

Michigan Department of Licensing and Regulatory Affairs
Office of Regulatory Reinvention
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**REGULATORY IMPACT STATEMENT
and
COST-BENEFIT ANALYSIS**

PART 1: INTRODUCTION

In accordance with the Administrative Procedures Act (APA) [1969 PA 306], the department/agency responsible for promulgating the administrative rules must complete and submit this form electronically to the Office of Regulatory Reinvention (ORR) no less than (28) days before the public hearing [MCL 24.245(3)-(4)]. Submissions should be made by the departmental Regulatory Affairs Officer (RAO) to **orr@michigan.gov**. The ORR will review the form and send its response to the RAO (see last page). Upon review by the ORR, the agency shall make copies available to the public at the public hearing [MCL 24.245(4)].

Please place your cursor in each box, and answer the question completely.

ORR-assigned rule set number:

ORR 2016-005 HS

ORR rule set title:

Certificate of Need

Department:

Department Of Health and Human Services

Agency or Bureau/Division

Policy, Planning and Legislative Services

Name and title of person completing this form; telephone number:

Beth Nagel, Planning Office Administrator; 517-241-2064

Reviewed by Department Regulatory Affairs Officer:

Mary Brennan

PART 2: APPLICABLE SECTIONS OF THE APA

MCL 24.207a “Small business” defined.

Sec. 7a.

“Small business” means a business concern incorporated or doing business in this state, including the affiliates of the business concern, which is independently owned and operated and which employs fewer than 250 full-time employees or which has gross annual sales of less than \$6,000,000.00.”

MCL 24.240 Reducing disproportionate economic impact of rule on small business; applicability of section and MCL 24.245(3).

Sec. 40.

(1) When an agency proposes to adopt a rule that will apply to a small business and the rule will have a disproportionate impact on small businesses because of the size of those businesses, the agency shall consider exempting small businesses and, if not exempted, the agency proposing to adopt the rule shall reduce the economic impact of the rule on small businesses by doing all of the following when it is lawful and feasible in meeting the objectives of the act authorizing the promulgation of the rule:

(a) Identify and estimate the number of small businesses affected by the proposed rule and its probable effect on small businesses.

(b) Establish differing compliance or reporting requirements or timetables for small businesses under the rule after projecting the required reporting, record-keeping, and other administrative costs.

(c) Consolidate, simplify, or eliminate the compliance and reporting requirements for small businesses under the rule and identify the skills necessary to comply with the reporting requirements.

(d) Establish performance standards to replace design or operational standards required in the proposed rule.

(2) The factors described in subsection (1)(a) to (d) shall be specifically addressed in the small business impact statement required under section 45.

(3) In reducing the disproportionate economic impact on small business of a rule as provided in subsection (1), an agency shall use the following classifications of small business:

(a) 0-9 full-time employees.

(b) 10-49 full-time employees.

(c) 50-249 full-time employees.

(4) For purposes of subsection (3), an agency may include a small business with a greater number of full-time employees in a classification that applies to a business with fewer full-time employees.

(5) This section and section 45(3) do not apply to a rule that is required by federal law and that an agency promulgates without imposing standards more stringent than those required by the federal law.

MCL 24.245 (3) “Except for a rule promulgated under sections 33, 44, and 48, the agency shall prepare and include with the notice of transmittal a **regulatory impact statement** containing...” (information requested on the following pages).

[**Note:** Additional questions have been added to these statutorily-required questions to satisfy the **cost-benefit analysis** requirements of Executive Order 2011-5.]

MCL 24.245b Information to be posted on office of regulatory reinvention website.

Sec. 45b. (1) The office of regulatory reinvention shall post the following on its website within 2 business days after transmittal pursuant to section 45:

- (a) The regulatory impact statement required under section 45(3).
 - (b) Instructions on any existing administrative remedies or appeals available to the public.
 - (c) Instructions regarding the method of complying with the rules, if available.
 - (d) Any rules filed with the secretary of state and the effective date of those rules.
- (2) The office of regulatory reinvention shall facilitate linking the information posted under subsection (1) to the department or agency website.

