

BEFORE THE BOARD OF PRIVATE ALTERNATIVE ADOLESCENT
RESIDENTIAL OR OUTDOOR PROGRAMS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of)
ARM 24.181.301 definitions,)
24.181.402 fees, and the adoption of)
NEW RULES I through XL pertaining)
to private alternative adolescent)
residential and outdoor programs)

NOTICE OF PUBLIC HEARING ON
PROPOSED AMENDMENT AND
ADOPTION

TO: All Concerned Persons

1. On April 3, 2009, at 9:00 a.m., a public hearing will be held in room B-07, 301 South Park Avenue, Helena, Montana to consider the proposed amendment and adoption of the above-stated rules.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Private Alternative Adolescent Residential or Outdoor Programs (board) no later than 5:00 p.m., March 27, 2009, to advise us of the nature of the accommodation that you need. Please contact Cyndi Breen, Board of Private Alternative Adolescent Residential or Outdoor Programs, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2392; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail dlibsdpap@mt.gov.

3. GENERAL STATEMENT OF REASONABLE NECESSITY: The 2005 Montana Legislature enacted House Bill 628 which established a board to examine the benefit of licensing private alternative adolescent residential or outdoor programs by gathering data via the registration process. The board was required to report its findings, recommendations, and proposed legislation, if any, to the economic affairs interim committee by September 15, 2006.

Following the institution of the registration process under 37-48-103, MCA, and submission of the board's report to the interim committee, the 2007 Montana Legislature enacted Chapter 178, Laws of 2007 (House Bill 769), an act requiring mandatory registration and licensure of alternative adolescent residential or outdoor programs and directing the board to adopt rules establishing minimum program criteria to ensure the health and safety of program participants. The bill was signed by the Governor and became effective on April 10, 2007.

The board determined it is reasonable and necessary to amend certain rules and adopt new rules to establish the licensing and regulation of private alternative adolescent residential or outdoor programs and further implement the 2007 legislation. Where additional specific bases for a proposed action exist, the board will identify those reasons immediately following that rule.

4. The rules proposed to be amended provide as follows, stricken matter interlined, new matter underlined:

24.181.301 DEFINITIONS For the purpose of this chapter the following definitions apply:

(1) "Administrator" means the person designated on the program application or by written notice to the department as the person responsible for the daily operation of the program and for the daily resident care provided by the program.

(1) remains the same but is renumbered (2).

(3) "Board" means the Board of Private Alternative Adolescent Residential or Outdoor Programs provided for in 2-15-1745, MCA.

(4) "Child abuse or neglect" is defined in 41-2-102, MCA.

(5) "Contraband" means any item possessed by a program participant or found on a program's premises that are prohibited by law or by the program.

(6) "Department" means the Department of Labor and Industry.

(7) "Direct care staff" means program personnel who directly participate in the care, supervision, and guidance of program participant in a program.

(2) and (3) remain the same but are renumbered (8) and (9).

(10) "Prospective owner or operator or worker affiliated with the program" means any owner, partner, member, employee, or contractor providing professional or occupational services to a program.

(11) "Registration" refers to the process whereby a person or entity seeking to establish a private alternative adolescent residential or outdoor program as provided in 37-48-101, et seq, MCA, completes the necessary application for registration, submits the required fee, and thereby seeks approval for the issuance of a provisional license.

(12) "Significant Change to Plan of Operation" means a major addition or deletion of advertised services or location or change of services offered by the program.

AUTH: 37-1-131, 37-48-103, MCA

IMP: 37-1-131, 37-48-103, MCA

24.181.402 LICENSING FEE SCHEDULE (1) through (4) remain the same.

(5) Additional standardized fees are specified in ARM 24.101.403.

AUTH: 37-1-131, 37-48-103, MCA

IMP: 37-1-134, 37-48-103, 37-48-106, MCA

REASON: The board is amending this rule to add a reference to additional standardized fees that apply to all licensees as set forth in department rule.

