SENATE FISCAL AGENCY
ADMINISTRATIVE RULES FISCAL NOTE

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TRANS. NO.	AGENCY	SUBJECT
21-69	Department of Health and Human Services- Children's Services Agency- Division of Child Welfare Licensing	Child Caring Institutions

FISCAL IMPACT:

In the Regulatory Impact Statement and Cost-Benefit Analysis (RIS) issued by the Michigan Department of Health and Human Services on rules changes proposed for Child Caring Institutions, the text states the rules will not have any fiscal impact on the agency. The analysis then states that by allowing more child caring institutions to come into compliance with Federal Title IV-E funding requirements it will allow for more facilities to be eligible for Title IV-E reimbursement. The statement about Title IV-E eligibility is difficult to evaluate because Title IV-E eligibility reimbursements follow children and their placements, not facilities. While it is true that if children are placed into a facility that does not meet Federal Title IV-E rules, those children would not be eligible for Title IV-E reimbursements, but the underlying Title IV-E eligibility is based on the circumstances of the child, not the circumstances of the facility. So, it is not certain what facilities are not currently in compliance with Title IV-E eligibility and how the rule changes would bring those facilities into compliance.

The RIS states the Families First Preservation and Services Act (FFPSA) established new standards of care for children placed into congregate care settings. The RIS seems to imply that all of these proposed rule changes seek to bring them into compliance with FFPSA Title IV-E requirements and does not distinguish the areas where the changes are optional or discretionary. This comingling makes it difficult to gauge which sections of the rules must be adopted to comply with FFPSA changes and those rule changes that are outside the scope of FFPSA. The RIS refers to licensing standards and rules in other states and specifically refers to standards for the physical restraint of youth in the State of Georgia. The RIS does not make a distinction as to what standards and rules taken from other states were implemented for FFPSA purposes and what standards were exclusive of the FFPSA requirements. If there is the potential to lose Title IV-E funding by not instituting rule changes required by FFPSA, it is uncertain as to which rules those requirements would apply.

The proposed rules require a prohibition on restraints as of May 1, 2022 under R 400.4159 Rule 159 (expect for those restraints made under an emergency, lifesaving response or those at a secure juvenile facility). The assumption made in the RIS is that with increased training and

treatment plans, the need for restraints will be attenuated. Since the current rules and staffing levels at child caring institutions allows for restraints under certain conditions, there could be a decrease in staffing costs if the crisis prevention and intervention plans result in less injuries and missed work time for agency staff. To the extent that the licensee's actual staff costs decrease there could be a decrease in provider rates paid by the State.

As the new rules prohibit seclusion as of May 1, 2022, R 400.4162 Rule 162, for both secure and nonsecure facilities, new procedures will be put into place for youth in facilities that may be in danger of jeopardizing the safety of themselves or others and will no longer be able to be placed into a seclusion setting. To the extent that the training and crisis prevention activities reduce the need for seclusion, there could be a decrease in staffing costs for supervision and could be a decrease in provider rates paid by the State. However, since all seclusion is prohibited as of May 1, 2022 it is uncertain as to the overall fiscal impact on the licensee and the State. If seclusion had been used in the past to reduce staff injuries or supervision requirements, to the extent that no seclusion results in a greater staffing level required to maintain the operation of the facility, there could be an increased cost to be recovered through an increased rate paid to providers. .

The RIS also states that the training module for behavior intervention (crisis prevention and intervention and de-escalation) will be provided at no cost to child caring institutions which should preclude any direct training cost to the providers. In the RIS there is no reference to coverage for the additional training costs in implementing diversity, equity, and inclusion methods of service delivery, including diverse SOGIE identity, so to the extent that this training is required by the providers, the increased cost could have to be recovered through an increased rate paid to providers.

The proposed rules require R 400.4108 Rule 108(c) that the licensee must "demonstrate sufficient financial resources, on an ongoing basis". The phrase "…on an ongoing basis…" is a new addition to the existing definition in the rules, but there is no definition as to what "ongoing basis" means in this context. To the extent that this language requires more financial report on behalf of the licensee, there could be additional costs that could be recovered through increased provider rates paid by the State.

Under proposed R 400.4144 Rule 144(2) and (3) there is a reference to identifying health needs within 3 days of admission and an "admission comprehensive health examination" that must follow, "…at minimum the recommendations by the American Academy of Pediatrics Bright Futures Guidelines." Current rules allow for a physical examination within 1 year or up to 30 calendar days after admission. The new rule could require an examination with 3 days where the previous rule allowed up 30 days. To the extent that an increased timeline for health examinations require an increased cost to the licensee, there could be additional costs to be recovered through increased provider rates paid by the State.

Proposed R 400.4149 Rule 149(4) requires that the licensee provide "…any special diet dictated by differing nutritional requirements related to the youth's age, medical condition, or religious beliefs". Current rules require the licensee to provide a special diet that has been prescribed, but the new rule broadens the special diet requirement and does not list any criteria for the provision the special diet as opposed to the existing rule that required a medical prescription. To the extent that youth's request a special diet under the new rule, the licensee must meet the request and to the extent this meal substitution increased costs to the licensee, there could be additional costs to be recovered through increased provider rates paid by the State.

The reporting requirement under proposed R 400.4150 Rule 150(1) reduces the time required to report from "…as soon as possible, but not more than 24 hours after the incident" to contacting within 12 hours and a written report within 24 hours. It also expands the treatment severity from "…requiring inpatient hospitalization…" to "…incidents that require emergency medical attention or hospitalization or both" and adds several additional incident types that must be reported. To the extent that there are new incidents required to be reported both verbally and written on an accelerated timeline, there could be additional staffing costs to the licensee. If there are additional costs, they could be recovered through increased provider rates paid by the State.

There are several new rule sections dealing with food preparation areas, food storage, food preparation, and sanitization (R 400.4437 Rule 437, R 400.4438 Rule 438, R 400.4439 Rule 439, R 400.4440 Rule 440). These new rules are not part of the current set of child caring institutions rules and place new requirements onto these facilities. If the two State owned and operated facilities require improvements to meet these rules, there would be a direct fiscal impact to the State. To the extent there are licensees that do not meet the new requirements, there could be an increased cost to the providers to meet these new rules which could be recouped through increased provider rates paid to the facilities.