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BILL ANALYSIS

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Senate Bills 466 through 469 (as introduced 8-29-19)
Sponsor: Senator John Bizon, M.D. (S.B. 466 & 468)
Senator Marshall Bullock II (S.B. 467 & 469)
Committee: Families, Seniors, and Veterans

Date Completed: 9-4-19

CONTENT

Senate Bill 466 would amend Public Act 116 of 1973, the child care licensing Act, to modify the definition of "foster family home" and "foster family group home", and to define "qualified residential treatment program" (QRTP).

Senate Bill 467 would amend the child care licensing Act, to modify the reasons for which the Department of Health and Human Services (DHHS), under certain circumstances, could grant a variance to one or more licensing rules or statutes regulating foster family homes or foster family group homes.

Senate Bill 468 would amend the child care licensing Act, to do the following:

- **Within 30 days after a child in foster care was placed in a QRTP, require a qualified individual to assess the child's strengths, needs, circumstances, and goals.**
- **Require a child placing agency responsible for care and supervision of a child to assemble a team consisting of certain individuals.**
- **Require a child placing agency responsible for a child in foster care who was placed in a QRTP to document certain information in the child's case plan.**
- **Within 60 days after the start of a child's placement in a QRTP, require the court to evaluate certain information and circumstances related to the child.**
- **Require the court to approve or disapprove of a child's QRTP placement at each dispositional review hearing and permanency planning hearing held with respect to the child.**
- **Require the signed approval of the Director of the DHHS for placements longer than the prescribed time periods.**
- **Prohibit the State from enacting or advancing policies or practices that would result in a significant increase in the population of youth in the juvenile justice system.**

Senate Bill 469 would amend the juvenile code to require the court to approve or disapprove a QRTP placement at a review hearing.

The bills are tie-barred.

Senate Bill 466

Under the Act, "foster family home" means a private home in which one but not more than four minor children, who are not related to an adult member of the household by blood or marriage, who are not placed in the household under the Michigan Adoption Code or who are

not hosted in the private home as provided in the Safe Families for Children Act, are given care and supervision for 24 hours a day, for four or more days a week, for two or more consecutive weeks, unattended by a parent, legal guardian, or legal custodian.

Under the bill, "foster family home" would mean the private home of an individual who is licensed to provide 24-hour care for one but not more than four minor children who are placed away from their parent, legal guardian, or legal custodian in foster care. The licensed individual providing care would have to comply with the reasonable and prudent parenting standard as defined in Section 1 of the juvenile code: decisions characterized by careful and sensible parental decisions that maintain a child's health, safety, and best interest while encouraging the emotional and developmental growth of the child when determining whether to allow a child in foster care to participate in extracurricular, enrichment, cultural, and social activities.

The Act currently defines "foster family group home" as a private home in which more than four but fewer than seven minor children, who are not related to an adult member of the household by blood or marriage, who are not placed in the household under the Michigan Adoption Code or who are not hosted in the private home as provided in the Safe Families for Children Act, are provided care for 24 hours a day, for four or more days a week, for two or more consecutive weeks, unattended by a parent, legal guardian, or legal custodian.

Instead, under the bill, "foster family group home" would mean the private home of an individual who has been licensed by the DHHS to provide 24-hour care for more than four but fewer than seven minor children who are placed away from their parent, legal guardian, or legal custodian in foster care. The licensed individual providing care would be required to comply with the reasonable and prudent parenting standard.

The bill also would define "qualified residential treatment program" as a program within a child caring institution to which all of the following apply:

-- 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 by 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 under Federal law.
-- 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.

(The Act currently defines "child caring institutions" as a child care facility that is organized for the purpose of receiving minor children for care, maintenance, and supervision, usually on a 24-hour basis, in buildings maintained by the child caring institution for that purpose, and operates throughout the year.)

Senate Bill 467

Under the child care licensing Act, upon the recommendation of a local foster care review board under Section 7a of child care review board Act, or of a child placing agency, the DHHS may grant a variance to one or more licensing rules or statutes regulating foster family homes

or foster family group homes to allow the child and one or more siblings to remain or be placed together.

