



Office of Children and Family Services

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Administrative Directive

Transmittal:	21-OCFS-ADM-05
To:	Commissioners of Social Services Executive Directors of Voluntary Authorized Agencies
Issuing Division/Office:	Child Welfare and Community Services
Date:	April 6, 2021
Subject:	Regulatory Changes and Standards of Care for Youth in Congregate Care Settings
Suggested Distribution:	Voluntary Agency Executive Directors Local District Social Services Commissioners Directors of Social Services Child Welfare Supervisors Foster Care Supervisors Staff Development Coordinators Runaway and Homeless Youth Programs Municipalities
Contact Person(s):	Please see section VI.
Attachments:	Behavior Management and Use of Physical Interventions Sample Policy Behavioral Health Services Sample Policy Continuous Quality Improvement Sample Policy Youth Personal Belongings Sample Policy LGBTQ Sample Policy

Previous ADMs/INFs	Releases Cancelled	NYS Regs.	Soc. Serv. Law & Other Legal Ref.	Manual Ref.	Misc. Ref.
21-OCFS-ADM-04		18 NYCRR 441.4, 441.17, 441.22, and 442.2	Family First Prevention Services Act (FFPSA) (P.L. 115-123)		

I. Purpose

The purpose of this Administrative Directive (ADM) is to provide guidance on recent regulatory changes in conjunction with the creation of policy-based standards of care that will continue to promote and maintain the health, safety and well-being of all youth placed in all congregate care settings that are licensed by the New York State Office of Children and Family Services (OCFS), including those operated by voluntary foster care agencies and local departments of social services (LDSS).

To accompany the regulatory changes described herein, specifically the development of mandated policies, OCFS is providing sample policies that comport with the regulations. OCFS has developed these sample policies to aid with regulatory changes and the documenting of required standards of care. These sample policies were drafted, specifically to provide agencies with language to either adopt or use to guide new or revised agency policies. Attached are samples of the five policies mandated by the adopted regulations and this ADM, they include:

- Behavior Management and Use of Physical Interventions
- Behavioral Health Services
- Continuous Quality Improvement (CQI)
- Youth Personal Belongings
- LGBTQ

This ADM is also to inform congregate care programs of future incident reporting requirements. OCFS will be mandating that all agencies operating a congregate care setting utilize the OCFS Voluntary Agency Incident Reporting System (VAIRS) beginning in the first quarter of 2022. OCFS will provide a presentation and training, as well as a guidebook in advance of this date. VAIRS is a procedural incident reporting system that is currently used for all voluntary agencies operating Raise the Age programs. The centralized reporting of incidents is part of a broad initiative to develop a consistent framework from which all congregate care programs can operate and provide increasingly supportive and effective services to youth.

II. Background

Effective March 31, 2021 changes were made to the following regulations: 18 NYCRR 441.22, Behavioral health, health and medical services; 18 NYCRR 441.17, Restraint of children in care; 18 NYCRR 442.2, De-escalation rooms (use of room isolation); and 18 NYCRR 441.14, related to creating policies for continuous quality improvement, treatment of youth of all sexual orientations, genders, gender identities and expression, use of de-escalation rooms and youth's personal property. As a result, additional clarification, guidance and promulgation of standards of care are required to achieve a high level of supportive, goal-oriented service for youth placed in congregate care settings.

III. Program Implications

Amended Regulations

A. 18 NYCRR 441.22, Behavioral health, health and medical services

This amended regulation outlines standards and expectations of care for youth placed in a congregate care setting. Some of the changes to this regulation include the following:

- A requirement that within the first 72-hours of a youth being placed in a congregate care program, an individualized crisis intervention plan must be developed with the youth and subsequently be reviewed and updated on a regular basis.
- Within 72-hours of a youth being placed in a congregate care program, the youth must be screened using a validated, industry accepted instrument for, at minimum, suicidality; chemical dependence requiring immediate medical intervention; and any current prescribed medications.
- Within 30 calendar days of a youth being placed in a congregate care program, the youth must be assessed by a qualified mental health professional for service needs related to mental, behavioral and developmental health; education; social and family connections; substance use/abuse, and sexual assault/trafficking. Such assessments must include consideration for the youth's sexual orientation and gender identity where developmentally appropriate.
- Within 30 calendar days of a youth being placed in a congregate care setting and on a schedule identified in the policy language thereafter, a support team must meet to develop and/or update the youth's support plan. The schedule of meetings provides for a graduated increase in meetings relative to lengths of stay requirements under the Family First Prevention Services Act.
- Ongoing services for mental, behavioral and substance use/abuse needs must be provided on a regular basis. The services may be delivered in both individual and group modalities and must be determined by a qualified mental health professional as to the frequency and modalities used.

B. 18 NYCRR 441.17, Restraint of children in care and 18 NYCRR 442.2, De-escalation rooms (use of room isolation)

Regulation 18 NYCRR 441.17 was amended to ban the use of prone restraints in all OCFS licensed programs. This regulation was also modified to exclude the use of room isolation. Room isolation is no longer permitted to be utilized as part of any restraint of any youth placed in a congregate care setting.

