

**SENATE FISCAL AGENCY
 MEMORANDUM**

DATE: October 24, 2018
TO: Members of the Michigan Senate
FROM: John Maxwell, Fiscal Analyst
RE: Executive Order 2018-11

Executive Order 2018-11

On October 17, 2018, Governor Snyder issued Executive Order (E.O.) 2018-11, which would transfer the Child Welfare Licensing and Regulation responsibilities from the Department of Licensing and Regulatory Affairs (LARA) to the Department of Health and Human Services (DHHS). The Executive Order would assign DHHS the authority, powers, duties, functions, and responsibilities of child welfare licensing and regulation of child caring institutions (including but not limited to children's therapeutic group homes), child placing agencies, foster family homes, foster family group homes, and court-operated facilities under the Child Care Organizations Act, 1973 PA 116, MCL 722.111 to 722.128, and the Social Welfare Act, 1939 PA 280, MCL 400.1 to 400.122.

Article V, Section 2 of the Michigan Constitution states that the Legislature has 60 calendar days following the issuance of an Executive Order to disapprove it; the last day for the Legislature to reject E.O. 2018-11 is December 16, 2018.

Background

Due to previously issued executive orders, there is ambiguity over the legal responsibility for child welfare licensing and regulation. Executive Order 2018-11 is the remedy for this apparent problem. In E.O. 2003-14, which created the Department of Labor and Economic Growth, the authority, powers, duties, functions, and responsibilities of the Office of Children and Adult Licensing within the Bureau of Family Services were transferred from the Department of Consumer and Industry Services to the Family Independence Agency (FIA). As a part of that transfer, the following responsibilities were moved to the FIA:

- Any authority, powers, duties, functions, and responsibilities of adult foster care, adult foster care facility, adult foster care camp, adult camp, adult foster care family home, and adult foster care group home licensing and regulation under the Adult Foster Care Licensing Act, 1979 PA 218, MCL 400.701 to 400.737, the Social Welfare Act, 1939 PA 280, MCL 400.1 to 400.122, and 1974 PA 381, MCL 338.41 to 338.47.
- Any authority, powers, duties, functions, and responsibilities of child welfare, child care organization, child caring institution, child placing organization, children's camp, child care center, day care center, foster family home, foster family group home, family day care home, and group day care home licensing and regulation under the Child Care Organizations Act 1973 PA 116, MCL 722.111 to 722.128, the Adult Foster Care Licensing Act, 1979 PA 218, MCL 400.701 to 400.737, and the Social Welfare Act, 1939 PA 280, MCL 400.1 to 400.122.
- Any authority, powers, duties, functions, and responsibilities of licensing and regulation of homes for the aged under Article 17 of the Public Health Code, 1978 PA 368, MCL 333.20101 to 333.22260, and the Social Welfare Act, 1939 PA 280, MCL 400.1 to 400.122.

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- The Adult Foster Care Licensing Advisory Council and all of its authority, powers, duties, functions, and responsibilities under the Adult Foster Care Licensing Act, 1979 PA 218, MCL 400.701 to 400.737, and the Social Welfare Act, 1939 PA 280, MCL 400.1 to 400.122, are transferred by Type II Transfer to the Family Independence Agency.

In E.O. 2004-35, the Family Independence Agency was renamed the Michigan Department of Human Services (DHS) with the declaration that any and all statutory references to FIA or the Department of Social Services shall be deemed references to the Department of Human Services.

In E.O. 2015-4, DHS and the Michigan Department of Community Health were combined into the Michigan Department of Health and Human Services (DHHS). One part of this combination was the movement of certain portions of the Office of Children and Adult Licensing from DHHS to LARA. The specific areas that were moved in E.O. 2015-4 are as follows:

- Any authority, powers, duties, functions, and responsibilities of adult foster care, adult foster care facility, adult foster care camp, adult camp, adult foster care family home, and adult foster care group home licensing and regulation under the Adult Foster Care Licensing Act, 1979 PA 218, MCL 400.701 to 400.737, and the Social Welfare Act, 1939 PA 280, MCL 400.1 to 400.122, and 1974 PA 381, MCL 338.41 to 338.47.
- Any authority, powers, duties, functions, and responsibilities of children's camp, child care center, day care center, family day care home, and group day care home licensing and regulation under the Child Care Organizations Act 1973 PA 116, MCL 722.111 to 722.128, the Adult Foster Care Licensing Act, 1979 PA 218, MCL 400.701 to 400.737, and the Social Welfare Act, 1939 PA 280, MCL 400.1 to 400.122.
- Any authority, powers, duties, functions, and responsibilities of licensing and regulation of homes for the aged under Article 17 of the Public Health Code, 1978 PA 368, MCL 333.20101 to 333.22260, and the Social Welfare Act, 1939 PA 280, MCL 400.1 to 400.122.
- The Adult Foster Care Licensing Advisory Council and all of the authority, powers, duties, functions, and responsibilities of the Adult Foster Care Licensing Advisory Council under the Adult Foster Care Licensing Act, 1979 PA 218, MCL 400.701 to 400.737, and the Social Welfare Act, 1939 PA 280, MCL 400.1 to 400.122, are transferred from the Department of Human Services and the Director of the Department of Human Services to the Director of the Department of Licensing and Regulatory Affairs.

Executive Order 2015-4 does not appear to have transferred any of the following authority, powers, duties, functions, and responsibilities to LARA which were transferred to the FIA in E.O. 2003-14:

- Any authority, powers, duties, functions, and responsibilities of child welfare, child care organization, child caring institution, child placing organization, foster family home, foster family group home, licensing and regulation under 1973 PA 116, MCL 722.111 to 722.128, the Adult Foster Care Licensing Act, 1979 PA 218, MCL 400.701 to 400.737, and the Social Welfare Act, 1939 PA 280, MCL 400.1 to 400.122.

Executive Order 2018-11 includes language which did not appear in E.O. 2003-14, such as specifying that child caring institutions included, but were not limited to, children's therapeutic group homes, adding the term "child placing agencies" instead of "child placing organization", and including "court-operated facilities". It is unclear as to how these functions can be transferred to DHHS if they were not transferred to LARA in E.O. 2015-4.

Types of Transfers

Article V, Section 2 of the State Constitution authorizes the Governor to organize the Executive branch of government by Executive Order. Three types of reorganizations are identified in the Executive Organization Act:

Type I Transfer. Under a Type I transfer, an existing department, board, commission, or agency is transferred intact to another principal department. The entity is administered under the supervision of the new principal department; however, the prescribed statutory powers, duties, and functions are exercised by the entity as a relatively autonomous entity.

Type II Transfer. Under a Type II transfer, all of the statutory authority, powers, duties, and functions, as well as records, personnel, property, unspent balances of appropriations and other funds associated with an entity, and the entity itself, are transferred to and placed under the authority of the principal department.

Type III Transfer. A Type III transfer abolishes an existing entity. The statutory authority, powers, duties, functions, records, personnel, and funding are not abolished, but are transferred to a principal department."

The E.O. does not specify whether this transfer is a Type I, II, or III transfer, but it appears to be a Type II transfer.

Fiscal Impact

Executive Order 2018-11 would not have any impact upon the State or local units of government. The functions that are being proposed for transfer by this E.O. are already completed within the DHHS.

Summary

E.O. 2018-11 would transfer any authority, powers, duties, functions, and responsibilities of child welfare licensing and regulation from LARA to DHHS. Again, it is unclear the necessity of this transfer as it appears the authority, powers, duties, functions, and responsibilities being transferred from LARA to DHHS were transferred to the Family Independence Agency in E.O. 2003-14, remained there upon the renaming and were not transferred to LARA in E.O. 2015-4. The transfers in the E.O. would make it clear which authority, powers, duties, functions, and responsibilities of child welfare licensing and regulation rest with DHHS.

Executive Order 2018-11 will take effect on December 16, 2018, unless the Legislature rejects it before that date.

If you have any questions on E.O. 2018-11, please do not hesitate to contact us.

/lms

c: Ellen Jeffries, Director
Steve Angelotti, Associate Director