5. The proposed new rules provide as follows:

NEW RULE I PROGRAM ADMINISTRATION (1) Each program shall have the following:

- (a) A plan of operation described in an information packet or similar publication for public distribution containing items such as:
 - (i) a description of the program and facility;
 - (ii) a description of the mission, goals, and objectives of the program for program participants;
 - (iii) a description of the services provided;
 - (iv) a description of the population served by the program, including the maximum number of program participants to be served and gender of program participants;
 - (v) a policy regarding communication privileges and restrictions; and
 - (vi) expectations for program participants and family participation.
 - (b) A written contract between the program and the legally responsible persons shall be completed, signed by all legally responsible persons, and maintained in the program participants' records with copies provided to those involved in the contract. It shall include:
 - (i) services to be provided;
 - (ii) cost of services; and
 - (iii) refund policy.
- (2) Where there is duplication of review by another oversight agency, the department shall accept that documentation as proof of compliance.

AUTH: 37-48-103, 37-48-113, MCA

IMP: 37-48-103, 37-48-113, MCA

NEW RULE II RIGHTS AND RESPONSIBILITIES OF PROGRAM

PARTICIPANTS (1) Each program shall have policy and procedures regarding rights and responsibilities of program participants including the rights to:

- (a) receive care and services, including educational services within the program's capability, mission, and applicable laws and regulations;
- (b) be free from discrimination;
- (c) a safe environment with respect for human dignity;
- (d) the protection of the privacy of information and records regarding each program participant and the participant's family;
- (e) communication privileges within the limitations of the program policy, excepting that at all times program participants will be allowed unrestricted access to contact the Montana abuse reporting hotline to report allegations of abuse;
- (f) be aware of the limitations that are necessary for the program to maintain a contraband free environment, including a description of the types of searches that are allowed in the program, the circumstances under which each type of search will be allowed, including the required training that staff must complete to be authorized to conduct such searches;
- (g) be free from corporal punishment or the infliction of physical pain as a disciplinary measure; and
- (h) submit complaints and grieve alleged violations of these rules. This shall include a prohibition on retaliation against a program participant for submitting such a complaint.

(2) Each program shall have a written student handbook or a statement of program participant rights and responsibilities, a copy of which must be provided to the program participant and the participant's parent(s) and/or guardian(s) at the time the participant is enrolled in the program. If requested, the program participant's parent(s) and/or guardian(s) will be given an opportunity to read the handbook prior to completing enrollment.

AUTH: 37-48-113, MCA
IMP: 37-48-113, MCA

NEW RULE III REQUIRED PERSONNEL SCREENING (1) Each program shall submit a background check for the program manager and each worker affiliated with the program that has or will have direct access to program participants.

(2) Consistent with 37-48-108, MCA, the background investigation will include a set of fingerprints for a fingerprint check by the Department of Justice and the Federal Bureau of Investigation.

AUTH: 37-48-108, 37-48-113, MCA
IMP: 37-48-108, 37-48-113, MCA

NEW RULE IV PROGRAM PARTICIPANT PROTECTION (1) A program may not employ any staff member, aide, volunteer, or other person having direct contact with the program participants in the residential or outdoor program that poses a potential threat to the health, safety, or well being of any program participant.

(2) For purposes of this rule, a person "posing a potential threat" is any person who:

(a) within the past ten years, has been convicted of a crime involving youth under the age of 18 years, physical or sexual violence against any person, or any felony drug related offense; or

(b) is charged with a crime involving youth under the age of 18 years, physical or sexual violence against any person, any felony drug related offense, or is awaiting trial.

(3) Each program shall have written policy and procedures to ensure program compliance with (1). The policy and procedures must include the requirement to notify the board in any case where any current program staff member, aide, volunteer, or other person having direct contact with program participants is identified as "posing a potential threat" under this rule.

(4) Failure of any program to comply with this rule constitutes unprofessional conduct and could form a basis for action being taken against the program's license.

AUTH: 37-48-113, MCA
IMP: 37-48-108, 37-48-113, MCA

NEW RULE V PHYSICAL ENVIRONMENT (1) Each program shall comply with all applicable federal and state regulations, laws, and codes. Specific attention is directed to programs regarding compliance with Montana building and fire codes.

Programs shall maintain the necessary documentation of annual compliance with these codes and/or inspection requirements.

(2) In the event that any building or fire code violations are found during a building code or fire code inspection of a program's premises and structures intended for use by the enrolled program participants, the program shall:

(a) Within five calendar days of the date the inspection is completed and the program is provided with a report indicating a violation, the program shall deliver a copy of the report to the board office.

(b) Within five calendar days of the date the program has remedied the noted violation and has been reinspected and received a satisfactory inspection report, the program shall deliver a copy of the report to the board office.

(c) Failure of any program to comply with this rule constitutes unprofessional conduct and could form a basis for action being taken against the program's license.

AUTH: 37-48-113, MCA

IMP: 37-48-113, MCA

NEW RULE VI PERSONNEL ADMINISTRATION (1) Each program shall have written policy and procedures to include the following:

(a) employee grievance procedures;

(b) lines of authority;

(c) orientation and ongoing training;

(d) performance appraisals;

(e) rules of conduct;

(f) prohibited conduct that constitutes sexual and personal harassment; and

(g) duties and responsibilities of employees.

(2) Each program shall have:

(a) a personnel file for each employee; and

(b) written policy and procedures describing required minimum initial and ongoing staff training and the requirement that staff members complete at least the minimum training required.

(3) Direct care staff initial training shall consist of the following minimum requirements:

(a) the program's policy, procedures, organization, and services;

(b) mandatory child abuse reporting laws;

(c) confidentiality;

(d) medical protocols and emergency procedures;

(e) suicide prevention; and

(f) de-escalation of crisis situations and passive physical restraint techniques to ensure the protection and safety of the program participants and staff.

(4) A program which uses volunteers, substitutes, or student interns shall have written policy and procedures covering direct supervision by program staff.

(5) The program shall document the trainings and maintain training records.

AUTH: 37-48-113, MCA

IMP: 37-48-113, MCA

NEW RULE VII RECORD KEEPING (1) Each program shall have written policy and procedures regarding program participant records. Staff and program participant files and records shall be maintained in accordance with state and federal law.

AUTH: 37-48-113, MCA

IMP: 37-48-113, MCA

NEW RULE VIII ADMISSIONS (1) Each program shall have written admissions policy and procedures including but not limited to:

- (a) suicide screening;
- (b) pertinent physical and mental health history;
- (c) current allergies;
- (d) current medical conditions and medications;
- (e) relevant history of medications that have been prescribed, but discontinued;
- (f) relevant psycho-social history; and
- (g) policies regarding the attesting or verifying of legal authority to place or remove a program participant from a program.

AUTH: 37-48-113, MCA

IMP: 37-48-113, MCA

NEW RULE IX TREATMENT PLANNING AND DELIVERY OF SERVICES

- (1) Each program shall have written policy and procedures that:
- (a) address services provided;
 - (b) clearly define the minimum levels of supervision of program participants during each day's activities; and
 - (c) protect the privacy of program participants in accordance with laws pertaining to confidentiality.

AUTH: 37-48-113, MCA

IMP: 37-48-113, MCA

NEW RULE X INCIDENTS, CRISIS INTERVENTION, AND EMERGENCY PLANS AND SAFETY (1) Each program shall have a written plan of action and training for:

- (a) response to and training for disasters, casualties, and evacuation;
- (b) Montana laws regarding reporting of child abuse and neglect as required in 41-3-201, MCA. Incidents of abuse or neglect must be reported to the appropriate state agency as required by state law;
- (c) handling emergency situations such as suicide threat or attempt, abuse, assault, and program participants running away from the program, which must include notification of the parent or legally responsible person;
- (d) addressing an incident that involves death which must include board notification as well as notification of the parent or legally responsible person;

(e) personnel to follow in medical emergencies and when arranging for medical care which requires, at a minimum:

- (i) the availability of an adequately supplied first aid kit in the facility and a direct care staff certified in first aid and CPR present;
- (ii) a telephone or two-way radio available for emergencies;
- (iii) response to and training on suicide prevention as well as prevention of injuries and illness; and
- (iv) maintenance and repair for essential equipment.

(2) The written plan of action and training must require that each direct care staff member must acknowledge in writing that the staff member received the training.

AUTH: 37-48-113, MCA

IMP: 37-48-113, MCA

NEW RULE XI TRANSFER AND DISCHARGE (1) Each program shall have written discharge and transfer policy and procedures.

