

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:

Lifelong Education, Advancement, and Potential

Bureau name:

Office of Early Childhood Education

Name of person filling out RIS:

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Rule Set Information:

ARD assigned rule set number:

2024-11 LP

Title of proposed rule set:

Licensing Rules for Child Care Center

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.

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

These rules are required by state mandate, MCL 722.112 and MCL 722.113e of the Child Care Organizations (excerpt), 1973 PA 116. In addition, these rules are required by the Child Care and Development Fund, 45 CFR Part 98 and Procedure for Hearings for the Child Care Development Fund, 45 CFR Part 99.

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.

These rules do 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.

The development of the proposed rules included researching standards for rules in other similarly situated states, specifically Ohio, Indiana, Illinois, Wisconsin, Minnesota, and Pennsylvania. The standards that were researched included group sizes, adult to child ratios, staffing requirements, training requirements, and discipline.

Group Size: In reference to group size, the proposed rules for Michigan appear to be somewhat similar to those of Ohio and exceeds those of the other states in the region.

Ratio: The adult to child ratios in the proposed rules appear to be similar to those of Minnesota, Wisconsin, Illinois, and Pennsylvania, noting small exceptions. Ohio and Indiana have more classifications of age brackets for children.

Staffing Requirements: The staffing requirements of Minnesota, Ohio, Illinois, Indiana, and Wisconsin are similar to Michigan's proposed rules. Pennsylvania staffing requirements are stricter than the proposed rules.

Training Requirements: Training requirements for Pennsylvania is similar to Michigan, while those of Minnesota and Ohio are less extensive, and Wisconsin and Indiana have more requirements.

Discipline: The regulation for discipline in Illinois is less strict than the proposed rules, while Minnesota, Indiana, Ohio, Pennsylvania, and Wisconsin are similar to the proposed rules.

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

The proposed rules exceed standards of other states in the areas of group size, training, and discipline. Regarding group size, Michigan allows for larger group sizes. This allowance supports the staffing needs for facilities, especially for preschool and school-age groups. The proposed rules require more clock hours of ongoing training for professional development. The training hours might create an added cost to the licensee for training; however, it also provides an opportunity for continued professional development and growth of staff. The discipline requirements in the proposed rules provide more prohibited methods of discipline. This supports positive methods of discipline used with children to guide their behavior and complies with Michigan statute.

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

To the best of the bureau's knowledge, the proposed rules do not duplicate, overlap, or conflict with any laws, rules, or other 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 process of revising the proposed rules involved gathering extensive feedback from many stakeholder groups in effort to avoid or minimize duplication. Feedback was received from various agency representatives including, Licensing and Regulatory Affairs Bureau of Fire Services, Michigan Department of Environment, Great Lakes, and Energy, Michigan Department of Health and Human Services, Michigan Department of Agriculture and Rural Development, Michigan Department of Lifelong Education, Advancement, and Potential, and local health departments.

Substantive portions of the rules are federally required to access Child Development and Care funding. These rules have been aligned with those requirements. There is no federal regulatory agency for child care center licensing, so beyond alignment there is no overlap of regulatory functions.

Purpose and Objectives of the Rule(s)

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

The licensing rules for child care centers were evaluated and revised in 2019, effective December 18, 2019. The current rule set is complex due to federal and state requirements. Licensees and applicants struggle with the licensing requirements, which leads to difficulty in recruiting and retaining staff, understanding the rules themselves, and meeting the cost to comply with the rules. Also, families have difficulty finding affordable child care, which negatively affects Michigan's economy. The proposed rule revisions are necessary to address the challenges faced by licensees, clarify requirements of the federal Child Care and Development Block Grant, and provide for the health, welfare and safety of children in affordable, quality licensed child care settings.

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

The proposed rule revision would assist in licensees finding and retaining qualified staff and understanding the requirements of the rule, support growth due to the Governor's expansion of PreK for All, streamline processes, and reorganize sections to improve the public's understanding of the rules. The proposed rules will also address changes required by the federal Office of Child Care to comply with Child Care and Development Fund (CCDF) requirements.

