

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

In the matter of the adoption of New) NOTICE OF PUBLIC HEARING ON
Rules I through LXI pertaining to) PROPOSED ADOPTION
private alternative adolescent)
residential programs or outdoor)
programs (PAARP))

TO: All Concerned Persons

1. On September 12, 2019, at 1:00 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 adoption 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 September 3, 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. The rules as proposed to be adopted provide as follows:

NEW RULE I PRIVATE ALTERNATIVE ADOLESCENT RESIDENTIAL PROGRAMS: PURPOSE (1) These rules establish licensing procedures and licensing requirements for private alternative adolescent residential or outdoor programs.

AUTH: Chap. 293, section 3(2), L. of 2019, Chap. 293, section 5(2), L. of 2019
IMP: Chap. 293, section 1, L. of 2019

NEW RULE II PRIVATE ALTERNATIVE ADOLESCENT RESIDENTIAL PROGRAMS: DEFINITIONS (1) "Adolescent" means any person between the ages of 10 and 18 years who is placed in a program by a parent/legal guardian. A program participant may be up to the age of 19 if they are enrolled in an accredited secondary school.

(2) "Case plan" means a specific plan for providing care, treatment, and services of any kind to a specific program participant.

(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) "Correspondence search" means opening, inspecting, and/or reading a program participant's mail or inspecting the contents of a package.

(5) "Department" means the Department of Public Health and Human Services.

(6) "Direct care staff" or "staff" means program personnel who directly participate in the care, supervision, and guidance of the program participants.

(7) "Discharge plan" means a realistic plan developed to transition the program participant home or to a less restrictive and appropriate placement with specific services identified and available.

(8) "Licensed addiction counselor" means a person licensed under Title 37, chapter 35, MCA.

(9) "Licensed health care professional" means a licensed physician, physician assistant, or advanced practice registered nurse who is practicing within the scope of the license issued by the Department of Labor and Industry.

(10) "Licensure Bureau" means the 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 an individual licensed pursuant to Title 37, chapters 22, 23, 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) "Near miss" means an unplanned, unforeseen, or potentially dangerous situation where safety was compromised but that did not result in injury.

(14) "Pat-down search" means a body search done outside of a person's clothing with the intention of locating suspected contraband.

(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) "Physical escort" means the temporary touching or holding of the hand, wrist, arm, shoulder, or back for the purpose of inducing a program participant to walk to a safe location.

(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) "Program participant-to-staff ratio" means the number of program participants in care per each on-duty awake direct care staff member.

(19) "Seclusion" means a behavior control technique involving locked isolation in which the resident 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) removing medication containers from secured storage;
- (b) providing verbal suggestions, promoting, reminding, gesturing or providing a written guide for self-administering medications;
- (c) handling a prefilled, labeled medication holder, labeled unit dose container, syringe, or original marked, labeled container from the pharmacy;
- (d) opening the lid of the above container for the resident;
- (e) guiding the hand of the program participant to self-administer the medication;
- (f) holding and assisting the program participant in drinking fluid to assist in the swallowing of oral medications; and
- (g) assisting with removal of a medication from a container for program participant with a physical disability which prevents independence in the act.

(21) "Serious incident" means suicide attempt, use of excessive physical force by staff, physical or sexual assault of a program participant by staff, or other resident, 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 resident, 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 is not physically prevented from leaving for the purpose of providing the program participant the opportunity to regain self-control.

AUTH: Chap. 293, section 3(2), L. of 2019, Chap. 293, section 5(2), L. of 2019
IMP: Chap. 293, section 2, L. of 2019, Chap. 293, section 3, L. of 2019, Chap. 293, section 5, L. of 2019

NEW RULE III PRIVATE ALTERNATIVE ADOLESCENT RESIDENTIAL PROGRAMS: APPLICATION OF OTHER RULES (1) Any program that includes in its marketing, advertising, information packet, or other similar document reference to providing primary, inpatient, or residential chemical dependency treatment must be licensed by the Montana Department of Public Health and Human Services under Title 50, chapter 5, MCA.

AUTH: Chap. 293, section 3(2), L. of 2019, Chap. 293, section 5(2), L. of 2019
IMP: Chap. 293, section 3, L. of 2019, Chap. 293, section 5, L. of 2019, Chap. 293, section 12, L. of 2019

NEW RULE IV PRIVATE ALTERNATIVE ADOLESCENT RESIDENTIAL PROGRAMS: LICENSING FEE SCHEDULE (1) Programs must submit payment for licensure annually.

(2) Licensing fees are based on the number of participants the program is licensed to serve as shown in the table below.

Number of participants	Licensing Fees
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1-10 participants	\$1,688
11-25 participants	\$4,345
26-50 participants	\$8,138
51 and more participants	\$13,313

(3) All fees provided for in this rule are nonrefundable and are not prorated for portions of the licensing period.

(4) All fees must be paid in full by July 1 of each year.

AUTH: Chap. 293, section 3(3), L. of 2019, Chap. 293, section 5(2), L. of 2019
IMP: Chap. 293, section 4, L. of 2019

NEW RULE V PRIVATE ALTERNATIVE ADOLESCENT RESIDENTIAL PROGRAMS: PROCEDURE FOR OBTAINING A LICENSE: ISSUANCE AND RENEWAL OF A LICENSE (1) Application for a program license must be made on an application form provided by the department.

(2) Renewal applications must be received within 30 days prior to the expiration date of the current license.

(3) The program must submit all written program management policies and procedures to the department for approval with the initial application. Policies and procedures must comply with requirements outlined in this chapter.

(4) Upon receipt of a complete initial or renewal application, the department must conduct an on-site licensing survey to determine if the applicant meets all applicable licensing requirements. The on-site licensing survey may be unannounced.

(5) If the department determines during the survey that the applicant is out of compliance with the applicable licensing requirements, the department will notify the applicant of the specific deficiencies and the applicant must submit a written plan of correction within ten working days of the department's notification of noncompliance specifying how compliance will be made and maintained in the future.

(6) The department must receive all required information and approve the plan of correction prior to issuing a license.

(7) If all licensing requirements are met and the fee has been paid in full, the department may issue a license for a period of up to three years.

(a) A three-year license may be issued to a program that has received no deficiencies within the last licensed period and licensing survey.

(b) A two-year license may be issued to a program that has received minor deficiencies that do not significantly affect or threaten the health, safety, and welfare of any program participant.

(c) A one-year license may be issued to any program:

(i) that has been in operation for less than one year;

(ii) upon a change in ownership;

(iii) that has received deficiencies within the last licensed period or licensing survey that threaten the health, safety, and welfare of program participants or staff;
or

(iv) that has received multiple deficiencies or repeat deficiencies.

(8) The department may in its discretion issue a provisional license for a period not to exceed six months to any license applicant which:

(a) has met all licensing requirements for fire safety; and

(b) has agreed in writing to comply fully with all licensing requirements established by these rules within the time period covered by the provisional license.

(9) Licensed premises must be open to inspection by the department or its authorized agent and access to all records must be granted to the department at all reasonable times.

(10) The program will only admit the number of program participants specified on the license.

(11) The current license must be publicly displayed at the program.

(12) A program's license is nontransferable.

AUTH: Chap. 293, section 3(2), L. of 2019, Chap. 293, section 5(2), L. of 2019
IMP: Chap. 293, section 5, L. of 2019, Chap. 293, section 6, L. of 2019, Chap. 293, section 7, L. of 2019, Chap. 293, section 8, L. of 2019, Chap. 293, section 9, L. of 2019, Chap. 293, section 10, L. of 2019, Chap. 293, section 11, L. of 2019, Chap. 293, section 12, L. of 2019

NEW RULE VI PRIVATE ALTERNATIVE ADOLESCENT RESIDENTIAL PROGRAMS: LICENSE DENIAL, SUSPENSION, RESTRICTION, AND REVOCATION (1) The department, after written notice to the applicant or program, may deny, suspend, cancel, reduce, modify, or revoke a license upon a finding of any of the following:

(a) the program is not in compliance with fire safety standards;

(b) the program is not in substantial compliance with other licensing requirements established by this chapter;

(c) the program has made any misrepresentations to the department, either negligent or intentional, regarding any aspect of its operations or facility;

(d) the program has failed to use payments for the support of the program participants;

(e) the program, persons associated with the program, any staff member, or persons living at the program have been named as the perpetrator in a substantiated report of abuse or neglect;

(f) the program, persons associated with the program, any staff member or persons living at the program have violated provisions of this chapter that resulted in child abuse or neglect;

(g) the program, persons associated with the program or any staff member do not meet the requirements in [NEW RULE XXV];

(h) the program failed to report an incident of abuse or neglect to the department or its local affiliate as required in 41-3-201, MCA;

(i) it is determined on the basis of a department or law enforcement investigation that the program, persons associated with the program, any staff member, or anyone living in a program may pose any risk or threat to the safety or welfare of program participants;

(j) the program has failed to provide an acceptable written plan of correction as specified in [NEW RULE V];

(k) the program did not pay the licensure fee as required in [NEW RULE IV];
or

(l) the program employs or has persons living at the program that do not have an approved background check as required in [NEW RULE XIII].

(2) At the discretion of the department and for protection of the program participants, program participants may be removed immediately upon receipt of a report of sexual or physical abuse or neglect by the program.

(3) Suspension or revocation of a license may be immediate upon a determination by the department that emergency action is required based on findings including, but not limited to the following situations:

(a) upon referral of suspected child abuse or neglect regarding a program, the initial investigation reveals that there are reasonable grounds to believe that a program participant may be in danger of harm;

(b) the department requests and is denied access to the program, program participants, or staff; or

(c) through a licensing investigation, it is determined that the program, persons associated with the program, any staff member, or persons living at the program have violated a licensing regulation that results in harm to a program participant which falls within the definitions of child abuse and neglect set out in 41-3-102, MCA, whether or not a criminal prosecution is initiated.

(4) Until the issuance of a contrary decision by the department the denial, suspension, cancellation, reduction, modification, or revocation of a license will remain effective and enforceable.

(5) Any person denied a license under the provisions of this subchapter, or whose license has been denied, suspended, canceled, reduced, modified, or revoked may request a hearing as provided in ARM 37.5.304, 37.5.305, 37.5.307, 37.5.310, 37.5.313, 37.5.316, 37.5.318, 37.5.322, 37.5.325, 37.5.328, 37.5.331, 37.5.334, and 37.5.337.

(6) Nothing in these rules precludes the department from utilizing provisions of the Montana Administrative Procedure Act, including but not limited to summary suspension under 2-4-631(3), MCA.

AUTH: Chap. 293, section 3(2), L. of 2019, Chap. 293, section 5(2), L. of 2019
IMP: Chap. 293, section 4, L. of 2019, Chap. 293, section 5, L. of 2019, Chap. 293, section 6, L. of 2019, Chap. 293, section 7, L. of 2019, Chap. 293, section 8, L. of 2019, Chap. 293, section 9, L. of 2019, Chap. 293, section 10, L. of 2019, Chap. 293, section 11, L. of 2019, Chap. 293, section 12, L. of 2019

NEW RULE VII PRIVATE ALTERNATIVE ADOLESCENT RESIDENTIAL PROGRAMS: WRITTEN POLICY AND PROCEDURE (1) A current written policy and procedure manual that includes all policies required in this chapter and describes all services provided in the program, must be developed, implemented, and maintained at the program. The manual must be available to staff, program participants, program participants' parent/legal guardian, and the department and must be complied with by all program personnel and its agents.

AUTH: Chap. 293, section 3(2), L. of 2019, Chap. 293, section 5(2), L. of 2019

IMP: Chap. 293, section 3, L. of 2019, Chap. 293, section 5, L. of 2019, Chap. 293, section 9, L. of 2019

NEW RULE VIII PRIVATE ALTERNATIVE ADOLESCENT RESIDENTIAL PROGRAMS: ADMISSIONS (1) The program will admit only those program

participants for whom it has an operational program and who meet its admissions policies.

(2) The program must have written policies and procedures for screening all referrals.

(3) The program must have a written admissions policy and procedures which include:

(a) the age, sex, and behavioral and/or emotional needs of adolescents served;

(b) verifying of legal authority to place or remove a program participant from the program;

(c) a description of the intake process for the program participants;

(d) a description of the orientation provided to program participants; and

(e) an initial assessment of the program participant's emotional, medical, developmental, social, and behavioral status that must be conducted at the time of admission.

(4) The admission person or committee must review all preplacement referral information to determine the appropriateness of placement, including age and developmental needs of adolescents accepted into the program.

(5) The program's policies and procedures must provide for and encourage a preplacement process with the program participant and family.

(6) Placements may only be accepted from the parent/legal guardian of the program participant.

(7) The admissions policy may not limit contact with the program participant's family for any duration of time after admission.

(8) A program must have written orientation policies and procedures for admission to the program that include:

(a) a procedure for ensuring that each program participant receives a personal orientation to the program as soon as appropriate, but no later than 24 hours after admission;

(b) inventory of each program participant's belongings;

(c) behavioral expectations;

(d) information on privilege systems;

(e) discipline policy;

(f) health and safety procedures;

(g) program rules;

(h) information on the program's search policies, program participant rights, and grievance procedure; and

(i) emergency evacuation procedures, including designated escape routes.

(9) Documentation that is signed by both the program participant and the staff person(s) conducting the orientation must be placed in the program participant's file.

(10) A program must maintain a list of current program participants to ensure all participants are accounted for and that staffing requirements are met in all circumstances.

(11) A program must ensure placement of each participant with the Interstate Compact on the Placement of Children (ICPC), as provided in 41-4-101, MCA, and ARM 37.50.901.