AUTH: 37-48-113, MCA

IMP: 37-48-113, MCA

NEW RULE XII BEHAVIORAL MANAGEMENT (1) Each program shall have written behavioral management policy and procedures that employs the least restrictive method to assure the safety of all the parties concerned (i.e. program participants and staff) and also includes:

- (a) a definition of appropriate and inappropriate behaviors of program participants;
 - (b) acceptable and unacceptable staff responses to inappropriate behaviors;
- and
- (c) acceptable consequences to inappropriate behaviors.

(2) All staff will receive a copy of this policy and staff shall receive training relative to behavior management at least annually.

(3) The program behavioral management policy shall prohibit the following:

- (a) excessive physical labor with no purpose other than for punishment;
- (b) denying necessary food, clothing, bedding, rest, toilet use, or bathing facilities as punishment;

- (c) verbal abuse, ridicule, humiliation, profanity, threats, or other forms of degradation directed at a program participant or a participant's family;

- (d) forcing a program participant to take an uncomfortable position for an extended period of time, which is anticipated to cause pain, for no purpose other than for punishment;

- (e) denial of visits or communication with the program participant's parent(s) or guardian(s) except as specified in the program's written policy, design and planned activities, the program participant's service plan, or court order;

- (f) locked confinement;

- (g) administration of medication for disciplinary purposes, for the convenience of staff, or as a substitute for appropriate treatment services;

(h) administration of discipline of a program participant by another participant without staff supervision;

(i) the intentional or malicious infliction of physical or mental suffering including pain;

(j) the use of pain to force compliance; and

(k) placement of a program participant alone in a locked room for nontherapeutic purposes.

(4) Programs shall only allow passive physical restraint when required in an emergency situation in which there is an imminent threat to life or physical safety of the program participant, staff, or others. Passive physical restraint shall not be associated with punishment in any way. Only staff trained in industry accepted de-escalation techniques and passive physical restraint, such as CPI and Mandt, may restrain program participants.

(5) Programs that use time out or short-term intervention for behavior modification or for therapeutic purposes will have written policy and procedures that have been provided to the program participants and legally responsible parties.

(6) Each program shall have written policy and procedures for handling emergency situations such as suicide threat or attempt, abuse, assault, and program participants running away from the program.

AUTH: 37-48-113, MCA

IMP: 37-48-113, MCA

NEW RULE XIII CHEMICAL DEPENDENCY TREATMENT (1) Any program that includes in its marketing, advertising, information packet, or other similar document reference to providing primary, inpatient chemical dependency treatment must ensure that such treatment program is provided by a public or private treatment chemical treatment facility licensed by the Montana Department of Health and Human Services under Title 53, chapter 24, of the Montana Code Annotated (MCA).

AUTH: 37-48-113, MCA

IMP: 37-48-113, MCA

NEW RULE XIV MEDICAL SERVICES (1) Each program shall have written policy and procedures for provision of routine and emergent medical services, including mental health services.

AUTH: 37-48-113, MCA

IMP: 37-48-113, MCA

NEW RULE XV MEDICATIONS (1) Each program shall have written policy and procedures regarding medication dispensing and control according to state and federal regulations which includes:

(a) notification within 24 hours of the parents or legally responsible person of any changes in medication that is prescribed or distributed by program staff; and

(b) maintaining a log of missed or refused dosages of prescribed medications distributed by program staff. Such log must be made available upon request to state and federal inspectors and to a parent or legally responsible person.

AUTH: 37-48-113, MCA
IMP: 37-48-113, MCA

NEW RULE XVI INFECTIOUS DISEASES (1) Each program shall have written policy and procedures designed to prevent or control infectious and communicable diseases in accordance with accepted standards.

AUTH: 37-48-113, MCA
IMP: 37-48-113, MCA

NEW RULE XVII FINANCIAL REQUIREMENTS (1) Before accepting any payment, processing any application, or entering any contract to provide services, the program shall provide written disclosure of all fees and expenses a program participant may incur, and identify which fees may be refundable.

AUTH: 37-48-113, MCA
IMP: 37-48-113, MCA

NEW RULE XVIII PHYSICAL ENVIRONMENT (1) Each program shall comply with all applicable federal and state regulations, laws, and codes.

