

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:

2015-077 HS

ORR rule set title:

MSA Provider Hearings

Department:

Health and Human Services

Agency or Bureau/Division

Bureau of Legal Affairs

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

Matthew Rick 517-241-0048

Reviewed by Department Regulatory Affairs Officer:

Mary E. 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.

Yes, the MSA Provider Hearings administrative rules are required by MCL 400.9. The Department of Health and Human Services is proposing amendments to those administrative rules. The proposed amendments to the administrative rules do not exceed a federal standard.

(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 to the administrative rules have been compared to standards in two other States. The proposed amendments to the administrative rules do not exceed standards 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 State administrative hearing rules within the Michigan Administrative Hearing System (MAHS) at the Michigan Department of Licensing and Regulatory Affairs. The proposed amendments to the administrative rules relate to the Medicaid providers' interaction with DHHS before those providers might proceed to an administrative hearing at MAHS.

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 to the administrative rules are not designed to alter behavior. Instead, the proposed amendments to the administrative rules are intended to combine the prehearing conference and the bureau conference into one internal conference. The proposed amendments inform the providers on what information they must submit to the department when they request an internal conference, set a deadline for the department to decide the matter after the internal conference, and allow the department to seek an administrative hearing if the department does not agree with the internal conference decision.

(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?

Because the proposed amendments to the administrative rules are not designed to alter behavior, no harm will result from them.

(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 department has worked with the Health Care Association of Michigan to make the proposed amendments to the administrative rules less burdensome for the Medicaid providers.

(7) Describe any rules in the affected rule set that are obsolete, unnecessary, and can be rescinded.

The Medicaid providers hearing rules were last amended in January 2015. Some of the rules in the rule set were rescinded then. None of the rules in the rule set 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 not be any cost for the proposed amendments to the administrative rules because the administrative rules already exist. There may be potential savings to the department and to the Medicaid providers by combining the preliminary conferences and the bureau conferences into internal conferences.

(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 amendments to the administrative rules streamline the pre-hearing process for Medicaid providers and accomplish the purpose of allowing Medicaid providers to resolve issues with the department before the parties might proceed to an administrative hearing. Rather than placing a burden upon the Medicaid providers, the proposed amendments to the administrative rules make the pre-hearing process less burdensome to Medicaid providers.

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).

The proposed amendments to the administrative rules will not have any impact on rural areas.

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.

Small businesses that are Medicaid providers do not want to be exempt from the proposed amendments to the administrative rules because the proposed amendments to the administrative rules allow small business Medicaid providers to resolve their issues with the department. For example, the small businesses that are Medicaid providers would not want to participate in both a preliminary conference and a bureau conference under the current rules when the Medicaid providers that are not small businesses would participate in only an internal conference under the proposed amendments to the administrative rules because of the extra time involved in participating in both a preliminary conference and a bureau conference. Similarly, the small businesses that are Medicaid providers would not want to operate under the old Medicaid provider hearing rules that do not have a time deadline for the department to issue a decision after the preliminary conference.

(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 to the administrative rules will not have any economic impact on small businesses.

(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.

(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 and direct benefit of the proposed amendments to the administrative rules is combining the preliminary conferences and the bureau conferences into internal conferences. Combining the conferences will shorten the time for the department to resolve issues with Medicaid providers.

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

The proposed amendments to the administrative rules should not have any impact on business growth and job creation in Michigan.

(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.

None.

(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.

None.

(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.

It is not feasible to establish a regulatory program that would operate through private market-based mechanisms. These administrative rules involve the administrative hearing process within the department. Ultimately, the director of the department decides these matters. They are not delegated to private market-based mechanisms.

(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 significant alternatives during rule development. Instead, discussions with stakeholders involved insignificant alternatives such as the length of time for the department to decide the cases.

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.

Not applicable.

PART 4: REVIEW BY THE ORR

Date Regulatory Impact Statement (RIS) received:

12-15-2015

Date RIS approved:

ORR assigned rule set number: 2015-077 HS

Date of disapproval:

Explain:

More information needed:

Explain: