

# Montana Code Annotated 2023

## Title 52 Family Services

### Youth Residential Services

#### Part 6

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52-2-601 Establishment of Substitute Care for Youth The legislature, in recognition of the wide and varied needs of youth in need of care, delinquent youth, and youth in need of intervention of this state and of the desirability of meeting these needs on a community level to the fullest extent possible, establishes by this part a system of substitute care to provide facilities and services for youth placed out of their homes and establishes a program to provide those facilities and services through local nonprofit corporations, counties, and the department of public health and human services. History: En. Sec. 6, Ch. 465, L. 1983; amd. Sec. 11, Ch. 609, L. 1987; amd. Sec. 2, Ch. 434, L. 1989; amd. Sec. 182, Ch. 546, L. 1995; amd. Sec. 6, Ch. 550, L. 1997; Sec. 41-3-1101, MCA 1999; redes. 52-2-601 by Sec. 17(3)(d), Ch. 281, L. 2001.

52-2-602 Definitions For the purposes of this part, the following definitions apply:

- (1) "Child-care agency" means a youth care facility in which substitute care is provided to 13 or more children or youth.
- (2) "Department" means the department of public health and human services provided for in **2-15-2201**.
- (3) "Foster child" means a person under 18 years of age who has been placed by the department in a youth care facility.
- (4) "Kinship foster home" means a youth care facility in which substitute care is provided to one to six children or youth other than the kinship parent's own children, stepchildren, or wards. The substitute care may be provided by any of the following:
  - (a) a member of the child's extended family;
  - (b) a member of the child's or family's tribe;
  - (c) the child's godparents;
  - (d) the child's stepparents; or
  - (e) a person to whom the child, child's parents, or family ascribe a family relationship and with whom the child has had a significant emotional tie that existed prior to the department's involvement with the child or family.
- (5) "Person" means any individual, partnership, voluntary association, or corporation.
- (6) "Respite care" means the provision of temporary, short-term supervision or care of a foster child, in an emergency or on an intermittent basis, to provide foster parents relief from the daily care requirements of a foster child whose mental or physical condition requires special or intensive supervision or care. Respite care includes but is not limited to homemaker services, child care, and emergency care either in the home or out of the home.
- (7) "Respite care provider" means a person who meets the qualifications and requirements established by the department to provide respite care under **52-2-627**.
- (8) "Substitute care" means full-time care of a youth in a residential setting who is placed by the department, another state agency, or a licensed child-placing agency. Individuals who provide care to youth who are recipients of services provided through the department's developmental

disabilities, mental health, or medicaid home and community-based services waiver program are also considered to be providing substitute care. This part does not apply when a person accepts the care and custody of a child on a temporary basis as an accommodation for the parent or parents, guardian, or relative of the child.

(9) "Transitional living program" means a program with the goal of self-sufficiency in which supervision of the living arrangement is provided for a youth who is 16 years of age or older and under 21 years of age.

(10) "Youth assessment center" has the meaning provided in **41-5-103**.

(11) "Youth care facility" means a facility that is licensed by the department or by the appropriate licensing authority in another state and in which facility substitute care is provided to youth. The term includes youth foster homes, kinship foster homes, youth group homes, youth shelter care facilities, child-care agencies, transitional living programs, and youth assessment centers.

(12) "Youth foster home" means a youth care facility in which substitute care is provided to one to six children or youth other than the foster parents' own children, stepchildren, or wards.

(13) "Youth group home" means a youth care facility in which substitute care is provided to 7 to 12 children or youth.

(14) "Youth shelter care facility" means a youth care facility that regularly receives children under temporary conditions until the court, probation office, department, or other appropriate social services agency has made other provisions for the children's care.

History: (1), (2), (5) thru (9)En. Sec. 7, Ch. 465, L. 1983; (3), (4)En. Sec. 1, Ch. 178, L. 1947; Sec. 10-520, R.C.M. 1947; redes. 10-1316 by Sec. 14, Ch. 328, L. 1974; R.C.M. 1947, 10-1316; amd. Sec. 3, Ch. 297, L. 1981; amd. Sec. 16, Ch. 465, L. 1983; MCA 1981, 41-3-501; redes. 41-3-1102 by Sec. 31(4), Ch. 465, L. 1983; amd. Sec. 1, Ch. 531, L. 1985; amd. Sec. 46, Ch. 609, L. 1987; amd. Sec. 1, Ch. 559, L. 1991; amd. Sec. 183, Ch. 546, L. 1995; amd. Sec. 9, Ch. 514, L. 1997; amd. Sec. 7, Ch. 550, L. 1997; amd. Sec. 17, Ch. 311, L. 2001; Sec. 41-3-1102, MCA 1999; redes. 52-2-602 by Sec. 17(3)(d), Ch. 281, L. 2001; amd. Sec. 29, Ch. 504, L. 2003.

