

Michigan Office of Administrative Hearings and Rules

Administrative Rules Division (ARD)

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**REGULATORY IMPACT STATEMENT
and COST-BENEFIT ANALYSIS (RIS)**

Agency Information:

Department name:

Licensing and Regulatory Affairs

Bureau name:

Bureau of Community and Health Systems

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Rule Set Information:

ARD assigned rule set number:

2023-71 LR

Title of proposed rule set:

Licensing Adult Foster Care Facilities

Comparison of Rule(s) to Federal/State/Association Standard

1. Compare the proposed rules to parallel federal rules or standards set by a state or national licensing agency or accreditation association, if any exist.

The proposed rules, Licensing Adult Foster Care (AFC) Facilities, combine 6 individual sets of AFC rules that are being rescinded, into one new proposed rule set. The six rule sets being rescinded are: 2023-65 LR (Family Homes), 2023-66 LR (Congregate Facilities), 2023-67 LR (Large Group Homes), 2023-68 LR (Small Group Homes), 2023-70 LR (Specialized Programs), and 2023-69 LR (Fire Safety Family and Small Group Homes).

There are no comparable federal or national licensing statutes, rules, or standards for AFC facilities licensed under the adult foster care facility licensing act (Act), 1979 PA 218, MCL 400.701 - 400.737.

A. Are these rules required by state law or federal mandate?

The proposed rules are required under the adult foster care facility licensing act, 1979 PA 218, specifically MCL 400.710. In addition, Section 10(5) of the Act, MCL 400.710(5), requires the AFC Licensing Advisory Council to review any rule set not less than once every 5 years. There is no federal mandate.

B. If these rules exceed a federal standard, please identify the federal standard or citation, describe why it is necessary that the proposed rules exceed the federal standard or law, and specify the costs and benefits arising out of the deviation.

The proposed rules do not exceed federal standards, as no federal standards exist.

2. Compare the proposed rules to standards in similarly situated states, based on geographic location, topography, natural resources, commonalities, or economic similarities.

Most states do not license AFC facilities and are more likely to license assisted living or residential care homes with lower acuity levels. The proposed rules, however, have comparable physical plant, staffing, training, rights, and service licensure requirements to other states like Ohio, Wisconsin, Illinois, Minnesota and North Carolina, that license AFC or similar facilities.

A. If the rules exceed standards in those states, please explain why and specify the costs and benefits arising out of the deviation.

The proposed rules do not exceed standards in states (Ohio, Wisconsin, Illinois, Minnesota, and North Carolina) that license AFC or similar facilities.

3. Identify any laws, rules, and other legal requirements that may duplicate, overlap, or conflict with the proposed rules.

There are no laws, rules or other legal requirements that duplicate, overlap or conflict with the proposed rules.

A. Explain how the rules have been coordinated, to the extent practicable, with other federal, state, and local laws applicable to the same activity or subject matter. This section should include a discussion of the efforts undertaken by the agency to avoid or minimize duplication.

The proposed rules were shared with the Michigan Department of Health and Human Services to minimize duplication or conflict with reimbursement and home and community-based waiver requirements.

Purpose and Objectives of the Rule(s)

4. Identify the behavior and frequency of behavior that the proposed rules are designed to alter.

The proposed rules are designed to ensure a uniformed standard to provide quality services and maintain a safe environment to protect the health, safety, and welfare of residents residing in these licensed facilities 24 hours a day and 7 days a week. The proposed rules set a minimum standard for licensed facilities that serve residents often paid for with state and federal funding sources such as Medicaid, Medicare, and Social Security.

A. Estimate the change in the frequency of the targeted behavior expected from the proposed rules.

The proposed rules comport with current practice standards and create a uniformed standard among the various AFC facility types: family home, small group home, large group home, and congregate facility.

B. Describe the difference between current behavior/practice and desired behavior/practice.

Current rule sets vary between provider types. The proposed rules set comports with today's practice standards, eliminates outdated rules, creates a uniformed standards for all licensed providers, as well as specific standards for various provider levels when applicable.

