

**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:**

Labor and Economic Opportunity

**Bureau name:**

Michigan Rehabilitative Services

**Name of person filling out RIS:**

Christina Rea

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**Rule Set Information:**

**ARD assigned rule set number:**

2023-34 LE

**Title of proposed rule set:**

Vocational Rehabilitation

**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.**

R 395.51 Definitions

(b) CFDA 84.161A provides an updated program definition for the Client Assistance Program (CAP) that is reflected in this rule change.

(k) Provides the definition of “Pre-employment transition services” or “Pre-ETS” as defined in 34 CFR 361.48(a)(2) and (3).

(n) Updates MRS rules definition of “substantial impediment to employment” to match the definition established in 34 CFR 371.6.

R 395.53 Purpose

Updates vocational rehabilitation (VR) program definition according to the language in CFDA Number 84.126A.

Also, updates program definition to incorporate the Workforce Innovation and Opportunity Act’s (WIOA) emphasis on pre-employment transition services and employer services.

R 395.54 General requirements

(1) Section 188 of WIOA (29 USC 3248) adds language to nondiscrimination requirements regarding program status and “certain non-citizens”. The proposed MRS rule change matches the nondiscrimination requirements of WIOA.

R 395.76 Rates of payment

34 CFR 361.50(c)(2) provides authority to state VR programs to establish a fee schedule. The establishment of a fee schedule with defined rates of payments for given VR services is parallel to the practices of Colorado, Indiana, North Carolina, Oregon, and other state VR programs.

R 395.79 Rehabilitated case closure

34 C.F.R. § 361.5(c)(41) clarifies that post-employment services must be provided as identified on an amended Individualized Plan for Employment (IPE). Therefore, given changes and clarification in WIOA’s amendments to the Rehab Act of 1973, Michigan Rehabilitation Services (MRS) staff leave customer cases open and amend the IPE to reflect the need for post-employment services, rather than providing services post-case closure as this rule describes. This parallel in federal regulations explains MRS is removing (f) from this rule.

R 395.83 Post-employment services

See above parallel for R. 395.79 regarding 34 C.F.R. § 361.5(c)(41).

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

By Federal mandate, Michigan is required to administer a vocational rehabilitation program in accordance with the Rehabilitation Act of 1973 as amended by WIOA.

**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.**

R 395.51 Definitions

This rule does not exceed a federal standard.

R 395.53 Purpose

This rule does not exceed a federal standard.

R 395.54 General requirements

This rule does not exceed a federal standard.

R 395.76 Rates of payment

This rule does not exceed a federal standard. While establishing a fee schedule is not required in federal standards, 34 CFR 361.50(c)(2) provides explicit authority to state VR programs to establish a fee schedule.

R 395.79 Rehabilitated case closure

This rule does not exceed a federal standard.

R 395.83 Post-employment services

This rule does not exceed a federal standard.

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

R 395.51 Definitions

The origin of this rule change is federal regulations that apply to all state VR programs.

R 395.53 Purpose

The origin of this rule change is federal regulations that apply to all state VR programs

R 395.54 General requirements

The origin of this rule change is federal regulations that apply to all state VR programs

R 395.76 Rates of payment

34 CFR 361.50(c)(2) provides authority to state VR programs to establish a fee schedule. Many state VR programs have adopted this practice when determining rates of payment practices, including Colorado, Indiana, North Carolina, Oregon- all states with similarities in population size, geographic size, and geographic diversity.

The use of a fee schedule is established in the following states' administrative rules:

Colorado - Section 9.108.1(D) of the Code of Colorado Regulations

Indiana - 460 IAC 14-23-1 Rates

North Carolina - 10A NCAC 89C .0103 Rates of payment

Oregon - 582-075-0010

R 395.79 Rehabilitated case closure

The origin of this rule change is federal regulations that apply to all state VR programs

R 395.83 Post-employment services

The origin of this rule change is federal regulations that apply to all state VR programs.

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

Rules 395.51, 395.53, 395.54, 395.79 and 395.83 do not differ from the standards of other state VR rules.

The proposed R 395.76 does not exceed the standards of the Colorado, Indiana, North Carolina, and Oregon rules identified above, but they do operate in slightly different ways. For example, in Indiana, rates of payment are determined by indexing to Medicaid rates of payment for the same service types. In Oregon, rates of payment are determined by whatever is the lesser rate between the Oregon Workers' Compensation Schedule and the Oregon Division of Medical Assistance Program (DMAP) Schedule. Instead of these methods, the MRS rule only states that MRS has the authority to set a fee schedule. MRS contracted a third-party consulting firm to conduct a rate study for the agency in order to determine rates of payment and will use their recommendations to form MRS rates of payment.