52-2-603 Powers and Duties of Department (1) The department shall:

(a) administer all state and federal funds allocated to the department for youth foster homes, kinship foster homes, youth group homes, youth shelter care facilities, child-care agencies, and transitional living programs for youth in need of care, as defined in **41-3-102**;

(b) exercise licensing authority over all youth foster homes, kinship foster homes, youth group homes, youth shelter care facilities, child-care agencies, transitional living programs, and youth assessment centers;

(c) collect and disseminate information relating to youth in need of care;

(d) provide for training of program personnel delivering services;

(e) in cooperation with youth care facility providers, develop and implement standards for youth care facilities;

(f) maintain adequate data on placements it funds in order to keep the legislature properly informed of the following:

(i) the number of youth in need of care in out-of-home care facilities;

(ii) the cost per facility for services rendered;

(iii) the type and level of care of services provided by each facility;

(iv) a profile of out-of-home care placements by level of care; and

(v) a profile of public institutional placements;

(g) administer all funds allocated to the department for residential alcohol and drug abuse treatment for indigent youth in need of care, indigent youth in need of intervention, and indigent delinquent youth who require treatment; and

(h) provide reimbursement for mental health outpatient counseling services for persons who experience the death of a foster child while providing substitute care to the foster child in a youth care facility.

(2) The department may:

(a) enter into contracts with nonprofit corporations or associations or private organizations to provide substitute care for youth in need of care in youth care facilities;

(b) accept gifts, grants, and donations of money and property from public and private sources to initiate and maintain community-based services to youth;

(c) adopt rules to carry out the administration and purposes of this part.

(3) The department shall pay for room, board, clothing, personal needs, and transportation in youth foster care homes and youth group homes for youth who are in the physical or legal custody of the department and who need to be placed in the facilities. Payments for the clothing of a youth placed in a youth foster home must be provided to the extent that the youth needs a basic wardrobe or has a special clothing need. Upon approval by the department, payments under this subsection may continue for a youth up to 21 years of age who remains in substitute care. Payments under this subsection may not exceed appropriations for the purposes of this subsection.

(4) The department may provide a subsidy for a guardianship of a child who is in the department's legal custody if the guardianship has been approved by the department pursuant to **41-3-444** and in accordance with eligibility criteria established by department rule.

History: En. Secs. 8, 17, Ch. 465, L. 1983; amd. Sec. 8, Ch. 15, L. 1985; amd. Sec. 1, Ch. 177, L. 1985; amd. Sec. 2, Ch. 531, L. 1985; amd. Sec. 47, Ch. 609, L. 1987; amd. Sec. 3, Ch. 434, L. 1989; amd. Sec. 1, Ch. 629, L. 1991; amd. Sec. 18, Ch. 799, L. 1991; amd. Sec. 1, Ch. 19, Sp. L. November 1993; amd. Sec. 184, Ch. 546, L. 1995; amd. Sec. 8, Ch. 550, L. 1997; amd. Sec. 3, Ch. 127, L. 1999; amd. Sec. 6, Ch. 428, L. 1999; amd. Sec. 18, Ch. 311, L. 2001; Sec. 41-3-1103, MCA 1999; redes. 52-2-603 by Sec. 17(3)(d), Ch. 281, L. 2001; amd. Sec. 30, Ch. 504, L. 2003.

52-2-604 Transfer of Custody to Private Agency -- Reports When the legal custody of a youth is vested in a public agency under the provisions of this part, the public agency may transfer physical custody of the youth to an appropriate private agency and may purchase care and treatment from the private agency if the private agency submits periodic reports to the public agency covering the care and treatment the youth is receiving and the youth's responses to that care and treatment. These reports shall be made as frequently as the public agency or the court deems necessary, but not less often than once each 6 months for each youth. The private agency shall also afford an opportunity for a representative of the public agency to examine or consult with the youth as frequently as the public agency deems necessary.

History: En. 10-1227 by Sec. 27, Ch. 329, L. 1974; R.C.M. 1947, 10-1227; MCA 1981, 41-5-804; redes. 41-3-1105 by Sec. 31(4), Ch. 465, L. 1983; Sec. 41-3-1105, MCA 1999; redes. 52-2-604 by Sec. 17(3)(d), Ch. 281, L. 2001.

