

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

In the matter of the amendment of ) NOTICE OF AMENDMENT  
ARM 37.51.102, 37.51.202, )  
37.51.203, 37.51.207, 37.51.209, )  
37.51.210, 37.51.216, 37.51.217, )  
37.51.301, 37.51.305, 37.51.310, )  
37.51.311, 37.51.602, 37.51.603, )  
37.51.608, 37.51.801, 37.51.802, )  
37.51.810, 37.51.816, 37.51.820, )  
37.51.825, 37.51.901, 37.51.902, )  
37.51.1001, 37.51.1404, and )  
37.51.1410 pertaining to foster care )  
licensing )

TO: All Concerned Persons

1. On February 9, 2024, the Department of Public Health and Human Services published MAR Notice No. 37-1004 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 214 of the 2024 Montana Administrative Register, Issue Number 3.

2. The department has amended the following rules as proposed: ARM 37.51.202, 37.51.203, 37.51.207, 37.51.209, 37.51.216, 37.51.217, 37.51.305, 37.51.310, 37.51.311, 37.51.602, 37.51.603, 37.51.801, 37.51.802, 37.51.810, 37.51.816, 37.51.820, 37.51.825, 37.51.901, 37.51.902, 37.51.1001, 37.51.1404, and 37.51.1410.

3. The department has amended the following rules as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

37.51.102 YOUTH FOSTER HOMES: DEFINITIONS The following definitions apply to youth foster home licensing rules:

(1) through (17) remain as proposed.

~~(16)~~(18) "Youth foster home" or "foster home" means a youth care facility in which care is provided to a maximum of six children or youth residing in the home, other than including the foster parents' own children, stepchildren, or wards; ~~and no more than two children under the age of two. Exceptions to these limits can be approved.~~

AUTH: 52-1-103, 52-2-111, 52-2-601, 52-2-621, 52-22-622, MCA

IMP: 52-1-103, 52-2-102, 52-2-111, 52-2-112, 52-2-113, 52-2-115, 52-2-601, 52-2-603, 52-2-621, 52-2-622, MCA

37.51.210 YOUTH FOSTER HOMES: GRANTING LICENSURE EXCEPTIONS (1) through (4) remain as proposed.

(5) The department shall review the circumstances and the foster parents' ability to maintain safety and well-being for all children in the home when a foster home exceeds more than six children in the home. ~~may grant an exception to a youth foster home or foster home that has more than the maximum of six children or youth residing in the home, including the foster parents' own children, stepchildren, wards, or more than two children under the age of two, after careful review of extenuating circumstances that justify exceeding the maximum numbers allowed.~~

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

37.51.301 YOUTH FOSTER HOMES: GENERAL REQUIREMENTS FOR FOSTER PARENTS AND OTHER HOUSEHOLD MEMBERS (1) and (2) remain as proposed.

(3) A foster parent shall not provide exposure to sexual or violent language and behavior inappropriate to the foster child's age, including but not limited to visual or other media depictions, and music, while in the foster parent's home.

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

37.51.608 YOUTH FOSTER HOMES: REPORTS OF SERIOUS INCIDENTS AND THREATS (1) Foster parents shall as soon as possible but in not ~~less~~ more than 24 hours report any serious incident as defined in ARM 37.51.102(13) involving a foster child to the person or agency which placed the child and to the department licensing worker or the licensed child placing agency under whose jurisdiction the foster home operates.

(2) remains as proposed.

(3) Foster parents shall as soon as possible but in not ~~less~~ more than 24 hours report any foster child who has run away from home to the police and the department's Centralized Intake Bureau at 1 (866) 820-5437.

(4) and (5) remain as proposed.

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

4. The department has thoroughly considered the comments and testimony received. A summary of the comments received, and the department's responses are as follows:

COMMENT #1: One commenter expressed concern regarding the change to the definition of a "youth foster home" in ARM 37.51.102(18) which recommended limits to the number of children allowed in a youth foster home. During the March 12, 2024, and May 9, 2024, meetings of the Children, Families, Health and Human

Services Interim Committee (interim committee), members of the interim committee questioned whether the proposed changes to the definition were consistent with the statutory definition.

RESPONSE #1: The proposed change to ARM 37.51.102(18) is part of a larger effort to overhaul the rules that govern the licensing process for youth foster homes. The department's intent in proposing to modify the definition of "youth foster home" in ARM 37.51.102(18) was to ensure that foster families have the necessary resources to appropriately care for children in foster care by limiting the number of children in a foster home but providing an exception process in ARM 37.51.210(5). The exception process would have permitted the department to grant exceptions to the limits on foster family size.

Upon further programmatic and legal review, the department recognizes that there may be confusion concerning how the proposed definition, even when coupled with the exception process, aligned with the statute. To avoid such confusion, the department will retain the current definition of a "youth foster home," which conforms to the statutory definition. The department makes corresponding changes to ARM 37.51.210(5), by eliminating the proposed exception process, which is no longer necessary. To ensure that foster parents can appropriately care for foster children, the department adopts, in its place, a requirement that the department review the circumstances and the foster parents' ability to maintain safety and well-being for all children in the home when there are more than six children in the foster home.

COMMENT #2: A commenter expressed a concern regarding ARM 37.51.825(12) regarding children being exposed to secondhand smoke.

RESPONSE #2: The proposed changes to ARM 37.51.825(12) do not change the status of secondhand smoke. The department acknowledges the concerns in general, but the rule proposal will remain the same.

COMMENT #3: A commenter expressed concern on ARM 37.51.816 regarding the ability of siblings over the age of five to share a room in a non-kinship home on a temporary basis.

RESPONSE #3: The changes proposed to ARM 37.51.816 do not address the issue raised by the commenter. The department acknowledges the concerns in general but makes no changes to the rule.

COMMENT #4: A member of the interim committee commented that revised ARM 37.51.210(5) had some grammatical errors and recommended that it be reviewed, although no substantive concerns were noted.

RESPONSE #4: The department acknowledges the member's comment. As noted in Response #1, the department has revised ARM 37.51.210(5) to more clearly convey the intent of the department which is to ensure that foster parents are able to

maintain the safety and well-being of all children that are placed in the foster home. The revision eliminates the grammatical issues noted by the member.

COMMENT #5: Members of the interim committee expressed concern over the proposed removal of ARM 37.51.301(3). The interim committee saw this rule as an important provision governing the conduct of foster parents and protecting children while in foster care.

RESPONSE #5: In response to the members' comment, the department explained during the interim committee meeting that the department's intent in removing this rule was to prevent a foster parent from being sanctioned in the event a foster child is exposed to inappropriate content while outside of the care of the foster parent and noted that the addition of (4) to ARM 37.51.801 was intended to address the obligation on foster parents to make careful and sensible decisions that maintain the health, safety, and best interests of the foster child. The department further explained that it was concerned that potential foster parents may be deterred from providing foster care if negative action could result from circumstances beyond their control. In response to the interim committee's comment, the department has elected to retain ARM 37.51.201(3) in an amended form, to expressly prohibit a foster parent from exposing a foster child to language and behavior inappropriate to the foster child's age while inside the foster home.

COMMENT #6: During the May 9, 2024, interim committee meeting, a member requested that the department review the proposed language in ARM 37.51.608(1) and (3), asking whether the phrase "but in not less than 24 hours" should be "but in not more than 24 hours."

RESPONSE #6: The department has reviewed the questioned language and agrees that the language in ARM 37.51.608(1) and (3) should be revised as suggested.

/s/ Paula M. Stannard  
Paula M. Stannard  
Rule Reviewer

/s/ Charles T. Brereton  
Charles T. Brereton, Director  
Department of Public Health and Human  
Services

Certified to the Secretary of State May 28, 2024.