

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

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Rule Set Information:

ARD assigned rule set number:

2020-3 HS

Title of proposed rule set:

Licensing Rules for Foster Family Homes and Foster Family Group Homes

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 rules parallel the Family First Preservation and Services Act (FFPSA) under 42 USC 671. While the foster homes are not subject to accreditation association, the child placing agency placing the children with foster parents is subject to accreditation standards.

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

The administrative rules are required by both federal and state mandate. Licensing rules for foster homes are required under the Child Care Organizations Act (CCOA), MCL 722.111 through 722.128 as part of a condition of funding under 42 USC 672(a)(10). The CCOA mandates rulemaking under MCL 722.112(1).

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 for Foster Homes do not exceed federal standards.

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 federal law, specifically the Family First Prevention Services Act (FFPSA); the new requirements have been implemented in statute and administrative rules in other states. The majority of states have similar rule sets with similar standards for the regulation of agencies that supervise children receiving care and supervision in out of home placements as well as the regulation of adoption agencies.

A review of other locally situated states reveals the similarities in the statutory requirements for child caring institutions for licensing of foster care parents. See Ohio Revised Code, Chapter 51, 5103.2 et seq.; Indiana Code, IC 31-27-3 et seq., Regulation of Child Caring Institutions; and Illinois Admin Code, Part 404, Licensing Standards for Child Caring Institutions and Maternity Homes.

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

The rules do not exceed standards in the states identified above.

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

The proposed Foster Home 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 have been amended to comply with the federal standards under the FFPSA, the federal law under 42 USC 671, and the Child Care Organizations Act. There was a careful review to determine if duplication exists and the proposed rules do not duplicate federal, state, or local laws.

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.

The proposed rules are not more stringent than the federally mandated 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.

The proposed rules are not more stringent than the applicable federally mandated standards.

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 rule revisions are overall less prescriptive in language than the current rules and offer more flexibility while incorporating required assessment to address SOGIE and culture and are consistent with the National Model Licensing Standards.

With the requirements outlined in this rule set, the department and the courts which have ordered children into out of home placements can be reasonably assured that foster and adopted children are placed with safe and healthy families.

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

Child Placing Agencies have more flexibility licensing foster homes and finding more appropriate families to foster DHHS children while ensuring safety aspects for children and families remain the top priority.

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

The rules have been adjusted to allow agency assessment for non-safety issues for placement of DHHS children with families. These adjustments are anticipated to allow for a reduction in the time it takes to license foster homes and to reduce licensing barriers that have previously been determined to be overly prescriptive.

C. What is the desired outcome?

The desired outcome is an increase in the number of foster homes available for DHHS children.

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 goal of these rules is to minimize risk to children placed outside of the parental home and to ensure that placements are made and supervised in settings where children are safe and well cared for. The majority of the current rules were promulgated in 2015. Current rules need to be updated to comply with requirements for child placing agencies that are set forth in the federal court settlement and corresponding modifications to the Dwayne B lawsuit. Further, one rule was amended in 2020 to address concerns related to hazardous materials.

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

MCL 722.112 mandates a review of the CCOA rules every 5 years. A review of these rules, together with the foster family and group home rules, indicated a need in several areas of amendment, rescission, and additions to accomplish the goals of placement of children in safe homes while their permanency goals are addressed. Further, the rules need to come into compliance with the FFPSA and continued to be monitored under the ISEP of the Dwayne B lawsuit to ensure any updated orders from the court are complied with in the rules.

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 rules protect the health and safety of children placed in unlicensed relative homes, licensed foster homes, and adoptive homes by addressing specific issues, including required content of home evaluations, standards for working with birth families, unlicensed relatives, foster and adoptive parents, required visitation to ensure safety, and the ongoing assessment of safety in various out of home living situations. Requirements for ensuring the qualifications and training of staff, reporting suspected child abuse or neglect, and record keeping are also clearly outlined.

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

R 400.9207 and R 400.9307 have been identified for rescission.

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).

Costs to revise rules and publish new rules in paper form are the same as ongoing costs to replenish supplies of rules that are already being provided. Forms required by the rules are currently available for download on the department's website (www.michigan.gov/dhs) or are incorporated into the department's web-based child welfare information management system.

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 is no additional funding/appropriation for expenditures associated with the proposed rules.

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 rules are required to set the minimum standards for foster family and group homes involving the safety and care of children under DHHS and non-DHHS care. While some of the rules may present a burden to potential licensees, variances are available provided they are non-safety variances to license a home. Safety issues are not negotiable or subject to variances. The rules promulgation authorized under the CCOA are required for federally funding and the State stands to lose funding in the event there are no requirements for foster family homes.

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

Safety of children and federal funding require the continued need for the administrative rules.

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.

Any increase or decrease in revenues to state or local governmental units would have occurred under the requirements of the Dwayne B. settlement back in 2008. These proposed rules are not anticipated to increase costs or revenues.

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

No additional program, service, duty, or responsibility will be imposed on any city, county, town, village, or school district by the rule changes.

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.