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

R 395.51 Definitions

34 CFR 370 details the programming and eligibility requirements of the Client Assistance Program (CAP), which has overlap with the proposed MRS rule.

“Pre-employment transition services” or “Pre-ETS” is defined in 34 CFR 361.48(a)(2) and (3) and is duplicated in the proposed MRS rule.

“Substantial impediment to employment” is defined in 34 CFR 371.6 and is duplicated in the proposed MRS rule.

R 395.53 Purpose

The Rehabilitation Act of 1973, as incorporated as Title IV of WIOA, outlines the purpose of state VR programs, which overlaps with the proposed MRS rule.

R 395.54 General requirements

Section 188 of WIOA (29 USC 3248) adds language to nondiscrimination requirements regarding program status and “certain non-citizens”. The proposed MRS rule change overlaps with the nondiscrimination requirements of WIOA.

R 395.76 Rates of payment

34 CFR 361.50(c)(2) provides authority to state VR programs to establish a fee schedule and the proposed MRS rule overlaps with this language.

R 395.79 Rehabilitated case closure

34 CFR 361.56 speaks to the requirements for closing a VR case of an individual who has achieved an employment outcome and the proposed MRS rule overlaps with this language.

R 395.83 Post-employment services

This rule does not duplicate, overlap, or conflict with other legal requirements because this rule is being rescinded.

**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.**

R 395.51 Definitions

Duplication of federal regulations' definitions is necessary to establish shared meaning between federal and state regulations when discussing like terms.

R 395.53 Purpose

The purpose of MRS is established in federal regulations, so duplication is required to accurately summarize the purpose of the state VR program.

R 395.54 General requirements

MRS is required to apply the nondiscrimination standards set in WIOA, amongst other state and federal nondiscrimination requirements. Duplication of Section 188 of WIOA (29 USC 3248) is needed for that MRS rules accurately reflect our program requirements.

R 395.76 Rates of payment

Language in 34 CFR 361.50(c)(3) is duplicated in proposed R. 395.76(4) in order for the rule to accurately reflect the MRS practice of establishing rates of payment. Other component of the rule are not duplications of other laws.

R 395.79 Rehabilitated case closure

34 CFR 361.56 speaks to the requirements for closing a VR case of an individual who has achieved an employment outcome and duplication occurs only to the extent required to accurately describe MRS practices.

R 395.83 Post-employment services

This rule does not coordinate, duplicate, overlap, or conflict with other legal requirements because this rule is being rescinded.

**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 MRS rules and the proposed MRS rules are not more stringent than applicable federal 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 MRS rules and the proposed MRS rules are not 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.**

R 395.51 Definitions

No change in behavior associated with rule change.

R 395.53 Purpose

VR programming post-WIOA focuses relatively more on services to employers and pre-employment transition services. MRS has established dedicated personnel focused on these service areas and emphasized these program areas in programming statewide. Behavioral changes include increased provision of employer services and pre-employment transition services, as well as greater collaboration between MRS staff serving individuals with disabilities and MRS staff their employer or prospective employer.

R 395.54 General requirements

No behavior change associated with rule change. Although “participant status” and “certain non-citizens” are not nondiscrimination requirements in existing MRS rules, in practice, MRS staff did not discriminate by these pieces of information.

R 395.76 Rates of payment

Prior to this rule change, rates of payment were negotiated case-by-case by MRS office staff and managers. Following this rule change, MRS will have standardized rates of payment for select VR services which will be paid to service providers statewide.

R 395.79 Rehabilitated case closure

Prior to WIOA requirements and this rule change, MRS staff would determine if post-employment services were warranted for MRS customers in the 12-month post-case closure. Following WIOA requirements and this rule change, MRS staff who become aware of a VR service need post-case closure will either re-open the customer’s case (does not require a new eligibility determination) or open a new case (does require a new eligibility determination).

R 395.83 Post-employment services

Prior to WIOA requirements and this rule change, MRS staff would determine if post-employment services were warranted for MRS customers in the 12-month post-case closure. Following WIOA requirement and this rule change, MRS staff who become aware of a VR service need post-case closure will either re-open the customer’s case (does not require a new eligibility determination) or open a new case (does require a new eligibility determination). Because of this, “post-employment services” as previously defined is no longer applicable to staff behavior.

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

R 395.51 Definitions

No change in behavior associated with rule change.

R 395.53 Purpose

Frequent, constant change in MRS programming. Reorienting the purpose of state VR programs to emphasize employer services and pre-employment transition services impact agency-wide programming. While the frequency of VR services provided outside of these two categories will not change, MRS can expect an increase in employer services and pre-employment transition services with this change. At a minimum, Section 110(d)(1) of the Rehabilitation Act requires a State to reserve “at least” 15 percent of its VR allotment for the provision of pre-employment transition services.

R 395.54 General requirements

No behavior change associated with rule change.

R 395.76 Rates of payment

MRS authorizes for payment to vendors for many VR services. This rule change is not expected to significantly change the rate of payments for services. This rule change alters the methodology for determining rates of payment.

R 395.79 Rehabilitated case closure

Change in frequency of targeted behavior would apply to all MRS customer cases in which VR services are determined needed following case closure.

R 395.83 Post-employment services

Change in frequency of targeted behavior would apply to all MRS customer cases in which VR services are determined needed following case closure.

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

R 395.51 Definitions

No change in behavior associated with rule change.

R 395.53 Purpose

Prior to WIOA requirements and this MRS rule change, MRS programming did not emphasize employer services and pre-employment transition services. Following WIOA requirements and this MRS rule change, MRS programming will emphasize employer services and pre-employment transition services.

R 395.54 General requirements

No behavior change associated with rule change.

R 395.76 Rates of payment

Prior to this rule change, rates of payment were negotiated regionally by MRS office staff and managers. Following this rule change, MRS will have standardized rates of payment for select VR services which will be paid to service providers statewide.

R 395.79 Rehabilitated case closure

Prior to WIOA requirements and this rule change, MRS staff would determine if post-employment services were warranted for MRS customers in the 12-month post-case closure. Following WIOA requirement and this rules change, MRS staff who become aware of a VR service need post-case closure will either re-open the customer's case (does not require a new eligibility determination) or open a new case (does require a new eligibility determination). This requirement is stipulated in 34 CFR 361(c)(41).

R 395.83 Post-employment services

Prior to WIOA requirements and this rule change, MRS staff would determine if post-employment services were warranted for MRS customers in the 12-month post-case closure. Following WIOA requirement and this rules change, MRS staff who become aware of a VR service need post-case closure will either re-open the customer's case (does not require a new eligibility determination) or open a new case (does require a new eligibility determination). Because of this, "post-employment services" as previously defined is no longer applicable to staff behavior.

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



R 395.51 Definitions

To properly define terminology used in MRS administrative rules consistent with federal regulations.

R 395.53 Purpose

To reflect the new emphasis in VR programming on employer services and pre-employment transition services as required by WIOA.

R 395.54 General requirements

To ensure the MRS rule on nondiscrimination includes the requirements of WIOA.

R 395.76 Rates of payment

To establish a methodology-driven, consistent, statewide fee schedule that determines rates of payment for specific VR services purchased through vendors.

R 395.79 Rehabilitated case closure

To ensure that MRS staff are following program requirements when offering post-employment services, which requires staff to reopen the customer case or open a new customer case, as stipulated in 34 CFR 361(c)(41), rather than the previous practice of offering services up to a year post-case closure.

R 395.83 Post-employment services

To ensure that MRS staff are following program requirements when offering post-employment services, which requires staff to reopen the customer case or open a new customer case, rather than the previous practice of offering services up to a year post-case closure.

**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.**

R 395.51 Definitions

No change in behavior is being altered by this rule change.

R 395.53 Purpose

An overemphasis on VR services provided to individual MRS customer paired with an underemphasis on employer services and pre-employment transition services is likely to underserve businesses, minors with disabilities, and young adults with disabilities. This rule change captures the WIOA requirements that VR programming provide robust services to businesses, minors with disabilities, and young adults with disabilities.

R 395.54 General requirements

No behavior change associated with rule change. Although “participant status” and “certain non-citizens” are not nondiscrimination requirements in existing MRS rules, in practice, MRS staff did not discriminate by these pieces of information. However, should a staff in the future choose to discriminate in such a way, this rule change would provide an additional layer of rationale for why such staff actions would not be allowable.

R 395.76 Rates of payment

Not having a statewide standardized fee schedule makes MRS highly vulnerable to paying service providers unreasonable costs, as the pre-proposed rule practices relies on the individual negotiating skills and knowledge of hundreds of disparate counselors and managers. Individual staff may not fully understand the prevailing industry rates of payment for specific VR services and use VR dollars to pay an unreasonable cost. The risk of harm from this previous, decentralized rates of payment system is high. Establishing an MRS fee schedule with methodology-driven rates of payment ensures that VR dollars are spent in accordance with the cost principles of 2 CFR 200 Subpart E.

