

DEPARTMENT OF HEALTH AND HUMAN
SERVICES CHILDREN'S SERVICES AGENCY,
PUBLIC HEARING I

June 3, 2021

Prepared by



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STATE OF MICHIGAN
DEPARTMENT OF HEALTH AND HUMAN SERVICES
CHILDREN'S SERVICES AGENCY

PUBLIC HEARING - VOL. I
RULES FOR CHILD CARING INSTITUTIONS

via Zoom Video Conference

Thursday, June 3, 2021, 9:00 a.m.

APPEARANCES:

For the Department of
Human and Human
Services:

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Regulatory Affairs Officer
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Also Present:

Kelly Maltby, Soleil Campbell

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1 Via Zoom Video Conference

2 Thursday, June 3, 2021 - 9:06 a.m.

3 MS. BRENNAN: Okay. Let's get started. It is now
4 9:06 a.m. Marcy, are you set to go?

5 REPORTER: I am. Thank you.

6 MS. BRENNAN: Okay. Very good. 9:06 a.m., on
7 Thursday, June 3rd, 2021. My name is Mary Brennan. Last
8 name spelled B-r-e-n-n-a-n. And I am the regulatory affairs
9 officer for the Michigan Department of Health and Human
10 Services.

11 We are on the record today for the public hearing
12 for the administrative rules involving Child Caring
13 Institutions number 2020-039 H.S. At this time I'd like to
14 introduce our subject matter experts for the hearing. If
15 they could introduce themselves and what their job function
16 is at DHHS? We'll start with you, Kelly.

17 MS. MALTBY: Good morning, everybody. My name is
18 Kelly Maltby and I am a manager at the central office in the
19 Division of Child Welfare Licensing. I handle all things
20 related to rules and statutes as well as I oversee
21 disciplinary action of foster homes and child welfare
22 agencies.

23 MS. BRENNAN: Thank you very much, Kelly. And our
24 other expert today will be Soleil. Soleil, can you
25 introduce yourself and your function? Did we lose Soleil?

1 MS. CAMPBELL: Good morning, everyone. This is
2 Soleil Campbell. I'm the juvenile justice program office
3 manager at the Michigan Department of Health and Human
4 Services.

5 MS. BRENNAN: Okay. Very good. Throughout this
6 hearing I will periodically place the public hearing
7 housekeeping rules up and process document for your
8 convenience. If we can go over it really -- rather quickly.
9 All phones will be muted upon entry to the hearing. The
10 hearing will be recorded for purposes of transcription and
11 transparency. We have the wonderful Marcy from Network
12 Reporting who will be doing the transcribing for this
13 hearing. If you'd like to make a comment, please raise your
14 hand. If you are not on Zoom, but have called in, I will
15 refer to the last four of your phone number to see if you'd
16 like to make a statement. One person shall speak at a time.
17 When you would like to make a statement and I call your
18 name, please unmute your computer or phone. While your
19 comments are invaluable to this public hearing, we ask that
20 you respect the public hearing process, keep comments
21 respectable and do not disrupt the hearing process for all.
22 Everyone who wishes to provide testimony will get the
23 opportunity to do so.

24 If I can remind you, this is the first of two
25 public hearings. The next one will be a week from today

1 starting at 9:00 o'clock. That is required by statute that
2 two public hearings be held. If you wish to make a
3 statement, you will be asked your name. Please spell your
4 last name for Marcy and identify what organization if any
5 you are speaking on behalf of. Two 15-minute breaks, one at
6 10:00, one at 2:00, and I'm going to give you a whole
7 30-minute break at 12:00 noon for lunch.

8 Comments for the public hearing ends next Friday,
9 June 11th. If you have any further comments to make that
10 you wanted to give and forgot to do so or can't make the
11 next public hearing, this is the e-mail box you would
12 provide that written testimony to. The rule status is
13 available at that link if you want to jot that down. It'll
14 let you know where we are in the process. And finally, a
15 copy of the hearing transcript will be available at the
16 AdminRules e-mail box. Please wait two weeks. Marcy, is
17 that presumptuous, two weeks?

18 REPORTER: Two weeks is our normal. Thank you.

19 MS. BRENNAN: Okay. Two weeks before requesting a
20 copy. So those are our housekeeping rules.

21 I would ask that if you'd like to make a comment,
22 please raise your hand and I will call on you in the order
23 of the hands raised. And, again, I will refer to any phone
24 numbers. If I haven't referred to a phone number, please
25 interrupt me and say, "Hey, Mary, you're forgetting about

1 me." That'll be fine. So if you want to -- we want to take
2 it from here, who would like to make our first comment?

3 MS. CAMPBELL: Mary, I don't know if it's just me,
4 but I'm seeing I Love Lucy.

5 MS. BRENNAN: Let me see. I have one hand up. Is
6 this Gabrielle French?

7 MS. GABRIELLE FRENCH: Yes. Hi. Good morning.

8 MS. BRENNAN: Good morning. Would you spell --
9 please spell your first and last name and proceed with your
10 comment? Thank you.

11 GABRIELLE FRENCH

12 MS. GABRIELLE FRENCH: Yes. So my first name is
13 spelled G-a-b-r-i-e-l-l-e and my last name is spelled
14 F-r-e-n-c-h, French like the language. All right.

15 Well, good morning. Thank you for the opportunity
16 to testify before you today. My name is Gabrielle French,
17 and I'm the policy associate for the Michigan Center for
18 Youth Justice. I'm here to testify in support of the rule
19 changes overall with several recommendations.

20 The rule changes are generally an improvement on
21 the previous rules. As a member of the steering committee
22 convened by MDHHS, I can say confidently that these changes
23 were not made lightly or without thoughtful consideration.
24 These changes bring the rules into compliance with
25 nationally recognized best practices and represent

1 collaborative input for most key stakeholder groups.
2 However, as a youth justice advocacy organization, MCYJ felt
3 it critical to highlight where the rule changes are leaving
4 behind justice involved youth.

5 Our recommendations which we have submitted in a
6 detailed public comment emphasize the following points.
7 First, the significant need for oversight. Following the
8 tragic and preventable death of Cornelius Frederick, MCYJ
9 began examining Lakeside Academy's licensure records finding
10 significant and repeated violations. It is our belief that
11 with more effective oversight, these continuing violations
12 would not have occurred and the safety of Michigan's
13 children would be improved in such situations. Second, the
14 need for youth and family is to be involved in all aspects
15 of treatment, including the development of the child's
16 treatment plan. Families and caregivers should also be
17 consulted in the development of administrative rules and
18 policy decisions that would impact the child. Last, and
19 most critical for MCYJ, is the necessity for juvenile
20 facilities which include detention and secure residential
21 facilities for justice involved youth to be subject to the
22 same requirements as other child caring institution. In the
23 proposed rule changes, secure juvenile justice facilities
24 are separated out from CCIs and subject to a different set
25 of rules. MCYJ holds that juvenile facilities should be

1 included in the plan for the elimination of seclusion and
2 non-emergency restraints by May 1st, 2022, as are CCIs.

3 With the consideration and integration of these
4 recommendations, MCYJ supports the proposed rule changes.
5 Thank you for your time and I'm happy to take any questions.

6 MS. BRENNAN: Are there any questions for
7 Gabrielle? Gabrielle, thank you very much for your comment.

8 MS. GABRIELLE FRENCH: Thank you.

9 MS. BRENNAN: Okay. Any more hands? Does anyone
10 on the phone care to make a statement? Well you guys are
11 very cooperative today. It's going to be a easy public
12 hearing. Okay. I'm going to place my phone on mute for a
13 minute. I will continue to check back to see if there are
14 any hands up, anybody wants to offer any testimony and we'll
15 continue to allow people

16 as participants as the morning goes on. Thank
17 you. Marcy, you want to go off the record until we have
18 testimony and then I will let you know to move back on.

19 REPORTER: Sounds good. Thank you.

20 MS. BRENNAN: Thank you.

21 (Off the record)

22 MS. BRENNAN: Good morning. For those who just
23 joined in the last 15, 20 minutes, what's up is a scrolling
24 of the housekeeping rules for today. If you would like to
25 make a comment, please raise your hand and we will get your

1 testimony down. Thank you. Marcy, off the record.

2 REPORTER: Thank you.

3 (Off the record)

4 MS. BRENNAN: Hi, Melissa. How are you?

5 MS. MELISSA KEATING: I'm good. Thanks.

6 MS. BRENNAN: Please move forward with your
7 comment -- I -- oh, can you wait one second? Marcy, are you
8 back on the record?

9 REPORTER: I am.

10 MS. BRENNAN: Okay. Very good. Melissa, can you
11 please provide your comment? Thank you.

12 MELISSA KEATING

13 MS. MELISSA KEATING: Yeah. Looking at rule 122
14 with the parent visitation.

15 UNIDENTIFIED SPEAKER: 4112.

16 MS. MELISSA KEATING: I guess, would a -- I
17 haven't done a public hearing before. I'm sorry. But
18 looking at it, it's very often that we don't have a court
19 order for visitation but we follow what the MDHHS workers
20 parent/agency treatment plan is regarding visitation. And I
21 know sometimes there are no visits and I don't always see
22 court orders for that and I'm wondering if it would make
23 more sense to be within the guidelines of the MDHHS service
24 plans and PATPs.

25 MS. BRENNAN: Kelly? Soleil? What do you think?

1 I'm trying to find the rule right now. Did you say 122?

2 MS. CAMPBELL: Yes, that's what she said.

3 MS. BRENNAN: Okay.

4 MS. CAMPBELL: So there are -- and I'm not sure
5 what type of use you're referring to, if they're non-MDHHS
6 supervised use. So the child caring institution rules
7 obviously apply to all youths in the child caring
8 institution and not necessarily just those that are under
9 the care and supervision of MDHHS. But there are guidelines
10 within here to be able to do that in accordance with the
11 service plan. So this is requiring child caring
12 institutions to be able to provide for the visits and making
13 sure that it is available. There could be a court order
14 such as a personal protection order or a restriction put on
15 parenting time for safety issues and so that accommodates
16 that in the second half of the rule.

17 MS. MELISSA KEATING: Okay. I read it as family
18 time must be provided. What if it was -- if -- or there is
19 a court order/treatment plan or something that -- I feel
20 like I could see us getting stuck here even though we're
21 following what the external team is recommending and
22 wanting.

23 MS. CAMPBELL: Yeah, the requirement in this rule
24 is requiring it to be provided unless there's a court order
25 that restricts the parenting time or unless parental rights

1 have been terminated. And so if there's a recommendation
2 against parenting time, that would need to be brought to
3 court to decide the issues so all parties could have input.

4 MS. MELISSA KEATING: Okay. I guess I -- yeah, I
5 know that sometimes we ask for stuff like that and don't get
6 it, so I would hope if we just have documentation requesting
7 it, that would cover us.

8 MS. MALTBY: And Melissa --

9 MS. BRENNAN: Oh.

10 MS. MALTBY: Oh, I'm sorry. Go ahead, Mary.

11 MS. BRENNAN: All I was going to say is if Melissa
12 has some proposed language to, you know, update the rule or
13 anything, by all means send it to the e-mail box and we can
14 review it. Kelly, go on.

15 MS. MALTBY: Honestly, that's exactly what I was
16 going to say, Mary. Is that Melissa have proposed language,
17 we'd be happy to consider it.

18 MS. BRENNAN: Great minds think alike.

19 MS. MELISSA KEATING: I can do that. Thank you,
20 guys.

21 MS. BRENNAN: Thank you.

22 REPORTER: Mary, are we off the record?

23 MS. BRENNAN: Actually, it's 9:55 at this time.
24 I'm telling you people, I've worked up quite a sweat with
25 all of this arguing and everything else. But how about we

1 take a 15-minute break and go back on the record at 10:10?

2 REPORTER: Thank you.

3 MS. BRENNAN: Off the record. Thanks.

4 (Off the record)

5 MS. BRENNAN: Okay. Good morning, everyone. For
6 those who just joined us, we're back on the record for the
7 child caring institution rules 2020-39 HAS. For those who
8 have just joined, I will be scrolling the housekeeping
9 rules. If you would like to make a comment, please raise
10 your hand if you are on a computer. If you are on your
11 phone, just come right out and indicate you'd like to make a
12 statement. Marcy, why don't we go off the record until
13 there is a comment?

14 REPORTER: Thank you.

15 MS. BRENNAN: Thank you.

16 (Off the record)

17 MS. BRENNAN: You want to spell your first and
18 last name, Tara, please?

19 MS. TARA DEGROOT: T-a-r-a D-e-G-r-o-o-t.

20 MS. BRENNAN: Sorry. Marcy, did you catch that?
21 Are we back on the record?

22 REPORTER: I did. Thank you.

23 MS. BRENNAN: Okay. And please go ahead.

24 TARA DEGROOT

25 MS. TARA DEGROOT: I just wanted to make a comment

1 on the licensing rules of 400.4113, Employee Records. One
2 of the challenges of running a child caring institution
3 these days tends to be hiring. I think especially now that
4 it's during COVID we're all really feeling that. And one of
5 the biggest challenges I have run into several times,
6 especially when hiring folks out of state, is this
7 requirement under (i) documentation from the Department of
8 Human Services for the equivalent state. The line I have
9 trouble with is, "The document shall be completed not more
10 than 30 days prior to the start of employment" -- this is
11 specifically referring to check clearances for child abuse.
12 And a number of times when hiring I've had issues of running
13 into that 30 days and I'm not sure that the 30 days provides
14 any measure of safety in terms of if I hire somebody in 29
15 days and they go and work for me and it's another year
16 before I re-run the report versus hiring them at 31 days
17 and, or, rather, probably more like 40 days and having to
18 re-run the report. I think it's just a burdensome
19 regulation in terms of trying to hire folks. It doesn't
20 really provide any measure of safety. I'd like to see it
21 either eliminated all together or just increased to maybe 45
22 or 60 days so that I'm having less trouble with those hires
23 that take awhile to get pushed through. I guess that's my
24 comment.

25 MS. BRENNAN: Tara, can you identify which rule

1 you're speaking of? Do you know?

2 MS. TARA DEGROOT: Sure. It's under "Employee
3 Records" which is 4113.

4 MS. MALTBY: And this is Kelly Maltby. I just
5 wanted to get some clarification. Are you operating a
6 contracted child caring institution or is your child caring
7 institution non-contracted with the state?

8 MS. TARA DEGROOT: We're not contracted with the
9 state. We run a shelter under a federal grant.

10 MS. MALTBY: Okay. Got it. Okay. So the
11 background to this is recently there was some legislation
12 passed known as the Families First Prevention Services Act.
13 And this act required that all Michigan contracted CCIs have
14 this particular documentation where if the person has
15 resided out of the state of Michigan within the previous
16 five years, so it's only people who have lived out of state
17 within the previous five years, that the state of Michigan
18 has to make a request of that other state for an abuse and
19 neglect background check.

20 Now, I know that, you know, because my staff
21 actually operate and they run these clearances for our
22 contracted facilities. I know that sometimes these out of
23 state entities are really a challenge to get those
24 clearances within a timely manner. So once the state has
25 decided and what we got clarification from the federal

1 government on is the person can begin employment as long as
2 the request has been made of the other state at -- before
3 the person is hired. So for example, if you're hiring an
4 employee who has lived in the state of Florida, that person
5 can begin working with you as long as you've made the
6 request to the state of Florida for the particular
7 background check, the child abuse neglect background check
8 results. I will tell you also -- and I can shoot you my
9 e-mail afterwards -- because my staff do this continuously,
10 we know every -- in and out of every state at this point and
11 what forms you have to submit and we would be happy to help
12 you. You know, if you'd like to shoot me an e-mail, I can
13 help you make sure that you have the right forms for the
14 right states and that makes it -- the process a lot smoother
15 for your agency.

16 MS. TARA DEGROOT: So am I to understand that it's
17 some sort of legislation that's putting that 30-day
18 requirement in there?

19 MS. MALTBY: Right; exactly. So, I mean, what --
20 the 30-day requirement is saying that, you know, basically
21 the child abuse neglect check has to be recent, right. Like
22 you can't present a child abuse neglect check from five
23 years ago and say this is, you know, this is legit. The
24 reason that it's giving that 30 days is because, you know,
25 we want to make sure that the check is recent.

1 MS. TARA DEGROOT: Yeah. I think the problem is
2 the 30-day window is definitely -- can definitely prove
3 onerous if a person's taking awhile to get hired.

4 MS. MALTBY: Right; right. I hear you. And, I
5 mean, that's something that maybe we can discuss, you know,
6 as we go through the testimony of this as whether or not we
7 can extend that time period out. But, you know, as long
8 as -- as long as the request has been made to the other
9 state, you know, then you're safe to hire that person and
10 allow them to start working. So if you --

11 MS. TARA DEGROOT: Sure. I understand that. Even
12 within -- even -- even excluding out of state hires there's
13 other reasons that a hiring might take longer.

14 MS. MALTBY: Right.

15 MS. TARA DEGROOT: It's pro- -- like all of a
16 sudden -- and it's not like you were really conscious of it,
17 and all of a sudden you're within like a week, "Oh, my gosh,
18 now we have to re-run the entire check and that's often up
19 to two weeks more time to hiring somebody.

20 MS. MALTBY: Right. What I would recommend is
21 that that's one of the -- one of the final things that
22 you're doing as this person has been onboard so that you
23 aren't having to make that check. We can definitely discuss
24 whether or not we can extend that 30-day current requirement
25 out further after this hearing. But, you know, from a

1 technical standpoint, I would say most states take no longer
2 than 15 days to return the background checks to you provided
3 that you do it on the correct form and in the correct
4 fashion with that state. So, and that's where, like I said,
5 my crew could probably help out and make sure that
6 everything is going okay.

7 MS. TARA DEGROOT: Well, honestly, even as little
8 as like about a 15-day addition to that would really make a
9 huge difference.

10 MS. MALTBY: Right. Okay. Well, I appreciate
11 your comment.

12 MS. TARA DEGROOT: Thank you.

13 MS. MALTBY: And we will look at that. Yup.

14 MS. CAMPBELL: Kelly, this is Soleil. I'm also
15 wondering if we can look at, like, whether or not like an
16 offer of contingent employment knowing that then it would be
17 within 30 days, like if that's something that could fit
18 within those rules?

19 MS. MALTBY: Yeah, that makes a lot of sense,
20 definitely.

21 MS. BRENNAN: And this is Mary. Maybe why
22 wouldn't we note that maybe this is something to flush out
23 in the technical assistance manual?

24 MS. MALTBY: That would be -- that would be a
25 really great idea especially with all the different

1 intricacies of out of state entities and who they can come
2 to for help on making those requests.

3 MS. BRENNAN: Perfect. Okay. Tara, thank you for
4 your comment.

5 MS. TARA DEGROOT: Thank you for hearing me.

6 MS. BRENNAN: Marcy, off the record, please.

7 REPORTER: Thank you.

8 (Off the record)

9 MS. BRENNAN: Okay. Give it a go, Melissa.

10 MS. MELISSA KEATING: All right, Thanks.

11 MELISSA KEATING

12 MS. MELISSA KEATING: I'm looking at Rule
13 112(7)(b).

14 MS. BRENNAN: For the record, "A staff member will
15 conduct himself or herself in a manner that is conducive to
16 the welfare of children and be able to meet the needs of
17 children and provide for their care, supervision, and
18 protection." Is that what you're referencing?

19 MS. MELISSA KEATING: Yeah.

20 MS. BRENNAN: Okay.

21 MS. MELISSA KEATING: And I don't have great word
22 advice, but I promise to work on it and shoot you another
23 e-mail. But I guess I'm reading that and feeling like it's
24 relatively broad and up to probably whoever shows up for an
25 investigation to decide where it fits. I guess wondering if

1 there's -- if we can add some clarity of accountability for
2 the individual versus the agency? My thought process is
3 that we train them, they're qualified, they're supervised,
4 they make a poor decision and puts the agency in
5 noncompliance even though they're in compliance up to not
6 controlling an individual.

7 MS. BRENNAN: Did you have some proposed language
8 to tighten it up?

9 MS. MELISSA KEATING: I'm sitting here trying to
10 think of that and I don't have -- it's -- everything I'm
11 coming up with still feels pretty broad and I'm just
12 thinking of consultants that we've had over the years. I
13 can -- I can see different interpretation from several. I
14 think was this -- is this where we usually see the
15 qualification citations; right? I think I remember we had
16 quite a discussion on this awhile back.

17 MS. MALTBY: Yes, the place is the staff
18 qualifications rule, yes, where it be -- it used to be,

19 "(7) A person with duties shall have both of the
20 following: (a) Ability to perform the duties of the
21 position assigned; and (b) Experience to perform the
22 duties of the position assigned."

23 So the new language replaces that.

24 MS. BRENNAN: This is Mary Brennan. The good news
25 is that you have at least 'til next Friday to come up with

1 the -- maybe tightening up the language a little bit. I
2 hear what you're saying and I think Kelly and Soleil also
3 hear what you're saying. So any proposed language to assist
4 on that in tightening up and we will review.

5 MS. MALTBY: The discussion on this area -- and
6 this is Kelly Maltby again -- that was mulled over at the
7 rulemaking committees was the fact that there are a lot of
8 staff that have the ability to perform the duties and the
9 experience, but they don't perform the duties. They may,
10 you know, do something inappropriate with a child or they
11 might physically harm a child, and for that we were
12 struggling all these years in DCW with finding that rule
13 language in (7), what used to be 7(a) and (b), and having it
14 tie into what the staff person's conduct was. As far as an
15 agency as a child caring institution, there's a certain
16 amount of what's known as vicarious liability where the
17 licensee is held responsible for the individual actions of
18 their staff. However, in this rule the way that we changed
19 it to read, it's still -- it's not going to hold an agency
20 automatically accountable if you have a staff that for lack
21 of a better term goes rogue; right? This is the rule that
22 we would cite if you had a staff that acted inappropriately.
23 It doesn't necessarily mean that there's something that's
24 going to happen, you know, to the license as an agency. We
25 just wanted to make the language fit a little bit better

1 with some of the issues that we see staff having in child
2 caring institutions, some of the ways in which things happen
3 wrong. So, but, yes, I mean, definitely if you have, you
4 know, some language suggestions, we're more than happy to
5 take a look at it.

6 MS. MELISSA KEATING: Okay. We'll look at it and
7 I will send something. I don't have a magic answer right
8 now. I'm sorry.

9 MS. BRENNAN: Thank you for the comment. **Tori,
10 are you still on the call?

11 MS. TORI BENDEN: I am.

12 TORI BENDEN

13 MS. BRENNAN: Tori, you just sent me an e-mail and
14 I do appreciate it. Do you mind if I read it out?

15 MS. TORI BENDEN: Yeah, no problem.

16 MS. BRENNAN: Okay. Tori's question was do I know
17 the reasoning behind Rule 400.4437(6) under the
18 Environmental Health CCI rules of the prohibition of the use
19 of deep fryers. My answer is no, I don't. The
20 Environmental Health section was written by the local Health
21 Officers Association and that is what they have provided as
22 updates to the previous CCI rules with regard to
23 environmental. I will seek clarification on that of why
24 there is a prohibition on the use of deep fryers and I will
25 document that in the comments to the rules when we send

1 everything over to JCAR, unless Kelly, Soleil, any ideas of
2 why they would prohibit the use of deep fryers?

3 MS. MALTBY: Are you saying "deep fryers"?

4 MS. BRENNAN: Deep fryers.

5 MS. TORI BENDEN: Yeah.

6 MS. CAMPBELL: I think some of them are -- I think
7 some of it's related to fire risk, but --

8 MS. MALTBY: Oh. Oh, I'm -- yeah. And that's
9 actually outside of my scope of expertise. We had fire and
10 safety to handle all of that. So we can definitely ask that
11 question of them following this hearing.

12 MS. BRENNAN: Yeah. And for the record, it is --
13 there is a laundry list under 4437 with regard to food prep
14 areas and cooking equipment and it does say the use of deep
15 fryers is prohibited. So Tori, I will follow up on that and
16 we will have a answer for you.

17 MS. TORI BENDEN: Thank you. You know, I've read
18 the first section of these several times but I'm just now
19 reading this last environmental section so I might have more
20 questions.

21 MS. BRENNAN: Okay. Yeah. Again, I sought out
22 the expertise of both the LARA fire safety program under the
23 fire safety rules and all of the fire safety rules are up to
24 code and everything that is currently required by their
25 expertise. And I, again, under the local health

1 association, they wrote and provided the amendments to the
2 environmental section. So outside of my scope, but
3 certainly within theirs. So we'll see what that deal is.

4 MS. TORI BENDEN: Okay. Thank you.

5 MS. BRENNAN: Uh-huh (affirmative).

6 MS. SHANNON BROWN: Mary, this is Shannon Brown
7 from Ingham County DHS.

8 SHANNON BROWN

9 MS. SHANNON BROWN: I'm wondering under that same
10 section if we can inquire in on number (2) on the "Carpeting
11 is prohibited in food preparation areas"? If we could maybe
12 find out the reasoning behind that? Because I anticipated
13 there are some older homes that might have carpeting in the
14 kitchen. Is that what it's basically saying?

15 MS. BRENNAN: "Carpeting is prohibited in food
16 preparation areas," that is the current comment. I will.
17 I'll follow up on that one as well. Thank you.

18 MS. SHANNON BROWN: I just know that, I mean,
19 there's going to be some older homes that will have that,
20 especially, you know, in rural areas and such.

21 MS. BRENNAN: Okay. So that comment's been
22 recorded and we'll follow up on that. Thank you very much.
23 Sorry. I'm competing with the garbage truck here, so I'm
24 going to go mute for a minute. You want to go off the
25 record, Marcy?

1 REPORTER: Yes. Thank you.

2 (Off the record)

3 MS. BRENNAN: Marcy, back on the record. Ms.
4 Reynolds, how are you?

5 MS. JULI REYNOLDS: I'm good.

6 JULI REYNOLDS

7 MS. JULI REYNOLDS: I was patiently waiting. I
8 didn't, wasn't sure what -- how to approach. But anyhow, I
9 just have kind of a question on the wording and what it
10 means before I could even come up with any different
11 wording. If the rule 159, "Youth restraint; pregnant youth;
12 reduction; prevention," there's a whole list of things
13 there. And down to number (10).

14 MS. BRENNAN: Hold on one second.

15 MS. JULI REYNOLDS: It just seems to be a lot in
16 that sentence and I was just trying -- I thought like it
17 makes it sounds like it's eliminated, but not for secure
18 facilities. My thought was -- my understanding throughout
19 all these discussions was restraints are being eliminated
20 for all facilities except for the emergency restraint when
21 it came to, you know, the welfare -- I shouldn't say
22 welfare, but the severe injury of youth.

23 MS. BRENNAN: Okay. For the record, Juli's
24 referring to the following:

25 "All restraints for child caring institutions that

1 are not secure juvenile justice facilities, with the
2 exception of an emergency restraint as provided in
3 R 400.4160, will be prohibited effective May 1, 2022."

4 I do recall so many discussions and so many
5 changes to that particular language. Soleil, can you help
6 out why -- what the (inaudible) of adding security of all
7 facilities?

8 MS. CAMPBELL: Yes. I think actually that was a
9 good -- that's a good catch on the part of the comment in
10 terms of the fact that we had several iterations of this and
11 I think that language actually was going to be taken out
12 because we defined the emergency restraint, and so we were
13 going back and forth with how to do that. And so I think
14 that you're correct that the purpose of this was to take
15 out -- so we would have -- we would be wanting to take out
16 "that are not secure juvenile justice facilities" because
17 that was part of one of the iterations. And so I think that
18 is actually in there in error because I think it is supposed
19 to have read, "All restraints for child caring institutions
20 with the exception of emergency restraint as provided in
21 4160 will be prohibited effective May 1st, 2022." That was
22 my understanding of where we ended at the end of our
23 conversations because the emergency restraint exceptions
24 were those that were identified.

25 The piece that we talked about related to taking

1 out -- the reason why we took out the "secure juvenile
2 justice facilities" was because we had the discussion around
3 the fact that these were focused on restraints within the
4 facility and not restraints related to transport of use when
5 necessary such as from a secured juvenile justice facility
6 to a court hearing when it's necessary for safety to prevent
7 escape.

8 MS. JULI REYNOLDS: Okay. I think I sent an
9 e-mail about it awhile ago because I had read that and --

10 MS. CAMPBELL: So if you --

11 MS. JULI REYNOLDS: -- it was confusing because if
12 you went back to 4160, it did tell you, you know, what an
13 emergency restraint was or whatever and I was very confused
14 as to what that exactly meant.

15 MS. CAMPBELL: If you --

16 MS. JULI REYNOLDS: So if that's the intent is to
17 take that line out, then that makes more sense.

18 MS. CAMPBELL: I think we will look really closely
19 at it to make sure. There is something else in 4161, I
20 think, if you scroll down a little further, Mary, that talks
21 about the secure juvenile justice facilities.

22 MS. JULI REYNOLDS: Yup.

23 MS. CAMPBELL: And it's related to some of the new
24 restrictions that are on there. And so when we had put
25 in -- again, we had put in the secure facilities into that

1 one, but then we went down here and we fixed it to allow for
2 these pieces within it. So would it be more clear to take
3 it out or would it be more clear to potentially to add a
4 reference to section 161 in Rule 159?

5 MS. JULI REYNOLDS: I just thought that that line
6 didn't make sense when you read the other two rules. So you
7 guys do what you want. I understand what you mean now, and
8 I was pretty sure I understood. I just thought that that
9 had not went along with all the discussions we had in, like
10 I said, 61 and 60. And so I was wondering if there was
11 something I was missing there.

12 MS. CAMPBELL: Well, and that goes to the piece of
13 primarily the mechanical restraints. And so I wonder if the
14 exception should be with the exception of those outlined in
15 Rule 4160 and 4161 so that we're referencing both of those
16 within 4159 so it's clear and we take out that reference to
17 "secure juvenile facilities" because it does read a little
18 strange. So we can -- we can look at tweaking that. But if
19 you have any suggestions as well, that would be great.

20 MS. BRENNAN: So this is Mary. I totally agree.
21 It does provide in 59 "all restraints," but then we do look
22 to 61 which clearly allows mechanical. So we do have to
23 tighten up that language. It is -- there is a conflict and
24 thank you, Juli, for pointing that out.

25 MS. JULI REYNOLDS: No problem.

1 MS. CAMPBELL: Yeah, primarily because the
2 non-secure facilities don't allow for mechanical restraint
3 at all, and so I think -- but I think we can do a better job
4 of wording that and referencing.

5 MS. BRENNAN: I agree. If there are no further
6 comments with regard to that or any of the other rules,
7 we'll go off the record.

8 REPORTER: Thank you.

9 (Off the record)

10 MS. BRENNAN: Jerry, let's hear that statement.

11 MR. JERRY PETERSON: Okay. Thank you.

12 JERRY PETERSON

13 MR. JERRY PETERSON: So Jerry Peterson. I'm the
14 executive director of the Ruth Ellis Center based in
15 Highland Park, Michigan. And we serve LGBTQ children and
16 youth, primarily 13 to 30 and their families.

17 We really do appreciate the opportunity to provide
18 input on the administrative rule changes and we express our
19 support for these rule changes, specifically the protections
20 that are included for youth with diverse sexual orientation,
21 gender identity, and expression. And in my comments, I'll
22 be using the acronym SOGIE to represent that phrase, diverse
23 sexual orientation, gender identity and expression.

24 We know nationally that these children are over
25 represented in child welfare systems across the county. On

1 average 20 percent, or more than one in five children in
2 child welfare systems nationally have diverse -- identify
3 with diverse SOGIE and, but they represent a much smaller
4 percentage of the total population. The vulnerability of
5 children with diverse SOGIE is well documented and it
6 reinforces the need for placement in the system with their
7 gender identity, and also that prioritizes the youth's views
8 about their own safety in the settings that they live in.
9 Youth with diverse SOGIE often suffer harm such as
10 consequence of rejection and social marginalization and that
11 pervasive rejection and bias happens in homes, schools,
12 communities. And these children often experience high rates
13 of depression, suicidality, substance use, physical and
14 sexual victimization and hopelessness, family conflict,
15 verbal harassment. School bullying and physical assault
16 constitute the harsh daily reality for way too many of these
17 young people. And social conditions for transgender girls
18 of color are particularly brutal and child caring
19 institutions should consider these factors related to
20 physical and emotional safety when making placement
21 decisions as the rule language outlines.

22 Children with diverse SOGIE are a particularly
23 vulnerable population with unique developmental tasks. They
24 also have the same inherent capacity for happiness,
25 achievement, and healthy adjustment as other children.

1 Placing children with diverse SOGIE in unsafe or hostile
2 settings through the child welfare system exacerbates their
3 isolation, sense of instability and trauma, and really
4 compromises their health and future opportunities. Placing
5 them on the other hand with loving, supporting adults who
6 provide a safe atmosphere in which they can explore and
7 develop their identities really maximizes their potential to
8 thrive and become healthy adults. Placements that consider
9 youths of diverse SOGIE and prioritize the youth's views
10 about their own safety and well being not only nurtures
11 children, but helps to protect them from the negative
12 effects of living in an otherwise unaccepting society. So
13 by adopting and implementing gender affirming policies and
14 practices, child caring institutions promote the safety,
15 permanency, and well being of children with diverse SOGIE
16 which is of course our goal and the primary goal and purpose
17 of the child welfare system in the state of Michigan.

18 So in summary, we support the proposed language
19 changes and we're grateful for the consideration that has
20 been given to these issues. That ends my statement.

21 MS. BRENNAN: Thank you, Jerry. Appreciate it.
22 Any questions, comments, based on Jerry's testimony? Okay.
23 Very good. Thank you, Jerry. I truly appreciate it.
24 Marcy, if there are no further comments from anyone, let's
25 go off the record temporarily.

1 REPORTER: Thank you.

2 MS. BRENNAN: Thank you.

3 (Off the record)

4 MS. BRENNAN: Okay. It is almost 12:00 o'clock,
5 so why don't we break 12:00 to 12:30. You're welcome to
6 stay on the line if you'd like to. I will be monitoring to
7 let in people, but I will also place a notice that we are on
8 break for lunch until 12:30.

9 (Off the record)

10 MS. BRENNAN: Good afternoon, everyone. Again,
11 we're on the record for the public hearing for the Child
12 Caring Institution Rules 2020-0398H. I am Mary Brennan, the
13 regulatory affairs officer for Department of Health and
14 Human Services, and am joined by our expert group, Kelly
15 Maltby and Soleil Campbell, from the Department as well. If
16 you would like to make a statement, either raise your hand
17 or indicate on the record that you are ready to roll and I
18 will take your statement accordingly. Marcy, you want to go
19 off the record until we have a comment?

20 REPORTER: Thank you.

21 MS. BRENNAN: Thank you.

22 (Off the record)

23 MS. BRENNAN: Thank you. It is now 2:57 p.m. I
24 highly doubt we will have anybody jumping on in the next two
25 to three minutes, so I am declaring this public hearing is

1 over. If you think of any other questions or concerns,
2 please join us a week from today at 9:00 o'clock for the
3 second public hearing and you may always utilize the MDHHS
4 admin rules e-mail box for any further thoughts or comments
5 about the proposed rules.

6 I want to thank you for sticking with me today.
7 It wasn't as lively as I thought it was going to be, but,
8 you know, you're all troupers and I truly appreciate it.
9 Everyone enjoy their day and thank you again for your
10 assistance with the public hearing.

11 (Proceedings adjourned at 2:58 p.m.)

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<p style="text-align: center;">A</p> <p>a.m 1:7 3:2,4,6 ability 19:20 20:8 able 10:10,12 18:16 abuse 13:11 14:18 15:7,21,22 Academy's 7:9 accommodates 10:15 accountability 19:1 accountable 20:20 achievement 29:25 acronym 28:22 act 14:12,13 acted 20:22 action 3:21 actions 20:17 add 19:1 27:3 adding 25:6 addition 17:8 adjourned 32:11 adjustment 29:25 admin 32:4 administrative 1:10 3:12 7:17 28:18 AdminRules 5:16 adopting 30:13 adults 30:5,8 advice 18:22 advocacy 7:2 affairs 1:11 3:8 31:13 affirmative 23:5 affirming 30:13 afternoon 31:10 agencies 3:22 agency 1:3 15:15 19:2,4 20:15,19 20:24 ago 15:23 26:9 agree 27:20 28:5 ahead 11:10 12:23 alike 11:18 allow 8:15 16:10 27:1 28:2 allows 27:22 amendments 23:1 amount 20:16 answer 21:7,19 22:16 anticipated 23:12 anybody 8:14 31:24 APPEARANCES</p>	<p>1:9 apply 10:7 appreciate 17:10 21:14 28:17 30:21 30:23 32:8 approach 24:8 area 20:5 areas 22:14 23:11 23:16,20 arguing 11:25 asked 5:3 aspects 7:14 assault 29:15 assigned 19:21,22 assist 20:3 assistance 17:23 32:10 associate 6:17 association 21:21 23:1 atmosphere 30:6 automatically 20:20 available 5:13,15 10:13 Avenue 1:12 average 29:1 awhile 13:23 16:3 19:16 26:9</p> <hr/> <p style="text-align: center;">B</p> <p>b 19:21 20:13 B-r-e-n-a-n 3:8 back 8:13,18 9:8 12:1,6,21 19:16 24:3 25:13 26:12 background 14:11 14:19 15:7,7 17:2 based 28:14 30:22 basically 15:20 23:14 began 7:9 behalf 5:5 belief 7:10 Benden 2:5 21:11 21:12,15 22:5,17 23:4 best 6:25 better 20:21,25 28:3 bias 29:11 biggest 13:5 bit 20:1,25 box 5:11,16 11:13 32:4</p>	<p>break 5:7 12:1 31:5 31:8 breaks 5:5 Brennan 1:10 2:3 3:3,6,7,23 4:5 5:19 6:5,8 8:6,9 8:20,22 9:4,6,10 9:25 10:3 11:9,11 11:18,21,23 12:3 12:5,15,17,20,23 13:25 15:21 18:3 18:6,9,14,20 19:7 19:24,24 21:9,13 21:16 22:4,12,21 23:5,15,21 24:3 24:14,23 27:20 28:5,10 30:21 31:2,4,10,12,21 31:23 bring 6:24 broad 18:24 19:11 brought 11:2 Brown 2:6 23:6,6,8 23:9,18 brutal 29:18 bullying 29:15 burdensome 13:18</p> <hr/> <p style="text-align: center;">C</p> <p>call 4:17 5:22 21:10 called 4:14 Campbell 1:15 4:1,2 6:3 10:2,4,23 17:14 22:6 25:8 26:10,15,18,23 27:12 28:1 31:15 capacity 29:24 care 8:10 10:9 18:17 caregivers 7:16 caring 1:5 3:12 7:22 10:6,7,11 12:7 13:2 14:6,6 20:15 21:2 24:25 25:19 29:18 30:14 31:12 carpeting 23:10,13 23:15 catch 12:20 25:9 CCI 21:18,22 CCIs 7:24 8:2 14:13 Center 6:17 28:14 central 3:18 CER 1:17 certain 20:15</p>	<p>certainly 23:3 Certified 1:17 challenge 14:23 challenges 13:2,5 changed 20:18 changes 6:19,20,22 6:24 7:3,23 8:4 25:5 28:18,19 30:19 check 8:13 13:11 14:19 15:7,7,21 15:22,25 16:18,23 checks 17:2 child 1:5 3:12,19,21 7:18,22 10:6,7,11 12:7 13:2,11 14:6 14:6 15:7,21,22 20:10,11,15 21:1 24:25 25:19 28:25 29:2,18 30:2,14 30:17 31:11 child's 7:15 children 7:13 18:16 18:17 28:15,24 29:1,5,12,22,25 30:1,11,15 CHILDREN'S 1:3 citations 19:15 cite 20:22 clarification 14:5,25 21:23 clarity 19:1 clear 27:2,3,16 clearances 13:11 14:21,24 clearly 27:22 closely 26:18 code 22:24 collaborative 7:1 color 29:18 come 12:11 18:1 19:25 24:10 coming 19:11 comment 4:13 5:21 6:2,10 7:6 8:7,25 9:7,11 12:9,13,25 13:24 17:11 18:4 21:9 23:16 25:9 31:19 comment's 23:21 comments 4:19,20 5:8,9 21:25 28:6 28:21 30:22,24</p>	<p>32:4 committee 6:21 committees 20:7 communities 29:12 competing 23:23 completed 13:9 compliance 6:24 19:5 compromises 30:4 computer 4:18 12:10 concerns 32:1 conditions 29:17 conducive 18:15 conduct 18:15 20:14 Conference 1:6 3:1 confidently 6:22 conflict 27:23 29:14 confused 26:13 confusing 26:11 conscious 16:16 consequence 29:10 consider 11:17 29:19 30:8 consideration 6:23 8:3 30:19 constitute 29:16 consultants 19:12 consulted 7:17 CONTENTS 2:1 contingent 17:16 continue 8:13,15 continuing 7:11 continuously 15:9 contracted 14:6,8 14:13,22 controlling 19:6 convened 6:22 convenience 4:8 conversations 25:23 cooking 22:14 cooperative 8:11 copy 5:15,20 Cornelius 7:8 Corporation 1:18 correct 17:3,3 25:14 county 23:7 28:25 course 30:16 court 9:18,22 10:13 10:19,24 11:3 26:6 cover 11:7 COVID 13:4</p>
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DEPARTMENT OF HEALTH AND HUMAN
SERVICES CHILDREN'S SERVICES AGENCY,
PUBLIC HEARING II

June 10, 2021

Prepared by



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STATE OF MICHIGAN
DEPARTMENT OF HEALTH AND HUMAN SERVICES
CHILDREN'S SERVICES AGENCY

PUBLIC HEARING - VOL. II
RULES FOR CHILD CARING INSTITUTIONS

via Zoom Video Conference

Thursday, June 10, 2021, 9:00 a.m.

APPEARANCES:

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Human and Human
Services:

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Kelly Maltby, Soleil Campbell

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1-800-632-2720

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1 Via Zoom Video Conference

2 Thursday, June 10, 2021 - 9:05 a.m.

3 MS. BRENNAN: Good morning, everyone. It is now
4 9:05 a.m. on Thursday, June 10th, 2021. My name is Mary
5 Brennan. I am the regulatory affairs officer for the
6 Department of Health and Human Services. We are on the
7 record for the second of two public hearings for the
8 administrative rules involving 2020-039 HAS, Child Caring
9 Institutions.

10 I'd like at this time to introduce our subject
11 matter experts. If they can introduce themselves and their
12 job role at DHHS? You want to start with Kelly?

13 MS. MALTBY: Hi. I'm Kelly Maltby. I am a
14 manager with the Division of Child Welfare Licensing in
15 central office.

16 MS. BRENNAN: Thank you, Kelly. Soleil?

17 MS. CAMPBELL: Good morning, everyone. This is
18 Soleil Campbell, Juvenile Justice Program office manager in
19 central office with Childrens Services Agency.

20 MS. BRENNAN: Thank you, Soleil. Throughout the
21 hearing I'm going to have the housekeeping rules running.
22 Very briefly, all phones are on mute. The hearing will be
23 recorded for purposes of transcription and transparency. We
24 have our marvelous Marcy today who will be taking
25 transcription. If you want to raise your hand to make a

1 statement, I will call on you. And I don't see anybody who
2 has called in just by phone, so I think we're fine on that.
3 One person shall speak at a time. When you'd like to make a
4 statement, you can unmute your computer or phone. We
5 respect the public hearing process. Please keep comments
6 respectful and do not disrupt hearing process for all.
7 Everyone will be given the opportunity to provide testimony
8 if you wish. You will be asked your name, spell your last
9 name, maybe your first, and identify what organization if
10 any you're speaking on behalf of.

11 Two 15-minute breaks, 10:00 and 2:00, one
12 30-minute break at 12:00 noon for lunch. There is the e-
13 mail address for the public comment. It ends tomorrow,
14 Friday, June 11th. The rule status is available at the
15 citation listed, or the link listed. And finally if you
16 would like a copy of the hearing transcript, that is the e-
17 mail box to request and please wait at least two weeks
18 before requesting a copy.

19 So without further ado, is there anybody that
20 would like to make a statement at this time? Okay. Megan,
21 I see that you've joined. If you would like to make a
22 statement, you can raise your hand and I'll take your
23 testimony. Good morning to those of us -- to those of you
24 have just joined. If you'd like to make a statement, please
25 raise your hand and testimony is now being taken.

1 Okay. It's now 9:11. We're going to go off
2 record at this time until such time there is public
3 testimony to take. Marcy, can you take us off the record?

4 REPORTER: Yes. Thank you.

5 MS. BRENNAN: Thank you.

6 (Off the record)

7 MS. BRENNAN: Okay. Very good. Is it Jeana
8 (pronouncing)?

9 DR. JEANA KOERBER: Hello. It's Jeana Koerber.

10 MS. BRENNAN: Good morning. If you'd like to make
11 a statement, please go ahead.

12 JEANA KOERBER, Ph.D.

13 DR. JEANA KOERBER: Yes. We have a statement that
14 we'll also submit in writing, so I will just read an excerpt
15 and then we will also submit it in writing for you as well.

16 So thank you for having us here. My name is Dr.
17 Jeana Koerber. I'm the executive director of Autism
18 Services at the Great Lakes Center for Autism Treatment and
19 Research. And we have two child caring institutions located
20 in Kalamazoo County, Michigan. Also, off screen is Calvin
21 Gage, our clinical director of Autism Services, who's also
22 here with me.

23 So first we commend the Department for the many
24 improvements to the rules that govern child caring
25 institutions in the state of Michigan that are contained in

1 the proposed rules; most notably, a focus on LGBTQ plus
2 youth and to further ensure seclusion and restraint are only
3 used in emergency circumstances. Unfortunately, there seems
4 to be a disproportionate focus on youth who may reside in
5 child caring institutions as a result of placement in the
6 foster care system. The proposed rules do not adequately
7 address youth who may reside in a child caring institution
8 due to extenuating circumstances resulting from a
9 developmental disability. Youth may be placed in child
10 caring institutions by community mental health entities if
11 the facility only serves youth diagnosed with developmental
12 disabilities. While we recognize these facilities are not
13 plentiful in the state of Michigan, they represent a crucial
14 service to this population, most notably for youth with a
15 diagnosis of Autism.

16 Individuals diagnosed with Autism can often engage
17 in challenging behaviors that cause harm to themselves or
18 others. While we recognize that our program -- the Great
19 Lakes Center for Autism Treatment and Research -- is
20 uniquely designed to care for individuals who engage in the
21 most severe forms of these behaviors, there are other child
22 caring institutions that also support youth with autism or
23 similar developmental disabilities who have challenges
24 residing in their familial home for a period of time. There
25 are several proposed rules that would make it very difficult

1 for providers, and potentially impossible for some
2 providers, to continue to provide services to this
3 vulnerable population of youth in Michigan. Without child
4 caring institutions that can serve this population, these
5 youth will be "caught" in the state's emergency rooms or
6 psychiatric placements. Other youth may be sent out of
7 state for the care they require, further separating them
8 from their families. As this is already happening at an
9 alarming rate, we cannot further limit providers' ability to
10 provide care to this group of children.

11 When youth are placed in a child caring
12 institution through a community mental health placement,
13 facilities are required to follow the Michigan Mental Health
14 Code and rules set forth through MDHHS Behavioral Health and
15 Developmental Disabilities Standards. Child caring
16 institutions are also required to follow Act 116 of 1973 for
17 Child Care Organizations. We implore the authors of these
18 rules to cross-reference the documents linked at the end of
19 this document to ensure that definitions are consistent and
20 to collaborate with the Behavioral Health and Developmental
21 Disabilities Department at MDHHS lead by director, Allen
22 Jansen. This will ensure providers are not placed in a
23 situation of either following Act 116 or the MDHHS
24 Behavioral Health and Developmental Disabilities Standards
25 at the risk of violating a child caring institution

1 licensing rule, or vice versa. For ease, rules that we have
2 identified as areas of conflict with Act 116 or the MDHHS
3 Behavioral Health and Developmental Disabilities Standards
4 are detailed below.

5 We've also noted other rules, that while written
6 with positive intent, may be quite difficult for providers
7 to comply with. We have noted those rules and potential
8 barriers to implementation in a separate section below.

9 We appreciate the time and effort the authors of
10 the proposed rules have already invested in this process.
11 We are confident that our comments will be taken seriously
12 and implemented in these rules so we can ensure a strong
13 provider network for our most vulnerable children with
14 developmental disabilities. If any further information or
15 insight would be helpful, we're happy to discuss or provide
16 additional input into this important endeavor. Our contact
17 information is provided below.

18 In the document that we'll submit, I have linked
19 references to Act 116 and MDHHS Behavioral Health and
20 Developmental Disabilities Standards as well as provided the
21 contact information for both myself and Mr. Gage. And then
22 I also have a detailed chart going through the rules that
23 are in conflict with Act 116 or the MDHHS Behavioral Health
24 and Developmental Disabilities Standards, as well as those
25 that we found may pose some challenges to implementation and

1 some potential solutions to that implementation barrier.

2 MS. BRENNAN: Jeana, thank you very much for that
3 thorough commentary and I look forward to seeing the written
4 testimony as well.

5 DR. JEANA KOERBER: All right. Well, thank you so
6 much for this opportunity.

7 MS. BRENNAN: Thank you.

8 DR. JEANA KOERBER: Bye-bye.

9 MS. BRENNAN: Bye-bye. Is there anyone who would
10 like to make another statement at this time? Please raise
11 your hand or just shout it out there. Mark? Please
12 proceed. Can you still -- I'm sorry. Can you give your
13 name for the record and then proceed with your testimony?
14 Thank you.

15 MARK MCWILLIAMS

16 MR. MARK MCWILLIAMS: All right. Thank you very
17 much, Mary. My name is Mark McWilliams, M-a-r-k
18 M-c-W-i-l-l-i-a-m-s. I am the director of public policy and
19 media relations at Disability Rights Michigan.

20 We are the private, nonprofit, nonpartisan
21 protection and advocacy agency serving people with
22 disabilities in Michigan. Our mission includes advocacy and
23 monitoring of child caring institutions to address the needs
24 of youth with disabilities in those places.

25 DRM supports many of the proposed changes in the

1 proposed regulations, including: Planning to reduce and
2 eliminate the use of restraint and seclusion in Section
3 159(1); the immediate ban on particularly dangerous and
4 noxious forms of restraint in Section 159(2) and 159(3); the
5 May 1st, 2022 ban on nonemergency restraint in Section
6 159(10); the narrowed list definition of emergency restraint
7 in Section 160; and, the process and the May 1st, 2022, ban
8 on seclusion in Section 162. And we will provide this also
9 in written comments that we'll submit tomorrow.

10 We think these changes are long overdue and
11 consistent with the recommendations from the Annie E. Casey
12 Foundation. Unfortunately, the regulations do not reference
13 or address other important Casey Foundation recommendations.
14 These recommendations call for broad cultural change,
15 authentic engagement of youth and families, and
16 disaggregated data reporting. Other than a broad staff
17 training requirement, there are no outcome-based or
18 transparent requirements for any of these activities in the
19 regulations.

20 Further, much of the success of the state's
21 efforts to eliminate restraint and seclusion from these
22 facilities rests on the state itself. The Casey Foundation
23 recommends the state drive cultural change, develop and
24 enforce contract performance standards, collect and report
25 data, monitor and oversee performance, pre-approve

1 outsourcing, enforce active case management, create a
2 specialized oversight team to support change, and enforce
3 rules (particularly with regard to repeat offenders and
4 serious violations). The rules have no reference to these
5 state roles as they relate to CCIs and their compliance.

6 The most recent report of the Dwayne B. settlement
7 monitor highlights the inadequacy of current state
8 corrective actions, despite over a decade of court
9 oversight.