AUTH: 37-48-113, MCA
IMP: 37-48-113, MCA

NEW RULE XIX FOOD SERVICES (1) Each program shall provide food adequate to the nutritional needs of participants and sanitary conditions and take reasonable steps to provide safe drinking water.

AUTH: 37-48-113, MCA
IMP: 37-48-113, MCA

NEW RULE XX CLOTHING (1) Each program shall have written policy and procedures concerning the appropriate apparel that program participants should wear.

AUTH: 37-48-113, MCA
IMP: 37-48-113, MCA

NEW RULE XXI TRANSPORTATION (1) Each program shall have written policy and procedures for transporting program participants.

(2) In each program or staff vehicle used to transport program participants, there shall be emergency information including: the name, address, and telephone number of the program and an emergency telephone number.

AUTH: 37-48-113, MCA
IMP: 37-48-113, MCA

NEW RULE XXII ADMINISTRATION-OUTDOOR PROGRAMS (1) In addition to the core requirements for all programs at ARM [NEW RULES I through XXI], each outdoor program must also comply with the requirements set forth at ARM [NEW RULES XXII through XXXVI].

(2) A list of all currently enrolled program participants must be maintained and be readily available.

AUTH: 37-48-103, 37-48-113, MCA
IMP: 37-48-103, 37-48-113, MCA

REASON: The board determined it is reasonable and necessary to adopt new rules XXII through XXXVI to delineate the rules specifically applicable to outdoor programs. These outdoor programs have special purposes and inherent risk factors and the board is proposing these rules to set forth the relevant definitions and requirements to ensure adequate protection of the outdoor program participants.

NEW RULE XXIII DEFINITIONS-OUTDOOR PROGRAMS (1) The following definitions apply only to outdoor programs.

(a) "Direct care staff" means program personnel who directly participate in the care, supervision, and guidance of program participants in an outdoor program, including senior field staff and field staff.

(b) "Expedition" means an excursion undertaken for specific therapeutic or educational purposes that takes program participants away from the field office.

(c) "Expedition camp" means a nonpermanent campsite. Program participants and staff may move from one expedition camp to another when on expedition.

(d) "Field office" means the office where coordination of expedition operations takes place.

(e) "High adventure activity" means an outdoor activity provided to program participants for the purposes of behavior management, outdoor education, or treatment, and which requires special safety precautions in accordance with industry risk management standards.

(f) "Low impact camping" means wilderness and land use ethics designed to minimize the impact of visitors to back country areas.

(g) "Outdoor program" means a program in which the majority of time, including overnight, is spent outdoors.

(h) "Solo experience" means separation of a program participant from the group as part of the outdoor therapeutic process exceeding the length of eight hours.

(i) "Wilderness first responder" means a certified first responder.

AUTH: 37-48-113, MCA
IMP: 37-48-113, MCA

NEW RULE XXIV STAFF REQUIREMENTS (1) The staff of each outdoor program must include an individual responsible for oversight of field operations who will be referred to as the field director.

(2) The field director shall be primarily responsible for:

- (a) the quality of field activities;
- (b) coordinating field operations;
- (c) supervising direct care staff;
- (d) ensuring compliance with applicable licensing rules in the field; and
- (e) ensuring that staff members are familiar with all applicable field program

policy and procedures.

(3) The field director may serve as direct care staff.

(4) The field director shall meet, at a minimum, the following qualifications:

- (a) a bachelors degree or one year outdoor program field experience; and
- (b) hold a wilderness first aid or wilderness first responder certification.

(5) If qualified, the administrator may serve as field director.

(6) Field staff teams responsible for direct care must have at least one team member certified as a wilderness first responder or in wilderness first aid. Other team members must be currently certified in first aid and CPR.

AUTH: 37-48-113, MCA

IMP: 37-48-113, MCA

NEW RULE XXV STAFF TRAINING (1) Each outdoor program shall have written policy, procedures, and training curriculum regarding minimum requirements for initial and ongoing training.

(2) Initial staff training shall consist of the following minimum requirements:

- (a) the program's policy, procedures, organization, and services;
- (b) mandatory child abuse reporting laws;
- (c) low impact camping;
- (d) confidentiality; and
- (e) medical protocols and emergency procedures to include but not be

limited to:

- (i) suicide prevention;
- (ii) documentation;
- (iii) de-escalation of crisis situations and passive physical restraint techniques to ensure the protection and safety of program participants and staff;
- (iv) avoiding potential hazards of the expedition areas; and
- (v) emergency evacuation procedures.