R 395.79 Rehabilitated case closure

WIOA requires VR staff to provide post-employment services on an amended or new IPE, as stipulated in 34 CFR 361 (c)(41). The harm, which is highly likely and frequent without rule change, is that MRS staff could provide post-employment services that are not compliant with WIOA requirements.

R 395.83 Post-employment services

WIOA requires VR staff to provide post-employment services on an amended or new IPE. The harm, which is highly likely and frequent without rule change, is that MRS staff could provide post-employment services that are not compliant with WIOA requirements.

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

R 395.51 Definitions

To update definitions used in MRS rules to be compliant with other federal regulations that use the same terminology.

R 395.53 Purpose

To reflect the new emphasis in VR programming on employer services and pre-employment transition services as required by WIOA.

R 395.54 General requirements

To ensure the MRS rule on nondiscrimination includes the requirements of WIOA.

R 395.76 Rates of payment

To establish a methodology-driven, consistent, statewide fee schedule that determines rate of payment for specific VR services, better ensuring MRS rates of payment are reasonable and allowable costs.

R 395.79 Rehabilitated case closure

To ensure that MRS staff are following program requirements when offering post-employment services, which requires staff to reopen the customer IPE or open a new customer case, rather than the previous practice of offering service up to a year post-case closure.

R 395.83 Post-employment services

To ensure that MRS staff are following program requirements when offering post-employment services, which requires staff to reopen the customer IPE or open a new customer case, rather than the previous practice of offering service up to a year post-case closure.

**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.**

R 395.51 Definitions

The update to the definition of the Client Assistance Program (CAP) ensures Michigan citizens are aware of an accurately defined program that advises and informs clients, client applicants, and other individuals with disabilities of all the available services and benefits under the Rehabilitation Act of 1973, as amended, and of the services and benefits available to them under Title I of the Americans with Disabilities Act (ADA). No required compliance by Michigan private citizens or businesses; CAP is an optional resource.

R 395.53 Purpose

Emphasizing employer services in VR programming works to promote the health, safety, and welfare of Michigan citizens by educating and materially assisting employers with recruiting, accommodating, and retaining individuals with disabilities as employees. Emphasizing pre-employment transition services in VR programming improves the transition of students with disabilities from school to postsecondary education or to an employment outcome, increases opportunities for students with disabilities to practice and improve workplace readiness skills through work-based learning experiences in a competitive, integrated work setting, and increases opportunities for students with disabilities to explore post-secondary training options, leading to more industry recognized credentials, and meaningful post-secondary employment. No required compliance by Michigan private citizens or businesses; MRS services are optional for all individuals and businesses.

R 395.54 General requirements

Inclusion of “participant status” and “certain non-citizens” in the MRS rules nondiscrimination statement ensures that all program-eligible individuals in Michigan are not excluded from MRS services due to these characteristics. No required compliance by Michigan private citizens or businesses; MRS services are optional for all individuals and businesses.

R 395.76 Rates of payment

By establishing a statewide, standardized, methodology-drive fee schedule for specific VR services that incorporates cost reports, personnel roster analysis, times studies, surveys, and market salary research, MRS can ensure that expenses are reasonable and MRS remains a good steward of taxpayers’ dollars. Also, a fee schedule allows for vendors to have a set expectation of what rates of payment for different service types will be and make programing and collaboration decisions accordingly. There are no compliance requirements; vendors are free to choose to do business with MRS or not with known rates of payment.

R 395.79 Rehabilitated case closure

This rule change affects the case status of MRS customers when receiving VR services, but not the services they receive. No required compliance by Michigan private citizens or businesses; MRS services are optional for all individuals and businesses.

R 395.83 Post-employment services

No required compliance by Michigan private citizens or businesses; this rule is to be rescinded.

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

R 395.79 Rehabilitated case closure

Following WIOA requirement and this rules change, MRS staff who become aware of a VR service need post-case closure will either re-open the customer’s case (does not require a new eligibility determination) or open a new case (does require a new eligibility determination). Because of this change in required programming, MRS must rescind R 395.79(f).

R 395.83 Post-employment services

Following WIOA requirement and this rules change, MRS staff who become aware of a VR service need post-case closure will either re-open the customer’s case (does not require a new eligibility determination) or open a new case (does require a new eligibility determination), which is stipulated in 34 CFR 361(c)(41). Because of this, “post-employment services” as previously defined is no longer applicable to staff behavior and the entirety of R 395.83 must be rescinded.

