

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 20, 2020

These rules take effect immediately upon filing with the secretary of state unless adopted under section 33, 44, or 45a(6) of the administrative procedures act of 1969, 1969 PA 306, MCL 24.233, 24.244, or 24.245a. Rules adopted under these sections become effective 7 days after 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, 722.124, and Executive Reorganization Order 2015-1, MCL 400.227.)

R 400.4101 and R 400.4159 of the Michigan Administrative Code are amended as follows:

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, and known as the child care organization licensing act.

(c) "Audit" means a review done by an auditor that conforms with generally accepted accounting principles.

(d) "Case record" means the individual file kept by an institution concerning a child who has been placed at the institution.

(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 residents.

(f) "Chief administrator designee" means a person above the level of the supervisor who approved an action, and who was not involved in the decision being reviewed.

(g) "Child caring institution" or "CCI" means a child caring institution as defined in section 1 of 1973 PA 116, MCL 722.111.

(h) "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 or other person who provides specific services under these rules.

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

(j) "Detention facility" means an institution that primarily provides care and supervision for youth pending adjudication for status or criminal offenses or pending placement in a treatment facility post-adjudication.

(k) "Department" means the Michigan department of health and human services.

(l) "Developmentally disabled" means an individual who has an impairment of general intellectual functioning or adaptive behavior that meets all of the following criteria:

(i) It originated before the person became 18 years of age.

(ii) It has continued since its origination or can be expected to continue indefinitely.

(iii) It constitutes a substantial burden to the impaired person's ability to perform normally in society.

(iv) It is attributable to 1 or more of the following:

(A) Significant cognitive impairment, cerebral palsy, epilepsy, or autism.

(B) Any other condition of a person found to be closely related to significant cognitive impairment because it produces a similar impairment or requires treatment and services similar to those required for a person who is significantly cognitively impaired.

(m) "Direct care worker" means a person who provides direct care and supervision of children in an institution.

(n) "Human behavioral science" means a course of study producing a degree from an accredited college or university in any of the following:

(i) Social work.

(ii) Psychology.

(iii) Guidance and counseling.

(iv) Consumer or community services.

(v) Criminal justice.

(vi) Family ecology.

(vii) Sociology.

(o) "Juvenile justice youth" means a youth pending adjudication for status or criminal offenses or a youth who has been adjudicated under section 2(a) 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.

(p) "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 is in compliance with these rules.

(q) "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.

(r) "Licensee designee" means the individual who is authorized by the licensee, board of directors, or the governing body for a public institution, to act on behalf of the corporation or organization on licensing matters.

(s) "Licensing authority" means the administrative unit of the department that has the responsibility for making licensing and approval recommendations for an institution.

(t) "Medication" means prescription and nonprescription medicines.

(u) "Misconduct" is conduct by a resident that affects the safety and security of residents, staff, or the community.

(v) "Open institution" means an institution or facility, or portion thereof, that is used to house residents and that is not locked against egress, except for an approved behavior management room.

(w) "Parent" means biological parent, including custodial and non-custodial parent, adoptive parent, or guardian.

(x) "Protection" means the continual responsibility of the licensee to take reasonable action to ensure the health, safety, and well-being of a resident while under the supervision of the licensee or an agent or employee of the licensee, including protection from physical harm, humiliation, intimidation, and social, moral, financial, and personal exploitation.

(y) "Resident" means a child who is admitted to and resides in an institution.

(z) "Seclusion room" means a room or area approved for the confinement or retention of a single resident. The door to the room may be equipped with a security locking device which 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.

(aa) "Secure institution" means an institution, or portion thereof, other than a seclusion room, used to house residents that is secured against egress from the building.

(bb) "Serious injury" means any significant impairment of the physical condition of the minor child as determined by qualified medical personnel. This includes, but is not limited to, burns, lacerations, bone fractures, substantial hematoma, and injuries to internal organs, whether self-inflicted or inflicted by someone else.

(cc) "Shelter care facility" means an institution which primarily provides care for residents for assessment, short-term supportive care, or placement planning.

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

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

(ff) "Terms of license" or "terms of approval" means those designations noted on an institution's license or certificate of approval for which the institution is authorized or approved. Such designations include the following:

(i) Short-term institution.

(ii) Residential treatment institution.

(iii) Secure institution.

(iv) Open institution.

(v) Age of children to be accepted for care.

(vi) Sex of children to be accepted for care.

(vii) Number of children to be accepted for care.

(viii) Effective and expiration dates.

(gg) "Treatment institution" means an institution whose primary purpose and function is to provide habilitative or rehabilitative services.

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

R 400.4159 Resident restraint; pregnant youth.

Rule 159. (1) An institution must establish and follow written policies and procedures regarding restraint. These policies and procedures shall be available to all residents, their families, and referring agencies.

(2) Resident restraint must be performed in a manner that is safe, appropriate, and proportionate to the severity of the minor child'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 resident's treatment plan.

(3) Subrules (4) and (5) apply to those public or private licensed child caring institutions for which the primary purpose is to serve juveniles that have been accused or adjudicated delinquent for having committed an offense, other than a juvenile accused or adjudicated under section 2 of chapter XIA of the probate code of 1939, 1939 PA 288, MCL 712A.2.

(4) Mechanical restraints must not be used on pregnant youth, including youth who are in labor, delivery, and post-partum recovery, unless credible, reasonable grounds exist to believe the youth presents an immediate and serious threat of hurting self, staff, or others.

(5) The following restraints are prohibited for use on pregnant youth unless reasonable grounds exist to believe the youth presents an immediate and credible risk of escape that cannot be reasonably minimized through any other method:

- (a) Abdominal restraints.
- (b) Leg and ankle restraints.
- (c) Wrist restraints behind the back.
- (d) Four-point restraints on known pregnant juveniles.
- (6) The written policy must include all of the following:

(a) Procedures for the review of an incident of restraint within 48 hours by a level of supervision above the staff ordering or conducting the restraint to determine if the requirements of the institution's procedures were adhered to in directing and conducting the restraint.

(b) Procedures for the provision of sufficient and adequate training for all staff members of the institution who may use or order the use of restraint using the institution's written procedures.

(c) Procedures for recording restraints as an incident report.

(d) Procedures for the review and aggregation of incident reports regarding restraints at least biannually by the institution's director or designee.

(7) The written policy must only permit the licensee to restrain a child for the following circumstances:

- (a) To prevent injury to the child, self-injury, or injury to others.
- (b) As a precaution against escape or truancy.
- (c) When there is serious destruction of property that places a child or others at serious threat of violence or injury if no intervention occurs.

(8) The written policy must prohibit, at a minimum, any of the following aversive punishment procedures:

- (a) The use of noxious substances.
- (b) The use of instruments causing temporary incapacitation.
- (c) Chemical restraint as defined in the act.
- (9) Restraint equipment and physical restraint techniques must not be used for punishment, discipline, or retaliation.

(10) The use of a restraint chair is prohibited.

(11) Resident restraint must only be applied for the minimum time necessary to accomplish the purpose for its use as specifically permitted in subrule (2) of this rule. Approval of a supervisor must be obtained when the restraint lasts more than 20 minutes.

(12) The approval of the administrator or his or her designee must be obtained before any use of material or mechanical restraints. A staff member shall be present continuously while material or mechanical restraint equipment is being used on a resident, and the staff member shall remain in close enough proximity to the restraint to intervene immediately in case of emergency to protect the safety of the resident.

(13) A staff person shall document each use of material or mechanical restraint equipment 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 time of removal of the equipment and the name of the person removing the equipment.