

DEPARTMENT OF HEALTH AND HUMAN SERVICES

CHILDREN'S SERVICES AGENCY

DIVISION OF CHILD WELFARE LICENSING

CHILD CARING INSTITUTIONS

Filed with the secretary of state on May 24, 2022.

These rules take effect in 7 days upon filing with the secretary of state.

(By authority conferred on the director of the department of health and human services by sections 2, 5, 10, and 14 of 1973 PA 116, MCL 722.112, 722.115, 722.120, and 722.124, and Executive Reorganization Order No. 2015-1, MCL 400.227)

R 400.4101, R 400.4158, R 400.4159, R 400.4160, R 400.4161, R 400.4162, and R 400.4163 of the Michigan Administrative Code are amended, as follows:

PART 1. GENERAL PROVISIONS

R 400.4101 Definitions.

Rule 101. (1) As used in these rules:

(a) "Accredited college or university" means a college or university recognized by the United States Department of Education.

(b) "Act" means 1973 PA 116, MCL 722.111 to 722.128, known as the child caring organizations act.

(c) "Case record" means the individual file, including electronic records, kept by an institution concerning a youth who has been placed at the institution.

(d) "Chemical restraint" means a drug that meets all the following:

(i) Is administered to manage a youth's behavior.

(ii) Has the temporary effect of restricting the youth's freedom of movement.

(iii) Is not a standard treatment for the youth's medical or psychiatric condition.

(e) "Chief administrator" means the person designated by the licensee as having the onsite day-to-day responsibility for the overall administration of a child caring institution and for assuring the care, safety, and protection of youth.

(f) "Child caring institution staff member" means an individual who is 18 years or older, and to whom any of the following apply:

(i) Is employed by a child caring institution for compensation, including adults who do not work directly with children.

(ii) Is a contract employee or self-employed individual working with a child caring institution.

(iii) Is an intern, volunteer, or other person who provides specific services under these rules.

(g) "Corporal punishment" means hitting, paddling, shaking, slapping, spanking, or any other use of physical force as a means of behavior management.

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- (h) "Department" means the Michigan department of health and human services.
- (i) "Direct care worker" means a person who provides direct care and supervision of youth in an institution.
- (j) "Emergency restraint or safety intervention" means use of personal restraint as an immediate response to an emergency safety situation.
- (k) "Emergency restraint or safety situation" means the onset of an unanticipated or severely aggressive behavior that places the youth or others at serious threat of violence or injury if no immediate intervention occurs.
- (l) "Human behavioral science" means a course of study producing a degree from an accredited college or university that is approved by the department for the specific positions when required by the act and these rules.
- (m) "Juvenile justice youth" means a youth pending adjudication, or has been adjudicated, under section 2 of chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.2a, or section 1 of chapter IX of The Code of Criminal Procedure, 1927 PA 175, MCL 769.1.
- (n) "License" means a license issued by the department to a non-governmentally operated institution or a certificate of approval issued by the department to a governmentally operated institution indicating that the institution complies with these rules.
- (o) "Licensee" means the agency, association, corporation, firm, organization, person, partnership, department, or agency of the state, county, city, or other political subdivision that has submitted an original application for licensure or approval or has been issued a license or certificate of approval to operate a child caring institution.
- (p) "Licensing authority" means the administrative unit of the entity responsible for making licensing and approval recommendations for an institution.
- (q) "Mechanical restraint" means a device, materials, or equipment attached or adjacent to the youth's body that he or she cannot easily remove that restricts freedom of movement or normal access to one's body. Mechanical restraint does not include the use of a protective or adaptive device, or a device primarily intended to provide anatomical support.
- (r) "Medication" means prescription and nonprescription medicines administered to treat a youth's medical or psychiatric condition.
- (s) "Michigan Children's Institute Superintendent" or "MCI Superintendent" means the person appointed under 1935 PA 220, MCL 400.201 to 400.214, as the guardian of permanent state wards committed to it by the court.
- (t) "Nonsecure institution" means an institution or facility, or portion thereof, that is used to house youth and that is not locked against egress.
- (u) "Parent" means biological parent, including custodial and non-custodial parent, adoptive parent, or legal guardian.
- (v) "Personal restraint" means the application of physical force, without the use of a device, that restricts the free movement of a youth's body. Personal restraint does not include:
- (i) The use of a protective or adaptive device.
 - (ii) Briefly holding a minor child without undue force in order to calm or comfort him or her.
 - (iii) Holding a minor child's hand, wrist, shoulder, or arm to safely escort him or her from 1 area to another.
 - (iv) The use of a protective or adaptive device or a device primarily intended to provide anatomical support.
- (w) "Seclusion" means the involuntary placement of a youth in a room alone, where the

