

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 37.99.102, 37.99.115,) PROPOSED AMENDMENT
37.99.118, 37.99.119, 37.99.125,)
37.99.127, 37.99.132, 37.99.172 and)
37.99.216 pertaining to Private)
Alternative Adolescent Residential)
Programs)

TO: All Concerned Persons

1. On June 4, 2024, at 10:00 a.m., the Department of Public Health and Human Services will hold a public hearing via remote conferencing to consider the proposed amendment of the above-stated rules. Interested parties may access the remote conferencing platform in the following ways:

(a) Join Zoom Meeting at: <https://mt-gov.zoom.us/j/82279369511?pwd=aGJJNnFqNE4vUGNXMkR6bHFvTUlxZz09>, meeting ID: 822 7936 9511, and password: 800205; or

(b) Dial by telephone: +1 646 558 8656, meeting ID: 822 7936 9511, and password: 800205. Find your local number: <https://mt-gov.zoom.us/u/kenTY4OviW>.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Public Health and Human Services no later than 5:00 p.m. on May 21, 2024, to advise us of the nature of the accommodation that you need. Please contact Bailey Yuhas, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail hhsadminrules@mt.gov.

3. The rules as proposed to be amended provides as follows, new matter underlined, deleted matter interlined:

37.99.102 PRIVATE ALTERNATIVE ADOLESCENT RESIDENTIAL PROGRAMS: DEFINITIONS (1) "Adolescent" means any person between the ages of 10 and 19 years who is placed in a program by a parent/legal guardian. A program participant may be up to the age of 20 if they are enrolled in an accredited secondary school.

(a) upon admission to the program, the adolescent is considered a program participant; and

(b) the adolescent may remain as a program participant up to the age of 20 if they are enrolled in an accredited secondary school.

(2) remains the same.

(3) "Chemical restraint" means the use of a drug or medication that is used to control behavior or restrict the program participant's freedom of movement, and which is not a standard treatment for the program participant's medical or psychiatric condition. ~~The use of chemical restraint is prohibited in all programs.~~

(4) through (9) remain the same.

(10) "Licensure Bureau" means the Office of Inspector General ~~Quality Assurance~~ Licensure Bureau.

(11) "Mechanical restraint" means the use of devices as a means of restricting a person's freedom of movement. ~~The use of mechanical restraint is prohibited in all programs.~~

(12) "Mental health professional" ~~means a person must be licensed pursuant to Title 37, chapters 22, 23, or and 37, MCA, as a clinical professional, social worker, or marriage and family therapist. A program may use a licensure candidate to provide mental health professional services with written consent of the program participant's parent/legal guardian.~~

(13) and (14) remain the same.

(15) "Personal property search" means a search which includes ~~but is not limited to~~ going through a program participant's personal property and/or room including closet, bed, desk, dresser drawers, backpacks, etc., with the intention of looking for contraband.

(16) remains the same.

(17) "Physical restraint" means a personal restriction that immobilizes or reduces the ability of the free movement of an individual's arms, legs, or head. Such term does not include physical escort. ~~Physical restraint may be imposed only in emergency circumstances and only to ensure the immediate physical safety of the resident, a staff member, or others, when less restrictive interventions have been determined to be ineffective.~~

(18) remains the same.

(19) "Seclusion" means a behavior control technique involving locked isolation in which the ~~resident~~ program participant is physically prevented from leaving. Such term does not include time-out. ~~Seclusion is prohibited in all programs.~~

(20) "Self-administration assistance" means providing necessary assistance to any program participant in taking their medication, including:

(a) through (c) remains the same.

(d) opening the lid of the above container for the ~~resident~~ program participant;

(e) through (g) remains the same.

(21) "Serious incident" means suicide attempt, ~~use of excessive use of a physical restraint or seclusion force by staff~~, physical or sexual assault of a program participant by staff, or another ~~resident~~ program participant, injury to a program participant which requires emergency medical care, known, or suspected abuse or neglect (as defined in 41-3-102, MCA), of a program participant by staff or another ~~resident~~ program participant, a near miss or the death of a program participant, elopement, or an incident that involves law enforcement.

(22) "Time-out" means the restriction of a program participant for a period of time to a designated unlocked area from which the ~~resident~~ program participant is

not physically prevented from leaving for the purpose of providing the program participant the opportunity to regain self-control.

AUTH: 52-2-803, 52-2-805, MCA
IMP: 52-2-802, 52-2-803, 52-2-805 MCA

37.99.115 PRIVATE ALTERNATIVE ADOLESCENT RESIDENTIAL PROGRAMS: WRITTEN POLICY AND PROCEDURE (1) remains the same.

(2) The policy and procedure manual must be submitted with the initial application for department approval.

(3) Any updates to the policy and procedure manual must be submitted to the department for approval 30 days prior to implementing the policy.