10 The monitoring team found -- to quote from the
11 report,

12 "The monitoring team found that the (CCI
13 corrective action plan) content and follow-up was often
14 ineffective and deficient, lacked specificity, and did
15 not remediate risk to children. Frequently repeated
16 violations of serious nature, such as physical
17 intervention or improper restraints causing injuries,
18 recurred despite the corrective action plans, and at
19 times they did not address prevalent underlying issues
20 that posed a serious risk of harm to children's
21 safety."

22 The Department acknowledged these issues in
23 September 2020, recognizing the clear "need to expedite
24 adverse licensing action in response to repeat
25 non-compliance or safety violations," but the proposed rules

1 lack clear, transparent standards and procedures to ensure
2 accountability and enforcement. Absent adequate state
3 oversight, there is no assurance that a future tragedy will
4 be prevented.

5 Finally, the Casey Foundation report concludes, in
6 order to best serve youth and the community and prevent
7 tragedy in the future, the long-term trajectory of this
8 system is to downsize. There is no regulation in the
9 proposed rules that governs facility size and no process for
10 downsizing large programs.

11 In short, while the rules have significant
12 positive elements, they still do not address several issues
13 of importance. These issues should be the subject of
14 additional rulemaking.

15 Thank you for the opportunity to comment. Please
16 contact me in our Lansing office for more information.
17 Thank you.

18 MS. BRENNAN: Thank you, Mark. I look forward to
19 the written testimony on this as well. And thank you for
20 your organization. I have worked with you guys for over
21 five years right now and thank you for all the work you do
22 on behalf of those children that really need your support
23 and guidance.

24 Is there anyone else who would like to make a
25 statement at this time? Okay. Very good. Marcy, let's go

1 off the record until we have a request to provide more
2 testimony.

3 REPORTER: Are we on that 10:00 o'clock break?

4 MS. BRENNAN: Sure. We can go on break, 15
5 minutes. Let us reconvene at 10:21, please.

6 REPORTER: Thank you.

7 MS. BRENNAN: Thank you.

8 (Off the record)

9 MS. BRENNAN: Good morning, everyone. We're back
10 on the record on the Child Caring Institution Administrative
11 Rules 2020-39 HS. My name is Mary Brennan. I'm the
12 regulatory affairs officer for Department of Health and
13 Human Services. Our subject matter experts this morning and
14 this afternoon, Kelly Maltby from the Division of Child
15 Welfare Licensing and Soleil Campbell from the Juvenile
16 Justice Services. If you would like to make comment, you
17 can raise your hand or take yourself off mute and indicate
18 that you would like to make a comment. Okay. Very good.
19 Marcy, you want to take us off the record until another --
20 or there's more testimony to be provided?

21 REPORTER: Thank you.

22 MS. BRENNAN: Thank you.

23 (Off the record)

24 MS. BRENNAN: Okay. It's almost 12:00 o'clock, so
25 we're going to take a half an hour break. We will resume at

1 12:30 with this public hearing. Enjoy your lunch and hope
2 to see you then. Thank you. Marcy, off the record, please.

3 REPORTER: Thank you.

4 (Off the record)

5 MS. BRENNAN: Good afternoon. It is almost 12:30.
6 We are back on the record with regard to Child Caring
7 Institution Rules 2020-39 HS. My name is Mary Brennan,
8 regulatory affairs officer from Department of Health and
9 Human Services, and I am joined by our subject matter
10 experts, Kelly Maltby from the Division of Child Welfare
11 Licensing and Soleil Campbell from Juvenile Justice
12 Services, for this hearing.

13 If anyone would like to make a statement, you can
14 raise your hand or unmute yourself and indicate you would
15 like to make a statement going forward. Otherwise, we are
16 going to go off the record until such time we have further
17 testimony. So, Marcy, let's give it a minute and if nobody
18 would like to testify and then we can go off the record.

19 (Off the record)

20 MS. BRENNAN: Hey, Brian, I noticed you just
21 joined us. I am sharing with you procedure for the public
22 hearing. In case you would like to make a statement, just
23 let me know.

24 REPORTER: Brian, you're on mute.

25 MR. BRIAN PHILSON: Sorry about that. Am I the

1 specific to that. Previously the interpretation had been if
2 a housing unit had been left vacant -- and I forget the
3 exact period of time before it -- and if it was going to be
4 put back into use, it then would have to comply with new
5 construction including being sprinkled. And that had been a
6 previous ruling and we had expended probably \$40,000 to make
7 that happen, and then I served on a subcommittee with Patty
8 Needman (phonetic) and, you know, the CCI fire safety rules
9 guru and it was our recommendation that that rule would not,
10 you know, be placed -- or that it was going to be changed.
11 You know, and as an example, I mean, we have 24 out of 36
12 beds being used, but if we needed to re-open that third
13 house, would I then have to expend, you know, 40,- to
14 \$50,000 to have that house sprinkled again?

15 MS. BRENNAN: That is a good question and I am not
16 going to answer for lack of experience in that. I will send
17 it to, yes, the fire safety guru, Jerry, and I will have
18 a -- the response that he provides to me, I will add that to
19 DHHS's response to public hearing comment and you can review
20 that. And if you would also like to place it in writing
21 with your e-mail address, I'd be happy to provide you an
22 e-mail of what Jerry's response is.

23 MR. BRIAN PHILSON: That would be great. And
24 Jerry served on that same subcommittee and, you know, I
25 just -- you know, the subcommittee fell off the radar for a

1 variety of reasons, COVID, yada, yada, et cetera, and, but I
2 just don't know what recommendations got passed forward and
3 included.

4 MS. BRENNAN: Well, I can tell you that Jerry was
5 working with us extensively on the rewrite of the rules. We
6 had rescinded a whole bunch of them due to newer fire
7 inspection requirements by law. And everything in the
8 current rules is what Jerry himself has updated. So if
9 there's clarification with regard to any of the particular
10 rules, Jerry would be happy to assist you on that.

11 MR. BRIAN PHILSON: All right. Thank you.

12 MS. BRENNAN: Sure. And if you want to stick
13 around if you come up with any other questions, just please
14 let us know.

15 MR. BRIAN PHILSON: All right. Thanks, Mary.

16 MS. BRENNAN: Thanks.

17 REPORTER: Mary, are we off the record?

18 MS. BRENNAN: Yes, we are. Thank you, Marcy.

19 REPORTER: Thank you.

20 (Off the record)

21 MS. BRENNAN: Okay. It's almost 2:00 o'clock.

22 Let's say we take a 15-minutes or let's just return this
23 meeting or public hearing, we'll reconvene at 2:15. Thank
24 you. Marcy, off the record.

25 REPORTER: Thank you.

1 (Off the record)

2 MS. BRENNAN: We're back on the record. 2020-039
3 HS, Child Caring Institution Administrative Rules. Anyone
4 would like to comment, please raise your hand or unmute
5 yourself and indicate that you would like to make a comment.
6 Marcy, we'll give it a minute and then we can go off the
7 record if nobody would like to make a comment at this time.

8 REPORTER: Thank you.

9 (Off the record)

10 MS. BRENNAN: Okay. Very good. It is almost 2:45
11 p.m. I do not anticipate any rush of the further comments.
12 I want to thank you all for being on this call. I want to
13 thank Kelly and Soleil for their assistance at being ready
14 to answer and tackle any questions. Again, if there are any
15 issues or comments that you forgot to make, please send them
16 to the admin rules e-mail box. And have a great day and,
17 again, thank you for all of your support. It is 2:45 p.m.
18 We are now concluding the public hearing regarding 2020-39
19 HS, Child Caring Institutions. Thank you, everyone.

20 (Proceedings concluded at 2:45 p.m.)

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