

Montana Code Annotated 2023

Title 52 Family Services

Chapter 2 Private Alternative Adolescent Residential or Outdoor Programs

Part 8

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52-2-801 Purpose The purpose of this part is to provide for the licensure and regulation of private alternative adolescent residential or outdoor programs to monitor and maintain a high standard of care and to ensure the health and safety of the adolescents and parents using the programs.

History: En. Sec. 1, Ch. 293, L. 2019.

52-2-802 Definitions As used in this part, the following definitions apply:

(1) "Department" means the department of public health and human services provided for in **2-15-2201**.

(2) "Direct access" means that an individual has or likely will have person-to-person spoken or physical contact with or access to a program participant.

(3) "License" means a written document issued by the department that the license holder has complied with this part and the applicable standards and rules for programs.

(4) "Licensee" means the holder of a license issued by the department in accordance with the provisions of this part.

(5) "Person associated with the program" means any owner, partner, member, employee, or contractor providing professional or occupational services to a program.

(6) (a) "Program" means a private alternative adolescent residential or outdoor program that provides a structured, private, alternative residential setting for youth who are experiencing emotional, behavioral, or learning problems and who have a history of failing in academic, social, moral, or emotional development at home or in less-structured traditional settings.

(b) The term does not include:

(i) any program that is otherwise required to be licensed or regulated by the state under Title 50, 52, or 53, except that a program that holds itself out as providing primary, inpatient chemical dependency treatment must ensure that the treatment program is provided by a public or private chemical treatment facility approved by the department under **53-24-208**.

(ii) recreational programs such as boy scouts, girl scouts, or 4-H clubs;

(iii) organizations, boarding schools, or residential schools with a sole focus on academics;

(iv) residential training or vocational programs with a sole focus on education and vocational training;

(v) youth camps with a focus on recreation and faith-related activities; or

(vi) an organization, boarding school, or residential school that is an adjunct ministry of a church incorporated in the state of Montana.

(7) "Program participant" means any adolescent to whom services are being provided by the program.

History: En. Sec. 2, Ch. 293, L. 2019.

52-2-803 Duties of Department The department shall:

- (1) exercise licensing authority over all programs under this part;
- (2) adopt rules prescribing the health and safety standards upon which licenses are issued under this part;
- (3) adopt rules setting forth reasonable licensing fees;
- (4) make available to the public information on the name, address, and contact information for each licensee; and
- (5) report to the children, families, health, and human services interim committee in accordance with **5-11-210** on the department's efforts related to this part.

History: En. Sec. 3, Ch. 293, L. 2019.

52-2-804 License Required -- Term of License -- Fees (1) A person, group of persons, or corporation may not establish or maintain a program as defined in this part unless licensed to do so by the department. A license is valid only for the person and premises for which it was issued. A license may not be sold, assigned, or transferred.

(2) The department:

- (a) may issue a license that remains in effect for a period not to exceed 3 years; and
- (b) may charge a reasonable fee commensurate with administrative costs to issue a license, as set forth by rule.

(3) A 3-year license may be issued only to a program that has not received notice of any deficiencies on the licensing criteria and implementation guidelines that are provided in department rule.

History: En. Sec. 4, Ch. 293, L. 2019.

52-2-805 Requirements for Licensure -- Restrictions -- Rulemaking (1) The department shall require applicants and licensees:

(a) to submit a set of fingerprints for each person associated with the program who has direct access to program participants for the purpose of conducting a criminal and child protection background check by the Montana department of justice and the federal bureau of investigation. This background investigation must include information pertaining to criminal convictions, reports of domestic violence, and substantiated child abuse or neglect of children.

(b) to maintain and to provide verification of policies of insurance in a form and in an adequate amount as determined by rule.

(2) In developing minimum standards for licensed programs, the department shall adopt rules that pertain to ensuring the health and safety of program participants, including:

(a) a procedure for a licensed program to report the use of a medical, chemical, or physical restraint or seclusion to the department within 1 business day after the day on which the use of the medical, chemical, or physical restraint or seclusion occurs;

(b) guidelines for written policies and procedures of the licensed program, including policies and procedures on suicide prevention and for implementation of the requirements and restrictions in subsections (3) and (4);

(c) a procedure for the department to review and approve the licensed program's policies and procedures; and

(d) a procedure for submitting a complaint about a licensed program to the department and law enforcement and a requirement that each licensed program publicly post information that describes how to submit a complaint about the licensed program to the department and law enforcement.

