



Montana Department of LABOR & INDUSTRY

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To: Economic Affairs Interim Committee

From: Montana Board of Private Alternative Adolescent Residential or Outdoor Programs

Date: June 10, 2013

Subject: HB 525 – PAARP response to the Economic Affairs Interim Committee questions

1. What is the public health, safety or welfare rationale for licensing and regulating your profession/occupation?

The members and staff of the Board of Private Alternative Adolescent Residential or Outdoor Programs (PAARP) believe in the mission of the board:

To license and regulate PAARP as a public service to monitor and maintain a high standard of care and to ensure the safety and well-being of the adolescents and parents using the programs. Necessary licensure processes and safety standards for programs are best developed and monitored by the professionals that are actively engaged in providing private alternative adolescent residential care.

We believe this is a strong foundation for the three aspects of our work—licensing, regulation and, in a small number of cases, discipline of the facilities under our authority. It is critical that Montanans trust their health care facilities particularly where vulnerable youth are concerned.

The board works to insure that trust is earned, by evaluating the program's plan of operation, the policies and procedure that target behavior modification plans, routine and emergency medical and psychological care, the competence and character of the program owners, managers, and direct care staff, and the safety of each licensed program. When situations arise, we are available to address those situations and effect (or initiate) the necessary changes.

2. If your profession/occupation were not licensed, what public protection would be lost?

Without licensing and regulation, any private home or building could claim to be a Private Alternative Adolescent Residential or Outdoor Program; housing youth and allowing unscrupulous or unethical individuals to place profit over youth safety. Parents place their children in private residential care programs only when they have no other alternative or are desperate and feel that their child's emotional and behavioral problems cannot be safely dealt with in the home environment. Both the children and their parents need assurance that the programs will be run according to acknowledged, ethical, and safe standards of care. Without the PAARP board there would be no standards for the safe treatment of children in private residential settings, and no inspections to check on the safety of programs in Montana.

We also believe the board plays an important role in making sure programs in Montana deliver high quality services to youth and their families. Without the PAARP Board's disciplinary process, youth and their families would not have a state agency to report complaints regarding programs they believe have engaged in incompetent, unprofessional or unethical practices. It would be extremely difficult to remedy problems, particularly if there weren't any established standards for the appropriate procedures, rights of children, and training requirements that ensure basic safety and respect for children's dignity. A consumer who is violated would have very little recourse except through the legal system, which can be very costly and time consuming. Under the current system, the board ensures public protection through qualifications for licensure and discipline of licensees for unprofessional conduct fairly quickly and with little or no cost to youth or their families.

In addition, without a clear licensing standard and an inspection process, the PAARP board believes that it would be very difficult for legitimate programs to compete with other states that have standards of safe and ethical care for all children's residential programs. Competent licensing standards and inspections are necessary for the credibility of our youth care facilities, and increase the public's trust in those facilities and the professionals working within them.

3. If a license is necessary (for health, safety, or welfare), does the profession/occupation need a board for oversight? If yes, please explain why and describe the purpose of creating a board.

Yes. The Montana board was established in 2007 to regulate Private Alternative Adolescent Residential or Outdoor Programs. The purpose for the creation of a board is oversight of health, safety, and welfare of children who are placed in private residential treatment programs. Prior to creation of this board programs serving private paying youth and families were unregulated in Montana, whereas any program that took any government funding was required to operate according to clear state standards for safe treatment and were regulated to insure compliance with these standards. The present board was created to make certain that all residential programs who serve children would be regulated and held to safe professional standards of practice. Who better to oversee these elements than a board composed of members drawn from both the public at large and from the professionals who operate these programs? As with any profession that requires a large body of knowledge, only fellow professionals truly can evaluate whether a facility meets the standards of the profession. As required by law, the PAARP board includes three members from programs of various sizes and types and two members who must be from the general public. The combination of expertise on the board is the best method to establish standards of care and deal with oversight issues.

The board protects the public from incompetent, unprofessional, and unethical providers of youth services through licensure and regulation. The board establishes and monitors licensure requirements for new licensees as well as monitors existing licensees through the complaint review process, new employee finger print and background checks, program inspections, and annual renewal requirements. Without a board, the consumer or youth & their families has no simple recourse to appeal in the event of unethical practice.

