

BEFORE THE BOARD OF BEHAVIORAL HEALTH
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the adoption of New) NOTICE OF ADOPTION
Rules I through XIV pertaining to)
certification of behavioral health peer)
support specialists (CBHPSS))

TO: All Concerned Persons

1. On October 13, 2017, the Board of Behavioral Health (board) published MAR Notice No. 24-219-31 regarding the public hearing on the proposed adoption of the above-stated rules, at page 1757 of the 2017 Montana Administrative Register, Issue No. 19.

2. On November 3, 2017, a public hearing was held on the proposed adoption of the above-stated rules in Helena, Montana. Several comments were received by the November 13, 2017, deadline.

3. The board has thoroughly considered the comments received. A summary of the comments and the board responses are as follows:

COMMENT 1: Several commenters opposed the application and renewal fees proposed in NEW RULE II, stating they will create a hardship for certificate holders as well as agencies who potentially pay the fees for certification and renewal. Commenters believed the fees are more in line with clinical licensure by the board.

RESPONSE 1: While the board recognizes the fees are high, the fees are not set arbitrarily and must provide the amount of money usually needed to administer the certification process. The fees reflect the amount of money necessary for the initial rulemaking, programming, and the ongoing costs to administer the CBHPSS certification.

COMMENT 2: Numerous commenters opposed the supervisor qualifications in NEW RULE IV, stating that CBHPSS need not be supervised by already overloaded clinical staff. The commenters suggested that master's and bachelor-level staff, agency program managers, and nonclinical staff could supervise certificate holders.

RESPONSE 2: The legislature, not the board, set the requirement that CBHPSS must be supervised by a competent mental health professional, and then defined these professionals to include licensed physicians, psychologists, social workers, professional counselors, advanced practice registered nurses with a clinical specialty in psychiatric mental health nursing, marriage and family therapists, and licensed addiction counselors. The commenters' suggestions would require a statutory change by the legislature, and cannot be done via rulemaking.

COMMENT 3: Numerous commenters objected that certificate holders are limited to only those with a mental health disorder. The commenters suggest that friends and family members should be able to apply for certification based on "lived experience."

RESPONSE 3: The legislature set the requirement of a diagnosed behavioral health disorder in 37-38-202(1)(a), MCA, thus the suggested change is not within the board's rulemaking power.

COMMENT 4: One commenter questioned the nature of the attestation and the additional documentation required in the application process.

RESPONSE 4: The board strives for the application processes to be as uniform as possible for each license and certification. An applicant must attest to meeting the qualifications for certification in 37-38-202, MCA, by signing the application. The application requirements are set out in proposed NEW RULE V. Additional documentation may include the behavioral health disorder diagnosis and any treatment plans the applicant may have.

COMMENT 5: Numerous commenters opposed the requirement in NEW RULE V that applicants must be in recovery for at least two years, stating that assigning a timeframe is restrictive and discriminatory based on current recovery and relapse models and practices. Commenters believed that the two-year requirement will discourage peer supporters from seeking help earlier in a relapse out of fear of losing certification. Two commenters stated that fitness to provide services should be the role of the supervisor and not the board because supervisors are in a better position to determine recovery and when a peer supporter is ready to return to the role of peer support specialist. One commenter suggested that instead of defining a timeframe, the board should use language from Washington State that "an applicant must be well-grounded in their own mental health recovery for at least one year."

RESPONSE 5: The board has an obligation to protect the public by adopting administrative rules regarding certification. In deciding on a two-year requirement, the board reviewed requirements from each state that regulates peer support specialists, and concluded that two years is an appropriate time for applicants to be well-grounded in recovery. The board did establish exceptions to allow those in recovery to seek help if needed without jeopardizing eligibility for certification.

COMMENT 6: One commenter stated that NEW RULE V fails to address what would happen to a currently certified peer support specialist who requires inpatient hospitalization for mental illness.

RESPONSE 6: NEW RULE V sets forth the application requirements. The situation described by the commenter would be covered in the statutes and rules governing ability to practice and conduct of a CBHPSS, including 37-1-316, MCA, and NEW RULE X. Once an applicant is certified, the certificate holder has due process rights to the certificate holder's certification, and the board cannot revoke the certification without following the established disciplinary processes.

COMMENT 7: Two commenters stated that applicants for CBHPSS should be granted education credit for on-the-job training. The commenters pointed out that military on-the-job-training is accepted while civilian training is not, and stated that NEW RULE V is not supportive or representative of the meaning behind the position.

RESPONSE 7: The board does not accept any on-the-job training hours in lieu of academic hours as relevant for certification, military or civilian.

COMMENT 8: One commenter noted an error in the CBHPSS application process in NEW RULE V(6), and suggested the board change "complete" to "incomplete."

RESPONSE 8: The board agrees and is amending the rule accordingly.

COMMENT 9: A commenter opposed the 40-hour training course required in NEW RULE VI, as it seems more in line with the education requirements for clinical practitioners. The commenter supported receiving credit for on-the-job training and suggested that agencies conduct inter-agency trainings by licensed staff to meet the certification education requirements.

