

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

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 37.97.102, 37.97.106,) PROPOSED AMENDMENT
37.97.126, 37.97.127, 37.97.132,)
37.97.142, 37.97.148, 37.97.903,)
37.97.905, 37.97.906, and 37.97.907)
pertaining to youth care facility)
requirements)

TO: All Concerned Persons

1. On July 1, 2021, at 9:00 a.m., the Department of Public Health and Human Services will hold a public hearing via remote conferencing to consider the proposed amendment of the above-stated rules. Because there currently exists a state of emergency in Montana due to the public health crisis caused by the coronavirus, there will be no in-person hearing. Interested parties may access the remote conferencing platform in the following ways:

(a) Join Zoom Meeting at: <https://mt-gov.zoom.us/j/81082335828>; meeting ID: 810 8233 5828; or

(b) Dial by telephone +1 646 558 8656; meeting ID: 810 8233 5828. Find your local number: <https://mt-gov.zoom.us/j/81082335828>.

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 June 25, 2021, to advise us of the nature of the accommodation that you need. Please contact Heidi Clark, 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 amended provide as follows, new matter underlined, deleted matter interlined:

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

(1) through (3) remain the same.

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

(a) and (b) remain the same.

(c) ~~chemical dependence issues~~ substance use;

(d) and (e) remain the same.

(f) psychiatric history (interventions, responses to treatment, medications);
and

(g) developmental history;

(h) medical history;

~~(g)~~ (i) social and educational history; and

(j) identified strengths and needs.

(5) through (7) remain the same.

(8) "Discharge plan" means a realistic plan developed at the time of admission to transition the youth to a less restrictive and appropriate placement with specific services identified and available.

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

(9) "Family" means the youth, the youth's biological, adoptive, or foster family members, siblings, grandparents, or someone who, though unrelated by birth or marriage, has such a close emotional relationship with the youth that they may be considered part of the family.

(10) through (12) remain the same.

(13) "Mental health professional" means a licensed clinical psychologist, licensed clinical social worker (LCSW), licensed marriage and family therapist (LMFT), licensed clinical professional counselor (LCPC), or any of following licensure candidates under Title 37, chapter 22, 23, or 37, MCA:

(a) social worker licensure candidate;

(b) professional counselor licensure candidate; or

(c) marriage and family therapist licensure candidate.

(13) through (16) remain the same but are renumbered (14) through (17).

~~(17)~~ (18) "Program manager" means an employee of a therapeutic group home provider who is responsible for the overall management and supervision of the program and trains and supervises direct care staff. A program manager shall must have a bachelor's degree in human services, or the experience and education, equivalent to a bachelor's degree. Human services experience equivalent to a bachelor's degree for a nondegree program manager is six years. Each year of post-secondary education in human services for a nondegree program manager equals one year of experience.

(18) through (21) remain the same but are renumbered (19) through (22).

~~(22) (23) "Therapeutic intervention" means interventions provided by the program manager under the supervision of the LCS to provide youth with activities and opportunities to improve social, emotional and/or behavioral skill development and reduce symptoms of the youth's serious emotional disturbance. Interventions include implementing behavior modification techniques and offering psycho-educational groups and activities. Interventions may be provided to the youth individually, in a group setting or with the youth and family that are implemented as~~

described in the TGH trauma informed treatment model addressing goals and objectives identified in the youth's treatment plan.

~~(23)~~ (24) "Therapeutic milieu" means the entire treatment environment in which comprehensive treatment is delivered as described in the TGH's policy and procedures.

~~(24)~~ (25) "Therapeutic services" means the provision of therapy and therapeutic interventions to reduce the impairment of the youth's mental disability and to improve the youth's functional level; to alleviate the emotional disturbances; to reverse or change maladaptive patterns of behavior, and to encourage personal growth and development. Therapeutic services must be provided under a treatment framework that involves understanding, recognizing, and responding to the effects of all types of trauma and in accordance with recognized principles of a trauma-informed approach and trauma specific interventions to address trauma's consequences and facilitate healing.

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

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

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

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

37.97.106 YOUTH CARE FACILITY (YCF): LICENSES (1) remains the same.

(2) A therapeutic group home must be accredited by the following independent organizations:

(a) The Commission on Accreditation of Rehabilitation Facilities (CARF);

(b) The Joint Commission on Accreditation of Healthcare Organizations (JCAHO);

(c) Council on Accreditation (COA); or

(d) another independent, not-for-profit accrediting organization that has been approved by the Secretary of the U.S. Department of Health and Human Services.

~~(2)~~ through ~~(5)~~ remain the same but are renumbered ~~(3)~~ through ~~(6)~~.

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

IMP: 41-3-1142, 52-2-113, 52-2-603, 52-2-622, MCA

37.97.126 YOUTH CARE FACILITY (YCF): DISCHARGE SUMMARY

(1) The YCF must develop and implement written discharge policies and procedures that include discharge planning to begin at the time of admission.

~~(4)~~ (2) Within ten business days of the discharge of a youth from the YCF, a discharge report must be completed, and include:

- (a) through (g) remain the same.
- (h) youth's continuing needs and recommendations for follow-up services for the youth;
- (i) and (j) remain the same.
- (3) Therapeutic group homes must document that the youth, parent/legal guardian, and placing agency participated in the development of the discharge plan and summary.
- (2) remains the same but is renumbered (4).

AUTH: 52-2-111, 52-2-603, 52-2-622, MCA
IMP: 52-2-113, 52-2-603, 52-2-622, MCA

- 37.97.127 YOUTH CARE FACILITY (YCF): CASE RECORDS (1) A YCF shall maintain a written case record for each youth which shall include administrative, treatment, and educational data from the time of admission until the time the youth is discharged from the YCF. A youth's case record must include but is not limited to the following:
- (a) remains the same.
 - (b) the name, address, and telephone number of the parent(s) or guardian of the youth;
 - (i) therapeutic group homes must maintain contact information on all known family members and document outreach efforts;
 - (c) through (2) remain the same.

AUTH: 52-2-111, 52-2-603, 52-2-622, MCA
IMP: 52-2-113, 52-2-603, 52-2-622, MCA

- 37.97.132 YOUTH CARE FACILITY (YCF): GENERAL REQUIREMENTS FOR ALL ADMINISTRATORS, STAFF, INTERNS, AND VOLUNTEERS (1) remains the same.
- (2) A YCF must maintain records for each staff member, volunteer, contracted personnel, and intern regarding the following:
- (a) through (h) remain the same.
 - (i) "personal statement of health for licensure" form as provided by the department; ~~and~~
 - (j) a copy of an independent contractor status and contractual agreement for contacted personnel; and
 - (j) remains the same but is renumbered (k).
 - (3) through (8) remain the same.

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

- 37.97.142 YOUTH CARE FACILITY (YCF): STAFF TRAINING (1) through (3) remain the same.
- (4) Therapeutic group homes must include training on trauma informed care in initial orientation training.

(4) through (8) remain the same but are renumbered (5) through (9).

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

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

37.97.148 YOUTH CARE FACILITY (YCF): CASE PLAN (1) Each YCF shall must develop a case plan for each youth in care. A case plan is a specific plan for providing care, treatment, and services of any kind to a specific youth.

(2) The case plan must include but is not limited to the following:

(a) through (e) remain the same.

(f) measurable goals and objectives; and

(g) the responsibilities of the youth, staff, and custodial parent or guardian for meeting the goals and objectives; and

(h) identification of all treatment members.

(3) The initial case plan must be developed with the youth (over the age of 5), parent/legal guardian, and placing agency and within seven business days after admission.

~~(a) be developed within seven business days after admission; and~~

~~(b) be updated at least every three months from the day of development.~~

~~(4) The placing agency, parent or guardian, and the youth must be involved in developing the case plan.~~

(4) The case plan must be reviewed and updated at least every three months from the day of development, be conducted face-to-face with the youth, and document the input of the youth (over the age of 5), parent/legal guardian, and placing agency.

(a) If the parent/legal guardian or placing agency are unable to attend face-to-face, telecommunication must be provided at a time that is convenient for the parent/legal guardian and placing agency.

(5) remains the same.

(6) ~~In addition to the requirements of this rule, therapeutic~~ Therapeutic group homes must also meet the treatment plan requirements in ARM 37.97.907.

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

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

37.97.903 THERAPEUTIC GROUP HOMES (TGH): STAFFING (1) In addition to the requirements specified in ~~ARM 37.97.142~~ ARM 37.97.141, TGH providers must meet staffing requirements specified in this rule to provide a therapeutic environment and treatment interventions identified in the youth's individual treatment plan.

(2) A TGH with four or fewer youth shall must have a ratio of youth to direct care staff of no more than 2:1 present for 15 hours each day between 7:00 a.m. and 7:30 a.m., or beginning at some other reasonable morning half hour which is approximately 15 hours prior to the bedtime of the youth.

(3) A TGH with five or more youth shall must have a minimum of two direct care staff present for 15 hours each day between 7:00 a.m. and 7:30 a.m., or beginning at some other reasonable morning half hour which is approximately 15

hours prior to the bedtime of the youth.

(4) Exceptions to youth to direct care staff ratio:

(a) and (b) remain the same.

(c) The program manager may be counted in the direct care ratio during the morning hours between 6:00 a.m. and 8:00 a.m., or beginning at some other reasonable two-hour time frame prior to the youth leaving for school.

(5) remains the same.

