

# **Summary of Proposed Changes to Ontario Regulation 155/18 – Lieutenant Governor in Council’s Regulation**

*Child, Youth and Family Services Act, 2017*

**Posting Date: August 20, 2021**

**Submissions Required by: October 4, 2021**

## Purpose

The purpose of this document is to seek feedback from Ontarians on a summary of proposed **draft** amendments to Ontario Regulation (O. Reg.) 155/18 under the *Child, Youth and Family Services Act, 2017* (CYFSA). The proposed changes pertain to licensed residential services for children and young persons across various sectors and settings (i.e., child welfare, youth justice, child and youth mental health and special needs), as well as placing agencies, including children's aid societies (societies) and other service providers funded to deliver services under the CYFSA.

This is one of two policy intent summaries that the Ministry of Children, Community and Social Services (MCCSS) is posting to the Regulatory Registry for feedback from Ontarians. For more information on the proposed **draft** amendments being proposed to O. Reg. 155/18, please see *Summary of Proposed Changes to Ontario Regulation 156/18 – Minister's Regulation*.

Please provide MCCSS with your comments on the proposal by email to [qualitystandardsframework@ontario.ca](mailto:qualitystandardsframework@ontario.ca) by no later than October 4, 2021. Please reference the section letter, proposal number and page number (e.g., Section A – Physical Restraint, s. 10(1), page 6) in your feedback for clarity. Responses must be received by the MCCSS by October 4, 2021.

**Disclaimer:** In this policy intent summary, the term “residential” is used for legal accuracy, however, MCCSS recognizes that this term in the context of providing group and foster care to children and young persons in Ontario may be traumatizing and triggering for First Nations, Inuit and Métis peoples given the history of the residential school system in Canada. As a result, MCCSS is reviewing options for other language that could be used in the CYFSA and its regulations to describe “residential care” provided to children and young persons in licensed residential settings. As this work continues, MCCSS will be consulting externally with stakeholders across Ontario, including representatives of First Nations, Inuit and Métis peoples and Indigenous service providers, given the importance of their perspectives in this area and others.

## Proposed Regulatory Changes

In July 2020, Ontario released a multi-year strategy to redesign the child welfare system, intended to shift the focus from reactionary service delivery to enhanced, community-based, prevention and early intervention-focused services to support the safety and success of children and youth. The Child Welfare Redesign (CWR) Strategy was developed with input from a diversity of perspectives including from youth, families, caregivers, Indigenous partners, lawyers, community organizations, frontline workers and child welfare sector leaders through over 100 engagement sessions. The [CWR Strategy](#) has five pillars, including Pillar 2: Quality of Care, which aims to improve the

quality of care and everyday experiences of children and young persons receiving licensed residential care<sup>1</sup> in Ontario.

As part of Ontario's announcement on the CWR Strategy, MCCSS released Ontario's Quality Standards Framework (QSF). The QSF provides an overview of what high-quality residential care looks like across all sectors and settings that make up licensed residential services for children and young persons in Ontario.

Implementation of the QSF is a cornerstone initiative under Pillar 2: Quality of Care. As the QSF is a resource document only, it does not have the force and effect of the law (i.e., the CYFSA, its associated regulations and directives). Proposed legislative amendments to embed elements of the QSF into the CYFSA and its associated regulations to improve quality of care is proposed to occur in a three-phase, multi-year plan over the next 3-5 years. This includes:

- **Phase 1:** Areas of focus include qualifications and pre-service training for persons delivering residential care, increased safety measures for children and young persons, and further enhancing the voices of children and young persons.
- **Phase 2:** Areas of focus include enhanced licensing enforcement measures, needs-based placements, and in-service training for persons delivering residential care.
- **Phase 3:** Areas of focus include operations and program delivery, enhanced reporting of serious occurrences, enhanced screening requirements and access to technology for children and young persons.

As part of **Phase 1 of the QSF Regulations**, MCCSS is proposing regulatory changes to O. Reg. 155/18 in the following key areas to help improve the quality of care that children and young persons receive:

- A. Physical Restraint<sup>2</sup> (beginning on page 5)
- B. Mechanical Restraint<sup>3</sup> (beginning on page 10)
- C. Written Complaint Procedures (beginning on page 14)
- D. Other Minor Enhancements (beginning on page 21)

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<sup>1</sup> Under the CYFSA, "residential care" means boarding, lodging and associated supervisory, sheltered or group care provided for a child away from the home of the child's parent, other than boarding, lodging or associated care for a child who has been placed in the lawful care and custody of a relative or member of the child's extended family or the child's community.

<sup>2</sup> Under the CYFSA, "physical restraint" means a holding technique to restrict a person's ability to move freely but, for greater certainty, does not include,

- (a) restricting movement, physical redirection or physical prompting, if the restriction, redirection or prompting is brief, gentle and part of a behaviour teaching program, or
- (b) the use of helmets, protective mitts or other equipment to prevent a person from physically injuring or further physically injuring themselves.

<sup>3</sup> Under the CYFSA, "mechanical restraints" means a device, material or equipment that reduces the ability of a person to move freely, and includes handcuffs, flex cuffs, leg irons, restraining belts, belly chains and linking chains.

