



Senate Fiscal Agency  
P. O. Box 30036  
Lansing, Michigan 48909-7536



BILL ANALYSIS

Telephone: (517) 373-5383  
Fax: (517) 373-1986  
TDD: (517) 373-0543

Senate Bill 241 (Substitute S-1 as reported)  
Senate Bills 242 and 243 (as reported without amendment)  
Sponsor: Senator Gilda Z. Jacobs  
Committee: Families and Human Services

Date Completed: 6-26-07

### **RATIONALE**

In 2001, the U.S. Department of Health and Human Services issued Federal regulations restricting the use of seclusion and restraint in facilities providing psychiatric services for individuals under the age of 21. Under the regulations, seclusion and restraint may not be used as a means of coercion or discipline. Those measures are allowed only in an emergency safety situation, as ordered by a licensed practitioner. Other restrictions and training and reporting requirements also apply. (Please see **BACKGROUND** for a more detailed description of the Federal regulations.)

In Michigan, Public Act 531 of 2004 amended the child care licensing Act to bring requirements governing licensed facilities into compliance with the new regulations. In general, the language of that Act closely follows the Federal requirements. Despite those changes, the Department of Community Health (DCH) has said that certain group homes for emotionally disturbed or developmentally disabled children (which are considered child caring institutions under the Act) are ineligible for Medicaid reimbursement for services provided, because the child care licensing Act permits restraint and seclusion in some circumstances. Instead, the services are paid for with General Fund dollars from the DCH budget. To enable these homes to qualify for Medicaid reimbursement, it has been suggested that the statute should provide for a separate category of children's group homes in which restraint or seclusion of residents would be prohibited. In addition, a number of other changes have been proposed to update and modify the language in the Act.

### **CONTENT**

**Senate Bill 241 (S-1)** would amend the child care licensing Act to do the following:

- Define the term "children's therapeutic group home", and prohibit certain restraints or seclusion otherwise permitted under licensing rules from being used in such a home.
- Require each individual over the age of 18 residing in a family day care home or group day care home to undergo a criminal history check with the Department of State Police, rather than a check using the State Police's Internet Criminal History Access Tool (ICHAT), as currently required.
- Set a beginning date of October 1, 2007, for requirements that a renewal certificate of registration be issued within six months of application.
- Include in the definition of "children's camp" an outdoor campsite located where the children's camp is operated.
- Replace references to "group day care home" or "family day care home" with "group child care home" or "family child care home".
- Redefine "related" and define "legal custodian".
- Revise the definitions of "foster family home" and "foster family group home".

**Senate Bill 242** would amend the Michigan Zoning Enabling Act to refer to a "family child care home" and a "group

**child care home", rather than a family day care home and a group day care home.**

**Senate Bill 243 would amend the Code of Criminal Procedure to replace references in the sentencing guidelines to family day care homes and group day care homes with "family child care homes" and "group child care homes".**

Senate Bills 242 and 243 are tie-barred to Senate Bill 241.

### **Senate Bill 241 (S-1)**

#### Therapeutic Group Home

The bill would define "children's therapeutic group home" as a child care facility receiving not more than six minor children who are diagnosed with a developmental disability as defined in Section 100a of the Mental Health Code, or a serious emotional disturbance as defined in Section 100d of that Code.

A children's therapeutic group home would have to meet all of the following requirements:

- Provide care, maintenance, and supervision, usually on a 24-hour basis.
- Comply with the rules for residential treatment institutions, except that behavior management rooms, personal restraint, mechanical restraint, or seclusion that is allowed in certain circumstances under licensing rules would be prohibited in a children's therapeutic group home.
- Not be a private home.
- Not be located on a campus with other licensed facilities.

(Under Section 100a of the Mental Health Code, "developmental disability", if applied to an individual older than five, means a severe, chronic condition that meets all of the following:

- Is attributable to a mental or physical impairment or a combination of those impairments.
- Is manifested before the individual is 22 years old.
- Is likely to continue indefinitely.
- Results in substantial functional limitations in three or more of the following areas: self care, receptive and

expressive language, learning, mobility, self-direction, capacity for independent living, and economic self-sufficiency.

