

Michigan Office of Administrative Hearings and Rules
MOAHR-Rules@michigan.gov

**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:

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:

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Battle Creek Enquirer-May 17, 2021; Oakland Press, May 18, 2021; Marquette Mining Journal, May 13, 2021.

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, Division of Child Welfare Licensing Analyst; Soleil Campbell, State Administrative Manager 15, Juvenile Justice Services

10. Persons submitting comments of support:

Because of the different comments made that did not specifically indicate either "support" or "opposition", all persons were added to Section 5 below.

11. Persons submitting comments of opposition:

Because of the different comments made that did not specifically indicate either "support" or "opposition", all persons were added to Section 5 below.

12. Persons submitting other comments:

Jenifer Nyhuis, CEO, Havenwyck Hospital; Jay Kaplan, ACLU of Michigan; Kurt Sebal, Executive Director, Penrickton Center; Jeana Koerber and Calvin Gage, Great Lake Center for Autism Treatment and Research; Bernadette Brown, B Brown Consulting; Jason Smith, Executive Director, Michigan Center for Youth Justice; Tori Benden, Director, Calhoun County Juvenile Center; Patricia Jansen, Livingston County ESA; Jerry Peterson, Director, Ruth Ellis; Melissa Kovach, ACLU of Michigan; Yona Issacs; Mark McWilliams, Disability Rights Michigan; Brian Philson; Gabrielle French, MCYJ;

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

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	Name & Organization	Comments made at public hearing	Written Comments	Agency Rationale for Rule Change and Description of Change(s) Made	Rule number & citation changed
1	Gabrielle French, MCYJ	In rule 158(l)(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." MCYJ recommends removing the phrase, "for the purpose of punishment, n 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		DHHS agrees with the recommendation of removal of the language "for the purpose of punishment" Language struck.	R 400.4158 (1)(a)(ii)

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2	Gabrielle French, MCYJ	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 instrtution.	R 400.4159
3	Gabrielle French, MCYJ	In Rule 159{1}(g), the provision requires each CCI to establish a restraint reduction committee. MCTJ strongly supports these provisions; however, it does not specify which stakeholders must be included in this committee, nor to whom this committee is held accountable. It is also unclear if a similar state-level restraint reduction committee will be convened by MDHHS that can analyze and		DHHS agrees with the proposed language to include youth and family representation on the committee. DHHS opposes adding a requirement of an outside organization at this time due to confidentiality concerns, in addition to separate interests outside the purpose of the	R 400.4159 (1)

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		<p>track process improvements toward eliminating restraints across CCIs. We recommend language that states, "the restraint reduction committee must include representation from at least one youth and/or family member and at least one outside organization that is not a ca. The agency's committee shall meet quarterly and submit quarterly progress reports to MDHHS. A representative from the CCI's restraint reduction committee must participate in a statewide restraint reduction committee convened by MOHHS."</p>		<p>committee.</p>	
4	Gabrielle French, MCYJ	<p>In Rule 161(1), MCYJ strongly supports the development of written policies and procedures regarding the use of mechanical restraints. We also suggest adding language that requires that these policies be posted publicly in visiting areas and be required to be provided in writing in their entirety, to referral agencies and legal guardians.</p>		<p>DHHS agrees with adding the proposed language to rule 161 but placed at the end as subrule (11) for consistency with other rules.</p>	<p>R 400.4161 (1)</p>

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5	Jeana Koerber/Calvin Gage-Great Lake Center for Autism Treatment and Research;		If a personal or mechanical restraint is used, staff must use the permitted methods of personal and mechanical restraint, appropriate techniques for use of restraints, and the child caring institution must provide guidance to staff in deciding what level of restraint to use if that becomes necessary.	This language was removed from R 400.4159 and only mechanical restraint guidance is provided under R 400.4161.	R 400.4159 (6)
6	Jeana Koerber/Calvin Gage-Great Lakes Center for Autism Treatment and Research		The penal code referenced here references child abuse. This would indicate you could only use emergency restraint if the danger was to another child. That is not consistent with Act 116, the MDHHS guidelines, or the definitions provided earlier in these proposed rules.	DHHS agrees that the citation does not align with the Child Care Organizations Act. Citation removed.	R 400.4160 (a)

14.Date report completed:

5/20/2022