The following chart provides a snapshot of each of the key areas, organized by section, that MCCSS is proposing to enhance to help improve quality of care in licensed and/or ministry-operated residential settings:

<b>Section</b>	<b>Regulatory Area</b>	<b>Rationale for Proposed Changes</b>	<b>Quality Standard(s) Reference</b>	<b>Intended Outcome(s)</b>
A.	Physical Restraint	To help to clarify the rules and restrictions specific to the use of physical restraint which is prohibited under the CYFSA unless authorized by the regulations	Quality Standard 5: Safe, Inclusive and Accessible Environments	Children and young persons feel that the licensed residential setting where they reside is safe, inclusive, and accessible
B.	Mechanical Restraint	To help to clarify the rules and restrictions specific to the use of mechanical restraints which are prohibited under the CYFSA unless specifically authorized by the Act or regulations	Quality Standard 5: Safe, Inclusive and Accessible Environments	Children and young persons feel that the licensed residential setting where they reside is safe, inclusive, and accessible
C.	Written Complaint Procedures	To support fairer, more impartial, transparent and objective complaints mechanisms for children and young persons, and their families	Quality Standard 3: Children and Young Persons Rights and Complaints	Children and young persons are supported and empowered to raise concerns about their care and have these concerns responded to in a timely manner
D.	Other Minor Enhancements	To help ensure enhanced understanding and clarity of certain regulatory requirements under the CYFSA	N/A – Change being proposed for clarification purposes	Enhanced clarity of certain requirements that must be met by service providers under the CYFSA

The ministry is also proposing legislative amendments under the distinct Indigenous approach of the CWR Strategy, and has additional mandates in respect of increasing access to customary care and enhancing access to prevention-focused wraparound supports for First Nations, Inuit and Métis children, youth and families. These proposed legislative amendments will seek to:

- More clearly distinguish customary care from residential care in the CYFSA, in order to address requirements that may act as a barrier to providing access;
- Provide standards for customary care that are more reflective of the distinct customs of bands and First Nations, Inuit or Métis communities;
- Implement “holistic wraparound supports for First Nations, Inuit and Métis children and youth under the CYFSA that follow an Indigenous “circles of care” model to enhance well-being; and
- Enhance the role of Indigenous service providers that are not societies within Ontario’s child and family services system.

MCCSS has posted these proposals to Ontario’s Regulatory Registry for public feedback.

The following provides a description of the intent of the proposed changes to O. Reg. 155/18.

### **Section A. Physical Restraint**

Section 6 of the CYFSA prohibits a service provider<sup>4</sup> or foster parent<sup>5</sup> from using or permitting the use of physical restraint on a child or young person for whom the service provider or foster parent is providing services, except as the regulations authorize.

Current provisions authorizing the use of physical restraint are outlined in sections 10 – 20 in O. Reg. 155/18 under the CYFSA. This includes requirements specific to when a physical restraint may be used, training and education requirements and requirements specific to documentation.

The proposed changes to the physical restraint regulations are intended to enhance the requirements for residential licensees and other service providers funded under the authority of the CYFSA to help to better ensure that all of the appropriate safeguards are in place when a physical restraint is used under the very limited circumstances authorized by the regulations. It is important to note that, while MCCSS is proposing to make enhancements to requirements in this area, it does not believe that physical

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<sup>4</sup> Under the CYFSA, “service provider” means,

- (a) the Minister,
- (b) a licensee,
- (c) a person or entity, including a society, that provides a service funded under this Act, or
- (d) a prescribed person or entity,
- (e) but does not include a foster parent.

<sup>5</sup> Under the CYFSA, “foster care” means the provision of residential care to a child, by and in the home of a person who,

- (a) receives compensation for caring for the child, except under the Ontario Works Act, 1997 or the Ontario Disability Support Program Act, 1997, and
- (b) is not the child’s parent or a person with whom the child has been placed for adoption under Part VIII (Adoption and Adoption Licensing),

and “foster home” and “foster parent” have corresponding meanings.

restraint should be used on children and young persons in residential care unless absolutely necessary, as a last resort, and as authorized by the regulations.

The following chart summarizes the proposed enhancements to these provisions. It is important to note that there are corresponding proposed enhancements to O. Reg. 156/18 as a result of some of the changes below (please see *Summary of Proposed Changes to Ontario Regulation 156/18 – Minister’s Regulation* for more details).

Current Requirements	Proposed Changes
<p><b>10. (1)</b> Subject to subsection 11(3), a service provider is authorized to use or permit the use of physical restraint on a child or young person for whom it provides a service only if the following are satisfied:</p> <ol style="list-style-type: none"> <li>1. There is imminent risk that,               <ol style="list-style-type: none"> <li>i. the child or young person will physically injure or further physically injure themselves or others, or</li> <li>ii. in the case of a young person, the young person will escape from a place of open custody, of secure custody or of temporary detention or will cause significant damage to property where there is also an imminent risk that the property damage will cause personal harm to a person, including the young person.</li> </ol> </li> <li>2. The physical restraint will be used to prevent, reduce or eliminate a risk referred to in paragraph 1.</li> <li>3. It has been determined that a less intrusive intervention is or would be ineffective in preventing, reducing or eliminating a risk referred to in paragraph 1.</li> <li>4. The person who will use the physical restraint has successfully completed the training required under section 16 or 17, as the case may be, including training in the particular holding technique that will be used.</li> <li>5. The person who will use the physical restraint has completed the education required under section 16 or 17, as the case may be.</li> <li>6. In each circumstance in which the person was required to complete education requirements as described in paragraph 5, the person has been assessed as required under section 20 with respect to the education requirements and has</li> </ol>	<ol style="list-style-type: none"> <li>1. It is proposed that this provision be enhanced to specify that a person providing direct care to a child or young person that has not successfully completed the training and education required under section 16 or 17 is not authorized to provide direct care to a child without supervision by a person who has successfully completed the training and education under those sections.</li> </ol> <p><b>Note:</b> This new provision would not be applicable to service providers that have decided that they will not use or permit the use of physical restraint and have established the required policy required under s. 11(2).</p>

<p>received a satisfactory assessment in the most recent assessment.</p>	
<p><b>11. (1)</b> A service provider that uses or permits the use of physical restraint shall maintain a written policy on the use of physical restraint that includes the following information:</p> <ol style="list-style-type: none"> <li>1. Alternative interventions to physical restraint that must be considered or used to reduce or eliminate a risk referred to in paragraph 1 of subsection 10(1).</li> <li>2. The titles or positions of persons who are authorized to use physical restraint on a child or young person and the training that those persons must complete.</li> <li>3. The measures that must be taken to prevent and minimize the use of physical restraint on a child or young person.</li> <li>4. Protocols that must be followed in monitoring and assessing a child or young person's condition while they are being physically restrained.</li> <li>5. Protocols that must be followed during the debriefing process under section 12.</li> </ol>	<ol style="list-style-type: none"> <li>1. It is proposed that this provision be enhanced to require the service provider to have a written policy and procedure that: <ol style="list-style-type: none"> <li>a) Explains the following information to the child or young person, in language suitable to their understanding and accordance with their age and maturity, and to the child or young person's parent/guardian: <ul style="list-style-type: none"> <li>▪ The meaning of "physical restraint" pursuant to the CYFSA; and</li> <li>▪ The rules governing the use of physical restraint under the CYFSA and its regulations including the circumstances under which the child or young person may be restrained and the procedures that must be followed following use of physical restraint on the child or young person.</li> </ul> </li> <li>b) Specifies that this information be provided by the service provider to the child or young person when the child or young person first starts to receive a service<sup>6</sup> from the service provider.</li> </ol> </li> </ol>
<p><b>12.</b> A service provider that has used or permitted the use of physical restraint on a child or young person for whom it provides a service shall ensure</p>	<ol style="list-style-type: none"> <li>2. It is proposed that this provision be enhanced to require the service provider to:</li> </ol>

<sup>6</sup> Under the CYFSA, a "service" includes,

- (a) a service for a child with a developmental or physical disability or the child's family,
- (b) a mental health service for a child or the child's family,
- (c) a service related to residential care for a child,
- (d) a service for a child who is or may be in need of protection or the child's family,
- (e) a service related to adoption for a child, the child's family or others,
- (f) counselling for a child or the child's family,
- (g) a service for a child or the child's family that is in the nature of support or prevention and that is provided in the community,
- (h) a service or program for or on behalf of a young person for the purposes of the Youth Criminal Justice Act (Canada) or the Provincial Offences Act, or
- (i) a prescribed service.

that a debriefing is conducted in accordance with the following rules:

1. A debriefing process must be conducted among the persons who were involved in the use of the physical restraint, in the absence of any children or young persons.
2. A second debriefing process must be conducted among the persons mentioned in paragraph 1 and the child or young person on whom the physical restraint was used.
3. A third debriefing process must be offered to be conducted among any children or young persons who witnessed the use of the physical restraint and must be conducted if any such children or young persons wish to participate in the debriefing process.
4. The debriefing processes referred to in paragraphs 2 and 3 must be structured to accommodate any child or young person's psychological and emotional needs and cognitive capacity.
5. Subject to paragraph 6, the debriefing processes referred to in paragraphs 1 to 3 must be conducted within 48 hours after the use of the physical restraint.
6. If the circumstances do not permit a debriefing process to take place within 48 hours after the physical restraint is used, the debriefing process must be conducted as soon as possible after the 48-hour period referred to in paragraph 5, and a record must be kept of the circumstances which prevented the debriefing process from being conducted within the 48-hour period.
7. The service provider must record the following:
  - i. The date and time of each debriefing, the names and, if applicable, titles of the persons involved in each debriefing and the duration of each debriefing.
  - ii. The name of each child or young person for whom a debriefing was offered in accordance with paragraph 3 and who indicated that they did not wish to participate in the debriefing process.

- a) Review the following with the child or young person that was the subject of the physical restraint:
  - The reasons that the child or young person was the subject of a physical restraint and whether the child or young person understands these reasons.
  - Whether the child or young person requires any supports or services as a result of the use of physical restraint.
- b) Document the information reported by the child or young person and include it in their file.
- c) Ensure that the child or young person signs the document, together with a date of signature, confirming the information recorded is accurate.
  - If the child or young person does not wish to sign the document, the service provider must document this and keep it in their file.

<p>iii. A description of the efforts made to conduct the debriefing processes required by this section that includes the names of the persons who made those efforts.</p>	
<p><b>16. (1)</b> Subject to subsection (2), this section applies in respect of a service provider that is licensed to operate a children’s residence, including a licensee that does not use or permit the use of physical restraint.</p> <p><b>(2)</b> This section only applies in respect of a licensee who is an individual if that individual provides direct care to a child or young person in the course of the licensee’s provision of a service to a child or young person.</p> <p><b>(3)</b> The licensee shall ensure that all persons who provide direct care to a child or young person in the course of the licensee’s provision of a service to the child or young person complete the following training on the use of physical restraint:</p> <ol style="list-style-type: none"> <li>1. A training program that includes training in the use of physical restraint that is approved by the Minister, including training in a particular holding technique that may be used.</li> <li>2. All refresher courses required by the program referred to in paragraph 1.</li> <li>3. Training on the use of less intrusive intervention measures.</li> </ol>	<ol style="list-style-type: none"> <li>1. It is proposed that this provision be enhanced to also include the category of licensee described under s. 117 of O. Reg. 156/187, namely: <ol style="list-style-type: none"> <li>a) A licensee, other than a foster care licensee, who provides residential care directly or indirectly, for three or more children not of common parentage in places;</li> <li>b) where adult persons are employed to provide residential care to children on the basis of scheduled periods of duty; and</li> <li>c) that are not children’s residences.</li> </ol> </li> </ol>
<p><b>17. (1)</b> Subject to subsection (2), this section applies in respect of a service provider that is not a licensee of a children’s residence.</p> <p><b>(2)</b> This section only applies in respect of a service provider who is an individual if that individual provides direct care to a child or young person in the course of the service provider’s provision of a service to the child or young person.</p> <p><b>(3)</b> Except in the case of a service provider that does not use or permit the use of physical restraint, the service provider shall ensure that all persons who provide direct care to a child or young person in the course of the service provider’s provision of a service to the child or young person, including foster parents, complete the following training:</p>	<p>It is proposed that this provision be enhanced to:</p> <ol style="list-style-type: none"> <li>1. Remove the category of licensee described under s. 117 of O. Reg. 156/18 (as it will be added to the requirement above).</li> <li>2. Require all service providers who permit the use of physical restraint to use a Ministry-approved training program.</li> </ol>

<sup>7</sup> This licence type is colloquially known as “staff-model home”.