AUTH: Chap. 293, section 3(2), L. of 2019, Chap. 293, section 5(2), L. of 2019
IMP: Chap. 293, section 3, L. of 2019, Chap. 293, section 5, L. of 2019, Chap. 293, section 9, L. of 2019

NEW RULE IX PRIVATE ALTERNATIVE ADOLESCENT RESIDENTIAL PROGRAMS: DISCHARGE (1) The program must assist the program participant and family in preparing for the participant's discharge from the program.

(2) Within ten business days of the discharge of a program participant from the program, a written discharge report must be completed, and include:

(a) the program participant's name, date of birth, admission and discharge dates, reason for placement and discharge, and name of parent/legal guardian;

(b) a written summary of services provided, including the program participant's participation and progress in the program, contact information of persons who conducted evaluations, and condition of the program participant at time of discharge;

(c) the program participant's educational status;

(d) medical, dental, and psychiatric care received during placement;

(e) follow-up health care required;

(f) current medications, dosage taken, number of times per day, and name of prescribing licensed health care professional;

(g) program participant's reaction to discharge and whether or not the discharge was planned or unplanned;

(h) recommendations for follow-up services;

(i) an up-to-date inventory of the program participant's clothing and personal belongings; and

(j) the signature of the staff member who prepared the report and the date of preparation.

(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 within ten days of discharge. Written documentation that the discharge report was provided to the parent/legal guardian must be maintained in the resident's file.

(4) A program participant may only be discharged to the parent/legal guardian of the program participant.

AUTH: Chap. 293, section 3(2), L. of 2019, Chap. 293, section 5(2), L. of 2019
IMP: Chap. 293, section 3, L. of 2019, Chap. 293, section 5, L. of 2019, Chap. 293, section 9, L. of 2019

NEW RULE X PRIVATE ALTERNATIVE ADOLESCENT RESIDENTIAL PROGRAMS: WRITTEN AGREEMENT (1) The program must enter into a written

agreement with the program participant's parent/legal guardian at the time of admission into the program. The written agreement must include:

- (a) the terms of the placement, the responsibilities of the program, and the responsibility of the parent/legal guardian;
- (b) a statement describing specific services the program will provide;
- (c) a statement describing the program participant's rights and the program's grievance policy;
- (d) a statement explaining the program participant's responsibilities including house rules;
- (e) a statement describing the communication policy and transportation of the program participant to and from medical appointments and activities;
- (f) a statement explaining specific charges for care and an itemized statement of what expenses in addition to the cost for care will be charged, including fines, penalties, or late fees that will be assessed;
- (g) a statement that the agreed-upon rate will not be changed unless 30 days' advance written notice is given to the program participant's parent/legal guardian;
- (h) criteria for requiring transfer or discharge of the program participant;
- (i) the refund policy; and
- (j) date and signature of the administrator and program participant's parent/legal guardian.

(2) A copy of the agreement must be filed in the program participant's file and a copy must be provided to the program participant's parent/legal guardian.

(3) When there are changes in services, financial arrangements, or requirements governing the written agreement, a new written agreement must be executed, or the original agreement must be updated by addendum. New agreements and any addenda must be signed and dated by the administrator and program participant's parent/legal guardian.

AUTH: Chap. 293, section 3(2), L. of 2019, Chap. 293, section 5(2), L. of 2019
IMP: Chap. 293, section 3, L. of 2019, Chap. 293, section 5, L. of 2019, Chap. 293, section 9, L. of 2019

NEW RULE XI PRIVATE ALTERNATIVE ADOLESCENT RESIDENTIAL PROGRAMS: CASE PLAN (1) Each program must develop a case plan for each program participant in care.

- (2) The case plan must include:
 - (a) the program participant's physical and medical needs;
 - (b) behavior management issues;
 - (c) mental health services when appropriate;
 - (d) measurable goals and objectives and corresponding time frames;
 - (e) the responsibilities of the program participant, staff, and parent/legal guardian for meeting the goals and objectives;
 - (f) education plans; and
 - (g) discharge plans and estimated discharge date.
- (3) The initial case plan must:
 - (a) be developed within seven business days after admission; and

- (b) be updated at least every 90 days from the day of development.
- (4) The program participant and the parent/guardian must be involved in developing and updating the case plan.
- (5) The program participant, parent/legal guardian, and program staff developing the case plan must sign and date the plan and plan updates.
- (6) A copy of the signed case plan must be provided to the parent/legal guardian and maintained in the program participant's file.

AUTH: Chap. 293, section 3(2), L. of 2019, Chap. 293, section 5(2), L. of 2019
IMP: Chap. 293, section 3, L. of 2019, Chap. 293, section 5, L. of 2019, Chap. 293, section 9, L. of 2019

NEW RULE XII 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) to be treated with dignity and respect;
 - (b) freedom from abuse, neglect, and unnecessary physical restraint;
 - (c) freedom from corporal, cruel, harsh, or unnecessary punishment, name calling, infliction of pain, or excessive physical exercise;
 - (d) to adequate food, water, clothing, school supplies, and personal hygiene supplies;
 - (e) to receive care and services according to individual need;
 - (f) to educational services in accordance with Montana state law, if the program operates during the school year;
 - (g) freedom from discrimination;
 - (h) to a safe environment with respect for human dignity;
 - (i) to the protection of the privacy of information and records regarding each program participant and the participant's family;
 - (j) to communication and visitation privileges with family in person, by mail, or by phone;
 - (k) to be allowed to contact the Montana abuse reporting hotline to report allegations of abuse and neglect;
 - (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) to personal privacy, when it is not contrary to the treatment and safety needs of the program participant; and
 - (n) for consideration of the program participant's opinions and recommendations when developing the case plan.
- (2) The program must review the program participant rights policy with the program participant and parent/legal guardian at the time of admission.
- (a) The program staff reviewing the policy, the program participant, and parent/legal guardian of the program participant must sign a statement acknowledging the review.

(b) The signed statement must be maintained in the program participant's file.

(3) The program must have a written grievance policy which outlines the procedures to be followed by a program participant or parent/legal guardian in presenting a grievance to the program.

(4) The program must review the grievance policy with the program participant and parent/legal guardian at the time of admission.

(a) The program staff reviewing the policy, the program participant, and parent/legal guardian of the program participant must sign a statement acknowledging the review.

(b) The signed statement must be maintained in the program participant's file.

(5) Any written grievance report must be maintained in the program participant's file. The report must include the nature of the complaint, the date of the complaint, and a statement indicating how the issue was resolved.

AUTH: Chap. 293, section 3(2), L. of 2019, Chap. 293, section 5(2), L. of 2019

IMP: Chap. 293, section 3, L. of 2019, Chap. 293, section 5, L. of 2019, Chap. 293, section 9, L. of 2019

NEW RULE XIII PRIVATE ALTERNATIVE ADOLESCENT RESIDENTIAL PROGRAMS: BACKGROUND CHECKS (1) All administrators, staff, volunteers, persons associated with the program, and any adult living at the program must complete a National Crime Information Center (NCIC) fingerprint-based background check from the Federal Bureau of Investigation. Results of the fingerprint-based background check must be documented prior to working or living at the program.

(2) All administrators, staff, volunteers, person associated with the program, and any adult living at the program 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 or living at the program.

(3) If an applicant has lived outside the state within the past five years, a criminal and child protective background check must be conducted in every state that the applicant has resided in within the past five years.

(4) All administrators, staff, volunteers, persons associated with the program, and any adult working or living at the program must complete a Montana Sexual and Violent Offender Registry Check (Montana SVOR) at <https://app.doj.mt.gov/apps/svow/search.aspx> and A National Sexual and Violent Registry Check (NSOPW) at <https://www.nsopw.gov/>.

(5) Results of all required criminal and child protective background checks and registry checks must be documented prior to working or living at a program.

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

(a) any administrator, staff, volunteer, person associated with the program, or any adult living at the program 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) any administrator, staff, volunteer, person associated with the program, or any adult living at the program has a conviction of 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) any administrator, staff, volunteer, person associated with the program, or any adult living at the program has within the previous five years a felony conviction of a drug-related offense, including but not limited to use, distribution, or possession of 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) any administrator, staff, volunteer, person associated with the program, or any adult living at the program has within the previous five years a conviction for 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; or

(e) any administrator, staff, volunteer, person associated with the program, or any adult living at the program has been convicted of abuse, sexual abuse, neglect, or exploitation of an elderly person or a person with a developmental disability.

(7) Any administrator, staff member, volunteer, persons associated with the program, or adult living at the program, 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 at the program pending the outcome of the criminal proceeding.

(8) No administrator, staff, volunteer, person associated with the program, or any adult living at the program shall have been named as a perpetrator in a substantiated report of child abuse or neglect or listed on the Montana Sexual and Violent Offender Registry or National Sex Offender Public Website.

(9) The program is responsible for assuring that the persons covered by this chapter have met these requirements prior to providing care.

(10) No administrator, staff, volunteer, person associated with the program, or any adult living at the program may pose any potential threat to the health, safety, and well-being of the program participants.

AUTH: Chap. 293, section 3(2), L. of 2019, Chap. 293, section 5(2), L. of 2019

IMP: Chap. 293, section 3, L. of 2019, Chap. 293, section 5, L. of 2019, Chap. 293, section 9, L. of 2019

NEW RULE XIV PRIVATE ALTERNATIVE ADOLESCENT RESIDENTIAL PROGRAMS: CHILD ABUSE OR NEGLECT AND SERIOUS INCIDENTS (1) A program must require each applicant, 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) Any program staff or person associated with the program who knows or has reasonable cause to suspect that an incident of child abuse or neglect has occurred must report within 24 hours of the incident to the program administrator, or a person designated by the program administrator, and to the state child abuse hotline, (866) 820- 5437 as required in 41-3-201, MCA. The program must fully cooperate with any investigation conducted as a result of the report.

(3) A program must have written policies and procedures for handling any suspected incident of child abuse or neglect, including:

(a) a procedure for ensuring that the staff member suspected does not continue to provide direct care until an investigation is completed;

(b) a procedure for developing a safety plan approved by the department which protects the program participants and staff until the investigation is complete; and

(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.

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

(a) the date and time of the incident;

(b) all program participants and staff member(s) involved;

(c) a description of the incident and the circumstances surrounding it; and

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

(5) A copy of the report must be maintained in the program participant's file.

(6) The program must cooperate with all licensing surveys and investigations, which may include private one-on-one interviews with staff and program participants.

AUTH: Chap. 293, section 3(2), L. of 2019, Chap. 293, section 5(2), L. of 2019

IMP: Chap. 293, section 3, L. of 2019, Chap. 293, section 5, L. of 2019, Chap. 293, section 9, L. of 2019

NEW RULE XV PRIVATE ALTERNATIVE ADOLESCENT RESIDENTIAL PROGRAMS: PHYSICAL ENVIRONMENT (1) Each program must comply with all applicable federal, state, and local regulations, laws, and building codes.

(2) Adequate space must be provided for all phases of daily living, including recreation, privacy, group activities, and visits from family, friends, and community acquaintances.

(3) Program participants must have indoor areas of at least 40 square feet of floor space per program participant for quiet, reading, study, relaxing, and recreation. The minimum space requirement may not include halls, kitchens, and any rooms not used by program participants.

(4) A bedroom must contain at least 50 square feet of floor space per person. Bedrooms for single occupancy must have at least 80 square feet.

- (5) The maximum number of program participants per bedroom must not exceed four. The bedrooms must have floor to ceiling walls.
- (6) Program participants sharing a bedroom must be no more than 3 years in age apart.
- (7) The program must provide:
 - (a) at least one toilet for every four program participants; and
 - (b) one bathing facility for every six residents.
- (8) All rooms with toilets or shower and bathing facilities must have an operable window to the outside or must be exhausted to the outside by a mechanical ventilation system.
- (9) Each program participant must have access to a bathroom without entering another bedroom, the kitchen, or dining areas.
- (10) Hot and cold water must be available in all kitchens, bathrooms, and laundry. The temperature of hot water supplied to handwashing and bathing facilities must not exceed 120°F.
- (11) For adequate housekeeping the program must ensure that:
 - (a) the building and grounds are free, to the extent possible, of harborage for insects, rodents, and other vermin;
 - (b) all electrical, mechanical, plumbing, fire protection, heating, and sewage disposal systems must be kept in operational condition;
 - (c) the floors, walls, ceilings, furnishings, and other equipment is clean and in good repair free of hazards, and offensive odors;
 - (d) cleaning equipment and supplies are provided in sufficient quantity to meet the housekeeping needs of the facility; and
 - (e) a maintenance policy and schedule, which describes the regular maintenance of the facility, is adhered to.
- (12) All rooms and hallways must have adequate lighting.
- (13) With respect to any conditions in existence in licensed programs prior to October 1, 2019, the specific requirements in this rule may be modified by the department to allow alternative arrangements that will provide that same level of safety to program participants and staff. In no case will the modification afford less safety than that which, in the discretion of the department, would be provided by compliance with the corresponding requirement in this rule.

AUTH: Chap. 293, section 3(2), L. of 2019, Chap. 293, section 5(2), L. of 2019
IMP: Chap. 293, section 3, L. of 2019, Chap. 293, section 5, L. of 2019, Chap. 293, section 9, L. of 2019, Chap. 293, section 10, L. of 2019

NEW RULE XVI PRIVATE ALTERNATIVE ADOLESCENT RESIDENTIAL PROGRAMS: LAUNDRY AND BEDDING (1) If a program processes its laundry on site, it must:

- (a) use rooms solely for laundry purposes;
- (b) equip the laundry room with at least one mechanical washer and hot-air tumble dryer, handwashing facilities, mechanical ventilation to the outside, a fresh air supply, and a hot water supply system which supplies the washer with water of at least 160°F (71°C) during each use. If the laundry water temperature is less than

160°F, chemical and detergent suitable to the water temperature and the manufacturer's recommended product time of exposure must be utilized;

(c) sort and store soiled laundry in an area separate from that used to sort and store clean laundry;

(d) provide well maintained carts or other containers impervious to moisture to transport laundry, keeping those used for soiled laundry separate from those used for clean laundry;

(e) dry all bed linen, towels, and washcloths in a manner that protects against contamination;

(f) protect clean laundry from contamination; and

(g) ensure that program staff handling laundry cover their clothes while working with soiled laundry, use separate clean covering for their clothes while handling clean laundry, and wash their hands both after working with soiled laundry and before they handle clean laundry.