Foster homes are required to be inspected by DHHS staff to determine if the home meets the standards set forth in the rules. The rules require the child placing agencies to keep records involving personnel, children served, families served, and other reporting data needed for federal and state reporting.

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 appropriations for additional expenditures associated with the proposed rules have been made to state or local governmental units.

Rural Impact

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

There will not be a disproportionate impact on foster families and unlicensed relatives based on their geographic location. All foster homes are required to be in compliance with same rules, whether urban or rural.

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

Private interests involving the requirements of following the child placing agency rules for foster parents and their homes must be followed for the safety of children placed in these homes.

Environmental Impact

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

The proposed rules will have no impact on the environment.

Small Business Impact Statement

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

Foster homes are not “businesses” for purposes of the Regulatory Impact Statement. Parents are paid a foster care rate as individuals.

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.

Foster homes are not “businesses” so this question is not applicable.

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

Foster homes are not “businesses” so the question is not applicable.

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.

Foster homes are not “businesses” so the question is not applicable.

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.

Foster homes are not “businesses” so the question is not applicable.

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

Foster homes are not “businesses” so the question is not applicable.

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

Foster homes are not “businesses” so the question is not applicable.

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

Foster homes are not “businesses” so the question is not applicable.

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.

Foster homes are not “businesses” so the question is not applicable.

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.

Foster homes are not “businesses” so the question is not applicable.

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

Foster homes are not “businesses” so the question is not applicable.

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.

Foster homes are not “businesses” so the question is not applicable.

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

Foster homes are not “businesses” so the question is not applicable.

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

Of the number of participants on the Child Placing Agency Rules Advisory Committee, several small businesses were involved in the development of these proposed rules.

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

Small businesses on the Foster Family and Group Home Rules Advisory Committee included:

- Ennis Center for Children in Detroit
- Ruth Ellis Center
- Fostering Forward Michigan
- Harambee Care
- Michigan Center for Youth Justice
- Michigan Federation for Children and Families, Lansing
- Americans for International Aid and Adoption

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 anticipated compliance costs for businesses or groups associated with the rules.

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

The child placing agencies themselves benefit from the rules to secure funding paid by the State to make best interest placement determination and monitor a child's progress within the system. The parents of a foster child and the child benefit as the rules are centered on the best interests of the child in an out of home placement where the child is safe and secure. Applicants are directly affected by, and benefit from, the amended non-safety requirements to expand the number of licensed foster homes available in 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 anticipated additional costs on businesses and other groups as a result of these 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 are no changes in fees for child placing agencies and/or foster parents. The costs associated with the new staffing standard have already been factored into the department's reimbursement rates for those private agencies under contract. Training will be implemented by the department. It is not anticipated that labor, accounting, or recordkeeping costs will increase as a result of these proposed rules.

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

All individual foster parents, child placing agency staff, state licensing staff, monitors of the Dwayne B. lawsuit, and other outside agencies associated with child welfare services will be affected by the rules.

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

The proposed rules are designed to reduce barriers to foster home licensure and affects all prospective, current foster parents, and child placing agency staff.

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

The proposed rules are generally cost-neutral other than those noted above.

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.

- Increase in foster homes.
- Increase in extended opportunities for agencies to establish compliance with rules.
- Increased adherence to safety standards for child welfare agencies as outlined by the National Model Standards.
- Increase in confidence by birth parents with children in foster care placement which allows the parents to address their issues, such as religion/spirituality and SOGIE, concerning reunification.
- Reduction in the number of placements foster children experience while in foster care due to increase in assessment in areas related to religion/spirituality and SOGIE training for child welfare staff and foster parents.

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

The rules are not anticipated to have any impact on business growth or job creation.

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 rules do not disproportionately affect any child placing agency or foster home as they apply equally to all licensed child placing agencies and foster homes.

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.

Data for this Regulatory Impact Statement came from DHHS and DCWL, information and data provided from the Rules Advisory Committee and other stakeholders, research on similarly situated states in the Midwest, The National Model Licensing Standards, the authority of FFPSA, and other federal law.

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.

All estimates and assumptions came from partnership with the identified stakeholders identified in section 34, which identified the need for several amendments of the rules, particularly the amendment of the licensing requirements for more foster homes being made available to children.

Alternative to Regulation

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

Statutory amendment to include all of the proposed rules may achieve the same or similar goals. However, this is not a reasonable alternative to the rules due to the length of the rule set. There are no further reasonable alternatives that would achieve the same goals.

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

No statutory amendments of the CCOA are anticipated with these proposed rules. The rules have adequate statutory authority.

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.

Oversight of child placing agencies to perform investigations and submit recommendations to the State for licensing of foster parents are governed under federal and state law for funding. In order to receive funding, there must be a state Title IVE agency. That is the DHHS. It is improbable the federal government would accept a private market as the state Title IVE agency. Currently, contracts with any licensed child placing agency are available through the department that include both public and private individuals or businesses.

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 proposed rules are a direct result of internal and external stakeholder feedback and discussions.

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 version of the Technical Assistance Manual that compliments the Foster Family and Group Home rules to provide guidance in the updates made to the rules for the benefit of licensing staff, child placing agencies, and foster parents.