C. What is the desired outcome?

The desired outcome is to increase compliance with licensure requirements as the proposed rules include more concise and clear standards.

5. Identify the harm resulting from the behavior that the proposed rules are designed to alter and the likelihood that the harm will occur in the absence of the rule.

The department routinely cites deficient practices of licensed facilities during a routine inspection or a complaint investigation, and often these deficiencies resulted in a poor outcome for the resident. The proposed rules increase clarity for the minimum standard required.

A. What is the rationale for changing the rules instead of leaving them as currently written?

Currently there are 6 different rule sets based on the type of AFC facility. The proposed rule set creates a single document with applicable requirements for all state-licensed providers as well as specific requirements based on the level of care being provided. This significantly reduces the number of rules and pages providers must review.

6. Describe how the proposed rules protect the health, safety, and welfare of Michigan citizens while promoting a regulatory environment in Michigan that is the least burdensome alternative for those required to comply.

The proposed rule set creates a uniform set of minimum requirements, which significantly reduces the number of rules and pages licensed providers must follow, especially since many providers operate large systems of licensed facilities of various levels.

7. Describe any rules in the affected rule set that are obsolete or unnecessary and can be rescinded.

The proposed rules comport with today's practice standards and eliminate unnecessary or outdated rules such as no longer requiring routine Tuberculosis testing but instead conducting risk assessments as recommended by the Centers for Prevention and Disease Control. The proposed rules set a uniform standard for record retention for providers. Other changes include items raised by provider associations, providers, and other stakeholders, such as increasing the dollar amount for spending accounts of residents, issuing special licenses during a natural disaster for temporary relocation of residents, allowing minors 16-17 years old to be considered as direct care staff with training, updating nutritional guidelines, allowing use of space heaters that are Underwriter Laboratories (UL) approved, providing clarity on reporting requirements to the department with higher thresholds to reduce the burden on providers to report only critical events, setting clearer standards for facility cooling requirements, and increasing opportunities for other health professionals to provide critical care and oversight when within the scope of that professional practice.

Fiscal Impact on the Agency

Fiscal impact is an increase or decrease in expenditures from the current level of expenditures, i.e. hiring additional staff, higher contract costs, programming costs, changes in reimbursements rates, etc. over and above what is currently expended for that function. It does not include more intangible costs for benefits, such as opportunity costs, the value of time saved or lost, etc., unless those issues result in a measurable impact on expenditures.

8. Please provide the fiscal impact on the agency (an estimate of the cost of rule imposition or potential savings for the agency promulgating the rule).

The proposed rules will not have a measurable fiscal impact on the agency. Any impact should result in cost savings in labor with the reduction in the number of rule sets and rules, including staff time maintaining and retaining documentation.

9. Describe whether or not an agency appropriation has been made or a funding source provided for any expenditures associated with the proposed rules.

There are no new expenditures resulting from the proposed rules. Funding source for the program is through licensure fees set forth in the act and General Fund /General Purpose (GF/GP) monies.

10. Describe how the proposed rules are necessary and suitable to accomplish their purpose, in relationship to the burden(s) the rules place on individuals. Burdens may include fiscal or administrative burdens, or duplicative acts.

The proposed rule set will reduce the burden on licensees as well as the department with a single rule set replacing 6 existing rule sets to create a uniform, clear, and concise minimum standard for licensed providers.

A. Despite the identified burden(s), identify how the requirements in the rules are still needed and reasonable compared to the burdens.

The proposed rules set minimum standards for care services and physical plant to ensure the health, safety, and welfare of residents and reduce the chance of poor outcomes for those residents.

Impact on Other State or Local Governmental Units

11. Estimate any increase or decrease in revenues to other state or local governmental units (i.e. cities, counties, school districts) as a result of the rule. Estimate the cost increases or reductions for other state or local governmental units (i.e. cities, counties, school districts) as a result of the rule. Include the cost of equipment, supplies, labor, and increased administrative costs in both the initial imposition of the rule and any ongoing monitoring.