(2) If laundry is cleaned off-site, the program must utilize a commercial laundry which satisfies the requirements stated in (1).

(3) A program must provide each program participant with:

(a) a bed with a moisture-proof mattress or moisture-proof mattress cover and mattress pad;

(b) clean bed linen in good condition;

(c) a supply of clean bed linen on hand sufficient to change beds often enough to keep them clean, dry, and free from odors;

(d) supply each program participant at all times with clean towels and washcloths; and

(e) enough blankets to maintain warmth while sleeping.

AUTH: Chap. 293, section 3(2), L. of 2019, Chap. 293, section 5(2), L. of 2019

IMP: Chap. 293, section 3, L. of 2019, Chap. 293, section 5, L. of 2019

NEW RULE XVII PRIVATE ALTERNATIVE ADOLESCENT RESIDENTIAL PROGRAMS: WATER SUPPLY (1) An adequate and potable supply of water must be provided.

(2) Before a license may be issued, a program using an individual, shared, or multiple user water supply must submit the following to the department or its designee:

(a) satisfactory coliform bacteria and nitrate test results as specified in ARM Title 17, chapter 38, subchapter 2; and

(b) the results of an onsite sanitary survey of the water supply system to detect sanitary deficiencies.

(3) A supplier of an individual, shared, or multiple user water supply shall conduct a coliform bacteria test of the system at least twice a year with one sample collected between April 1 through June 30 and the second sample collected between August 1 through October 31 and conduct a nitrate test of the system at least once every three years. Water tests must be analyzed at a certified laboratory. A supplier must keep sampling result records for at least three years.

(4) A public water supply system must be constructed and operated in accordance to current applicable laws as regulated by the Montana Department of Environmental Quality.

(5) Nonpotable water sources must be marked "not for human consumption."

(6) Plumbing must be installed and maintained in a manner to prevent cross connections between the potable water supply and any nonpotable or questionable water supply or any source of pollution through which the potable water supply might be contaminated. The potable water system must be installed to preclude the possibility of backflow. A hose may not be attached to a faucet unless a backflow prevention device is installed.

(7) A water supply system is determined to have failed and requires treatment, replacement, repair, or disinfection, when the water supply becomes unsafe, or when it exceeds the maximum contaminant levels specified in ARM Title 17, chapter 38, subchapter 2. A water supply system is inadequate when it is found to be less than 20 psi measured at the extremity of the distribution line during the instantaneous peak usage.

(8) Extension, alteration, repair, or replacement of a water supply system or development of a new water supply system must be in accordance with all applicable state and local laws.

(9) Bottled and packaged potable water must be obtained from a licensed and approved source and be handled and stored in a way that protects it from contamination.

AUTH: Chap. 293, section 3(2), L. of 2019, Chap. 293, section 5(2), L. of 2019
IMP: Chap. 293, section 3, L. of 2019, Chap. 293, section 5, L. of 2019

NEW RULE XVIII PRIVATE ALTERNATIVE ADOLESCENT RESIDENTIAL PROGRAMS: SEWAGE SYSTEM AND SOLID WASTE (1) An adequate and safe wastewater system must be provided for conveying, treating, and disposing of all sewage. Immediate measures must be taken to alleviate health and sanitation hazards caused by wastewater at the program when they occur.

(2) All sewage, including liquid waste, must be disposed of by a public sewage treatment and disposal system constructed and operated in accordance to applicable state and local laws.

(3) A wastewater system has failed and requires replacement or repair if any of the following conditions occur:

(a) the system fails to accept, treat, or dispose of wastewater as designed;

(b) effluent from the wastewater system contaminates a potable water supply or state waters; or

(c) the wastewater system is subjected to mechanical failure, including electrical outage, or collapse or breakage of a septic tank, lead line, or drain field line.

(4) Extension, alteration, replacement, or repair of any wastewater system must be done in accordance with all applicable state and local laws.

(5) Mop water or soiled cleaning water may not be disposed of in any sink other than a mop or utility sink or a toilet.

(6) Solid waste must be collected, stored, and disposed of in a manner that does not create a sanitary nuisance. Solid waste must be removed from the premises at least weekly to a licensed solid waste disposal facility.

AUTH: Chap. 293, section 3(2), L. of 2019, Chap. 293, section 5(2), L. of 2019
IMP: Chap. 293, section 3, L. of 2019, Chap. 293, section 5, L. of 2019

NEW RULE XIX PRIVATE ALTERNATIVE ADOLESCENT RESIDENTIAL PROGRAMS: FIRE SAFETY (1) The department adopts and incorporates by reference the occupancy designation/classification group R-3 of the International Fire Code (IFC), 2018, which sets forth the fire safety regulations that apply to all programs. A copy of the IFC definitions and requirements for R-3 occupancies may be obtained from the Fire Prevention and Investigation Section of the Department of Justice, 2225 11th Avenue, Helena, MT 59620.

(2) The state fire marshal must annually certify a program for fire and life safety.

(3) Smoke detectors approved by a recognized testing laboratory must be located on each level of the facility, at the top of stairways, in any bedroom, in any hallway leading to bedrooms, and in areas requiring separation as set forth in Section 907.2.11, IFC.

(4) Carbon monoxide detectors installed in facilities with fuel-burning appliances or with attached garages must be installed per manufacture recommendations according to Section 1103.9, IFC.

(5) A workable portable fire extinguisher, with a minimum rating of 2A10BC, must be located on each floor of the facility. Fire extinguishers must be:

(a) mounted on the wall not to exceed five feet from handle to floor and no closer than four inches from the floor;

(b) no more than 75 feet from each other;

(c) inspected, recharged, and tagged at least once a year by a person certified by the state to perform such services; and

(d) not obstructed or obscured from view.

(6) Program staff must check battery operated smoke detectors at least once each month and the batteries must be replaced at least once each year.

Documentation, including the date and the signature of the person checking or replacing the batteries, must be maintained at the facility.

(7) Integrated dial-out-smoke detection systems that are monitored from an outside source must have the date showing the most recent maintenance. Maintenance must occur once per year.

(8) Orientation for staff and program participants must include instruction of the program's fire evacuation procedure. The fire evacuation procedure must be posted in a conspicuous place in the program.

(9) All exits must be clear and unobstructed at all times.

(10) Paint, flammable liquids, and other combustible material must be kept in locked storage away from heat sources or in outbuildings not used by the program participants.

(11) The program must conduct at least four fire drills annually, no closer than two months apart, with at least one drill occurring on each shift. Drill

observations must be documented and maintained in the program files for at least three years. The documentation must include:

- (a) time and location of the drill;
- (b) identification of participating staff;
- (c) problems identified during the drill; and
- (d) steps taken to correct such problems.

AUTH: Chap. 293, section 3(2), L. of 2019, Chap. 293, section 5(2), L. of 2019

IMP: Chap. 293, section 3, L. of 2019, Chap. 293, section 5, L. of 2019, Chap. 293, section 9, L. of 2019, Chap. 293, section 10, L. of 2019

NEW RULE XX PRIVATE ALTERNATIVE ADOLESCENT RESIDENTIAL PROGRAMS: EMERGENCY AND EVACUATION PLANS

(1) A program must have and follow a written emergency plan developed in conjunction with emergency services in the community, and it must include specific procedures for evacuations, disasters, medical emergencies, hostage situations, casualties, missing program participants, and other serious incidents identified by the program.

(2) The emergency plan must include:

- (a) designation of authority and staff assignment;
- (b) a specific evacuation plan;
- (c) provisions for transportation and relocation of program participants when necessary;
- (d) provisions for supervision of program participants after an evacuation or relocation;
- (e) provisions for the instruction of all participants on how to respond in the case of an emergency;
- (f) provisions for arranging medical care and notifying the program participant's licensed health care professional, and parent/legal guardian; and
- (g) maintenance and repair of essential equipment including a two-way radio.

AUTH: Chap. 293, section 3(2), L. of 2019, Chap. 293, section 5(2), L. of 2019

IMP: Chap. 293, section 3, L. of 2019, Chap. 293, section 5, L. of 2019, Chap. 293, section 9, L. of 2019

NEW RULE XXI PRIVATE ALTERNATIVE ADOLESCENT RESIDENTIAL PROGRAMS: SAFETY

(1) A program must have written policies and procedures on safety and equipment.

(2) There must be a first aid kit with sufficient supplies available at all times.

A first aid kit must:

- (a) be readily available on site as well as in all vehicles used by the program;
- (b) meet the standards of an appropriate national organization for the activity being conducted and the location and environment being used;
- (c) be reviewed with new staff for contents and use; and
- (d) be inventoried on a quarterly basis.

(3) Policies and procedures must be in place for the safe use and storage of fuels and all heat sources, including inaccessibility to program participants when not being used under the direct supervision of staff.

(4) Cleaning materials, flammable liquids, detergents, aerosol cans, and other poisonous and toxic materials must be kept in their original containers and in a place inaccessible to program participants. They must be used in such a way that will not contaminate play surfaces, food, food preparation areas, or constitute a hazard to the program participants. Bio-contaminants including blood, bodily fluids, and other infectious materials must be properly disposed of.

(5) No extension cord will be used as permanent wiring. All appliances, lamp cords, and exposed light sockets must be suitably protected to prevent electrocution.

(6) Any pet or animal present at the program indoors or outdoors, must be in good health, show no evidence of carrying disease, and be a friendly companion for the program participants. The provider is responsible for maintaining the animal's vaccinations and vaccination records. These records must be made available to the department upon request. The program must make reasonable efforts to keep stray animals off the premises.

(7) Emergency information for program participants must be easily accessible at the program. Emergency information for each program participant must include:

(a) the name, address, telephone number, and relationship of a designated person to be contacted in case of an emergency;

(b) the name, address, telephone number of the program participant's licensed health care professionals or source of health care;

(c) the name, address, telephone number, and relationship of the person able to give consent for emergency medical treatment;

(d) documentation of any medical conditions that may affect care including but not limited to known allergies;

(e) a signed release for emergency medical treatment from the parent/legal guardian; and

(f) a copy of the program participant's current medical insurance card or insurance information when a card is not available to providers.

AUTH: Chap. 293, section 3(2), L. of 2019, Chap. 293, section 5(2), L. of 2019

IMP: Chap. 293, section 3, L. of 2019, Chap. 293, section 5, L. of 2019, Chap. 293, section 9, L. of 2019

NEW RULE XXII PRIVATE ALTERNATIVE ADOLESCENT RESIDENTIAL PROGRAMS: CASE RECORDS (1) A program must maintain a written case record for each program participant which contains administrative, treatment, and educational data from the time of admission until the time the program participant is discharged from the program.

(2) The case record must include:

(a) the name, sex, and birth date of the program participant;

(b) the name, address, and telephone number of the parent/legal guardian of the program participant;

(c) date of admission;

(d) current immunization records and documentation of exemptions per program policy;

- (e) date of discharge, person and signature whom the program participant was released to, and signed discharge summary;
 - (f) all documents related to the referral of the program participant to the program;
 - (g) current custody and parent/legal guardianship documents or other documents verifying legal custody of the parent/legal guardian placing the program participant;
 - (h) the program participant's court status, if applicable;
 - (i) a copy of the program participant's birth certificate;
 - (j) consent forms signed by the parent/legal guardian prior to placement allowing the program to authorize all necessary medical care, routine tests, immunization, and emergency medical or surgical treatment;
 - (k) cumulative health records including medical history provided by the parent/legal guardian;
 - (l) education records and reports, including but not limited to report cards and individual education plan (IEP) reports;
 - (m) treatment or clinical records and reports;
 - (n) records of special or serious incidents;
 - (o) case plans, treatment plans, all updates and related material;
 - (p) social assessment that is current to date of placement; and
 - (q) an immediate needs assessment and assigned responsibilities.
- (3) A copy of the signed physical examination form must be maintained in the file for outdoor programs.
- (4) Program participant records must be maintained at the program for a minimum of six years.

AUTH: Chap. 293, section 3(2), L. of 2019, Chap. 293, section 5(2), L. of 2019
IMP: Chap. 293, section 3, L. 2019, Chap. 293, section 5, L. 2019, Chap. 293, section 9, L. 2019

NEW RULE XXIII PRIVATE ALTERNATIVE ADOLESCENT RESIDENTIAL PROGRAMS: CONFIDENTIALITY OF RECORDS AND INFORMATION

- (1) All records maintained by a program and all personal information made available to a program pertaining to a program participant must be kept confidential and are not available to any person, agency, or organization except as specified in (2) and (3).
- (2) All records pertaining to a program participant are available upon request to:
- (a) the program participant's parent/legal guardian or attorney absent specific and compelling reasons for refusing such records;
 - (b) a court with continuing jurisdiction over the placement of the program participant or any court of competent jurisdiction issuing an order for such records;
 - (c) a program participant to whom the records pertain, absent specific and compelling reasons for refusing specific records; or
 - (d) an adult who was formerly the program participant in care to whom the records pertain.

(3) Records pertaining to program participants must be available to the department for the purposes of licensing, relicensing, or investigating a complaint of the program.