<ol style="list-style-type: none"> <li>1. Training on the use of physical restraint, including training in a particular holding technique that may be used.</li> <li>2. All refresher courses, if any, that are required by the training referred to in paragraph 1.</li> <li>3. Training on the use of less intrusive intervention measures.</li> </ol>	
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**Section B. Mechanical Restraint**

Section 7 of the CYFSA prohibits a service provider or foster parent from using or permitting the use of mechanical restraint on a child or young person for whom the service provider or foster parent is providing services, except as Part VI (Youth Justice) and Part VII (Extraordinary Measures) and the regulations authorize.

Current provisions authorizing the use of mechanical restraint for purposes other than those authorized by Parts VI and VII are outlined in section 21 in O. Reg. 155/18 under the CYFSA. This provision permits the use of mechanical restraints where authorized by a plan of treatment or a plan for the use of a personal assistance service device (PASD) and includes requirements specific to when a mechanical restraint may be used, requirements specific to the creation of a plan to authorize the use of a mechanical restraint, and requirements specific to documentation.

The proposed changes to section 21 of the regulations are intended to enhance the requirements for residential licensees and other service providers funded under the authority of the CYFSA so that all of the appropriate safeguards are in place when a mechanical restraint is used under the very limited circumstances authorized by the regulations. It is important to note that, while MCCSS is proposing to make enhancements to requirements in this area, it does not endorse the use of intrusive measures on children and young persons in residential care. Intrusive measures should not be used unless absolutely necessary, as a last resort, and as authorized by the Act and regulations. This includes the use of mechanical restraints.

The following chart summarizes the proposed enhancements to this provision. It is important to note that there are corresponding proposed enhancements to O. Reg. 156/18 as a result of some of the changes below (please see *Summary of New and Proposed Changes to Ontario Regulation 156/18 – Minister’s Regulation* for more details).

Current Requirements	Proposed Changes
<p><b>21. (1)</b> In this section, “health practitioner” means a member of a College under the Regulated Health Professions Act, 1991 or a person designated by the Minister;</p>	<p>It is proposed that this provision be enhanced to:</p> <ol style="list-style-type: none"> <li>1. Clarify that the use of a mechanical restraint as part of a plan of treatment or a plan for the use of a PASD must</li> </ol>

