

Michigan Office of Administrative Hearings and Rules

Administrative Rules Division (ARD)

MOAHR-Rules@michigan.gov

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

Agency Information:

Department name:

Licensing and Regulatory Affairs

Bureau name:

Bureau of Community and Health Systems

Name of person filling out RIS:

Tammy Bagby

Phone number of person filling out RIS:

517-243-9351

E-mail of person filling out RIS:

BagbyT@michigan.gov

Rule Set Information:

ARD assigned rule set number:

2022-46 LR

Title of proposed rule set:

Adult Foster Care Congregate Facilities Licensing Rules

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 are in accordance with the department's authority set forth in the Adult Foster Care Facility Licensing Act, Act 218 of 1979, specifically MCL 400.710, and do not exceed or contradict the Code governing this state licensure program. There are no rules or standards set by the federal government or a national accrediting association related to these specific rules for this provider type, adult foster care facilities. This RIS is for Adult Foster Care Congregate Facilities Administrative Rule Set R 400.2401 to 400.2475.

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

The department shall promulgate rules under the Adult Foster Care Facility Licensing Act, Act 218 of 1979, specifically MCL 400.710. There are no federal mandates for this specific provider type.

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 comport with the Adult Foster Care Facility Licensing Act and 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.

The proposed rules are consistent with the standards required in the Adult Foster Care Facility Licensing Act (MCL 400.710). There are no like rules found for other states as other states do not license adult foster care facilities. Most states do not license adult foster care facilities but instead license assisted living facilities that generally serve a lower acuity level of resident.

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

This is not applicable.

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

The proposed rules comport with and do not duplicate, overlap, or conflict with any other state or federal standards, as no federal standard exists.

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 reviewed to ensure they comport with the Adult Foster Care Facility Licensing and the rules promulgating authority in this Act.

4. If MCL 24.232(8) applies and the proposed rules are more stringent than the applicable federally mandated standard, provide a statement of specific facts that establish the clear and convincing need to adopt the more stringent rules.

There are no comparable federal standards applicable to these proposed rules.

5. If MCL 24.232(9) applies and the proposed rules are more stringent than the applicable federal standard, provide either the Michigan statute that specifically authorizes the more stringent rules OR a statement of the specific facts that establish the clear and convincing need to adopt the more stringent rules.

There are no comparable federal standards applicable to these proposed rules.

Purpose and Objectives of the Rule(s)

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

The proposed rules comport with the limitations set forth in MCL 400.710 and are to assist with the administration of the Adult Foster Care Facility Licensing Act to ensure the health, safety, and welfare of residents residing in state licensed adult foster care facilities. The proposed rules establish requirements for state licensed facilities to record, track, and respond to incidents where a resident is harmed. These documents must be available to the department upon request during routine inspections or complaint investigations.

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

Current rules require that incidents be reported to the department, which consumes both state and provider staff time. Most incidents reported to the department do not result in a special investigation. This change will free up hundreds of staff hours for providers to focus on direct care and needed corrective action, as well as freeing up hundreds of hours for state staff.

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

Current rules require immediate reporting to the state. There is no specific statutory reference to incident reporting in the Adult Foster Care Facility Licensing Act. The proposed rules are to ensure the department is within its scope of authority. MCL 400.710 does grant the department authority to promulgate rules requiring maintenance of records related to the health of a resident.

C. What is the desired outcome?

The desired outcome is to comport with the authority designated to the department in the Adult Foster Care Facility Licensing Act and to provide practical regulatory relief to state licensed facilities while still assuring the health, safety, and welfare of these residents are being served.

7. 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 harm that the proposed rules are designed to alter is systemic issues of poor practice of care or compliance with regulatory requirements that may result in adverse outcomes for residents in the licensed facility. If licensed providers are not required to record, track, and correct any systemic issue, adverse outcomes will likely reoccur.

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

Several provider associations met with the department looking for joint solutions on providing regulatory relief during the pandemic due to staffing shortages and availability due to illness or needed isolations of exposed staff. The department and the association viewed several options, and these proposed rules changes are just one effort to provide regulatory relief.

8. 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 new rules help ensure the health, safety, and welfare of residents receiving services in state licensed adult foster care facility by still requiring providers to record, track, and correct as needed causes of adverse events to residents. The requirement to report immediately to the state is burdensome to the providers, taking staff time away from correcting issues and caring for residents. Most incidents reported to the state does not result in an investigation but the state under the proposed changes will still have access to this information upon request.

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

This review was limited to incident reporting to provide regulatory relief and a full review was not conducted for other rules that may be obsolete or unnecessary, as the department plans to conduct a comprehensive review at a later date.

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.

10. 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 result in labor savings to the department. It is estimated that managers spend approximately one day a week in reviewing submitted incident reports. There will be field staff labor savings too, as fewer special investigations will be conducted that often does not result in a citation, as the provider has already corrected prior to state staff arrival. It is estimated that hundreds of hours will be saved and shifted to other priorities, such as timely routine inspections. It is not estimated that these labor savings will result in any staff reductions at this time.