youth is prevented from exiting by any means, including the physical presence of a staff person if that staff person's presence prevents the youth from exiting the room.

(x) "Seclusion room" means a room or area approved for the involuntary confinement or retention of a single youth. The door to the room may be equipped with a security locking device that operates by means of a key or is electrically operated and has a key override and emergency electrical backup in case of a power failure.

(y) "Secure institution" means any public or private licensed child caring institution where the movement and activities of residents is restricted and locked against egress from the building.

(z) "Sexual harassment" means verbal comments or gestures of a sexual nature to a youth by a staff member, contractor, or volunteer, including demeaning references to gender, sexually suggestive or derogatory comments about body or clothing, or obscene language or gestures.

(aa) "Shelter care facility" means an institution that primarily provides short-term assessment and planning.

(bb) "Social service supervisor" means a person who supervises a social service worker.

(cc) "Social service worker" means a person who works directly with youth, their families, and other relevant individuals and who is primarily responsible for the development, implementation, and review of treatment plans for the youth. This definition does not prevent a team approach to treatment plan development and implementation.

(dd) "Terms of license" means those designations noted on an institution's license for which the institution is authorized or approved.

(2) A term defined in the act has the same meaning when used in these rules unless otherwise indicated.

R 400.4158 Intervention standards and prohibitions.

Rule 158. (1) A child caring institution shall establish and follow written policies and procedures that prohibit the following forms of intervention:

(a) Any type of physical punishment including, but not limited to:

(i) Use of chemical agents including, but not limited to, pepper spray, tear gas, and mace.

(ii) Hitting or striking, throwing, kicking, pulling, or pushing a youth on any part of their body.

(iii) Threats of restraint, seclusion, punishment, or otherwise suggesting physical or emotional harm to a youth.

(iv) Verbal abuse including the use of derogatory or discriminatory language including negative references to a youth's background or appearance or mental state. Yelling, threats, ridicule, or humiliation are strictly prohibited.

(v) Peer-on-peer discipline.

(b) Denial of any essential program service as punishment. These include, but are not limited to, the following:

(i) Food or creating alternative menus.

(ii) Family time or any type of communications with family.

(iii) The opportunity for at least 8 hours of sleep in a 24-hour period.

(iv) Shelter, clothing, medical care, or essential personal needs, including culturally specific items.

(v) Any actions that inhibit a youth's ability to achieve permanency.

(2) An agency will provide a list of these prohibited practices to all youth, their families, and referring agencies upon admission.

R 400.4159 Youth restraint; pregnant youth; reduction, prevention; prohibited restraints; elimination of restraints.

