There’s a New Law In Town!

What you need to know about the federal and statutory changes affecting Child Care

05/10/2018
Changes to PA 116-Why were they necessary?

- Laws passed by Congress in 2014 greatly impacted Child Care Licensing in all 50 states, Puerto Rico and Guam.
- The federal government had not made any changes to laws regarding child care in years.
- Audits on Health and Safety across the United States and their findings.
Congressional Purpose of Laws

• Allow each State maximum flexibility in developing child care programs and polices that best suit the needs of children and parents within that State
• Promote parental choice to empower working parents to make their own decisions regarding child care
• Encourage States to provide consumer education information to help parents make informed choices about child care
• Assist States in delivering high-quality early childhood care and education services to maximize parents’ options
• Assist States in improving the overall quality of child care services and programs by implementing the health, safety, licensing, training standards
• Increase the number and percentage of low-income children in high-quality child care settings
Why did Michigan change it’s laws?

• Michigan receives over $167,000,000 which provides funding to:
  – Michigan Department of Education
  – Department of Health and Human Services-to Provide Child Development and Care Subsidy
  – Child Care Licensing Division
  – ECIC
  – Great Start to Quality
  – Schools
  – Families

• These funds are used to provide training, meet health and safety standards and subsidize low income children so that they can have access to high quality care. In order to receive these funds, Michigan had to come into compliance with federal law.
When did Michigan change the Laws regarding Child Care?

- Senate Bills 180-183 were introduced early in 2017. Passed unanimously in the Senate and 90-12 in the House.
- Bills were signed into law by Lieutenant Governor Calley on December 28, 2017.
- Law went into effect March 28th, 2018 (90 days from signature).
Some New Terminology you will want to know

• Original License: An Original License is the first license issued
  – This is a six-month license.
  – This was previously referred to as a Provisional License. (We are working with GSQ to change this term in their system as well).

• Provisional License: Is a license that is issued when the facility is temporarily unable to comply with the rules

• Regular License: is a license that is issued and indicates that the facility is in substantial compliance with all the rules
Other New Terms/Definitions

• Member of Household means any individual who resides in a family child care home, group home, foster family home, or foster family group home on an ongoing basis, or who has a recurrent presence in the home, including, but not limited to overnight stays. For foster family homes and foster family group homes, a member of the household does not include a foster child. For group child care homes and family child care homes, a member of the household does not include a child to who child care is being provided.

• Conviction: Means a final conviction, the payment of a fine, a plea of guilty or nolo contendere if accepted by the court, a finding of guilt for a criminal law violation or a juvenile adjudication or disposition by the juvenile division of probate court or family division of circuit court for a violation that if committed by an adult would be a crime, or a conviction in a tribal court or a military court.
Terms and Definitions cont.

• “Conducive to the welfare of the children” means:
  – (i) The service and facility comply with this act and the administrative rules promulgated under this act
  – (ii) The disposition, temperament, condition, and action of the applicant, licensee, licensee designee, program director, child care staff member, and member of the household promote the safety and well-being of the children served
What else is new?

• Licensee Designee: The individual chosen to be the designee must agree in writing to be designated as a Licensee Designee

• A copy of the BCAL-5003 must be in the staff file & submitted to the department.
Some really Good News!

• When possible, LARA tried to reduce regulation and costs to providers in statute.

• CPR
  – Sec. 2a. (1) A child caring institution, foster family home, foster family group home, child care center, group child care home, and family child care home shall have individuals present, as prescribed in the appropriate administrative rules, who have current certification in first aid and cardiopulmonary resuscitation obtained through the American Red Cross, the American Heart Association, or an equivalent organization or institution approved by the department.
  – This will save each individual requiring CPR around $50 -$80 a person, bi-annually.

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So what are the biggest changes to PA 116?

- Family Homes issued a “License” instead of a “Registration”
- All facilities DF, DG, DC will be inspected annually
- Governmental organizations such as schools will be “Licensed” instead of “approved”
- Full/Partial Exemptions from inspections were stricken from PA 116
- Changes made to CPR training
- New Training Requirements for staff
- New Background Check Requirement

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Let’s break-down these changes.