PART 3: DEPARTMENT/AGENCY RESPONSE

Please place your cursor in each box, and provide the required information, using complete sentences. Please do not answer the question with “N/A” or “none.”

Comparison of Rule(s) to Federal/State/Association Standards:

(1) Compare the proposed rule(s) to parallel federal rules or standards set by a state or national licensing agency or accreditation association, if any exist. Are these rule(s) required by state law or federal mandate? If these rule(s) exceed a federal standard, please identify the federal standard or citation, and describe why it is necessary that the proposed rule(s) exceed the federal standard or law, and specify the costs and benefits arising out of the deviation.

The Certificate of Need Administrative Rules are required by MCL 333.22221. There is no parallel to these rules or the proposed amendment in federal statute, and so there is no standard to exceed.

(2) Compare the proposed rule(s) to standards in similarly situated states, based on geographic location, topography, natural resources, commonalities, or economic similarities. If the rule(s) exceed standards in those states, please explain why, and specify the costs and benefits arising out of the deviation.

The proposed amendments have been compared to standards in four other states that have Certificate of Need programs similar in size and scope to Michigan. The proposed amendment to the rules do not exceed the standards or rules in those states.

(3) Identify any laws, rules, and other legal requirements that may duplicate, overlap, or conflict with the proposed rule(s). Explain how the rule has 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.

There are no laws, rules, and other legal requirements that duplicate, overlap, or conflict with the proposed amendments to the administrative rules. The proposed amendments to the administrative rules have been coordinated with the Certificate of Need Review Standards and the statutes pertaining to Michigan's Certificate of Need program.

Purpose and Objectives of the Rule(s):

(4) Identify the behavior and frequency of behavior that the proposed rule(s) are designed to alter. Estimate the change in the frequency of the targeted behavior expected from the proposed rule(s). Describe the difference between current behavior/practice and desired behavior/practice. What is the desired outcome?

The proposed amendments are not designed to alter behavior. Instead, the purpose of the rules is to accommodate unforeseen events that interfere with the construction of a licensed facility after a Certificate of Need has been approved. The current rules do not allow for a licensed facility with an approved Certificate of Need to amend their Certificate of Need to change the site of the licensed facility if an unforeseen event interferes with the construction of their licensed facility. The proposed amendment allows for the Certificate of Need to be amended for the licensed facility if such an event occurs.

(5) Identify the harm resulting from the behavior that the proposed rule(s) are designed to alter and the likelihood that the harm will occur in the absence of the rule. What is the rationale for changing the rule(s) and not leaving them as currently written?

The proposed amendments do not alter behavior and therefore no harm will result from them. The rationale for changing the rules is to accommodate unforeseen events that interfere with the construction of a licensed facility.

(6) Describe how the proposed rule(s) 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 amendment to the administrative rules will promote a positive regulatory environment in Michigan by accommodating unforeseen events that interfere with the construction of a licensed facility. Under the current administrative rules a Certificate of Need cannot be amended to change the location of a licensed facility even if an unforeseen event prevents the licensed facility from being constructed at that site. In such a case, the licensed facility will not be constructed and will therefore not meet the healthcare needs of Michigan's citizens. The proposed amendment allows the Certificate of Need for the licensed facility to be amended in such a circumstance, and the licensed facility to be constructed at a new site that will meet the needs of Michigan's citizens.

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

These administrative rules were amended in 2014. Some of the rules in the set were rescinded at that time. None of the rules in this proposed amendment are obsolete or unnecessary.

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, an increase in the cost of a contract, programming costs, changes in reimbursement rates, etc. over and above what is currently expended for that function. It would not include more intangible costs or 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 on the agency promulgating the rule).

There should be no cost for the proposed amendments to the administrative rules because the administrative rules already exist.

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

There is no agency appropriation or funding source for the proposed amendments to the administrative rules because there are no expenditures associated with the proposed amendments to the administrative rules.