Rule 159. (1) A child caring institution, including private secure juvenile justice facilities, shall establish a process improvement and restraint reduction/elimination plan that:

- (a) Includes documentation of each restraint.
 - (b) Requires staff training in approved crisis prevention and intervention techniques including:
 - (i) Prevention, de-escalation techniques, and non-violent responses to assaultive behavior.
 - (ii) Conflict management.
 - (iii) Minimizing trauma.
 - (iv) Staff emotional self-regulation techniques.
 - (c) Training must be conducted by certified trainers.
 - (d) Staff must complete refresher training annually or more frequently as needed.
 - (e) The agency must maintain documentation verifying staff training.
 - (f) The agency will review all restraints at least monthly.
 - (g) The agency shall establish a restraint reduction committee, including youth and family representation, for the purpose of analysis, process improvement, communication, and recognition of efforts to eliminate the use of restraints.
- (2) The following restraints are strictly prohibited:
- (a) Use of chemical restraints as defined in section 2b of the act, MCL 722.112b.
 - (b) Use of pressure point control and pain adherence techniques at the facility.
 - (c) Use of straightjackets, hogtying, and restraint chairs.
 - (d) Restraining youth to fixed objects, including beds or walls.
 - (e) Restraining youth in a prone position or any restraint that restricts the youth's airway.
 - (f) Using restraints for punishment, discipline, retaliation, or humiliation.
 - (g) Peer-on-peer discipline or utilizing the assistance of another youth to implement a restraint.
- (3) For a youth who is pregnant, including a youth who is in labor, delivery, or post-partum recovery, mechanical restraints are prohibited. In addition, the following restraints are prohibited for use on pregnant youth:
- (a) Abdominal restraints.
 - (b) Leg and ankle restraints.
 - (c) Wrist restraints behind the back.
 - (d) Four or five-point restraints.
- (4) Only the least restrictive intervention necessary to prevent immediate harm to the youth or others may be used and must follow an individualized set of graduated interventions that avoid the use of restraints.
- (5) In the event a restraint occurs, it must be performed in a manner that is safe, appropriate, and proportionate to the severity of the youth's behavior, chronological and developmental age, size, gender, physical condition, medical condition, psychiatric condition, and personal history, including any history of trauma, and must be done in a manner consistent with the youth's treatment plan.
- (6) Restraint must not last longer than the minimal duration of time it takes for a youth to calm down and to restore safety.
- (7) Staff must continuously monitor the youth's breathing and other signs of physical distress and take appropriate action to ensure adequate respiration, circulation, and overall well-being.

(8) When an emergency health situation occurs or the youth exhibits sign of physical distress during the restraint, staff must immediately obtain treatment for the youth.

(9) All restraints for child caring institutions, with the exception of those restraints allowed in R 400.4160 and R 400.4161, will be prohibited effective November 1, 2022.

R 400.4160 Emergency restraint.

Rule 160. The use of emergency restraint as a lifesaving response for a youth will be limited to:

(a) An emergency response to protect the youth or others from an unanticipated or severely aggressive behavior that places the youth or others at serious threat of violence or injury if no immediate intervention occurs.

(b) When all other interventions in the agency's crisis prevention and intervention plan and the youth's individual safety and calming plan have been utilized but fail to protect the youth or others from unanticipated or severely aggressive behavior that places the youth or others at serious threat of violence or injury if no immediate intervention occurs.

(c) The emergency restraint must not last longer than needed to end the threat of serious physical harm.

(d) Staff must continuously monitor the youth's breathing and other signs of physical distress and take appropriate action to ensure adequate respiration, circulation, and overall well-being.

(e) When an emergency health situation occurs or the youth exhibits sign of physical distress during the restraint, staff must immediately obtain treatment for the youth.

R 400.4161 Secure juvenile justice facilities, mechanical restraint; policies and procedures; prohibitions.

Rule 161. (1) Secure juvenile justice facilities must develop and implement written policies and procedures regarding the use of mechanical restraint in actual practice in secure detention and residential treatment juvenile justice facilities.

(2) Staff are prohibited from doing the following:

(a) Handcuffing youth together during transportation or restraining youth to a vehicle.

(b) Leaving sleeping youth in restraints.

(c) Leaving a restrained youth alone.

(3) The only mechanical restraints that staff may use within a facility are handcuffs, unless circumstances require, and written approval is given by the chief administrator, for the use of leg shackles, a leg bar, or belly chains or belly belts, or both.