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

The current rules do not provide for flexibility of staffing, are cumbersome to comprehend, and are difficult to implement. The proposed rules would provide flexibility, organization, and clarification of requirements.

C. What is the desired outcome?

The desired outcome is to support growth of the number of licensed child care centers, assist licensees' and parents' understanding of the rules, comply with federal requirements, and provide for the health and safety of children in quality child care settings.

5. 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 proposed rules for licensed child care centers are essential for increasing compliance with federal requirements and state regulations, expanding access to quality licensed child care facilities, and protecting the health and safety of children. In the absence of these rules, it is likely that the barriers experienced by licensed providers and families will continue. Licensees will continue to struggle to find and retain quality staff. Staff will continue to lack an understanding of how to properly implement rules and ensure child safety. Families will continue to experience difficulty finding affordable, quality child care in their area.

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

The licensing rules for child care centers were evaluated and revised in 2019, effective December 18, 2019. The rule set is complex due to federal and state requirements. Licensees and applicants struggle with the licensing requirements, which leads to difficulty in recruiting and retaining staff, understanding the rules themselves, and meeting the cost to comply with the rules. Also, families have difficulty finding affordable child care, which negatively affects Michigan's economy.

6. 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 proposed rule revisions were developed by the department in collaboration with stakeholders representing each type of child care organization, parents of children in care, Licensing and Regulatory Affairs Bureau of Fire Services, Michigan Department of Environment, Great Lakes, and Energy, Michigan Department of Health and Human Services, Michigan Department of Agriculture and Rural Development, Michigan Department of Lifelong Education, Advancement, and Potential, local health departments, and community partners.

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

MCL 722.118e of the Child Care Organizations Act 1973 PA 116 rescinded R 400.8560.

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.

8. 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 are not anticipated to have a fiscal impact on the agency.

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

There have not been any appropriations made or a funding source provided for any expenditures associated with the proposed rules.

10. 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 rule revisions impose an administrative burden to providers and parents with the new requirement to develop and implement a food allergy plan. The providers are required to develop a written plan for the prevention of and response to emergencies due to food and allergic reactions. The new rule is necessary to promote the health, safety, and well-being of children. This addition of this rule is also necessary to maintain compliance with federal requirements.

The proposed rule revisions also impose an administrative and fiscal burden on providers to comply with requirements of “Filter First” legislation, PA 154 of 2023. The providers are required to complete a Drinking Water Management Plan, ensure that any water furnished to children is from a filtered source, and conduct ongoing sampling and certify compliance with requirements once filters are installed. These requirements are necessary to comply with statute changes as well as to promote the health and safety of children by reducing exposure to harmful chemicals and substances in drinking water.

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

The proposed rule revisions are needed to promote the health, safety, and well-being of children as well as maintain compliance with federal and state requirements. The burdens imposed by the proposed rules are narrowly tailored to actions necessary to provide the health protections they seek to ensure.

Impact on Other State or Local Governmental Units

11. 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 rules do not directly increase or reduce costs for state and local governmental units, however, to the extent that new providers become licensed a result of the changes, local health departments may see increased requests for environmental health inspections which may or may not be fee funded, and the Bureau of Fire Services may require additional staff time to field a greater number of requests for fire safety plan reviews. The proposed rules also do not directly increase or decrease state or local unit revenues, but as noted previously may indirectly increase local unit revenues to the extent that environmental health inspections have fees associated with them. To the extent that new businesses begin operating or expand, local units may also see an increase in tax revenues as a result. To the extent that new staff are employed, the state may also indirectly see increased income tax revenue.

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

There would be no program, service, duty, or responsibility imposed on any city, county, town, village, or school district by 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.

There are no actions governmental units must take to be in compliance with the rules.

13. 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.

There are no additional expenditures associated with the rules; therefore, no appropriations to state or local government were made.

Rural Impact

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

It is anticipated that with the revisions to staffing requirements, the rules will impact rural areas positively through an increase in available staff.

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

The revisions to the rules should help center licensees continue to expand their business.

Environmental Impact

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

The proposed rules do not have an impact on the environment.