### 52-2-605 Through 52-2-610 Reserved

52-2-611 Payment for Support of Youth in Need of Care, Youth in Need of Intervention, Or Delinquent Youth (1) Whenever a youth who is a youth in need of care, a youth in need of intervention, or a delinquent youth is placed by the department of public health and human services or the department of corrections in a youth care facility, the department making the placement shall pay, within the limits of the appropriation for that purpose, a foster care payment to the youth care facility at a rate established by the department of public health and human services for the youth's board, clothing, personal needs, treatment, and room.

(2) The department shall conduct or arrange for the review required under **41-3-115**, or when applicable, **41-3-1010** of a youth placed in a youth care facility if the youth is placed by the department. History: En. Sec. 1, Ch. 48, L. 1949; amd. Sec. 1, Ch. 194, L. 1965; amd. Sec. 1, Ch. 264, L. 1971; amd. Sec. 48, Ch. 121, L. 1974; Sec. 10-524, R.C.M. 1947; redes. 10-1320 by Sec. 14, Ch. 328, L. 1974; amd. Sec. 22, Ch. 100, L. 1977; R.C.M. 1947, 10-1320; amd. Sec. 3, Ch. 543, L. 1979; amd. Sec. 1, Ch. 297, L. 1981; amd. Sec. 11, Ch. 465, L. 1983; MCA 1981, 41-3-104; redes. 41-3-1122 by Sec. 31(4), Ch. 465, L. 1983; amd. Sec. 4, Ch. 531, L. 1985; amd. Sec. 52, Ch. 609, L. 1987; amd. Sec. 8, Ch. 561, L. 1993; amd. Sec. 17, Ch. 610, L. 1993; amd. Sec. 187, Ch. 546, L. 1995; amd. Sec. 11, Ch. 550, L. 1997; amd. Sec. 9, Ch. 571, L. 2001; Sec. 41-3-1122, MCA 1999; redes. 52-2-611 by Sec. 17(3)(d), Ch. 281, L. 2001; amd. Sec. 1, Ch. 5, L. 2023.

52-2-612 Debt to State by Natural or Adoptive Parents -- Limitations If a child has been placed in substitute care, as defined in **41-5-103** and **52-2-602**, and a written agreement for payment of support has been entered into by the responsible parent or parents and the department, the debt for support is limited to the amount provided for in the agreement. However, if a court order for support is or has been entered, the order prevails over the agreement.

History: En. Sec. 10, Ch. 609, L. 1987; Sec. 41-3-1126, MCA 1999; redes. 52-2-612 by Sec. 17(3)(d), Ch. 281, L. 2001.

52-2-613 Through 52-2-615 Reserved

52-2-616 Power of Nonprofit Corporations to Establish Homes and to Receive Facilities and Funds

Nonprofit corporations or associations may be formed or organized for the purpose of establishing youth care facilities or to provide community-based services and to receive from the department and other governmental units such services, facilities, training, and funds as the department or other governmental units may be authorized by law to provide. History: En. Sec. 18, Ch. 465, L. 1983; Sec. 41-3-1131, MCA 1999; redes. 52-2-616 by Sec. 17(3)(d), Ch. 281, L. 2001.

52-2-617 Governmental Contracts with Nonprofit Organizations (1) The department of public health and human services and the department of corrections may contract with nonprofit corporations or associations to provide facilities and services for youth in need of care, youth in need of intervention, and delinquent youth in youth care facilities and are authorized to expend money that is appropriated or available for those purposes. The contracts must be based on the following considerations:

- (a) budgets submitted by the nonprofit corporation or association identifying fixed and variable costs;
- (b) reasonable costs of service;
- (c) appropriation level; and
- (d) availability of funds.

(2) Governmental units, including but not limited to counties, municipalities, school districts, or state institutions of higher learning, are authorized to provide funds, materials, facilities, and services for community-based services at their own expense. History: En. Sec. 19, Ch. 465, L. 1983; amd. Sec. 188, Ch. 546, L. 1995; amd. Sec. 12, Ch. 550, L. 1997; Sec. 41-3-1132, MCA 1999; redes. 52-2-617 by Sec. 17(3)(d), Ch. 281, L. 2001.

52-2-618 Through 52-2-620 Reserved

52-2-621 License Required (1) A person may not maintain or operate a youth care facility for any child or children within the meaning of this part without first securing a license from the department.

(2) A kinship care provider who provides unlicensed care for a child placed pursuant to the legal authority of the department must receive approval in writing from the department.

(3) An extended family member, as defined by the department, who provides unlicensed care for a youth who receives services provided through the department's developmental disabilities program, mental health program, or medicaid home and community-based services waiver program must receive approval in writing from the department.