- Family homes moving to a license instead of a registration
- Over the next few months, LARA will implement a plan to move Family Homes over from a Registration to a License
- Because Family Homes will be licensed, the department will have the option to place licensees on a Provisional License to correct rule non-compliance
  - This was not an option previously provided
- Family Homes will receive yearly inspections by their licensing consultant. (Began implementation on renewals in 2017)
- Licensing Family Homes will allow the consultants to be at the homes more often, which provides the opportunity to offer important Technical Assistance and consultation

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Let’s break-down these changes (cont.)

• All centers are “licensed” and will have on-site inspections.

• Some centers were previously “approved” rather than licensed. They will now be “licensed”.

• Language allowing full and partial exemptions from inspections was struck from the law.
  – What does that mean? All child care centers will receive, at a minimum, a yearly inspection from the child care licensing consultant.
Biggest Change of All-Background Checks!

- Comprehensive Background Checks
- **What is a Comprehensive Background Check?**
  - Fingerprint (FBI/MSP check)
  - NCIC Sex Offender Check
  - Central Registry Check (CA/N)
  - Disciplinary Action Check
  - Check Criminal and CA/N Registry for any states of residence in the past 5 years.
- **You will no longer need to run ICHATs or obtain a Michigan DHHS Clearance on staff and volunteers with unsupervised access to children.**

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Out of State Registry Checks

• Although we will be fingerprinting licensees/designees, adult household members, staff and volunteers with unsupervised access to children, the federal law requires that we additionally complete the following registry checks if the individual has resided out of state in the past 5 years:
  – State Criminal History Registry Check
  – State Child Abuse/Neglect Registry Check
Why do we need to also have out of state registry checks?

• Not all criminal convictions are reported to the FBI. Therefore, even though an individual may not have a criminal history that shows up on their FBI fingerprint result, they may still have a conviction for a crime that carries an exclusion.

• The MDHHS Central Registry Check does not provide child abuse/neglect information for other states.

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What will happen if someone lived out of state in the past 5 years?

- If the individual resided out of state in the past 5 years, the department will:
  - Send a letter to the applicant and advise them that additional information is required before the department can determine them eligible.
  - The letter will contain a copy of any forms and a notice of fees charged by the receiving state.
  - The applicant must return the completed forms to the address on the form along with any fees.
  - The department will log the forms and fees into an electronic file before mailing them to the receiving state.
  - If the applicant has passed the FBI, MSP, and Michigan registry checks, they may work in a child care facility “supervised” while the department processes the out of state registry checks.
Why does the applicant need to submit the forms and fees to the department?

• Our research has shown that many of the out of state background checks can take several weeks to be returned.
• The Administration for Children and Families (ACF) is allowing states the flexibility to make an eligibility determination if an out of state registry check takes longer than 45 days. Michigan would like to allow our applicants to be eligible to work on day 45 if we are solely waiting on the out of state registry result to be returned. This can occur if the department is assured that the out of state registry checks and fees were submitted.
• What if the applicant fails to return the out of state registry check forms or fees to the department?
  – If the applicant fails to return the out of state registry check forms or fees, than the applicant will be found “ineligible” to be connected with a child care facility.

• What if the applicant receives the results of the out of state registry checks?
  – If the results of the out of state registry checks are returned to the applicant, they must provide a copy to the department so that the applicant can be found “eligible”.
• **What if there is a cost for running the Out of State Registry Checks?**
  – At this time, the department will not pay for, or reimburse applicants for the cost of running out of state registry checks.

• **What if the individual does not receive a response back from the other state?**
  – If the request was made for the out of state registry check, but the results are not received within 45 days, the department has the flexibility to make an eligibility determination. The department may request that the individual complete a Self-Certification form.
Do I need to submit an out of state registry check for all states I have lived in during the past 5 years?

• If an individual previously resided in a National Fingerprint File (NFF) state, then the additional out of state criminal registry check is not required.

