



February 6, 2023

VIA E-MAIL

Attn: Tammy Bagby
Lara-bchs-training@michigan.gov

RE: Comments on Proposed Changes to Administrative Rules for Adult Foster Care Family Homes, Rule Set 2022-45 LR

Dear Ms. Bagby,

Disability Rights Michigan (DRM) is the private, nonprofit, nonpartisan protection and advocacy program mandated to serve Michigan's disability community. DRM is pleased to have the opportunity to comment on the Proposed Administrative Rule changes for Adult Foster Care Family Homes as presented by the Department of Licensing and Regulatory Affairs, Bureau of Community and Health Systems.

ADULT FOSTER CARE FAMILY HOMES

- R 400.1401 (1)(c) Chemical restraint. Modify the definition to mirror the definition from the Centers for Medicare and Medicaid Services (CMS). That definition is "any drug used for discipline or convenience and not required to treat medical symptoms".
- DRM appreciates the new language proposed in the definition of "elopement" (R 400.1401 (1)(f)) as it supports HCBS Rules and doesn't presume all individuals who live in an AFC require constant supervision or that they need permission to leave their home.
- R 400.1401 (1)(J) Incident. Modify the proposed definition to include medication errors (...elopes **or medication errors**) in addition to what is already proposed. This would be consistent with the definition of incident used in MCL 333.20106 as it applies to licensed homes for the aged.
- R 400.1416a Resident healthcare – 400.1417 Absence without notice. DRM is deeply concerned about changes proposed under R 400.1416 (A)(4) – (5), more specifically, the removal of the requirements to report an incident/accident to the department 400.1416 (4), and the removal of the requirement to report an elopement to the department 400.1417 (1)(a). Removing this layer of reporting weakens protections for residents and eliminates the department's oversight responsibility for reasons that do not support

vulnerable individuals residing in these facilities. Eliminating the department's opportunities to quickly intervene and/or investigate an incident or elopement increases risks unnecessarily to residents and can be interpreted as a convenience and in the interest of AFC staff and the department. Additionally, it does nothing to protect individuals who do not have an authorized representative or if the incident or elopement occurs outside of normal business hours when their representative or responsible agency can reasonably be reached. Further, while the proposed language in R 400.1416a(4) references what the department can do during a renewal inspection, DRM believes this follow-up may occur too long after the event occurred which may make interventions and remedies moot.

- R 400.1416a(1) Incident notification, incident records. Add (f) Medication errors.

ADULT FOSTER CARE CONGREGATE HOMES

- R 400.2404(3). Keep language requiring reporting to the department when a serious accident requiring medical attention occurs. This allows for timely review and follow-up by the department. Eliminating the department's opportunities to quickly intervene and/or investigate an accident increases risks unnecessarily to residents and can be interpreted as a convenience and in the interest of AFC staff and the department. Removing this layer of reporting weakens protections for residents and eliminates the department's oversight responsibility for reasons that do not support vulnerable individuals residing in congregate settings.
- DRM appreciates the new language proposed in the definition of "elopement" (R 400.2404a (1)(b)) as it supports HCBS Rules and doesn't presume all individuals who live in a congregate setting require constant supervision or that they need permission to leave their home.
- R 400.2404a (1)(c) Incident. Modify the proposed definition to include medication errors (...elopes **or medication errors**) in addition to what is already proposed. This would be consistent with the definition of incident used in MCL 333.20106 as it applies to licensed homes for the aged.
- R 400.2404a (2) Incident notification, incident records. Add (f) Medication errors.

ADULT FOSTER CARE SMALL GROUP HOMES

- DRM appreciates the new language proposed in the definition of "elopement" (R 400.14102 (1)(k)) as it supports HCBS Rules and doesn't presume all individuals who live in an AFC require constant supervision or that they need permission to leave their home.
- R 400.14102 (1)(o) Incident. Modify the proposed definition to include medication errors (...elopes **or medication errors**) in addition to what is already proposed. This

would be consistent with the definition of incident used in MCL 333.20106 as it applies to licensed homes for the aged.

- R 400.14311 (1) Incident notification, incident records. Keep language requiring reporting to the responsible agency and the department. This allows for timely review and follow-up by all parties. Eliminating the responsible agency and department's opportunities to quickly intervene and/or investigate increases risks unnecessarily to residents and can be interpreted as a convenience and in the interest of AFC staff and the department. Removing this layer of reporting weakens protections for residents and eliminates oversight responsibility for reasons that do not support vulnerable individuals residing in AFC settings.
- R 400.14311 (1) Add (f) Medication errors.

ADULT FOSTER CARE LARGE GROUP HOMES

- DRM appreciates the new language proposed in the definition of "elopement" (R 400.15102 (1)(k)) as it supports HCBS Rules and doesn't presume all individuals who live in an AFC require constant supervision or that they need permission to leave their home.
- R 400.14102 (1)(o) Incident. Modify the proposed definition to include medication errors (...elopes **or medication errors**) in addition to what is already proposed. This would be consistent with the definition of incident used in MCL 333.20106 as it applies to licensed homes for the aged.
- R 400.15311 (1) Incident notification, incident records. Keep language requiring reporting to the responsible agency and the department. This allows for timely review and follow-up by all parties. Eliminating the responsible agency and department's opportunities to quickly intervene and/or investigate increases risks unnecessarily to residents and can be interpreted as a convenience and in the interest of AFC staff and the department. Removing this layer of reporting weakens protections for residents and eliminates oversight responsibility for reasons that do not support vulnerable individuals residing in AFC settings.
- R 400.15311 (1) Add (f) Medication errors.

Thank you for considering these comments. Please contact Michelle Roberts at DRM, mroberts@drmich.org, if you have any questions.

February 22, 2023

Department of Licensing and Regulatory Affairs
Bureau of Community and Health Systems

**Comments on Administrative Rules for Adult Foster Care Providers
Rule Set 2022-(45 – 48)**

LeadingAge Michigan appreciates the department's continued efforts to streamline incident and accident reporting for Adult Foster Care (AFC) facilities. LeadingAge Michigan supports the proposed changes to AFC incident and accident reporting.

The proposed rule changes will free up hundreds of staff hours. Allowing providers more time to focus on providing direct care and a greater ability to fix the root cause of an incident ensuring the health, safety, and welfare of the residents being served. We would also like to thank LARA for their communication and time conducting the AFC workgroups and we will continue to follow these rules changes as they make their way through the administrative rules process.

In closing, LeadingAge Michigan would like to thank LARA and the AFC workgroup for their time developing these rule changes and support the rule changes.

Sincerely,

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