

Quality Standards Framework Regulations Implementation Bulletin #8: Mechanical Restraints

FEBRUARY 22, 2023

In follow up to the February 15, 2023 email, this is the eighth of the weekly communications that will be sent by the Ministry of Children, Community and Social Services (ministry) to out of home care¹ service providers and placing agencies on the new and updated [Quality Standards Framework](#) related regulations, which come into effect on July 1, 2023.

The weekly bulletins will cover the 10 regulatory topics with the intent to help familiarize licensees and placing agencies with the new and updated requirements, and answer questions about how they can start preparing for implementation.

Note that the information that follows does not constitute legal advice. It provides general information about the regulatory amendments made to licensing requirements under the *Child, Youth and Family Services Act, 2017 (CYFSA)*. If you require assistance with respect to the interpretation of the regulatory requirements and their potential application in specific circumstances, you should seek legal advice.

1. Who do the updated mechanical restraint requirements apply to?

The updated mechanical restraint regulations apply to all service providers under the CYFSA. For out of home care licensees, this includes children's residence licensees, foster care licensees and staff model home licensees. This captures children's aid societies who hold a foster care licence, as well as licensees operating a place of temporary detention, of secure custody or of open custody, service providers that are directly operated and secure treatment facilities.

¹ Although the term *residential* is a legal term under the CYFSA and its regulations, the ministry is using the term "out-of-home care" instead of "residential" care to acknowledge the traumatic history of the Residential School system in Canada. We recognize the importance of choosing different languages, especially, since the term may be triggering to some.

2. Overview of Updated Requirements:

Scope

- Clarified to more clearly differentiate mechanical restraints that are personal assistance service devices (PASDs) and mechanical restraints used for behaviour modification/control as part of a plan of treatment (e.g., the difference between a substitute-decision maker who may consent for plans of treatment versus the nearest relative who may consent for the plan for the use of a PASD, the different criteria for the use of mechanical restraints for PASDs versus plans of treatment, etc.).

Plans Required for Use

- For the purposes of this regulation, a service provider may use or permit the use of a mechanical restraint on a child or young person if:
 - The use is authorized by a plan of treatment to which the child/young person or their substitute decision-maker has consented to in accordance with the HCCA or a plan for the use of a PASD to which the child/young person or their nearest relative, as defined at s.21(1) of the Act, has consented, and
 - The plan of treatment or plan for the use of a PASD includes content described below, has been signed and dated by the health care practitioner who participated in the development of the plan, and the child/young person or their substitute decision-maker to indicate agreement with the content of the plan, and
 - If the plan is amended following its development, it clearly indicates the amendments that were made, and those amendments are signed off on by the same group as above.

Content for Plan of Treatment/Plan for the Use of a PASD

- A plan of treatment must include a description of:
 - Any risks that the child/young person poses to themselves or others or any other behaviours the child or young person engages in that require the use of mechanical restraints,
 - How the use of mechanical restraints supports the health, safety and well-being of the child/young person,
 - Alternative interventions to the use of a mechanical restraint that have been considered or proven to be ineffective in managing the child/young person's behaviours and the risks posed by those behaviours,
 - Clinical or other supports to be provided to the child/young person that are intended to address the behaviours or needs that are being managed through the use of mechanical restraints,
 - Alternative interventions that are being used to teach the child/young person skills intended to eliminate the behaviours or meet the needs that are being managed through the use mechanical restraints,
 - An indication of the length of time during which the mechanical restraint may be used, which must not exceed 12 hours in any 24-hour period. and
 - An indication of the date on which the plan was developed.
- A plan for the use of a PASD must include a description of:

- Alternatives to the use of the PASD that have been considered or proven to be ineffective in assisting the child/young person with a routine activity of daily living,
- How it was determined that the use of a PASD is reasonable and that the PASD in question is the least restrictive type of PASD that would effectively assist the child/young person with a routine activity of daily living, taking into consideration their physical and mental condition and their personal history,
- How the child/young person being restrained by the PASD will be repositioned, and
- An indication of the date on which the plan was developed.

Additional Restrictions for the Use of Mechanical Restraints

- Only the least intrusive type of mechanical restraint that is necessary in circumstances must be used.
- A child/young person must not be secured by a mechanical restraint to a fixed object or another person.
- A child/young person who is being restrained by mechanical restraints must be monitored continuously.
- Mechanical restraints must be removed immediately upon the earliest of: when their use will endanger the health or safety of the child/young person, when the length of time set out in the plan has expired and no additional approval has been given, and if the child/young person, or their substitute decision-maker, withdraws consent to the use of the mechanical restraint.
- If the use of a mechanical restraint is authorized by a plan of treatment, a service provider must ensure that the use of the mechanical restraint does not exceed 12 hours, or other shorter amount of time set out in the plan of treatment, in any 24-hour period, unless the use of the mechanical restraint for a longer amount of time is approved by (and documented in the plan):
 - A legally qualified medical practitioner,
 - A registered nurse or registered practical nurse,
 - A member of the College of Occupational Therapists of Ontario, or
 - A member of the College of Physiotherapists.

