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Unregulated Youth Residential Care Programs in Montana

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Intent

This paper provides awareness, background information, and research regarding the unregulated youth residential care programs in Montana. The paper is not intended to focus on one program, or review the strengths and weaknesses of each behavioral healthcare model. Therefore, programs are not identified by name in the paper, and a redacted bibliography is attached. To request a complete bibliography, contact the Department of Public Health and Human Services, at (406) 444-5622 or e-mail at ssletta@state.mt.us.

Background

The behavioral healthcare industry includes therapeutic boarding schools, emotional growth schools or programs, special purpose schools or programs, therapeutic group homes, private group homes for troubled or at-risk youth, and wilderness therapy programs. This industry has grown rapidly in the United States since the early 1980s. Montana has seen much growth in these programs since the early 1990s, especially in programs that use wilderness programming or adventure activities, such as rafting, mountain biking, hiking, rock climbing.

Therapeutic boarding schools, emotional growth schools or programs, special purpose schools or programs, and therapeutic group homes have expanded dramatically in the last 15 years. Therapeutic and emotional growth programs in Montana offer a wide range of approaches and models. Almost all of these programs advertise as providing a highly structured environment for the youth. Several programs require a minimum amount of stay, such as 12 months, while others allow the youth to "graduate" when they complete all levels of the program.

As a rule, the group homes provide a home environment for youth and the youth attends school through a local school district. Boarding schools, whether they are categorized as being therapeutic, emotional growth, special purpose, or faith based, provide education for youth on their program site. The emotional growth curriculum in the group home or school is designed and marketed for youth with behavioral, emotional, and/or motivational problems, or learning disabilities. Some programs advertise as providing therapeutic counseling or informal counseling. The programs use various means to emphasize the youth—acquiring skills in self-esteem, development of problem-solving, decision-making, and self-awareness skills. Youth deal with day-to-day living in a dorm, group, or family environment where their inappropriate behavior is confronted and new skills are taught.

Wilderness therapy programs have been in existence for at least 30 years. This industry made rapid growth in the mid-1980s, with the fastest growth in the western states. Wilderness therapy programs can last from 21 days to 12 months and provide round-the-clock programming. Group size in these programs usually ranges from 6 to 14 people. These programs don't always need to be conducted in the wilderness—an unfamiliar environment to the youth can be just as effective.

The program's course "curriculum" varies, but often times provides a series of challenges which increase in difficulty throughout the course. For example, in the beginning of the course, the students will be trained on how to successfully complete basic outdoor skills like setting up tents

On June 3, 2003, the *Missoulian* carried an article featuring the Program C program—a "Christian rescue home for troubled teen girls." (*Jamison, M.*) The following quote appeared in the article:

"The Christian ministry that is [Program C] began loving girls back into the world a decade and a half ago, at a boarding school in south-central Washington. But Washington has some tight rules regarding schools and curriculums and teaching methods, said [the Program C] president....

The nascent school, operating on a start-up budget, could not keep up with the regulators, and *so in 1995 moved to Montana where rules regarding curriculums are not merely loose, but are quite nearly non-existent.*" (emphasis added) (*Jamison, M.*)

In March 2003, a County Prosecutor charged a 20-year-old Program D staff member with sexually assaulting two boys – one 14 and the other 17 years old—in the isolation area. This case has not yet been resolved (*Weiner, T.; and Rummel, D.*).

In September 2002, a civil court case between a 16-year-old former resident of Program E, and the directors of Program E was settled with monetary damages. The complaint documents that a director took inappropriate photos of the girl and conducted inappropriate touching and inappropriate comments while the pictures were being taken. The case was handled by attorney David McLean, who stated that there was enough evidence to bring the case through the criminal court system, but the family did not want to put the girl through depositions and a trial (*Rummel, D. and McLean D.*).

The behavioral healthcare industry has standards of practice, principles that have been established through organizations such as: National Association of Therapeutic Schools and Programs, National Association of Therapeutic Wilderness Camps, Association for Experiential Education (AEE), Outdoor Behavioral Health Industry Council (OBHIC), Council on Accreditation (COA), and the Joint Commission on Accreditation of Healthcare Organizations (JCAHO).

In addition, Oregon, Idaho, Wyoming, Utah, Arizona, and Nevada have regulations for some or all types of behavioral healthcare programs. Montana does not have any licensing or regulations for these programs. Some of the behavioral healthcare programs that have opened in Montana have called the Department of Public Health and Human Services (DPHHS) and/or the Office of Public Instruction (OPI) requesting the necessary information to become licensed in some way through the state. Some of these programs, when finding out that there were not any licensing requirements, pursued accreditation through JCAHO, COA or AEE.

Behavioral Healthcare Programs in Montana

Currently, there are 29 "known" private behavioral healthcare programs in Montana. These are programs that are not licensed childcare facilities, therapeutic youth group homes, regular youth group homes, or therapeutic foster care as defined in Montana Code. When conducting the

It is well known throughout the behavioral healthcare industry that Montana is one of the only western states that currently has no regulating requirements for private behavioral healthcare organizations. This information is being utilized by some programs that haven't been able to meet requirements in other states, so they move to Montana.