(4) Within the facility or during transportation to or from the facility, staff may use handcuffs when an assessment has been made that the youth presents a current risk of escape or serious, recent assaultive behavior has been documented and there are no other means available to provide for the safety of other youth and staff. In the rare instances that staff need additional restraints as described in subrule (3) of this rule during transportation, staff must document specific reasons for the use of any mechanical restraint other than handcuffs and obtain written approval by the chief administrator.

(5) During secure facility emergencies, such as a lockdown or riot, staff may use handcuffs and belly chains to prevent serious injury or escape. Staff must remove handcuffs and other restraints promptly after the youth is placed in his or her room or is otherwise in a safe place.

(6) In the event a mechanical restraint occurs, it must be performed in a manner that is safe, appropriate, and proportionate to the severity of the youth's behavior, chronological and

developmental age, size, gender, physical condition, medical condition, psychiatric condition, and personal history, including any history of trauma, and done in a manner consistent with the youth's treatment plan.

(7) If a mechanical restraint is used, staff must use the permitted methods of mechanical restraint and appropriate techniques for use of restraints, and the agency shall provide guidance to staff in deciding what level of restraint to use if that becomes necessary.

(8) Restraint may not last longer than the minimal duration of time it takes for a youth to regain self-control and to restore safety.

(9) Staff must continuously monitor the youth's breathing and other signs of physical distress and take appropriate action to ensure adequate respiration, circulation, and overall well-being.

(10) When an emergency health situation occurs or the youth exhibits sign of physical distress during the restraint, staff must immediately obtain treatment for the youth.

(11) Written policies and notifications must be posted publicly in visiting areas and provided in writing, in their entirety, to referral agencies and legal guardians.

R 400.4162 Seclusion within secure and nonsecure facilities; seclusion plan; prohibitions; reduction and elimination.

Rule 162. (1) An agency must establish a process improvement and a seclusion reduction/elimination plan that addresses the following areas:

(a) Requires staff training in approved crisis prevention and intervention techniques including:

(i) Prevention, de-escalation techniques, and non-violent response to assaultive behavior.

(ii) Conflict management.

(iii) Minimizing and addressing trauma for youth and staff.

(b) Training must be conducted by certified trainers.

(c) Staff shall complete refresher training annually or more frequently as needed.

(d) Access to youth support team members.

(e) Review and update the youth's individual behavioral and calming plan, as needed.

(2) Prior to using seclusion, staff must use less restrictive techniques to de-escalate the situation such as talking with youth, bringing in other staff or qualified mental health professionals to assist, or engaging family members or other youth to talk with the youth. Prior to using seclusion or immediately after placing a youth in seclusion, staff will explain to the youth the reasons for the seclusion and the fact that he or she will be released upon regaining self-control.

(3) Seclusion must be performed in a manner that is safe, appropriate, and consistent with the youth's chronological and developmental age, size, gender, physical condition, medical condition, psychiatric condition, and personal history, including history of trauma.

(4) Staff must only use seclusion as a temporary response to prevent life-threatening injury or serious bodily harm when other interventions are ineffective.

(5) Staff may not use seclusion for discipline, punishment, administrative convenience, retaliation, staffing shortages, or reasons other than a temporary response to behavior that threatens immediate harm to a youth or others.

(6) Staff may not place youth in seclusion for fixed periods of time. Staff must release the youth from seclusion as soon as the youth has regained self-control and is no longer engaging in behavior that threatens immediate harm to the youth or others.

(7) During the time that a youth is in seclusion, staff must perform variable interval, eye-on checks of youth. The time between the variable interval checks must not exceed 15 minutes

unless the situation requires continuous observation for the child's safety, including, but not limited to, youth exhibiting suicidal ideations or performing self-harm.

(8) Youth in seclusion must have reasonable access to water, toilet facilities, and hygiene supplies.

