

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

TO: All Concerned Persons

1. On August 15, 2019, at 2:00 p.m., the Department of Public Health and Human Services will hold a public hearing in the auditorium of the Department of Public Health and Human Services, 111 North Sanders, Helena, Montana, to consider the proposed amendment of the above-stated rules.

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 August 6, 2019, to advise us of the nature of the accommodation that you need. Please contact Gwen Knight, 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 dphhslegal@mt.gov.

3. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) proposes to amend ARM 37.97.102, 37.97.132, 37.97.140, and 37.97.903, pertaining to licensing requirements for youth care facilities.

The department proposes to amend the youth care facility licensure rule to implement changes made to Titles IV-B and IV-E of the Social Security Act, as amended by Public Law 115-123, enacted February 9, 2018. The changes include the Family First Prevention Services Act which requires fingerprint background checks on all individuals working in a youth care facility. It is necessary to include requirements for state and national sexual and violent offender registry checks in order for providers to receive relevant information regarding an applicant that may pose a significant risk to the youth served. Information obtained from these checks may not be available on the fingerprint background checks.

The department proposes to revise the "lead clinical staff" definition to reflect changes made by the Board of Behavioral Health pursuant to Senate Bill 22 enacted by the 2015 Legislature and House Bill 220 enacted by the 2015 Legislature. Changes are necessary to remove "in-training practitioner" definition and all references of such and include licensure candidate to the definition of mental health

professional to be consistent with language and licensure process by the Board of Behavioral Health. The changes are necessary to allow licensure candidates to act as the mental health professional. These amendments will increase providers' ability to recruit and hire mental health professionals.

ARM 37.97.102

The department proposes to amend the definitions of "clinical assessment," "lead clinical staff," and "therapy" to eliminate the term "in-training mental health professional" and replace with "licensure candidate" to reflect changes made by the Board of Behavioral Health.

ARM 37.97.132

The department proposes to amend this rule to ensure policies and procedures are completed to help providers implement background checks required in ARM 37.97.140.

ARM 37.97.140

The proposed amendment is necessary to implement requirements of the Family First Prevention Services Act. It is necessary to include requirements for state and national sexual and violent offender background checks in order for providers to receive relevant information regarding an applicant who may pose a significant risk to the youth served. Information obtained from these checks may not be available on the fingerprint background checks.

ARM 37.97.903

It is necessary to amend this rule to reflect the changes made to the definition section of this rule.

Fiscal Impact

There will be an increased cost to providers who will have to pay for fingerprint background checks. A fingerprint background check will be required for all staff at all youth care facilities. The cost of the fingerprint background check is \$30.00 per person and must be conducted upon hire. This will affect approximately 1,200 staff statewide. At the current time, providers are required to complete a name-based criminal background check on all staff at the time of hire. The average cost of these checks is \$12.00. This will be an increase of \$18.00 per staff person.

There will be a cost to the Licensure Bureau to support the processing of fingerprint background checks. The bureau plans on utilizing existing resources.

4. The department intends the effective date for these rule amendments to be October 1, 2019.

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

37.97.102 YOUTH CARE FACILITY (YCF): DEFINITIONS The following definitions apply to all YCF licensing rules:

(1) through (3) remain the same.

(4) "Clinical assessment" means an assessment with DSM - IV diagnosis and a social history completed by the lead clinical staff ~~or an in-training mental health professional supervised by the lead clinical staff~~. Clinical assessments include the following information:

(a) through (8) remain the same.

~~(9) "In-training mental health professional" is defined in ARM 37.87.702.~~

~~(10)~~ (9) "Lead clinical staff (LCS)" means an employee of the therapeutic group home (TGH) provider. The LCS is responsible for the supervision and overall provision of treatment services to youth in the TGH. Effective July 1, 2012, the LCS must be a licensed clinical psychologist, licensed master level social worker (MSW), or licensed clinical professional counselor (LCPC), a social worker licensure candidate or professional counselor licensure candidate licensed under Title 37, chapter 22 or 23, MCA. ~~The LCS can be an in-training mental health professional.~~

(11) through (25) remain the same but are renumbered (10) through (24).

~~(26)~~ (25) "Therapy" means the provision of psychotherapy and rehabilitative services provided by the LCS acting within the scope of the professional's license ~~or same services provided by an in-training mental health professional under the supervision of the LCS~~ in the TGH. These services include a combination of supportive interactions, cognitive therapy, interactive psychotherapy and behavior modification techniques which are used to induce therapeutic change for youth in TGH. Interactive psychotherapy means using play equipment, physical devices, language interpreter, or other mechanisms of nonverbal communication.

(27) through (33) remain the same but are renumbered (26) through (32).

AUTH: 52-2-111, 52-2-603, 52-2-622, MCA

IMP: 52-2-113, 52-2-603, 52-2-622, 53-2-201, MCA

37.97.132 YOUTH CARE FACILITY (YCF): GENERAL REQUIREMENTS FOR ALL ADMINISTRATORS, STAFF, INTERNS, AND VOLUNTEERS (1) remains the same.

(2) A YCF must maintain records for each staff member, volunteer, and intern regarding the following:

(a) through (e) remain the same.

(f) documentation of approved fingerprint-based ~~criminal~~ background check as specified in ARM 37.97.140;

(g) documentation of child protective services background checks, and if applicable, tribal criminal background checks as specified in ARM 37.97.140;

(h) documentation of state sexual or violent offender registry check as specified in ARM 37.97.140;

(h) and (i) remain the same but are renumbered (i) and (j).

