



November 29, 2023

Family, Children and Adult Services Manual Transmittal Letter No. 529

TO: Family, Children and Adult Services Manual Holders
FROM: Matt Damschroder, Director
SUBJECT: Amendments of Children Services Licensing Rules in Chapter 5101:2-5 and 5101:2-9 of the Administrative Code

This letter transmits amendment to two Ohio Administrative Code (OAC) rules 5101:2-5-13 and 5101:2-9-21 surrounding foster care. The rules will be effective on 12/15/2023. The following is a list of the changes.

OAC 5101:2-5-13 entitled **Required agency policies, plans and procedures** provides guidance to agencies on the minimum required polices, plans and procedures for the agency. Paragraph (A)(1)(a) was amended to clarify the definition of prone restraint and to state that any face-down positioned restraint of a child is not permitted for any length of time.

OAC 5101:2-9-21 entitled **Care, supervision and discipline** provides guidance to residential facilities in disciplinary procedures. The title line is changing to Residential care, supervision and discipline, there is another rule with a different purpose but entitled the same. Paragraph (C)(19) was amended by removing language and clarifying that any face-down positioned restraint of a child is not permitted for any length of time.

INSTRUCTIONS:

The following chart indicates the materials that should be removed from the Family, Children and Adult Service Manual (FCASM) and the materials that are to be inserted in the FCASM.

LOCATION	REMOVE AND FILE AS OBSOLETE	INSERT/REPLACEMENT
Foster Care Licensing	5101:2-5-13	5101:2-5-13
Foster Care Licensing	5101:2-9-21	5101:2-9-21
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5101:2-5-13

Required agency policies, plans and procedures.

(A) A public children services agency (PCSA), private child placing agency (PCPA) or private noncustodial agency (PNA) engaging in any of the functions listed in rule 5101:2-5-03 of the Administrative Code shall have, at a minimum, all of the following policies as applicable to the function or functions being performed.

(1) An agency shall have a written discipline policy which:

(a) Prohibits the use of prone restraints. ~~Prone restraint is defined as all items or measures used to limit or control the movement or normal functioning of any portion, or all, of an individual's body while the individual is in a face-down position for an extended period of time.~~ Prone restraint is a method of intervention where a person's face and/or frontal part of his or her body is placed in a downward position touching any surface for any amount of time. Prone restraint includes physical or mechanical restraint.

(b) If an agency has a discipline policy that does not allow any type of restraint, the agency can document this in its policy and the agency does not have to address the issues in paragraph (A)(1)(a) of this rule.

(2) An agency shall have a written plan describing strategies for foster caregiver recruitment that complies with the Multiethnic Placement Act, Oct. 20, 1994, P.L. 103-382, as amended by Section 1808 of the Small Business Job Protection Act of 1996, P.L. 104-188 (MEPA), and the Civil Rights Act of 1964 (Title VI), as it applies to the foster care process. If the PCSA, PCPA or PNA amends its recruitment plan, the agency shall be responsible for submitting the amended recruitment plan to ODJFS within ninety days following a plan change. This policy shall include:

(a) A description of the characteristics of foster children served by the agency that shall include the following:

(i) Ages.

(ii) Developmental needs.

(iii) Emotional needs.

(iv) Physical needs.

(v) Race, color and national origin backgrounds.

(vi) Levels of care needed.

- (b) Diverse methods of disseminating general information regarding the children served by the agency.
 - (c) Specific strategies to reach all parts of the community as defined by the agency.
 - (d) Strategies for assuring that prospective foster caregivers have access to the application process, including the flexibility of service to the community served by the agency.
 - (e) Strategies for training staff to work with diverse cultural, racial, ethnic and economic communities.
 - (f) Strategies for dealing with linguistic barriers.
 - (g) Procedures for a timely search for foster caregivers, including the use of interagency efforts, provided that such procedures ensure that placement of a child in an appropriate household is not delayed by the search for a same race or ethnic placement.
 - (h) A statement of assurance that all foster caregiver recruitment activities and materials shall be in compliance with MEPA and Title VI, the Indian Child Welfare Act of 1978, 25 U.S.C. 1901 and the Adoption and Safe Families Act of 1997.
- (3) An agency shall have a written policy describing the process for simultaneously approving applicants for foster care placement and adoptive placement.
- (4) An agency shall have a written policy detailing any assessment activities in which an agency would require a foster caregiver applicant to participate and any materials or documentation, not specifically required by Chapter 5101:2-5 or 5101:2-7 of the Administrative Code, which a foster caregiver applicant would be required to submit as part of the assessment or homestudy process.
- (5) An agency shall have a written policy detailing all payments to foster caregivers.
- (6) An agency shall have a written grievance policy detailing the methods for hearing grievances and for resolving differences with a foster caregiver or applicant relative to the requirements imposed by Chapter 5101:2-7 of the Administrative Code and other agency policies. This policy shall include a method of review by the highest administrative employee of the agency or designee for any unresolved grievance within thirty calendar days of the filing of the grievance.