• NFF states include:
• Non-NFF states: These are states where we will have to check the state criminal history registry if the individual resided there in the past 5 years:
  – Alabama, Alaska, Arizona, Arkansas, California, Connecticut, Delaware, D.C. Illinois, Indiana, Kentucky, Louisiana, Maine, Massachusetts, Michigan, Mississippi, Nebraska, Nevada, New Hampshire, New Mexico, North Dakota, Pennsylvania, Rhode Island, South Carolina, South Dakota and Texas.
Comprehensive Background Check

• Who needs them?
  – Licensee (DF/DG/DC)
  – Adult Household Member (DF/DG)
  – Licensee Designee (DC only)
  – Program Director (DC only)
  – Child Care Staff ages 14 and up (Including Contractual and Self-Employed) (DF/DG/DC)
  – Volunteers with unsupervised contact with the child care children (DF/DG/DC)
Child Care Staff including Contractual & Self-Employed

• Determining who might be a contractual or self-employed staff
• Does the child care center employ or contract staff who are unsupervised with children?
  – If so, these individuals must have the comprehensive background check unless they are supervised by an individual who has completed and passed the comprehensive background check. Make sure the individual is contractual with the child care facility.
• Does the child care center have contractual employees or individuals who come in to the center to provide services and have unsupervised contact with the child care children?
  – Early On, Hearing and Vision Screeners, Speech, PT and OT Therapists, and School Social Workers if they are unsupervised with children.
• Do you send a child care center child to the Principal’s Office or Secretary unsupervised?
  – If so, you just caused them to need a Comprehensive Background Check.
What about Volunteers?

• Any adult Volunteer with **UNSUPERVISED** access to children will need to have Comprehensive Background Check.
  
  – Co-Op Centers (**UNSUPERVISED** Parents in the Co-Op)
  
  – Individuals who help out in a classroom, but then take children to the restroom, read in the hall, etc. **UNSUPERVISED**
  
  – Individuals who transport children on Field Trips **UNSUPERVISED**
  
  – Individuals who provide an activity or special service **UNSUPERVISED**

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What about Bus Drivers?

• The department has been working with the Michigan Department of Education and the ACF to provide clarification on whether or not bus drivers will need to have a comprehensive background check.

• The department will be sending out approved policy and instruction about transportation staff in the near future. Until then, please do not schedule school bus drivers for a comprehensive background check through the CCBC system.
Finding Solutions

• If you are feeling overwhelmed, stop! Let’s think about this.

• We can find a solution.
  – Can the volunteer be supervised by a child care staff member at all times?
  – Co-Ops: Is there a way to make sure that the parents are supervised by a child care staff member at all times?
  – Let’s not send children off alone with someone who does not have the Comprehensive Background Check.
Subsidizing Fingerprints

• Have you heard? Michigan is the only known state that requested & received money from their legislature to subsidize some of the required background checks. Just another example of how much Michigan cares about our providers. We will provide subsidized fingerprinting through “Coupon Codes”.
  – DC: Licensed Centers will receive up to 16 subsidized/free fingerprints.
  – DG: Group Homes will receive up to 8 subsidized/free fingerprints.
  – DF: Family Homes will receive up to 6 subsidized/free fingerprints.
How do I get a subsidized fingerprint?

• A Provider will create an account in the Child Care Background Check System (CCBCS).

• After activating their account in the system, the provider will enter each applicable individual into the CCBCS.

• The provider will then schedule an appointment directly through the system for the individual to be fingerprinted.

  — (MorphoTrust is the only vendor accepted at this time – unsubsidized costs is $61.75).

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Subsidized Fingerprinting cont.

• If the provider has a coupon code available, the system will prompt:
  – “You have a coupon available, would you like to use it on this application?” No. Yes.
  – If you want to use a coupon (subsidy) for that individual, you would check, Yes.

• ALL COUPON CODES WILL EXPIRE 09/30/2018!
  – LARA will NOT reimburse for background checks. All subsidized fingerprinting will be done via a “coupon code” in the system.
Important Information regarding your fingerprinting appointment!

1. All individuals must complete the Consent and Disclosure form that can be found under Forms and Resources.

2. The Consent and Disclosure form must be completed and signed by the applicant prior to fingerprinting.

3. The Consent and Disclosure form must be retained by the provider and available to the department upon request.

4. The applicant must be entered into the Child Care Background Check System under the correct and legal name.

5. They must take their government ID with them to their appointment.

6. If their ID has a different name than what was entered into the system, MorphoTrust will be unable to fingerprint the individual at that time. The individual will need to have their profile edited in the CCBC System and their fingerprint appointment rescheduled under the correct name.

