

PROPOSAL REGARDING PAARP BOARD:

Transition of licensing of the Private Alternative Adolescent Residential Programs or Outdoor Programs (PAARP) from the PAARP Board within the Department of Labor and Industry to the Department of Public Health and Human Services, Quality Assurance Division

Executive Summary:

The Department of Public Health and Human Services could support the relocation of the regulatory functions for serving children and adolescents from a board driven regulatory structure to a minimum requirement regulatory overview. The PAARP functions would fit into the Quality Assurance Division, which administers the Community Residential programs for youth within the Licensing Bureau. The logistics needed to make such a transition are:

1. Legislation to repeal the PAARP board statutory requirements in Title 37.
2. Legislation to enact licensing requirements for PAARP programs into Title 50, chapter 5, which will grant rule writing authority for identifying the standards to be used for licensing.
3. Repealing the PAARP board “licensing fee rule” ARM 24.181 - 301 established by the board for all PAARP programs.
4. Currently licensed programs would continue to operate under their existing board rule for the year it will take to transition to a new licensing standard.
5. Develop new licensing standards in Administrative Rule 37.106 specific to the PAARPs. It is recommended that the Licensing Bureau form a rule work group with the stakeholders and interested parties to develop the new standard. The group would begin with what can be ported over from the existing rule. Note that MCA Title 50, chapter 5 will allow for a reasonable time for transition of rules.ⁱ
6. The structure used by the Department of Labor and Industry/PAARP Board for licensing surveys and complaints is very different than the regulatory structure used by DPHHS. Title 50 requires unannounced licensing and on-site complaint investigations. DOLI coordinates the survey process with the programs in advance of an on-site visit. This would be a big change for providers but can be mitigated by provider participation in the rule development and implementation.
7. The current licensing fees in Title 50, chapter 5, part 1, are as follows:
Facilities/programs with 20 beds (children) or less--\$20;
Facilities/programs with 21 beds (children) or more-- \$1.00 per bed.

Assumptions:

1. There are currently 12 licensed Private Alternative Adolescent Residential Programs or Outdoor Programs (PAARP).
2. The licensing responsibility for these programs would require an additional 1.0 FTE at Pay Band 6, plus approximately 30% for benefits. Associated travel costs, rent and equipment costs to perform the duties associated with licensing and surveying PAARP board facilities would also be required. Additional

resources necessary to support the FTE would be augmented by existing resources within QAD.

3. Routine Licensure Inspections--It is estimated that on-site routine licensure inspection will take approximately 30 hours from start to finish (30 hours x12 facilities=360 hours/ year). This is based upon historical factors of similarly known licensing activities within QAD.

The 30 hour total includes approximately 18 hours allocated for travel time to and from the program site; four hours on-site survey time; six hours for off-site survey write up, development of a letter of deficiency (as necessary); written approval of the program plan of correction and any follow up activities.

Travel costs for PAARP work and the associated duties are anticipated to be \$250.00 per inspection, or \$3,000 annually. This includes motor pool vehicle costs, and state rate for meals and lodging costs, based on two days per diem and lodging at state rates.

4. In addition to routine licensure inspections of the programs, PAARP expedition experiences will be directly observed during on-site licensing surveys. This will require additional DPHHS survey staff hours. Expedition locations will take additional staff travel time for the survey. The department must take into account access of the expedition site; certain locations will require utilizing four-wheel drive vehicles, ATVs or potentially even snowmobiles to access the site. Travel costs for these inspections are estimated to be \$300 per trip and six inspections per year for an annual cost of \$1,800.
5. Administrative rules would be revised and updated. The total estimated cost for rule development is \$1,500. This is the publication cost for the Secretary of State's office at \$50/page x 30 pages (minimum), or \$1,500.ⁱⁱ The assistance of agency legal staff is estimated at 24 hours. This workload will be completed by existing staff in QAD and agency legal staff using current appropriation and resources. ARM Revision cost is \$1,500.