- (7) A PCSA or PCPA shall have a written policy regarding the required notification to the foster or kinship caregiver if the PCSA or PCPA seeks permanent custody of a child placed with the caregiver and if a child placed with the caregiver becomes available for adoption. The notification shall also be given to the recommending agency when the custodial agency is different than the recommending agency. The notification shall be consistent with the requirements contained in section 5103.161 of the Revised Code.
- (8) An agency shall have written policies that shall be explained to potential foster caregivers during initial orientation for all of the following:
- (a) Liability insurance and compensation for damages done by children placed in foster care.
 - (b) Legal representation, legal fees, counseling or legal advocacy for foster caregivers for matters directly related to the proper performance of their roles.
 - (c) Investigations of abuse and/or neglect involving a child living in a foster home.
- (9) Each recommending agency shall establish and implement a policy regarding good cause for a foster caregiver's failure to complete the continuing training in accordance with rule 5101:2-5-33 of the Administrative Code. If the foster caregiver complies with the policy, as determined by the agency, ODJFS may renew the foster caregiver's foster home certificate. The agency shall submit the policy to the department and provide a copy to each foster home the agency recommends for certification or renewal.
- The policy shall include all of the following:
- (a) What constitutes good cause, including documented illness, critical emergencies, and lack of accessible training programs.
 - (b) Procedures for developing a scheduled corrective action plan that provides for prompt completion of the continuing training.
 - (c) Procedures for recommending revocation of the foster home certificate if the foster caregiver fails to comply with the corrective action plan.
- (10) An agency operating a specialized foster home program shall have a written policy on the operation of the specialized foster home program which shall comply with the requirements of rules 5101:2-5-36, 5101:2-5-37, 5101:2-7-16,

and 5101:2-7-17 of the Administrative Code, as applicable. The policy shall specify:

- (a) The hierarchy of the program including:
 - (i) The number of treatment team leaders each supervisor is responsible for providing supervision.
 - (ii) The specific number of treatment and medically fragile foster children for which each treatment team leader shall be responsible for providing case management services.
 - (b) How the agency will determine the equivalent experience required by paragraph (A) of rule 5101:2-7-16 of the Administrative Code and rule 5101:2-7-17 of the Administrative Code, as applicable.
- (11) An agency operating a specialized foster home program shall have a written policy that provides for access to both planned and crisis respite care, the amount to be determined on a case-by-case basis, for children in the program's care. The respite care policy shall include, but is not limited to, the following provisions:
- (a) Utilization of respite care shall be only with the approval of the administrative director of the specialized foster care program or his or her designee.
 - (b) A process for the specialized foster care program to select and approve respite care providers.
 - (c) Only approved respite care providers shall be utilized.
 - (d) An approved respite care provider, who is not certified as a foster caregiver or specialized foster caregiver, shall receive at least twelve hours of orientation and training relevant to the children served by the specialized foster care program and have a criminal record check conducted as for a foster caregiver pursuant to rule 5101:2-5-09.1 of the Administrative Code prior to providing respite care.
 - (e) A respite care provider shall not provide respite care for children for more than two consecutive weeks unless the provider is certified as a specialized foster caregiver.
 - (f) Prior to each occasion of respite care, the recommending agency shall provide the respite care provider with a copy of the JFS 01443 "Child's

Education and Health Information" or the form the agency uses in lieu of the JFS 01443 completed for the child pursuant to rule 5101:2-38-08 of the Administrative Code as part of his case plan and at least a written summary of the child's service plan and any information required to be shared with a foster caregiver by rule 5101:2-42-90 of the Administrative Code. In addition, for a medically fragile child, any nursing treatment plan containing physician orders shall be provided. The information required by this paragraph shall be provided to the respite care provider by the agency that has approved the respite care provider. Documentation that this has been done shall be maintained in the child's case record by the agency that approved the respite care provider.

