

SENATE BILL NO. 992

March 24, 2022, Introduced by Senators LAUWERS, CHANG, BULLOCK, WOZNIAK, HERTEL, HORN and SCHMIDT and referred to the Committee on Families, Seniors, and Veterans.

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 1 and 2c (MCL 722.111 and 722.112c), section 1 as amended by 2020 PA 6 and section 2c as amended by 2017 PA 257.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. As used in this act:

(a) "Child care staff member" means an individual who is 18 years of age or older to whom 1 or more of the following applies:**apply:**

(i) The individual is employed by a child care center, group child care home, or family child care home for compensation, including a contract employee or a self-employed individual.

(ii) An individual whose activities involve the unsupervised care or supervision of children for a child care center, group child care home, or family child care home.

(iii) An individual who has unsupervised access to children who are cared for or supervised by a child care center, group child care home, or family child care home.

(iv) An individual who acts in the role of a licensee designee or program director.

(b) "Child care organization" means a governmental or nongovernmental organization having as its principal function receiving minor children for care, maintenance, training, and supervision, notwithstanding that educational instruction may be given. Child care organization includes organizations commonly described as child caring institutions, child placing agencies, children's camps, children's campsites, children's therapeutic group homes, child care centers, day care centers, nursery schools, parent cooperative preschools, foster homes, group homes, or child care homes. Child care organization does not include a governmental or nongovernmental organization that does either of the following:

(i) Provides care exclusively to minors who have been emancipated by court order under section 4(3) of 1968 PA 293, MCL 722.4.

(ii) Provides care exclusively to persons who are 18 years of

1 age or older and to minors who have been emancipated by court order
2 under section 4(3) of 1968 PA 293, MCL 722.4, at the same location.

3 (c) "Child caring institution" means a child care facility
4 that is organized for the purpose of receiving minor children for
5 care, maintenance, and supervision, usually on a 24-hour basis, in
6 buildings maintained by the child caring institution for that
7 purpose, and operates throughout the year. An educational program
8 may be provided, but the educational program shall not be the
9 primary purpose of the facility. Child caring institution includes
10 a maternity home for the care of unmarried mothers who are minors
11 and an agency group home, that is described as a small child caring
12 institution, owned, leased, or rented by a licensed agency
13 providing care for more than 4 but less than 13 minor children.
14 Child caring institution also includes an institution for
15 developmentally disabled or emotionally disturbed minor children.
16 Child caring institution does not include a hospital, nursing home,
17 or home for the aged licensed under article 17 of the public health
18 code, 1978 PA 368, MCL 333.20101 to 333.22260, a boarding school
19 licensed under section 1335 of the revised school code, 1976 PA
20 451, MCL 380.1335, a hospital or facility operated by the state or
21 licensed under the mental health code, 1974 PA 258, MCL 330.1001 to
22 330.2106, or an adult foster care family home or an adult foster
23 care small group home licensed under the adult foster care facility
24 licensing act, 1979 PA 218, MCL 400.701 to 400.737, in which a
25 child has been placed under section 5(6).

26 (d) "Child caring institution staff member" means an
27 individual who is 18 years of age or older to whom 1 or more of the
28 following ~~applies~~**apply**:

29 (i) The individual is employed by a child caring institution

1 for compensation, including an adult who does not work directly
2 with children.

3 (ii) The individual is a contract employee or self-employed
4 individual with a child caring institution.

5 (iii) The individual is an intern or other individual who
6 provides specific services under the rules promulgated under this
7 act.

8 (e) "Child placing agency" means a governmental organization
9 or an agency organized under the nonprofit corporation act, 1982 PA
10 162, MCL 450.2101 to 450.3192, for the purpose of receiving
11 children for placement in private family homes for foster care or
12 for adoption. The function of a child placing agency may include
13 investigating applicants for adoption and investigating and
14 certifying foster family homes and foster family group homes as
15 provided in this act. The function of a child placing agency may
16 also include supervising children who are at least 16 but less than
17 21 years of age and who are living in unlicensed residences as
18 provided in section 5(4).

19 (f) "Children's camp" means a residential, day, troop, or
20 travel camp that provides care and supervision and is conducted in
21 a natural environment for more than 4 children, apart from the
22 children's parents, relatives, or legal guardians, for 5 or more
23 days in a 14-day period.

24 (g) "Children's campsite" means the outdoor setting where a
25 children's residential or day camp is located.

26 (h) "Children's therapeutic group home" means a child caring
27 institution receiving ~~not more than 6 minor~~ children who are
28 diagnosed with a developmental disability as defined in section
29 100a of the mental health code, 1974 PA 258, MCL 330.1100a, or a

serious emotional disturbance as defined in section 100d of the mental health code, 1974 PA 258, MCL 330.1100d, and that meets all of the following requirements:

(i) Provides care, maintenance, and supervision, usually on a 24-hour basis.