(4) The department may not charge a fee for a license or approval granted under this section.

History: En. Sec. 2, Ch. 178, L. 1947; amd. Sec. 47, Ch. 121, L. 1974; Sec. 10-521, R.C.M. 1947; redes. 10-1317 by Sec. 14, Ch. 328, L. 1974; R.C.M. 1947, 10-1317; amd. Sec. 20, Ch. 465, L. 1983; MCA 1981, 41-3-502; redes. 41-3-1141 by Sec. 31(4), Ch. 465, L. 1983; amd. Sec. 10, Ch. 514, L. 1997; Sec. 41-3-1141, MCA 1999; redes. 52-2-621 by Sec. 17(3)(d), Ch. 281, L. 2001.

52-2-622 Issuance of License -- Authority of Issuing Agency -- Rules (1) The department may issue licenses to persons operating youth care facilities or grant approval of kinship or extended family care providers and prescribe the conditions upon which licenses and approvals may be issued. The department may make rules necessary for the licensure or approval, operation, and regulation of those facilities consistent with the welfare of the residents.

(2) The department may inspect all licensed facilities or approved homes and, as appropriate, undertake action, including but not limited to the revocation of licenses and approvals.

(3) The person providing care in the facilities or homes shall give the department any information that may be required and afford the department every reasonable opportunity for observing the operation of the facilities or homes.

(4) The department shall require an applicant for a youth foster home license to submit to a criminal and child protection background check, which must include information pertaining to criminal convictions, reports of domestic violence, and substantiated child abuse or neglect of children. The department shall require a criminal background investigation of each applicant by means of a fingerprint check by the Montana department of justice and the federal bureau of investigation.

History: En. Sec. 2, Ch. 178, L. 1947; amd. Sec. 47, Ch. 121, L. 1974; Sec. 10-521, R.C.M. 1947; redes. 10-1317 by Sec. 14, Ch. 328, L. 1974; R.C.M. 1947, 10-1317; amd. Sec. 21, Ch. 465, L. 1983; MCA 1981, 41-3-503; redes. 41-3-1142 by Sec. 31(4), Ch. 465, L. 1983; amd. Sec. 11, Ch. 514, L. 1997; amd. Sec. 20, Ch. 311, L. 2001; Sec. 41-3-1142, MCA 1999; redes. 52-2-622 by Sec. 17(3)(d), Ch. 281, L. 2001.

52-2-623 Penalty for Failure to Obtain License Any person who maintains or operates a youth care facility or assists in operating or maintaining such facility without having first obtained a license in writing as hereto provided shall be guilty of a misdemeanor.

History: En. Sec. 4, Ch. 178, L. 1947; Sec. 10-523, R.C.M. 1947; redes. 10-1319 by Sec. 14, Ch. 328, L. 1974; R.C.M. 1947, 10-1319; amd. Sec. 22, Ch. 465, L. 1983; MCA 1981, 41-3-504; redes. 41-3-1143 by Sec. 31(4), Ch. 465, L. 1983; Sec. 41-3-1143, MCA 1999; redes. 52-2-623 by Sec. 17(3)(d), Ch. 281, L. 2001.

#### 52-2-624 Through 52-2-626 Reserved

52-2-627 Respite Care (1) The department shall provide respite care, to the extent funds are available, for foster children who are:

(a) persons with developmental disabilities and either on a respite care waiting list or not eligible for respite care from another program;

(b) medically demanding because they are nonambulatory or have other special needs requiring intensive supervision or care; or

(c) suffering from severe emotional problems that are manifested in serious behavior problems.

(2) Respite care may be provided by the department on an hourly, daily, or weekly basis at a rate of payment to be determined by the department.

(3) Respite care may not be provided in an institutionalized setting except in cases involving foster children who require intensive supervision or care.

History: En. Sec. 2, Ch. 559, L. 1991; amd. Sec. 21, Ch. 255, L. 1995; Sec. 41-3-1151, MCA 1999; redes. 52-2-627 by Sec. 17(3)(d), Ch. 281, L. 2001.

52-2-628 Respite Care Providers -- Recruitment, Training, And Employment -- Qualifications (1)

The department shall either directly or by contract with public or private, nonprofit agencies recruit, train, and employ respite care providers.

(2) Respite care providers shall meet the qualifications and requirements specified in rules adopted by the department pursuant to **52-2-603**.

History: En. Sec. 3, Ch. 559, L. 1991; Sec. 41-3-1152, MCA 1999; redes. 52-2-628 by Sec. 17(3)(d), Ch. 281, L. 2001.