- (g) For each occasion of respite care, a respite care provider shall provide a written report of the child's stay in respite care to the specialized foster caregiver.
 - (h) A respite care provider for a medically fragile child shall be certified as a foster caregiver for medically fragile children or be a licensed medical professional.
- (12) An agency operating a specialized foster home program shall have a written policy, outlining procedures for matching children with specialized foster caregivers, that ensures consideration of the child's needs, the capabilities of the specialized foster caregiver, and family-centered, neighborhood-based practices.
- (13) An agency operating a specialized foster care program shall have a written policy to assure that all children in specialized foster care and all specialized foster caregivers and their families affiliated with the program shall have access to crisis counseling, arranged by the program, for issues or problems caused by a specific incident related to a child receiving treatment within the caregiver's home, including the death or hospitalization of a child.
- (14) An agency which is certified to operate a residential facility, a treatment foster care program, or a medically fragile foster care program shall be responsible for developing and implementing a behavior intervention policy which includes a description of the facility's behavior management program. The behavior intervention policy shall, at a minimum, contain the following components:
- (a) A detailed description of the full range of behavior intervention procedures (intervention that is the least intrusive and least disruptive to the child, positive behavioral interventions, prompted relaxation, time out, physical restraints, supervised restraint, and isolation) or combination of

procedures employed, including operational details of the interventions themselves and a definition of each behavior intervention.

- (b) The use of restrictive behavior interventions, behavior management techniques or aversive procedures and identification of instances in which such procedures may be contraindicated.
 - (c) Procedures for carrying out these provisions consistent with the needs of children with disabilities.
 - (d) A description of the credentials of the personnel involved in designing, approving, implementing, monitoring and supervising the implementation of the behavior interventions.
- (15) An agency which is certified to operate a residential facility shall have a written policy on the use of alcohol, tobacco and tobacco products by staff and children within such facilities which shall conform to, but is not limited to, the requirements of rule 5101:2-9-06 of the Administrative Code. No residential facility shall use alcohol, tobacco or tobacco products to influence or control the behavior of a child.
- (16) An agency which is certified to operate a residential facility shall have a written admissions policy specifying the type of child who will be accepted into the facility and the conditions under which a child would not be accepted.
- (17) An agency which is certified to operate a residential facility is to have a written policy to address the requirements of being a qualified residential treatment program (QRTP) as outlined in rule 5101:2-9-42 of the Administrative Code.
- (18) An agency shall have a written policy which describes the conditions under which, and the procedures by which, a child will be discharged from an out-of-home care setting including any criteria for emergency discharges and discharges not in accordance with a child's service plan.
- (19) An agency shall have a written policy which specifies the procedures for ensuring the accessibility of the administrator or designee with executive authority to agency staff and ODJFS representatives at all times.
- (20) An agency shall have a written policy regarding access, confidentiality, maintenance, security and disposal of all records maintained by the agency.
- (21) An agency shall have a written policy which protects the confidentiality of information concerning a child and the child's family. This policy shall include

the agency's procedure for disseminating information to a child fatality review board.

- (22) An agency shall have a written policy governing the agency's participation in human research projects, fund raising and publicity activities, and shall not involve a child in any such activity without the prior informed, written consent of the parent, guardian or legal custodian and the child, according to the child's age and functioning level. Such written consent shall be contained in the child's case record.
- (23) An agency shall have written personnel policies and procedures which are provided to all personnel. These personnel policies and procedures shall include, but are not limited to:
- (a) Procedures for recruitment, screening, orientation, assignment, supervision, promotion, training, and written annual evaluation of all employees.
 - (b) Procedures for discipline of employees including suspension and dismissal.
 - (c) Procedures for handling staff grievances.
 - (d) Salary and fringe benefit plan.
 - (e) A requirement for an employee that he shall notify the agency within twenty-four hours of any charge of any criminal offense that is brought against him. This policy shall also contain a provision that:
 - (i) Failure to notify the agency within twenty-four hours of any charge of any of the crimes listed in rule 5101:2-5-09 of the Administrative Code shall result in immediate dismissal from employment.
 - (ii) If the charges result in a conviction, the employee shall notify the agency within twenty-four hours of the conviction. Failure to notify the employer of any conviction of any criminal offense shall result in the employee's immediate dismissal from employment.
 - (iii) Conviction of any of the crimes listed in rule 5101:2-5-09 of the Administrative Code while in the employ of the agency shall result in immediate dismissal from employment with the agency.
- (24) An agency which uses volunteers or college interns shall have a written policy for screening which includes conducting criminal background checks, orienting, training, supervising and assigning volunteers and college interns, as appropriate to the function to be performed. The policy shall include a