AUTH: Chap. 293, section 3(2), L. of 2019, Chap. 293, section 5(2), L. of 2019
IMP: Chap. 293, section 3, L. of 2019, Chap. 293, section 5, L. of 2019, Chap. 293, section 9, L. of 2019, Chap. 293, section 11, L. of 2019

NEW RULE XXIV PRIVATE ALTERNATIVE ADOLESCENT RESIDENTIAL PROGRAMS: REPORTS (1) The program must submit to the department, upon its request, any reports required by federal law, state law, or regulations.

(2) The program must report any of the following changes in writing to the department's licensure bureau, prior to the effective date of the change:

(a) a change of administrator;

(b) a change in location of which the department must approve prior to the move;

(c) a change in the name of the program; or

(d) any significant change in the program policies or procedures or services.

(3) Runaways shall be reported immediately to the police and parent/legal guardian and within the next working day to the licensure bureau.

(4) Disasters or emergencies which require relocation of program participants or closure of the program must be reported to the licensure bureau within the next working day.

(5) Any serious incident as defined in this subchapter must be reported in writing to the licensure bureau within 24 hours of the incident.

(6) Any fire or other incident that caused significant damage to the property must be reported to the licensure bureau within 24 hours of the incident.

AUTH: Chap. 293, section 3(2), L. of 2019, Chap. 293, section 5(2), L. of 2019
IMP: Chap. 293, section 3, L. of 2019, Chap. 293, section 5, L. of 2019, Chap. 293, section 8, L. of 2019, Chap. 293, section 9, L. of 2019

NEW RULE XXV PRIVATE ALTERNATIVE ADOLESCENT RESIDENTIAL PROGRAMS: GENERAL REQUIREMENTS FOR ALL ADMINISTRATORS, STAFF MEMBERS, AND VOLUNTEERS (1) A program must have written personnel and program policies and procedures covering the following items:

(a) screening procedure for all applicants;

(b) job qualifications for all positions;

(c) job descriptions for all positions;

(d) supervisory structure; and

(e) performance evaluations.

(2) In addition to the specific requirements set out in this chapter, all staff working in a program must:

(a) be at least 21 years of age;

(b) have a high school diploma or GED; and

(c) be physically, mentally, and emotionally competent to care for program participants.

(3) The department may require an evaluation or medical examination, a signed authorization for release of medical records, or both from any program administrator, staff member, or volunteer if there are grounds to believe these individuals have engaged in behaviors which may place the program participants at risk of harm.

(4) Any administrator, staff member, volunteer, or other person whose behavior or health status endangers the program participants may not be allowed at the program.

(5) Program volunteers must:

- (a) not be included in the program participant-to-staff ratios;
- (b) be under the supervision of program staff;
- (c) follow written policies and procedures developed by the program defining the responsibilities, limitations, and supervision of volunteers;
- (d) complete all required background checks; and
- (e) be provided orientation and initial training. The training must include orientation on all program policies and procedures.

(6) All program staff who transport program participants must have a valid driver's license and, while transporting program participants, follow all laws applicable to driving in Montana.

AUTH: Chap. 293, section 3(2), L. of 2019, Chap. 293, section 5(2), L. of 2019

IMP: Chap. 293, section 3, L. of 2019, Chap. 293, section 5, L. of 2019, Chap. 293, section 9, L. of 2019

NEW RULE XXVI PRIVATE ALTERNATIVE ADOLESCENT RESIDENTIAL PROGRAMS: PERSONNEL RECORDS (1) The program is responsible for maintaining a file on each administrator, person associated with the program, staff member, or volunteer. Files may be inspected by the department at any time. If the file is not maintained at the program it must be available to the department within 24 hours of the request.

(2) The file must contain:

- (a) application for employment;
- (b) written results of at least two references;
- (c) record of orientation and ongoing training;
- (d) periodic performance evaluations;
- (e) a copy of current credentials, certification, or professional licenses required to perform the duties described in the job description;
- (f) documentation of criminal background check as specified in [NEW RULE XIII];
- (g) documentation of child protective services background checks as specified in [NEW RULE XIII];
- (h) documentation of Montana and National registry checks as specified in [NEW RULE XIII];
- (i) a copy of current driver's license for employees transporting program participants; and
- (j) any other employee records required by this subchapter.

AUTH: Chap. 293, section 3(2), L. of 2019, Chap. 293, section 5(2), L. of 2019
IMP: Chap. 293, section 3, L. of 2019, Chap. 293, section 5, L. of 2019, Chap. 293, section 9, L. of 2019

NEW RULE XXVII PRIVATE ALTERNATIVE ADOLESCENT RESIDENTIAL PROGRAMS: QUALITY ASSESSMENT (1) The program must implement and maintain an active quality assessment program for improving policies, procedures, and services. At a minimum, the quality assessment program must include procedures for:

(a) conducting program participant satisfaction surveys at least annually which are maintained and filed at the program;

(b) maintaining records on the occurrence, duration, and frequency of physical restraints used; and

(c) reviewing, on an ongoing basis, serious incident reports, grievances, complaints, medication errors, and the use of physical restraints with special attention given to identifying patterns and making necessary changes in how services are provided.

(2) The program must prepare and maintain, on file, an annual report including improvements made as a result of the quality assessment activities specified in this rule.

AUTH: Chap. 293, section 3(2), L. of 2019, Chap. 293, section 5(2), L. of 2019
IMP: Chap. 293, section 3, L. of 2019, Chap. 293, section 5, L. of 2019, Chap. 293, section 9, L. of 2019

NEW RULE XXVIII PRIVATE ALTERNATIVE ADOLESCENT RESIDENTIAL PROGRAMS: ADMINISTRATOR (1) Each program must employ an administrator that is responsible for the day-to-day operation of the program.

(2) The administrator must have formal training and/or experience in residential or outdoor programs and demonstrates the ability to perform the functions and duties required in these rules.

(3) In the absence of the administrator, a staff member must be designated to oversee the operation of the program during the administrator's absence. The administrator or designee must be in charge, on call, and physically available on a daily basis as needed, and must ensure there are sufficient, qualified staff so that the care, well-being, health, and safety needs of the program participants are met at all times.

(a) If the administrator will be absent from the program for more than 30 continuous days, the department must be given written notice of the individual who has been appointed the designee. The appointed designee must meet the requirements for an administrator.

AUTH: Chap. 293, section 3(2), L. of 2019, Chap. 293, section 5(2), L. of 2019
IMP: Chap. 293, section 3, L. of 2019, Chap. 293, section 5, L. of 2019, Chap. 293, section 9, L. of 2019

NEW RULE XXIX PRIVATE ALTERNATIVE ADOLESCENT RESIDENTIAL PROGRAMS: STAFF (1) Each program must maintain the minimum program participant to awake-staff ratios:

- (a) from 7:00 a.m. to 11:00 p.m., eight program participants to one staff; and
 - (b) from 11:00 p.m. to 7:00 a.m., or any other reasonable eight-hour period of time when program participants are generally sleeping, 12 program participants to one staff.
- (2) Outdoor programs must meet staff ratios defined in [NEW RULE LII].
- (3) During regular school hours when program participants are not normally present, at least one on-call staff must be available for duty within 30 minutes of notification that they are needed.
- (4) The program must have a policy that specifies a nighttime safety protocol that outlines program staff responsibility for monitoring the program participants.
- (5) Sufficient staff must be employed to meet the supervision needs of the program participants and implement each program participant's individualized case plan.
- (6) Mental health professionals must be employed in sufficient number to meet the mental health needs of program participants as outlined in the program description.
- (7) A registered nurse or licensed practical nurse must be employed to meet the needs of the program participants as outlined in the program description.
- (8) Any program that includes in its program description, marketing, advertising, information packet, or other similar document reference to providing chemical dependency services must employ licensed addiction counselors in sufficient number to meet the needs of the program participants.

AUTH: Chap. 293, section 3(2), L. of 2019, Chap. 293, section 5(2), L. of 2019
IMP: Chap. 293, section 3, L. of 2019, Chap. 293, section 5, L. of 2019, Chap. 293, section 9, L. of 2019

NEW RULE XXX PRIVATE ALTERNATIVE ADOLESCENT RESIDENTIAL PROGRAMS: STAFF TRAINING (1) A program must have written policies, procedures, and initial and ongoing training curriculum that meets the minimum requirements in this rule.

- (2) Programs must provide adequate and timely training to ensure the safety of program participants.
- (3) All program staff must complete a minimum of 24 hours of orientation training consisting of the following minimum requirements:
- (a) an overview of the program's policy, procedures, organization, and services;
 - (b) mandatory child abuse reporting laws;
 - (c) behavioral management techniques;
 - (d) fire safety, including emergency evacuation routes;
 - (e) confidentiality;
 - (f) suicide prevention;
 - (g) emergency medical procedures;

- (h) report writing including the development and maintenance of logs and journals;
 - (i) program participant rights as outlined in [NEW RULE XII]; and
 - (j) hours required for on-the-job training.
- (4) Orientation training must be completed and documented before the staff person may count in the staff ratio as specified in [NEW RULE XXIX] and [NEW RULE LII].
- (5) All program staff must complete the following certification training within six months of hire:
- (a) the use of de-escalation training and methods of managing program participants as described in the program's policies and [NEW RULE XXXVII];
 - (b) first aid and hands-on CPR certification; and
 - (c) maintain and update these trainings and certifications as required.
- (6) Program staff may not work alone without completing the requirements of (5).
- (7) The program must provide ongoing training for staff to maintain and improve proficiency in their knowledge and skills. Training must be a minimum of 20 hours annually thereafter and appropriate for the level of care provided.
- (8) All training must be documented and kept on file for each staff member, administrator, and volunteer.

AUTH: Chap. 293, section 3(2), L. of 2019, Chap. 293, section 5(2), L. of 2019
IMP: Chap. 293, section 3, L. of 2019, Chap. 293, section 5, L. of 2019, Chap. 293, section 9, L. of 2019

NEW RULE XXXI PRIVATE ALTERNATIVE ADOLESCENT RESIDENTIAL PROGRAMS: PHYSICAL CARE (1) Every program participant must have access to the services of at least one licensed health care professional as defined in 50-5-101, MCA.

(2) Medical, dental, psychiatric, psychological care, and counseling services will be arranged for the program participant as needed.

(3) If a program participant has not received a complete physical examination within a year prior to placement, within 30 days after admission the program must arrange for a complete physical examination and annually thereafter.

(4) If a program participant has not had a dental examination within a year prior to placement, the program must arrange for the program participant to have a dental examination within 90 days after admission. All necessary dental work must be completed, and checkups must be arranged for the program participant at least annually.

(5) If a program participant has not had an eye examination within a year prior to placement, the program must arrange for the program participant to have an eye examination within 90 days after admission. All necessary checkups must be arranged for the program participant at least annually.

(6) Provisions for medical, dental, or vision care must be made by the provider immediately upon the licensed health care professional's recommendation with notification to the parent/legal guardian.

(7) Documentation of all required services must be in the program participant's file.

AUTH: Chap. 293, section 3(2), L. of 2019, Chap. 293, section 5(2), L. of 2019

IMP: Chap. 293, section 3, L. of 2019, Chap. 293, section 5, L. of 2019, Chap. 293, section 9, L. of 2019

NEW RULE XXXII PRIVATE ALTERNATIVE ADOLESCENT RESIDENTIAL PROGRAMS: MEDICATION STORAGE AND ADMINISTRATION (1) A program must have written policies and procedures regarding the storage, administration, and disposal of prescription, nonprescription, and over-the-counter medication.

(2) All medication must be kept in a locked nonportable container, stored in its original container with the original prescription label. For medications taken on outings, all medication must be in the possession of a staff member trained to assist with the self-administration of medications.

(3) Staff who assist with self-administration must be trained to assist in proper medication procedures. Training must be documented in each staff member's personnel file.

(4) All prescription medications must be ordered by licensed health care professionals working within the scope of their practice. All prescription orders must contain the dosage to be given.

(5) Psychotropic medication is prohibited unless a licensed health care professional working within the scope of that professional's practice determines that the medications are clinically indicated.

(6) Under no circumstances may psychotropic or any other prescription or over-the-counter medication be given for disciplinary purposes, for the convenience of the staff, or as a substitute for other appropriate treatment services.

(7) A written record of all medications administered to a program participant must be maintained and include:

- (a) program participant's name;
- (b) name and dosage of the medication;
- (c) the date and time the medication was taken or was refused by the program participant;
- (d) name of the staff member who assisted in the self-administration of the medication; and
- (e) documentation of any medication errors, results of errors, and any effects observed.

(8) Prescribed medication may not be stopped or changed in dosage or administration without first consulting with a licensed health care professional. Results of the consultation must be recorded in the medication record.

(9) Parent/legal guardian must be notified of all medications prescribed to program participant including medication changes. Documentation of notification must be maintained in the medication record.

(10) All unused and expired medication must be properly disposed of and documented in the medication record.

AUTH: Chap. 293, section 3(2), L. of 2019, Chap. 293, section 5(2), L. of 2019

IMP: Chap. 293, section 3, L. of 2019, Chap. 293, section 5, L. of 2019, Chap. 293, section 9, L. of 2019

NEW RULE XXXIII PRIVATE ALTERNATIVE ADOLESCENT RESIDENTIAL PROGRAMS: CARE AND GUIDANCE (1) A program must provide to each

program participant sufficient staff to ensure:

- (a) appropriate medical care, supervision, safety, treatment, and guidance;
- (b) opportunities for educational, social, and cultural growth through suitable reading materials, toys, activities, and equipment; and
- (c) opportunities to associate with peer groups in school and community settings.

(2) A program must arrange for contact with each program participant's parent/legal guardian and approved family members.

(3) The program must assist the parent/legal guardian with referral for support services.