AUTH: 52-2-803, 52-2-805, MCA
IMP: 52-2-803, 52-2-805, 52-2-809, MCA

37.99.118 PRIVATE ALTERNATIVE ADOLESCENT RESIDENTIAL PROGRAMS: WRITTEN AGREEMENT (1) through (1)(d) remain the same.

(e) a statement describing the communication policy, which must include a minimum of one ~~telephone~~ confidential video communication contact per week between the youth and the youth's parents/legal guardian or foster parent(s), in addition to any therapeutic contact (family therapy);

(f) through (3) remain the same.

AUTH: 52-2-803, 52-2-805, MCA
IMP: 52-2-803, 52-2-805, 52-2-809, MCA

37.99.119 PRIVATE ALTERNATIVE ADOLESCENT RESIDENTIAL PROGRAMS: DISCHARGE (1) through (2) remain the same.

(3) The discharge report must be maintained by the program in the participant's file and a copy must be provided to the parent/legal guardian at the time of discharge. Written documentation that the discharge report was provided to the parent/legal guardian must be maintained in the ~~resident's~~ program participant file.

(4) remains the same.

(5) Unless otherwise prohibited by law or court order, a program must allow a parent or legal guardian to remove a youth from the program at any time.

AUTH: 52-2-803, 52-2-805, MCA
IMP: 52-2-803, 52-2-805, 52-2-809, MCA

37.99.125 PRIVATE ALTERNATIVE ADOLESCENT RESIDENTIAL PROGRAMS: RIGHTS AND GRIEVANCES (1) The program must have a written program participant rights policy that supports and protects the fundamental human, civil, constitutional, and statutory rights of all program participants. These rights must include:

(a) remains the same.

(b) freedom from abuse, neglect, exploitation, harassment, and unnecessary physical restraint;

(c) through (k) remain the same.

(l) to submit complaints and ~~grieve~~ alleged violations of these rules, including a prohibition on retaliation against a program participant for submitting such a complaint;

(m) through (n) remain the same.

(2) A program is prohibited from:

(a) using physical discipline or the threat of physical discipline as a punishment, deterrent, or incentive;

(b) unlawfully depriving a program participant of a basic necessity or an fundamental right, including education;

(c) admitting a program participant who is under the age approved on the license or has a condition that the program is not authorized to treated pursuant to the program's admission policy;

(d) using medical, chemical or mechanical restraints;

(e) using physical restraints, except in emergency circumstances to ensure the immediate physical safety of the program participant, a staff member, or others, when less restrictive interventions have been determined to be ineffective;

(f) using a licensure candidate to provide mental health professional services if the parent/legal guardian of a program participant has not provided written consent;

(g) using seclusion; and

(h) sexually abusing, exploiting or harassing a program participant.

(2) through (5) remain the same but are renumbered (3) through (6).

AUTH: 52-2-803, 52-2-805, MCA

IMP: 52-2-803, 52-2-805, 52-2-809, MCA

37.99.127 PRIVATE ALTERNATIVE ADOLESCENT RESIDENTIAL PROGRAMS: CHILD ABUSE OR NEGLECT AND SERIOUS INCIDENTS (1) A program must require each ~~applicant~~ program participant, person associated with the program and staff member to read and sign a statement that clearly defines child abuse and neglect and outlines the individual's responsibility to report all known or suspected incidents of child abuse or neglect of any program participant to the department within 24 hours.

(2) through (3)(b) remain the same.

(c) a procedure for taking appropriate disciplinary measures against any staff member involved in an incident of child abuse or neglect, including termination, retraining, or any other action geared towards the prevention of future incidents; and

(d) a procedure for reporting all serious incidents to the parent/legal guardian within 24 hours of the incident.

(4) Any serious incident involving a program participant must be reported in writing ~~the next~~ within one business day ~~to the parent/legal guardian and to the~~ department's licensure bureau. The report must include:

(a) through (c) remain the same.

(d) a statement written by the staff member that was involved in the incident or witnessed the incident; and

(e) documentation of date and time the incident was reported to the parent/legal guardian.

(5) through (6) remain the same.

AUTH: 52-2-803, 52-2-805, MCA

IMP: 52-2-803, 52-5-805, 52-2-809, MCA

37.99.132 PRIVATE ALTERNATIVE ADOLESCENT RESIDENTIAL PROGRAMS: PHYSICAL ENVIRONMENT (1) through (7)(a) remain the same.

(b) one bathing facility for every eight ~~residents~~ program participants.

(8) through (12) remain the same.

(13) Programs must post a sign within the facility that is accessible to all program participants and to the public. The sign must provide information on what agency should be contacted to report a violation of law or policy and must include contact information for the Office of Inspector General Licensure Bureau, the Montana Child Abuse and Neglect Hotline (866-820-5437), and local law enforcement.

(13) remains the same but is renumbered (14).

AUTH: 52-2-803, 52-2-805, MCA

IMP: 52-2-803, 52-2-805, 52-2-809, 52-2-810, MCA

37.99.172 PRIVATE ALTERNATIVE ADOLESCENT RESIDENTIAL PROGRAMS: USE OF CRISIS INTERVENTION AND PHYSICAL RESTRAINT STRATEGIES (1) remains the same.

