

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 37.99.102, 37.99.115, )  
37.99.118, 37.99.119, 37.99.125, )  
37.99.127, 37.99.132, 37.99.172, and )  
37.99.216 pertaining to Private )  
Alternative Adolescent Residential )  
Programs )

TO: All Concerned Persons

1. On May 10, 2024, the Department of Public Health and Human Services published MAR Notice No. 37-1050 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 1024 of the 2024 Montana Administrative Register, Issue Number 9.

2. The department has amended the following rules as proposed: ARM 37.99.115, 37.99.119, 37.99.125, 37.99.127, 37.99.132, and 37.99.216.

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:

37.99.102 PRIVATE ALTERNATIVE ADOLESCENT RESIDENTIAL PROGRAMS: DEFINITIONS (1) through (20) remain as proposed.

(21) "Serious incident" means suicide attempt, use of excessive physical force by staff, use of a restraint or seclusion, physical or sexual assault of a program participant by staff, or another program participant, 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 another program participant, a near miss or the death of a program participant, elopement, or an incident that involves law enforcement.

(22) remains as proposed.

AUTH: 52-2-803, 52-2-805, MCA  
IMP: 52-2-802, 52-2-803, 52-2-805 MCA

37.99.118 PRIVATE ALTERNATIVE ADOLESCENT RESIDENTIAL PROGRAMS: WRITTEN AGREEMENT (1) through (1)(d) remain as proposed.

(e) a statement describing the communication policy, which must include a minimum of one confidential video telephonic communication contact per week between the youth and the youth's parents/legal guardian or foster parent(s), in addition to any therapeutic contact (family therapy), which;

- (i) is confidential, i.e., in a private setting with no other individuals in the vicinity of being able to see or hear what is being discussed; and
- (ii) is allocated a minimum of 15 minutes for the confidential video communication between youth and the youth's parents/legal guardian;
- (f) through (3) remain as proposed.

AUTH: 52-2-803, 52-2-805, MCA  
IMP: 52-2-803, 52-2-805, 52-2-809, MCA

37.99.172 PRIVATE ALTERNATIVE ADOLESCENT RESIDENTIAL PROGRAMS: USE OF CRISIS INTERVENTION AND PHYSICAL RESTRAINT STRATEGIES (1) remains as proposed.

- (2) The crisis intervention and physical restraint policies and procedures must include evidenced-based training and include:
  - (a) through (6) remain as proposed.

AUTH: 52-2-803, 52-2-805, MCA  
IMP 52-2-803, 52-2-805, 52-2-809, 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: Two commenters expressed concerns that the requirement to have a fixed number telephone to the child abuse hotline operated by the department was missing from being addressed in the Administrative Rules of Montana.

Response #1: Section 52-2-805(5), MCA addresses the requirement for Private Alternative Adolescent Residential Programs (PAARPs) to have "a fixed number telephone to the child abuse hotline operated by the department that is readily available to enrolled participants 24 hours a day." Because this is specifically stated in statute, it is unnecessary that it be included in rule.

Comment #2: Three commenters requested the department define "confidential" specific to the requirement of allowance for PAARP participants to have confidential video telephone calls with the youth's parents/legal guardians. It was also requested that the department stipulate a minimum amount of time for these video calls.

Response #2: The department agrees that it makes sense to further specify what constitutes a confidential video telephone call. The department further amends ARM 37.99.118(1)(e) to provide that the requirement for confidential calls means that the youth is granted video telephone calls in a private setting with no other individuals in the vicinity of being able to see or hear what is being discussed, and that the call is allocated a minimum of 15 minutes for the conversation.

Comment #3: Two commenters requested the department to restore "use of physical force by staff" to the definition of "serious incident" mentioned in ARM 37.99.102.

Response #3: The department agrees to the request. Use of physical force by staff should be included in the definition of a "serious incident" for review by the program and the department to determine if the force was excessive or abusive in nature. The department retains this portion of the rule that it had proposed to repeal.

Comment #4: Three commenters suggested that the training requirement for suicide, crisis intervention, and restraint use be "evidence-based" training.

Response #4: The department agrees with the commenter's suggestions to require trainings be evidence-based. Evidence-based practices are proven to improve quality of care, patient safety, and many positive clinical outcomes when followed. ARM 37.99.172(2) will be amended to indicate, "The crisis intervention and physical restraining policies and procedures must include evidence-based training and include:" with (a) through (f) remaining as proposed.

Comment #5: Three commenters suggested that the department define "physical discipline" as to prohibit excessive physical labor or work detail as a means of physical discipline.

Response #5: Physical discipline is described in ARM 37.99.170(2)(f), which says, "physical discipline of any means including but not limited to hitting, shaking, biting, or pinching." This description does not include the use of excessive physical labor. The same rule, ARM 37.99.170, also requires behavior management policies and procedures to prohibit "(d) cruel or excessive physical exercise, prolonged positions, or work assignments that produce unreasonable discomfort." The department believes that ARM 37.99.170 already addresses the prohibition of using excessive physical labor as a means of discipline.