RESPONSE 9: The board conducted a thorough review of education and training requirements in other states, and noted that 40-hour training programs are common. The board appreciates the suggestion of inter-agency trainings and encourages agencies to develop training programs and submit for board approval. The board previously addressed on-the-job training in RESPONSE 7.

COMMENT 10: Numerous commenters opposed the post-certification supervision requirements in NEW RULE VII, stating they are exorbitant, unreasonable, excessive, overreaching, and burdensome. Commenters suggested the board be more flexible in the supervision requirements by allowing supervisors to determine the need for and methods of supervision.

RESPONSE 10: The board conducted thorough research on other states, and concluded that these standards are common to other states and reflective of the board's responsibility to protect the public. The board has provided flexibility in the method of supervision, but determined that it is necessary to establish a certain amount of required supervision.

COMMENT 11: Numerous commenters suggested the board change "work experience" to "direct contact" in NEW RULE VII(2)(c) to compensate for other tasks of peer supporters that don't involve working with clients, such as outreach, training, support group preparation, and staff meetings.

RESPONSE 11: The board acknowledges the suggestion, but is adopting the rule exactly as proposed.

COMMENT 12: Several commenters suggested the board allow direct supervision to occur over video, WebEx/WebCam, etc.

RESPONSE 12: The board agrees that supervision, so long as the parties can see and interact with each other, may occur using various electronic means.

COMMENT 13: Multiple commenters believed the term "clinical supervision" should not be used, as CBHPSS are not clinicians and do not provide clinical services such as therapy.

RESPONSE 13: The board acknowledges the comment, but is adopting the rule exactly as proposed.

COMMENT 14: One commenter noted the lack of reasonable necessity statements for NEW RULE V and NEW RULE VII.

RESPONSE 14: The board was required to adopt rules regarding the application procedures and the supervision requirements to implement the provisions of Senate Bill 62, as explained in the general reasonable necessity statement. A separate reasonable necessity statement is not required for these two rules.

COMMENT 15: One commenter stated that the required education in NEW RULE VI should include education on conditions that require legal reporting, since NEW RULE X(2)(o) requires confidentiality of clients except when required by law.

RESPONSE 15: Section 37-38-106, MCA, sets specific standards for privileged communications which CBHPSS are required to follow. The board's education requirements include training on confidentiality and ethics. The board concluded that the statutory language, combined with the educational requirements in rule, are sufficient to address the commenter's concern.

COMMENT 16: One commenter recommended the board amend NEW RULE XI(3) to clarify that the situation only applies in the first year of certification and avoid confusion among certificate holders and the public.

RESPONSE 16: The board agrees and is amending the rule to specify that the dates apply only in the first year of certification.

COMMENT 17: Several commenters opposed the 20 hours of continuing education (CE) required for certification renewal in NEW RULE XI, stating that the requirement is excessive and expensive in relationship to the income earned by CBHPSS.

RESPONSE 17: The board disagrees with the commenters. In considering CE requirements, the board looked at other states and determined 20 hours is an appropriate requirement. Additionally, the board created enough flexibility in the rule to allow CBHPSS to gain CE in a number of ways.

COMMENT 18: One commenter suggested the board amend NEW RULE XII(5) to clarify that the board may direct staff, rather than delegate authority to staff, to determine compliance with CE standards.

RESPONSE 18: The board agrees and is amending the rule accordingly.

4. The board has adopted NEW RULE I (24.219.901), II (24.219.905), III (24.219.903), IV (24.219.902), VI (24.219.912), VII (24.219.916), VIII (24.219.921), IX (24.219.923), X (24.219.925), XIII (24.219.931), and XIV (24.219.933) exactly as proposed.

5. The board has adopted NEW RULE V (24.219.907), XI (24.219.927), and XII (24.219.929) with the following changes, stricken matter interlined, new matter underlined:

NEW RULE V (24.219.907) CBHPSS APPLICATION PROCEDURES

(1) through (5) remain as proposed.

(6) If the applicant fails to satisfy the requirements for certification within one year of the date the application is determined by the department to be ~~complete~~ incomplete, the application will expire, the application fee will be forfeited, and a new completed application and application fee will be required.

NEW RULE XI (24.219.927) CONTINUING EDUCATION HOURS AND CREDITS (1) and (2) remain as proposed.

(3) CBHPSSs certified before July 1 of the renewal year will be required to fulfill the 20-hour requirement. Those certified July 1 through October 1 are required to obtain one-half of the 20-hour requirement. Those certified after October 1 will not be required to obtain continuing education credits for renewal. These dates apply only in the first year of certification.

NEW RULE XII (24.219.929) CONTINUING EDUCATION STANDARDS

(1) through (4) remain as proposed.

(5) Continuing education courses offered by providers not on the list will be accepted if all criteria listed in (1) are met. The board may ~~delegate authority to~~ direct staff to determine compliance with criteria.

BOARD OF BEHAVIORAL HEALTH
DR. PETER DEGEL, LCPC
CHAIRPERSON

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

/s/ GALEN HOLLENBAUGH
Galen Hollenbaugh, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State February 13, 2018.