<p>“PASD” means a personal assistance service device, being a device used to assist a child or young person with hygiene, washing, dressing, grooming, eating, drinking, elimination, ambulation or positioning or any other routine activity of living; and</p> <p>“plan of treatment” and “substitute decision-maker” have the same meaning as in the Health Care Consent Act, 1996.</p> <p><b>(2)</b> A service provider may use or permit the use of a mechanical restraint on a child or young person for whom the service provider is providing a service if the use is authorized by,</p> <ul style="list-style-type: none"> <li>a) a plan of treatment to which the child or young person, or their substitute decision-maker, has consented in accordance with the Health Care Consent Act, 1996; or</li> <li>b) a plan for the use of a PASD that is a mechanical restraint to which the child or young person, or their nearest relative as defined in subsection 21(1) of the Act, has consented.</li> </ul> <p><b>(3)</b> For the purposes of clause (2)(b), a plan for the use of a PASD means a plan that is developed by one or more health practitioners and provides for how a PASD that is a mechanical restraint will assist a child or young person with hygiene, washing, dressing, grooming, eating, drinking, elimination, ambulation or positioning or any other routine activity of living.</p> <p><b>(4)</b> In circumstances where this section and section 160 of the Act would apply to the use of mechanical restraints on a child in a secure treatment program, section 160 of the Act applies and this section does not apply.</p> <p><b>(5)</b> A service provider shall ensure that the use of mechanical restraints under this section is carried out in accordance with the following rules:</p> <ul style="list-style-type: none"> <li>1. Mechanical restraints shall not be used on a child or young person for the purposes of punishment or solely for the convenience of the service provider, foster parent or staff member who is providing the service.</li> <li>2. Mechanical restraints must be applied using the least amount of force that is necessary in the circumstances.</li> </ul>	<p>not only require consent but must also meet the requirements of this regulation.</p> <ul style="list-style-type: none"> <li>2. Require the following as part of the plan for the use of a PASD: <ul style="list-style-type: none"> <li>a) Alternatives to the use of a PASD that is a mechanical restraint have been considered and/or tried and determined not to be effective.</li> <li>b) The type of PASD used is reasonable and least restrictive.</li> <li>c) The child or young person being restrained by the PASD is released and repositioned from time to time.</li> <li>d) Documentation requirements (e.g., signatures and dates by those part of the plan and, all revisions must also be documented and signed).</li> </ul> </li> <li>3. Require the following be considered as part of the plan of treatment: <ul style="list-style-type: none"> <li>a) Any risks the child or young person poses to themselves or others.</li> <li>b) How the use of mechanical restraint is supporting their mental health and well-being.</li> <li>c) Alternative interventions to the use of mechanical restraint.</li> <li>d) The clinical or other supports provided to the child or young person to address their needs.</li> <li>e) Alternate interventions that are being used to teach the child or young person skills to replace the actions that are resulting in the use of a mechanical restraint.</li> <li>f) The length of time that the mechanical restraint can be used, not exceeding 12 hours in a 24-hour period except in exceptional circumstances that must be approved by a specific health practitioner (i.e., a physician, a nurse, a member of the College of Occupational Therapists of Ontario or College of Physiotherapists of Ontario).</li> </ul> </li> </ul>
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<p>3. The service provider shall ensure that the child or young person being restrained by the use of mechanical restraints is monitored on a regular basis and in accordance with any instructions or recommendations provided in the child or young person’s plan of treatment or plan for the use of a PASD.</p> <p>4. Mechanical restraints must be removed immediately upon the earliest of the following:</p> <ul style="list-style-type: none"> <li>i. When there is a risk that their use will endanger the health or safety of the child or young person.</li> <li>ii. When the continued use of the mechanical restraints would no longer be authorized by the plan of treatment or plan for the use of a PASD.</li> </ul> <p><b>(6)</b> A service provider shall ensure that mechanical restraints used under this section,</p> <ul style="list-style-type: none"> <li>a) are applied in accordance with the manufacturer’s instructions, if any;</li> <li>b) are maintained in good condition in accordance with the manufacturer’s instructions, if any; and</li> <li>c) are not altered except for adjustments made in accordance with the manufacturer’s instructions, if any.</li> </ul> <p><b>(7)</b> A service provider shall ensure that a staff member or foster parent who is permitted to use a mechanical restraint on a child or young person under this section has received the necessary training, instruction or education to allow the staff member or foster parent to use the mechanical restraint in accordance with the child or young person’s plan of treatment or plan for the use of a PASD.</p> <p><b>(8)</b> A service provider shall maintain written records regarding the use of a mechanical restraint on a child or young person under this section and those records shall include,</p> <ul style="list-style-type: none"> <li>a) information that is necessary to demonstrate that use of the mechanical restraint was in conformity with the child or young person’s plan of treatment or plan for the use of a PASD; and</li> </ul>	<ul style="list-style-type: none"> <li>g) Documentation requirements (e.g., signatures and dates by those part of the plan and, all revisions must also be documented and signed).</li> </ul> <p>4. Require the service provider to communicate these requirements to the health practitioner developing the plan(s).</p> <p>5. Require the service provider to request a copy of the plan(s) from the health practitioner. The plan(s), including all revised versions, must be kept in the child or young person’s file.</p> <p>6. Require the service provider to evaluate the plan(s) once every 30 days for the first six months the child or young person is in service, and every 6 months after. The service provider must also consult with the health practitioner, child or young person, or their substitute decision-maker as part of the evaluation.</p> <p>7. Require the service provider to also evaluate the plans(s) when the following occurs:</p> <ul style="list-style-type: none"> <li>a) New information about the child or young person’s needs is obtained.</li> <li>b) The child or young person’s needs change, or the plan(s) is unnecessary.</li> <li>c) Methods in the plan(s) have not been effective.</li> <li>d) When requested by the child or young person, their substitute decision-maker or the health practitioner.</li> </ul> <p>8. Require all staff members and/or foster parents to review the plan(s) before providing direct care to the child or young person and any time the plan(s) is revised.</p> <p>9. Require the service provider to remove the mechanical restraint if:</p> <ul style="list-style-type: none"> <li>a) The child, young person or their substitute decision-maker withdraws consent.</li> </ul>
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<p>b) the names of every staff member or foster parent who was permitted to use mechanical restraints on the child or young person and a description of the training, instruction or education that the staff member or foster parent received.</p> <p><b>(9)</b> A service provider that uses or permits the use of a mechanical restraint under this section shall develop and maintain policies regarding the following:</p> <ol style="list-style-type: none"> <li>1. Protocols that must be followed in monitoring and assessing a child or young person’s condition while a mechanical restraint is being used.</li> <li>2. Protocols for developing and maintaining records required under subsection (8).</li> </ol> <p><b>(10)</b> The following rules apply, despite any other subsection of this section, with respect to the period beginning on the day this section comes into force and ending on the day that is 60 days later:</p> <ol style="list-style-type: none"> <li>1. Subsections (1), (4) and (6) apply and subsections (2), (3), (5), (7), (8) and (9) do not apply.</li> <li>2. A service provider may use or permit the use of a mechanical restraint on a child or young person for whom the service provider is providing a service if the mechanical restraint is used as part of the child or young person’s treatment, as defined in subsection 2(1) of the Health Care Consent Act, 1996, or if the mechanical restraint is a PASD.</li> <li>3. A service provider shall ensure that the use of mechanical restraints under this section is carried out in accordance with the following rules: <ol style="list-style-type: none"> <li>i. Mechanical restraints shall not be used on a child or young person for the purposes of punishment or solely for the convenience of the service provider, foster parent or staff member who is providing the service.</li> <li>ii. Mechanical restraints must be applied using the least amount of force that is necessary in the circumstances.</li> </ol> </li> </ol>	<p>b) The time limit has expired.</p> <ol style="list-style-type: none"> <li>10. Require the mechanical restraint or PASD used is the least intrusive.</li> <li>11. Require that no child or young person is mechanically restrained to a fixed object or another person.</li> <li>12. Require that a service provider must tell children and young persons the following at specified timelines (i.e., at admission, 30 days after admission, 3 months after admission, 6 months after admission, every 6 months thereafter, and more frequently if the child or young persons asks or needs to be reminded): <ol style="list-style-type: none"> <li>a) Their policy on mechanical restraint.</li> <li>b) When a mechanical restraint can be used and what will happen if they are mechanically restrained.</li> </ol> </li> <li>13. Require a service provider to have a written policy and procedure that outlines the steps they will take to explain to a child or young person when a mechanical restraint can be used and what will happen if they are mechanically restrained.</li> <li>14. Require a service provider to have a written policy and procedure that outlines the maximum length of time a child or young person can be mechanically restrained that does not exceed 12 hours in a 24-hour period.</li> <li>15. Require the service provider to create, for every month, a written record of each time a child or young person is mechanically restrained outlining why a mechanical restraint was used, and provide the written record to MCCSS on or before the fifth day of the following month.</li> <li>16. Revoke 21(10) of the current regulation as it no longer applies and was intended to be a transitional requirement to support implementation of the CYFSA.</li> </ol>
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<p>iii. The service provider shall ensure that the child or young person being restrained by the use of mechanical restraints is monitored on a regular basis.</p> <p>iv. Mechanical restraints must be removed immediately when there is a risk that their use will endanger the health or safety of the child or young person.</p>	
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**Section C. Written Complaint Procedures**

Under section 18 of the CYFSA, service providers who provide residential care to children or young persons or who place children or young persons in licensed residential settings must have a written procedure, in accordance with the regulations, for hearing and dealing with:

- Complaints regarding alleged violations of the rights of children in care<sup>8</sup>, and
- Complaints by children in care or other persons affected by conditions or limitations imposed on visitors who are visiting a young person in a place of temporary detention, open custody, or secure custody, or suspensions of visits within a place of temporary detention, open custody, or secure custody.

Current provisions for residential licensees and placing agencies related to written complaint procedures pursuant to section 18 of the CYFSA are outlined in section 22 in O. Reg. 155/18 under the CYFSA. This includes requirements specific to what the written procedure must set out, who a child, young person or their parent/guardian can make a complaint to, and timelines for responding to complaints under this section of the regulation.

In addition, a service provider, other than a children’s aid society or a service provider who provides residential care to children or young persons or who place children or young persons in licensed residential settings, must establish and follow a written complaint procedure in accordance with s. 23 of O. Reg. 155/18 under the CYFSA.

The proposed changes related to written complaint procedures for residential licensees, placing agencies and other service providers under the CYFSA are intended to further support and empower children and young persons to understand, exercise and benefit

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<sup>8</sup> Under the CYFSA, “child in care” means a child or young person who is receiving residential care from a service provider and includes,  
 (a) a child who is in the care of a foster parent, and  
 (b) a young person who is,  
 (i) detained in a place of temporary detention under the Youth Criminal Justice Act (Canada),  
 (ii) committed to a place of secure or open custody designated under subsection 24.1 (1) of the Young Offenders Act (Canada), whether in accordance with section 88 of the Youth Criminal Justice Act (Canada) or otherwise, or  
 (iii) held in a place of open custody under section 150 of this Act.

from their rights, including raising concerns about their care and having these concerns responded to in a timely manner.

The following chart summarizes the proposed changes to these provisions:

Current Requirements	Proposed Changes
<p><b>22. (1)</b> A service provider who provides residential care to children or young persons or who places children or young persons in residential placements shall ensure that their written complaints procedure under subsection 18 (1) of the Act meets the requirements of this section.</p> <p><b>(2)</b> The written procedure shall set out,</p> <ul style="list-style-type: none"> <li>a) how a child in care may make a complaint, either verbally or in writing, with respect to alleged violations of the rights of the child in care under Part II of the Act to, <ul style="list-style-type: none"> <li>i. a staff member or a foster parent, either in private or in the presence of other children or young persons, and</li> <li>ii. the service provider or a person designated by the service provider;</li> </ul> </li> <li>b) how the parent of a child in care or other person representing the child in care may make a complaint, either verbally or in writing, with respect to alleged violations of the rights of the child in care under Part II of the Act to, <ul style="list-style-type: none"> <li>i. a staff member or a foster parent, and</li> <li>ii. the service provider or a person designated by the service provider;</li> </ul> </li> <li>c) how an individual affected by conditions or limitations on visitors imposed under subsection 11 (1) of the Act may make a complaint, either verbally or in writing, respecting those conditions or limitations to, <ul style="list-style-type: none"> <li>i. a staff member, and</li> <li>ii. the service provider or a person designated by the service provider; and</li> </ul> </li> <li>d) how an individual affected by the suspension of visits to a facility under subsection 11 (2) of the Act may make a complaint, either verbally or in writing, respecting the suspension to, <ul style="list-style-type: none"> <li>i. a staff member, and</li> <li>ii. the service provider or a person designated by the service provider.</li> </ul> </li> </ul> <p><b>(3)</b> In addition to the requirements set out in the Act, the written procedure shall,</p>	<p>1. It is proposed that this provision be enhanced to also include that a service provider who provides residential care to children or young persons or places children or young persons in residential placements must ensure that their written complaints procedure:</p> <ul style="list-style-type: none"> <li>a) Is available in a language suitable to the understanding of: <ul style="list-style-type: none"> <li>▪ children in care with respect to alleged violations of the rights of the child in care under Part II of the Act,</li> <li>▪ a parent/guardian of a child in care or other person representing a child in care with respect to alleged violations of the rights of the child in care under Part II of the Act, and/or</li> <li>▪ other persons affected by conditions or limitations imposed on visitors under subsection 11(1) or suspensions of visits under subsection 11(2).</li> </ul> </li> <li>b) Respects the child or young person’s right to be heard respecting decisions affecting them.</li> <li>c) Establishes a process for reviewing the complaint that is transparent, objective, impartial and fair.</li> </ul> <p>2. In addition, it is proposed that this provision be enhanced to include that the written procedure must:</p> <ul style="list-style-type: none"> <li>a) Set out a process for complaints received to be considered and responded to by a person other than a person in respect of whom the complaint is made.</li> <li>b) Require the service provider to document the details of the complaint and the steps taken in</li> </ul>