requirement for any volunteer or college intern to notify the agency within twenty-four hours of any charge of any criminal offense that is brought against him. The policy shall also contain the following provisions:

- (a) Failure to notify the agency within twenty-four hours of any charge shall result in immediate dismissal from the agency.
 - (b) If the charges result in a conviction, the volunteer or college intern shall notify the agency within twenty-four hours of the conviction. Failure to notify the agency of any conviction of any criminal offense shall result in the immediate dismissal of the volunteer or college intern from the agency.
 - (c) Conviction of any of the crimes listed in rule 5101:2-5-09 of the Administrative Code while serving as a volunteer or college intern for the agency shall result in the immediate dismissal of the volunteer or college intern from the agency.
- (25) An agency shall have a written policy and procedure which assures protection of a child's civil rights.
- (26) An agency operating a foster care program shall include in its foster care policy a copy of the JFS 01611 "Non-discrimination Requirements for Foster Care and Adoptive Placements." No additional language regarding non-discrimination in the foster care process based upon race, color, or national origin shall be permitted in the PCSA, PCPA or PNA foster care policy unless additional language is required pursuant to a federal court order and is approved by the ODJFS.
- (27) An agency operating a foster care program shall comply with the standards of conduct regarding MEPA and Title VI in accordance with rule 5101:2-33-11 of the Administrative Code.
- (28) An agency operating a foster care program shall include in its foster care policy the complaint process pursuant to rule 5101:2-33-03 of the Administrative Code.
- (29) If a recommending agency has a foster home that is providing care for a child in the custody of another agency, the recommending agency shall have a written policy and procedure to notify the custodial agency if any of the following incidents occur:
- (a) A serious injury or illness involving medical treatment of the foster child.

- (b) The death of the foster child.
 - (c) Unauthorized absence of the foster child from the home. The recommending agency shall provide the notification to the custodial agency immediately, but no later than twenty-four hours from the time the recommending agency became aware of the unauthorized absence.
 - (d) Removal or attempted removal of the foster child from the home by any person or agency other than the placing agency.
 - (e) Any involvement of the foster child with law enforcement authorities.
- (30) A PCSA shall have a written policy for monitoring the appropriate use of psychotropic medications for children in foster care. In preparation for developing the policy, the PCSA may review the JFS 01682 "Psychotropic medication toolkit for Public Children Services Agencies." This policy shall include:
- (a) Comprehensive and coordinated screening, assessment, and treatment planning mechanisms to identify the child's mental health and trauma-treatment needs including a psychiatric or medical evaluation, as necessary, to identify needs for psychotropic medication.
 - (b) Informed and shared decision-making and methods for ongoing communication between the prescriber, the child, the child's parents or caregivers, other healthcare providers, and the agency case worker.
 - (c) Effective medication monitoring for the children placed in care.
- (31) A residential facility operating as a private, nonprofit therapeutic wilderness camp shall have written policies in accordance with division (D) of section 5103.50 of the Revised Code.
- (B) Unless otherwise indicated, policies, plans and procedures related to ODJFS certified or approved functions shall be submitted to ODJFS for review in accordance with the following:
- (1) At the time of application for an initial certificate, all policies, plans, and procedures shall be submitted.
 - (2) At the time of application for an amended certificate to add an additional function, the agency shall submit any policy, plan, or procedure related to the new function.

