

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 37.51.216 and 37.51.901) PROPOSED AMENDMENT
pertaining to youth foster homes)

TO: All Concerned Persons

1. On August 12, 2021, at 10:00 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. Interested parties may access the remote conferencing platform in the following ways:

(a) Join Zoom Meeting at: <https://mt-gov.zoom.us/j/81356270597>; meeting ID: 813 5627 0597; or

(b) Dial by telephone +1 646 558 8656; meeting ID: 813 5627 0597. Find your local number: <https://mt-gov.zoom.us/u/kKbStg8ts>.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Public Health and Human Services no later than 5:00 p.m. on August 6, 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:

37.51.216 YOUTH FOSTER HOMES: NEGATIVE LICENSING ACTION

(1) The department, through written notice to the applicant, licensee, or potential emergency placement will deny, or revoke, ~~or restrict~~ a license or emergency placement upon finding that the applicant, licensee, or member of the applicant's or licensee's household has a conviction for any of the following types of crimes:

(a) through (4) remain the same.

AUTH: 52-1-103, 52-2-111, 52-2-601, 52-2-621, 52-2-622, MCA

IMP: 2-4-631, 52-1-103, 52-2-111, 52-2-601, 52-2-621, 52-2-622, MCA

37.51.901 YOUTH FOSTER HOMES: ENVIRONMENTAL AND SAFETY REQUIREMENTS (1) through (16) remain the same.

~~(17) Foster children in the care or custody of the department may not participate in high risk activities including, but not limited to hunting, snowmobiling,~~

~~four-wheeling, or rock climbing without written consent of the department community social worker supervisor for the child who will determine if consent from the birth parents is needed. Foster parents caring for a child who is not in the care or custody of the department must work with the agency responsible for the child to ensure that permission to participate in high risk activities is obtained.~~

(17) Foster parents will exercise careful and sensible parental decisions that maintain the health, safety, and best interests of a child while at the same time encouraging the emotional and developmental growth of the child. All foster parents shall use this standard when determining whether to allow a child in foster care, under the responsibility of the State, to participate in extracurricular, enrichment, cultural, and social activities.

AUTH: 52-1-103, 52-2-111, 52-2-601, 52-2-621, 52-2-622, MCA

IMP: 52-1-103, 52-2-111, 52-2-601, 52-2-621, 52-2-622, MCA

4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services Child and Family Services Division (department) is responsible for the licensure of all youth foster homes in the state of Montana. The department is directed by 52-1-103, MCA. Montana Administrative Rules (ARM) for licensing requirements must be in compliance with the Social Security Act (SSA) § 471 [42 U.S.C. 671] including sections (20)(A) and (24).

ARM 37.51.216

The proposed amendment to ARM 37.51.216 removes the word "restrict" from the negative licensing action rule based on the results of criminal background checks of foster care applicants or individuals living in the home. Removing the word "restrict" brings the rule into compliance with the mandates in the SSA 471 (20)(A). SSA does not allow for "restricting" a foster care license with certain criminal history and instead requires that the license is not granted.

ARM 37.51.901

The proposed amendments to ARM 37.51.901 update the language in the Montana foster care licensing rule to align with the requirements mandated in the Preventing Sex Trafficking and Strengthening Families Act of 2014 which requires the designated state authority or authorities to: (1) develop a reasonable and prudent parent standard for the child's participation in age or developmentally appropriate extracurricular, enrichment, cultural, and social activities; and (2) apply this standard to any foster family home or child care institution receiving funds under title IV part E.

The department has developed reasonable and prudent parenting standards and has applied them in field practice and training for foster families but lack

administrative rules that require the standard be applied to any foster family home or child care institution receiving funds under title IV part E.

Fiscal Impact

The department expects there to be no fiscal impact.

The department intends for these proposed amendments to be effective retroactive to May 1, 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., August 20, 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.

/s/ Caroline Warne
Caroline Warne
Rule Reviewer

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

Certified to the Secretary of State July 13, 2021.