Regulation 18 NYCRR 442.2 was amended to reflect the change to regulation 18 NYCRR 441.17, in that an institution shall not use room isolation, or de-escalation rooms (new term) as part of the restraint process. It further describes the circumstances of utilizing a de-escalation room, and notably, that it is to be voluntary in nature. It also provides specific guidelines as to the physical environment and construction requirements for a de-escalation room and prescribes a mandate for the record-keeping of its use.

Agency Policies

Included as an attachment to this ADM are a series of sample policies that comport with and support the goals of the regulation. OCFS has developed these sample policies to aid with the implementation of this ADM and the regulatory changes. These sample policies were drafted specifically to provide agencies with sample language to either adopt or use to guide the development of the relevant agency policy. The policies are meant to comport with the regulatory expectations but also go beyond them in some instances to provide examples of best practices.

- A. The attached Behavior Management and Use of Physical Interventions Sample Policy contains language that requires the development of individualized crisis management plans and describes the requirements for the use of proactive, non-physical interventions prior to the use of physical restraints. It specifies training requirements, safety precautions, and procedures that must be followed in addition to describing the circumstances under which staff may use physical restraints.
- B. The attached Behavioral Health Services Sample Policy contains language that comports with the regulatory requirements, sets specific standards and procedures, while also describing the continuum of behavioral health services available to youth in a congregate care setting.
- C. The attached Continuous Quality Improvement (CQI) Sample Policy specifies the functional components and implementation of an agency's CQI process. It will be required for any agency operating a congregate setting to adopt a CQI model if one is currently not in effect. The CQI process utilizes a data-driven process to identify, describe and analyze strengths and problems in order to develop solutions and processes with measurable outcomes.
- D. The attached Youth Personal Belongings Sample Policy provides language consistent with the intent of the regulatory amendment related to the inventory and care for youth's personal belongings while in a congregate setting.
- E. The attached LGBTQ Sample Policy provides language consistent with the intent and expectations of OCFS relative to the treatment and planning for all youth and young adults being cared for by agencies.

IV. Required Action

It is required that any agency operating a congregate care program will disseminate any necessary information, as well as provide training and guidance wherever needed, to provide for all congregate care staff being aware of and in compliance with the new standards of care put forth in the aforementioned regulations, and described in this ADM.

The attached sample policies serve as examples of acceptable policies. Policies addressing these areas must be developed and included into the program manual of any agency operating a congregate care setting for youth by the dates outlined below.

All text and language within these sample policies may directly be adopted or revised and tailored to the specific needs of the agency and congregate care program, so long as they comport with the applicable statutes and regulations. The agency will be bound to the practice described by the language adopted in its policy and thereby be expected to exhibit regular adherence to said practice and policy.

The Behavior Management and Use of Physical Interventions policy must be submitted to and receive approval from OCFS prior to implementation in accordance with 18 NYCRR 441.17. OCFS has developed a statewide review team to expedite submissions and provide technical assistance. Mandatory content requirements for agency Behavior Management and Use of Physical Interventions policies include:

- **Proactive Supervision of Youth Summary:** A summary of the agency's principles and practice related to the proactive supervision of youth.
- **Post-Physical Restraint Medical Response:** Regulation 18 NYCRR 441.17 requires that all children cared for in an institution as defined in section 441.2 must receive a post-physical restraint health review in accordance with the standards set forth by OCFS. The OCFS standards are specified under sections G and H of the sample policy.
- **Notification and Documentation:** Regulation 18 NYCRR 441.17 requires notification to parent, guardian or other person legally responsible, as applicable, the attorney for the child, the authorized agency with legal custody of the restrained child, and the Vulnerable Persons Central Register, if applicable. A list of all required notifications is contained under this section of the sample policy.
 - The requirements for documentation of all physical restraints, including the requirement for restraint packets and their content, are also specified in this section of the sample policy.
- **Debriefing Process:** A series of debriefings following the use of physical restraint and the requirements for those debriefings are specified under this section of the sample policy.
- **Administrative Review:** The multilayered administrative review process and its requirements are specified under this section of the sample policy.
- **Risk Management/QI Reviews:** The requirements for quality assurance reviews of physical restraints are specified under this section of the sample policy, which includes a review of the agency's physical restraint data contained within the OCFS Automated Restraint Tracking System (ARTS) to inform and guide staff, policy, and/or programmatic changes when necessary.

Please send any policy questions and submissions of your Behavior Management and Use of Physical Interventions to: VAPolicyReviews@ocfs.ny.gov

OCFS Standards of Care Implementation Dates		
Policy / Action	Policy Submission to OCFS	Implementation by Agency
Youth Personal Property Policy	For TA Only	6/1/2021
Behavior Management and Use of Physical Interventions Policy	4/9/2021	7/1/2021
Behavioral Health Services Policy	For TA Only	9/28/2021
Continuous Quality Improvement Policy	For TA Only	9/28/2021
LGBTQ Policy	6/30/2020	9/28/2021
VAIRS	N/A	Q1 2022

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