(6) ~~Each~~ A TGH must employ a program manager shall be who is responsible for no more than 16 youth. The program manager may not be counted in the direct care staffing to youth ratio except as provided in (4)(b) and (c).

(7) An individual providing therapy A TGH must employ or contract with a mental health professional as defined in ARM 37.97.102(25) ARM 37.97.102(13) must meet the requirements of ARM 37.97.102(9). Services must be provided on-site or as specified in the treatment model. The mental health professional must not be counted in the direct care staffing to youth ratio.

(8) Program managers and ~~lead clinical staff~~ mental health professionals may be the same employee as long as they meet the minimum qualifications of both positions and have sufficient time to carry out the functions of both positions.

~~(9) Lead clinical staff shall be responsible for the supervision and overall provision of treatment services to youth in the TGH. The lead clinical staff must not be counted in the direct care staff to youth ratio.~~

(9) The TGH must have nursing services available 24 hours a day seven days a week as described in the TGH's treatment model.

(10) remains the same.

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

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

37.97.905 THERAPEUTIC GROUP HOMES (TGH): CLINICAL ASSESSMENT ~~(1) A clinical assessment must be completed on a youth admitted to a TGH within ten business days (Monday through Friday), of admission unless a current clinical assessment that has been completed within the last 12 months is submitted with the youth's referral packet.~~

(1) A TGH must develop written policies and procedures to implement a trauma informed treatment model designed to address the identified emotional, behavioral, and clinical needs of the youth.

(2) The mental health professional must complete a clinical assessment on a youth admitted to a TGH within ten business days (Monday through Friday) of admission, unless a clinical assessment has been completed within the last three months prior to admission and is submitted with the youth's referral packet.

(3) All assessments must be documented in the youth's case record.

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

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

37.97.906 THERAPEUTIC GROUP HOMES (TGH): THERAPEUTIC SERVICE REQUIREMENTS (1) The therapeutic services provided by the ~~lead~~

~~clinical staff and the program manager~~ mental health professionals are "therapy," and services provided by the program manager or direct care staff are "therapeutic intervention" services. The purpose of ~~both~~ therapeutic services is to:

(a) through (d) remain the same.

(2) Each youth must receive 75 minutes of therapy and 75 minutes of therapeutic intervention services per week (Sunday through Saturday). Therapy includes individual and group or family therapy as clinically indicated based on the specific treatment needs of the youth. Therapy requirements include the following:

(a) Individual therapy must be provided at least 50 minutes out of the required 75 minutes per week. Individual therapy may be provided in two 25- minute sessions per week as clinically appropriate. ~~The lead clinical staff shall~~ mental health professional must document specific reasons why a 50-minute therapy session cannot be provided.

(b) Family therapy must be provided to the youth ~~and biological, adoptive, or foster family members with whom the youth previously resided or plans to reside with upon discharge~~ and family members as defined in ARM 37.97.102(9) and provided as outlined in the youth's treatment plan. If family therapy is not appropriate based on the particular situation of the youth, ~~the lead clinical staff shall~~ mental health professional must document specific reasons why family therapy cannot be provided.

(3) In the event the ~~lead clinical staff and/or program manager~~ mental health professional is unavailable due to vacation, illness, or if the youth is on a home visit, or similar circumstance, ~~therapeutic services can be suspended for no more than 780 minutes per calendar year per youth. The amount of minutes will be prorated for youth placed in the facility for less than one year~~ alternative arrangements for therapy must be made based on the program's policy and procedures. The TGH must document why therapy was not provided and what alternative arrangements were made.

(4) Therapy sessions and therapeutic interventions must address the youth's treatment goals and objectives in the treatment plan, and each session must be documented in the case record by the ~~lead clinical staff~~ individual providing the service. Documentation must include the signature of the person who provided the therapy service and the date, start and end times of each session.

~~(5) Each youth shall receive from the program manager or lead clinical staff 75 minutes of therapeutic interventions per week. Therapeutic interventions are as clinically indicated based on the specific needs of the youth.~~

(6) remains the same but is renumbered (5).

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

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

37.97.907 THERAPEUTIC GROUP HOMES (TGH): TREATMENT PLAN

~~(1) In addition to the requirements specified in ARM 37.97.148, the treatment plan must document specific and measurable objectives and interventions based on a clinical assessment related to the youth's mental health needs.~~

~~(2) Treatment plans must be reviewed and updated at least every 30 days.~~

~~(3) All direct care staff and treatment team members, including the lead~~

~~clinical staff involved in the care of the youth, shall read and sign off on the treatment plan within seven days of its development or update.~~

~~(4) A copy of the treatment plan must be provided to the youth's placing agency and custodial parent or guardian within ten days of the plan's development or update.~~

(1) A TGH must develop and implement a treatment plan for each youth in care based on the results of the clinical assessment.