(10) Describe how the proposed rule(s) is necessary and suitable to accomplish its purpose, in relationship to the burden(s) it places on individuals. Burdens may include fiscal or administrative burdens, or duplicative acts. So despite the identified burden(s), identify how the requirements in the rule(s) are still needed and reasonable compared to the burdens.

The proposed amendment to the administrative rules is meant to relieve a burden felt by Michigan healthcare providers that invest in licensed facilities. The proposed amendments will provide the administrative remedy that will likely save funding that would otherwise be used for litigation when an amendment to change the location of a licensed facility is denied.

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 on other state or local governmental units (i.e. cities, counties, school districts) as a result of the rule. Please include the cost of equipment, supplies, labor, and increased administrative costs, in both the initial imposition of the rule and any ongoing monitoring.

There will be no increase or decrease in revenues to other state or local governmental units as a result of the proposed amendments to the administrative rules. There will be no cost increases or reductions

on other state or local governmental units as a result of the proposed amendments to the administrative rules.

(12) Discuss any program, service, duty or responsibility imposed upon any city, county, town, village, or school district by the rule(s). Describe any actions that governmental units must take to be in compliance with the rule(s). This section should include items such as record keeping and reporting requirements or changing operational practices.

The proposed amendments to the administrative rules do not impose any program, service, duty or responsibility upon any city, county, town, village, or school district. Governmental units do not have to take any action to comply with the proposed amendments to the administrative 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 rule(s).

Since there are no additional expenditures associated with the proposed amendments to the administrative rules, no appropriation to state or local governmental units has been made.

Rural Impact:

(14) In general, what impact will the rules have on rural areas? Describe the types of public or private interests in rural areas that will be affected by the rule(s).

It is possible that the proposed amendment will positively impact rural areas. If a provider wants to invest in a licensed facility in Michigan's rural areas, with the proposed amendment to the rules they can do so with the knowledge that an unforeseen event will not keep them from obtaining the Certificate of Need necessary to complete their project.

Environmental Impact:

(15) Do the proposed rule(s) have any impact on the environment? If yes, please explain.

No. The proposed amendments to the administrative rules will not have any impact on the environment.

Small Business Impact Statement:

[Please refer to the discussion of "small business" on page 2 of this form.]

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

The proposed amendments benefit all providers – large and small. No consideration was given to exempting small businesses because this rule may be to the benefit of small businesses.

(17) If small businesses are not exempt, describe (a) the manner in which the agency reduced the economic impact of the proposed rule(s) 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 rule(s) 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 amendments may reduce economic impact on small businesses by allowing a small business to relocate a licensed facility in the event of unforeseen circumstances. However, the proposed amendments are intended to reduce economic impact on all business that may be subject to these administrative rules.

(A) Identify and estimate the number of small businesses affected by the proposed rule(s) and the probable effect on small business.

There is no probable effect on small businesses.

(B) Describe how the agency established differing compliance or reporting requirements or timetables for small businesses under the rule after projecting the required reporting, record-keeping, and other administrative costs.

The department did not establish differing compliance or reporting requirements or timetables for small businesses.

(C) Describe how the agency consolidated or simplified the compliance and reporting requirements and identify the skills necessary to comply with the reporting requirements.

The department neither consolidated or simplified the compliance and reporting requirements nor identified the skills necessary to comply with the reporting requirements because there are no reporting requirements resulting from the proposed amendments to the administrative rules.

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

Because the proposed amendments to the administrative rules do not require design or operation standards, the department did not establish performance standards to replace design or operation standards required by the proposed amendments to the administrative rules.

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

The proposed amendments to the administrative rules will not have any disproportionate impact on small businesses because of their size or geographic location.

(19) Identify the nature of any report and the estimated cost of its preparation by small business required to comply with the proposed rule(s).

Small businesses will not have any reports or estimated costs to comply with the proposed amendments to the administrative rules.