AUTH: 37-48-113, MCA

IMP: 37-48-113, MCA

NEW RULE XXVI PROGRAM PARTICIPANT ADMISSION REQUIREMENTS (1) Each outdoor program shall have written admissions policies and procedures to include the following:

- (a) age range of program participants;

(b) current health history of program participants including notation of limitations and prescription medications; and

(c) a requirement that program participants have a physical examination by a licensed medical provider that has been completed within six months preceding enrollment into the program. Medical release forms for each program participant must be kept by field staff team providing direct care to participants.

AUTH: 37-48-113, MCA

IMP: 37-48-113, MCA

NEW RULE XXVII RATIO OF PROGRAM PARTICIPANTS TO STAFF

(1) Outdoor programs shall have written policies establishing ratios between direct care staff and program participants which meet program participant needs for health and safety. The maximum program participant to direct care staff ratio shall not exceed 20 participants to one direct care staff member.

AUTH: 37-48-113, MCA

IMP: 37-48-113, MCA

NEW RULE XXVIII PHYSICAL ENVIRONMENT (1) Each outdoor program must adhere to use of land requirements of forest service, park service, state lands, BLM, or the landowner.

(2) Health and safety policies and procedures must be adequate to meet the requirements of program participants living in an outdoor setting for an extended period of time.

(3) Sleeping areas must be set up in accordance with program policy to provide for safety and adequate supervision of participants in an outdoor setting.

AUTH: 37-48-113, MCA

IMP: 37-48-113, MCA

NEW RULE XXIX TOOLS AND POTENTIALLY HAZARDOUS MATERIALS

(1) Each outdoor program shall have written policy and procedures on management of tools and other sharp edged implements and any potentially hazardous material.

AUTH: 37-48-113, MCA

IMP: 37-48-113, MCA

NEW RULE XXX HYGIENE (1) Each outdoor program shall provide methods available in an outdoor setting for program participants to wash hands and face, brush teeth, and bathe.

(2) Toileting methods must provide for privacy and be compatible with low impact camping.

AUTH: 37-48-113, MCA

IMP: 37-48-113, MCA

NEW RULE XXXI WATER, FOOD, AND NUTRITION (1) Outdoor programs must take reasonable steps to provide safe drinking water.

AUTH: 37-48-113, MCA
IMP: 37-48-113, MCA

NEW RULE XXXII MEDICAL AND MEDICATION MANAGEMENT, STORAGE, AND ADMINISTRATION (1) At least one member of an outdoor program field staff team must be trained in the management and administration of medications in an outdoor setting.

(2) Each group of staff and program participants must have a medical kit that will meet the need for wilderness first aid. First aid medical kits shall include sufficient supplies for the activity, location, and environment and shall be available during all field activities.

AUTH: 37-48-113, MCA
IMP: 37-48-113, MCA

NEW RULE XXXIII EMERGENCY AND EVACUATION PLANS (1) Outdoor programs shall have:

- (a) a written emergency plan which provides specific procedures for disasters, evacuations, medical emergencies, missing youth, and other serious incidents identified by the program; and
- (b) an established form of communication for emergency situations.

AUTH: 37-48-113, MCA
IMP: 37-48-113, MCA

NEW RULE XXXIV SOLO EXPERIENCE (1) If an outdoor program uses a solo experience as part of the therapeutic or educational process during expeditions, the program shall have written policy and procedures for the utilization of the solo experience. Policy and procedures must address:

- (a) purpose of solo experience;
- (b) assessment of participant readiness for the experience; and
- (c) risk management procedures.

AUTH: 37-48-113, MCA
IMP: 37-48-113, MCA

NEW RULE XXXV EDUCATION (1) Outdoor programs which operate during the academic year and in which program participants are enrolled more than six weeks must provide an educational component.