Personnel

Parents, some unknowingly, are enrolling their children in programs that have no requirements in place that provide for the protection of the youth and ensure that the youth have services that are safe, therapeutic and educational. Some private behavioral healthcare programs in Montana have stringent requirements for personnel. Some of the programs require a Montana certified teacher to be working in an instructional capacity with the youth; some wilderness programs require at least one person with the youth to have at least Wilderness First Responder certification. A few of the programs have managerial staff that have Master's degrees and are licensed social workers or chemical dependency counselors. Other programs only require background in working with youth or a bachelor degree in the areas of social work, psychology, or education.

One program states in its enrollment agreement with the parents, "...staff are hired not necessarily by credentials, but to carry out the outlined programs specifically designed to benefit student..." (*Program D p. 6*). This same program and others have the youth who have successfully graduated from the program stay on as paid or non-paid staff who supervise youth who are just entering the program.

In parallel examples where the state has assumed responsibility for protecting the safety of the public, Montana teachers, hunting/fishing guides and outfitters are required to have a minimum level of standards. Teachers and substitute teachers, who work in public and private schools accredited by the state of Montana, must undergo fingerprinting and a background check prior to working with students in the classroom. If the behavioral healthcare program has home-school type of educational program, Montana teacher licensure would not be required. The legislation that requires fingerprinting and background checks, that was originally put in place to protect the children of Montana, provides no protection to the youth in some of the behavioral healthcare programs.

Montana statute requires that all hunting and fishing outfitters and guides be licensed. Montana statute 37-47-401 states, "It is recognized that some activities conducted by outfitters, guides and professional guides within the scope of their authorized services are inherently hazardous to participants regardless of all feasible safety measures that may be taken." Although wilderness programs do not usually carry firearms, many of the same activities that an outfitter does in a normal day also occur in a wilderness program for youth.

Outfitters must pass a written examination that covers topics such as practical woodsmanship, use of outfitter's gear, knowledge of area and terrain, first aid, and water safety. Outfitters are required to abide by a certain level of expertise in the areas of first aid certification, ability to perform the services contemplated with efficiency and with safety to the health and welfare of clients, employees and the public, provide services in such manner as not to be detrimental to wildlife or the environment, and knowledge of equipment, terrain, and hazard to competently provide a safe experience for those persons guided (*State of Montana Board of Outfitters*).

It is ironic that Montana requires outfitters and guides to be licensed to serve a mostly wealthy out-of-state adult clientele, and, yet, Montana has no licensing regulations that protect the minor youth (mostly out-of-state residents) that are enrolled in private behavioral healthcare organizations. The Board of Outfitters Web page states: "Licensing is for the protection of the public. The licensing process is to ensure that the users of [these] services have a safe and enjoyable ... experience in Montana." There are no similar regulations for private behavioral healthcare programs.

State licensing requirements for private behavioral healthcare programs is becoming standard in the western United States. States with regulations for some or all types of behavioral healthcare programs include: Utah, Oregon, Idaho, Wyoming, Arizona, and Nevada. Utah and Nevada created legislation and rules as a result of a tragic youth fatality or serious injury. Oregon was looking into creating legislation when a youth fatality occurred. If Montana would choose to create rules for licensure at this time, it would be the first state to begin licensure regulations prior to a death or serious injury occurring in one of the behavioral healthcare facilities.

During the 2003 Legislature, House Bill 524 was passed to give licensing rights to outdoor behavioral programs that accept public funding. The amended 50-5-101, Section 2 (1), states: "An outdoor behavioral program that does not accept public funds or governmental contracts is exempt from licensure." The bill also gave a directive to the DPHHS to develop administrative rules for licensure that include: program requirements, staff requirements, staff to youth ratios, staff training and health requirements, youth admission requirements, water and nutritional requirements, health care and safety, environmental requirements, infectious disease control, transportation, and evacuation (*MCA 50-5-101 Section 2 [2]*). The licensure requirements apply to two programs that were operating during the 2003 legislative session.

Youth Referrals

Parents that are looking for help from the behavioral healthcare industry are struggling with youth who have run away from home, are experimenting with drugs or are consistent drug users, running with the wrong crowd, staying out past curfew, struggling with the integration of new family members, not communicating at home, trying to commit suicide, or other stressors. Parents are desperate to find help for their child.

There are many ways that the parents find programs. Some search the Internet. It can be challenging for a parent who is in crisis with their child to find an appropriate program. Parents who live in states that are highly regulated may not have enough personal background to pose the question regarding if Montana programs are licensed or accredited in some way. This question was asked when doing research on the programs in Montana; one program responded that all of its program sites "follow all required rules and regulations" in every state in which they operate. An unsuspecting parent would not realize that Montana has no rules or regulations for private behavioral healthcare programs.

