

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

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 37.95.102, 37.95.103,)
37.95.106, 37.95.161, and 37.95.162,)
pertaining to the federal Child Care)
and Development Block Grant)
Reauthorization Act requirements for)
child care facilities)

TO: All Concerned Persons

1. On August 10, 2018, the Department of Public Health and Human Services published MAR Notice No. 37-858 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 1544 of the 2018 Montana Administrative Register, Issue Number 15.

2. The department has amended the following rules as proposed: ARM 37.95.103, 37.95.161, and 37.95.162.

3. The department has amended the following rules as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

37.95.102 DEFINITIONS (1) through (60) remain as proposed.

AUTH: 52-2-704, 53-4-212, ~~53-4-503~~, MCA
IMP: 52-2-702, 52-2-703, 52-2-704, 52-2-713, 52-2-723, 52-2-725, 52-2-731, 52-2-735, 52-2-736, 53-2-201, 53-4-211, 53-4-212, 53-4-601, 53-4-611, 53-4-612, MCA

37.95.106 CHILD CARE FACILITIES, REGISTRATION, OR LICENSING
(1) through (8) remain as proposed.

AUTH: 52-2-704, ~~53-4-503~~, MCA
IMP: 52-2-704, 52-2-722, 52-2-723, 52-2-731, 53-4-504, 53-4-507, MCA

4. The department has thoroughly considered the comments and testimony received. A summary of the comments received and the department's responses are as follows:

COMMENT #1: One commenter requested clarification for ARM 37.95.162 as to how the three-year timeframe for the health and safety review course will be calculated and if the course will be standardized.

RESPONSE #1: The department appreciates the comment. The health and safety review course will be a standardized course that will need to be taken within three years from the completion of the health and safety orientation and every three years thereafter. Policies and database systems will be updated to support the implementation of this rule.

COMMENT #2: Two commenters have requested clarification for ARM 37.95.161 on whether the department will require that Federal Bureau of Investigation (FBI) fingerprint results be received prior to a staff member working in a child care facility. Both commenters suggested that a grace period be allowed for staff to work in the facility until results are received. One of these commenters expressed concerns that requiring FBI checks to be complete prior to working in the facility will result in violations when there is staff turnover. The commenter suggested that since turnover rates are high in child care facilities, the facilities will sometimes be forced to choose between violating the background check rule or violating the ratio requirements.

RESPONSE #2: The department appreciates the comments. This rule is a federal requirement and the department is required to enforce it as of the effective date of these rules. The department has requested a one-year waiver from the federal Office of Child Care, to allow for staff to work in a child care facility provisionally prior to receiving FBI results. If the waiver is granted, new staff will be allowed to work under direct supervision of an approved staff member, after submitting fingerprints to the Montana Department of Justice and pending the FBI results. The waiver, if granted, will only be in effect through September 2019.

COMMENT #3: One commenter relayed support for the FBI background checks and for ongoing health and safety training provided every three years versus a certain number of hours each year.

RESPONSE #3: The department appreciates the comments and support.

COMMENT #4: One commenter notified the department that an authorizing statute referenced in the department's citations of authority for its rulemaking, 53-4-503, MCA, had been renumbered to 52-2-704, MCA.

RESPONSE #4: The department thanks the commenter for the comment and has corrected the statutory authority citation deficiencies for ARM 37.95.102 and 37.95.106 in accordance with 2-4-305, MCA.

/s/ Flint Murfitt
Flint Murfitt
Rule Reviewer

/s/ Laura Smith
Laura Smith for Sheila Hogan, Director
Public Health and Human Services

Certified to the Secretary of State September 11, 2018.