4. Does your board deal with unlicensed practice issues? If yes, what types of issues?

Yes. This is an important function. The licensing process assures that a licensed program has met the necessary requirements to be competent in providing services for youth and their families. Without licensing, we as regulators do not know the program's body of knowledge or level of services offered. The board currently licenses 14 programs has addressed very few cases of unlicensed practice. As of July 1, 2010, the board reviewed 2 cases of unlicensed practice and both cases were dismissed without prejudice. An issue of unlicensed practice could be a simple misunderstanding, in which a program is reported to the board because the complainant fails to understand program exemptions from licensure such as (any program that is required to be licensed or regulated by the state under Title 50, 52, or 53, recreational programs such as boy scouts, girl scouts, or 4-H clubs, organizations, boarding schools, or residential schools with a sole focus on academics, residential training or vocational programs with a sole focus on education and vocational training, youth camps with a focus on recreation and faith-related activities, or an organization, boarding school, or residential school that is an adjunct ministry of a church incorporated in the state of Montana. Or, it could be as serious as a facility functioning and representing themselves as a PAARP program, without a license. Recently, the Nineteenth Judicial District Court in its Order held the Ranch for Kids must be licensed.

5. People who are not licensed but are qualified in an occupation or profession may feel that a licensing board is preventing them from earning a living -- what is your response?

The Legislature finds and declares that the board is to license and regulate private alternative adolescent residential or outdoor programs as a public service to monitor and maintain a high standard of care and to ensure the safety and well-being of the adolescents and parents using their services. In addition, the board shall develop and adopt rules and set fees for mandatory licensing programs. Each program is required to provide policies of insurance in a form and in an adequate amount as determined by board rule. The Legislature further finds and declares that programs shall meet the qualifications set forth in statute and provided by board rule. Additionally, board statute provides for a variety of exemptions as listed in question 4. The cost of securing licensure for a program is high as fees are set commensurate with costs and the current 14 programs are obligated to meet the financial obligations of regulation. In light of this, the board does not prevent anyone from earning a living; rather the board prevents unqualified programs from operating at the expense of vulnerable youth and their families. Without this board, an established set of program standards for safe care of children in residential programs, and a process of verifying compliance with the standards there would be no way of establishing that a person or company is qualified to operate a safe program and there would not be a process to assure compliance.

6. How does your board monitor bias among board members toward a particular licensee, an applicant, or a respondent (to unlicensed practice)? How does your board monitor bias toward a particular profession/occupation, if more than one profession or occupation is licensed by the board?

Only one license type is regulated by the board. As mentioned in question 3, the board composition includes three members from programs of various sizes and types and two members who must be from the general public. No program size or type holds enough seats to create a quorum or win a majority if all members vote. The board includes two public member

seats which are not held by program members. We believe this provides even more diversity, as our public members have no vested interest in any particular program size or type. In addition, when a complaint enters the compliance process, two panels become involved, screening and adjudication. The panels are comprised of different members of the board. This insures that a board member who is involved in screening a case is not involved in adjudicating that same case. The Department of Labor and Industry provides board member training for all appointed members; board members are advised of the need to recuse themselves from decision-making if an actual conflict or the appearance of a conflict exists. The presiding officer and staff, including an attorney, monitor to ensure that all cases are treated according to the same requirements and the possibility or perception of bias is avoided.

7. Does the profession or occupation have one or more Associations that could provide oversight without the need for a licensing board? Why not use the Association as the oversight body?

The PAARP Board sees its role as very different from the roles played by The National Association of Therapeutic Schools and Programs or NATSAP to which many of our licensees belong. We both have adopted similar standards for safe care of children. However, NATSAP is not a regulatory body nor an accrediting body and so cannot provide the inspection and oversight that is provided by the PAARP board. The board's role is to protect the public through its own rules and through the statutes it enforces. In contrast, the Association serves as an advocate and resource for innovative organizations which devote themselves to society's need for the effective care and education of struggling young people and their families. Their vision is for a nation of healthy children. "We are the voice inspiring, nurturing, and advancing the courageous work of our schools and programs." At this time, the board is unaware of any effort by a professional association to share—or assume outright—the duties assigned to the board by statute and/or rule.