Total Costs--Therefore, it is anticipated that the **costs** associated is anticipated to be \$75,310.50 plus \$2,035.50 one-time-only costs. This amount includes the projected salary(\$66,982.00 including benefits) and operational costs for 1.00 FTE paid at Pay Band 6 plus approximately 30% for benefits, associated travel costs, rent and equipment costs.

Additional Considerations to the initial startup Assumptions:

6. Complaint Investigations—The PAARP Board responded to 26 complaints between 2009 and 2014 (an average of four per year). DPHHS anticipates the cost of conducting a complaint investigation to be approximately \$1000.00 per complaint investigation. This base cost is created using existing data from the PAARP Board and DPHHS historical data because investigations of a similar nature occur within similarly licensed programs within DPHHS.
7. Survey Staff--DPHHS would assign two survey staff persons to respond to on-site complaint investigations. The second surveyor salary cost would come from existing QAD staff appropriation. It would be estimated \$5000.00/year would be required for complaint investigation. The costs outlined for complaint include costs for travel, meals and one night lodging for two staff.

Technical Notes:

1. DPHHS would require a transfer of statutory authority and appropriate legal reference to Title 50. DPHHS has existing references for similarly licensed facilities; however, that particular reference is likely to be incompatible (and may be legally indefensible) to what is needed and necessary for the licensure of the

PAARP facilities. Therefore, an additional category of facility and definition of service will be necessary.

2. DPHHS is aware that some of these sites have generated litigation. One has cost the PAARB board approximately \$70,000 in litigation costs to date. DPHHS anticipates that if the transfer of the PAARP facilities occurs and the litigation is not fully resolved prior to the transfer, the issues associated— as well as the accompanying litigation—will also transfer to DPHHS.
3. DPHHS notes that there is a separate bill draft request which has been submitted for 2015 which would require that the religious exemptions for licensure currently in statute to be removed. There are programs/facilities in existence that use this exemption presently to remain unlicensed; such as Pinehaven Christian Children’s Ranch. If the bill is successful; litigation brought forth by the presently exempt programs to the agency would require the services of outside legal counsel. Typically outside council comes from the Department of Justice. The estimated rate for legal services from DOJ is \$80.00 per hour. Cost for potential litigation remains unknown at this time.
4. Defining the PAARP programs as a “health care facility” under 50-5-101 means that absent a specific exclusion, they will get swept up into the Montana Medical-Legal Panel process. DPHHS does not believe these facilities would benefit from participation in this process and would like to exclude them from involvement with the Montana Medical-Legal Panel.

5. The following MCA would also need to be repealed:

2-15-1745. Board of private alternative adolescent residential or outdoor programs. (1) There is a board of private alternative adolescent residential or outdoor programs.

(2) The board consists of five members appointed by the governor with the consent of the senate for 3-year terms. The members must include:

(a) three members from a list of nominees provided by programs, as defined in [37-48-102](#), of various sizes and types; and

(b) two members who must be from the general public.

(3) A vacancy on the board must be filled in the same manner as the original appointment.

(4) The board is allocated to the department for administrative purposes only as prescribed in [2-15-121](#).

6. The appropriate agency to take the lead on the legislation outlined above is the DOLI, with DPHHS providing information background.

ⁱ 50-5-103. *Rules and standards -- accreditation.* (1) *The department shall adopt rules and minimum standards for implementation of parts 1 and 2.*

(2) *Any facility covered by this chapter shall comply with the state and federal requirements relating to construction, equipment, and fire and life safety.*

(3) *The department shall extend a reasonable time for compliance with rules for parts 1 and 2 upon adoption.* In the past the department has taken up to a year to establish a full transition of a new rule. This time was used to consult with licensees; to educate and check on implementation of the new rule with providers.

ⁱⁱ *It will require an estimated 200 hours of staff time (paid at a Pay Band Seven for a total of approx. \$6,000) to develop and revise the rules accordingly.*