MONTANA
ADMINISTRATIVE
REGISTER

DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES

SUPPLEMENTAL NOTICE OF RULEMAKING

MAR NOTICE NO. 37-1044

Summary

Adoption of NEW RULES I through XCVI and repeal of ARM Title 37, chapter 95 pertaining to licensure of day care facilities

Previous Notice(s) and Hearing Information

On October 20, 2023, the Department of Public Health and Human Services (department) published MAR Notice No. 37-1044, pertaining to the public hearing on the proposed adoption and repeal of the above-referenced rules at page 1297 of the 2023 Montana Administrative Register, Issue Number 20.

On April 12, 2024, the department published the notice of adoption and repeal of the above-stated rules at page 738 of the 2024 Montana Administrative Register, Issue Number 7.

Reason for Supplemental Notice

The department is publishing this supplemental notice to confirm the effective date of the adoption of NEW RULES I through XCVI and the repeal of ARM Title 37, chapter 95. In paragraph 5 of the notice of adoption and repeal, the department stated that, in the event that the Children, Families, Health, and Human Services Interim Committee did not withdraw its written objection to the rulemaking pursuant to 2-4-406(2), MCA (which it did not do), the effective date would be postponed until the day after the final adjournment of the regular session of the 69th Legislature. This delayed effective date is pursuant to 2-4-306(4)(c), MCA. The department stated that it would publish a notice confirming the effective date. Accordingly, the department is confirming that May 1, 2025 is the effective date for the adoption and repeal of the above-stated rules.

The department is also publishing this supplemental notice to correct a clerical error referencing NEW RULE LXXXI (37.96.1001) in NEW RULE VI (37.96.108), NEW RULE LXX (37.96.902), NEW RULE LXXI (37.96.903), NEW RULE LXXII (37.96.904), NEW RULE LXXIII

(37.96.907), NEW RULE LXXIV (37.96.908), NEW RULE LXXV (37.96.909), NEW RULE LXXVI (37.96.910), and NEW RULE LXXVII (37.96.913). The correct cross-reference in these rules is NEW RULE LXXXII (37.96.1002).

Contact

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Final Rulemaking Actions – Effective May 1, 2025

ADOPT AS CORRECTED

The rules adopted in corrected form are as follows, deleted matter interlined, new matter underlined:

37.96.108 RCE AND FFN APPLICATION REQUIREMENTS

(1) RCE and FFN providers must meet the following requirements to be registered under this chapter:

(a) be 18 years old or older;

(b) limit the care they provide to a period of less than 24 consecutive hours;

(c) have satisfactory results of background checks for the applicant as set forth in ARM ~~37.96.1001~~ 37.96.1002. If care is provided in the applicant's home, all adults who reside there must also have satisfactory results of background checks;

(d) complete orientation approved by the department that includes health and safety training; and

(e) complete a department-approved health and safety review course at least every three years.

(2) In addition to the requirements in (1), FFN providers must hold current certification for infant, child, and adult CPR, infant choking response, and pediatric first aid. CPR certification must be completed in a hands-on setting.

(3) For payment purposes, subsidized care provided in a child's home can only be paid to FFN and RCE providers, pursuant to ARM 37.80.208.

Authorizing statute(s): 52-2-704, MCA

Implementing statute(s): 52-2-703, 52-2-704, 52-2-713, 52-2-721, 52-2-722, 52-2-723, 52-2-731, MCA

37.96.902 DIRECTOR RESPONSIBILITIES AND QUALIFICATIONS

(1) All facilities except RCEs must have a director.

(a) For the purposes of this rule, FFN providers are considered a director.

(2) A director and their program staff are responsible for the health, safety, supervision, protection, and guidance of the children in care. The director is responsible for operating the child care program at all times.

(3) A director must demonstrate knowledge and ability to carry out day-to-day operations and is responsible for being on-site at the facility, unless there is a site director, designated staff member, or substitute filling the on-site role.

(4) Directors must meet the following qualifications:

(a) be at least 18 years old;

(b) have satisfactory results of background checks as set forth in ARM ~~37.96.1001~~ 37.96.1002;

(c) be current on the Practitioner Registry;

(d) have current CPR and pediatric first aid certification;

(e) successfully complete orientation training; and

(f) have a combination of education, training, other licensing, or experience in working with children to demonstrate an ability to fulfill the director responsibilities for the licensed or registered facility type, subject to approval through the Practitioner Registry or to department approval.

(5) If the director will be absent from the facility for more than 30 continuous days, the director must notify the department in writing of the individual who has been appointed as the designee. The appointed designee must meet all the requirements of this rule.

(6) The director must ensure compliance with all applicable administrative rules within this chapter.

(7) The director or designee must review every incident or accident causing injury to a child resulting in medical or dental care and document the appropriate corrective action taken to avoid a reoccurrence.

Authorizing statute(s): 52-2-704, MCA

Implementing statute(s): 52-2-702, 52-2-704, 52-2-723, 52-2-731, MCA

37.96.903 SITE DIRECTOR RESPONSIBILITIES AND QUALIFICATIONS

(1) Site director is an optional role. Providers may employ site directors when they have multiple facilities in geographically dispersed locations. An individual may only serve as a site director at one location or site. Site directors plan and implement facility services under the oversight of the director/owner.

(2) Site directors must meet the following qualifications:

(a) be at least 18 years old;

(b) have satisfactory results of background checks as set forth in ARM ~~37.96.1001~~ 37.96.1002;

(c) be current on the Practitioner Registry;

(d) have current CPR and pediatric first aid certification;

(e) successfully complete orientation training;

(f) complete on-the-job training; and

(g) have a combination of education, training, other licensing, or experience in working with children to demonstrate an ability to fulfill the site director responsibilities for the licensed or registered facility type, subject to approval through the Practitioner Registry or to department approval.

(3) The site director is responsible for being on-site during the facility's operating hours and providing regular supervision and mentoring of lead teachers, teachers, substitutes, support staff, and volunteers.

(4) One person may be the director and site director.

(5) A site director may also serve as a lead teacher.

(6) The director absence requirements in ARM 37.96.902 apply to site directors.

Authorizing statute(s): 52-2-704, MCA

Implementing statute(s): 52-2-702, 52-2-704, 52-2-723, 52-2-731, MCA

37.96.904 LEAD TEACHER RESPONSIBILITIES AND QUALIFICATIONS

(1) Lead teacher is an optional role.

(2) Lead teachers are responsible for facility activity planning and delivery.

(3) A lead teacher must:

(a) be at least 18 years old;

(b) have satisfactory results of background checks as set forth in ARM ~~37.96.1001~~ 37.96.1002;

(c) complete on-the-job training;

(d) be current on the Practitioner Registry;

(e) have current CPR and pediatric first aid certification;

(f) successfully complete required orientation training; and

(g) have a combination of education, training, other licensing, or experience in working with children to demonstrate an ability to fulfill the lead teacher responsibilities for the licensed or registered facility type, subject to approval through the Practitioner Registry or to department approval.

Authorizing statute(s): 52-2-704, MCA

Implementing statute(s): 52-2-702, 52-2-704, 52-2-723, 52-2-731, MCA

37.96.907 TEACHER RESPONSIBILITIES AND QUALIFICATIONS

(1) Teacher is an optional role.

(2) Teachers help a lead teacher or director provide instructional support to children and implement developmentally appropriate programming.

(3) Teachers must:

(a) receive oversight and guidance from a lead teacher, site director, or director;

(b) be at least 16 years old;

(c) have satisfactory results of background checks as set forth in ARM ~~37.96.1001~~ 37.96.1002;

(d) complete on-the-job training;

(e) be current on the Practitioner Registry;

(f) have current CPR and pediatric first aid certification; and

(g) successfully complete required orientation training.

Authorizing statute(s): 52-2-704, MCA

Implementing statute(s): 52-2-704, 52-2-723, 52-2-731, MCA

37.96.908 SUBSTITUTE RESPONSIBILITIES AND QUALIFICATIONS

(1) Substitutes must:

(a) have satisfactory results of background checks as set forth in ARM ~~37.96.1001~~ 37.96.1002;

(b) meet the age requirement for the role for which they are substituting;

(c) complete on-the-job training;

(d) be current on the Practitioner Registry;

(e) have current CPR and pediatric first aid certification; and

(f) successfully complete required orientation training.

Authorizing statute(s): 52-2-704, MCA

Implementing statute(s): 52-2-704, 52-2-723, 52-2-731, MCA

37.96.909 TRAINEE RESPONSIBILITIES AND QUALIFICATIONS

(1) Trainees must:

(a) have satisfactory results of background checks as set forth in ARM ~~37.96.1001~~ 37.96.1002;

(b) be at least 16 years old;

(c) not be left alone with children until they complete the required 30-day orientation training;

(d) receive oversight and guidance from an onsite lead teacher, site director, or director; and

(e) not remain in this role for longer than 90 days.

Authorizing statute(s): 52-2-704, MCA

Implementing statute(s): 52-2-704, 52-2-723, 52-2-731, MCA

37.96.910 SUPPORT STAFF QUALIFICATIONS

(1) Support staff who do not provide direct care for children must:

(a) have satisfactory results of background checks as set forth in ARM ~~37.96.1001~~ 37.96.1002; and

(b) complete on-the-job training.

(2) Support staff do not count toward compliance with required child-to-staff ratios.

Authorizing statute(s): 52-2-704, MCA

Implementing statute(s): 52-2-704, 52-2-723, 52-2-731, MCA

37.96.913 VOLUNTEER QUALIFICATIONS

(1) Volunteers may include a parent or guardian helping on a field trip, special guest presenters, or a parent or guardian, family member, or community member helping with a cultural celebration, or other activity. Volunteers:

(a) must be at least 15 years old; and

(b) must have satisfactory results of background checks as set forth in ARM ~~37.96.1001~~ 37.96.1002 if they will have unsupervised access to children.

(2) Volunteers do not count toward compliance with required child-to-staff ratios.

Authorizing statute(s): 52-2-704, MCA

Implementing statute(s): 52-2-704, 52-2-723, 52-2-731, MCA

Rule Reviewer

Heidi Sanders

Approval

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