

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 licensing fee schedule,)
24.181.501 application for)
registration, 24.181.505 site visits,)
24.181.601 program administration,)
24.181.607 program participant)
protection, 24.181.803 definitions -)
residential programs, 24.181.2101)
renewals, and the repeal of)
24.181.401 registration fee schedule)
and 24.181.502 implementation)

NOTICE OF PUBLIC HEARING ON
PROPOSED AMENDMENT AND
REPEAL

TO: All Concerned Persons

1. On May 19, 2011, at 11:00 a.m., a public hearing will be held in room 439, 301 South Park Avenue, Helena, Montana, to consider the proposed amendment and repeal 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., on May 13, 2011, 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 Board of Private Alternative Adolescent Residential or Outdoor Programs (board) was established by the Montana Legislature in 2005 with the initial purposes of identifying and registering programs operating within the state and completing a study to assist the Legislature in determining the need for licensure. Programs were registered and the study was completed and presented to a legislative interim committee. The 2007 Legislature passed a bill that required licensure of the programs and identified the shift from program registration to full licensure.

As part of the review of its rules, the board is amending several rules to delete references to the obsolete registration process, and facilitate the 2007 legislation for program licensure. The board determined reasonable necessity exists to amend and repeal certain other obsolete and unnecessary existing rules regarding program

registration. Where additional specific bases for a proposed action exist, the board will identify those reasons immediately following that rule. Authority and implementation cites are being amended to add the statutes being implemented through the proposed changes.

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) through (4) remain the same.

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

(6) through (10) remain the same.

~~(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) remains the same but is renumbered (11).

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

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

24.181.402 LICENSING FEE SCHEDULE (1) Programs will be licensed annually. ~~Beginning July 1, 2009, the~~ The annual period will run from July 1 to June 30 of the following year.

(2) Licensing fees are based on the program's estimated average daily census during the first calendar year of operation ~~at the time of application and are paid at 20% of the combined registration and licensing fees:~~

(a) 0-10 participants	\$ 270 <u>1,688</u>
(b) 11-25 participants	695 <u>4,345</u>
(c) 26-50 participants	1300 <u>8,138</u>
(d) 51- 400 <u>and more</u> participants	2130 <u>13,313</u>
(e) 101 and more participants	

~~Programs with 101 and more participants must contact the board for current information on the average daily census rate to determine the licensing fee balance.~~

(3) and (4) remain the same.

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

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

REASON: The board has determined it is reasonably necessary to amend this rule and ARM 24.181.2101 to increase licensure fees to comply with 37-1-134, MCA, and keep the board's fees commensurate with costs. In providing administrative services to the board, the department has determined that unless both licensure application and renewal fees are increased as proposed, the board

will have a shortage of operating funds by the 2012 renewal period. The board estimates that 18 programs will be affected by the proposed fee changes and will result in an \$18,390 increase in annual revenue.

24.181.501 APPLICATION FOR REGISTRATION LICENSURE (1) through (1)(d) remain the same.

(e) ~~the average daily census. If the program did not operate during the prior calendar year, the applicant shall estimate the expected average daily census during the first calendar year of operations; and~~

(f) remains the same.

(2) Incomplete applications will be returned. The applicant may correct any deficiencies, complete any requirements necessary for registration licensure, and resubmit the application to the board office. Failure to resubmit the deficient application within 60 days from the date the notice of deficiency ~~is~~ was sent from the board office ~~and~~ will be treated as a voluntary withdrawal of the application and all fees will be forfeited.

(3) remains the same.

(4) Registration Licensure applications submitted to the board will be reviewed by department staff, which may request such additional information as it deems reasonably necessary.

(5) Registration Licensure applications that are deemed complete will be issued a registration licensure certificate by the department.

(6) A program's registration licensure is nontransferable.

(7) Programs that are registered licensed will be listed as being registered licensed on the Montana state web site.

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

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

24.181.505 SITE ONSITE VISITS INSPECTIONS (1) ~~For the purpose of gathering data and information for the study, programs may be visited by the board or its designee~~ The department or board shall conduct onsite inspections of the program premises and facilities before initial licensure and for maintenance of licensure.

(2) An initial onsite inspection of the program shall be conducted by the board or its designee for licensure.

(2) (i) Department staff will contact the person responsible for the conduct of the program, as identified in the registration licensure application, to request permission to visit the facility at least seven business days prior to the intended visit for the purpose of initial licensure.

