



STATE OF MICHIGAN
JOCELYN BENSON, SECRETARY OF STATE
DEPARTMENT OF STATE
LANSING

June 2, 2020

NOTICE OF FILING

ADMINISTRATIVE RULES

To: Secretary of the Senate
Clerk of the House of Representatives
Joint Committee on Administrative Rules
Michigan Office of Administrative Hearings and Rules (Administrative Rule #20-022-HS)
Legislative Service Bureau (Secretary of State Filing #20-06-01)
Department of Health and Human Services

In accordance with the requirements of Section 46 of Act No. 306 of the Public Acts of 1969, being MCL 24.246, and paragraph 16 of Executive Order 1995-6, this is to advise you that the Michigan Office of Administrative Hearings and Rules filed Administrative Rule #20-022-HS (Secretary of State Filing #20-06-01) on this date at 11:51 A.M. for the Department of Health and Human Services entitled, "Juvenile Court Operated Facilities".

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.

Sincerely,

Jocelyn Benson
Secretary of State

Melissa Malerman /CM

Melissa Malerman, Departmental Supervisor
Office of the Great Seal

Enclosure



STATE OF MICHIGAN

GRETCHEN WHITMER
GOVERNOR

DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS

ORLENE HAWKS
DIRECTOR

LEGAL CERTIFICATION OF RULES

I certify that I have examined the attached administrative rules, dated May 8, 2020, in which the Department of Health and Human Services proposes to modify a portion of the Michigan Administrative Code entitled “**Juvenile Court Operated Facilities**” by:

- ◆ Amending R 400.10101 and R 400.10177.

The Legislative Service Bureau has approved the proposed rules as to form, classification, and arrangement.

I approve the rules as to legality pursuant to the Administrative Procedures Act, MCL 24.201 *et seq.* and Executive Order No. 2019-6. In certifying the rules as to legality, I have determined that they are within the scope of the authority of the agency, do not violate constitutional rights, and are in conformity with the requirements of the Administrative Procedures Act.

Dated: May 27, 2020

Michigan Office of Administrative Hearings and Rules

By: _____

Katie Wienczewski,
Attorney



Since 1941

Legal Division

Kevin H. Studebaker, Director

CERTIFICATE OF APPROVAL

On behalf of the Legislative Service Bureau, and as required by section 45 of the Administrative Procedures Act of 1969, 1969 PA 306, MCL 24.245, I have examined the proposed rules of the Department of Health and Human Services dated May 8, 2020, amending R 400.10101 and R 400.10177 of the Department's rules entitled "Juvenile Court Operated Facilities." I approve the rules as to form, classification, and arrangement.

Pursuant to section 44(1) of 1969 PA 306, being MCL 24.244(1), these rules are being processed without a public hearing.

Dated: May 19, 2020

LEGISLATIVE SERVICE BUREAU

By

Elizabeth R. Edberg,
Legal Counsel

DEPARTMENT OF HEALTH AND HUMAN SERVICES

DIVISION OF CHILD WELFARE LICENSING

CHILDREN'S SERVICES AGENCY

JUVENILE COURT OPERATED FACILITIES

Filed with the secretary of state on June 2, 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 90 days after filing with the secretary of state.

(By authority conferred on the department of health and human services by sections 1 and 14 of the social welfare act, 1939 PA 280, MCL 400.1 and 400.14, and section 2 of 1973 PA 116, MCL 722.112.)

R 400.10101 and R 400.10177 are amended in the Michigan Administrative Code, as follows:

R 400.10101 Definitions.

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

(a) "Act" means 1973 PA 116, MCL 722.111 to 722.128, and known as the child care organization licensing act.

(b) "Behavior management" means techniques employed to control behavior in accordance with written policy and procedures related to program expectations, child safety, facility safety, and security.

(c) "Chief administrator" means the person designated as having the day-to-day responsibility for the overall administration of a facility and for assuring the care, safety, and protection of residents.

(d) "Counseling" means planned opportunities for residents to express their feelings verbally with the goal of resolving individual problems. Counseling may be in a one-to-one relationship or in a small or large group.

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

(f) "Detention" means the temporary residential care of a juvenile who requires custody in a physically restricting facility pending court action or other placement.

(g) "Direct care worker" means a person who has assigned child care responsibilities and provides direct care and supervision of children in a facility.

(h) "Discipline" means action taken for the sake of training or correction and may include punishment.

May 8, 2020

(i) "Employee" means a staff person who is under contract of hire on a full-time or a part-time basis at a juvenile facility.

(j) "Human services degree or field" means a major in a curriculum that is designed to give students an understanding of human behavior and to teach them appropriate intervention/problem-solving skills on behalf of selected populations.

(k) "Inspection" means the on-site review of a juvenile facility by the department to determine compliance with these administrative rules for a juvenile facility.

(l) "Juvenile facility," hereinafter referred to as "facility" means a program operated by a juvenile court and providing residential care as provided in the social welfare act, 1939 PA 280, MCL 400.1 to 400.119b.

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

(n) "Parent" means a biological parent, adoptive parent, or guardian.

(o) "Physical examination" means a thorough evaluation of a patient's current physical condition and a medical history conducted by, or under the supervision of, a licensed medical professional.

(p) "Policy" means a definitive, stated course or method of action that guides and determines present and future decisions and activities. A policy is a written statement of principles that guides the facility in the attainment of objectives. To comply with a rule that requires a policy, there must be evidence that a line of action or principle has been adopted and is being followed by the facility.

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

(r) "Rated capacity" means the actual number of beds that are available and approved by the department for use. This does not include hospital beds, segregation beds, or other spaces used only on a temporary basis.

(s) "Resident" means a child who is admitted to and resides in a facility.

(t) "Resident confinement room" means a locked or unlocked room or area that is approved by the licensing authority for the seclusion or retention of a resident.

(u) "Residential treatment facility" means a facility that has established a goal-oriented intervention program to provide post-dispositional residential care.

(v) "Resident record" means the individual file kept by a facility concerning a child who has been placed at the facility.

(w) "Resident restraint" means the use of material, mechanical, medical, or physical techniques for restricting a resident's behavior or movement.

(x) "Secure facility" means a facility, or portion thereof, other than a resident confinement room, that is used to retain residents in custody. Outside doors usually have locks that prevent egress from the building.

(y) "Shelter care facility" means a facility that provides care for residents pending court action or other placement planning.

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

(aa) "Social 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 shall not be interpreted to prevent a team approach to service plan development and implementation.

(bb) "Training" means any of the following:

- (i) Formal classroom instruction.
- (ii) Recognized courses provided through other means.
- (iii) On-the-job training under the direction of an instructor.
- (iv) Meetings or conferences that include agendas and instruction by instructors.
- (v) Other instructional programs that include a trainer-trainee relationship.

(cc) "Volunteer" means a person who donates his or her time in activities at a juvenile facility.

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

R 400.10177 Resident restraint; pregnant youth.

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

(2) The written policy must 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 must prescribe the maintenance of written records of the routine and emergency distribution and use of restraint equipment.

(4) Restraint equipment and physical restraint techniques must not be used for punishment.

(5) 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 and must only be applied with the approval of the facility administrator or administrative designee. Approval must be obtained within 20 minutes after the restraint has been initiated.

(6) Subrules (7) and (8) of this rule 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 XIIIA of the probate code of 1939, 1939 PA 288, MCL 712A.2.

(7) 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.

(8) 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.

(9) A staff member shall be present continuously while material or mechanical restraint equipment is being used on a resident.

(10) 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.