## **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).**

R 395.51 Definitions

There is no expected fiscal impact of this rule change.

R 395.53 Purpose

There is no expected fiscal impact of this rule change.

R 395.54 General requirements

There is no expected fiscal impact of this rule change.

R 395.76 Rates of payment

This rule change will have a minor fiscal impact on individual purchases as rates of payment are standardized rather than individually negotiated. This rule change will not have a significant agency-wide fiscal impact.

R 395.79 Rehabilitated case closure

There is no expected fiscal impact of this rule change.

R 395.83 Post-employment services

There is no expected fiscal impact of this rule change.

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

No agency appropriation has been made or a funding source provided, as expenditures of the proposed rules are not expected to significantly alter MRS expenditures.

### **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.**

R 395.51 Definitions

There are no burdens placed on individuals from this rule change.

R 395.53 Purpose

There are no burdens placed on individuals from this rule change.

R 395.54 General requirements

There are no burdens placed on individuals from this rule change.

R 395.76 Rates of payment

Standardizing rates of payment on an agency fee schedule will reduce administrative burden for counselors and managers who were previously responsible to negotiate rates of payment on their own cases.

R 395.79 Rehabilitated case closure

A small administrative burden will be placed on counselors and managers, as re-opening a customer case or opening a new customer case to provide post-employment services requires staff time and effort in excess of the previous method of providing post-employment services on closed customer cases.

R 395.83 Post-employment services

A small administrative burden will be placed on counselors and managers, as re-opening a customer case or opening a new customer case to provide post-employment services requires staff time and effort in excess of the previous method of providing post-employment services on closed customer cases.

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

R 395.51 Definitions

There are no burdens placed on individuals from this rule change.

R 395.53 Purpose

There are no burdens placed on individuals from this rule change.

R 395.54 General requirements

There are no burdens placed on individuals from this rule change.

R 395.76 Rates of payment

Despite the burden of MRS staff to provide education to service providers on the justification, methodology, and payments changes associated with the rule change and vendors absorbing some administrative burden as they attend MRS educational sessions, read MRS guidance, and potentially adjust their own VR, purchased programming in response to rate changes, this rule change is a more efficient use of MRS staff expertise than to rely on individual counselors and managers to provide this type of education on a vendor-by-vendor, often repeated basis and this rule change is needed to establish a methodology of ensuring MRS expenses are reasonable.

Despite MRS service providers absorbing some administrative burden as they attend MRS educational sessions, read MRS guidance, and potentially adjust their own VR, purchased programming in response to rate changes, this change will allow vendors to have a known payment amount prior to designing programming. Also, most vendors will not care to know about the methodology behind established rates of payment on the MRS fee schedule, so all additional learning about rate rationale is available but optional for vendors.

R 395.79 Rehabilitated case closure

This change is required by changes to federal law.

R 395.83 Post-employment services

This change is required by changes to federal law

## 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.**

The proposed rule change to R 395.76 could have minor fiscal impact of school districts who provide services authorized by MRS, as the rates of payment for services provided by school districts would change. However, MRS estimates these fiscal impacts would be minor due to the relatively small changes to rates of payment. Additionally, MRS anticipates the revenue for school district partners to increase due to MRS changes to rates of payments, as a strong majority of rates set by the rate study increased over their previous average amounts.

The proposed rule changes do not affect any other state or local government entities.

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

The proposed rule changes do not impose any program, service, duty, or responsibilities on any city, county, town, village, or school district.

**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.**

The proposed R 395.79 changes MRS staff behavior when providing services to a customer after having closed that customer's case in employed status. Instead of providing "post-employment services" on a closed customer case, the MRS counselor will either re-open the previous customer case or open a new customer case.

**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.**

MRS has not made an appropriation or provided a funding source to state or local governmental units.

## Rural Impact

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

MRS does not anticipated the proposed rules changes having an impact on rural areas.

At this time, MRS will not implement geographic adjustments with rates of payment in R 395.76 because (1) the undetermined long-term impact of Covid-19 on the frequency of online service delivery in rural areas and the associated cost changes, (2) current sample sizes of rural service providers are too low to make meaningful geographic comparison to suburban and urban service providers, (3) the complete fiscal impact of this rule change is unknown at this time, and (4), because MRS customers often cross county-level borders for community-based services with no location of service tracked, the nature of VR services does not lend itself to accurate administration of geographic adjustments.

Following implementation of R 395.76, MRS will continually evaluate potential disparate impacts of this rule change on rural communities and make geographic adjustments if needed.

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

MRS does not anticipate the proposed rules changes having an impact on rural areas.