(2) The crisis intervention and physical restraint policies and procedures must include:

(a) suicide prevention training for all staff to include risk identification, screening, and assessment, indicated interventions, safety planning, treatment, follow-up care and documentation;

(a) through (f) remain the same but are renumbered (b) through (g).

(3) remains the same.

(4) The documentation requirement in (3) must be submitted in writing to the Office of Inspector General Licensure Bureau within one business day of the physical restraint.

(4) through (5) remain the same but are renumbered (5) and (6)

AUTH: 52-2-803, 52-2-805, MCA

IMP 52-2-803, 52-2-805, 52-2-809, MCA

37.99.216 NUTRITIONAL REQUIREMENTS (1) through (2) remain the same.

(3) Foods must be served in amounts and a variety sufficient to meet the nutritional needs of each ~~resident~~ program participant.

(4) through (7) remain the same.

AUTH: 52-2-803, 52-2-805, MCA
IMP: 52-2-803, 52-2-805, 52-2-809, MCA

4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (Department) is proposing to amend the administrative rules pertaining to Private Alternative Adolescent Residential and Outdoor Programs pursuant to House Bill 218, signed into law on May 17, 2023, which amended 52-2-805 and 52-2-810, MCA. The law requires additional licensing requirements regarding a program's policies and procedures, reporting of restraints utilized by the program, suicide prevention, procedures for submitting complaints to the department and law enforcement, program participant rights, discharging youth to parents, and weekly unmonitored communication with parent or guardian. The Department proposes to amend ARM 37.99.102, 37.99.115, 37.99.118, 37.99.119, 37.99.125, 37.99.127, 37.99.132, and 37.99.172 to implement the above requirements.

37.99.102 Definitions

The department proposes amendments to certain definitions, to remove prohibited practices from the definitions. The prohibited practices would be moved to 37.99.125, where all prohibited practices would be set forth and to update the language of the rule to reflect changes to 52-2-805, MCA, in the 2023 Legislative implementing reporting requirements for the use of medical, chemical, or physical restraint or seclusion. These amendments are proposed to update the language of the rule to be consistent with the reference to program participant versus resident.

37.99.115

These amendments are proposed to update the language of the rule to reflect 52-2-805(2)(c), MCA, added by the 2023 Legislature, to ensure program policies and procedures follow all standards in Administrative Rules of Montana and Montana Code Annotated, by requiring the department to review and approve the policy and procedure manuals of all licensed programs.

37.99.118

These amendments are proposed to update the language of the rule to reflect 52-2-805(4)(b), MCA, added by the 2023 Legislature, requiring one unmonitored video conference call per week between the youth and the youth's parent/legal guardians or foster parents.

37.99.119

These amendments are proposed to update the language of the rule to reflect 52-2-805(4)(a), MCA, added by the 2023 Legislature, to clarify parents/legal guardians are allowed to remove the youth from the program at any time.

37.99.125

The department proposes the amendments to this provision to (1) implement 52-2-805(3), MCA, added by the 2023 Legislature, which identify practices prohibited to licensed programs, and (2) locate the state of other prohibited practices, previously included in the definitional section, in the same provision as those statutory prohibited practices.

37.99.127

These amendments are proposed to update the language of the rule to reflect (52-2-805(2)(a), MCA, added by the 2023 Legislature, to clarify and implement the requirement for the use of restraints or seclusion to be reported the department within one business day. The department also proposes an amendment to implement 52-2-810(d), added by the 2023 Legislature, to require that licensed programs make their records available for inspection by the department at all reasonable times.

37.99.132

These amendments are proposed to update the language of the rule to reflect 52-2-805(2)(d) and (5), MCA, added by the 2023 Legislature, ensuring youth, parents/guardians, and the public are advised of the department contact information for filing a complaint.

37.99.172

These amendments are proposed to update the language of the rule to reflect 52-2-805(2)(b) and (2)(a), MCA, added by the 2023 Legislature, ensuring all staff (1) receive suicide prevention training and (2) report all physical restraint to the department within 1 business day.

37.99.216

This amendment is proposed to update the language of the rule to be consistent with the reference to program participant versus resident.

Fiscal Impact

The proposed rule amendment has no anticipated fiscal impact implications on providers.

5. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Bailey Yuhas, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail hhsadminrules@mt.gov, and must be received no later than 5:00 p.m., June 7, 2024.

6. The Office of Legal Affairs, Department of Public Health and Human Services, has been designated to preside over and conduct this hearing.

7. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 5 above.

8. An electronic copy of this notice is available on the department's web site at <https://dphhs.mt.gov/LegalResources/administrativerules>, or through the Secretary of State's web site at <http://sos.mt.gov/ARM/register>.

9. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was notified by email on August 31, 2023 and had the opportunity to meet with program staff to discuss proposed ARM changes to implement HB 218.

10. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of the above-referenced rules will not significantly and directly impact small businesses.

/s/ Greg Henderson
Greg Henderson
Rule Reviewer

/s/ Charles T. Brereton
Charles T. Brereton, Director
Department of Public Health and Human
Services

Certified to the Secretary of State April 30, 2024.