(4) The provider must assist the program participant and, when appropriate, the family, in preparing for the program participant's discharge.

AUTH: Chap. 293, section 3(2), L. of 2019, Chap. 293, section 5(2), L. of 2019

IMP: Chap. 293, section 3, L. 2019, Chap. 293, section 5, L. of 2019, Chap. 293, section 9, L. of 2019

NEW RULE XXXIV PRIVATE ALTERNATIVE ADOLESCENT RESIDENTIAL PROGRAMS: NUTRITION (1) A program must provide for or serve three regular,

well-balanced meals per day, and snacks. Foods must be served in amounts and a variety sufficient to meet the nutritional needs of each program participant.

(2) Special diets must be provided for program participants as ordered in writing by a licensed health care professional. Such orders must be kept on file by the program.

(3) Food may not be altered, modified, restricted, or prohibited as a means of punishment, discipline, or as a behavioral modification technique.

(4) Records of menus as served must be filed at the program for three months after the date of service for review by the department.

AUTH: Chap. 293, section 3(2), L. of 2019, Chap. 293, section 5(2), L. of 2019

IMP: Chap. 293, section 3, L. of 2019, Chap. 293, section 5, L. of 2019, Chap. 293, section 9, L. of 2019

NEW RULE XXXV PRIVATE ALTERNATIVE ADOLESCENT RESIDENTIAL PROGRAMS: FOOD PREPARATION AND HANDLING (1) Safe food handling and

preparation practices must be followed in all programs. All food must be from an approved source and must be transported, labeled, stored, covered, prepared, and served in a sanitary manner to prevent contamination.

(2) The program must have conveniently located hand washing facilities, supplied with liquid hand soap, disposable towels kept clean in a dispenser, and cleanable trash can.

- (3) Any staff person or program participant handling or preparing food must thoroughly wash hands, wrists, and exposed arms with soap and warm running water for at least 20 seconds:
- (a) before and after handling food;
 - (b) after using the bathroom; and
 - (c) after handling raw food such as raw meat, uncooked eggs, and unwashed fruits and vegetables.
- (4) General food safety requirements must include:
- (a) all canned foods and dry ingredients must be stored in a designated area;
 - (b) food cannot be stored on the floor;
 - (c) food must be free from adulteration or other contamination and must be safe for human consumption;
 - (d) food that is not stored in original containers must be dated, labeled, and covered;
 - (e) all food must be cooked and reheated to the recommended temperature;
 - (f) milk and other dairy products must be pasteurized;
 - (g) use of home canned foods other than jams, jellies, and fruits is prohibited;
 - (h) use of thermometers is required to check food temperatures;
 - (i) cold storage of potentially hazardous food must be at 41°F or below;
 - (j) frozen food must be kept frozen;
 - (k) hot storage of potentially hazardous food must be 135°F or above;
 - (l) each type of food must be stored and arranged so that cross-contamination of one type with another is prevented; and
 - (m) raw fruits and vegetables must be thoroughly washed in potable water to remove soil and other contaminants before being cut, combined with other ingredients, cooked, served, or offered for human consumption in ready-to-eat form. Fruits and vegetables may be washed by using chemicals approved by the Environmental Protection Agency (EPA).
- (5) General health and safety requirements include the following:
- (a) Use clean cutting boards, knives, can openers, and other equipment and utensils for each type of food preparation to prevent cross-contamination.
 - (b) A person with symptoms of a communicable disease that can be transmitted to foods or who is a carrier of such a disease may not work with food, clean equipment, or clean utensils.
 - (c) When the regulatory authority has reasonable cause to suspect possible disease transmission within a program, the program must take appropriate action in accordance with ARM Title 37, chapter 114, regarding communicable disease control.
- (6) Equipment and utensil sanitation requirements include the following:
- (a) Kitchenware, tableware, and food contact surfaces must be washed, rinsed, and completely dried after each use.
 - (b) Moist cloths used for wiping kitchen and dining area surfaces, equipment, and utensils must be placed in chemical sanitizer solution frequently enough and be of sufficient strength to maintain 200 to 400 parts per million (ppm) available chlorine or equivalent.
 - (c) Sinks used for food preparation must be cleaned before beginning the preparation of the food.

(7) A domestic style dishwasher may be used only if it is equipped with a heating element and the following conditions are met:

(a) The dishwasher must be capable of washing and sanitizing all dishware, utensils, and food service equipment normally used for the preparation and service of a meal in one cycle.

(b) The dishwasher must have water at a temperature of at least 165°F when it enters the machine, if it uses hot water for sanitization.

(c) If it uses a heat cycle with a heating element for sanitization, the dishwasher must be allowed to run through the entire cycle before it is opened.

AUTH: Chap. 293, section 3(2), L. of 2019, Chap. 293, section 5(2), L. of 2019

IMP: Chap. 293, section 3, L. of 2019, Chap. 293, section 5, L. of 2019, Chap. 293, section 9, L. of 2019

NEW RULE XXXVI PRIVATE ALTERNATIVE ADOLESCENT RESIDENTIAL PROGRAMS: PERSONAL NEEDS

(1) The program must ensure that each program participant has clothing suitable to the program participant's age and size and comparable to the clothing of other adolescents in the community.

(2) Program participants must have some choice in the selection of their clothing.

(3) A program must provide necessary supplies and train program participant's in personal care, hygiene, and grooming.

AUTH: Chap. 293, section 3(2), L. of 2019, Chap. 293, section 5(2), L. of 2019

IMP: Chap. 293, section 3, L. of 2019, Chap. 293, section 5, L. of 2019, Chap. 293, section 9, L. of 2019

NEW RULE XXXVII PRIVATE ALTERNATIVE ADOLESCENT RESIDENTIAL PROGRAMS: BEHAVIOR MANAGEMENT POLICIES

(1) A program must have written behavior management policies and procedures which include a description of the model, program, or techniques to be used with program participants. The program must have policies addressing discipline, therapeutic de-escalation in crisis situations, crisis intervention and physical restraint, and time-out. Behavior management must be based on an individual assessment of each program participant's needs, stage of development, and behavior. It must be designed with the goal of teaching the program participant to manage their own behavior and be based on the concept of providing effective treatment by the least restrictive means.

(2) The behavior management policies and procedures must prohibit:

(a) the use of physical force, mechanical, chemical, or physical restraint as discipline;

(b) pain compliance, aversive conditioning, and use of pressure point techniques;

(c) placing of anything in or on a program participant's mouth;

(d) cruel or excessive physical exercise, prolonged positions, or work assignments that produce unreasonable discomfort;

(e) verbal abuse, ridicule, humiliation, profanity, and other forms of degradation directed at a program participant's family;

- (f) physical discipline of any means including but not limited to hitting, shaking, biting, or pinching;
- (g) locked confinement or seclusion;
- (h) withholding of necessary food, water, clothing, shelter, bedding, rest, medications as prescribed, medical care, or toilet use;
- (i) denial of visits or communication with the program participant's family;
- (j) isolation as punishment; and
- (k) any other form of punishment or discipline which subjects a program participant to pain, humiliation, or unnecessary isolation or restraint.

(3) If program policies and procedures allow for disciplining a group of program participants for actions of one participant, the policies and procedures must clearly prescribe the circumstances and safeguards under which disciplining the group is allowed.

(4) Any staff person involved in or witnessing an infraction of this rule shall complete an incident report clearly detailing the events of the infraction. The report must be completed prior to the end of the involved staff person's shift.

(5) A copy of the incident report must be placed in the program participant's file and the incident must be reported to the licensure bureau and parent/legal guardian within 24 hours of its occurrence.

(6) An authorized staff person must be notified of the incident immediately and:

- (a) begin an investigation within 24 hours of the incident; and
 - (b) complete a written report and submit it to the licensure bureau within two days of completion of the investigation.
- (7) An investigation of the incident may be conducted by the department.
- (8) A complete report of any investigation conducted by the program must be placed in the provider's records and must be available for inspection by the department.

AUTH: Chap. 293, section 3(2), L. of 2019, Chap. 293, section 5(2), L. of 2019
IMP: Chap. 293, section 3, L. of 2019, Chap. 293, section 5, L. of 2019, Chap. 293, section 9, L. of 2019

NEW RULE XXXVIII PRIVATE ALTERNATIVE ADOLESCENT RESIDENTIAL PROGRAMS: TIME-OUT (1) A program must develop a written time-out policy and procedures which clearly provide:

- (a) length of time the program participant may remain in time-out which must be age appropriate;
- (b) guidelines for staff observation of the program participant when in time-out;
- (c) documentation required for each time-out that is directed by staff;
- (d) purpose of time-out; and
- (e) staff training pertaining to the use of time-out.

(2) Staff may direct a program participant to time-out when the behavior is disruptive to the program participant's ability to learn, to participate appropriately, or to function appropriately with other participants and the activity, and when the other

de-escalation techniques have failed. Restraint, seclusion, or confinement may not be used as part of time-out procedures.

(3) Time-out may not be used as punishment.

(4) Program participants placed in time-out must be reintroduced to the group in a sensitive and nonpunitive manner as soon as control is regained.

AUTH: Chap. 293, section 3(2), L. of 2019, Chap. 293, section 5(2), L. of 2019

IMP: Chap. 293, section 3, L. of 2019, Chap. 293, section 5, L. of 2019, Chap. 293, section 9, L. of 2019

NEW RULE XXXIX PRIVATE ALTERNATIVE ADOLESCENT RESIDENTIAL PROGRAMS: USE OF CRISIS INTERVENTION AND PHYSICAL RESTRAINT STRATEGIES

(1) The program must have written policies and procedures governing the appropriate use of crisis intervention and physical restraint methods if used by the program.

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

(a) crisis prevention and verbal and nonverbal de-escalation techniques are the preferred methods and must be used first to manage behavior;

(b) all staff must be trained in the program's crisis intervention, de-escalation techniques, and physical restraint methods;

(c) physical restraint may only be used to safely control a program participant until the program participant can regain control of their own behavior;

(d) physical restraint must only be used in the following circumstances:

(i) when the program participant has failed to respond to de-escalation techniques and it is necessary to prevent harm to the program participant or others; or

(ii) when a program participant's behavior puts themselves or others at substantial risk of harm and the program participant must be forcibly moved;

(e) physical restraint must be used only until the program participant has regained control and must not exceed 15 consecutive minutes. If the program participant remains a danger to self or others after 15 minutes, the participant's record must include written documentation of attempts made to release the program participant from the restraint and the reasons that continuation of restraint is necessary; and

(f) physical restraint may be used only by staff who are documented to be specifically trained in crisis intervention and physical restraint techniques.

(3) The program policies and procedures must require the documentation of:

(a) the specific behavior which required the physical restraint;

(b) the specific attempts to de-escalate the situation before using physical restraint;

(c) the length of time the physical restraint was applied including documentation of the time started and completed;

(d) the identity of the specific staff member(s) involved in administering the physical restraint;

(e) the type of physical restraint used;

(f) any injuries to the program participant resulting from the physical restraint;

(g) debriefing completed with the staff and program participant involved in the physical restraint; and

(h) notification of the parent/legal guardian within 24 hours of restraint.

(4) Program policies and procedures must require that whenever a physical restraint has been used on a program participant more than four times within a seven-day period, the program administrator or designee will review the program participant's situation to determine the suitability of the program participant to remain in the program, whether modification of the case plan is warranted, or whether staff need additional training in alternative therapeutic behavior management techniques. The program must take appropriate action as a result of the review.

(5) Program policies and procedures must prohibit the application of a physical restraint if a program participant has a documented physical condition that would contradict its use, unless a health care professional has previously and specifically authorized its use in writing. Documentation must be maintained in the program participant's record.

AUTH: Chap. 293, section 3(2), L. of 2019, Chap. 293, section 5(2), L. of 2019

IMP: Chap. 293, section 3, L. of 2019, Chap. 293, section 5, L. of 2019, Chap. 293, section 9, L. of 2019

NEW RULE XL PRIVATE ALTERNATIVE ADOLESCENT RESIDENTIAL PROGRAMS: SEARCHES (1) The provisions of this rule apply to all searches by program staff of the program participant's person and personal property, including searches of personal correspondence. The facts and circumstances supporting a determination of reasonable cause for the search must be documented in the program participant's file.

(2) Program participants may not be subjected to any search except as follows:

(a) there is reasonable cause to believe that the search will result in discovery of contraband;

(b) there is reasonable cause to believe that the search is necessary to alleviate a threat of harm to the program participant, other individuals, or staff; or

(c) there is a court order/parole order in the program participant's case record allowing for searches.

(3) The program must have written policy and procedures relating to searches, including pat-down searches, personal property searches, correspondence searches, urinalysis testing, and breathalyzer testing. The policies must include the following:

(a) a procedure for documenting all searches, reasons for the search, who conducted the search, and the results of the search;

(b) notification of the search policy to parent/legal guardian and program participant at time of admission;

(c) a protocol for conducting personal property searches when the program participant is not available to be present for the search;

(d) the consequences to a program participant when contraband is located;

(e) description of what happens to contraband which has been located; and

(f) pat-down searches on program participants, which must be conducted by staff persons of the same sex.

(4) Staff must be trained in the proper protocol for all searches. Training must be documented in staff's personnel record.

(5) Program participants may not be subjected to any of the following intrusive acts:

- (a) strip searches;
- (b) body cavity searches; or
- (c) video surveillance except in common areas such as the living room, kitchen, and hallways.

(6) The program must have written policies and procedures prior to use of urinalysis testing for the purpose of determining drug and alcohol use which include:

- (a) procedures for obtaining samples for urinalysis testing;
- (b) procedures for processing urinalysis testing; and
- (c) consequence to the program participant when a urinalysis is positive.