AUTH: 37-48-113, MCA
IMP: 37-48-113, MCA

NEW RULE XXXVI OUTDOOR PROGRAMS-HIGH ADVENTURE REQUIREMENTS (1) High adventure activities are those that may require specific certification and/or equipment or training and may include the following:

- (a) target sports;
- (b) aquatics;
- (c) adventure challenge courses;
- (d) climbing and rappelling;
- (e) spelunking;
- (f) swimming;
- (g) white water activities;
- (h) use of horses or other animals for riding or packing;
- (i) skiing; and
- (j) trampoline.

(2) For the high adventure activities identified in (1), each program shall adopt written policy and procedures that address minimum training, experience, and qualifications for leaders and staff and must adhere to accepted industry risk management procedures.

AUTH: 37-48-113, MCA
IMP: 37-48-113, MCA

NEW RULE XXXVII ADMINISTRATION-RESIDENTIAL PROGRAMS (1) In addition to the core requirements for all programs at ARM [NEW RULES I through XXI], residential programs must also comply with the requirements set forth at ARM [NEW RULES XXXVII through XL].

(2) A list of all currently enrolled program participants must be maintained and be readily available.

AUTH: 37-48-103, 37-48-113, MCA
IMP: 37-48-103, 37-48-113, MCA

REASON: The board determined it is reasonable and necessary to adopt new rules XXXVII through XL to delineate the rules specifically applicable to residential programs. These residential programs have specialized purposes and the board is proposing these rules to set forth the relevant definitions and requirements to ensure adequate protection of the residential program participants.

NEW RULE XXXVIII DEFINITIONS-RESIDENTIAL PROGRAMS (1) The following definitions apply only to residential programs.

(a) "Residential program" means a 24-hour group living environment for four or more program participants unrelated to the owner or provider.

AUTH: 37-48-113, MCA
IMP: 37-48-113, MCA

NEW RULE XXXIX STAFFING (1) Residential programs shall have a manager who is responsible for the day-to-day supervision of program participants

and operation of the program. The responsibilities of the manager shall be clearly defined. Whenever the manager is absent there shall be a substitute available.

(2) Residential programs that employ, contract, or consult with professional licensed or certified staff shall:

(a) describe in policy and procedure the circumstances under which the professional staff are to be engaged; and

(b) maintain on file copies of the professional staff licenses or certifications.

(3) Residential programs that do not employ, contract, or consult with licensed medical staff shall have written policy and procedures in place to secure medical care when needed.

(4) Each residential program shall have written policy and procedures to secure mental health care as needed.

(5) Each residential program shall have written policy and procedures establishing direct care staff to program participant ratios that meet program participant needs for health and safety in the various activities and settings available in the program.

AUTH: 37-48-113, MCA

IMP: 37-48-113, MCA

NEW RULE XL FOOD SERVICE (1) Each residential program kitchen shall have clean, safe, and operational equipment for the preparation, storage, serving, and cleanup of all meals.

(2) Each residential program shall have written safety and health policy and procedures for preparation of food by staff and program participants.

AUTH: 37-48-113, MCA

IMP: 37-48-113, MCA

6. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Board of Private Alternative Adolescent Residential or Outdoor Programs, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to dlibsdpap@mt.gov, and must be received no later than 5:00 p.m., April 10, 2009.

7. An electronic copy of this Notice of Public Hearing is available through the department and board site on the World Wide Web at www.paarp.mt.gov. The department strives to make the electronic copy of this Notice conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems, and that technical difficulties in accessing or posting to the e-mail address do not excuse late submission of comments.

8. The board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this board. 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 the person wishes to receive notices regarding all board administrative rulemaking proceedings or other administrative proceedings. The request must indicate whether e-mail or standard mail is preferred. Such written request may be sent or delivered to the Board of Private Alternative Adolescent Residential or Outdoor Programs, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, faxed to the office at (406) 841-2305, e-mailed to dlibsdpap@mt.gov, or made by completing a request form at any rules hearing held by the agency.

9. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was notified on November 21, 2008, by regular mail.

10. Mike McCabe, attorney, has been designated to preside over and conduct this hearing.

BOARD OF PRIVATE ALTERNATIVE
ADOLESCENT RESIDENTIAL OR
OUTDOOR PROGRAMS
JOHN SANTA, CHAIRPERSON

/s/ DARCEE L. MOE
Darcee L. Moe
Alternate Rule Reviewer

/s/ KEITH KELLY
Keith Kelly, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State March 2, 2009