Currently there are 6 managers and more than 60 field inspectors for approximately 3,900 licensed adult foster care facilities in the state, including seven (7) congregate facilities.

11. 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 or impact on fees established in the Act. Funding source for the program is through fees and General Fund /General Purpose (GF/GP) monies.

12. 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 rules are authorized by MCL 400.710 and there are no additional burdens placed on state licensed adult foster care facilities, as these providers are already required to record, track, and correct. The savings for providers is the elimination of immediate reporting to the state.

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

It is important to require providers to record, track, and evaluate adverse outcomes to residents to correct any related deficient practices to ensure the health, safety, and welfare of residents.

Impact on Other State or Local Governmental Units

13. 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 cost increases or reductions to other state or local governmental units. There is no increase or decrease in revenues to other state or local governmental units.

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

There is no program, service, duty or responsibility imposed upon any city, town, village, or school district by these 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 these rules.

15. 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 additional expenditures are associated with the proposed rules. Therefore, no appropriation to state or local government units will be required.

Rural Impact

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

There is no specific impact related specifically to rural areas.

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

This affects only licensed providers related to reporting to the state and will not have an effect on public or private interests in rural areas.

Environmental Impact

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

There is no environmental impact.

Small Business Impact Statement

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

The proposed rules do not place a new requirement on small businesses such as small, licensed adult foster care facilities. Therefore, no exemptions were considered for small facilities.

19. 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.

The proposed rules do not place any additional economic burden on small state licensed adult foster care facilities.

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

There are approximately 3,900 state licensed adult foster care facilities, including seven (7) congregate facilities.

These facilities are often less than 20 residents, but congregate facilities can serve more than 20 residents. Most of the state licensed facilities are operated by a business entity operating multiple facilities in the state. These proposed rules do not add any additional requirements.

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 department did not establish any different requirements for small state licensed facilities as the proposed rules are uniform relative to record keeping and other administrative costs.

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 are uniform for all state licensed facilities as the requirements set forth in these rules are minimal or are overridden by the need to ensure the health, safety, and welfare of the residents served.

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

There are no design or operation standards required by the proposed rules.

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

There is no disproportionate impact from the proposed rules.

21. 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 to the department set forth in the proposed rules.

22. 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, or increased administrative costs for state licensed facilities.

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

There is no legal, consulting, or accounting costs imposed by these proposed rules to state licensed facilities.

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

There are no costs to small businesses from the proposed rules.

25. 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 from the proposed rules.

26. 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 small businesses.

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

The proposed rules received input from all three applicable provider associations and small provider focus groups within these associations.

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

State licensed providers, including small capacity providers, were involved in the development of the proposed rules through representation of their associations, including Leading Age of Michigan, Michigan Center for Assisted Living (MCAL), and the Michigan Assisted Living Association (MALA).

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

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

The proposed rules do not require any costs associated with compliance.

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 affect and 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 businesses or other groups because of the proposed rules.

29. 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 is no additional cost 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 approximately 3,900 state licensed adult foster care facilities with a capacity to serve more than 32,000 residents, including seven (7) congregate facilities with a capacity to serve 244 residents.

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

The proposed rules qualitative impact is to ensure minimum standards for state licensed adult foster care facilities to record, track, analyze, and correct deficient practices that resulted in an adverse outcome to a resident. Quantitative impact should be a reduction in adverse outcomes and lower state citations.

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

There is no reduction or increase of costs to businesses, individuals, groups of individuals, or governmental units because of the proposed rules.

31. 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 proposed rules create minimum standards for recording, tracking, and correcting deficient practices that resulted in an adverse outcome to a resident. Secondary benefit is a savings in labor hours as providers will not be required to report directly to the state.

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

The proposed rules will have no impact on elimination or creation of jobs.

33. 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.

No disproportionate impact on individuals or businesses from these rules.

34. 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 through approximately 4 meetings as well as expert input from department managers and field staff. The associations shared the draft work product with licensed providers in their own focus group to ensure requirements were clear and properly defined.

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.

Estimates were made based on special investigation reports conducted by the department related to incident reporting. Most special investigations found that providers corrected deficient practices prior to state staff being onsite or that the provider reported an incident that was not required to be reported under existing rules. The proposed rules include more concise definitions of what is reportable and should be reviewed.

Alternative to Regulation

35. 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 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. The proposed rules comport better with the statutory requirements for rules than the existing rules that required reporting of incidents to the state.

36. 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 rules are required by statute and therefore a private market-based system cannot serve as an alternative. No states to our knowledge and research use a private market-based system to report or track incidents from state licensed residential providers.

37. 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 and served to protect public health and safety. These proposed rules do represent a consensus among those that participated in the development of these rules.

Additional Information

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

This is not applicable.