(7) The program must have written policies and procedures prior to use of breathalyzer testing for the purpose of determining drug and alcohol use which include:

(a) breathalyzer testing may only be conducted by appropriate law enforcement personnel and probation, parole, or correctional officer; and

- (b) consequences to the program participant when a urinalysis is positive.

(8) Program participants may not be subjected to urinalysis or breathalyzer testing unless the testing:

- (a) has been ordered by a court;
- (b) is required pursuant to a case plan for monitoring alcohol use, as approved by the parent/legal guardian; or
- (c) is requested by the program participant's parent/legal guardian, probation, parole, or correctional officer.

(9) The program must notify the program participant's parent/legal guardian within 24 hours of every search, urinalysis testing, or breathalyzer testing performed on the program participant and the results.

(10) Staff shall document compliance with program policies and procedures in connection with each search, urinalysis testing, or breathalyzer testing.

AUTH: Chap. 293, section 3(2), L. of 2019, Chap. 293, section 5(2), L. of 2019

IMP: Chap. 293, section 3, L. of 2019, Chap. 293, section 5, L. of 2019, Chap. 293, section 9, L. of 2019

NEW RULE XLI PRIVATE ALTERNATIVE ADOLESCENT RESIDENTIAL PROGRAMS: CONTRABAND AND POTENTIAL WEAPONS (1) A program must define prohibited contraband in a written policy.

(2) Law enforcement must be notified as appropriate when illegal contraband is discovered.

(3) All contraband that is not illegal must be returned to the program participant's parent/legal guardian or destroyed in accordance with the program's contraband policy. When contraband is disposed of, at least two staff members

must be present, and the disposal must be documented in the program participant's case record.

(4) If contraband that is not illegal is stored by the program, the program must have written policies clearly outlining the storing procedure.

(5) A program must have written policy and procedure on management of weapons and potential weapons.

(6) Firearms must not be allowed on the program's property.

(7) Firearms must not be in the presence of program participants with the exception of law enforcement at any time on or off the program's property.

(8) Staff shall supervise a program participant's possession and use of knives, hatchets, other edged tools, or any item which may pose a danger to self or others.

AUTH: Chap. 293, section 3(2), L. of 2019, Chap. 293, section 5(2), L. of 2019

IMP: Chap. 293, section 3, L. of 2019, Chap. 293, section 5, L. of 2019, Chap. 293, section 9, L. of 2019

NEW RULE XLII PRIVATE ALTERNATIVE ADOLESCENT RESIDENTIAL PROGRAMS: MONEY AND ADOLESCENT TRAINING AND EMPLOYMENT

(1) Money earned or received as a gift or allowance must be part of the program participant's personal property and accounted for separately from the program funds.

(2) If the program is partly supported by institutional production on a commercial basis, the program must comply with state and federal child labor and minimum wage laws.

(3) For program participants aged 16 and older, a program may assist in:

(a) preparing the program participant for economic independence;

(b) referring the program participant to the appropriate independent living program if applicable; and

(c) obtaining skills necessary for employment as determined to be appropriate to meet the individual's needs. Such skills include:

(i) completing applications;

(ii) personal appearances for employment situations;

(iii) attitudes toward employment; and

(iv) interviewing for jobs.

(4) A program must distinguish between tasks which program participants are expected to perform as part of living together, jobs to earn spending money, and jobs performed for vocational training. Program participants may not be compelled to work for the program without prior approval of the parent/legal guardian.

(5) Program participants may be given age appropriate, non-vocational work assignments within the program participant's capabilities as a constructive experience. The work assignment must comply with all state and federal labor laws, and regulations.

AUTH: Chap. 293, section 3(2), L. of 2019, Chap. 293, section 5(2), L. of 2019

IMP: Chap. 293, section 3, L. of 2019, Chap. 293, section 5, L. of 2019, Chap. 293, section 9, L. of 2019

NEW RULE XLIII PRIVATE ALTERNATIVE ADOLESCENT RESIDENTIAL PROGRAMS: RECREATION (1) The program may have an on-grounds recreation program that is operated by the program staff. However, when available, the program must provide the program participant access to community recreation and cultural events when appropriate to the program participant's needs, interests, and abilities.

(2) Program participants must have the opportunity to participate in age appropriate recreational activities on a regular basis.

AUTH: Chap. 293, section 3(2), L. of 2019, Chap. 293, section 5(2), L. of 2019
IMP: Chap. 293, section 3, L. of 2019, Chap. 293, section 5, L. of 2019, Chap. 293, section 9, L. of 2019

NEW RULE XLIV PRIVATE ALTERNATIVE ADOLESCENT RESIDENTIAL PROGRAMS: INFECTION CONTROL (1) A program must develop and implement an infection prevention and control program. At a minimum the program must develop, implement, and review, at least annually, written policy and procedures regarding infection prevention and control which must include procedures to identify high risk individuals and what methods are used to protect, contain, or minimize the risk to program participants and staff.

AUTH: Chap. 293, section 3(2), L. of 2019, Chap. 293, section 5(2), L. of 2019
IMP: Chap. 293, section 3, L. of 2019, Chap. 293, section 5, L. of 2019, Chap. 293, section 9, L. of 2019

NEW RULE XLV PRIVATE ALTERNATIVE ADOLESCENT RESIDENTIAL PROGRAMS: RELIGION AND CULTURE (1) The program must have written policies and procedures on how the program participant's individual religious and cultural beliefs will be addressed.

(2) The program must provide program participants with a reasonable opportunity to practice their respective religions. Program participants must be permitted to have reasonable access to religious materials of their choice. If reasonable access is denied, the program must have documentation of the specific reasons for the denial.

(3) The program must document its efforts in providing opportunity and encouragement to each program participant to identify with their cultural heritage.

AUTH: Chap. 293, section 3(2), L. of 2019, Chap. 293, section 5(2), L. of 2019
IMP: Chap. 293, section 3, L. of 2019, Chap. 293, section 5, L. of 2019, Chap. 293, section 9, L. of 2019

NEW RULE XLVI PRIVATE ALTERNATIVE ADOLESCENT RESIDENTIAL PROGRAMS: TRANSPORTATION (1) All staff transporting program participants must possess a valid Montana driver's license for the type of vehicle used in transporting the program participants.

- (2) Any person transporting program participants must comply with applicable traffic laws while transporting.
- (3) All vehicles used in transporting program participants must:
 - (a) have proper Montana registration;
 - (b) have insurance coverage;
 - (c) be maintained in a safe condition;
 - (d) be equipped with a red triangle reflector device for use in an emergency;and
 - (e) be equipped with a first aid kit.
- (4) The driver and all of the passengers must ride in a vehicle manufactured seat. Each person must use a seat belt.
- (5) Program participants must not ride in the bed of, or in the back of a truck.
- (6) Program participants utilizing off highway or all terrain recreational vehicles must wear a helmet and be instructed on safety procedures.

AUTH: Chap. 293, section 3(2), L. of 2019, Chap. 293, section 5(2), L. of 2019
IMP: Chap. 293, section 3, L. of 2019, Chap. 293, section 5, L. of 2019, Chap. 293, section 9, L. of 2019

ADDITIONAL REQUIREMENTS FOR PRIVATE OUTDOOR PROGRAMS

NEW RULE XLVII PRIVATE OUTDOOR PROGRAMS: DEFINITIONS

- (1) "Administrative office" means the office where business operations, public relations, and management procedures take place.
- (2) "Expedition" means an excursion undertaken for specific treatment purposes that takes the program participant away from the field office.
- (3) "Expedition camp" means a nonpermanent campsite. Program participants and staff may move from one expedition camp to another when on expedition.
- (4) "Field office" means the office where all coordination of expedition operations takes place.
- (5) "Global position system (GPS) receiver" means a receiver which receives signals from a network of satellites known as the global positioning system, or GPS, which identifies the receiver's location by:
 - (a) latitude;
 - (b) longitude; and
 - (c) altitude to within a few hundred feet.
- (6) "High adventure activity" means an outdoor activity provided to program participants for the purposes of behavior management or treatment and that requires specially trained staff and special safety precautions to reduce the possibility of an accident or injury.
- (7) "Leave no trace principles" means wilderness and land use ethics designed to minimize the impact of visitors on back country areas.
- (8) "Residential outdoor program" means a program at designated stationary sites including permanent buildings where the program participants reside.
- (9) "Solo experience" means separation of a program participant from the group as part of the outdoor therapeutic process, not including a time-out.

(10) "Water cache" means storing away water in hiding or for future use.

(11) "Wilderness first responder" means a licensed first responder with the medical training course for outdoor professionals as offered by the National Association for Search and Rescue.

AUTH: Chap. 293, section 3(2), L. of 2019, Chap. 293, section 5(2), L. of 2019

IMP: Chap. 293, section 2, L. of 2019, Chap. 293, section 3, L. of 2019, Chap. 293, section 5, L. of 2019

NEW RULE XLVIII PRIVATE OUTDOOR PROGRAMS: APPLICATION OF OTHER RULES (1) In addition to requirements established in this subchapter a private outdoor program must meet the requirements for all private alternative adolescent residential programs established in subchapter [NEW RULES I through XLVI].

AUTH: Chap. 293, section 3(2), L. of 2019, Chap. 293, section 5(2), L. of 2019

IMP: Chap. 293, section 3, L. of 2019, Chap. 293, section 5, L. of 2019, Chap. 293, section 12, L. of 2019

NEW RULE XLIX PRIVATE OUTDOOR PROGRAMS: PHYSICAL EXAMINATION (1) All physical examinations must be completed by an appropriate licensed health care professional.

(2) A program participant must have a physical examination:

(a) within 30 days prior to admission into the program;

(b) at least annually after entering the program; and

(c) at any time when circumstances indicate that an updated examination would be appropriate.

(3) The result of the physical examination including restrictions must be recorded on a standard form provided by the program and signed by the licensed health care professional performing the examination. The form must clearly identify the type and extent of physical activity which the program participant will be participating in.

(a) The program must comply with all restrictions or limitations placed on the program participant by the examining practitioner.

(4) The original physical examination form must be maintained at the field office and a copy must be carried by staff in a waterproof container when the program participant is away from the field office.

AUTH: Chap. 293, section 3(2), L. of 2019, Chap. 293, section 5(2), L. of 2019

IMP: Chap. 293, section 3, L. of 2019, Chap. 293, section 5, L. of 2019, Chap. 293, section 9, L. of 2019

NEW RULE L PRIVATE OUTDOOR PROGRAMS: FIELD DIRECTOR REQUIREMENTS (1) Each program expedition must include a field director responsible for:

(a) the quality of the field activities;

(b) coordinating field operations;

- (c) supervising direct care staff;
- (d) managing the field office; and
- (e) ensuring compliance with applicable licensing rules.
- (2) The field director must have the following:
 - (a) a bachelor's degree in a relevant discipline or 12 months of outdoor program field experience; and
 - (b) a current wilderness first responder certification.
- (3) The administrator of the program may serve as the field director if qualified for both positions.

AUTH: Chap. 293, section 3(2), L. of 2019, Chap. 293, section 5(2), L. of 2019
IMP: Chap. 293, section 3, L. of 2019, Chap. 293, section 5, L. of 2019, Chap. 293, section 9, L. of 2019

NEW RULE LI PRIVATE OUTDOOR PROGRAMS: ADDITIONAL STAFF TRAINING (1) In addition to training requirements in [NEW RULE XXX], staff orientation training must include:

- (a) supervision of program participants;
 - (b) procurement, preparation, and conservation of water, food, and shelter;
 - (c) instruction in safety procedures and safety equipment, use of fuel, fire, and life protection;
 - (d) instruction in emergency procedures, medical, weather signalization fire, runaway and lost program participant;
 - (e) sanitation procedures relating to food, water, and waste;
 - (f) knowledge of wilderness medicine, including health issues related to acclimation and exposure to the environmental elements;
 - (g) local environmental precautions including terrain, weather upsets, poisonous plants, wildlife, and proper response to adversarial situations;
 - (h) high adventure activities; and
 - (i) avoiding potential hazards of expedition areas.
- (2) All program staff must complete first aid training within six months of hire and prior to working without a staff member trained in wilderness first aid.

AUTH: Chap. 293, section 3(2), L. of 2019, Chap. 293, section 5(2), L. of 2019
IMP: Chap. 293, section 3, L. of 2019, Chap. 293, section 5, L. of 2019, Chap. 293, section 9, L. of 2019

NEW RULE LII PRIVATE OUTDOOR PROGRAMS: RESIDENTIAL OUTDOOR PROGRAM PARTICIPANT-TO-STAFF RATIO (1) A residential outdoor program must maintain the following program participant to awake staff ratios:

- (a) from 7:00 a.m. to 11:00 p.m., eight program participants to one staff;
 - (b) from 11:00 p.m. to 7:00 p.m., or any other reasonable eight-hour period of time when program participants are generally sleeping, 12 program participants to one staff.
- (2) When participating in high adventure activities the program must meet expedition staffing requirements in [NEW RULE LIII].

AUTH: Chap. 293, section 3(2), L. of 2019, Chap. 293, section 5(2), L. of 2019
IMP: Chap. 293, section 3, L. of 2019, Chap. 293, section 5, L. of 2019, Chap. 293, section 9, L. of 2019

NEW RULE LIII PRIVATE OUTDOOR PROGRAMS: EXPEDITION AND HIGH ADVENTURE ACTIVITY PROGRAM PARTICIPANT-TO-STAFF RATIO

- (1) Each expedition group of program participants must have the following:
 - (a) two staff members for the first four program participants and one additional staff member for each four program participants;
 - (b) each group must have at least one staff member of the same gender as the genders represented in the program participant group; and
 - (c) each group must include one field director.