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• Q: What is a “Launch Letter”?  
  – A: The purpose of the “launch letter” is to provide the licensee with the instructions for activating their account within the Child Care Background Check System.

• Q: MCCM said I should have received a Launch Letter. Why haven’t I received one?  
  – A: Launch Letters are being sent out. As fingerprinting will be phased in, the Launch Letters will also be phased in.
What if I need my Launch Letter and I haven’t received it yet?

• If you must have your Launch Letter before, the department launches in your county, you may contact:
  – 1-844-765-2247

• This is the number of the Child Care Background Check Hotline.

• The Primary User must request the Launch Letter, as all facilities will show up under the account.

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• We have begun to send out the Launch Letters out to providers in Ingham County!
• Ingham County was selected first for the roll out.
• Launch Letters were also sent out to Head Start & GSRP facilities.
• All providers should receive their Launch Letter by May 31, 2018.
As an applicant for a child care license, you are required as the primary user to utilize the Michigan Child Care Background Check System (CCBC). A comprehensive background check is required to be completed on all licensees/licensee designees, program directors, adult household members, child care staff, and volunteers with unsupervised access to children.

Step 1: Go to michigan.gov/ccbc and click on “Activate New Account” and enter the information as listed below:
- Licensee Group ID:
- Zip Code:
- Activation Code:

Step 2: You will then be able to create a personalized User ID and Password. Once completed, you will be directed to your account homepage. Ensure you maintain confidentiality of your unique User ID and Password.

Step 3: Click on the “New Background Check” tab and be sure to print, save, and maintain the Consent and Disclosure form at your facility for each individual you send for fingerprinting.

Step 4: Follow the prompts to schedule fingerprinting. On the Request Fingerprinting screen, the system will show, “You have a coupon available, would you like to use it on this application?” By selecting “Yes” you are indicating you will be using a subsidized background check for that applicant. Once you have scheduled the fingerprinting appointment, print the fingerprint request form as indicated. The applicant must take this form with them to the fingerprint appointment.

Step 5: The system will ask “Has a fingerprint appointment been scheduled?” Make sure to check “Yes” and then “Save and Continue.”

After your appointment, you will be notified of your results by the Child Care Background Check unit. There are various resources and forms on the website, as well as a video training tutorial for your use.

What does a Launch Letter look like?

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What should I do with the Launch Letter?

1. Make sure that the Launch Letter is given to the **Primary User**. (The person is the individual responsible for the license).
2. Primary User must “Activate Account”.
3. Primary User may add additional Primary Users under the “Manage Users” tab.
4. Primary User begins the process of completing the Comprehensive Background Checks.

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What can I do to help my staff get fingerprinted in a timely fashion?

• Consider hosting a Fingerprint Special Event.
  – What is a Special Event?
  – How do I qualify for a Special Event?
  – What if I don’t have enough staff for a Special Event?
  – What about Family and Group Homes?
  – What are the advantages of hosting a Special Event?

• Okay, you talked me into it. Who do I contact about hosting a Special Event?
  – John.McGraw@us.idemia.com
• Q: I was already fingerprinted, will I need to be re-fingerprinted?
  – A: Yes. Licensing has a new fingerprint reason code and results must download into the new Child Care Background Check System (CCBC System).

• Q: I was fingerprinted for School Employment. Do I need to be re-fingerprinted?
  – A: Yes. School prints do not meet compliance with federal legislation. They are not processed through the NCIC or in accordance with federal and state requirements for childcare.
Q: What is a Primary User and Primary User Letter?
   
   - A: “Primary User” is the name LARA has given to an individual who is the head of a License. If the facility is a DF or DG, the Primary User is the Licensee.
   - Centers who are Corporations and Schools.
   - Primary User Letters were sent in September of 2017 to facilities with a Licensee Designee only.
   - Did your Primary User respond?
   - About 1600 have replied, but not everybody
Q: Why do you need to know who the Primary User is?

- A: This individual will be in charge of the CCBC. This is the individual who can appoint a Licensee Designee.

