

Legislative Analysis



INCREASED CAPACITY FOR IN-HOME CHILD CARE PROVIDERS

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House Bill 5041 as enacted

Public Act 106 of 2022

Sponsor: Rep. Jack O'Malley

House Committee: Families, Children and Seniors

1st Senate Committee: Families, Seniors, and Veterans [Discharged]

2nd Senate Committee: Economic and Small Business Development

Complete to 12-15-22

SUMMARY:

House Bill 5041 amends 1973 PA 116, known as the child care licensing act, to increase the number of children that in-home child care providers can receive into care under certain circumstances.

Under the act, a *family child care home* is defined as a private home where up to six children are taken care of and supervised for compensation for periods of less than 24 hours at a time, and a *group child care home* is a private home where seven to 12 children are provided that supervision and care.

In addition, Rule 10 of the licensing rules for family and group child care homes¹ provides that the ratio of staff to children at any given time must be at least one staff member to six minor children. The ratio must include all minor children in care who are not related to any personnel and any of the following children who are under six years of age:

- Children of the licensee.
- Children of a child care staff member or child care assistant.
- Children related to a member of the household by blood, marriage, or adoption.

There can be only up to four minor children under 30 months old per each personnel member, and no more than two of those four children can be under 18 months old.

The bill amends the definitions of *family child care home* and *group child care home* to provide that each term also includes a private home with *increased capacity*.

Increased capacity means one additional child added to the total number of minor children received for care and supervision in a family child care home or two additional children added to the total number of minor children received for care and supervision in a group child care home.

The bill provides that a family child care home or group child care home is automatically eligible for increased capacity if it meets all of the following:

- It holds a current license.
- It has been licensed to operate for at least 29 consecutive months.

¹ https://www.michigan.gov/documents/lara/lara_BCAL_PUB-724_0715_494800_7.pdf

- It has received one or more unrelated minor children for care and supervision during that licensed period.
- It has received a renewed regular license after at least 29 months of licensed operation as described above.

The Department of Licensing and Regulatory Affairs (LARA) may rescind increased capacity due to one corrective action, licensing action, or a determination by LARA that increased capacity is not ***conducive to the welfare of children*** as that term is defined in section 5m of the act.² A family child care home or group child care home may appeal rescission of increased capacity under a hearing held as provided under the act. If LARA rescinds increased capacity, the family child care home or group child care home may be considered for increased capacity in a form and manner determined by LARA after at least 22 months following the rescission.

Conducive to the welfare of the children means both that the service and facility comply with the act and its administrative rules and that the disposition, temperament, condition, and action of the applicant, licensee, licensee designee, program director, child care staff member, and member of the household promote the safety and well-being of the children served.

Inspections

The bill provides that an inspection in accordance with the approved state child care plan of a child care organization licensed under the act must be unannounced unless LARA or the Department of Health and Human Services (DHHS), as applicable,³ considers it necessary to schedule an appointment for an inspection. (This provision existed prior to the bill, but referred to an “annual inspection” instead of an “inspection in accordance with the approved state child care plan.”)

“Substantially violates”

The act also provides that LARA or DHHS, as applicable, may deny, revoke, or refuse to renew a license of a child care organization when the licensee or applicant falsifies information on the application or willfully and ***substantially violates*** the act, the rules promulgated under it, or the terms of the license.

Under the bill, ***substantially violates*** means repeated violations of the act or repeated instances of noncompliance or a single issue of noncompliance with the act, a rule promulgated under the act, or the terms of a license that jeopardizes the health, safety, care, treatment, maintenance, or supervision of individuals receiving services or, in the case of an applicant, individuals who may receive services.

(***Substantially violates*** previously meant repeated violations or noncompliance of the act, a rule promulgated under the act, or the terms of a license that jeopardizes the health, safety, care, treatment, maintenance, or supervision of individuals receiving services or, in the case of an applicant, individuals who may receive services.)

² Note: As defined in section 5m, the term is ***conducive to the welfare of the children***.

³ Under the act, LARA is responsible for licensure and regulation of child care centers, group child care homes, family child care homes, children's camps, and children's campsites, and DHHS is responsible for licensure and regulation of child caring institutions, children's therapeutic group homes, child placing agencies, foster family homes, and foster family group homes.

Other amendments

The bill also includes amendments that derive from House Bill 5042 and are further described in the summary of that bill. (Changes proposed by each of these bills were included in both of them as they neared passage, so that the changes in one would not be undone by their absence in the other.) These amendments include lowering the permissible age of a child care staff member from 18 years of age or older to 16 years of age or older. In addition, the bill amends the term *licensee* to mean a person, *legal entity* organized under a law of this state, state or local government, or trust that has been issued a license under the act to operate a child care organization. It then defines the term *legal entity* as a sole proprietorship, partnership, corporation, limited liability company, or any other entity.

MCL 722.111, 722.113h, and 722.121

FISCAL IMPACT:

House Bill 5041 would not have a fiscal impact on any unit of state or local government.

Legislative Analyst: E. Best
Fiscal Analyst: Marcus Coffin

■ 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.