AUTH: Chap. 293, section 3(2), L. of 2019, Chap. 293, section 5(2), L. of 2019
IMP: Chap. 293, section 3, L. of 2019, Chap. 293, section 5, L. of 2019, Chap. 293, section 10, L. of 2019

NEW RULE LIV PRIVATE OUTDOOR PROGRAMS: OUTDOOR BEHAVIORAL PROGRAM: HIGH ADVENTURE GENERAL REQUIREMENTS

- (1) High adventure activities may include the following:
 - (a) target sports;
 - (b) aquatics;
 - (c) adventure challenge courses;
 - (d) climbing and rappelling;
 - (e) spelunking;
 - (f) white water activities;
 - (g) use of horses or other animals for riding or packing;
 - (h) skiing; or
 - (i) other activities defined in program policy as a high adventure activity.
- (2) For the high adventure activities, the program must have written policies and procedures that include:
 - (a) minimum training, experience, and qualifications for leaders and staff which must be documented in personnel records;
 - (b) classification and limitations for each program participant participation;
 - (c) arrangement, maintenance, and inspection of the activity area;
 - (d) appropriate equipment and the inspection and maintenance of the equipment; and
 - (e) safety precautions to reduce the possibility of an accident or injury.
- (3) Program participants must not be forced to participate in any high adventure activity.

AUTH: Chap. 293, section 3(2), L. of 2019, Chap. 293, section 5(2), L. of 2019
IMP: Chap. 293, section 3, L. of 2019, Chap. 293, section 5, L. of 2019, Chap. 293, section 9, L. of 2019

NEW RULE LV PRIVATE OUTDOOR PROGRAMS: EXPEDITION: FIELD OFFICE REQUIREMENTS (1) A program must have a field office in Montana. A field office may be a vehicle, a camp, a building, the residential program, or the administrative office.

(2) The field office must be staffed and monitored 24 hours a day when there are program participants on expeditions or have staff continually monitoring communications and available by satellite phone within 15 minutes of the field office.

(3) Field office staff must respond immediately to any emergency situation.

(4) The following items must be maintained at the field office:

(a) a current list of the names of staff and program participants in each group;

(b) a master map of all activity areas used by a program;

(c) each group's expeditionary route with its schedule and itinerary, copies of which must be sent to the department and local law enforcement when requested;

(d) current logs of all communications with each expedition group away from the field office;

(e) program participant's emergency information required in [NEW RULE XXI];

(f) physical examination completed as part of program admission process and any subsequent physical exams;

(g) medical treatment authorization;

(h) list of current medications taken by the program participant;

(i) identifying marks of the program participants such as scars, tattoos, and piercings;

(j) health insurance information;

(k) list of contact persons in case of emergencies; and

(l) a copy of the program participant's case plan.

(5) The program must comply with federal, state, and local laws and regulations and must maintain proof of compliance at the field office.

(6) An arrangement must be made with national or state forest service offices if such land is to be used by the field office.

(a) If the field office or the expedition camp is located on or uses national or state lands, the administrator must familiarize the staff and program participants with rules and ethics governing the use of such property.

(7) If private property will be used, arrangements must be made with the property owners.

AUTH: Chap. 293, section 3(2), L. of 2019, Chap. 293, section 5(2), L. of 2019

IMP: Chap. 293, section 3, L. of 2019, Chap. 293, section 5, L. of 2019, Chap. 293, section 9, L. of 2019

NEW RULE LVI PRIVATE OUTDOOR PROGRAMS: OUTDOOR PROGRAM EXPEDITION STAFF (1) During any expedition:

(a) expedition staff must carry a copy of the itinerary placed on file at the field office;

- (b) expedition staff must remain in contact with the field office via satellite phone, with contacts occurring at a minimum of once each morning and once each evening;
 - (c) expedition staff must possess a global positioning satellite receiver;
 - (d) supplies for providing emergency care must be at each expedition camp;
 - (e) expedition staff must maintain the daily expedition log. Entries in the log must be made in permanent ink and signed and dated by the staff member making the entry. The daily expedition log must be filed at the field office upon return from the expedition and maintained as part of the program's permanent record;
 - (f) expedition staff and program participants must implement and follow program policies and procedures regarding back country etiquette and leave no trace principles;
 - (g) expedition staff must closely monitor program participants while acclimating to the environment including temperature, climate, and altitude; and
 - (h) when temperatures exceed 95°F or fall below 10°F, expedition staff must take appropriate preventative measures to ensure program participants remain free of heat or cold related illness or injuries.
- (2) Expedition staff must maintain a daily log that includes:
 - (a) daily entries regarding health programs, accidents, injuries, near misses, medications used, behavioral problems, and unusual occurrences;
 - (b) daily notations of environmental factors such as weather, temperature, altitude, and terrain;
 - (c) daily entries assessing each program participant's hydration, skin condition extremities, and general physical condition;
 - (d) daily entries describing morning and evening contacts between expedition staff and field office staff;
 - (e) weekly entries assessing each program participant's physical condition by the field director or other trained as a wilderness first responder;
 - (f) emergency plan drills, showing date, time, staff, and program participants present; and
 - (g) descriptions of pre-site investigations for solo expeditions if applicable.
 - (3) Entries in the log must be made in permanent ink and signed and dated by the staff member making the entry.
 - (4) The daily expedition log must be filed at the field office upon return from the expedition and maintained as part of the program's permanent record.
 - (5) Upon return from any expedition the field director must debrief each program participant and staff member and document the debriefing in writing.

AUTH: Chap. 293, section 3(2), L. of 2019, Chap. 293, section 5(2), L. of 2019
IMP: Chap. 293, section 3, L. of 2019, Chap. 293, section 5, L. of 2019, Chap. 293, section 9, L. of 2019

NEW RULE LVII PRIVATE OUTDOOR PROGRAMS: COMMUNICATIONS

- (1) The program must have written policies and procedures establishing a system of communication that meets the following criteria:
 - (a) each group away from the field office must have a satellite phone and extra charged battery packs for the satellite phone;

- (b) a global positioning system; and
 - (c) the program must develop a signal mirror communication system.
- (2) Verbal communication between each group and the field office must occur once each morning and once each evening.

AUTH: Chap. 293, section 3(2), L. of 2019, Chap. 293, section 5(2), L. of 2019

IMP: Chap. 293, section 3, L. of 2019, Chap. 293, section 5, L. of 2019, Chap. 293, section 9, L. of 2019

NEW RULE LVIII PRIVATE OUTDOOR PROGRAMS: EXPEDITION: NUTRITIONAL REQUIREMENTS (1) A program must have and follow written policies and procedures on nutritional requirements.

(2) Each program must have a written menu that is approved by a qualified dietitian or nutritionist with knowledge of the program activities and levels.

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

(4) Hands must be cleaned after each latrine use and prior to food preparation and food consumption.

(5) Food may not be withheld from a program participant for any reason.

(6) If no fire is available for cooking food, other food of equal caloric value which does not require cooking must be available.

(7) Field staff are responsible monitoring each program participant's food intake to ensure that the program participants have adequate nutrition.

AUTH: Chap. 293, section 3(2), L. of 2019, Chap. 293, section 5(2), L. of 2019

IMP: Chap. 293, section 3, L. of 2019, Chap. 293, section 5, L. of 2019, Chap. 293, section 9, L. of 2019

NEW RULE LIX PRIVATE OUTDOOR PROGRAMS: EXPEDITION: WATER REQUIREMENTS (1) A program must have written policies and procedures on expedition water requirements to include:

(a) program participants must have access to potable water at all times;

(b) water must be available at each expedition camp site. Water cache location information must be verified by field staff before the group leaves expedition camp each day;

(c) expedition groups may not depend on aerial drops for water supply. Aerial water drops must be used for emergency situations only; and

(d) water taken by staff or program participants from a natural source and used for drinking or cooking must be treated to eliminate health hazards.

(2) Each group must have a supply of electrolyte replacement, the quantities to be determined by group size and environmental conditions.

AUTH: Chap. 293, section 3(2), L. of 2019, Chap. 293, section 5(2), L. of 2019

IMP: Chap. 293, section 3, L. of 2019, Chap. 293, section 5, L. of 2019, Chap. 293, section 9, L. of 2019

- NEW RULE LX PRIVATE OUTDOOR PROGRAMS: EXPEDITION:
PARTICIPANT CLOTHING, EQUIPMENT, AND SUPPLIES (1) Each expedition participant must have appropriate clothing, equipment, and supplies for the types of activities and for the weather conditions likely to be encountered.
- (2) Clothing, equipment, and supplies must include:
 - (a) sunscreen, which must be worn during all seasons;
 - (b) insect repellent, if appropriate, for the environmental conditions generally expected for the area and season;
 - (c) a commercial backpack or the materials to construct a safe backpack or bedroll;
 - (d) personal hygiene items necessary for cleansing;
 - (e) appropriate feminine hygiene supplies;
 - (f) wool blankets or an appropriate sleeping bag and a tarp or poncho for when the average nighttime temperature is expected to be 40°F or higher;
 - (g) shelter from precipitation, appropriate sleeping bag and ground pad when the average nighttime temperature is expected to be 39°F or lower;
 - (h) clothing appropriate for the temperature changes generally expected for the area;
 - (i) a clean change of clothing at least once a week or an opportunity for the participant to wash their clothing at least once a week; and
 - (j) a handbook for staff and program participants describing expedition requirements and expectations.
 - (3) A program may not remove, deny, or make unavailable, for any reason, the appropriate clothing, equipment, or supplies.
 - (4) There must be a first aid kit with sufficient supplies on all expeditions and high adventure activities. A kit must:
 - (a) be readily available on site as well as in all vehicles;
 - (b) meet the standards of an appropriate national organization for the activity being conducted and the location and environment being used;
 - (c) be reviewed by the field director with new staff for contents and use; and
 - (d) be inventoried by the field director after each expedition and restocked as needed.

AUTH: Chap. 293, section 3(2), L. of 2019, Chap. 293, section 5(2), L. of 2019
IMP: Chap. 293, section 3, L. of 2019, Chap. 293, section 5, L. of 2019, Chap. 293, section 9, L. of 2019

- NEW RULE LXI PRIVATE OUTDOOR PROGRAMS: OUTDOOR PROGRAM SOLO EXPERIENCE (1) If an outdoor program uses a solo experience as part of the therapeutic or educational process during expeditions, the program must have written policy and procedures for the utilization of the solo experience. Policy and procedures must include:
- (a) purpose of solo experience;
 - (b) a solo experience must never be used as a punishment or negative consequence;
 - (c) supervision of program participant;

- (d) assessment of program participant readiness for the experience; assessment must be documented in the daily expedition log book;
 - (e) documented instructions on the solo experience, including expectations, restrictions, communication, environment, and emergency procedures;
 - (f) notification and check-in systems including a procedure for checking the program participant's emotional and physical condition daily;
 - (g) risk management procedures; and
 - (h) a staff member be designated to coordinate and implement the plan.
- (2) Staff must be familiar with the site chosen to conduct solo experiences and must conduct a pre-site investigation and preparation. These activities must be documented in the daily expedition log including:
- (a) a description of the terrain selected and the appropriateness for the level of participation skill of the program participants;
 - (b) a review of hazardous conditions; and
 - (c) a description of arrangements made prior to the solo experience for medication, food and water drop-offs, if needed.
- (3) Program participants must be supervised during a solo experience. Written plans for supervision must be drafted prior to the solo experience, and a copy of these written plans must be placed in the daily expedition log. A plan of supervision must include at a minimum:
- (a) the assignment of a specific staff member responsible for the supervision of the solo participant;
 - (b) predetermined procedures for placing program participants at a distance from the assigned staff to allow for appropriate supervision and emergency communication;
 - (c) a method of clearing defining physical boundaries;
 - (d) instruction of program participants to not participate in potentially dangerous activities;
 - (e) notification and check-in systems including a procedure for checking the program participant's emotional and physical condition daily; and
 - (f) emergency planning, including:
 - (i) instructing the program participants on safety and emergency procedures, including evacuation routes;
 - (ii) providing each program participant with signaling capabilities, including a whistle, for emergency notification;
 - (iii) instructing of other program participants on how to respond if the emergency notification system is put into use; and
 - (iv) providing a check-in system should an emergency occur.
- (4) The program participants must be debriefed immediately after a solo expedition. The debriefing must at a minimum:
- (a) include a written summary of the program participant's participation and progress achieved; and
 - (b) be provided in written form to the placing agency and, upon request, to the program participant's parent/legal guardian.

AUTH: Chap. 293, section 3(2), L. of 2019, Chap. 293, section 5(2), L. of 2019

IMP: Chap. 293, section 3, L. of 2019, Chap. 293, section 5, L. of 2019, Chap. 293, section 9, L. of 2019

4. STATEMENT OF REASONABLE NECESSITY

The 2019 Montana Legislature enacted Senate Bill 267 (SB 267), an act to terminate the Board of Private Alternative Adolescent Residential or Outdoor Programs and transfer the licensing duties of the board to the Department of Public Health and Human Services (department). SB 267 provides the department licensure and rulemaking authority. The bill was signed by the Governor on May 3, 2019, and became effective on July 1, 2019.

The department proposes to adopt New Rules I through LXI establishing new minimum standards for private alternative adolescent residential or outdoor programs. The proposed new rules are necessary to establish licensing and regulation to ensure the health and safety of program participants in accordance with SB 267.

The department is proposing to adopt the following new rules in order to authorize the state licensure of private alternative adolescent residential and outdoor programs.

NEW RULE I

It is necessary to implement this rule to identify the programs required to comply with the licensing requirements in this chapter.

NEW RULE II

It is necessary to adopt this new rule to define terminology used throughout the rule that is not defined in statute.