Written Record

- A service provider must, for every month, maintain a written record that summarizes every instance of the use of a mechanical restraint that is not a PASD on a child/young person at any premises at which the service provider provides a service during that month, and the record must include the following for each instance:
 - The name and age of each child/young person who was restrained,
 - The dates and time periods during which the mechanical restraint was used, and
 - A description of the circumstances and the risk that existed before the mechanical restraint was used.
- A service provider must, on or before the 5th day of every month, provide a copy of the record to a Director (i.e., their respective licensing manager, for services delivered to children who are not young persons) and a provincial director (for services delivered to young persons as [defined in the CYFSA](#)).

Additional Policies

- A service provider who permits the use of mechanical restraint or uses mechanical restraints must develop a policy for ensuring that the mechanical restraints are only used for the amount of time permitted by the regulations, or less.
- A service provider that uses or permits the use of mechanical restraints must develop and maintain policies for providing information as required by this section, which must provide that,
 - The service provider consider the age and maturity of the child or young person to whom the information is to be provided; and
 - Information to be provided relates to the specific type of mechanical restraint that may be used.

Development/Review of Plans

- A service provider must ensure that any plan of treatment or plan for the use of a PASD for a child/young person to whom the service provider is providing a service is evaluated to ensure that it complies with the requirements of section 21 of the regulation at the following intervals:
 - 30 days after the child or young person's plan of treatment or plan for the use of a PASD, as the case may be, is developed or, if the plan was developed more than 30 days before the child or young person began receiving services from the service provider, 30 days after the child began receiving those services.
 - 90 days after the child or young person's plan of treatment or plan for the use of a PASD, as the case may be, is first evaluated under the first bullet above.
 - 180 days after the child or young person's plan of treatment or plan for the use of a PASD, as the case may be, is first evaluated under paragraph 1 and every 180 days after that.
- A service provider must ensure that a plan of treatment or a plan for the use of a PASD is also evaluated to ensure that it complies with the requirements of section 21 of the regulation if any of the following occur:
 - New information comes to the attention of the service provider respecting the child or young person's needs.
 - There is a change to the needs of the child or young person such that an intervention set out in the plan is no longer necessary.
 - An intervention set out in the plan has been shown to be ineffective.
 - The service provider receives a request that the plan be reviewed from the child or young person or their substitute decision-maker, if the substitute decision-maker consented to the plan.

Consultation on the Plan

- As part of an evaluation of a plan of treatment or a plan for the use of a PASD, the service provider must ensure that the following individuals are consulted:
 - Any health care practitioner who developed the plan.
 - The child or young person to whom the plan relates.
 - The child or young person's substitute decision-maker, if the substitute decision-maker consented to the plan.

- A service provider must ensure that any plan of treatment or plan for the use of a PASD for a child or young person to whom the service provider is providing a service and any revised version of such a plan is kept in the file of the child or young person at the location at which the child or young person receives the service.
- A service provider shall ensure that,
 - A plan of treatment or a plan for the use of a PASD is reviewed by any individual who is employed or otherwise engaged by the service provider to provide a service and who provides direct care to the child or young person to whom the plan relates; and
 - The review takes place before the individual provides direct care to the child or young person for the first time and as soon as reasonably possible after any revisions are made to the plan.
- The service provider shall ensure that any individual who reviews a plan of treatment or a plan for the use of a PASD signs the plan and indicates the date of the review.

Staff Review of the Plan

- A service provider who is an individual and who provides direct care to a child or young person must:
 - Review the child or young person's plan of treatment or plan for the use of a PASD before providing direct care to the child or young person for the first time and as soon as reasonably possible after any revisions are made to the plan; and
 - Sign the plan of treatment or plan for the use of a PASD and indicate the date of the review.

Provision of Information Regarding Use of Mechanical Restraints

- A service provider must provide a child or young person to whom it provides a service, or their parent, the information, as the case may be, about the service provider's use of mechanical restraints.
- A service provider shall provide the information at the following times:
 - Upon the child or young person beginning to receive the service, 30 days after that date, 90 days after that date, 180 days after that date and subsequently at intervals of 180 days.
 - In between the intervals referred to in paragraph 1, if the child or young person requests a review of the information or the service provider is of the opinion that the child or young person would benefit from such a review.
- In the case of a service provider that uses or permits the use of mechanical restraints, the service provider must provide a description of the following to the child or young person or their parent:
 - The circumstances in which a mechanical restraint may be used on the child or young person under this Regulation.
 - Any steps that may be taken by the service provider when the mechanical restraint is being used.
 - A description of the type of mechanical restraint that may be used.
 - How the use of the mechanical restraint would comply with the child or young person's plan of treatment or plan for the use of a PASD, as the case may be.

- In the case of a service provider that does not use or permit the use of mechanical restraints, the service provider must inform the child or young person, or their parent, of that fact.

Documentation of Orientation

- A child/young person must receive an orientation in language suitable to their understanding and in accordance with their age and maturity in respect of,
 - if applicable, the circumstances in which mechanical restraints may be used, including,
 - i. what constitutes a mechanical restraint under the Act, and
 - ii. the rules governing the use of mechanical restraints under the Act, including the circumstances in which the child or young person may be restrained by means of mechanical restraints and the procedures that must be followed after any such use of mechanical restraints,
 - the child/young person's right to speak in private with and receive visits from the Ombudsman appointed under the Ombudsman Act and members of the Ombudsman's staff, including with respect to concerns about the use of a mechanical restraint; and
 - The licensee shall ensure that the matters to be reviewed with a child or young person during an orientation are again reviewed with the child or young person as follows:
 - i. 7 days after the child or young person's admission to the licensed setting.
 - ii. As soon as reasonably possible after the child or young person requests that the information be reviewed with them.
 - iii. Any time at which, in the opinion of the licensee or a person designated by the licensee, the information should be reviewed with the child or young person.
 - The licensee shall document the following information in the case record/file of the child or young person:
 - i. The date on which the child or young person received the orientation.
 - ii. The dates on which the matters to be reviewed with the child or young person during an orientation are again reviewed with the child or young person.
 - iii. A written record signed by the child or young person that indicates that they understood the matters reviewed with them during the orientation or, if the child or young person refuses to sign such record, a written record documenting this fact.

3. How do the new mechanical restraint requirements enhance quality of care?

Over the last few years, the ministry has received recommendations from inquests, expert reports and first voice advocates that included the need for enhancements to the mechanical restraint regulatory requirements. Mechanical restraints should only be used in situations of imminent risk (as per the regulations), when necessary, as a last resort or not at all, and not be used as a behaviour modification tool.

Enhancing the mechanical restraint regulatory requirements is part of the work to embed [Ontario's Quality Standards Framework: A Resource Guide to Improve the Quality of Care for Children and Young Persons in Licensed Residential Settings](#) (QSF) into regulation. Quality Standard 5 of the QSF speaks to children and young persons needing licensed settings where they feel safe (culturally, spiritually, physically, emotionally, and mentally), inclusive, and accessible.

The regulatory amendments will enhance the existing requirements with the goals of:

- Further clarifying the exceptions to the CYFSA prohibition on the use of mechanical restraints by clarifying the rules, restrictions and safeguards for their use when specifically authorized by the regulations,
 - Supporting increased understanding for children and young persons regarding how and why a mechanical restraint may be used.
 - Confirming these restraints are used safely, if they must be used at all.
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4. Where can I find the regulations?

The new mechanical restraint regulations can be found on E-Laws accessible by the following links: O. Reg. 156/18, [Section 90](#) and [Section 130.1](#) and O. Reg. 155/18, [Section 21](#), [Section 21.1](#) and [Section 21.2](#).

5. What resources will be available to me in future to support implementation of the new requirements?

In the coming months, the following will be available to licensees to support understanding and compliance with the new mechanical restraint requirements:

- A guidance document covering the new requirements, purpose for the new requirements, indicators used by the ministry to assess compliance, guidance for placing agencies and best practices for implementation (March 2023).
- A mechanical restraints reporting template for the use of mechanical restraints that are not personal assistance service devices (PASDs) (March 2023).
- Information webinars for service providers on the new requirements (spring 2023).

Youth justice licensees will continue to use existing processes for submitting monthly reports for the use of mechanical restraints.

6. Who should I be sharing this information with?

Information regarding the new mechanical restraint requirements should be shared with all service providers that are funded, licensed and/or delivering services under the

CYFSA, including all out of home care licensees for children and young persons, including children's residences licensees, staff-model home licensees and foster care licensees. This information should also be shared with placing agencies, front-line staff members and foster parents.

7. Who can I contact if I have questions about the new regulations?

If you require assistance with respect to the interpretation of the legislation and its potential application in specific circumstances, you should seek legal advice.

You may also contact your regional licensing team for more information as you implement the new requirements. Any additional questions pertaining to future activities to support operationalization of the new regulations can be directed to qualitystandardsframework@ontario.ca.

8. What's next?

Stay tuned! The next Quality Standards Framework Regulations Implementation Bulletin topic on **complaints** will be released on March 1.