

Michigan Office of Administrative Hearings and Rules

611 W. Ottawa Street

Lansing, MI 48909

Phone: 517-335-8658 Fax: 517-335-9512

**AGENCY REPORT TO THE
JOINT COMMITTEE ON ADMINISTRATIVE RULES (JCAR)**

1. Agency Information

Agency name:

Health and Human Services

Division/Bureau/Office:

Children's Services Agency

Name of person completing this form:

Mary Brennan

Phone number of person completing this form:

517-284-4850

E-mail of person completing this form:

BrennanM@michigan.gov

Name of Department Regulatory Affairs Officer reviewing this form:

Mary Brennan

2. Rule Set Information

MOAHR assigned rule set number:

2020-39 HS

Title of proposed rule set:

Child Caring Institutions

3. Purpose for the proposed rules and background:

These rules address the licensing requirements for child caring institutions in the state. They provide the minimal standards for staff qualifications, facility requirements, licensing, and fire safety. The rules were last updated in 2015. Since that time, federal law requirements have changed, and new issues have evolved that require a review of the entire rule set to address such current issues involving LGBT youth, vaccinations, and variance requirements. Further, there are conflicts within the child caring institution, child placing agencies, and foster family and group home rules that need to be amended for consistency for the contracted agencies providing services.

4. Summary of proposed rules:

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These rules address the licensing requirements for child caring institutions in the state. They provide the minimal standards for staff qualifications, facility requirements, licensing, and fire safety. The rules were last updated in 2015. Current issues have evolved that require a review of the entire rule set to address LGBTQ youth, restraints, seclusion, and behavior management. Further, there are conflicts within the child caring institution, child placing agencies, and foster family and group home rules that need to be amended for consistency for the contracted agencies providing services. All three rule sets are currently being revised.

5. List names of newspapers in which the notice of public hearing was published and publication dates:

Oakland Press, 5/18/21; Marquette Mining Journal, 5/13/2021; Battle Creek Enquirer, 5/17/21

6. Date of publication of rules and notice of public hearing in Michigan Register:

6/1/2021

7. Date, time, and location of public hearing:

6/3/2021 09:00 AM at The public hearing will be held virtually via Zoom to receive public comments while complying with measures designed to help prevent the spread of Coronavirus Disease 2019 (COVID 19) and the City of Lansing Resolution #2021-081. , <https://tinyurl.com/4rx79535> Meeting ID: 871 2605 2252 Passcode: rWvA73

8. Provide the link the agency used to post the regulatory impact statement and cost-benefit analysis on its website:

<https://ARS.apps.lara.state.mi.us/Transaction/RFRTransaction?TransactionID=167>

9. List of the name and title of agency representative(s) attending public hearing:

Kelly Maltby, Manager, Compliance and Regulatory Action Unit, Division of Child Welfare Licensing; Soleil Campbell, Manager, Juvenile Justice Programs and Prison Rape Elimination Act (PREA) Juvenile Coordinator

10. Persons submitting comments of support:

Mark McWilliams, Public Policy and Media Relations, Disability Rights Michigan; Jeana Koerber, PH D / Calvin Gage, MA, Great Lakes Center for Autism and Research; Kurt M. Sebaly, Executive Director, Penrickton Center for Blind Children; Jerry Peterson, Director, Ruth Ellis Center; Gabrielle French Policy Associate, Michigan Center for Youth Justice; Jay Kaplan, Staff Attorney, ACLU of Michigan; Melissa Keating, Eagle Village; Merissa Kovach, Policy Strategist, American Civil Liberties Union of Michigan; Jason Smith, Executive Director, Michigan Center for Youth Justice; Bernadette E. Brown, B. Brown Consulting, LLC; Jenifer Nyhuis, Chief Executive Officer, Havenwyck Hospital; Juli Reynolds, Bay County Juvenile Facility.

11. Persons submitting comments of opposition:

Jeana Koerber, PH D / Calvin Gage, MA, Great Lakes Center for Autism and Research; Kurt M. Sebaly, Executive Director, Penrickton Center for Blind Children; Gabrielle French, Policy Associate, Michigan Center for Youth Justice.

12. Identify any changes made to the proposed rules based on comments received during the public comment period:

	Name & Organization	Comments made at public hearing	Written Comments	Agency Rationale for change	Rule number & citation changed
1	Jeana Koerber, PH D / Calvin Gage, MA Great Lakes Center for Autism and Research		In Act 116.7229 (D) this is defined as an emergency safety situation. In the MDHHS standards this is listed as emergency interventions, for which one is physical management. Under physical management in the MDHHS standards, this is the language “Physical management shall only be used on an emergency basis when the situation places the individual or others at imminent risk of serious physical harm. To ensure the safety of each consumer and staff, each agency shall designate emergency physical management techniques to be utilized during emergency situations.”	DHHS agrees that the definitions should be consistent. The definition has been updated to add the word "or safety intervention" consistent with the definition in MCL 722.112b.	R 400.4101(j)

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2	Jeana Koerber, PH D / Calvin Gage, MA Great Lakes Center for Autism and Research		Act 116 722.122B(G) does not define mechanical restraint in this manner, nor do the MDHHS behavioral health and developmental disabilities standards. Both Act 116 and MDHHS have an exclusion for the use of devices used for protective equipment and anatomical support	DHHS agrees that the definitions should be consistent. The defintions will be changed to remain consistent with the those definition in MCL 722.112b.	R 400.4101(s)
3	Jeana Koerber, PH D / Calvin Gage, MA Great Lakes Center for Autism and Research		In Act 116 722.122B(H) does not de?ne personal restraint in this manner. Act 116 has an exclusionary list of items that do not meet the de? nition of personal restraint that are omitted here. MDHHS standards discuss this under physical management which is de?ned as “A technique used by staff as an emergency intervention to restrict the movement of a recipient by	DHHS agrees that the definitions should be consistent. The defintions will be changed to remain consistent with the those definition in MCL 722.112b.	R 400.4101 (w)

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		<p>direct physical contact to prevent the recipient from seriously harming himself, herself, or others. NOTE: Physical management shall only be used on an emergency basis when the situation places the individual or others at imminent risk of serious physical harm. To ensure the safety of each consumer and staff, each agency shall designate emergency physical management techniques to be utilized during emergency situations”</p>		

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4	Gabrielle French Policy Associate Michigan Center for Youth Justice		Secure institution” is defined as “any public or private licensed child caring institution where the movement and activities of residents is restricted against egress from the building.” MCYJ recommends that language be added to clarify that this means a “locked” facility, compared with a Nonsecure institution,” which does include language noted that it is “not locked against egress.”	DHHS agrees with the recommendation. The definition will include the term "locked" for "secure institution".	R 400.4101 (aa)

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5	Melissa Keating, Eagle Village	Looking at rule 122 with the parent visitation...But looking at it, it's very often that we don't have a court order for visitation but we follow what the MDHHS workers parent/agency treatment plan is regarding visitation. And I know sometimes there are no visits and I don't always see court orders for that and I'm wondering if it would make more sense to be within the guidelines of the MDHHS service plans and PATPs.		DHHS agrees to amend Rule 122 as follows: . Family time must be provided unless parental rights have been terminated, or the resident's record contains documentation that visitation is detrimental to the resident the child's service plan prohibits visitation, or there is a court order restricting the family time.	R 400.4122
6	Jerry Peterson, Director Ruth Ellis Center (4 others with same comment)		In conjunction with local and national partners, we would like to express support for the proposed rules changes, specifically protections for youth with diverse sexual orientation, gender identity, and expression (SOGIE) in R 400.4137 on sleeping rooms. (See attached letter with proposed new language)	The amendments to the proposed rules provide for increases safety for SOGIE youth. DHHS adopts the proposed language submitted by Ruth Ellis Center.	R 400.4137