(ii) Has a capacity of not more than 6 children.

(iii) ~~(ii)~~—Complies with the rules for child caring institutions, except that behavior management rooms, personal restraint, mechanical restraint, or seclusion, which is allowed in certain circumstances under licensing rules, are prohibited in a children's therapeutic group home. Emergency safety intervention in the form of physical management is allowed but must comply with the mental health code, 1974 PA 258, MCL 330.1001 to 330.2106, and associated administrative rules.

~~(iv) ~~(iii)~~—Is not a private home.~~

~~(v) ~~(iv)~~—Is not located on a campus with other licensed facilities.~~

(i) "Child care center" means a facility, other than a private residence, receiving 1 or more children under 13 years of age for care for periods of less than 24 hours a day, where the parents or guardians are not immediately available to the child. Child care center includes a facility that provides care for not less than 2 consecutive weeks, regardless of the number of hours of care per day. The facility is generally described as a child care center, day care center, day nursery, nursery school, parent cooperative preschool, play group, before- or after-school program, or drop-in center. Child care center does not include any of the following:

(i) A Sunday school, a vacation bible school, or a religious instructional class that is conducted by a religious organization

1 where children are attending for not more than 3 hours per day for
2 an indefinite period or for not more than 8 hours per day for a
3 period not to exceed 4 weeks during a 12-month period.

4 (ii) A facility operated by a religious organization where
5 children are in the religious organization's care for not more than
6 3 hours while persons responsible for the children are attending
7 religious services.

8 (iii) A program that is primarily supervised, school-age-child-
9 focused training in a specific subject, including, but not limited
10 to, dancing, drama, music, or religion. This exclusion applies only
11 to the time a child is involved in supervised, school-age-child-
12 focused training.

13 (iv) A program that is primarily an incident of group athletic
14 or social activities for school-age children sponsored by or under
15 the supervision of an organized club or hobby group, including, but
16 not limited to, youth clubs, scouting, and school-age recreational
17 or supplementary education programs. This exclusion applies only to
18 the time the school-age child is engaged in the group athletic or
19 social activities and if the school-age child can come and go at
20 will.

21 (v) A program that primarily provides therapeutic services to
22 a child.

23 (j) "Conviction" means a final conviction, the payment of a
24 fine, a plea of guilty or nolo contendere if accepted by the court,
25 a finding of guilt for a criminal law violation or a juvenile
26 adjudication or disposition by the juvenile division of probate
27 court or family division of circuit court for a violation that if
28 committed by an adult would be a crime, or a conviction in a tribal
29 court or a military court.

1 (k) "Criminal history check" means a fingerprint-based
2 criminal history record information background check through the
3 department of state police and the Federal Bureau of Investigation.

4 (l) "Criminal history record information" means that term as
5 defined in section 1a of 1925 PA 289, MCL 28.241a.

6 (m) "Department" means the department of health and human
7 services and the department of licensing and regulatory affairs or
8 a successor agency or department responsible for licensure under
9 this act. The department of licensing and regulatory affairs is
10 responsible for licensing and regulatory matters for child care
11 centers, group child care homes, family child care homes,
12 children's camps, and children's campsites. The department of
13 health and human services is responsible for licensing and
14 regulatory matters for child caring institutions, child placing
15 agencies, children's therapeutic group homes, foster family homes,
16 and foster family group homes.

17 (n) "Eligible" means that the individual obtained the checks
18 and clearances described in sections 5n and 5q and is considered
19 appropriate to obtain a license, to be a member of the household of
20 a group child care home or family child care home, or to be a child
21 care staff member.

22 (o) "Ineligible" means that the individual obtained the checks
23 and clearances as described in sections 5n and 5q and is not
24 considered appropriate to obtain a license, to be a member of the
25 household of a group child care home or family child care home, or
26 to be a child care staff member due to violation of section 5n, 5q,
27 or 5r.

28 (p) "Private home" means a private residence in which the
29 licensee permanently resides, which residency is not contingent

1 upon caring for children or employment by a child placing agency.
2 Private home includes a full-time foster family home, a full-time
3 foster family group home, a group child care home, or a family
4 child care home, as follows:

5 (i) "Foster family home" means the private home of an
6 individual who is licensed to provide 24-hour care for 1 but not
7 more than 4 minor children who are placed away from their parent,
8 legal guardian, or legal custodian in foster care. The licensed
9 individual providing care is required to comply with the reasonable
10 and prudent parenting standard as defined in section 1 of chapter
11 XIIIA of the probate code of 1939, 1939 PA 288, MCL 712A.1.