Comment #6: A written comment was received regarding ARM 37.99.102(1)(b) regarding the definition of an adolescent and the allowance of the program participant to remain through the age of 20 years old if part of a secondary school. The commenter indicates that a program participant should be infrequently staying past the age of 18, suggests that the department should look at any youth that stays past the age of 18, and questions why the requirement of an accredited secondary school be the only requirement needing to be met to allow a youth to stay past 18.

Response #6: There is no suggestion in the comment for revision to the proposed amendments. The department has taken note of the concerns and will plan to collect data on the frequency of youth remaining in PAARP programs past the age of 18. The frequency or infrequency of this occurrence will determine if additional amendments to this portion of the rule is required.

Comment #7: A written comment was received indicating appreciation for the changes to ARM 37.99.102(15).

Response #7: The department appreciates the support for these amendments.

Comment #8: A written comment was received requesting that the requirement for specific plans for participants who will turn 18 while in the program be added to ARM 37.99.119(3).

Response #8: The department does not agree with the recommended changes. The department believes that ARM 37.99.119(2)(g), "program participants reaction to discharge and whether or not the discharge was planned or unplanned," and (h), "recommendations for follow-up services" cover this recommended change.

Comment #9: A written comment was received requesting that the department define "exploitation" and "harassment."

Response #9: The department declines the suggestion to add definitions for "exploitation" and "harassment." These terms are defined and utilized in many areas of the Montana Code Annotated, and have legal ramifications associated with them. The department defers to existing definitions.

Comment #10: A written comment was received requesting that the department define "mechanical restraint" to include any mechanism to restrain any movement.

Response #10: The department declines the request of the commenter. The definition of "mechanical restraint" is located in ARM 37.99.102(11). The commenter indicates awareness that mechanical restraint is already defined in this subchapter, but requests additional notation of definition under ARM 37.99.125(2)(d). The department does not support redundancy in rules.

Comment #11: A written comment was received requesting that the department define "sexual exploitation" and "harassment."

Response #11: The department does not agree with the request of the commenter. ARM 37.99.125(2)(h) states, "A program is prohibited from (h) sexually abusing, exploiting, or harassing a program participant." "Sexual exploitation" is not a term used within the subchapter. See Response #9 regarding the definition of harassment.

Comment #12: A written comment was received indicating that the department needs to develop a standard for requirements in ARM 37.99.127(3)(b) and (d). The standard developed by the department should include what needs to be included and should be based on best practices.

Response #12: The department does not agree that it should develop a standard for all PAARPs. Each program is unique, has unique individuals, and has its own

processes for conducting the program and for documentation. The department has been successful in deciphering compliance with safety plan and reporting requirements with the different methods that the PAARPS are using. Accordingly, the department does not believe that standard or uniform requirements are necessary.

Comment #13: A written comment was received suggesting the department create a standard of what needs to be reported to the state when a restraint is used.

Response #13: The department does not agree that it needs to develop a standard for what is to be reported. The reporting requirements are addressed in ARM 37.99.172(2). The department has been successful in determining compliance with reporting requirements with the different methods that the PAARPs are using. Accordingly, the department does not believe that standard or uniform requirements are necessary.

Comment #14: A verbal comment was received during the rule hearing requesting that the department include cavity searches in the definition of "sexual abuse."

Response #14: Sexual abuse is not defined in this subchapter; therefore, the commenter's proposed revision cannot be adopted. The department notes, however, that ARM 37.99.173(5)(b) prohibits program participants be subjected to body cavity searches.

Comment #15: A verbal comment was received during the rule hearing indicating that the requirement for a fixed phone line to the child abuse hot line should not be made mandatory. The commenter expressed that because of where some of the programs are located, fixed lines are not possible so the requirement will not be able to be met for at least some of the PAARPs.

Response #15: The requirement for a fixed line is in the statute. Consequently, the department does not believe that it can make exceptions to the statutory requirement. Programs will need to find resources to meet this statutory requirement.

Comment #16: A verbal comment was received during the rule hearing indicating that they would like the confidential telephone call requirement to stay in and not have the requirement of the video call. The commenter indicates many families do not know how to use video calls or they prefer telephone calls.

Response #16: The facility has to be able to provide confidential video calls between a youth and the youth's parents or legal guardians. If the youth or the parents or legal guardians refuse to utilize the video component, and just want to use the voice calling, they can make that choice, but the facility has to provide the option and the ability to conduct a video call.

Comment #17: Two commenters referenced the emergency plans and drills requirement. One commenter indicates they perform emergency drills more frequently than rule requires already. Another commenter made comments that the emergency plans require students to know the plans and practice the procedures, and the commenter asked about emergency kits.

Response #17: Neither commenter suggested a change to the proposed rules, and the rule referenced is not one addressed by the amendment notice. The comments are outside the scope of this rulemaking; therefore, they are not being addressed in this notice.

Comment #18: Written comments suggesting staffing ratios at night were received, and a suggestion that training not be done just at staff meetings was made.

Response #18: The comments are outside the scope of this rulemaking; therefore, they are not being addressed in this notice.

/s/ Gregory Henderson  
Gregory Henderson  
Rule Reviewer

/s/ Robert Siedlecki  
Robert Siedlecki, Deputy Director  
Department of Public Health and Human  
Services

Certified to the Secretary of State August 27, 2024.