

# Legislative Analysis



Mitchell Bean, Director  
Phone: (517) 373-8080  
<http://www.house.mi.gov/hfa>

## ENROLLED PROVIDERS

**House Bill 5242 (Substitute H-1)**  
**Sponsor: Rep. Pam Byrnes**

**House Bill 5243 (Substitute H-1)**  
**Sponsor: Rep. Tim Melton**

**House Bill 5244 (Substitute H-1)**  
**Sponsor: Rep. Dudley Spade**

**House Bill 5838 (Substitute H-1)**  
**Sponsor: Rep. Barb Byrum**

**House Bill 5934 as introduced**  
**Sponsor: Rep. Bert Johnson**

**Committee: Families and Children's Services**

**Complete to 3-18-10**

## A SUMMARY OF HOUSE BILLS 5242-5244, 5838 & 5934 AS REPORTED FROM COMMITTEE ON 3-10-10

House Bills 5242-5244 and 5838 would amend the Social Welfare Act. (MCL 400.1 et seq.)  
House Bill 5934 would amend related sentencing guideline provisions in the Code of Criminal Procedure. (MCL 777.14a)

### **Training Session Requirement (House Bill 5242)**

The bill would add Section 74b, under which the Department of Human Services would require enrolled providers to complete a six-hour training program, as directed by the department, that includes cardiopulmonary resuscitation and first aid training, before the enrolled providers could receive a department subsidy for child care services. Enrolled providers who complete ten annual clock hours of training in addition to the required training could be eligible to receive an incentive payment. Approved training topics could include topics regarding child care development, learning through play, managing children's behavior, caring for children with special needs, blood-borne pathogens and communicable diseases, child abuse and neglect, and business basics.

### **Subsidy Ineligibility (House Bill 5243)**

The bill would add a new Section 74c to specify that an enrolled provider would not be eligible to receive a child care subsidy under the act for providing care for a child if the provider and the child reside in the same household and the provider is not related to the child.

### **Criminal History and Background Check Requirement (House Bill 5244)**

Checks on Newly Enrolled Aides and Providers. Under the bill, when the department enrolled an individual as an enrolled provider, it would have to request the Department of State Police to conduct on that individual (1) a criminal history check and (2) a criminal records check through the Federal Bureau of Investigations (FBI). An individual enrolling as an enrolled provider would have to give written consent, at the time of enrollment, for the State Police to conduct the checks required under this section. The DHS would require the individual to submit fingerprints to the State Police for those history and record checks.

The DHS would request the criminal background and history checks on a form and in the manner prescribed by the Department of State Police. Within a reasonable amount of time after receiving a complete request for a criminal history check on an individual under this section, the State Police would be required to conduct the criminal history check and provide a report of the results to the Department of Human Services. The report would need to contain any criminal history record information on the individual maintained by the State Police. After receiving a proper request for a criminal records check, the State Police would be required to initiate the criminal records check. When the results were received from the Federal Bureau of Investigation (FBI), the State Police would provide a report of the results to the DHS.

The enrolled provider would need to pay the fee for a criminal history or criminal records check; the fee could not exceed the actual and reasonable cost of conducting it.

Reports of Arraignments. An enrolled provider would be required to report to the DHS within three business days after having been arraigned for any felony and any of the following misdemeanors:

- \*Criminal sexual conduct (CSC) in the fourth degree or an attempt to commit CSC in the fourth degree.
- \*Child abuse in the third or fourth degree or an attempt to commit child abuse in the third or fourth degree.
- \*A misdemeanor involving cruelty, torture, or indecent exposure involving a child.
- \*A misdemeanor violation of Section 7410 of the Public Health Code (controlled substance violations).
- \*A violation of various sections of the Penal Code related to breaking and entering; larceny from a vacant building; allowing minors to have alcohol or controlled substances at social gatherings; accosting, enticing, or soliciting a child for immoral purposes; indecent exposure; assault and battery; inflicting serious or aggravated injury; and Internet communication crimes.
- \*A misdemeanor violation of Section 701 of the Michigan Liquor Control Code (furnishing alcohol to a minor).
- \*Any misdemeanor that is a listed offense under the Sex Offenders Registration Act.
- \*A violation of a substantially similar law of another state, of a political subdivision of this state or another state or of the United States.

The failure to report such an arraignment would be a misdemeanor, punishable by imprisonment for up to one year and/or a fine of up to \$1,000. However, if the arraignment was for a felony or for a misdemeanor that is a listed offense under the Sex Offenders Registration Act, the failure to report would be a felony, punishable by imprisonment for up to two years and/or a fine of up to \$2,000.

DHS would be required to delete from the enrolled provider's records all information relating to a reported arraignment if it received documentation that the individual arraigned for the crime was subsequently not convicted of any crime after the completion of the judicial proceeding resulting from the arraignment.

Within 12 months after the bill's effective date, the department would be required to inform all persons currently enrolled providers and all applicants for enrollment to report certain

arraignments and the penalty for not reporting them. Similarly, the department would have to make the same information available whenever it enrolls an individual as an enrolled provider.

Checks on Currently Enrolled Providers. Within 12 months after the bill's effective date, the DHS would be required to conduct a criminal history and criminal records check on all currently enrolled providers. However, if an individual being enrolled as an enrolled provider has previously undergone a criminal history and criminal records check and has been continuously enrolled as an enrolled provider after the checks have been performed, that individual would not be required to submit to another such check.

Automated Fingerprint Identification System. Under the bill, the State Police would be required to use the automated fingerprint identification system database, established under the Child Care Licensing Act, to provide for an automatic notification at the time a subsequent criminal arrest fingerprint card submitted to the system matches a previously submitted set of fingerprints. Upon this notification, the State Police would immediately notify the department and it would immediately contact the respective enrolled provider. Information in the database is confidential, is not subject to disclosure under the Freedom of Information Act, and cannot be disclosed to any other person except for purposes of the Social Welfare Act or law enforcement purposes.

Definitions in HB 5244. The bill would define "listed offense" to mean that term as defined in Section 2 of the Sex Offenders Registration Act of 1994.

**Definitions of Terms Used in Other Bills (House Bill 5838)**

The bill would add Section 74d to the Social Welfare Act to define certain terms as they are used in Sections 74a, 74b, and 74c of the act. Under the bill, term "enrolled provider" would be defined to mean an individual who is at least 18 years of age or older, is employed by the parent or guardian of the child receiving child care services, is enrolled by the department to care for up to four children at one time and does either of the following; (a) provides care for the child in the child's home; or (b) provides care for the child in the caregiver's home and is related to the child. The bill would define "related" to mean any of the following relationships by blood, marriage, or adoption: grandparent, great-grandparent, aunt, great-aunt, uncle or great-uncle.

**Penalty for Failure to Report Arraignment (House Bill 5934)**

House Bill 5934 would amend Section 14a of the Code of Criminal Procedure (MCL 777.14a) to add failure by provider to report an arraignment as a Class H felony (violation of public order) punishable by a two-year maximum penalty. The bill is tie-barred to House Bill 5244, meaning it cannot take effect unless House Bill 5244 were enacted.

**FISCAL IMPACT:**

HB 5242 (H-1) has no fiscal impact. HB 5242 (H-1) requires all enrolled providers to complete a 6-hour basic training requirement, and also provides an incentive payment to the enrolled providers that complete 10 additional hours of training annually. This bill codifies current boilerplate and funding within the DHS appropriations act (2009 PA 129), which

adjusts funding for these new enrolled provider rates and also provides sufficient funding to support the cost to provide training to the enrolled providers.

HB 5243 (H-1) could generate an indeterminate amount of fiscal savings by preventing unrelated persons living in the child's home from becoming an enrolled provider for any children living in the same household. This bill should help reduce the level of fraud within the child care subsidy program.

HB 5244 (H-1) could generate an indeterminate amount of fiscal savings. HB 5244 (H-1) requires all enrolled providers to submit their fingerprints to the Department of State Police for them to conduct a criminal records check through the FBI. The enrolled provider would be charged a fee (around \$70.00) to cover the cost of this background check (licensed and registered child care providers are already charged for this background check through their licensing fees). This new requirement could lead to a moderate number of enrolled providers no longer accepting DHS child care subsidies because they do not want to consent to provide a fingerprint. The parent of the child supervised by an enrolled provider no longer accepting a DHS child care subsidy would have to decide to either use a different child care provider or choose to continue to use that provider without a DHS subsidy.

HB 5838 (H-1) will reduce administrative costs by merging relative care providers and day care aides into one classification. This will allow DHS to only have to develop and distribute one provider application for enrolled providers rather than two different applications. HB 5838 (H-1) could also generate a minimal amount of subsidy savings by no longer allowing DHS to provide exemptions to the policy that an enrolled provider can only supervise 4 children at one time. DHS currently allows exemptions to the 4 children at one time policy for large sibling groups and more migrant child care.

## **POSITIONS:**

Department of Human Services supports the bills. (3-10-10)

United Way for Southeastern Michigan supports the substitute language in House Bill 5242 but with amendments that reflect the importance of Child Development curriculum for enrolled providers. (3-10-10)

United Auto Workers (UAW) opposes House Bill 5244. (3-10-10)

Legislative Analyst: E. Best  
Fiscal Analyst: Kevin Koorstra

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.