

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 37.97.102, 37.97.132, )  
37.97.140, and 37.97.903 pertaining )  
to youth care facilities )

TO: All Concerned Persons

1. On July 26, 2019, the Department of Public Health and Human Services published MAR Notice No. 37-885 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 1034 of the 2019 Montana Administrative Register, Issue Number 14.

2. The department has amended the above-stated rules as proposed.

3. 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 comment was received asking if the "lead clinical staff" (LCS) must be employed by the facility.

RESPONSE #1: The LCS must be employed by the youth care facility licensed as a therapeutic youth group home. This is not a new requirement.

COMMENT #2: A commenter asked if, in the absence of an LCS or mental health clinician, there are minimal qualifications for staff persons employed by a facility.

RESPONSE #2: Minimum qualifications for all staff are listed in ARM 37.97.132.

COMMENT #3: A commenter asked if accreditation exists for the facilities.

RESPONSE #3: The department believes the commenter is asking if licensure rules allow for a license to be issued based on a facility's program accreditation. The youth care facility statute and rules do not allow for licensure to be based on accreditation.

COMMENT #4: A commenter agreed that the background check requirements are appropriate and important; however the commenter does not agree that a person convicted of a misdemeanor for partner and family member assault may not be employed or a person that is charged with a crime involving children, physical or sexual violence against any person, or any felony drug related offense should not provide care pending the outcome of the criminal proceeding.

RESPONSE #4: The requirements in question are not new requirements. The comment is beyond the scope of these proposed rule changes.

COMMENT #5: The department received two comments regarding the lack of direction provided by the department on the process of completing the fingerprint background checks. One commenter requested information regarding all expectations, policies, procedures, and cost impact so that they may provide input to the rulemaking process.

RESPONSE #5: The department agrees that the proposed rule notice did not provide direction on the process of implementing fingerprint background checks. The department has been collaborating with the Department of Justice on developing tools that will provide clear guidance on conducting fingerprint background checks. This information will be available prior to the implementation of this rule. The department provided a fiscal impact statement within the MAR notice to address increased cost to providers. The department disagrees that this information must be provided in order to provide input into the rulemaking process.

COMMENT #6: A commenter estimated the fingerprint background check process will increase the time of hire by 45 to 90 days.

RESPONSE #6: The department disagrees with the commenter. The department is working collaboratively with the Department of Justice to implement a process to decrease the time required to process the fingerprint background checks.

COMMENT #7: A commenter would like the department to amend the rule to allow individuals to enter employment pending the fingerprint background checks. The commenter believes this will ensure they can continue to provide effective care to the youth in Montana. The commenter believes providing a reasonable timeline to complete these checks will help mitigate the fiscal and quality impact on services.

RESPONSE #7: Current rule requires criminal background checks prior to staff working in the youth care facility. The department disagrees with the comment and believes the safety of youth could be compromised by allowing staff to work in the youth care facility prior to receiving background check results.

COMMENT #8: A commenter requested clarification of how continued ARM 37.97.140 requirements will be coordinated with these new requirements so that they may provide meaningful input into the rulemaking process.

RESPONSE #8: The State of Montana background check will be included within the FBI fingerprint background check which is \$30. The cost of out-of-state background checks varies from one state to another and will continue to be required for anyone who has lived out of state within the last five years, unless the state an applicant lived in participates in the national fingerprint file program. In those cases, there will be no additional costs for out-of-state background checks. The department will be

providing specific guidance prior to the adoption date of the rule. If there is any increased cost, the provider may opt to pass it along to the applicant.

COMMENT #9: The department received four comments concerning the cost of implementing fingerprint background checks. One commenter requested the department provide a fiscal impact on providers, including cost associated with increased fees, staff vacancies, and lost revenue.

RESPONSE #9: Please see response to #8.

COMMENT #10: A commenter requested information on efforts the department will take to mitigate the increased cost to providers including any rate adjustments.

RESPONSE #10: Please see responses to #5 and #8.

COMMENT #11: A commenter requested clarification regarding whether current employees will be required to have fingerprint background checks or be grandfathered in.

RESPONSE #11: Proposed amendments to ARM 37.97.140(1) states fingerprint background checks must be conducted on all staff hired after October 1, 2019.

COMMENT #12: A commenter requested clarification if current or future employees providing Care Management to Therapeutic Foster Care will be required to be fingerprinted.

RESPONSE #12: These proposed rule amendments apply to youth care facilities only. The comment goes beyond the scope of the proposed rule changes.

COMMENT #13: A commenter requested language be added to rule that allows for either a name based state or tribal criminal history check or an FBI fingerprint check prior to working in a youth care facility allowing an additional 90 days after hire to complete the background check that was not obtained prior to employee date of hire.

RESPONSE #13: The department disagrees; the commenter's proposed language would require an additional criminal history background to be completed for staff: one check completed at the time of hire, and one completed within 90 days of hire. This would place an additional burden on providers and increase costs. Allowing individuals to work in facilities up to 90 days without receiving a complete background check increases the risk of harm to youth.

Please see response to #8.

COMMENT #14: A commenter had several questions regarding the process of completing the fingerprint background checks.

RESPONSE #14: Please see response #5.

4. These rule amendments are effective October 1, 2019.

/s/ Flint Murfitt  
Flint Murfitt  
Rule Reviewer

/s/ Erica Johnston for  
Sheila Hogan, Director  
Public Health and Human Services

Certified to the Secretary of State August 27, 2019.