- Can appoint additional Primary Users and Secondary Users, etc.
• Q: What is the CCBC System and when will we begin using it?
  – A: The CCBC System houses all the background check information. The CCBC System can be found at: www.michigan.gov/ccbc

• Features of CCBC System:
  – Houses all background check information
  – Schedule fingerprinting through system
  – Forms and Resources
  – Training Tutorial
  – Provides eligibility status on individuals
  – Connect/Disconnect Staff
• Q: How will I background check my staff?
  – Consent and Disclosure Form
  – Schedule Fingerprinting Appointment thru the CCBC System
  – Applicant goes in for fingerprinting

• Q: How will I be notified whether they are eligible or ineligible?
  – Notifications
    • Eligible
    • Ineligible
• Q: How long will it take to get the results of a background check?
  – A: Most fingerprint results will download quickly (in a couple of days). However, the registry checks are a manual process.
  – We have hired/trained a Child Care Background Check Unit to quickly process results.
  – The department has 45 days to complete all background checks.
• In general, it will not take 45 days for the background checks to come back. Rather, the state has up to 45 days to complete the processing of the background check.

• Q: What can delay the completion of a background check?
  – A: Smooth prints rejected, Out of State Registry Checks, and incomplete criminal history records.
• Q: What if the result of the background check is not completed within 45 days?
  – A: If the state is unable to complete the background check within 45 days, because we are awaiting results on the out of state registry checks, the state has the “flexibility” to make an initial “eligible” determination. If later information is received by the state showing that the individual would be ineligible an updated result would be sent to the provider.
• Q: What happens if a staff member is found ineligible?
  – 30 Day Re-determination or Request for Continued Eligibility (Grandfathering).
  – May request “grandfathering” in some situations
  – If the staff member does not appeal or request grandfathering they will be ineligible to be connected with a child care facility
  – The provider would need to “disconnect” them

• More on Grandfathering:
  – Employee must have been working/connected to a child care facility when the law went into effect
  – Individual must make a request in writing within 30 days of receiving the “ineligibility determination”
  – Request must include all evidence of rehabilitation (we have a form for this)
  – Disqualification cannot be for one of the offenses listed as carrying a Lifetime Ineligibility {5r (3).} or a Drug related Felony in last 5 years
  – Department has 60 days to respond in writing and the decision of the director is final
Connecting/Disconnecting

• Once you have the results of the background check, “connect” the individual to your facility
• “Disconnect” them from your facility if they no longer work in there or move out of the home
• Can connect to more than 1 facility
**Disconnecting Employees/Reporting Arraignments**

- **Q:** What happens if you don’t disconnect an ineligible employee?
  - Possible Special Investigation
  - Rule Non-Compliance
  - Possible Disciplinary Action
  - If you receive subsidy, it will be closed

- **Q:** What do I do if an employee is accused of breaking the law?
  - *Per PA 116, a staff member must report any arraignment and convictions for exclusionary offense(s) to the center within 3 business days*
  - The licensee must then report this to the department within 3 business days of being notified by the staff member
  - Center must also notify all staff of these reporting requirements

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• **Q:** What will make an individual “ineligible”?
  – Refusal to submit to the background check
  – Falsifying information on a background check

• **Lifetime Exclusions:**
  – Placement on Central Registry
  – Placement or requirement to be placed on Sex Offender Registry
  – Felony Convictions for: murder, child abuse/neglect, crime against a minor child including, but not limited to child pornography, spousal abuse or domestic violence, rape or sexual assault, kidnapping, arson, physical assault, and human trafficking/involuntary servitude
  – Violent **Misdemeanor** against a child such as child abuse, child endangerment, sexual assault and child pornography
• 10 Year Exclusionary Offenses (from date of conviction)
  – Felony involving harm or threatened harm
  – Felony involving use of a firearm/dangerous weapon
  – Felony involving substantial misrepresentation of fact, bribery, fraud, larceny, embezzlement, theft, home invasion, breaking and entering, receiving and concealing stolen property, or crime of similar statute
  – Felony involving Op. of a Motor Vehicle While Intoxicated or Impaired causing serious injury/death
  – Felony involving the use of a computer/internet to commit a crime
  – Felony involving cruelty to animals
  – Felony aggravated stalking, indecent exposure, pandering, operating house of ill fame
  – Felony as a habitual offender