## Environmental Impact

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

No, the proposed rules do not have any impact on the environment.

## Small Business Impact Statement

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

The proposed rules of R 395.51, 395.53, 395.54, 395.79, and 395.83 could not reasonably exempt small businesses due to the nature of the rule changes and was not considered by MRS. For the R 395.76 change, MRS considered and decided against small business exemption for rates of payment, because such an exception would mean, in practice, that MRS would have a standard rate of payment to service providers over a certain size and then a flexible, negotiated rate of payment for service providers under a certain size, which runs contrary to the purpose of the rule change of establishing a methodology-driven, reasonable standard of payment for all MRS service providers. MRS does not anticipate a disparate impact on small service providers based on third-party contractor-conducted market salary research, cost reports, and time studies.

### **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.**

MRS does not anticipate a disproportionate impact on small service providers based on third-party contractor-conducted market salary research, cost reports, and time studies.

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

MRS does not anticipate a disproportionate impact on small service providers based on third-party contractor-conducted market salary research, cost reports, and time studies.

#### **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.**

MRS did not establish compliance or reporting requirements or timetables for small businesses.

#### **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.**

MRS did not consolidate or simplify the compliance and reporting requirements for small businesses.

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

MRS did not establish performance standards to replace design or operations standards because the proposed rules do not require such compliance.

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

MRS does not anticipate a disproportionate impact on small service providers based on third-party contractor-conducted market salary research, cost reports, and time studies.

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

The proposed MRS rule changes are not associated with any reporting requirements of small business.

### **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 cost of compliance for rules 395.51, 395.53, 395.54, 395.79, and 395.83 for small businesses is zero. The cost of compliance for R 395.76 for small businesses would be very minimal and often unnecessary. Small MRS service providers might desire additional information from MRS regarding the justification and methodology of establishing a fee schedule, which could take a minimal amount of service provider staff administrative burden to attend an MRS information session or read the third-party rate recommendation study. MRS does not anticipate any equipment, supplies, or labor costs for small businesses associated with the proposed rule changes.

### **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.**

MRS does not anticipate any legal, consulting, or accounting services that small businesses would incur associated with the proposed rule changes.



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

The cost of compliance for rules 395.51, 395.53, 395.54, 395.79, and 395.83 for small businesses is zero. The minimal administrative burden of understanding the new MRS rates of payment as established by a fee schedule associated with rule change 395.76 for small service providers doing business with MRS should be absorbable by any size business with the allocation of less than a couple hours of staff time, making it absorbable for businesses of all sizes. Additionally, this small compliance burden is not required, as most service providers will not care to understand the rate setting methodology beyond knowing the bottom-line figure of the rate they will receive.

**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 are no exemptions or lesser standards for small businesses.

**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 for small businesses.

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

Small businesses were not included in the development of rules 395.51, 395.53, 395.54, 395.79, and 395.83.

In developing R 395.76, MRS contracted a third-party consulting firm to include small business perspective in rate setting. The third-party consulting firm performed outreach to service providers of all sizes that received over \$20,000 in payments from MRS between July 1, 2018 and June 30, 2019. Using 55 separate businesses of varying sizes, including small business, the third-party consulting firm conducted cost reports using personnel roster submissions, time studies, and surveys to determine appropriate rates and potential impacts. Throughout the development of the proposed rule and fee schedule, small business was involved in informing MRS decision-making.

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

Small businesses involved in the development of R 395.76 include (full list of surveyed businesses available upon request):

- Benton Employment Solutions – Portage, MI
- BEST Essential Services – Mount Clemens, MI
- Degi Enterprises – Grand Rapids, MI
- Do-All Inc. – Essexville, MI
- Dreamtek Consulting – Detroit, MI
- Eurisko Vocational Services – St. Joseph, MI
- Grand Traverse Industries – Traverse City, MI
- Judson Center – Ann Arbor, MI
- Key Opportunities Inc. – Hillsdale, MI
- Lapeer Team Work Inc – Lapeer, MI
- Livingston Educational Service Agency – Howell, MI
- Marquette Alger Regional Educational Service Agency – Marquette, MI
- Mid Michigan Industries – Mount Pleasant, MI
- Mostyn Community Development Services – Detroit, MI
- Northwest Education Services – Traverse City, MI
- Skill and Ability Education – Ypsilanti, MI
- TRICO Opportunities Inc – Kingsford, MI
- WSG Staffing – Brighton, MI
- WFQ Inc. – Canton, MI

**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 cost of compliance for rules 395.51, 395.53, 395.54, 395.79, and 395.83 for small businesses is zero. The minimal administrative burden of understanding the new MRS rates of payment as established by a fee schedule associated with rule change 395.76 for MRS service providers doing business with MRS should be absorbable by any size business with the allocation of less than a couple hours of staff time, making it absorbable for businesses of all sizes. Additionally, this small compliance burden is not required, as most service providers will not care to understand the rate setting methodology beyond knowing the bottom-line figure of the rate they will receive.