There are no revenue or cost increases or reductions to other state or local governmental units as these requirements apply only to licensees and the department.

12. Discuss any program, service, duty, or responsibility imposed upon any city, county, town, village, or school district by the rules.

There are no programs, services, duties, or responsibilities imposed upon any city, town, village, or school district by the proposed rules.

A. Describe any actions that governmental units must take to be in compliance with the rules. This section should include items such as record keeping and reporting requirements or changing operational practices.

There are no actions that must be taken by any other governmental units to comply with the proposed rules.

13. Describe whether or not an appropriation to state or local governmental units has been made or a funding source provided for any additional expenditures associated with the proposed rules.

No appropriations to state or local government units have been made nor has a funding source been provided for any additional expenditure with the proposed rules.

Rural Impact

14. In general, what impact will the rules have on rural areas?

The proposed rules ensure a minimum standard of care across the state with no specific requirement that would adversely impact rural areas.

A. Describe the types of public or private interests in rural areas that will be affected by the rules.

There are no public or private interests in rural areas that will be affected by the proposed rules.

Environmental Impact

15. Do the proposed rules have any impact on the environment? If yes, please explain.

The proposed rules do require facilities relying on private wells for water to test water quality every 2 years and update private well testing requirements to comport with today's practice standards.

Small Business Impact Statement

16. Describe whether and how the agency considered exempting small businesses from the proposed rules.

The proposed rules do not place new requirements on small businesses such as small, licensed AFC facilities. Some requirements do not apply to family homes such as having an administrator and some physical plant requirements.

Therefore, no exemptions were considered for small facilities.

17. If small businesses are not exempt, describe (a) the manner in which the agency reduced the economic impact of the proposed rules on small businesses, including a detailed recitation of the efforts of the agency to comply with the mandate to reduce the disproportionate impact of the rules upon small businesses as described below (in accordance with MCL 24.240(1)(a-d)), or (b) the reasons such a reduction was not lawful or feasible.

Family and small group homes (3-6 capacity) are not required to meet some of the minimum requirements that apply to small group homes (7-12 capacity), large group homes, and congregate facilities to reduce any financial impact on these smaller provider types as referenced above. The proposed rules meet the requirements set forth in MCL 24.240.

A. Identify and estimate the number of small businesses affected by the proposed rules and the probable effect on small businesses.

There are 3,826 state licensed AFC facilities, including 494 family homes and 2,320 small group homes licensed for 6 or less residents. All AFC facilities must be less than 20 residents, except existing congregate facilities can serve more than 20 residents. Most of the state-licensed AFC facilities are operated by large business entities with multiple facilities in the state. The proposed rules have fewer requirements for family homes, reducing any economic burden on these smaller family providers.

B. Describe how the agency established differing compliance or reporting requirements or timetables for small businesses under the rules after projecting the required reporting, record-keeping, and other administrative costs.

The proposed rules have limited reporting requirements but do have requirements for the licensed facilities to keep applicable records such as policies and procedures, resident service plans, staffing logs, and staff trainings. The proposed rules have created uniformed retention timeframes and reduced record keeping to the minimum in select subject matters. One example is reducing the retention schedule to retain resident menus for 1 year down to 90 days. This reduced requirement still allows the department to verify any complaint related nutritional allegations while reducing the need for providers to retain for the longer period under current administrative rules.

C. Describe how the agency consolidated or simplified the compliance and reporting requirements for small businesses and identify the skills necessary to comply with the reporting requirements.

The proposed rules have fewer requirements for family homes and do not require any increased skills necessary for small providers to comply with any reporting requirements.

D. Describe how the agency established performance standards to replace design or operation standards required by the proposed rules.

The physical design or operation standards required by the proposed rules are minimal and in place to ensure the health, safety, and welfare of residents.