Small Business Impact Statement

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

The bureau did not consider exempting small businesses from the proposed rules as statute does not allow for such exemptions. Many small child care centers are small businesses, and the bureau did include representatives from these centers in the development of the proposed rules.

17. 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 rule revisions would not have a disproportionate impact on small businesses. All licensed child care centers must comply with the same rules now, and the proposed rule revisions will also apply to all.

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

There are approximately 4,528 licensed child care centers in Michigan, many of which could be considered a small business.

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.

The bureau did not establish differing compliance requirements because many child care centers could be considered small businesses. The bureau included representatives from these businesses in the development of these proposed rule revisions.

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.

The bureau did not consolidate or simplify the compliance and reporting requirements for small businesses, per se, because many child care centers are small businesses. However, the department tried to streamline these rules to the extent possible within the parameters of the statute while ensuring the health and safety of children.

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

The proposed rule revisions would update performance standards for the design and operation of licensed child care centers to comply with current law and best practices.

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

The proposed rule revisions would not have any disproportionate impact on small businesses due to their size or geographic location.

19. 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 rule revisions would not impose any more cost to small business owners than they have with the current rules. Compliance with the proposed rule revisions may indirectly reduce overall costs for these businesses because they would reduce the risk of harm to children in their care. The bureau is not aware of any reports required by small businesses as a result of these rules.

20. 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 proposed rule revisions would not impose any new costs on small businesses.

21. Identify the nature and estimated cost of any legal, consulting, or accounting services that small businesses would incur in complying with the proposed rules.

Small businesses would not incur any new costs for legal, consulting, or accounting services to comply with the proposed rule revisions.

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

All licensed child care centers are subject to the current rules. The proposed rule revisions would not impose any additional costs.

23. 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 Child Care Organizations Act does not permit lesser standards of compliance. However, introducing revised rules would still necessitate additional training for consultants to ensure consistent and accurate enforcement, leading to increased operational costs. Additionally, any modifications to the rules would require adjustments to the licensing system to accommodate these changes and streamline historical information, further increasing costs related to design, implementation, and training.

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

Setting lesser standards for licensed child care centers could jeopardize the health and safety of children in care.

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

Licensed child care centers, many of whom are small business owners, were included in the development of the proposed rule revisions.

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

The bureau completed extensive outreach to licensed child care center providers when developing the proposed rules. Many small businesses were actively involved during the stakeholder outreach when the bureau gathered feedback about the current rule set. Small businesses were also a part of the ad hoc committee. The committee conducted a thorough review of the proposed rule set, held two public hearings to gather further input, and developed final recommendations to the department based on this comprehensive review.

The following small businesses served on the ad hoc committee: Pooh's Playhouse, Uno Dos Tres Spanish Immersion Preschool, Kids R Us Child Development Center, Houghton Lake Cooperative Preschool, Early Childhood Learning Laboratory, and the Learning Experience of South Lyon. Other small business provided engagement through stakeholder engagement and the ad hoc committee public hearings.

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

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

The statewide compliance cost of the proposed rules is not anticipated to be substantially different than the compliance cost of the current licensing rules. Some recordkeeping obligations are introduced through the food allergy plan that are anticipated to have negligible impacts overall. Other changes that may have more financial impact such as drinking water filtration requirements are a result of statutory changes and are required to be included.

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

Businesses that will be affected by the proposed rules are licensed child care centers.

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.

Additional costs imposed by the proposed rules are anticipated to be minimal, with minor recordkeeping costs to licensed child care centers associated with documenting compliance to the food allergy plan provisions added. Due to other existing obligations that require recordkeeping actions, new obligations on this front should largely be absorbed into existing processes and have a negligible impact overall.

27. 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.

No new compliance costs would be imposed. The proposed rule revisions update the current rules to ensure they comply with state law and federal standards.

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

Licensed child care centers are the businesses that would be affected by the proposed rule revisions. There are approximately 4,528 licensed child care centers in Michigan.

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

The proposed rule set will help support child care centers by addressing challenges faced by licensees, such as workforce shortages, clarifying training requirements, and providing more flexibility for programming.