Under the bill, in addition to the reason provided above the DHHS also could grant a variance to one or more licensing rules or statutes regulating foster family homes or foster family group homes for one or more of the following reasons:

-- To allow a child with an established meaningful relationship with the family to remain with the family.
-- To allow a family with special training or skills to provide care to a child who has a severe disability.

(Section 7a of the Act provides that if the case of a child who has at least one sibling is otherwise before a local board, the board may evaluate the child's placement in a foster family home or foster family group home that would allow the child and one or more siblings to remain or be placed together, but would also require obtaining a variance from one or more licensing rules or statutes.)

Senate Bill 468

Requirements; Placement of Child in Qualified Residential Treatment Program

Under the bill, in the case of a child in foster care who was placed in a QRTP, the following requirements would apply.

Within 30 days after the start of each placement in a QRTP, a qualified individual would have to do all of the following:

-- Assess the strengths and needs of the child using an age-appropriate, evidence-based, validated, functional assessment tool approved by the Secretary of the United States Department of Health and Human Services.
-- Determine whether the needs of the child could be met with family members or through placement in a foster family home or, if not, which setting would provide the most effective and appropriate level of care for the child in the least restrictive environment and would be consistent with the short-term and long-term goals for the child, as specified in the child's permanency plan.
-- Develop a list of child-specific short-term and long-term mental and behavioral health goals.

"Qualified individual" would mean a trained professional or licensed clinician who was not an employee of the DHHS and who was not connected to, or affiliated with, any placement setting in which children were placed by the DHHS. The DHHS could seek a waiver from the Secretary to approve a qualified individual who did not meet the criteria described above to conduct the assessment. The individual would have to maintain objectivity with respect to determining the most effective and appropriate placement for the child.

The child placing agency responsible for care and supervision of the child would have to assemble a team for the child in accordance with the requirements above. The qualified individual conducting the assessment required as described above would have to work in conjunction with the child's team while conducting and making the assessment. The child's team would have to consist of all appropriate biological family members, relatives, and other supportive adults of the child, as well as professionals who were a resources to the family of the child, such as teachers, medial or mental health providers who had treated the child, or

clergy. In the case of a child who had attained age 14, the team would have to include members of the permanency planning team for the child that were selected by the child.

Also, the child placing agency responsible for the child's care and supervision would have to document in the child's case plan the following:

-- The reasonable and good-faith effort to identify and include all the individuals on the child's team.
-- All contact information for team members, as well as contact information for other relatives and supportive adults who were not part of the child's team.
-- Evidence that team meetings, including meetings relating to the assessment required as described above, were held at a time and place convenient for the family.
-- If reunification were the goal, evidence demonstrating that the parent from whom the child was removed provided input to the members of the child's team.
-- Evidence that the assessment of the child's strengths and needs was determined in conjunction with the child's team.
-- The placement preference of the child's team relative to the assessment that recognized a child should be placed with his or her sibling unless there was a finding by the court that the placement would be contrary to his or her best interest.
-- If the placement preference of the child's team and the child were not the placement setting recommended by the qualified individual conducting the assessment, the reason why the preferences of the child's team and of the child were not recommended.

Placement in Residential Treatment Program

If the qualified individual conducting the assessment determined the child should not be placed in a foster family home, the qualified individual would have to specify the reason the needs of the child could not be met by the family of the child or in a foster family home. A shortage or lack of foster family homes would not be an acceptable reason for determining that the needs of the child could not be met in a foster family home. The qualified individual would have to specify why the recommended placement in a QRTP was the setting that would provide the child with the most effective and appropriate level of care in the least restrictive environment and how that placement was inconsistent with the short-term and long-term goals for the child, as specified in the permanency plan for the child.