<ul style="list-style-type: none"> <li>a) require a staff member, a foster parent or the service provider to make a record of any complaint described in clause (2) (a), (b) or (c) that is made verbally;</li> <li>b) set out timelines for responding to a complaint, including a requirement that the service provider or a person designated by the service provider must provide an acknowledgement of a complaint within 24 hours of receiving it;</li> <li>c) require the service provider to, within 24 hours of receiving a complaint, determine what, if any, immediate action can be taken to respond to the complaint and what, if any, supports the child in care or the person making the complaint may require in order to participate in the complaints review process; and</li> <li>d) require the service provider, until the results of a complaints review have been provided under subsection 18 (4) of the Act to the person who made the complaint, to provide an update to the person on the status of the review, <ul style="list-style-type: none"> <li>i. if requested by the person, and</li> <li>ii. at such other times as necessary to ensure that the person receives an update on the review no later than 30 days after the service provider receives the complaint and subsequently at intervals of no more than 30 days.</li> </ul> </li> </ul>	<p>response to the complaint in the file of a child or young person in respect of whose rights the complaint is made.</p> <ul style="list-style-type: none"> <li>c) Require the service provider to make reasonable efforts to ensure that any person who is informed of the results of a review understands the results.</li> <li>d) Recognize certain clauses do not apply if the complaint is made anonymously (see 3(b), (c), and (d)).</li> </ul> <p>The proposed enhancements to this provision also include:</p> <ul style="list-style-type: none"> <li>3. Where the service provider makes a determination following the review that there has been a violation of a child's right under Part II of the CYFSA, the service provider is required to determine whether any action can be taken to prevent the violation from occurring or recurring and, if so, implement that action.</li> <li>4. The service provider shall ensure that no child in care experiences negative consequences as a result of making a complaint with respect to an alleged violation of their rights under Part II of the CYFSA.</li> <li>5. Following the completion of a complaints review, the service provider shall ensure a debriefing is conducted in accordance with the following rules: <ul style="list-style-type: none"> <li>a) A debriefing process must be conducted with the person(s) who were involved with the complaint, in the absence of any children or young persons.</li> <li>b) A debriefing process must be conducted with the child or young person who made, or is subject of, the complaint, in the absence of the person(s) who were involved with the complaint under (5)(a).</li> </ul> </li> </ul>
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Please refer to page 15 and 16 for current requirements.

- c) A third debriefing process must be offered to be conducted with any children or young persons who witnessed the complaint and must be conducted if any such children or young persons wish to participate in the debriefing process.
- d) The debriefing processes referred to in (5)(b) and (5)(c) must:
  - Be structured to accommodate any child or young person's psychological, communication and emotional needs and cognitive capacity; and,
  - Focus on understanding the experience of the child or young person, why they made, or are subject to, the complaint, and if there is anything the service provider could do to meet an unmet need of the child or young person.
- e) Subject to (5)(f), the debriefing processes referred to in (5)(a) to (5)(c) must be conducted within 48 hours after the completion of the complaints review.
- f) If the circumstances do not permit a debriefing process to take place within 48 hours after the completion of the complaints review, the debriefing process must be conducted as soon as possible after the 48-hour period referred to in (5)(e), and a record must be kept of the circumstances which prevented the debriefing process from being conducted within the 48-hour period.
- g) The service provider must record the following:
  - The date and time of each debriefing, the names and, if applicable, titles of the persons involved in each debriefing and the duration of each debriefing.

<p>Please refer to page 15 and 16 for current requirements.</p>	<ul style="list-style-type: none"> <li>▪ The name of each child or young person for whom a debriefing was offered in accordance with (5)(c) and who indicated that they did not wish to participate in the debriefing process.</li> <li>▪ A description of the efforts made to conduct the debriefing processes required by this section that includes the names of the persons who made those efforts.</li> </ul> <p>6. The service provider must, at least once in every 12 months, ensure that a written evaluation is conducted respecting,</p> <ul style="list-style-type: none"> <li>a) The effectiveness of service provider’s written complaints procedure; and,</li> <li>b) Whether changes or improvements to the procedures are required.</li> </ul> <p>7. The service provider must, for every month, prepare a written analysis of every complaint received pursuant to the complaints procedure required under subsection 18(1) of the CYFSA and the results of the review to determine whether any changes are required to the services provided by the service provider specific to children’s rights.</p>
<p><b>23. (1)</b> A service provider, other than a society or a service provider who provides residential care to children or young persons or who places children or young persons in residential placements, shall establish and follow a written complaints procedure that meets the requirements of subsection (2).</p> <p><b>(2)</b> The complaints procedure shall,</p> <ul style="list-style-type: none"> <li>a) allow for any person to make a complaint respecting alleged violations of a child or young person’s rights under sections 3 to 7 of the Act in a manner that is accessible to the person making the complaint;</li> <li>b) allow for complaints to be made anonymously;</li> </ul>	<p>1. It is proposed that this provision be enhanced to also include that a service provider, other than a society or a service provider who provides residential care to children or young persons or who places children or young persons in residential placements, must ensure that their written complaints procedure:</p> <ul style="list-style-type: none"> <li>a) Is available in a language suitable to the understanding of: <ul style="list-style-type: none"> <li>▪ children or young persons with respect to alleged violations of the rights of the child in care under Part II of the Act,</li> </ul> </li> </ul>