12 (ii) "Foster family group home" means the private home of an
13 individual who has been licensed by the department to provide 24-
14 hour care for more than 4 but fewer than 7 minor children who are
15 placed away from their parent, legal guardian, or legal custodian
16 in foster care. The licensed individual providing care is required
17 to comply with the reasonable and prudent parenting standard as
18 defined in section 1 of chapter XIIIA of the probate code of 1939,
19 1939 PA 288, MCL 712A.1.

20 (iii) "Family child care home" means a private home in which 1
21 but fewer than 7 minor children are received for care and
22 supervision for compensation for periods of less than 24 hours a
23 day, unattended by a parent or legal guardian, except children
24 related to an adult member of the household by blood, marriage, or
25 adoption. Family child care home includes a home in which care is
26 given to an unrelated minor child for more than 4 weeks during a
27 calendar year. A family child care home does not include an
28 individual providing babysitting services for another individual.
29 As used in this subparagraph, "providing babysitting services"

1 means caring for a child on behalf of the child's parent or
2 guardian if the annual compensation for providing those services
3 does not equal or exceed \$600.00 or an amount that would according
4 to the internal revenue code of 1986 obligate the child's parent or
5 guardian to provide a form 1099-MISC to the individual for
6 compensation paid during the calendar year for those services.

7 (iv) "Group child care home" means a private home in which more
8 than 6 but not more than 12 minor children are given care and
9 supervision for periods of less than 24 hours a day unattended by a
10 parent or legal guardian, except children related to an adult
11 member of the household by blood, marriage, or adoption. Group
12 child care home includes a home in which care is given to an
13 unrelated minor child for more than 4 weeks during a calendar year.

14 (q) "Legal custodian" means an individual who is at least 18
15 years of age in whose care a minor child remains or is placed after
16 a court makes a finding under section 13a(5) of chapter XIIIA of the
17 probate code of 1939, 1939 PA 288, MCL 712A.13a.

18 (r) "Licensee" means a person, partnership, firm, corporation,
19 association, nongovernmental organization, or local or state
20 government organization that has been issued a license under this
21 act to operate a child care organization.

22 (s) "Listed offense" means that term as defined in section 2
23 of the sex offenders registration act, 1994 PA 295, MCL 28.722.

24 (t) "Member of the household" means any individual who resides
25 in a family child care home, group child care home, foster family
26 home, or foster family group home on an ongoing basis, or who has a
27 recurrent presence in the home, including, but not limited to,
28 overnight stays. For foster family homes and foster family group
29 homes, a member of the household does not include a foster child.

1 For group child care homes and family child care homes, a member of
2 the household does not include a child to whom child care is being
3 provided.

4 (u) "Original license" means a license issued to a child care
5 organization during the first 6 months of operation indicating that
6 the organization is in compliance with all rules promulgated by the
7 department under this act.

8 (v) "Provisional license" means a license issued to a child
9 care organization that is temporarily unable to conform to the
10 rules promulgated under this act.

11 (w) "Qualified residential treatment program" or "QRTP" means
12 a program within a child caring institution to which all of the
13 following apply:

14 (i) The program has a trauma-informed treatment model,
15 evidenced by the inclusion of trauma awareness, knowledge, and
16 skills into the program's culture, practices, and policies.

17 (ii) The program has registered or licensed nursing and other
18 licensed clinical staff on-site or available 24 hours a day, 7 days
19 a week, who provide care in the scope of their practice as provided
20 in parts 170, 172, 181, 182, 182A, and 185 of the public health
21 code, 1978 PA 368, MCL 333.17001 to 333.17097, 333.17201 to
22 333.17242, 333.18101 to 333.18117, 333.18201 to 333.18237,
23 333.18251 to 333.18267, and 333.18501 to 333.18518.

24 (iii) The program integrates families into treatment, including
25 maintaining sibling connections.

26 (iv) The program provides aftercare services for at least 6
27 months post discharge.

28 (v) The program is accredited by an independent not-for-profit
29 organization as described in 42 USC 672(k)(4)(G).

(vi) 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.

(x) "Regular license" means a license issued to a child care organization indicating that the organization is in substantial compliance with all rules promulgated under this act and, if there is a deficiency, has entered into a corrective action plan.

(y) "Guardian" means the guardian of the ~~person~~**individual**.

(z) "Minor child" means any of the following:

(i) ~~A person~~**An individual** less than 18 years of age.