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7	Jeana Koerber, PH D / Calvin Gage, MA Great Lakes Center for Autism and Research		In emergency situations often physician assistants (PA) or nurse practitioners are writing prescriptions. During routine visits, our youth are also often being seen at a family health center so a licensed physician is often not writing prescriptions. We propose the language be written in a way to include these professionals.	DHHS agrees with the comment and has changed the language to "licensed medical practitioner."	R 400.4142
8	Jeana Koerber, PH D / Calvin Gage, MA Great Lakes Center for Autism and Research		Same issue as indicated in rule 4142(2e). Many dietary needs come from a PA or another profession that isn't specifically a licensed physician.	DHHS has changed the language to "licensed medical practitioner."	R 400.4149
9	Jeana Koerber, PH D / Calvin Gage, MA Great Lakes Center for Autism and Research		Many of our youth are coming from their homes and plan to return home. This seems like a more appropriate statement for the foster care contract than the CCI rules	DHHS has added the terms "transition" and "discharge" to the language.	R 400.4155

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10	Gabrielle French Policy Associate Michigan Center for Youth Justice		In Rule 157(1)(a), the proposed rule requires the CCI to develop written policies for behavioral and calming plan; however, it does not specify whether or to whom the plan is submitted. We request that language be added to require the plans to be submitted to the Michigan Department of Health and Human Services and be made publicly available on the MDHHS website.	DHHS agrees with the recommendation to specify the plans are received at DHHS. DHHS opposes they be made public as there are too many CCIs with separate behavioral and calming plans based upon the institution's license .	R 400.4157 (1)(a)

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11	Gabrielle French Policy Associate Michigan Center for Youth Justice		In Rule 157(1)(b) and (1)(c), the proposed rule requires the development of an individualized behavioral and calming plan for each child. We request that language be included that specifies that the youth, and his/her family as appropriate, be involved in the development of the plan, in ine with the mental health code, which requires treatment to be person-centered.	DHHS has amended the current subrule 157(1)(c)(iii) to remove "prevention" and add "behavioral and calming plan" that invites input from youth and family.	R 400.4157 (1)(b) and (c)

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12	Gabrielle French Policy Associate Michigan Center for Youth Justice		<p>In rule 158(1)(a) (ii), the proposed rule states, “Hitting or striking, throwing, kicking, pulling or pushing a child on any part of their body for the purpose of punishment.”</p> <p>MCYJ recommends removing the phrase, “for the purpose of punishment,” acknowledging that none of these behaviors should occur under any circumstances. By qualifying it as "for the purpose of punishment," it leaves it open to say that these harmful approaches may be warranted in some situations</p>	<p>DHHS agrees with the recommendation of removing the language "for the purpose of punishment" Language struck.</p>	R 400.4158 (1)(a)

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13	Gabrielle French Policy Associate Michigan Center for Youth Justice		In Rule 159, MCYJ strongly supports the proposed rule to require all child caring institutions to establish a process improvement and restraint reduction plan. Since secure juvenile justice facilities were separated out to permit some forms of mechanical restraints, we recommend adding language that specifically states, "A child caring institution, including non-secure and secure juvenile justice facilities, must establish a process improvement and restraint reduction/elimination plan..."	DHHS agrees to add "private secure juvenile justice facilities". The county operated facilities fall under the Social Welfare Act and are not considered a child caring institution.,	R 400.4159

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14	Juli Reynolds, Bay County Juvenile Facility	In Rule 159, It just seems to be a lot in that sentence and I was just trying -- I thought like it makes it sounds like it's eliminated, but not for secure facilities. My thought was -- my understanding throughout all these discussions was restraints are being eliminated for all facilities except for the emergency restraint when it came to, you know, the welfare -- I shouldn't say welfare, but the severe injury of youth.		DHHS is in agreement with the public comment. Secure detention facilities was left in the rules inadvertently when the emergency restraint rule was developed. "secure detention facilities" removed from the language.	400.4159
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13.Date report completed:

9/24/2021