Evaluation of Residential Treatment Program Placement

The bill specifies that, within 60 days after the start of each placement in a QRTP, the court, or an administrative body appointed or approved by the court, independently, would have to do the following:

-- Consider the assessment, determination, and documentation made by the qualified individual.
-- Determine whether the needs of the child could be met through placement in a foster family home or, if not, whether placement of the child in a QRTP provided the most effective and appropriate level of care for the child in the least restrictive environment and whether that placement was consistent with the goals for the child, as specified in the permanency plan for the child.
-- Approve or disapprove the QRTP placement.

The documentation of the determination and approval or disapproval of the placement in a QRTP by a court or administrative body would have to be included in, and made part of, the case plan for the child.

As long as a child remained placed in a QRTP, the DHHS would have to submit evidence at each dispositional review hearing and each permanency planning hearing held with respect to the child that did the following:

-- Demonstrated that ongoing assessment of the strengths and needs of the child continued to support the determination that the needs of the child could not be met through placement in a foster family home, that the placement in a QRTP provided the most effective and appropriate level of care for the child in the least restrictive environment, and that the placement was consistent with the short-term and long-term goals for the child, as specified in the permanency plan for the child.
-- Documented the specific treatment or service needs that would be met for the child in the placement and the length of time the child was expected to need the treatment or services.
-- Documented the reasonable efforts made by the DHHS to prepare the child to return home or to be placed with a fit and willing relative, a legal guardian, or an adoptive parent, or in a foster family home.

At each dispositional review hearing and permanency planning hearing held with respect to the child, the court would have to approve or disapprove QRTP placement.

In the case of a child who was placed in a QRTP for more than 12 consecutive months or 18 consecutive months, or, in the case of a child who had not attained age 13, for more than six consecutive or nonconsecutive months, the DHHS would have to obtain the signed approval of the director of the DHHS for the continued placement of the child in that setting.

In addition, the bill specifies that the State could not enact or advance policies or practices that would result in a significant increase in the population of youth in the juvenile system.

Senate Bill 469

Under the juvenile code, if a child remains under the court's jurisdiction, a cause may be terminated or an order may be amended or supplemented, within the authority granted to the court under the code at any time the court considers necessary and proper.

After the filing of a petition, if a child subject to the court's jurisdiction remains in his or her home, a review hearing shall be held not more than 182 days from the date a petition is filed to give the court jurisdiction over the child and no later than every 91 days after that for the first year that the child is subject to the court's jurisdiction. If a child is subject to the court's jurisdiction and removed from his or her home, a review hearing must be held within 182 days after the child's removal from his or her home and no later than every 91 days after that for the first year that the child is subject to the court's jurisdiction.

In addition, if a child is under the care and supervision of the agency and is either placed with a relative and the placement is intended to be permanent or is in a permanent foster family agreement, the court shall hold a review hearing not more than 182 days after the child has been removed from his or her home and no later than every 182 days after that so long as the child is subject to the jurisdiction of the court, the Michigan Children's Institute, or other agency.

Under the bill, at a review hearing, the court would have to approve or disapprove a QRTP placement as provided in Section 13a of the child care licensing Act.

The code also specifies that in making determinations at a permanency planning hearing, the court must consider any written or oral information concerning the child from the child's parent, guardian, custodian, foster parent, child caring institution, relative with whom the

child is placed, or guardian ad litem in addition to any other evidence, including the appropriateness of parenting time, offered at the hearing. Under the bill, if a QRTP placement were presented, the court would have to approve or disapprove it.

MCL 722.111 (S.B. 466)
MCL 722.118b (S.B. 467)
Proposed MCL 722.123a (S.B. 468)
MCL 712A.19 & 712A.19a (S.B. 469)

BACKGROUND

Title IV-E of the Social Security Act authorizes the Federal Foster Care Program, which grants funds to eligible states to provide child welfare systems such as foster care services. In 2018, Congress enacted the Family First Prevention Services Act, which will begin granting funds on October 1, 2019, to eligible states to provide substance abuse, mental health, and other treatment services to prevent children from entering foster care. Eligible states can claim Federal reimbursement under Title IV-E for approved prevention services to keep candidates for foster care in their parent or caregiver's home. To claim Federal reimbursement, states must adopt prevention programs that meet certain criteria. In addition, states may claim Federal reimbursement for QRTPs if those programs meet certain criteria. The Title IV-E Prevention Services Clearinghouse recently released a list of approved prevention programs.