(3) The board or its designee shall conduct an onsite inspection of each licensed program at least once every three years.

(i) Department staff will contact the person responsible for the conduct of the program, as identified in the licensure application, to request permission to visit the facility at least seven business days prior to the intended visit for the purpose of maintenance of licensure.

(ii) A program may petition the board for exemption from the onsite inspection for the purpose of maintenance of licensure if the program is accredited by the National Independent Private Schools Association (NIPSA), Council on Accreditation (COA), Commission on Accreditation of Rehabilitation Facilities (CARF), and Joint Commission on Accreditation of Healthcare Organizations (JCAHO).

(iii) If a program is granted exemption from the onsite inspection, the board may request such additional information from the program as it deems reasonably necessary.

(4) The board or its designee may enter and inspect, without prior notice, program premises and facilities in response to a complaint for purposes of determining compliance.

AUTH: 37-48-103, 37-48-115, MCA

IMP: 37-48-103, 37-48-115, MCA

REASON: The board determined it is reasonably necessary to amend this rule to set forth the circumstances under which the board will conduct onsite inspections of the programs. The amended verbiage conforms to statutory requirements and sets forth the program certifying organizations approved by the board.

24.181.601 PROGRAM ADMINISTRATION (1) remains the same.

(2) A program shall submit a significant change to plan of operation to the board for approval. A program may not deviate from its plan of operation without the prior approval of the board.

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

(2) remains the same but is renumbered (4).

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

IMP: 37-48-103, 37-48-106, 37-48-113, MCA

REASON: The board is amending this rule to further implement the requirement in 37-48-106, MCA, that a program must obtain board approval before deviating from a plan of operation. The board previously defined a "significant change to plan of operation" in ARM 24.181.301, and this amendment sets forth the consequences for failure to comply with this requirement.

24.181.607 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) remains the same.

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

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

(3) and (4) remain the same.

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

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

REASON: The board determined it is reasonably necessary to amend this rule to specify that only felony convictions will disqualify a worker from program employment. Following two years of obtaining and evaluating worker background checks, the board concluded that excluding only those individuals with specific felony convictions from program employment will continue to ensure the protection of the participants and the integrity of the licensed programs.

24.181.803 DEFINITIONS - RESIDENTIAL PROGRAMS (1) remains the same.

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

AUTH: 37-48-113, MCA

IMP: 37-48-113, MCA

REASON: The board is amending this rule to require licensure of all programs, regardless of participant population. The board concluded this amendment is necessary to ensure the health and safety of all individuals enrolled in programs of every size and to remain consistent with Montana law.

24.181.2101 RENEWALS (1) ~~Beginning in calendar year 2009, renewal~~ Renewal notices will be sent as specified in ARM 24.101.414.

(2) remains the same.

(3) ~~The licensing renewal~~ Renewal fees are calculated by each program being assessed a base fee of \$500 to which is added an amount based on the program's average daily census:

- | | |
|---|---------------------------------|
| (a) 0-10 participants | \$ 1350 <u>1,688</u> |
| (b) 11-25 participants | 3475 <u>4,345</u> |
| (c) 26-50 participants | 6540 <u>8,138</u> |
| (d) 51- 400 <u>and more</u> participants | 10650 <u>13,313</u> |
| (e) 101 and more participants | |

~~Programs with 101 and more participants must submit the base fee and contact the board for current information on the average daily census rate to determine the renewal fee total.~~

(4) through (7) remain the same.

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

IMP: 37-1-131, 37-1-134, 37-1-141, MCA

5. The rules proposed to be repealed are as follows:

24.181.401 REGISTRATION FEE SCHEDULE found at ARM page 24-20755.

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

IMP: 37-1-134, 37-48-103, 37-48-107, MCA

24.181.502 IMPLEMENTATION found at ARM page 24-20772.

AUTH: 37-48-103, MCA

IMP: 37-48-103, 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., May 27, 2011.

7. An electronic copy of this Notice of Public Hearing is available through the department and board's 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 contact requirements of 2-4-302, MCA, do not apply.

10. Mary Tapper, attorney, has been designated to preside over and conduct this hearing.

BOARD OF PRIVATE ALTERNATIVE
ADOLESCENT RESIDENTIAL OR
OUTDOOR PROGRAMS
DR. 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 April 18, 2011