NEW RULE III

The department proposes to adopt this new rule to inform programs of all applicable administrative rules that apply to licensure of private alternative adolescent residential and outdoor programs.

NEW RULE IV

The department has determined that there is reasonable necessity to set the licensure fees at a level commensurate with program costs, as required in SB 267. The department maintained the current licensure fee that was established under the Board of Private Alternative Adolescent Residential and Outdoor Programs.

NEW RULE V

The department proposes to adopt this new rule to specify application and licensing survey procedures for private alternative adolescent residential and outdoor programs. This rule is necessary to inform applicants and licensed providers what requirements must be satisfied prior to the department issuing a license and the length of time a license will be issued.

NEW RULE VI

The department proposes to adopt this new rule to specify what may require the department to initiate negative licensure action. It is necessary to inform the applicant or licensee of their right to a fair hearing and the Administrative Rules of Montana describe that process.

NEW RULE VII

The department proposes to adopt this rule to specify the requirements for private alternative adolescent residential or outdoor programs regarding written policy and procedures. An effective policy and procedure manual is essential for programs to maintain consistency in delivery of service. It is a tool to ensure new and existing employees understand the program's expectations and requirements and provide guidance to all staff in the program's specific methods and standards for how services are provided, and work is performed.

NEW RULE VIII

This proposed new rule is necessary to require programs to develop an admission policy that clearly defines the type of program participant who would be appropriately served in their program. Program participants being placed in care have a wide variety of needs and behaviors, and one program may not be able to appropriately serve the adolescent. An inappropriate placement can be harmful or disruptive to the program participant, other program participants in the program, and program staff.

This new rule is necessary to ensure that program participants are adequately informed upon admission of the provider's specific program policies and expectations. It is particularly important to inform the program participant of the fire and safety issues, evacuation plans, discipline policy, and behavioral modification programs under which the program operates. Program participants must be made aware of the daily operations and treatment requirements necessary in order to maximize the benefit of their placement.

This new rule is necessary to maintain a list of current program participants to ensure that all participants are accounted for and that staffing requirements are met in all circumstances.

NEW RULE IX

The department proposes to adopt this new rule to specify discharge requirements to ensure program participants are safely discharged and the program participant's parent/legal guardian receive the necessary information required to arrange for follow-up services needed.

NEW RULE X

This proposed new rule is necessary to ensure all parties acknowledge and agree with the terms of the placement, the responsibilities of the program, and the responsibilities of the parent/legal guardian.

NEW RULE XI

This proposed new rule is necessary to ensure that the program participants' needs are being addressed by implementing measurable goals and objectives. Because each program participant has his or her own needs that the facility must address, individual case plans should be created to meet this goal. Timelines are included to ensure that the program participants' needs are being continually monitored and updated as necessary.

NEW RULE XII

The department proposes to adopt this new rule as it is necessary to ensure program staff and program participants are aware of the rights afforded to all program participants. This rule provides direction to staff and program participants for addressing such rights and grievances.

NEW RULE XIII

The department proposes to adopt this new rule as it is necessary to implement the background check requirements of SB 267. It is necessary to implement reasonable guidelines for disqualifying applicants from employment due to certain convictions to safeguard program participants from potential harm.

NEW RULE XIV

The department proposes to adopt this new rule to help ensure the safety of program participants served from abuse or neglect. This rule gives clear guidance and describes what is required for staff training and procedures to follow incidents of suspected abuse and neglect, and ensure that mandatory reporting requirements are followed.

NEW RULE XV

It is necessary to adopt the proposed new rule to ensure a safe living environment for all program participants and provide an environment that enhances the program participants' well-being.

NEW RULE XVI

The department proposes to adopt this new rule to ensure bedding and laundry are clean and maintained at all times and reduce the risk of spreading infection and communicable disease.

NEW RULE XVII

The department proposes to adopt this new rule to ensure adequate and potable water will be available at all times, reducing the risk of dehydration, illnesses, and diseases spread through contaminated water sources.

NEW RULE XVIII

The department proposes to adopt this new rule to ensure adequate and safe wastewater systems are maintained at all times reducing the risk of spreading infectious and communicable diseases.

NEW RULE XIX

The department proposes to adopt this new rule to increase safety by reducing the risk of fire hazards through preparation, program implementation, and education.

NEW RULE XX

The department proposes to adopt this new rule to ensure all staff and program participants are prepared for any emergency or disaster. This proposed new rule will assist in decreasing the risk of harm and injury to program participants while in placement.

NEW RULE XXI

The department proposes to adopt this new rule to increase safety to program participants by reducing the risk of harm through preparation, program implementation, and education. Having documented policies and procedures ensures that precautionary steps have been taken to avoid accidents or injuries.

NEW RULE XXII

The department proposes to adopt this new rule to specify information required in the program participants' case record to document services provided. Accurate records are essential for the continuity of care to clients. Adequate documentation allows all program staff to be informed of essential information needed to provide quality services to program participants.

NEW RULE XXIII

This proposed new rule is necessary to ensure all information provided to the program remains confidential and is released to only those that are allowed to have the information according to state and federal laws.

NEW RULE XXIV

This proposed new rule is necessary to ensure the department has been advised of changes made within the programs, disasters, serious incidents, and/or fires that may have occurred at the program. This proposed new rule will assist the department in determining the safety of the program participants.

NEW RULE XXV

This proposed new rule is necessary to ensure the safety and well-being of the staff and program participants. The requirements are standard conditions of employment that are used in any workplace serving children or adolescents. These conditions are commonly used to define job duties and what qualifications are necessary to successfully perform those duties. It is necessary for the program to maintain personnel records. The records provide documentation showing compliance with these rules, thereby ensuring the safety and well-being of the program participant. The department proposes a minimum age requirement for staff to be 21 years of age. Programs can serve adolescents up to the age of 19. The department believes it is not appropriate for staff to be younger or equivalent in age than the program participants they are in charge of caring for. Without an age gap between staff and program participants the likelihood of issues with boundaries and behavioral problems increases. Requiring a high school diploma or GED for staff is necessary because the job responsibilities require the basic knowledge obtained through a high school education.

NEW RULE XXVI

The department proposes to adopt this new rule to ensure personnel records maintain documentation of compliance with this rule, thereby ensuring the safety and well-being of the program participants.

NEW RULE XXVII

The department proposes to adopt this new rule to ensure programs conduct an internal audit regarding the quality of treatment, care, and services provided to program participants. The internal audit is necessary to provide management recommendations for continuous improvement in conforming to standards efficiency in service delivery, and program participant satisfaction.

NEW RULE XXVIII

The department proposes to adopt this new rule to ensure the program has a qualified administrator and the program has the appropriate oversight to provide the necessary care and treatment to the program participants.

NEW RULE XXIX

The proposed new rule is necessary to ensure the safety and well-being of program participants at all times. The nighttime safety protocol will increase safety for all program participants and staff by allowing the program to determine what measures are needed depending on the population the program serves and the level of night supervision. The requirement for professional staff is determined by the program as outlined in the program description.

NEW RULE XXX

The department proposes to adopt this new rule in order to provide the necessary training requirements for staff to ensure that they are prepared to address the everchanging needs of the program and the program participants being served. Staff must be prepared to deal with a wide variety of possible scenarios such as how to deal with crisis and emergency situations. Due to the difficult nature of the program participants being served, providers need to implement effective de-escalation methods and ensure staff is trained in these procedures. The proposed new rule provides training timelines and expectations. Without these timelines, it is possible that staff may not be trained in a timely manner when situations arise. Requirements for continued training give staff the opportunity to keep current with changes in care management and improve their knowledge and skills to deal with difficult program participants. When staff are not adequately trained to provide appropriate care, it reduces the effectiveness of the program and increases the risk of harm to program participants.

NEW RULE XXXI

The department proposes to adopt this new rule to ensure program participants' medical, dental, and psychological needs are being identified and addressed in a timely manner.

NEW RULE XXXII

The department proposes to adopt this new rule to clearly outline procedures for the safe administration, storage, and documentation of medication. The proposed new rules are necessary to provide for the safety of program participants by ensuring that the program participants are given the proper medication, in the appropriate dosage, at the appropriate time. It further prohibits the use of medication as a means of discipline.

NEW RULE XXXIII

The proposed new rule is necessary to increase the safety of program participants by ensuring appropriate care, supervision, safety, treatment, and guidance to program participants. The proposed rule is necessary to ensure program participants have adequate contact with family members in order to foster and improve relationships.

NEW RULE XXXIV

The proposed new rule is necessary to ensure the nutritional needs of each program participant is being identified and met.

NEW RULE XXXV

The proposed new rule is necessary to ensure programs meet the minimum requirements needed for safe food handling, preparation and sanitation, and prevent contamination and communicable diseases.

NEW RULE XXXVI

The department proposes to adopt this new rule to ensure that the program participants are provided with suitable clothing and hygiene supplies for their age, size, and peer groups in surrounding communities.

NEW RULE XXXVII

The department proposes to adopt this new rule in order to protect the health and safety of the program participants being served by developing appropriate behavioral management policies. It is necessary to require programs to clearly define policies, so the program participant understands what is expected of them and know the consequences of their behaviors in order to gain the most benefit from the program.

NEW RULE XXXVIII

The department proposes to adopt this new rule to approve appropriate time-out procedures implemented by program policy. This proposed new rule is necessary as it describes the appropriate use of time-out. It is necessary to specifically identify time-out as an individual behavior management policy because of the widespread use and various ways it is implemented.

NEW RULE XXXIX

The department proposes to adopt this new rule as it provides clear guidelines in the application of crisis intervention and physical restraints. The rule incorporates standard practices and federal guidelines pertaining to physical restraints, including when the use of physical restraint is acceptable and when it is prohibited. Since the use of physical restraints is a serious behavioral management technique and is to be

used only in emergency situations, it is necessary to have strict guidelines in order to protect the program participant, other program participants, and the staff.

NEW RULE XL

The department proposes to adopt this new rule to protect program participant's right to be free from unnecessary searches of their person, personal property, and correspondence.

NEW RULE XLI

The department proposes to adopt this new rule to safeguard program participants from dangerous weapons and provide guidelines for the storage and destruction of harmful items as defined by program policy. Prohibiting the possession and use of firearms on the property dramatically decreases the risk of harm to program participants.

NEW RULE XLII

The department proposes to adopt this new rule to ensure separation of the program participant's personal money and program funds and ensure compliance with state and federal child labor laws. It is necessary to implement requirements of this rule to assist program participants in developing the necessary skills needed to achieve economic independence.

NEW RULE XLIII

The department proposes to adopt this new rule to improve program participants' health and social skills by requiring program participants have access to recreational and cultural events when appropriate.

NEW RULE XLIV

The department proposes to adopt this new rule to prevent the spread of diseases to staff and program participants.

NEW RULE XLV

The department proposes to adopt this new rule to ensure program participants are granted individual freedom to participate in religious activities and cultural events of their choosing when appropriate.

NEW RULE XLVI

The department proposes to adopt this new rule to increase safety of program participants and staff when operating or riding in a motorized vehicle.

NEW RULE XLVII

It is necessary to adopt this new rule to define terminology used for private outdoor programs that is not defined in statute or private alternative adolescent residential program administrative rules.

NEW RULE XLVIII

The department proposes to adopt this new rule to inform programs of all applicable administrative rules that apply to licensure of private outdoor programs.

NEW RULE XLIX

The department proposes to adopt this new rule to ensure the program participant is healthy enough to participate in an outdoor program that, by its nature, demands a higher level of physical fitness to participate.

NEW RULE L

The department proposes to adopt this new rule to ensure all groups going on an expedition are led by a qualified field director that has specific training and experience in wilderness activities and emergency safety.

NEW RULE LI

The department proposes to adopt this new rule to require additional training for outdoor staff specific to providing a safe program in the wilderness. Staff must be prepared to be in difficult terrain, weather, and keep program participants safe in an outdoor environment.

NEW RULE LII

The department proposes to adopt this new rule to ensure the safety and well-being of program participants at all times. Due to the inherent risk factors of high adventure activities in outdoor programs, a higher level of supervision is required. The nighttime safety protocol will increase safety for all program participants and staff by allowing the program to determine what measures are needed depending on the population the program serves and the level of night supervision.

NEW RULE LIII

The proposed new rule is necessary to ensure the safety and well-being of program participants at all times. Due to the inherent risk factors of expeditions, a higher level of supervision is required.

NEW RULE LIV

The department proposes to adopt this new rule to ensure the safety of program participants when participating in a high adventure activity. The rule allows for the programs to develop policy and procedures appropriate for specific high adventure activities the programs utilize.

NEW RULE LV

The department proposes to adopt this new rule to increase the safety of program participants and staff when on expedition.

NEW RULE LVI

The department proposes to adopt this new rule to increase the safety of program participants and staff when on expedition.

NEW RULE LVII

The department proposes to adopt this new rule to increase the safety of program participants and staff when on expedition.

NEW RULE LVIII

The department proposes to adopt this new rule to ensure program participants have access to an adequate amount of food during an expedition to meet their nutritional needs.

NEW RULE LIX

The department proposes to adopt this new rule to ensure program participants have access to an adequate and safe water supply during an expedition.

NEW RULE LX

The department proposes to adopt this new rule to ensure program participants are prepared for conditions in the outdoors and have access to the appropriate clothing, equipment, and supplies to safely participate in an expedition.

NEW RULE LXI

The department proposes to adopt this new rule to provide for the safety and well-being of program participants engaging in a solo experience. The inherent risk associated with a solo experience places the youth in increased danger which requires additional safety precautions and supervision requirements in the proposed rule.

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: 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., September 20, 2019.

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

8. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was notified by email and letter on August 13, 2019.

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

/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 13, 2019.