(ii) ~~A person~~**An individual** who is a resident in a child caring institution, foster family home, or foster family group home, who is at least 18 but less than 21 years of age, and who meets the requirements of the young adult voluntary foster care act, 2011 PA 225, MCL 400.641 to 400.671.

(iii) ~~A person~~**An individual** who is a resident in a child caring institution, children's camp, foster family home, or foster family group home; who becomes 18 years of age while residing in a child caring institution, children's camp, foster family home, or foster family group home; and who continues residing in a child caring institution, children's camp, foster family home, or foster family group home to receive care, maintenance, training, and supervision. A minor child under this subparagraph does not include ~~a person~~**an individual** 18 years of age or older who is placed in a child caring institution, foster family home, or foster family group home under an adjudication under section 2(a) of chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.2, or under section 1 of chapter IX of the code of criminal procedure, 1927 PA 175, MCL

1 769.1. This subparagraph applies only if the number of those
2 residents who become 18 years of age does not exceed the following:

3 (A) Two, if the total number of residents is 10 or fewer.

4 (B) Three, if the total number of residents is not less than
5 11 and not more than 14.

6 (C) Four, if the total number of residents is not less than 15
7 and not more than 20.

8 (D) Five, if the total number of residents is 21 or more.

9 (iv) ~~A person~~ **An individual** 18 years of age or older who is
10 placed in an unlicensed residence under section 5(4) or a foster
11 family home under section 5(7).

12 (aa) "Related" means in the relationship by blood, marriage,
13 or adoption, as parent, grandparent, great-grandparent, great-
14 great-grandparent, aunt or uncle, great-aunt or great-uncle, great-
15 great-aunt or great-great-uncle, sibling, stepsibling, nephew or
16 niece, first cousin or first cousin once removed, and the spouse of
17 any of the individuals described in this definition, even after the
18 marriage has ended by death or divorce.

19 (bb) "Religious organization" means a church, ecclesiastical
20 corporation, or group, not organized for pecuniary profit, that
21 gathers for mutual support and edification in piety or worship of a
22 supreme deity.

23 (cc) "School-age child" means a child who is eligible to
24 attend a grade of kindergarten or higher, but is less than 13 years
25 of age. A child is considered to be a school-age child on the first
26 day of the school year in which he or she is eligible to attend
27 school.

28 (dd) "Severe physical injury" means that term as defined in
29 section 8 of the child protection law, 1975 PA 238, MCL 722.628.

(ee) "Licensee designee" means the individual designated in writing by the board of directors of the corporation or by the owner or person with legal authority to act on behalf of the company or organization on licensing matters. The individual must agree in writing to be designated as the licensee designee. All license applications must be signed by the licensee in the case of the individual or by a member of the corporation, company, or organization.

Sec. 2c. ~~(1) If a child caring institution contracts with and receives payment from a community mental health services program or prepaid inpatient health plan for the care, treatment, maintenance, and supervision of a minor child in a child caring institution, the child caring institution may place a minor child in personal restraint or seclusion only as provided in this section and sections 2d and 2e but shall not use mechanical restraint or chemical restraint.~~ **must comply with the rules for child caring institutions. Emergency safety intervention in the form of physical management is allowed but must comply with the mental health code, 1974 PA 258, MCL 330.1001 to 330.2106, and associated administrative rules.**

~~(2) A child caring institution shall require its staff to have ongoing education, training, and demonstrated knowledge of all of the following:~~

~~(a) Techniques to identify minor children's behaviors, events, and environmental factors that may trigger emergency safety situations.~~

~~(b) The use of nonphysical intervention skills, such as de-escalation, mediation conflict resolution, active listening, and verbal and observational methods to prevent emergency safety~~

1 situations.

2 ~~(c) The safe use of personal restraint or seclusion, including~~
3 ~~the ability to recognize and respond to signs of physical distress~~
4 ~~in minor children who are in personal restraint or seclusion or who~~
5 ~~are being placed in personal restraint or seclusion.~~

6 ~~(3) A child caring institution's staff shall be trained in the~~
7 ~~use of personal restraint and seclusion, shall be knowledgeable of~~
8 ~~the risks inherent in the implementation of personal restraint and~~
9 ~~seclusion, and shall demonstrate competency regarding personal~~
10 ~~restraint or seclusion before participating in the implementation~~
11 ~~of personal restraint or seclusion. A child caring institution's~~
12 ~~staff shall demonstrate their competencies in these areas on a~~
13 ~~semiannual basis. The department shall review and determine the~~
14 ~~acceptability of the child caring institutions' staff education,~~
15 ~~training, knowledge, and competency requirements required by this~~
16 ~~subsection and the training and knowledge required of a licensed~~
17 ~~practitioner in the use of personal restraint and seclusion.~~