(2) The initial treatment plan must be developed within 10 business days of admission and include:

(a) names of treatment team members including appropriate biological family, relatives, and fictive kin of the youth, appropriate school personnel, placing agency representative, and other professionals as appropriate;

(b) contact information for all treatment team members;

(c) the youth's physical and medical needs;

(d) behavior management issues;

(e) short-term and long-term mental and behavioral goals with corresponding time frames;

(f) specific interventions with corresponding time frames in accordance with the TGH treatment model;

(g) identifying how the TGH will facilitate participation of family members in the treatment of the youth, including siblings;

(h) identifying how the TGH will facilitate family visitation or contact outside of family therapy;

(i) criteria for the youth's completion of the program;

(j) education plans; and

(k) a discharge plan, including planning for aftercare services, and estimated discharge date.

(3) Treatment plans must be reviewed and updated at least every 30 days from the date of development and:

(a) be conducted face-to-face with the youth and document the input of the youth (over the age of 5), parent/legal guardian, and placing agency;

(b) include all treatment team members;

(c) be conducted at a time that is convenient for the youth's family; and

(d) if treatment team members are unable to attend face-to-face, telecommunication must be provided at a time that is convenient for the parent/legal guardian and placing agency;

(4) The TGH must document in the youth's case record notification to all treatment team members of the time and place of the treatment plan review.

(5) All direct care staff and treatment team members, including the mental health professional involved in the care of the youth, must read and sign off on the treatment plan within seven days of its development or update.

(6) A copy of the treatment plan must be provided to the youth's placing agency and parent/legal guardian within ten days of the plan's development or update.

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

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

4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) proposes to amend Youth Care Facility administrative rules to incorporate requirements of the Family First Prevention Services Act (act) signed into law on February 9, 2018. The law implemented changes to federal Title IV-E funding requirements which allow reimbursement for care in certain residential treatment programs. In Montana, these programs are identified as Youth Care Facility, Therapeutic Group Home facilities. The act seeks to limit the use of congregate or group care for children with a new emphasis on family care. The proposed changes implement the specific requirements of the act and focus on increasing family involvement to reduce the amount of time the youth spends in the group setting and return to a family setting.

ARM 37.97.102 is proposed to be amended to update definitions used throughout this chapter. The department has amended the definition of "family" to include requirements of the act. Minor changes are also provided for clarity.

ARM 37.97.106 is proposed to be amended to increase oversight for therapeutic group homes through an accrediting organization that has been approved by the secretary of the U.S. Department of Health and Human Services.

ARM 37.97.126 is proposed to be amended to increase the emphasis on discharge planning of the youth and to increase involvement of family members and placing agencies in the youth's discharge plan.

ARM 37.97.127 is proposed to be amended to increase contact and improve relationships with the youth and family members.

ARM 37.97.132 is proposed to be amended to ensure documentation that independent contractors meet the licensing requirements of this rule and identify the services provided to youth in care.

ARM 37.97.142 is proposed to be amended to ensure all staff receive training on the provider's trauma informed treatment model prior to working with youth.

ARM 37.97.148 is proposed to be amended to ensure the youth and the family are provided the opportunity to participate in and have input into the youth's case plan.

ARM 37.97.903 is proposed to be amended to allow changes to staffing requirements of the program manager and mental health professional and adding licensed nursing services as required by the act. The proposed changes will increase the amount of time the program manager can provide direct care, allow direct care staff to provide therapeutic interventions and will increase the provider's ability to provide services by a licensed clinician.

ARM 37.97.905 is proposed to be amended to implement a trauma informed treatment model and ensure documentation of an updated clinical assessment for the youth.

ARM 37.97.906 is proposed to be amended to clarify which staff can provide therapy and therapeutic interventions.

ARM 37.97.907 is proposed to be amended to implement the trauma informed treatment model into the treatment planning process and to increase family involvement in order to improve the quality of treatment services provided to the youth, maintain family connections, and increase family involvement.

Fiscal Impact

The department does not anticipate that the proposed amendments will cause any fiscal impact.

The department intends for these proposed amendments to be effective July 24, 2021.

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: Heidi Clark, 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., July 9, 2021.

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, do not apply.

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

10. Section 53-6-196, MCA, requires that the department, when adopting by rule proposed changes in the delivery of services funded with Medicaid monies,

make a determination of whether the principal reasons and rationale for the rule can be assessed by performance-based measures and, if the requirement is applicable, the method of such measurement. The statute provides that the requirement is not applicable if the rule is for the implementation of rate increases or of federal law.

The department has determined that the proposed program changes presented in this notice are not appropriate for performance-based measurement and therefore are not subject to the performance-based measures requirement of 53-6-196, MCA.

/s/ Aleea Sharp
Aleea Sharp
Rule Reviewer

/s Erica Johnston for Adam Meier
Adam Meier, Director
Public Health and Human Services

Certified to the Secretary of State June 1, 2021.