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

Rules 395.51, 395.53, 395.54, 395.79, and 395.83 affect only MRS staff and MRS customers.

Rules 395.76 applies equally to all businesses and groups that provide authorized payment services to MRS customers.

**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.**

All proposed rules have no anticipated costs on businesses and other groups such as new equipment, supplies, labor, accounting, or recordkeeping.

**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.**

MRS does not anticipate training, application fees, examination fees, license fees, new equipment, supplies, labor, accounting, or recordkeeping costs associated with rules changes 395.51, 395.53, 395.54, 395.79, and 395.83.

A minimal administrative burden of understanding the new MRS rates of payment as established by a fee schedule associated with rule change 395.76 for small service providers doing business with MRS should be absorbable by any size business with the allocation of less than a couple hours of staff time. Additionally, this small compliance burden is not required, as most service providers will not care to understand the rate setting methodology beyond knowing the bottom-line figure of the rate they will receive.

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

Rules 395.51, 395.53, 395.54, 395.79, and 395.83 affect only MRS staff and MRS customers.

Rules 395.76 applies equally to all businesses and groups that provide authorized payment services to MRS customers.

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

Rules 395.51, 395.53, and 395.54 have no impact on any groups.

Rules 395.79, and 395.83 impact MRS staff and MRS customers in specific service situations. These rules impact service situations in which an MRS customer has obtained employment and closed their case with MRS but is later determined eligible for and requests MRS services. In this circumstance, the assigned MRS counselor would either re-open the customer's case or open a new customer case, rather than the previous practice of providing services to an individual with a closed case. The impact of this change on MRS customers is negligible and, at most, requires the customer to sign a couple documents and/or provide eligibility-determining information. The impact of this change on MRS staff members is a simple business process change with no significant impact.

Rule 395.76 impacts all businesses and groups that provide authorized payment services to MRS customers by setting statewide, methodology-driven rates of payment for specified VR services. The quantitative impact of this change will result in slightly more revenue for most MRS vendors, as the rates for most VR services identified on the MRS fee schedule increased a small amount over their previous value, however, this determination cannot be made for certain without more data.

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

Rules 395.51, 395.53, 395.54, 395.79, and 395.83 are not associated with cost reductions.

Rule 395.76 could potentially minorly increase MRS expenditures and minorly increase service provider revenue, as the rates for most VR services identified on the MRS fee schedule increased over their previous value a small amount, however, this determination cannot be made for certain without more data.

Additionally, the administrative and labor costs for MRS and service providers associated with negotiating rates of payment on a vendor-by-vendor, service-by-service basis will be eliminated, replaced with a single MRS expenditure to a third-party consulting firm in order to conduct a rate study to determine MRS rates of payment.

**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.**

R 395.51 Definitions

Benefits: MRS staff and members of the public better understand MRS programming.

Assumptions: federal definitions are appropriate for state programming.

R 395.53 Purpose

Benefits: educating and providing resources to employers to make their workplaces more accommodating to different abilities; to prepare youth and young adults with services to help them transition to post-secondary education and/or employment.

There are no notable assumptions.

R 395.54 General requirements

Benefits: ensures MRS compliance with additional nondiscrimination requirements as stated in WIOA.

There are no notable assumptions.

R 395.76 Rates of payment

Benefits: establishes a methodology-driven process to determine service-specific rates of payment, promoting 2 CFR 200 cost allowability principles in MRS spending; reduces MRS staff time and effort of negotiating appropriate rate of payment with even vendor they interact with; allows MRS vendors statewide to have a set, pre-known revenue value that they can plan programming around.

Assumptions: since most rates will increase on the MRS fee schedule relative to pre-fee schedule average payment for the same service, we assume MRS will not lose a significant amount of vendors, and that it is even likely that establishing a fee schedule will entice additional vendors; we assume, with MRS review, that the rate recommendation study performed by the third-party contracting entity is valid and accurate.

R 395.79 Rehabilitated case closure

Benefits: brings MRS staff activity and rules into alignment with WIOA programming requirements

Assumptions: MRS staff properly understand WIOA requirements.

