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BILL ANALYSIS



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Senate Bills 1041 through 1044 (as enacted)

PUBLIC ACTS 492-495 of 2016

Sponsor: Senator Judy K. Emmons

Senate Committee: Families, Seniors and Human Services

House Committee: Families, Children, and Seniors

Date Completed: 1-19-17

CONTENT

The bills amend various statutes to allow certain confidential information in the possession of the Department of Health and Human Services (DHHS) or the Department of Licensing and Regulatory Affairs (LARA) to be shared as necessary for the functioning of either Department in administering certain programs, regardless of confidentiality provisions.

Senate Bill 1043 also includes a children's advocacy center in the list of organizations to which the DHHS may make a confidential record available under certain circumstances.

Senate Bill 1041 amends the Adult Foster Care Facility Licensing Act; Senate Bill 1042 amends the Social Welfare Act; Senate Bill 1043 amends the Child Protection Law; and Senate Bill 1044 amends the child care licensing Act.

The bills will take effect on April 6, 2017.

Senate Bill 1041

Under the Adult Foster Care Facility Licensing Act, a person who believes that the Act or a rule promulgated under it might have been violated may request an investigation of an adult foster care facility. The request must be submitted to LARA in writing or the Department must assist the person in reducing an oral complaint to writing within seven days after the oral request is made.

The complaint, a copy of it, or a record published, released, or otherwise disclosed to the facility may not disclose the name of the complainant or an adult resident named in the complaint unless the complainant or resident consents in writing or the investigation results in an administrative hearing or judicial proceeding, or unless the DHHS considers disclosure essential to the investigation. If disclosure is considered essential to the investigation, the complainant must be given the opportunity to withdraw the complaint before disclosure.

Under the bill, notwithstanding the provision described above and Sections 5 and 7(2) of the Child Protection Law, information or records in the possession of the DHHS or LARA may be shared to the extent necessary for the proper functioning of those Departments in administering adult welfare or adult foster care licensing under the Act or in an investigation conducted under Section 43b of the Social Welfare Act (which establishes the Office of Inspector General in the DHHS to investigate suspected cases of fraud within the Department). The DHHS or LARA may not release information or records shared under the

bill unless otherwise permitted under the Adult Foster Care Facility Licensing Act or other State or Federal law.

(Section 5 of the Child Protection Law provides that, with certain exceptions, the identity of a person reporting suspected child abuse is confidential and subject to disclosure only with the person's consent or by judicial process. Under Section 7(2), unless made public as allowed under the Law, a written report, document, or photograph filed with the DHHS is confidential and may be made available only to certain people or entities.)

Senate Bill 1042

Under the Social Welfare Act, certain people who suspect or have reasonable cause to believe that an adult has been abused, neglected, or exploited must immediately make an oral report to the county department of social services and may follow up with a written report. In addition to those people required to report, any person who suspects that an adult has been abused, neglected, or exploited may report that suspicion.

The identity of a person making a report must be confidential, subject only to disclosure with that person's consent or by judicial process. Under the bill, notwithstanding any other confidentiality provisions of the Act and Sections 5 and 7(2) of the Child Protection Law, information or records in the possession of the DHHS or LARA may be shared to the extent necessary for the proper functioning of those Departments in administering child or adult welfare or child or adult foster care facility licensing under the Act or in an investigation conducted under Section 43b of the Act. The DHHS or LARA may not release information or records shared under the bill unless otherwise permitted under the Act or other State or Federal law.

Senate Bill 1043

The Child Protection Law (CPL) requires certain people who have reasonable cause to suspect child abuse or neglect to make an immediate report to the DHHS by telephone or, if available, through an online reporting system. Within 72 hours after making the oral report, the person must file a written report. In addition, any person who has reasonable cause to suspect child abuse or neglect may report to the DHHS or a law enforcement agency.

The CPL also requires the DHHS to maintain a statewide electronic central registry to carry out the intent of the Law. Under Section 7(2), unless made public as specified information released under Section 7d the CPL (which allows the DHHS Director to release specified information, subject to other conditions) a written report, document, or photograph filed with the DHHS is a confidential record and may be made available only to certain people or entities. Under the bill, notwithstanding that provision and Section 5 of the Law, information or records in the possession of the DHHS or LARA may be shared to the extent necessary for the proper functioning of those Departments in administering child welfare or child care facility licensing under the CPL or in an investigation conducted under Section 43b of the Social Welfare Act. The DHHS or LARA may not release information or records shared under the bill unless otherwise permitted under the CPL or other State or Federal law.

In addition, under the bill, neither the DHHS nor LARA may release or open for inspection any document, report, or record authored by or obtained from another agency or organization unless required by State or Federal law, in response to an order issued by a judge, magistrate, or other authorized judicial officer, or unless the document, report, or record is requested for a child abuse or child neglect case or for a criminal investigation of a child abuse or child neglect case conducted by law enforcement.

The bill also allows the DHHS to make a written report, document, or photograph filed with the Department as provided under the CPL available to a children's advocacy center in the

course of providing services to a child alleged to have been the victim of child abuse or child neglect or to that child's family.

Senate Bill 1044

Under the child care licensing Act, the DHHS may investigate and examine conditions of a child care organization in which a licensee receives, maintains, or places out children, and may investigate and examine a licensee's books and records.

Except as otherwise provided in the Act, records regarding children and facts compiled about children and their parents and relatives are confidential and disclosure of that information must be properly safeguarded by the child care organization, the DHHS, and any other entity in possession of the information. Under the bill, notwithstanding that provision and Sections 5 and 7(2) of the Child Protection Law, information or records in the possession of the DHHS or LARA may be shared to the extent necessary for the proper functioning of those Departments in administering child welfare or child care licensing under the Act or in an investigation conducted under section 43b of the Social Welfare Act. The DHHS or LARA may not release information or records shared under the bill unless otherwise permitted under the child care licensing Act or other State or Federal law.

In addition, under the bill, neither the DHHS nor LARA may release or open for inspection any document, report, or record authored by or obtained from another agency or organization unless required by State or Federal law, in response to an order issued by a judge, magistrate, or other authorized judicial officer, or unless the document, report, or record is requested for a child abuse or child neglect case or for a criminal investigation of a child abuse or child neglect case conducted by law enforcement.

MCL 400.724 (S.B. 1041)
400.11c (S.B. 1042)
722.627 (S.B. 1043)
722.120 (S.B. 1044)

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

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

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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.