8. Is a licensing board needed in order for the practitioner to bill to receive insurance (for example, health insurance)? If so, is there an alternate method for billing that may be recognized rather than having a license or being regulated by a licensing board?

Programs and/or staff must be licensed in order to bill Medicare, Medicaid or insurance companies. The board is not aware of any alternative billing method. Most insurance companies provide only limited coverage for longer term residential care of emotional and behavioral problems in children. However, some will provide limited support only if a program is duly licensed and regulated in a state.

9. What are the benefits of a board being part of the licensing and discipline process instead of the department handling one or both?

The board is made up primarily of experienced and knowledgeable service providers. As such, board members have a clear understanding of the qualifications and knowledge base needed to qualify as a licensed program in their respective categories. They also understand the appropriate professional standards for competent programs. Therefore, it is appropriate and wise for the board to set the standards of licensing and professional practice, to emphasize standards of care and to enforce discipline when needed. Board members who serve on screening and adjudication panels respectfully yield to the expertise of their counterparts to best determine outcomes of reviewed cases.

10. Is there an optimum ratio between licensees, board size, or public representation?

The Board of Private Alternative Adolescent Residential or Outdoor Programs cannot speak to the larger issue of an “optimum” ratio for all boards. We can report that the size of our board works well, in terms of both license review and the disciplinary process. We take pride that the variety of size and types of programs are represented on the board as well as recognition in the value of having two public members on the board.

11. If a board's purpose includes protecting public welfare, would that consumer protection be handled better by the Attorney General's office than by a board? (In other words, is there a value in a disinterested third party? If yes, why? If not, why not?) Who should be responsible for monitoring fraud within the profession or occupation?

The board believes the specialized knowledge required of programs makes it appropriate for program peers to regulate programs. A disinterested third party would spend significant time and money either learning the profession or hiring consultants in various areas of the profession to address practice and conduct issues. Moreover, without established standards of care a third party could not establish whether or not a program was operating in an acceptable fashion so as to limit any adverse consequences to children under their care. When circumstances require disciplinary action, the board has tremendous faith in both the compliance specialist assigned to it and the legal staff who prosecute offenders before the Department of Labor and Industry hearing examiners.

12. If boards have overlapping scopes of practice, should there be a third-party to determine whether there is intrusion into the other's practices? If so, who should be the judge? If not, why not? Should each be allowed to operate on the other's turf without repercussions?

Licensed programs should not exceed their scope of practice. The PAARP Board is the only one of its kind at the Department of Labor and Industry. There are no overlaps or conflicts of scope of practice within the department. With that said however, there is a potential overlap of practice with the Department of Health and Human Services who is charged with providing the same tasks of setting standards and oversight of all programs that serve publically funded children. However in 2007 the legislature created the PAARP board as a separate entity to establish standards and regulation of private programs at least in part because they recognized that both the standards and regulatory process could reflect the differences in program type between what is currently offered in the private domain as opposed to the levels of care offered in the public domain.

Conduct considered unprofessional and should be subject to discipline by the board which regulates that program practice whether at the DLI or DPHHS. When and if the conduct enters into another board's area of professional expertise, then the second board is justified in taking action for unlicensed practice. In many cases, the best course of action recommended by the board is for the program in question to seek an additional license to avoid a scope of practice issue. The board recognizes that issues such as scope of practice might arise periodically. The board has found that when they arise, we have been able to work cooperatively with other regulatory boards.

We believe cooperation can resolve issues and we have confidence in the strong working relationships among boards and staff within the Health Care Licensing Bureau and the Department of Public Health and Human Services.

13. Should any board have the ability to limit use of certain terminology to only a licensee?

Essentially, this is a “truth in advertising” issue that reflects both factual accuracy and the trust relationship between programs and the youth and families they serve. In Montana, the Board of Private Alternative Adolescent Residential or Outdoor Programs is the body best able to determine whether a program is truthful in presenting their professional status to the public, whether through advertising or through claims about the program. In addition, the public expects a youth care facility and its professionals to be truthful about the professional status, including the legally recognized name. According to statute, the designation as a Licensed Private Alternative Adolescent Residential or Outdoor Program shall “be displayed in a conspicuous place near the admitting office of the program.”

The board looks forward to providing you with any further information you may need.