- Reflects the individual's need for a combination and sequence of special, interdisciplinary, or generic treatment, or other services that are of lifelong or extended duration and are individually planned or coordinated.

If applied to a minor from birth to five years of age, the term means a substantial developmental delay or a specific congenital or acquired condition with a high probability of resulting in developmental disability if services are not provided.

Under Section 100d, "serious emotional disturbance" means a diagnosable mental, behavioral, or emotional disorder affecting a minor that exists or has existed during the past year for a period of time sufficient to meet the most recent diagnostic criteria published by the American Psychiatric Association, resulting in functional impairment that substantially interferes with or limits the minor's role or functioning in family, school, or community activities.)

#### Criminal History Check

Under the Act, when a person applies for a certificate of registration to operate a family day care home or a license to operate a group day care home, the Department of Human Services (DHS) must perform a criminal history check using the Department of State Police's ICHAT on all individuals over 18 years of age residing in the home. In addition, by January 1, 2007, the DHS had to perform an ICHAT check on all people over the age of 18 residing in the home in which a family day care home or group day care home was operated.

The bill would require a criminal history check with the State Police, rather than an ICHAT check, to be conducted on those individuals.

Under the Act, the DHS may not issue or renew a certificate of registration to a family day care home or a license to a group day care home without requesting a criminal history check and an ICHAT check. The bill would delete the requirement for an ICHAT check.

The bill also would refer to a family child care home and a group child care home in these provisions.

(Under the child care licensing Act, "family day care home" means a private home in which at least one but fewer than seven minor children, who are not related to an adult member of the household by blood or marriage, or who are not placed in the household under the Michigan Adoption Code, are received for care and supervision for less than 24 hours a day, unattended by a parent or legal guardian, except children related to an adult member of the family by blood, marriage, or adoption. The term includes a home in which care is given to an unrelated minor child for more than four weeks during a calendar year.

The definition of "group day care home" is similar, except that it refers to a private home in which more than six but not more than 12 minor children are given care and supervision.

#### Registration Renewal

The Act requires the DHS to issue a certificate of registration to a person who has successfully completed an orientation session and who certifies to the Department that the family day care home has complied with and will continue to comply with the rules promulgated under the Act, and will provide services and facilities conducive to the welfare of children.

Beginning October 1, 2007, the DHS must issue an initial license or renewal license within six months after the applicant files a completed application.

If the DHS fails to issue or deny a license or registration to a child care center, group day care home, or family day care home within the time required, the DHS must return the license or registration fee and reduce the fee for the applicant's next renewal application, if any, by 15%.

A renewal certificate of registration must be issued in the same manner as provided above for the initial issuance of the certificate, except that an on-site visit and the orientation session are not required.

Under the bill, until September 30, 2007, the six-month time limit and related

provisions would not apply to a renewal certificate of registration. Beginning October 1, 2007, all of the above requirements would apply. As currently provided, an on-site visit and the orientation session would not be required (before or after that date) for a certificate renewal.

#### Children's Camp

Currently, "children's camp" means a residential, day, troop, or travel camp that provides care and supervision and is conducted in a natural environment for more than four children, apart from the children's parents, relatives, or legal guardians, for five or more days in a 14-day period.

Under the bill, the term also would include a campsite that is an outdoor setting that has natural or manmade features available for outdoor living or activities and that is located where the children's camp is operated.

#### Definitions

Currently, a "foster family home" is a private home in which one to four minor children, who are not related to an adult member of the household by blood or marriage, or who are not placed in the household under the Michigan Adoption Code, are given care and supervision 24 hours a day, for four or more days a week, for two or more consecutive weeks, unattended by a parent or legal guardian. The definition of a "foster family group home" is identical except that it provides for more than four but fewer than seven children in the home. Under the bill, in both definitions, the children would have to be unattended by a parent, legal guardian, or legal custodian.

The bill would define "legal custodian" as an individual who is at least 18 years of age in whose care a minor child remains or is placed after a court makes a finding under Section 13a(5) of the juvenile code. (That section deals with allegations of abuse by a parent, guardian, custodian, nonparent adult, or other person residing in a child's home.)

Currently, "related" means a parent, grandparent, brother, sister, stepparent, stepsister, stepbrother, uncle, aunt, cousin, great-aunt, great-uncle, or step-grandparent related by marriage, blood, or adoption.

Under the bill, the term would mean an individual who is at least 18 years of age and related to the child by blood, marriage, or adoption, as grandparent, great-grandparent, great-great-parent, aunt or uncle, great-aunt or great-uncle, great-great-aunt or great-great-uncle, sibling, stepsibling, nephew or niece, first cousin or first cousin once removed, and the spouse of any of the above, even after the marriage has ended by death or divorce.

### **Senate Bill 242**

The Michigan Zoning Enabling Act includes provisions for the zoning of a family day care home and a group day care home. A county or township must consider a family day care home a residential use of property for zoning purposes.

A group day care home must be issued a special use permit, conditional use permit, or other similar permit if the group day care home meets standards specified in the Act.

The Act provides that "family day care home" and "group day care home" mean those terms as defined in the child care licensing Act, and only apply to a bona fide private residence of the operator of the family or group day care home. Under the bill, "family child care home" and "group child care home" would replace those terms, and would have the same definition.

### **Senate Bill 243**

Under the child care licensing Act, a person with a license or registration to operate a family day care home or a group day care home must notify the Department of Human Services within three business days if he or she has been arraigned for one or more specific crimes, or within three business days after he or she knows or reasonably should know that an employee or an adult residing in the home has been arraigned for any of those crimes. Failure to report a misdemeanor that is a "listed offense" or any felony is a felony punishable by a maximum fine of \$2,000 and/or imprisonment for up to two years.

Under the Code of Criminal Procedure, this offense is a class G felony against public safety with a statutory maximum of two years.

The bill would refer to family child care homes and group child care homes, rather than family day care homes and group day care homes, in the guidelines' description of the offense.

MCL 722.111 et al. (S.B. 241)  
125.3102 (S.B. 242)  
777.15g (S.B. 243)

### **BACKGROUND**

Current Federal regulations (42 CFR 483) impose procedural, reporting, and training requirements regarding the use of restraint and seclusion in nonhospital psychiatric facilities serving people younger than 21. The regulations provide that each resident has the right to be free from restraint or seclusion used as a means of coercion, discipline, convenience, or retaliation; prohibits the simultaneous use of restraint and seclusion; and prohibits an order for restraint or seclusion from being written as a standing order or on an as-needed basis. Upon admittance, incoming residents and their parents must be notified of the facility's policy regarding the use of restraint and seclusion.

Restraint or seclusion may be used only to ensure the safety of a resident or others during an emergency safety situation. Restraint or seclusion must not result in harm to the patient or continue beyond the end of the emergency safety situation.

Restraint and seclusion may be ordered only by a physician or other authorized licensed practitioner trained in the use of emergency safety interventions. The physician or licensed practitioner must order the least restrictive emergency safety intervention that is likely to be effective in resolving the emergency safety situation.

An order for restraint or seclusion must be limited to the duration of the emergency safety situation, and may not exceed four hours for residents from ages 18 to 21, two hours for residents ages nine to 17, or one hour for residents under the age of nine. Within one hour of the initiation of an intervention, the physician or other practitioner must conduct a face-to-face assessment of the resident.

The regulations also require every serious occurrence (i.e., a resident's death, serious

injury, or suicide attempt) to be reported to the state Medicaid agency (the DCH in Michigan), and, unless prohibited by state law, the state-designated protection and advocacy system.

The regulations require facility staff to have ongoing education, training, and demonstrated knowledge in identification of factors that may trigger emergency safety situations, the use of nonphysical intervention skills, and the safe use of restraint and seclusion. Additionally, staff must be certified in the use of cardiopulmonary resuscitation.