(20) Analyze the costs of compliance for all small businesses affected by the proposed rule(s), including costs of equipment, supplies, labor, and increased administrative costs.

There will be no costs of compliance for all small businesses affected by the proposed amendments to the administrative rules, including costs of equipment, supplies, labor, and increased administrative costs.

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

There are no estimated costs of any legal, consulting, or accounting services that small businesses would incur in complying with the proposed amendments to the administrative rules.

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

Small businesses will not have any problems absorbing the costs without suffering economic harm and without adversely affecting competition in the marketplace because there are no costs to small businesses resulting from the proposed amendments to the administrative rules.

(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.

None.

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

No impact identified.

(25) Describe whether and how the agency has involved small businesses in the development of the proposed rule(s). If small business was involved in the development of the rule(s), please identify the business(es).

The department has kept the Health Care Association of Michigan involved in the development of the proposed amendments to the administrative rules.

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

(26) Estimate the actual statewide compliance costs of the rule amendments on businesses or groups. Identify the businesses or groups who will be directly affected by, bear the cost of, or directly benefit from the proposed rule(s). 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 will be no actual statewide compliance costs on businesses or groups to the proposed amendments to the administrative rules.

(27) Estimate the actual statewide compliance costs of the proposed rule(s) on individuals (regulated individuals or the public). Please include the costs of education, training, application fees, examination fees, license fees, new equipment, supplies, labor, accounting, or recordkeeping). How many and what category of individuals will be affected by the rules? What qualitative and quantitative impact does the proposed change in rule(s) have on these individuals?

There will be no actual statewide compliance costs on individuals to the proposed amendments to the administrative rules.

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

None.

(29) Estimate the primary and direct benefits and any secondary or indirect benefits of the proposed rule(s). Please provide both quantitative and qualitative information, as well as your assumptions.

The primary benefit is that a project approved under the Certificate of Need standards and laws could now change the site of a licensed facility when an unforeseen circumstance prevents the use of the originally proposed site. Under the current standards, the project would not be implemented without the provider first obtaining a new Certificate of Need. The proposed amendments will save time and resources and allows projects to be implemented that would otherwise not be approved.

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

The proposed amendment may have a positive impact on business growth and job creation as projects that otherwise would not be completed are allowed to be implemented.

(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.

Businesses or individuals that initiate, own or operate licensed health facilities that are regulated under Certificate of Need will be affected by these rules. It is not anticipated that anyone will be affected disproportionately.

(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 a proposed rule(s) and a cost-benefit analysis of the proposed rule(s). How were estimates made, and what were your assumptions? Include internal and external sources, published reports, information provided by associations or organizations, etc., which demonstrate a need for the proposed rule(s).

Not applicable.

Alternatives to Regulation:

(33) Identify any reasonable alternatives to the proposed rule(s) that would achieve the same or similar goals. In enumerating your alternatives, please include any statutory amendments that may be necessary to achieve such alternatives.

One reasonable alternative would be to amend the statute creating the Certificate of Need program in Michigan, MCL 333.22201, to include the specific provisions of the proposed amendments to this rule.

(34) Discuss the feasibility of establishing a regulatory program similar to that proposed in the rule(s) that would operate through private market-based mechanisms. Please include a discussion of private market-based systems utilized by other states.

The Certificate of Need program is a regulatory function of state government, and is not administered through private market-based mechanisms in any other state. It would not be feasible to establish a private market based program.

(35) Discuss all significant alternatives the agency considered during rule development and why they were not incorporated into the rule(s). This section should include ideas considered both during internal discussions and discussions with stakeholders, affected parties, or advisory groups.

The Department did not consider any other alternatives during rule development. Internal discussions and those with stakeholders focused on making the proposed amendments to the administrative rules.

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.

None.

PART 4: REVIEW BY THE ORR

Date Regulatory Impact Statement (RIS) received:

6-8-2016

Date RIS approved:	6-14-2016
ORR assigned rule set number:	2016-005 HS

Date of disapproval:	Explain:
More information needed:	Explain: