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STATE OF MICHIGAN

**Department of
Health and Human
Services**

Memo

Division of Child Welfare Licensing

To: Chief Administrators, Court Operated Facilities Date: June 2, 2015
From: Janice Tribble, Director
Division of Child Welfare Licensing

Subject: Court Operated Facility Letter 2015 - 01

- Changes in the Child Protection Law, 1975, PA 238
- Electronic Reporting of Seclusion and Restraint
- Division of Child Welfare Licensing Central Changes

• **Changes in the Child Protection Law, 1975, PA 238**

Act 30 of 2014 amended a number of sections of the Child Protection Law. The changes to the statute became effective March 31, 2015. The change that affects court operated facilities was an addition to the definition of "person responsible." The statute defines child abuse and child neglect as meaning certain activities done by a person responsible. I have included those definitions below.

The entire statute may be accessed at:

[http://www.legislature.mi.gov/\(S\(ceffburved1gxwgompo0nbv\)\)/mileg.aspx?page=getObject&objectName=mcl-722-622](http://www.legislature.mi.gov/(S(ceffburved1gxwgompo0nbv))/mileg.aspx?page=getObject&objectName=mcl-722-622)

MCL 722.622 (f) "Child abuse" means harm or threatened harm to a child's health or welfare that occurs through nonaccidental physical or mental injury, sexual abuse, sexual exploitation, or maltreatment, by a parent, a legal guardian, or any other **person responsible** for the child's health or welfare or by a teacher, a teacher's aide, or a member of the clergy.

(j) "Child neglect" means harm or threatened harm to a child's health or welfare by a parent, legal guardian, or any other **person responsible** for the child's health or welfare that occurs through either of the following:

(i) Negligent treatment, including the failure to provide adequate food, clothing, shelter, or medical care.

(ii) Placing a child at an unreasonable risk to the child's health or welfare by failure of the parent, legal guardian, or other person responsible for the child's health or welfare to intervene to eliminate that risk when that person is able to do so and has, or should have, knowledge of the risk.

(u) "Person responsible for the child's health or welfare" means a parent, legal guardian, person 18 years of age or older who resides for any length of time in the same home in which the child resides, or, except when used in section 7(2)(e) or 8(8), nonparent adult; or an owner, operator, volunteer, or employee of 1 or more of the following:

(i) A licensed or registered child care organization.

(ii) A licensed or unlicensed adult foster care family home or adult foster care small group home as defined in section 3 of the adult foster care facility licensing act, 1979 PA 218, MCL 400.703.

(iii) A court-operated facility as approved under section 14 of the social welfare act, 1939 PA 280, MCL 400.14.

Prior to this change, court operated facilities (COF) were not subject to investigations of allegations of child abuse or neglect from the Department of Health and Human Services (DHHS). With the amended definition of "person responsible," allegations that one or more staff in a COF either abused or neglected a child in care will be conducted concurrently with licensing rule investigations. The CPS investigation will be conducted by CPS staff that are part of the specialized DHHS staff from the Maltreatment in Care unit (MIC). As has happened in the past, your assigned licensing consultant will complete investigations where there are allegations of violations of the Juvenile Court Operated Facility rules. As noted above, these investigations will generally be done concurrently with the assigned MIC worker but the focus of the two investigations is different, one is looking at rules and the other is looking at allegation of child abuse and neglect.

- **Electronic Reporting of Seclusion and Restraint**

A letter was issued in early May regarding reporting seclusion and restraint in a DHHS electronic reporting system. The Division of Child Welfare Licensing is responsible for monitoring compliance with rules related to both seclusion and restraint in the residential facilities that are licensed or approved by DHHS. The current reporting system, JJOLT, is being replaced with MiSACWIS. This is the system that has been used for reporting seclusions and restraints by licensed and approved child caring institutions. To ensure consistent application of standards across regulated facilities, the decision was made that COFs should utilize the same system. This allows the consultant to review information regarding the use of seclusion and restraint, at least in part, prior to making onsite visits to the facility. The relevant rules relating to seclusion and restraint are included below for reference.

If your facility needs assistance in obtaining passwords and training on the use of the MiSACWIS system, please let your consultant know and you will be connected with the appropriate resource to assist. Due to the fact that JJOLT will only be active until

September 30, 2015, it is reasonable to expect reporting by COFs to begin on October 1, 2015.

R 400.10171 Resident confinement room; approved usage.

Rule 171. A facility approved to use a resident confinement room may place a resident in this room for the following reasons:

- (a) For sleep during normal sleeping hours.
- (b) For medical reasons.
- (c) For privacy, when a resident voluntarily requests to be confined to his or her room.
- (d) For confinement during an emergency situation to maintain the safety and security of other residents, staff, and the facility.
- (e) For behavior management/confinement when a resident is in danger of harming self or others.
- (f) For confinement, when the facility's normal security precautions are inadequate to prevent a resident's escape.
- (g) For disciplinary reasons in accordance with the provisions of R 400.10169.

R 400.10173 Resident confinement room; construction.

Rule 173. (1) A room used for resident confinement shall be approved in writing for use as such by the fire inspection authority and the licensing authority.

(2) A resident confinement room shall be constructed and equipped so as to minimize suicide and fire risk.

(3) A resident confinement room established and approved after the effective date of these rules shall:

- (a) Be constructed to allow for both visual and auditory supervision of a resident in the room.
- (b) Be equipped with a 2-way audio monitoring device. The device shall be maintained in an operative condition.
- (c) Have break-resistant windows or break-resistant materials on internal windows.
- (d) Have breakable outside windows covered by security screening.
- (e) Have walls and ceilings made of noncombustible materials. Polyurethane materials shall be prohibited.

(f) Provide adequate lighting.

(g) The area of the resident confinement room shall not be less than 48 square feet.

(4) A resident confinement room may have 1 approved locking-against egress device on the door if a staff person is available and awake and is in possession of a key for the door locking device when the room is occupied.

R 400.10175 Resident confinement room; procedures for use.

Rule 175. (1) A facility that uses a resident confinement room shall establish and follow written policies and procedures specifying its use.

(2) The policy shall include the approved reasons for use as specified in R400.10171.

(3) Not more than 1 resident shall be placed in a resident confinement room at one time when it is used for behavior management or discipline purposes.

(4) When a resident is confined in a resident confinement room, except during normal sleeping hours, for sleeping purposes only, staff shall maintain a record of confinement.

The record shall contain all of the following information:

- (a) The name of the resident.

- (b) Time of confinement.
- (c) The name of the staff member responsible for the confinement.
- (d) A description of the specific behavior that necessitated the confinement.
- (5) For each instance in which a resident remains in a resident confinement room for more than 2 hours, except during normal sleeping hours, a record shall be maintained and shall contain documented supervisory approval and the reasons for continued use.
- (6) During a resident's confinement, visual observations of the resident shall be made by staff at least every 15 minutes. Each contact shall be logged at the time of the observation.
- (7) A review by the chief administrator or a designee who is not involved in the room confinement shall be conducted and logged every 12 hours for each room confinement that is 12 hours or longer in duration. The review shall determine both of the following:
 - (a) Whether each room confinement was appropriate and consistent with the facility's policies and procedures.
 - (b) The action that is necessary to insure the appropriate use of resident confinements.
- (8) When a resident is confined in a resident confinement room for sleeping purposes only during normal sleeping hours, a visual observation of the resident shall be made by staff at least every 30 minutes.

R 400.10176 Resident confinement room; disciplinary usage.

Rule 176. (1) A resident confinement room may be used for disciplinary reasons, but only as specified in written policy and procedure.

- (2) Before confinement to a resident confinement room or as soon as possible thereafter, a resident shall have the disciplinary reason for the restriction explained to him or her and have an opportunity to explain his or her behavior that led to the restriction.
- (3) Confinement to a resident confinement room for up to 72 hours may be used when a resident has been charged with a major rule violation that endangers the safety of residents or others or endangers the security of the facility.
- (4) Confinement to a resident confinement room for more than 72 hours may be used only with the written approval of the chief administrator.

R 400.10177 Resident restraint.

Rule 177. (1) The facility shall establish and follow written policy and procedures specifying the use of resident restraint.

- (2) The written policy shall limit the uses of resident restraint to the following:
 - (a) As a precaution against escape during transfer.
 - (b) For medical reasons by direction of the medical officer.
 - (c) To prevent self-injury, injury to others, or property damage.
- (3) The written resident restraint policy shall prescribe the maintenance of written records of the routine and emergency distribution and use of restraint equipment.
- (4) Restraint equipment and physical restraint techniques shall not be used for punishment.
- (5) Resident restraint shall only be applied for the minimum time necessary to accomplish the purpose for its use as specifically permitted in subrule (2) of this rule and shall only be applied with the approval of the facility administrator or administrative designee. Approval shall be obtained within 20 minutes after the restraint has been initiated.
- (6) A staff member shall be present continuously while material or mechanical restraint equipment is being used on a resident.
- (7) Each use of material or mechanical restraint equipment shall be documented in a written record and shall include all of the following information:
 - (a) The name of the resident.

- (b) The name of the administrator or designee who authorized the use of the equipment, and the time of the authorization.
- (c) The time the restraint equipment was applied.
- (d) The name of the staff member who was responsible for the application.
- (e) A description of the specific behavior that necessitated its use.
- (f) The name of the staff person who was continuously with the resident.
- (g) The date and the time of removal of the equipment and the name of the person removing the equipment.

- **Division of Child Welfare Licensing changes**

As a result of Executive Order 2015-4, the former Bureau of Children and Adult Licensing was split between two separate state departments. The Division of Adult Foster Care and Home for the Aged Licensing and the Division of Child Care Licensing have been transferred to the Department of Licensing and Regulatory Affairs (LARA). The Division of Child Welfare Licensing (DCWL) remains with the newly formed Department of Health and Human Services (DHHS) under the Children's Services Administration. DCWL continues to have responsibility for the licensing and regulation of Court Operated Facilities, Child Caring Institutions, Child Placing Agencies, and Children's Foster Homes.

As part of this governmental restructuring, DCWL central office staff are also relocating from the Victor Building to the Grand Tower. Phone numbers will remain the same for central office staff. This change does not affect your assigned field consultant. The new address for DCWL is:

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