- (3) At the time of request for approval of any new foster home function of a PCSA, all policies, plans, and procedures related to that function shall be submitted.
 - (4) When an agency revises a policy, plan or procedure, the revision shall be submitted within ninety calendar days of the change.
 - (5) If a change of the Administrative Code or the Revised Code requires the agency policy to change, the agency shall submit the affected agency policy to ODJFS within ninety days of the effective date of the Administrative Code or the Revised Code change.
- (C) An agency shall ensure that agency staff and contractors performing work related to the functions listed in rule 5101:2-5-03 of the Administrative Code shall implement all current written policies of the agency related to those functions and that all activities and programs related to those functions occur in accordance with such policies.
- (D) All policies required by this chapter shall be provided to any person affected by the policy. Any policy required by this chapter shall be provided to any person upon request.
- (E) If ODJFS determines an agency's foster care policy, policy revisions or plans are noncompliant, the agency shall accept technical assistance from ODJFS until such time that the policy or recruitment plan is in compliance.

Effective: 12/15/2023
Five Year Review (FYR) Dates: 7/19/2023 and 12/15/2028

CERTIFIED ELECTRONICALLY

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5101:2-9-21

CareResidential care, supervision and discipline.

- (A) Disciplinary procedures of a residential facility shall be explained to all staff and each child according to their age and functioning level. A copy of the disciplinary procedures shall be made available to persons or agencies who desire to place children in the facility.
- (B) The residential facility disciplinary procedures shall be humane, instructive and shall be administered with fairness, consistency and respect and regardless of the child's race, sex, gender identity, sexual orientation, disability, religion or cultural heritage. All cruel and unusual punishments/practices are prohibited including, but not limited to:
- (1) Physical punishment such as spanking, punching, paddling, shaking, biting, spitting, hair pulling, pinching, pushing, physical hitting inflicted in any manner upon the body or roughly handling a child.
 - (2) Physically strenuous work or exercises, when used as a means of punishment, consequence or discipline.
 - (3) Forcing a child to maintain an uncomfortable position, or to continuously repeat physical movements when used as a means of punishment, consequence or discipline.
 - (4) Group punishments for the behavior of an individual. A group activity shall not be cancelled for the entire group, prior to the activity, due to the behavior of one or more individuals.
 - (5) Verbal abuse, including swearing, directed at a child or derogatory remarks about a child's family, race, gender identity, sexual orientation, disability, religion, or cultural background or threats of physical violence against the child or removal of the child from the facility.
 - (6) Denial of social or recreational activities for more than five consecutive days without prior written approval of the facility administrator or designee and a certified or licensed practitioner of behavioral science.
 - (7) The denial of social, mental health or casework services, medical treatment, educational services or access to their guardian ad litem or attorney, probation officer, court appointed special advocate, placement worker or caseworker.
 - (8) The deprivation of meals or any required snack.
 - (9) The use or denial of any medication as a punishment or discipline.

- (10) The denial of visitation or communication rights with a child's family as a means of punishment or discipline.
 - (11) The denial of sleep.
 - (12) The denial of shelter, clothing, bedding, or restroom facilities.
 - (13) The use of physical restraint as a means of punishment or discipline.
 - (14) Organized social ostracism such as codes of silence.
 - (15) The use of chemical restraint.
 - (16) The use of mechanical restraint.
 - (17) Isolation in a locked or unlocked room used as punishment.
 - (18) Separation of a teenage mother and her child in a residential parenting facility as a means of punishment.
 - (19) The use of prone restraints. Prone restraint is defined as ~~all items or measures used to limit or control the movement or normal functioning of any portion, or all, of an individual's body while the individual is in a face-down position for an extended period of time~~ a method of intervention where a person's face and/or frontal part of his or her body is placed in a downward position touching any surface for any time. Prone restraint includes physical or mechanical restraint.
 - (20) Time out exceeding one minute for each year of the child's age, unless approval is granted by a certified or licensed practitioner of behavioral science and documented in the child's service plan.
 - (21) Punishment for actions over which the child has no control such as bedwetting, enuresis, encopresis or incidents that occur in the course of toilet training activities.
- (C) Discipline shall be administered only by persons who are administrators or employees with direct care responsibilities of the residential facility. Children shall not discipline other children, except their own. All staff involved in the discipline of children shall meet the requirements of rule 5101:2-9-03 of the Administrative Code.
- (D) Agency employees, contract staff, student interns and volunteers shall not engage in any act of omission or commission which results in the death, injury, illness, abuse, neglect, or exploitation of any child.

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