Legislative Analyst: Tyler VanHuyse

FISCAL IMPACT

Senate Bill 466

There is no direct fiscal impact to State and local government with the addition of the definition of a "qualified residential treatment program" and the various requirements included therein. However, this definition would satisfy Federal requirements made as a condition under the Family First Prevention Services Act (FFPSA). Under FFPSA requirements, to receive Federal child welfare funding (also known as Title IV-E funding) for congregate care or residential out-of-home placements, these placements will need to meet the qualifications described in the new definition. Nationally, the QRTP requirements will go into effect on October 1, 2019 (though this requirement could be delayed until September 29, 2021, if other Title IV-E funding incentives included in FFPSA are delayed as well). Thus, at some point in the future, when Michigan DHHS caseworkers make congregate care or residential placement determinations for children removed from their home, in order for the State to qualify for Federal reimbursement, service providers will need to meet the QRTP definition.

When QRTP guidelines take effect in Michigan, there is an uncertain, but likely a fairly significant fiscal impact to the DHHS. Information provided by residential service providers suggest there will be increased costs due to QRTP implementation which includes: training requirements to provide trauma-informed treatment, full-time coverage from licensed nursing and other licensed clinical staff, six months of after-treatment care (including transportation and staffing cost), and other administrative requirements, such as accreditation and background checks.

Congregate care or residential providers are paid through a daily administrative or maintenance payment by the State through both Federal and State funding sources. The current rates are contractual terms based on service requirements found in current law and DHHS policy. Qualified residential treatment program requirements will place additional requirements on service providers, though some providers may provide these services as a

part of their current operations. To the extent that current rates are sufficient to cover provisions under QRTP, there would be no increased cost. For those requirements placed on providers that are not currently covered under current rates, rates likely would be increased to provide the obligatory services. The DHHS and the provider community are currently engaged in determining the additional QRTP costs that will factor into rate determination.

Local government fiscal impacts likely would be indirect as children served through the shared State and county child welfare structure (the County Child Care fund and State Ward Board and Care fund) are not subject to the Federal funding requirements under QRTP. However, QRTP requirements could create additional overhead costs or more generally raise rates of existing providers of congregate care or residential placements that would increase the local contribution for out-of-home placements.

Senate Bill 467

To the extent that the Michigan DHHS has developed processes to facilitate licensing variances, there would be no fiscal impact to the State. There would be no fiscal impact on local government.

Senate Bill 468

The bill's potential fiscal impact is estimated to be approximately $5.0 million to State government per information provided by the Michigan DHHS. The $5.0 million estimate is on a Gross basis and includes likely Federal sources, so depending on the mix of Federal financing, the total State General Fund/General Purpose cost likely would be $2.5 million or less annually. The increased cost would result from Federal requirements made as a condition under the Family First Prevention Services Act. The FFPSA requires that a "qualified individual" make assessments of QRTPs on an on-going basis to ensure that these placements are meeting the needs of the child. Since under the bill, the "qualified individual" could not be an employee of the Department or connected to or affiliated with the placement setting (unless a waiver were obtained from the Federal government), contracting with third-party assessor would necessitate increased cost.

The bill would increase costs for circuit courts slightly. The bill would require the family division of Michigan circuit courts to review and approve or disapprove QRTP placements. Minor costs associated with these tasks likely would be absorbed by circuit court budgets.

Senate Bill 469

There would be no fiscal impact on the Michigan Department of Health and Human Services.

The bill would increase costs for circuit courts slightly. The bill would require the family division of Michigan circuit courts to review and approve or disapprove QRTP placements. Minor costs associated with these tasks likely would be absorbed by circuit court budgets.

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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.