Another way to find a suitable program is to work with an educational consultant. There are various levels of training and experience amongst educational consultants. Consultant fees range

research on behavioral healthcare programs, if the program advertises that it has accreditation through the Joint Commission on Accreditation of Healthcare Organizations (JCAHO) or the Commission on Accreditation, the program was not included in the final numbers. Because private behavioral healthcare programs are not required to be licensed or registered with any state agency, it is a bit like knowing about "undiscovered lake" in the mountains. These programs are:

- ✓ Located in Sanders, Lincoln, Flathead, Missoula, Gallatin, Carbon, Hill, Teton, and Blaine counties.
- ✓ Serving approximately 975 youth between the ages of 12 to 18. Ninety to 95 percent of the youth are from out of state.
- ✓ Serving youth in single-sex and coed programs.
- ✓ Providing education through the local public school system, a home-school curriculum, or a boarding school curriculum.
- ✓ Charging parents between \$700 to \$5,500 a month for each youth. Many parents take out a loan to cover the costs.
- ✓ Allowing various levels of contact with the parents—from no contact when the youth are first admitted to the program, to staff supervision of all phone calls to parents, to requiring a 48-hour notice prior to a parent visiting, to staff supervision when parents visit, to allowing parents full access to youth and phone calls.

In addition, the programs advertise as providing the following services:

- ✓ 2 programs advertise as Boarding Schools
- ✓ 9 programs advertise as Therapeutic Boarding Schools
- ✓ 5 programs advertise as Therapeutic Homes
- ✓ 14 programs advertise as having a Ranch Setting (livestock is on site, and most of the programs require the youth to perform typical ranch chores)
- ✓ 7 programs are faith-based
- ✓ 10 programs provide services in drug and alcohol recovery
- ✓ 15 programs have an adventure or wilderness program, or adventure and wilderness is a component of their program
- ✓ 6 programs have clinical personnel as part of their staff
- ✓ 3 programs consult with clinical personnel
- ✓ 6 programs send their residents to the local public school, and the school district collects base-aid through the Average Number Belonging (ANB) count
- ✓ 16 of the programs have a business license (business license search was done using the program name or the executive director's name)

At this time, private behavioral healthcare programs fall into the space as substitute care providers under Montana Code 52-2-part 6. The 1997 Amendments to the 52-2-602 Youth Residential Services "Substitute Care" statutes made clear that the substitute care provided in Youth Residential Services "...does not apply if a person accepts the care and custody of a child on a temporary basis as an accommodation to a parent, guardian, or relative for 'the purpose of providing food, shelter, security and safety, guidance, direction, and if necessary, treatment to youth who are removed from or without the care and supervision of their parents or guardian'." (*Compilers Comments*).

or tarps, cooking over a fire or backpacking stove, basic first aid, effectively loading and adjusting a backpack, and basic orienteering skills. The instructors of the course will be providing most of the leadership and direction regarding when hiking will occur, what direction the group is hiking and when breaks are taken. In addition, the instructors will be teaching the youth new communication and problem-solving skills, and processing the day's events or stressors throughout the day. As the course progresses, more of the responsibility is given to the group members and group members may rotate "leader of the day" responsibilities. The group may be able to decide, given a goal location and date that they must arrive by, how many miles they will hike, when they will be eating, and how they want to process the day's events. As group members gain better skills in communication and problem solving, the group will do more of its own processing of issues that may arise. By the end of the course, if the group has effectively learned all of the necessary skills, the instructor may be acting as a silent "guardian angel." The instructor will be with the group, but only adding direction for emotional or physical safety issues.

The following are a few examples of issues that behavioral healthcare programs have had in Montana over the last few years.

On August 9, 2002, the Silver Bow County Child Protective Services social workers took 11 teens into protective custody after the social workers found them camping in cold, rainy weather with limited food and shelter. The teens were part of Program A—a Utah-based wilderness therapy program. This program was closed down by a court order sought by the state of Utah because of alleged violations of licensing and safety requirements. The same week that the facility was closed, one of the directors moved to Montana with the youth to property that Program A had purchased (*MacDonald, J.*). The other director signed an agreement with the state of Utah not to operate a youth treatment facility (*Whiting, L.E.*). Carol Sisco, the spokesperson for the Utah Department of Human Services stated, "The good thing is he [they] can't operate another youth wilderness program in the state of Utah forever. ..." (*Whiting, L.E.*). The same cannot be said for the programs operating in the state of Montana.

On July 19, 2001, Linda Collins, from the Department of Family Services in Wyoming, notified the Department of Health and Human Services (DPHHS) that the Program B, a private faith-based group home that was illegally operating without licensure, had closed down in Wyoming. The group home jumped the state line and had just purchased a home in Montana for the program. At a minimum, the program did not meet the Wyoming requirement that private group homes employ a director that had a Bachelor's degree. The DPHHS responded that private group homes in Montana are exempt from licensure requirements.

On September 9, 2001, while operating in Montana, the director of the program drove a resident to the Powell, Wyoming airport. The youth, who had been residing for many months in the Program B, was dropped at the airport without money or a ticket to go home. The Wyoming Child and Family Services were called and the youth reported that he had been involved in a sexual encounter and was brought to the airport "because he would not repent." This program, that didn't qualify for basic safety and health standards in Wyoming, and while operating in Montana put the youth in danger by dropping him at an airport without any means to return to his home on the east coast, is still running and is working to expand its program (*Collins, L.*).