

 <p>Children's Services Agency</p> <p>Communication Issuance</p> <p>20-096</p>	Subject/Title	Guidelines for Implementing Emergency Rules for Child Caring Institutions
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	Contact Name	The Division of Child Welfare Licensing
	Email	MDHHS-DCWL-QA@michigan.gov
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Due to	MDHHS-DCWL-QA@michigan.gov	
Distribution	<input checked="" type="checkbox"/> CSA Central Office Managers/Staff <input checked="" type="checkbox"/> MDHHS BSC and County Directors <input checked="" type="checkbox"/> MDHHS Juvenile Justice Managers/Staff <input checked="" type="checkbox"/> MDHHS Child Welfare Managers/Staff <input checked="" type="checkbox"/> Native American Tribes <input checked="" type="checkbox"/> Office of Workforce Development and Training <input checked="" type="checkbox"/> Private Agency Child Welfare Managers/Staff <input checked="" type="checkbox"/> Private Residential Abuse/Neglect Managers/Staff <input checked="" type="checkbox"/> Private Residential Juvenile Justice Managers/Staff <input type="checkbox"/> Other:	

On July 16, 2020, Michigan Department of Health and Human Services (MDHHS) issued Emergency Administrative Rules that set forth requirements for Child Caring Institutions (CCIs) to safeguard children in their care. These rules were implemented, in part, based on the review of a tragic death of a youth in a child caring institution due to improper physical restraint. The review determined that administrative rules regarding restraint were not protective of youth and that accurate tracking of incidents involving restraints was needed to understand practice and improve safety for youth. The emergency rules highlighted in gray below outline new restrictions and requirements related to using restraints, reporting restraints, and developing policies and procedures.

PROHIBITED TYPES OF RESTRAINTS

Effective July 16, 2020, the following forms of restraint are prohibited:

- Prone restraints or other restraint that may constrict a youth's breathing.
- Mechanical restraints on pregnant youth, including youth 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.
- The following restraints on pregnant youth unless the youth presents an immediate and credible risk of escape that cannot be minimized through any other method:
 - Mechanical restraints.
 - Abdominal restraints.
 - Leg and ankle restraints.
 - Wrist restraints behind the back.
 - Four-point restraint.
- Chemical restraint as that term is defined in section 2b of 1973 PA 116, MCL 722.112b.
- The use of a restraint chair.

- The use of noxious substances.
- The use of instruments causing temporary incapacitation.

LIMITS ON WHEN AND HOW RESTRAINTS CAN BE USED

Effective July 16, 2020, restraint may only be used after less restrictive techniques have been exhausted and the restraint is still necessary to either:

- prevent serious injury to the child, self-injury, or injury to others, or
- as a precaution against escape where the youth may be at risk of injury to self or others.
- Resident restraint must be performed in a manner that is safe, appropriate, and proportionate to the severity of the minor child's behavior, chronological and developmental size, age, gender, physical condition, medical condition, psychiatric condition, and personal history, including any history of trauma, and done in a manner consistent with the resident's treatment plan.
- Restraint shall not be used for punishment, discipline, or retaliation.
- Restraint must only be applied for the minimum time necessary to accomplish the purpose for its use.
- Approval of the administrator or his or her designee must be obtained before any use of material or mechanical restraints.
- A staff member shall be present continuously while material or mechanical restraint equipment is being used.
- A staff member must be in close enough proximity to intervene immediately in case of emergency or to protect the safety of the resident.

POLICY & PROCEDURE DEVELOPMENT & ATTESTATION

By August 20, 2020, all CCIs must submit the attached *Emergency Rule Implementation Certification*, signed by the Chief Administrator, to the [DCWL mailbox](#) attesting to completed development of written policies and procedures that demonstrate compliance with the Emergency Administrative Rules, including:

- Debriefing of the restraint among the staff involved and supervisors immediately following the restraint that examines preventive strategies that could have been used to avoid the restraint.
- Debrief with the youth restrained, including the youth's perspective of preventive strategies that could have been used to help support the youth to avoid behavior or help the youth de-escalate.
- Recording restraints as an incident report.
- Submitting the incident report for all restraints in writing to the parent/guardian within 12 hours and to MDHHS within 24 hours.
- Review and aggregation of incident reports regarding restraints at least biannually by the CCI director or designee.
- Comprehensive review of the incident within 24 hours following the use of a restraint. The review may need to occur multiple times over multiple days to support the youth involved or youth that witnessed the restraint. Family should be invited.
- Provision of sufficient and adequate training on the CCI's written restraint procedures for all staff who may use or order the use of restraints.
- For limiting use of restraints to only those circumstances allowable in the emergency rule and prohibiting the use of restraint procedures that are not allowable in the emergency rule.

These rules shall be made available to all residents, their families, and referring agencies.

INCIDENT REPORTING

All restraint incidents must be documented and proper notifications made. Please see CI 20-095, *Incident Reporting for Child Caring Institutions*.