18. Identify any disproportionate impact the proposed rules may have on small businesses because of their size or geographic location.

There are no requirements that disproportionately impact a provider related to size or geographic location in the proposed rules.

19. Identify the nature of any report and the estimated cost of its preparation by small businesses required to comply with the proposed rules.

There are no reporting requirements that would require outside expertise or costs to small providers in the proposed rules.

20. Analyze the costs of compliance for all small businesses affected by the proposed rules, including costs of equipment, supplies, labor, and increased administrative costs.

The proposed rules do not require any new or additional equipment, supplies, labor, or increased administrative costs for small providers.

21. Identify the nature and estimated cost of any legal, consulting, or accounting services that small businesses would incur in complying with the proposed rules.

The proposed rules do not obligate or require legal, consulting, or accounting services costs to comply with these requirements.

22. Estimate the ability of small businesses to absorb the costs without suffering economic harm and without adversely affecting competition in the marketplace.

There are minimal to no costs and no harm anticipated because of the proposed rules.

23. Estimate the cost, if any, to the agency of administering or enforcing a rule that exempts or sets lesser standards for compliance by small businesses.

There is no additional cost to the agency for administering and enforcing a rule that exempts or sets lesser standards for compliance by smaller providers beyond the current operational cost.

24. Identify the impact on the public interest of exempting or setting lesser standards of compliance for small businesses.

There are no exemptions or lesser standards in the proposed rules that affect the public interest or adversely impact the health, safety, and welfare of residents. The proposed rules carry forward the existing rule that allows the licensee to request a variance if they can demonstrate the proposed alternative complies with the intent of the rule.

25. Describe whether and how the agency has involved small businesses in the development of the proposed rules.

The proposed rules received input from all 3 applicable provider associations and their members, including small AFC providers, and included the understanding that the existing rules sets will be rescinded.

A. If small businesses were involved in the development of the rules, please identify the business(es).

State licensed family and small group homes provided input to the proposed rules as well as various associations that represent all levels of licensed providers. These associations included Leading Age of Michigan, Michigan Center for Assisted Living (MCAL), and Michigan Assisted Living Association (MALA). The department held an informational webinar with 500+ providers and other interested parties where they provided feedback on the proposed rules.

Cost-Benefit Analysis of Rules (independent of statutory impact)

26. Estimate the actual statewide compliance costs of the rule amendments on businesses or groups.

The proposed rules are primarily a continuation of existing rules but updated to comport with today's practice standards, eliminate outdated requirements, and provide conciseness and clarity to remaining requirements.

Therefore, any estimated increase on businesses or groups in compliance costs should be minimal and likely reduced.

A. Identify the businesses or groups who will be directly affected by, bear the cost of, or directly benefit from the proposed rules.

The proposed rules will directly impact licensed providers and will benefit residents residing in state licensed facilities and will bear no additional costs.

B. What additional costs will be imposed on businesses and other groups as a result of these proposed rules (i.e. new equipment, supplies, labor, accounting, or recordkeeping)? Please identify the types and number of businesses and groups. Be sure to quantify how each entity will be affected.

No additional costs will be imposed on providers as there are no new requirements related to required equipment, supplies, labor, accounting or recordkeeping that already do not exist in the current rule sets being rescinded.

27. Estimate the actual statewide compliance costs of the proposed rules on individuals (regulated individuals or the public). Include the costs of education, training, application fees, examination fees, license fees, new equipment, supplies, labor, accounting, or recordkeeping.

There are no statewide compliance costs placed upon the public or any regulated individuals.

A. How many and what category of individuals will be affected by the rules?

The proposed rules cover 3,826 state licensed AFC facilities with a capacity to serve more than 31,819 residents.

B. What qualitative and quantitative impact do the proposed changes in rules have on these individuals?

The qualitative impact is that the proposed rules are updated to comport with current practice standards to ensure quality of care. The quantitative impact is that the proposed rules reduce the existing 6 rule sets from approximately 120 pages and 206 rules to 39 pages and 73 rules.