## **ARGUMENTS**

*(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)*

### **Supporting Argument**

By prohibiting the use of seclusion or restraint in a children's therapeutic group home, Senate Bill 241 (S-1) would help ensure that those homes were in compliance with Federal regulations, enabling them to qualify for Medicaid reimbursement. The Federal rules permit the use of seclusion or restraint in limited circumstances, but also require extensive training, monitoring, and reporting to prevent those practices from being used improperly. The small group homes in question do not engage in seclusion or restraint, according to testimony before the Senate Families and Human Services Committee, and therefore the clearest way of demonstrating compliance with the regulations would be to prohibit those practices altogether in children's therapeutic group homes.

Presently, although the children in the homes otherwise would be eligible for Medicaid reimbursement, the homes receive funds from Community Mental Health services, which are funded through the DCH's non-Medicaid appropriation. The bill would enable the homes to receive Medicaid funding, freeing up more funds for other locally provided mental health services. It is estimated that about eight to 10 homes would apply immediately to be licensed as therapeutic group homes, and more likely would follow in order to receive Federal funding.

### **Supporting Argument**

Senate Bill 241 (S-1) would place into statute the term "legal custodian", to allow a child to be placed with an individual who is unrelated to the child, but is not licensed as a foster care provider. In some child placement cases, an individual such as a friend of the family is willing to take care of the child, but may not wish to go through the licensing requirements to become a foster care provider. Such placements often are in the best interest of the child, but currently there is no legal description in the Act to accommodate such a placement.

In addition, the bill would update the definition of "related", making it consistent with the definition of "relative" contained in the juvenile code.

### **Supporting Argument**

The Act requires a child care organization to conduct certain criminal background checks for employees and others using the Department of State Police's ICHAT. Because the statute requires that the check be conducted with this specific tool, it limits the DHS's ability to conduct background checks using other equally effective methods. To give the DHS latitude to conduct the required background checks in the most efficient and accurate way possible while accommodating technological and procedural changes, Senate Bill 241 (S-1) would refer more generally to a criminal history check with the Department of State Police, rather than specifically to an ICHAT check.

### **Supporting Argument**

By replacing the terms "family day care home" and "group day care home" with "family child care home" and "group child care home" in the Michigan Zoning Enabling Act and the Code of Criminal Procedure, Senate Bills 242 and 243 would bring the language of those statutes into conformity with changes in the child care licensing Act proposed by Senate Bill 241 (S-1). Those changes would reflect common usage in the industry.

Legislative Analyst: Curtis Walker

## **FISCAL IMPACT**

### **Senate Bill 241 (S-1)**

The bill would have an indeterminate impact on State government. The DHS Office of Children and Adult Licensing (OCAL) will license the children's therapeutic group homes at \$75 per home for a three-year period and \$25 per home for license renewal, which is the rate for one- to six-bed child caring institutions (CCIs). There were approximately 220 CCIs in FY 2005-06; however, it is anticipated that there will be a small number of children's therapeutic group homes due to the residency size restriction. It is necessary for the homes to be licensed in order to be eligible for Medicaid reimbursement. Medicaid reimbursement for these homes would reduce the amount of General Fund support needed to provide these services.

The statutory definition of "legal custodian", although the person does not require a license, is necessary for a legal placement ordered by the probate court. It is not clear to what degree the costs for custodial care are the total responsibility of the State. Any costs incurred are not eligible for Federal Title IV-E claims, unless the placement is licensed. However, the State could use other available Federal funds if this is a time-limited emergency foster care placement. Otherwise, the costs will be paid with State funds.

No additional administrative costs are expected for the issuance of a renewal certificate of registration.

### **Senate Bills 242 and 243**

The bills would have no fiscal impact on State or local government.

Fiscal Analyst: Constance Cole  
David Fosdick  
Lindsay Hollander

#### A0708\S241a

This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.