

**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:**

Health and Human Services

**Bureau name:**

Children's Services Agency

**Name of person filling out RIS:**

Mary Brennan

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**Rule Set Information:**

**ARD assigned rule set number:**

2020-39 HS

**Title of proposed rule set:**

Child Caring Institutions

**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.**

There are no parallel federal rules or standards set by a state or national licensing agency or accreditation association.

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

Yes, these rules are required by state mandate pursuant to MCL 722.112(1). In addition, the Michigan Department of Health and Human Services (MDHHS) receives federal matching funds for foster care placement of children who meet federal eligibility criteria under pursuant to the Social Security Act (Title IV-E). In 2018, the Families First Preservation and Services Act (FFPSA) was enacted. This established higher standards of care for children placed in congregate settings. These rules align with the new criteria. The rules also align with standards established under 42 USC 671(a)(10).

**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 any federal standard.

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

All states are required to come into compliance with the standards of care enacted under FFPSA. The new requirements have been implemented in statute and administrative rules in other states.

Additionally, MDHHS completed a comprehensive review of child caring institution licensing standards and rules in other states, including Oregon, Georgia, New Hampshire, New Jersey, Florida, and Texas. MDHHS' revisions of child caring institution licensing rules align with the standards set in these states. For example, the proposed rule revisions incorporate language from Georgia regarding standards for physical restraint of youth, including training and monitoring a youth's breathing during a physical restraint.

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

The child caring institution rule revisions do not exceed the standards set in other states.

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

The child caring institution rules do not duplicate, overlap, or conflict with any other laws, rules, or legal requirements.

**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 rules follow federal mandates and standards for funding and state law, and administrative rules are aligned with those federal laws and standards for seamless enforcement.

**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.**

MCL 24.232(8) does not apply to the proposed rules. The proposed rules align with the federal mandates as required under FFPSA; 42 USC 671(a)(10). The rules do not exceed these standards.

**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.**

MCL 24.232(9) does not apply to the proposed rules as they aren't more stringent than applicable federal standards.

## **Purpose and Objectives of the Rule(s)**

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

These rules set standards for the day-to-day operation of child caring institutions in the state of Michigan. MDHHS currently licenses 134 child caring institutions in the state of Michigan. The revised rules update health, safety, and behavior management standards in child caring institutions, particularly in the areas of restraint and seclusion of youth in these institutions.

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

The proposed rule revisions modify requirements for physical restraint, seclusion and behavior management of youth in care. In May 2020, a youth residing in a Michigan child caring institution tragically died as a result of being physically restrained by staff. Michigan has committed to ending the use of physical restraint and seclusion of youth in child caring institutions. The revised rules place a May 2022 sunset date to end all physical restraints and seclusions in child caring institutions. The proposed revisions also enhance behavior management plan requirements to implement recognized national best practice standards for behavioral support of youth in congregate care settings including staffing and addresses the need to support those youth who identify as LGBTQ.

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

Current child caring institution licensing rules currently allow for the practice of restraint and seclusion of youth in care. The revisions place a sunset date on these methods of behavior management with youth and add national best-practice methods of youth behavioral support. The rules also address the needs of those youth who identify as LGBTQ in congregate care settings.

**C. What is the desired outcome?**

The goal is to assure the physical and emotional wellbeing of all youth in care in Michigan child caring institutions.

**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.**

Unregulated physical restraint of youth in child caring institutions directly jeopardizes the health and safety of youth in care. In May 2020, a youth residing in a Michigan child caring institution tragically died as a result of being physically restrained by staff. Michigan has committed to ending the use of physical restraint and seclusion of youth in child caring institutions. The revised rules place a May 2022 sunset date to end all physical restraints and seclusions in child caring institutions. The proposed revisions also enhance behavior management plan requirements to implement recognized national best practice standards for behavioral support of youth in congregate care settings and to recognize and support youth who identify as LGBTQ and promote proper assimilation and services in the institution.

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

The current rules do not sufficiently address the behavior management of youth in child caring institutions. Recent national research by the Building Bridges Initiative has shown that youth are irreparably harmed by unnecessary and improper physical restraints in child caring institutions. The rules require updating to meet national best-practice standards for proper care and safety of youth. Further, the identification and needs of youth who identify as LGBTQ has increased and the proposed rules are intended to assure proper training for staff involving LGBTQ population, including the physical environment needs that each institution utilizes for services to this population.

**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.**

Adopting national best-practice behavioral health standards is essential to assure the safety and emotional wellbeing of youth in care at child caring institutions. It is critical to update behavior management practices in child caring institutions based on recent research findings that improper restraint of youth in residential settings may permanently inhibit a youth's neurological and social development. By implementing these best-practice behavior management standards, youth may exhibit positive outcomes that will limit or reduce behaviors requiring intervention. This will allow youth to have a greater likelihood of having a safe and healthy return to their family homes.

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

28 rules are being rescinded. The majority of the rules rescinded are obsolete fire safety regulations.

## **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 not have any fiscal impact on the agency. By allowing more child caring institutions to come into compliance with Title IV-E funding requirements, more facilities will be eligible for Title IV-E reimbursement.

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

An agency appropriation is not needed.

**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 necessary to promote safety of youth in child caring institutions. While the burden is on the child caring institution and its staff to adhere to these requirements, the rules are suitable and necessary to the safety and welfare of Michigan youth and youth from other states placed in Michigan facilities. Any fiscal or administrative burden appears minimal compared to the safety and wellbeing of Michigan and out-of-state youth.

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

Any burdens are speculative and appear to be minimal. The rules require behavioral and training changes for child caring institution staff and its officers and administrators involving the reduction and elimination of restraint and seclusion necessary to promote safety of youth in child caring institutions. While the burden is on the child caring institution and its staff to adhere to these requirements, which also includes assisting LGBTQ youth with assimilation and access to needed services are suitable and necessary to the safety and welfare of Michigan youth and youth from other states placed in Michigan facilities.

## **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.**

By adhering to the proposed administrative rules, the child caring institution remains in business and provides business to local restaurants, stores, and other small businesses that will be utilized by staff and the institution.

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

There are no services or duties expected to be imposed on any municipality, nor a school district as a result of 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.**

MDHHS and child caring institutions must report physical restraint incidents to a MiSACWIS database. MDHHS is currently working with all child caring institutions to obtain access to this database. This will limit the amount of paper reports required of child caring institutions. Further, MDHHS has worked with LARA with data share agreements to provide a new dashboard for licensing workers outlining restraints and seclusions in child caring institutions to address any issues quickly.

**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 appropriation to state or local governmental units has been made or a funding source provided for any additional expenditures associated with the proposed rules.

## **Rural Impact**

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

The rules affect both rural and urban child caring institutions alike. There is no disproportionate impact on facilities in either setting.

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

By adhering to the proposed administrative rules, the child caring institution remains in business and provides business to local restaurants, stores, and other small businesses that will be utilized by staff and the institution.

## **Environmental Impact**

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

There is a section in the rules that outlines the requirements of the child caring institution to comply with environmental health and safety issues both inside and outside the child caring institution.

## **Small Business Impact Statement**

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

There was no consideration to exempt small businesses from the proposed rules. The rules apply equally to large and small institutions and many child caring institutions constitute a small business and MDHHS licenses these businesses frequently. In the event a deviation from the rules for non-safety issues in a small institution is required, a variance to the rules may always be requested.

**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 have no disproportionate impact on small businesses.

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

MDHHS currently licenses 134 child caring institutions in the state of Michigan. While the rules apply equally to large and small institutions, there may be requirements under the Prison Rape Elimination Act (PREA) that may result in costs that a small institution may find burdensome, however, PREA is a federal law and must be complied with.

**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.**

There are no differing compliance and reporting requirements for small child caring institutions from the larger institutions. All facilities must comply with the 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.**

MDHHS simplified and consolidated several areas which apply equally to both large and small institutions: access to MiSACWIS, requests to modify MiSACWIS to make reporting easier, and the creation of the institution performance dashboard to address licensing issues quickly and more efficiently.

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

MDHHS simplified and consolidated access to MiSACWIS, requests to modify MiSACWIS to make reporting easier, and the creation of the institution performance dashboard to address licensing issues quickly and more efficiently.

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

There is no known disproportionate impact on small institutions because of their size or geographic location.

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

Both large and small institutions will continue to be responsible for filing Incident Reporting forms and that practice is not affected in these 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.**

There do not appear to be any additional costs for small institutions to comply with these proposed rules.

**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.**

The agency does not anticipate any additional legal, consulting, or accounting service costs with these proposed rules.

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

The agency does not anticipate any economic harm and adverse effects to competition in complying with these 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.**

The proposed rules do not exempt nor set lesser standards for compliance by small businesses.

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

MDHHS has not received any public commentary of exempting or setting lesser standards for small businesses.

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

MDHHS is required by statute under MCL 722.112(2)(d) to establish an ad-hoc rules committee with representatives of organizations to be on this committee. MDHHS' committee regarding the current rule revisions was comprised of 36 members, including multiple representatives from stakeholder child caring institutions.

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

The following child caring institutions were involved in the development of the rules: Oakland County Children's Village, Wolverine Human Services, D.A. Blodgett for Children, Eagle Village, Calhoun County, Bay County, Washtenaw County, Ruth Ellis Center, Christ Child House, Vista Maria, Wedgwood Christian Services, and Spectrum Human Services.

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

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

There are no additional compliance costs associated with the revised rules above and beyond the rules that are currently in effect.

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

There are 134 licensed child caring institutions in the state of Michigan. There are approximately 2,000 youth placed in child caring institutions throughout the state.

**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.**

There are no additional costs that will be imposed on child caring institutions as a result of the proposed rule revisions. Child caring institution administrators and staff will require additional training to adhere to new youth behavior intervention practices, however, this training module is being offered at no cost to child caring institutions through the Building Bridges Initiative.

**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 are no additional costs that will be imposed on child caring institutions as a result of the proposed rule revisions. Child caring institution administrators and staff will require additional training to adhere to new youth behavior intervention practices, however, this training module is being offered at no cost to child caring institutions through the Building Bridges Initiative.

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

There are 134 licensed child caring institutions in the state of Michigan. There are approximately 2,000 youth placed in child caring institutions throughout the state. The youth's family will be affected by these rules as the rules improve upon the services an individual youth will require while dealing individually with youth behavior. CCI workers, administration, and volunteers will be effected by compliance with the amended rule requirements.

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

There are qualitative and quantitative impacts on improving the behavioral outcomes for youth placed in Michigan child caring institutions. Compliance with the proposed rules will increase the quality of care that youth receive while residing in these facilities. It will also quantitatively reduce a youth's length of stay in congregate care settings and help reunite the children in family homes, ending their stay in foster care sooner.

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

Reducing the amount of time foster care youth are placed in residential settings will decrease the cost of that child's care to the State of Michigan. Currently, the State of Michigan pays approximately \$450.00 per day, per youth, for that child to stay in a child caring institution. Improving behavioral outcomes for these youth in congregate care settings will allow for these children to be placed in less-restrictive, family foster care settings at a much-reduced cost of less than \$40.00 per day. Improved behavioral outcomes for youth in congregate care settings may also allow for that child to exit the foster care system entirely and be reunified with his or her family sooner.

**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 state anticipates lower rates for CCI children, youth will benefit from new behavioral management rules and freedom from potentially dangerous forms of restraint in these institutions, parents and guardians will become more involved in the child's case which may accelerate the release of the child from the CCI.

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

Child caring institutions that are able to comply with the revised standards set in these rules may be awarded MDHHS contracts to provide care to Michigan youth in foster care. This will have a positive impact on that institution's business growth and it will allow for the creation of jobs at that facility.

**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.**

The proposed rules will not disproportionately impact child caring institutions located in a particular industrial or geographic sector.

**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.**

Reducing the number of days in care results in cost-savings to the department and the state under the daily rate and the administrative rate as defined in MCL 400.117a. Number of institutions and children in care was determined by statistics kept by the MDHHS Division of Child Welfare Licensing and foster care program areas. MDHHS will be responsible for printing the new rules for dissemination to CCIs and any other organization or person who desires the information.

**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 only cost left outstanding involves the printing cost of the rules. That information is not available at this time, but the last publication of the rules cost the department approximately \$750. Regarding the cost savings for decreased length of stay and improvements for youth in care was discussed extensively with the Casey Foundation and a CCI Steering Committee specifically formed to address rules, policy, and financial impact.

## **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 will provide for child safety in Michigan child caring institutions.

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

There are no statutory amendments anticipated that would achieve the necessary safety outcomes for youth in Michigan child caring institutions.

**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.**

Child caring institutions nationwide are regulated by state entities. By federal law, MDHHS is the state Title IVE agency and responsible for following federal law and standards on condition of funding. All states have an appointed state agency as the Title IVE agency. It is not feasible to regulate child caring institutions through private market-based systems.

**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.**

As discussed previously, MDHHS is statutorily mandated to create ad-hoc workgroups for their licensing rule sets, consisting of several partners and stakeholders. Many child caring institution administrators had a primary role in discussion and drafting these rule revisions. MDHHS considered all feedback from institutions regarding the revisions. The final proposed rule set is a result of the consensus of work done by the workgroup.

## **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.**

The department will amend its current Technical Assistance Manual for the Child Caring Institution rule set to broaden and provide examples of the proposed rules as they apply to licensing staff and the child caring institutions that are subject to the rules moving forward.