(3) through (8) remain the same.

AUTH: 52-2-111, 52-2-603, 52-2-622, MCA

IMP: 52-2-111, 52-2-603, 52-2-622, MCA

37.97.140 YOUTH CARE FACILITY (YCF): STAFF BACKGROUND

CHECKS (1) The administrator, staff, volunteers, and interns must have a state criminal background check, a state child protective services background check, and if applicable, a tribal criminal background check and tribal child protective services background check conducted prior to being employed by the provider or working at the YCF. All administrators, staff, volunteers, interns, and any adult working in the YCF hired after October 1, 2019 must complete a National Crime Information Center (NCIC) fingerprint-based background check by the Federal Bureau of Investigation. Results of the fingerprint-based background check must be documented prior to working in the YCF.

(2) If an applicant has lived outside the state within the past five years, the YCF must complete background checks in every state that the applicant has resided in within the past five years. All administrators, staff, volunteers, interns, and any adult working in the YCF must complete a Montana Department of Public Health and Human Services child protective services background check, and if applicable, a tribal child protective services background check and a tribal criminal background check prior to working in the YCF.

(a) If an applicant has lived outside the state within the past five years, the YCF must complete background checks in every state that the applicant has resided in within the past five years.

(3) All administrators, staff, volunteers, interns, and any adult working in the YCF must complete a Montana Sexual and Violent Offender Registry check. Results of the registry check must be documented prior to working in the YCF.

(3) (4) The department will deny or revoke a license upon finding that:

(a) the administrator, staff member, volunteer, or intern, or any adult working in the YCF has been convicted by a court of competent jurisdiction of a felony or misdemeanor involving but not limited to homicide, sexual intercourse without consent, sexual assault, aggravated assault, assault on a minor, assault on an officer, assault with a weapon, kidnapping, aggravated kidnapping, prostitution, robbery, or burglary;

(b) the administrator, staff member, volunteer, or intern, or any adult working in the YCF has a conviction for a crime pertaining to children and families, including but not limited to child abuse or neglect, incest, child sexual abuse, ritual abuse of a minor, felony partner and family member assault, child pornography, child prostitution, internet crimes involving children, felony endangering the welfare of a minor, felony unlawful transactions with children, or aggravated interference with parent-child contact;

(c) the administrator, staff member, volunteer, or intern, or any adult working in the YCF has within the previous five years a felony conviction of a drug related offense, including but not limited to use, distribution, or possession of controlled substances, criminal possession of precursors to dangerous drugs, criminal

manufacture of dangerous drugs, criminal possession of imitation dangerous drugs with the purpose to distribute, criminal possession, manufacture of or delivery of drug paraphernalia, or driving under the influence of alcohol or other drugs; or

(d) the administrator, staff member, volunteer, or intern, or any adult working in the YCF has been convicted of abuse, sexual abuse, neglect, or exploitation of an elderly person or a person with a developmental disability; or

(e) the administrator, staff member, volunteer, intern, or any adult working in the YCF is a registered offender on the Montana Sexual and Violent Offender Registry (<https://www.nsopw.gov>) or the National Sexual and Violent Offender Registry (<https://app.doj.mt.gov/apps/svov/search.aspx>).

~~(4)~~ (5) The department may deny or revoke a license upon finding that:

~~(a)~~ the administrator, staff member, volunteer, or intern, or any adult working in the YCF has a conviction for a misdemeanor partner and family member assault, misdemeanor endangering the welfare of a child, misdemeanor unlawful transaction with a child, or a crime involving an abuse of the public trust.

~~(5)~~ (6) The administrator, staff member, volunteer, or intern, or any adult working in the YCF who is charged with a crime involving children, physical or sexual violence against any person, or any felony drug related offense and awaiting trial may not provide care or be present in the facility pending the outcome of the criminal proceeding.

~~(6)~~ (7) No administrator, staff member, volunteer, or intern, or any adult working in the YCF shall have been named as a perpetrator in a substantiated report of child abuse or neglect.

(7) remains the same but is renumbered (8).

~~(8)~~ (9) No administrator, staff member, volunteer, or intern, or any adult working in the YCF shall pose any potential threat to the health, safety, and well being of the youth in care.

AUTH: 52-2-111, 52-2-603, 52-2-622, MCA

IMP: 52-2-113, 52-2-603, 52-2-622, MCA

37.97.903 THERAPEUTIC GROUP HOMES (TGH): STAFFING (1) through (6) remain the same.

(7) An individual providing mental health professional services therapy as defined in ARM 37.97.102(25) shall must meet the requirements of ARM ~~37.87.702~~ 37.97.102(9).

(8) through (10) remain the same.

AUTH: 52-2-111, 52-2-603, 52-2-622, MCA

IMP: 52-2-113, 52-2-603, 52-2-622, MCA

6. 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: Gwen Knight, 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 dphhslegal@mt.gov, and must be received no later than 5:00 p.m., August 23, 2019.

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

8. 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 6 above or may be made by completing a request form at any rules hearing held by the department.

9. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

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/ Flint Murfitt
Flint Murfitt
Rule Reviewer

/s/ Sheila Hogan
Sheila Hogan, Director
Public Health and Human Services

Certified to the Secretary of State July 16, 2019.