(3) A licensed program may not:

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

(b) deprive a youth of basic necessity or inherent right, including education;

(c) admit a youth who is under the age approved in the licensure or has a condition not allowed to be treated under the licensure; or

(d) sexually abuse, exploit, or harass an enrolled youth.

(4) A licensed program must:

(a) allow a parent or guardian to remove a youth from the licensed program; and

(b) unless otherwise prohibited by law or court order, facilitate weekly confidential video communication between a youth and the youth's parents, guardians, or foster parents.

(5) A licensed program shall provide a fixed number telephone to the child abuse hotline operated by the department that is readily available to enrolled participants 24 hours a day.

History: En. Sec. 5, Ch. 293, L. 2019; amd. Sec. 1, Ch. 498, L. 2023.

52-2-806 Provisional License The department may issue a provisional license for a period not to exceed 6 months if it finds that a licensee or applicant does not meet all standards established by the department as long as the licensee or applicant is attempting to meet the minimum standards.

History: En. Sec. 6, Ch. 293, L. 2019.

52-2-807 Renewal License If a licensed program desires to renew a license, the request for renewal must be made at least 30 days prior to the expiration of its license.

History: En. Sec. 7, Ch. 293, L. 2019.

52-2-808 Denial, Cancellation, Reduction, Revocation, And Nonrenewal of Licenses -- Fair hearing (1) The department, after written notice to the applicant or licensee, may deny, suspend, cancel, reduce, modify, or revoke a license upon finding that:

(a) any of the applicable conditions set forth in this part and the rules adopted pursuant to this part as prerequisites for the issuance of a license no longer exist;

(b) the licensee is no longer in compliance with the minimum standards prescribed by the department; or

(c) the license was issued upon fraudulent or untrue representation.

(2) The applicant or licensee by written request may invoke the opportunity for hearing on the department's action by requesting a hearing within 10 days of notice of department action. The hearing must be conducted according to the department's rules.

History: En. Sec. 8, Ch. 293, L. 2019.

52-2-809 Licensees and Applicants to Maintain Records, Furnish Reports, And Permit Inspections Every applicant for a license and every licensee shall give the right of entrance to and inspection of premises to representatives of the department at reasonable times, keep and maintain records as the department may prescribe, permit

inspection of these records, and report to the department facts that may be required on forms furnished by the department.

History: En. Sec. 9, Ch. 293, L. 2019.

52-2-810 Periodic Visits to Facilities by Department -- Investigations -- Consultation With Licensees And Registrants

(1) The department or its authorized representative shall make periodic visits to all licensed programs to ensure that minimum standards are maintained.

(2) The department shall investigate and inspect the conditions and qualifications of any program seeking or holding a license under the provisions of this part.

(3) (a) The department shall conduct an onsite inspection of:

(i) each program applying for a license; and

(ii) each licensed program at least semiannually.

(b) The semiannual inspections of a licensed program must be unannounced.

(c) At least 50% of the youth enrolled in the program must be interviewed by department staff during each inspection. Program staff may not be present during these interviews.

(d) All records of a licensed program must be open to inspection by the department at all reasonable times.

(4) On request of the department, the state fire prevention and investigation section of the department of justice shall inspect any program for which a license is applied for or issued and shall report its findings to the department.

History: En. Sec. 10, Ch. 293, L. 2019; amd. Sec. 2, Ch. 498, L. 2023.

52-2-811 Penalty -- Remedies (1) A person who establishes or maintains a program or assists in conducting or maintaining a program without first obtaining a license from the department as provided for in this part is guilty of a misdemeanor and upon conviction is punishable by a fine not to exceed \$500.

(2) (a) If the department is advised or has reason to believe that a program is operating without a license, it shall make an investigation to ascertain the facts. If the department finds that the program is being or has been operated without a license, it may report the results of its investigation to the attorney general or the county attorney of the county where the program is being operated for prosecution and request that an injunction be issued against the program until a license is issued.

(b) The department may institute any action necessary to enforce compliance with this part or any order or rule of the department under this part or to obtain a judicial interpretation of any of the foregoing.

(c) The department may, by its own attorney, any county attorney, or the attorney general, initiate an action in the justice's court, city court, municipal court, or district court of the appropriate jurisdiction and be represented by that representative on appeal to the district court and supreme court of Montana, as applicable.

History: En. Sec. 11, Ch. 293, L. 2019.