<ul style="list-style-type: none"> <li>c) require the service provider, as soon as possible in the circumstances but before the end of the business day following the day on which the complaint was received by the service provider, to, <ul style="list-style-type: none"> <li>i. except if the complaint is made anonymously, acknowledge receipt of the complaint in writing,</li> <li>ii. determine whether, without deciding upon the merits of the complaint, any immediate action can be taken to prevent the alleged violation from occurring or recurring or mitigating any possible harm to any child or young person in respect of whose rights the complaint is made that could be caused by the alleged violation,</li> <li>iii. except if the complaint is made anonymously, determine what, if any, supports the person making the complaint may require in order to participate in a review of the complaint;</li> </ul> </li> <li>d) Revoked O. Reg. 79/19 s. 2;</li> <li>e) set out a process for complaints received to be considered and responded to by a person other than a person in respect of whom the complaint is made, if possible;</li> <li>f) subject to subsection (3), require the service provider, until a response to a complaint has been provided under clause (g), to provide an update to the person who made the complaint and any child or young person in respect of whose rights the complaint is made, <ul style="list-style-type: none"> <li>i. if requested by the person or by the child or young person, and</li> <li>ii. at such other times as necessary to ensure that the person and the child or young person receives an update respecting the complaint no later than 30 days after the service provider receives the complaint and subsequently at intervals of no more than 30 days;</li> </ul> </li> <li>g) subject to subsection (3), require the service provider to inform in writing the person who made the complaint and any child or young person in respect of whose rights the complaint is made, of what, if anything, the</li> </ul>	<ul style="list-style-type: none"> <li>▪ a parent/guardian of a child or young person or other person representing a child or young person with respect to alleged violations of the rights of the child or young person under Part II of the Act, and/or</li> </ul> <ul style="list-style-type: none"> <li>b) Respects the child or young person's right to be heard respecting decisions affecting them.</li> <li>c) Establishes a process for reviewing the complaint that is transparent, objective, impartial and fair.</li> </ul> <p>The proposed enhancements to this provision also include:</p> <ol style="list-style-type: none"> <li>2. Where the service provider makes a determination following the review that there has been a violation of a child's right under Part II of the CYFSA, the service provider is required to determine whether any action can be taken to prevent the violation from occurring or recurring and, if so, implement that action.</li> <li>3. The service provider shall ensure that no child in care experience negative consequences as a result of making a complaint with respect to an alleged violation of their rights under Part II of the CYFSA.</li> <li>4. Following the completion of a complaints review, the service provider shall ensure a debriefing is conducted in accordance with the following rules: <ol style="list-style-type: none"> <li>a) A debriefing process must be conducted with the person(s) who were involved with the complaint, in the absence of any children or young persons.</li> <li>b) A debriefing process must be conducted with the child or young person who made, or is subject of, the complaint, in the absence of the person(s) who were involved with the complaint in (4)(a).</li> </ol> </li> </ol>
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<p>service provider has decided to do in response to the complaint;</p> <p>h) require the service provider to obtain the consent of the child or young person in respect of whose rights the complaint is made before disclosing any of the child or young person's personal information in the circumstances described in clauses (f) and (g);</p> <p>i) require the service provider to make reasonable efforts to ensure that any person who is informed of the results of a review understands the results; and</p> <p>j) require the service provider to document the details of the complaint and the steps taken in response to the complaint in the file of a child or young person in respect of whose rights the complaint is made.</p> <p><b>(3)</b> The requirements in clauses (2) (f) and (g) do not apply in respect of the person who made the complaint if the complaint was made anonymously.</p>	<p>c) A third debriefing process must be offered to be conducted with any children or young persons who witnessed the complaint and must be conducted if any such children or young persons wish to participate in the debriefing process.</p> <p>d) The debriefing processes referred to (4)(b) and (4)(c) must:</p> <ul style="list-style-type: none"> <li>▪ Be structured to accommodate any child or young person's psychological, communication and emotional needs and cognitive capacity; and,</li> <li>▪ Focus on understanding the experience of the child or young person, why they made, or are subject to, the complaint, and if there is anything the service provider could do to meet an unmet need of the child or young person.</li> </ul> <p>e) Subject to (4)(f), the debriefing processes referred to in (4)(a) to (4)(c) must be conducted within 48 hours after the completion of the complaints review.</p> <p>f) If the circumstances do not permit a debriefing process to take place within 48 hours after the completion of the complaints review, the debriefing process must be conducted as soon as possible after the 48-hour period referred to in (4)(e), and a record must be kept of the circumstances which prevented the debriefing process from being conducted within the 48-hour period.</p> <p>g) The service provider must record the following:</p> <ul style="list-style-type: none"> <li>▪ The date and time of each debriefing, the names and, if applicable, titles of the persons involved in each debriefing and the duration of each debriefing.</li> </ul>
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<p>Please refer to pages 18-20 for current requirements.</p>	<ul style="list-style-type: none"> <li>▪ The name of each child or young person for whom a debriefing was offered in accordance with paragraph (4)(c) and who indicated that they did not wish to participate in the debriefing process.</li> <li>▪ A description of the efforts made to conduct the debriefing processes required by this section that includes the names of the persons who made those efforts.</li> </ul> <ol style="list-style-type: none"> <li>5. The service provider must, at least once in every 12 months, ensure that a written evaluation is conducted respecting,             <ol style="list-style-type: none"> <li>a) The effectiveness of service provider’s written complaints procedure; and,</li> <li>b) Whether changes or improvements to the procedures are required.</li> </ol> </li> <li>6. The service provider must, for every month, prepare a written analysis of every complaint received pursuant to the complaints procedure required under section 23 of the regulation and the results of the review to determine whether any changes are required to the services provided by the service provider specific to children’s rights.</li> </ol>
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**Section D: Other Minor Enhancements**

Clarification of Places that are Not Included in the Definition of a Children’s Residence

Section 243 of the CYFSA sets out the definition for a “children’s residence” and identifies a list of settings that are not included in that definition.

Paragraph 8 of section 243 currently exempts “a school or private school as defined in the Education Act” from the definition of a children’s residence. Amendments are being proposed to clarify that this provision includes private or public schools in Ontario that provide boarding or lodging to students.

Rules for Placement in a Foster Home

Section 125 of O. Reg. 156/18 (General Matters Under the Authority of the Minister) sets out the rules respecting placement in a foster home.

Under this section, there is a prescribed maximum number of four children per foster home, unless all the foster children have one common parent or are related to the foster parent and the placement is approved in writing by the Director. The ministry is proposing amendments that would set out additional rules (prescribed circumstances) for exemptions, for example, where any of the children have one common parent or are related to the foster parent and where certain criteria are met. These amendments may be set out in O. Reg. 155/18 as part of an exemption by the Director pursuant to section 251 of the CYFSA.

## **Conclusion**

All interested parties are encouraged to provide feedback on the proposed regulatory provisions. MCCSS values the unique and diverse perspectives from children and youth, families and broader sector partners.

Please provide MCCSS with your comments by email to [qualitystandardsframework@ontario.ca](mailto:qualitystandardsframework@ontario.ca) by no later than October 4, 2021. Please reference the section letter, proposal number and page number (e.g., Section A – Physical Restraint, s. 10(1), page 6) in your feedback for clarity.

Please note that you will not receive a formal response to your comment. MCCSS will review all feedback received and consider revisions the proposed regulations as appropriate.

Thank you for taking the time to review this document and provide feedback.