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

Cost reductions for providers may be achieved through the proposed rules by elimination of the requirement of a tuberculosis test for staff and the allowance of one program administrator to oversee multiple facilities. These changes reduce the regulatory burden and associated costs for providers.

29. 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 primary benefits of the proposed rule revisions are to improve the health and safety of children in child care and to ensure these child care centers meet the requirements of the federal Child Care and Development Block Grant.

The proposed rule revisions have secondary or indirect benefits. Flexibility in staffing, group size ratios, and administration should lower the marginal cost of providing services and therefore make child care services more affordable. Changes made to align the program with the Great Start to Readiness Program (GSRP) guidelines should allow for transition of licensed space into PreK classrooms easier.

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

The proposed rule set will help support child care centers by addressing challenges faced by licensees, such as workforce shortages, clarifying training requirements, and providing more flexibility for programming.

31. 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 would be disproportionately affected by the proposed rules.

32. 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.

To assist in determining the existence and extent of the impact of the proposed rules, the bureau formed an ad hoc committee consisting of representatives from the Department of Licensing and Regulatory Affairs, Michigan Department of Education, Department of Health and Human Services, the State Fire Marshal's Office, the Bureau of Fire Services, licensed child care providers and parents. The committee conducted a thorough review of the proposed rule set, held two public hearings to gather further input, and developed final recommendations to the department based on this comprehensive review.

The bureau also researched standards for rules in Ohio, Indiana, Illinois, Wisconsin, Minnesota, and Pennsylvania to learn how the proposed rules compare to the standards in states within the same region. The following websites were used for the research:

Ohio (<https://emanuals.jfs.ohio.gov/ChildCare/ChildCareCenter/Rules/>)

Indiana (<https://www.in.gov/fssa/carefinder/files/Rule4.7.pdf>)

Wisconsin (<https://dcf.wisconsin.gov/files/publications/pdf/205.pdf>)

Illinois (<https://dcfs.illinois.gov/content/dam/soi/en/web/dcf/docs/documents/about-us/policy-rules-and-forms/documents/rules/rules-407.pdf>)

Pennsylvania (<https://www.pacodeandbulletin.gov/Display/pacode?file=/secure/pacode/data/055/chapter3270/chap3270toc.html&d=>)

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 need for the proposed rules were as a result of the extensive outreach from the bureau with the ad hoc committee, community partners, licensed providers, state partners, and bureau members. The feedback showed that the current rules are difficult to understand, are duplicative, cause difficulty for licensees to recruit and retain qualified staff, and cause families difficulty in finding affordable, quality child care.

Alternative to Regulation

33. 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 would achieve the same or similar goals.

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

There are no statutory amendments necessary.

34. 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.

To this bureau's knowledge, there are no states that use a private market-based system to regulate child care organizations.

35. 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 bureau gathered input from various stakeholder groups, internal discussions, and the ad hoc advisory committee, including during ad hoc public comment hearings. The bureau incorporated as many recommendations as possible while ensuring the rules continued to support the health, safety and welfare of children while maintaining compliance with federal requirements.

However, some ideas were introduced and discussed but not incorporated in the rules. These included reducing the number and type of exclusionary criteria for criminal background check and removing certain training requirements. The proposed alternatives were not incorporated because they would have led to non-compliance with federal requirements.

Additional Information

36. As required by MCL 24.245b(1)(c), please describe any instructions regarding the method of complying with the rules, if applicable.

A technical assistance and consultation manual as well as any necessary forms will be created when the rules are finalized. An informational overview detailing changes to the rules when finalized will be available. The previous versions of these documents, and the new versions once finalized, are available at these addresses:

<https://www.michigan.gov/mileap/-/media/Project/Websites/mileap/Documents/Early-Childhood-Education/CCLB/Licensing-Rules-and-Statutes/Draft-2024-Child-Care-Licensing-Rule-Revisions-Explained.pdf?rev=d26b3c7c4c4f4794835d5c1ca2147de7&hash=B7F7E72274CE69BA361AA71A707995F4>

<https://www.michigan.gov/mileap/early-childhood-education/cclb/providers/tech-cons#:~:text=TECHNICAL%20ASSISTANCE%20&%20CONSULTATION.%20The%20Child%20Care>