R 395.83 Post-employment services

Benefits: brings MRS staff activity and rules into alignment with WIOA programming requirements

Assumptions: MRS staff properly understand WIOA requirements.

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

The proposed rules will not have an impact on business growth and job creation in Michigan. MRS does not expect the number of MRS vendors to change with this rule as the rate changes are minor and most rates will increase.

**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 individuals or businesses will be disproportionately affected.

**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.**

For all rule changes, MRS is informed by 2 CFR 200, 34 CFR 361, the rate recommendation report produced by Public Consulting Group, and other states' administrative rules.

The rate recommendation report produced by Public Consulting group is included in this submission.

**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 agency used the "Michigan Rehabilitative Services Vocational Rehabilitation Rate Recommendation Report," published by the Public Consulting Group in August of 2020 as the sole resource to determine rates. The report that demonstrates the need for proposed changes can be found at: <https://www.michigan.gov/leo/-/media/Project/Websites/leo/Documents/MRS3/MRS-Rate-Recommendations-Report.pdf>.

## **Alternative to Regulation**

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

R 395.51 Definitions

There are no reasonable alternatives to bring definitions up to date.

R 395.53 Purpose

This rule change is in alignment with WIOA requirements and there are no reasonable alternatives.

R 395.54 General requirements

This rule change is in alignment with WIOA requirements and there are no reasonable alternatives.

R 395.76 Rates of payment

Alternatives include:

- Doing nothing; rates of payment remain negotiated on a vendor-by-vendor, case-by-case basis by MRS vocational rehabilitation counselors.
- Indexing fee schedule rates of payment to an existing fee schedule, such as Medicaid reimbursement rates.

R 395.79 Rehabilitated case closure

This rule change is in alignment with WIOA requirements and there are no reasonable alternatives.

R 395.83 Post-employment services

This rule change is in alignment with WIOA requirements and there are no reasonable alternatives.

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

If R 395.76 were to index the MRS fee schedule rates of payment to an external fee schedule, the proposed rule would need to be written accordingly.

**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.**

R 395.51 Definitions

There are no feasible private market-based mechanisms applicable to this rule.

R 395.53 Purpose

There are no feasible private market-based mechanisms applicable to this rule.

R 395.54 General requirements

There are no feasible private market-based mechanisms applicable to this rule.

R 395.76 Rates of payment

Prior to this rule change, MRS rates of payment operated using market-based mechanisms with MRS vocational rehabilitation counselors negotiating rates of payment on a vendor-by-vendor, case-by-case basis. The primary issue with this previous system is VR counselors are not trained in business, industry payment standards, or similar fields. As a result, MRS staff would often ‘take the word’ of vendors requesting a certain rate of payment and would sometimes pay exorbitant amounts for business services provided by vendors. Additionally, the time required to negotiate the rate for every vendor integration is a large administrative burden on MRS and vendor staff.

The proposed rule, which utilizes a third-party consulting firm to determine a fee schedule, uses a market analysis to determine standard rates of payment for given services, so this proposed rule also utilizes market-based systems in a different way by informing fee schedule rates of payment.

Other state VR programs utilize a range of market-based systems in paying vendors, including both systems discussed above.

R 395.79 Rehabilitated case closure

There are no feasible private market-based mechanisms applicable to this rule.

R 395.83 Post-employment services

There are no feasible private market-based mechanisms applicable to this rule.

**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.**

R 395.51 Definitions

No significant alternatives were considered because this change is in alignment with requirements of federal regulations.

R 395.53 Purpose

No significant alternatives were considered because this change is in alignment with requirements of federal regulations.

R 395.54 General requirements

No significant alternatives were considered because this change is in alignment with requirements of federal regulations.

R 395.76 Rates of payment

Alternatives including the status quo and indexing rates of payment to an external fee schedule were discussed internally and with Public Consulting Group, however, it was decided that a study of MRS vendors, market conditions, peer stat research, surveys, and a uniform quantitative methodology to setting fee schedule values would best to set rates representative of a fair market price for services purchased. Additionally, MRS made the Public Consulting Group rate recommendation report available to current and potential MRS vendors and conducted public comment sessions to gather vendor feedback and concerns. Through these discussions, MRS learned of alternatives that the agency will follow, including setting the rate for Work-Based Learning Experiences variable because of the high variability of cost in establishing and conducting this service type.

R 395.79 Rehabilitated case closure

No significant alternatives were considered because this change is in alignment with requirements of federal regulations.

R 395.83 Post-employment services

No significant alternatives were considered because this change is in alignment with requirements of federal regulations.

**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.**

There are no applicable instructions to comply with these rules.