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7 Year Exclusionary Offenses (from date of conviction):
  - Felony Drug Offense or an Attempt or Conspiracy to commit a Felony Drug Offense

5 Year Exclusionary Offenses (from date of conviction):
  - Misdemeanor Convictions for:
    - Operating Under Controlled Substance
    - Use/Possession of Controlled Substance
    - Selling Controlled Substance to a Minor
    - Using a computer to commit a crime
    - Substantial misrepresentation of material fact
    - Embezzlement, Breaking & Entering,
    - Any other fraudulent crime except retail
    - Fraud in third degree, petty theft, shoplifting
    - Stalking, Assault, Spousal Abuse, Domestic Violence
    - Weapons offenses, harboring runaways and arson

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Other things that may lead to Ineligibility

• “A person, child care organization, agency, or representative or officer of a firm, a corporation, an association, or an organization who has a license or certificate of registration revoked, applications denied, renewal refused, or before the effective date of the 2017 amendatory act that amended this subsection, certificate of registration revoked or refused renewal or application denied, may be refused a license, or be prohibited from being connected directly or indirectly, with a licensee for a period of not less than 5 years after the revocation, denial, or refusal to renew. The department, in its discretion is not required to accept an application from a person, child care organization, agency, or representative, or officer of a firm, corporation, an association, or an organization described in this subsection. The department may reject the application on its face without taking further action after notifying the applicant of the rejection and reason for the rejection.”

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Ineligible for Life-Due to Serious Injury/Death of a Child

• Warning

  “The department shall not issue a license to an individual who worked in a child care center, group child care home, or family child care home at the time of a violation of this act, the rules promulgated under this act, or the terms of a license that resulted in the severe physical injury or death of a child or resulted in a child being sexually abused if the individuals had direct care and supervision of that child at the time of the violation.”
What if a Disaster Strikes?

• In case of a disaster, family homes, group homes and centers may temporarily operate at an unlicensed location, IF the following are met:
  – The department has conducted an onsite inspection and approved the new location. You cannot operate at the new location until this inspection has occurred.
  – For a center, a fire safety inspection, an environmental health inspection and, if necessary, a lead inspection must be completed within 45 days.

• If any of these inspections find the new location to be unsafe, the center will have to stop operating at the new location.

• If a family home, group home or center will remain at the new location, the licensee must apply for and obtain a new license within one year of moving to the new location.
Re-Cap of Some of the Changes and what LARA is doing for providers.

- Elimination of the need to do CPR every year
  - Savings of $50 to $80 per individual
- We will no longer require providers to run the MDHHS Central Registry/ICHATs for staff, as LARA will process these background checks
  - Saving $10 per ICHAT and time of processing background checks
- Subsidized Fingerprints at $5.5 Million dollars. Thank you Michigan Legislature!
- Locking child care licensing fees in statute so they cannot be raised without going through the legislature. LARA can’t raise your licensing fees!
- Allow for temporary location of facilities in the event of a disaster.

04/06/2018
• LARA has begun the process to open the rules for Family/Group Homes and Centers
  – Focus on reducing regulation where possible
  – Focus on Health and Safety
  – Looking at suggestions submitted for Rule Changes
  – Formed an Ad Hoc Committee and meeting bi-weekly

• LARA is providing training around the state to educate providers on the law/rule changes and the use of the new Child Care Background Check System.

• LARA has coordinated with MorphoTrust/IdentoGo/Idemia to arrange Fingerprinting Events to alleviate barriers to providers in obtaining the necessary background checks.

04/06/2018
What’s Next?

• Changes to PA 116 will require the Licensing Rules to be opened for Family/Group Homes and Centers.
• Process of reviewing current rules, suggested changes and Technical Assistance.
• Will look for ways to reduce regulation when possible that doesn’t impact health and safety.
• Licensing rules will also address federal requirements that are not specifically outlined in statute such as Training and Emergency Preparedness.
Coming late 2018

TRAINING ON NEW RULES!

04/06/2018
Providers, Thank you!

LARA is committed to removing barriers to obtaining and maintaining a child care license in the State of Michigan. We look forward to partnering with you, our providers. Thanks for all you do to serve Michigan children!

04/06/2018