

CHILD CARE ORGANIZATIONS (EXCERPT)
Act 116 of 1973

722.111 Definitions; increased capacity requirements; rescission of increased capacity; appeal.

Sec. 1. (1) As used in this act:

(a) "Child care staff member" means an individual who is 16 years of age or older to whom 1 or more of the following 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 age or older and to minors who have been emancipated by court order under section 4(3) of 1968 PA 293, MCL 722.4, at the same location.

(c) "Child caring institution" means 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. An educational program may be provided, but the educational program shall not be the primary purpose of the facility. Child caring institution includes a maternity home for the care of unmarried mothers who are minors and an agency group home, that is described as a small child caring institution, owned, leased, or rented by a licensed agency providing care for more than 4 but less than 13 minor children. Child caring institution also includes an institution for developmentally disabled or emotionally disturbed minor children. Child caring institution does not include a hospital, nursing home, or home for the aged licensed under article 17 of the public health code, 1978 PA 368, MCL 333.20101 to 333.22260, a boarding school licensed under section 1335 of the revised school code, 1976 PA 451, MCL 380.1335, a hospital or facility operated by the state or licensed under the mental health code, 1974 PA 258, MCL 330.1001 to 330.2106, or an adult foster care family home or an adult foster care small group home licensed under the adult foster care facility licensing act, 1979 PA 218, MCL 400.701 to 400.737, in which a child has been placed under section 5(6).

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

(i) The individual is employed by a child caring institution for compensation, including an adult who does not work directly with children.

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

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

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

(f) "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 4 children, apart from the children's parents, relatives, or legal guardians, for 5 or more days in a 14-day period.

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

(h) "Children's therapeutic group home" means a child caring institution receiving not more than 6 minor children who are diagnosed with a developmental disability as defined in section 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) 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.

(iii) Is not a private home.

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

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

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

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

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

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

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

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

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

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

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

(p) "Increased capacity" means 1 additional child added to the total number of minor children received for care and supervision in a family child care home or 2 additional children added to the total number of minor children received for care and supervision in a group child care home.

(q) "Private home" means a private residence in which the licensee permanently resides, which residency is not contingent upon caring for children or employment by a child placing agency. Private home includes a full-time foster family home, a full-time foster family group home, a group child care home, or a family child

care home, as follows:

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

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

(iii) "Family child care home" means a private home in which 1 but fewer than 7 minor children are received for care and supervision for compensation for periods of less than 24 hours a day, unattended by a parent or legal guardian, except children related to an adult member of the household. Family child care home includes a home in which care is given to an unrelated minor child for more than 4 weeks during a calendar year. A family child care home does not include an individual providing babysitting services for another individual. As used in this subparagraph, "providing babysitting services" means caring for a child on behalf of the child's parent or guardian if the annual compensation for providing those services does not equal or exceed \$600.00 or an amount that would according to the internal revenue code of 1986 obligate the child's parent or guardian to provide a form 1099-MISC to the individual for compensation paid during the calendar year for those services. Family child care home includes a private home with increased capacity.

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

(r) "Legal custodian" means 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 chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.13a.

(s) "Legal entity" means a sole proprietorship, partnership, corporation, limited liability company, or any other entity.

(t) "Licensee" means a person, legal entity organized under a law of this state, state or local government, or trust that has been issued a license under this act to operate a child care organization.

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

(v) "Member of the household" means any individual who resides in a family child care home, group child care home, foster family home, or foster family group home on an ongoing basis, or who has a recurrent presence in the home, including, but not limited to, overnight stays. For foster family homes and foster family group homes, a member of the household does not include a foster child. For group child care homes and family child care homes, a member of the household does not include a child to whom child care is being provided.

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

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

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

(i) 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.

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

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

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

(v) The program is accredited by an independent not-for-profit 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.

(z) "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.

(aa) "Guardian" means the guardian of the person.

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

(i) A person less than 18 years of age.

(ii) A person 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 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 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 769.1. This subparagraph applies only if the number of those residents who become 18 years of age does not exceed the following:

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

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

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

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

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

(cc) "Related" means 1 of the following:

(i) Except as provided in subparagraph (ii), a relative as defined in section 13a of chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.13a.

(ii) For licensing by the department related to a child care center, children's camp, children's campsite, family child care home, foster family home, foster family group home, or group child care home, in the relationship by blood, marriage, or adoption, as parent, grandparent, great-grandparent, great-great-grandparent, 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 individuals described in this definition, even after the marriage has ended by death or divorce.

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

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

(ff) "Severe physical injury" means serious physical harm as that term is defined in section 136b of the Michigan penal code, 1931 PA 328, MCL 750.136b.

(gg) "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.

(2) A family child care home or group child care home is automatically eligible for increased capacity after satisfying all of the following criteria:

(a) Holds a current license.

(b) Has been licensed to operate for at least 29 consecutive months.

(c) Has received 1 or more unrelated minor children for care and supervision during the licensed period under subdivision (b).

(d) Has received a renewed regular license after at least 29 months of licensed operation under subdivision (b).

(3) The department may rescind increased capacity due to 1 or more of the following:

(a) Corrective action.

(b) Licensing action.

(c) Determination by the department that increased capacity is not conducive to the welfare of children as that term is defined in section 5m.

(4) If the department rescinds increased capacity as outlined in subsection (3), the family child care home or group child care home may be considered for increased capacity not less than 22 months after rescinding increased capacity in a form and manner determined by the department.

(5) A family child care home or group child care home may appeal rescission of increased capacity under a hearing held in the manner provided under section 11(2).

History: 1973, Act 116, Eff. Mar. 29, 1974;—Am. 1978, Act 438, Imd. Eff. Oct. 5, 1978;—Am. 1980, Act 32, Imd. Eff. Mar. 10, 1980;—Am. 1980, Act 232, Imd. Eff. July 20, 1980;—Am. 1980, Act 510, Imd. Eff. Jan. 26, 1981;—Am. 1981, Act 126, Imd. Eff. July 23, 1981;—Am. 1984, Act 139, Imd. Eff. June 1, 1984;—Am. 1991, Act 162, Imd. Eff. Dec. 9, 1991;—Am. 1994, Act 205, Eff. Jan. 1, 1995;—Am. 2002, Act 696, Eff. Mar. 31, 2003;—Am. 2005, Act 202, Imd. Eff. Nov. 10, 2005;—Am. 2007, Act 217, Imd. Eff. Dec. 28, 2007;—Am. 2007, Act 217, Imd. Eff. Dec. 28, 2007;—Am. 2009, Act 155, Imd. Eff. Nov. 24, 2009;—Am. 2010, Act 379, Imd. Eff. Dec. 22, 2010;—Am. 2011, Act 228, Imd. Eff. Nov. 22, 2011;—Am. 2014, Act 65, Imd. Eff. Mar. 28, 2014;—Am. 2017, Act 257, Eff. Mar. 28, 2018;—Am. 2018, Act 431, Eff. Mar. 20, 2019;—Am. 2020, Act 6, Imd. Eff. Jan. 27, 2020;—Am. 2022, Act 70, Eff. Nov. 1, 2022;—Am. 2022, Act 106, Imd. Eff. June 23, 2022;—Am. 2022, Act 107, Imd. Eff. June 23, 2022;—Am. 2022, Act 208, Imd. Eff. Oct. 7, 2022.

Constitutionality: The First and Fourteenth Amendments of the United States Constitution do not prevent the state from compelling the defendants to conform to the licensure requirements of the childcare organization act. Department of Social Services v Emmanuel Baptist Preschool, 434 Mich 380; 455 NW2d 1 (1990).

Compiler's note: For transfer of powers and duties of child welfare licensing from the department of social services to the director of the department of commerce, see E.R.O. No. 1996-1, compiled at MCL 330.3101 of the Michigan Compiled Laws.

For transfer of powers and duties of state fire marshal to department of labor and economic growth, bureau of construction codes and fire safety, by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

For transfer of powers and duties of the bureau of family services from the department of consumer and industry services to the family independence agency by Type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

For transfer of powers and duties pertaining to children's camp, child care center, day care center, family day care home, and group day care home licensing and regulation from department of human services to department of licensing and regulatory affairs, see E.R.O. No. 2015-1, compiled at MCL 400.227.

For transfer of powers and duties relative to the licensing and regulation of child caring institutions, child placing agencies, foster family homes, foster family group homes, and court-operated facilities from department of licensing and regulatory affairs to the department of health and human services, see E.R.O. No. 2018-6, compiled at MCL 722.110.

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