

Michigan Office of Administrative Hearings and Rules
Administrative Rules Division (ARD)

MOAHR-Rules@michigan.gov

REQUEST FOR RULEMAKING (RFR)

1. Department:

Lifelong Education, Advancement, and Potential

2. Bureau:

Office of Early Childhood Education

3. Promulgation type:

Full Process

4. Title of proposed rule set:

Licensing Rules for Family and Group Child Care Homes

5. Rule numbers or rule set range of numbers:

R 400.1901 – R 400.1963

6. Estimated time frame:

12 months

Name of person filling out RFR:

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7. Describe the general purpose of these rules, including any problems the changes are intended to address.

These rules provide for the protection of children through the licensing of child care family and group homes. The Child Care Licensing Bureau (CCL) anticipates introducing additional rules, amending, or eliminating existing rules to address inconsistencies with current state statutes and federal regulations.

The rule set for child care family and group homes is complex due to federal and state requirements. Licensees and applicants struggle with understanding the licensing requirements, which leads to difficulty in recruiting and retaining staff, complying with the rules, and meeting the cost to comply with the rules. Changes to the rules will include or address the lack of child care in the state, lack of staffing for child care, streamlining processes, and reorganizing sections to improve the public's understanding of the rules. CCL will also address changes required by the federal Office of Child Care to comply with Child Care and Development Fund (CCDF) requirements.

8. Please cite the specific promulgation authority for the rules (i.e. department director, commission, board, etc.).

Executive Order No. 2023-6 established the Michigan Department of Lifelong Education, Advancement, and Potential (MiLEAP). It also transferred all authority, powers, duties, functions, and responsibilities of the Department of Licensing and Regulatory Affairs (LARA) related to licensing and regulation of children's camps, child care centers, day care centers, family child care homes, and group child care homes under Public Act 116 of 1973, MCL 722.111 to 733.128, from LARA to MiLEAP.

The Michigan Department of Lifelong Education, Advancement, and Potential is responsible for promulgating rules under section 2(1) of the Child Care Organizations (excerpt) Act, 1973 PA 116, MCL 722.112. The Department must also promulgate rules under section 3e of the Child Care Organizations (excerpt) Act, 1973 PA 116, MCL 722.113e.

A. Please list all applicable statutory references (MCLs, Executive Orders, etc.).

E.R.O. No. 2015-1, MCL 400.227, transferred the 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 the Department of Human Services to LARA.

Executive Order No. 2023-6 established MiLEAP and transferred the licensing and regulation of children's camps, child care centers, day care centers, family child care homes, and group child care homes from LARA to MiLEAP.

MCL 722.112 and MCL 722.113e of the Child Care Organizations (excerpt) Act, 1973 PA 116.

Child Care and Development Fund - 45 CFR Part 98.

Procedure for Hearings for the Child Care and Development Fund - 45 CFR Part 99.

B. Are the rules mandated by any applicable constitutional or statutory provision? If so, please explain.

The Child Care Organizations (excerpt) Act, 1973 PA 116, MCL 722.112(5), Section 2(5) requires that not less than once every 5 years the rules are subject to a major review by an ad hoc committee whose purpose is to make recommendations on the content of the rules.

Under section 3e of the Child Care Organizations (excerpt) Act, 1973 PA 116, MCL 722.113e, MiLEAP shall promulgate rules related to child care family and group homes and child caring organization employee and volunteer criminal background checks.

Under 45 CFR § 98.11(b)(2), the Lead Agency shall "promulgate all rules and regulations governing overall administration of the Plan." The Federal Child Care and Development Fund (CCDF) grant is administered by MiLEAP, the CCDF Lead Agency. The Plan is the CCDF State Plan for implementing programs under CCDF, including child care health and safety.

Under 45 CFR § 98.90, if a review or investigation reveals evidence that a Lead Agency has failed to substantially comply with the Plan or with one or more provisions of the Act or implementing regulations, the Secretary will issue a preliminary notice to the Lead Agency of possible non-compliance. Michigan's CCDF Lead Agency was monitored in December 2022 and received preliminary notice of possible non-compliance in September 2023 for rules in both child care center rules and child care family and group home rules; therefore, items specific to family and group home rules must be updated to comply with CCDF.

9. Please describe the extent to which the rules conflict with or duplicate similar rules, compliance requirements, or other standards adopted at the state, regional, or federal level.

The proposed rules do not conflict with or duplicate similar rules, compliance requirements, or other standards adopted at the state, regional, or federal level.

10. Is the subject matter of the rules currently contained in any guideline, handbook, manual, instructional bulletin, form with instructions, or operational memoranda?

The subject matter of these rules is currently in a technical assistance (TA) manual. CCL plans to update the TA manual after promulgating the revised rules.

11. Are the rules listed on the department's annual regulatory plan as rules to be processed for the current year?

The Licensing Rules for Family and Group Child Care Homes were stated in LARA's Annual Regulatory Plan. Executive Order No. 2023-6 transferred Licensing Rules for Family and Group Child Care Homes to MiLEAP. E.O. 2023-6 took effect December 1, 2023, which is after the July 1, 2023, deadline for submitting the Annual Regulatory Plans.

12. Will the proposed rules be promulgated under Section 44 of the Administrative Procedures Act, 1969 PA 306, MCL 24.244, or under the full rulemaking process?

Full Process

13. Please describe the extent to which the rules exceed similar regulations, compliance requirements, or other standards adopted at the state, regional, or federal level.

The rules do not exceed similar regulations, compliance requirements, or other standards adopted at the state, regional, or federal level.

14. Do the rules incorporate the recommendations received from the public regarding any complaints or comments regarding the rules? If yes, please explain.

Yes, the rules will incorporate the recommendations received from the public. CCL has gathered comments and recommendations from licensees, parents, and various stakeholder groups through meetings, surveys, and other routine practices. Additionally, Section 2 of the Child Care Organizations (excerpt) Act, 1973 PA 116, MCL 722.112, requires an ad hoc committee to review the rules and recommend changes during the period of the formulation of rules. The ad hoc committee will be convened after a request for rulemaking is approved.

15. If amending an existing rule set, please provide the date of the last evaluation of the rules and the degree, if any, to which technology, economic conditions, or other factors have changed the regulatory activity covered by the rules since the last evaluation.

The licensing rules for child care family and group homes were evaluated and revised in 2019, with an effective December 13, 2019. This rule set is complex due to federal and state requirements, which has caused licensees and applicants to struggle with understanding the licensing requirements. This struggle leads to difficulty in recruiting and retaining staff, understanding how to implement and comply with the rules themselves, and meeting the cost to comply with the rules.

16. Are there any changes or developments since implementation that demonstrate there is no continued need for the rules, or any portion of the rules?

The Child Care Organizations (excerpt) Act, 1973 PA 116, requires a set of rules for licensed child care family and group homes. The rules are needed to protect children's health, safety, and welfare while in licensed child care settings.

17. Is there an applicable decision record (as defined in MCL 24.203(6) and required by MCL 24.239(2))? If so, please attach the decision record.

No

Based on the information provided in this RFR, MOAHR concludes that there are sufficient policy and legal bases for approving the RFR. The RFR satisfies the requirements of the Administrative Procedures Act of 1969, 1969 PA 306, MCL 24.201 to 24.328, and Executive Order No. 2019-6.