(9) Staff will keep designated areas used for seclusion clean, appropriately ventilated, and at comfortable temperatures.

(10) Designated areas used for seclusion must be suicide-resistant and protrusion-free.

(11) All seclusion will be prohibited effective November 1, 2022.

R 400.4163 Health status assessment; notification; debriefing; reporting.

Rule 163. (1) The agency shall develop and implement written procedures for health status screening, notifications, debriefing, and reporting when a restraint, including an emergency restraint, or seclusion is used.

(2) Health status screening of the youth will occur immediately after seclusion or restraint by staff assigned to this screening, as defined in agency policy. If the youth has any physical complaints or if the screening staff has any concerns, depending on the severity of the complaint or concerns, the staff will arrange for the youth's health needs to be met immediately by any of the following actions:

(a) Consultation with the on-call or onsite nursing staff.

(b) Referral for an off-site health assessment.

(c) Contacting emergency medical services.

(3) Notification must be made to the following individuals in the event of a restraint or seclusion:

(a) If a restraint or seclusion does not involve injury or medical intervention, or an injury that does not give rise to a serious injury as defined by section 8 of the child protection law, 1975 PA 238, MCL 722.628, the following individuals shall be notified within 12 hours:

(i) The youth's parent or parents or legal guardian or guardians, including the MCI Superintendent, if applicable.

(ii) The youth's child and family caseworker.

(iii) The youth's attorney or guardian ad litem.

(iv) The youth's advocate, if applicable.

(v) Any other individual appropriate for notification.

(b) If a restraint or seclusion results in serious injury, the following individuals shall be notified as soon as possible but no later than 6 hours after the incident:

(i) The youth's parent or parents or legal guardian or guardians, including the MCI Superintendent, if applicable.

(ii) The youth's child and family caseworker.

(iii) The youth's attorney or guardian ad litem.

(iv) The youth's advocate, if applicable.

(v) Any other individual appropriate for notification.

(c) The notification shall include all the following:

(i) The date and time of the restraint or seclusion.

(ii) A brief summary of events that led to the restraint or seclusion.

(iii) The actions taken following the restraint or seclusion, including any medical services provided.

(iv) A plan for debriefing following the incident, including how the notified individual will be engaged in the debriefing process.

(4) The agency shall implement a debriefing protocol containing the following characteristics:

- (a) Consistent with trauma-informed principles.
 - (b) Consistent with the agency's crisis prevention and intervention processes.
 - (c) Inclusive of involved youth, caregivers, and staff directly involved in the incident, as well as supervisors, management, and agency leadership.
 - (d) Informs ongoing quality improvement in the treatment of the individual youth.
 - (e) Informs ongoing quality improvement in the agency's programs, policies, and practices.
- (5) An agency will provide an incident report on a form prescribed by the department for each incident involving the use of seclusion or restraint. The initial report shall be submitted to the department within 24 hours of the incident occurring. A final incident report shall be submitted no later than 72 hours after the incident has occurred.
- (6) If mechanical restraint was used, the report must also include the following:
- (a) Name of administrator or designee who approved equipment use.
 - (b) Time of the authorization.
 - (c) Specific rationale for use.
 - (d) Time equipment was applied and removed, if different than the time of the overall incident.
 - (e) Name of the staff member who applied the equipment.
 - (f) Name or names of staff member or staff members continuously present with the youth throughout mechanical restraint use.
- (7) The facility administrator shall review the use of restraint and seclusion on a quarterly basis to ensure that staff only use it as a temporary response to behavior that threatens immediate harm to the youth or others. Based upon the administrative review, a process improvement plan shall be implemented to address:
- (a) Strategies to prevent use of restraints and seclusions for youth.
 - (b) Improvements to staff competency in non-physical crisis prevention and intervention techniques.
- (8) The agency's policies and procedures shall be provided and explained to all youth, their families, and referring agencies upon admission.