28. Quantify any cost reductions to businesses, individuals, groups of individuals, or governmental units as a result of the proposed rules.

There is no cost reduction to businesses, individuals, or groups of individuals that can be quantified from the proposed rule changes.

29. Estimate the primary and direct benefits and any secondary or indirect benefits of the proposed rules. Please provide both quantitative and qualitative information, as well as your assumptions.

The primary benefit is providing licensed providers with a consolidated rule set in place of 6 existing rule sets as well as providing uniformed minimum requirements for all provider levels when applicable. The secondary benefit is to improve consistency of care across provider types with a minimum and uniformed level of basic care requirements for all residents no matter the facility size.

30. Explain how the proposed rules will impact business growth and job creation (or elimination) in Michigan.

The proposed rules are not expected to have a positive or negative impact on business growth or job creation.

31. Identify any individuals or businesses who will be disproportionately affected by the rules as a result of their industrial sector, segment of the public, business size, or geographic location.

Individuals or businesses will not be disproportionately affected by the rules because of their industrial sectors, segment or the public, business size or geographic location.

32. Identify the sources the agency relied upon in compiling the regulatory impact statement, including the methodology utilized in determining the existence and extent of the impact of the proposed rules and a cost-benefit analysis of the proposed rules.

The department used input from the 3 applicable provider associations, AFC Licensing Advisory Council members, advocacy groups, other state agencies, and department managers and staff. Key stakeholders, such as the various associations, and shared the proposed rules with members of their associations (licensed providers) to ensure requirements were clear and properly defined. These associations also have national organizations to gather information, processes, and methods from other states for like provider types and how these states regulate providers. The department held an informational webinar with 500+ providers and other interested parties where they provided feedback on the proposed rules.

A. How were estimates made, and what were your assumptions? Include internal and external sources, published reports, information provided by associations or organizations, etc., that demonstrate a need for the proposed rules.

The demonstrated needs for the proposed rules are set in statute (1979 PA 218, MCL 400.701 - 400.737) that include a requirement for routine review, as well as the need to update existing rules to comport with today's practice standards to ensure the health, safety, and welfare of the residents receiving services in these licensed settings. The agency relied upon department managers and staff and its regulatory and administrative experience to determine the impact of the proposed rules. While some requirements have been updated and some processes may change slightly, no notable changes in cost are anticipated.

Alternative to Regulation

33. Identify any reasonable alternatives to the proposed rules that would achieve the same or similar goals.

There are no reasonable alternatives to the proposed rules that would achieve the same or similar goals.

A. Please include any statutory amendments that may be necessary to achieve such alternatives.

There are no reasonable alternatives to the proposed rules, so there are no necessary statutory amendments.

34. Discuss the feasibility of establishing a regulatory program similar to that proposed in the rules that would operate through private market-based mechanisms. Please include a discussion of private market-based systems utilized by other states.

The proposed rules and licensure of this provider category are required by statute. The department in its research did not identify a private market-based approach used by any other state for like provider types.

35. Discuss all significant alternatives the agency considered during rule development and why they were not incorporated into the rules. This section should include ideas considered both during internal discussions and discussions with stakeholders, affected parties, or advisory groups.

The department incorporated as many recommendations as possible from stakeholders if the recommendations met statutory requirements, specifically Section 17(4) of the continuing care community disclosure act, MCL 554.917.

The proposed rules represent a consensus among those that participated in the development of these rules as well as the AFC Licensing Advisory Council. During the discussions and research, no alternative models were suggested by the stakeholders.

Additional Information

36. As required by MCL 24.245b(1)(c), please describe any instructions regarding the method of complying with the rules, if applicable.

BCHS regularly provides instructions to licensed AFC providers regarding compliance with the applicable administrative rules. In addition, after the proposed rules set has been promulgated, the bureau will provide information to licensees that will inform them of the new rules, update any technical assistance guidance, and inform as described in MCL 24.245b(1)(c).