



AN ACT GENERALLY REVISING THE LICENSURE OF PERSONAL-CARE FACILITIES; CHANGING THE NAME OF "PERSONAL-CARE FACILITY" TO "ASSISTED LIVING FACILITY" FOR PURPOSES OF HEALTH CARE FACILITY LICENSURE; REVISING THE REQUIREMENTS FOR THE TYPES OF RESIDENTS SERVED BY ASSISTED LIVING FACILITIES; PROVIDING FOR A NEW CATEGORY C THAT CLASSIFIES COGNITIVELY IMPAIRED RESIDENTS WHO ARE SERVED BY ASSISTED LIVING FACILITIES FOR LICENSURE PURPOSES; AND AMENDING SECTIONS 39-3-406, 50-5-101, 50-5-225, 50-5-226, 50-5-227, 50-5-1202, 50-8-101, 52-1-104, 52-3-811, 53-6-101, AND 87-2-802, MCA.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 39-3-406, MCA, is amended to read:

"39-3-406. Exclusions. (1) The provisions of 39-3-404 and 39-3-405 do not apply with respect to:

- (a) students participating in a distributive education program established under the auspices of an accredited educational agency;
- (b) persons employed in private homes whose duties consist of menial chores, such as babysitting, mowing lawns, and cleaning sidewalks;
- (c) persons employed directly by the head of a household to care for children dependent upon the head of the household;
- (d) immediate members of the family of an employer or persons dependent upon an employer for half or more of their support in the customary sense of being a dependent;
- (e) persons who are not regular employees of a nonprofit organization and who voluntarily offer their services to a nonprofit organization on a fully or partially reimbursed basis;
- (f) persons with disabilities engaged in work that is incidental to training or evaluation programs or whose earning capacity is so severely impaired that they are unable to engage in competitive employment;
- (g) apprentices or learners, who may be exempted by the commissioner for a period not to exceed 30 days of their employment;
- (h) learners under the age of 18 who are employed as farm workers, provided that the exclusion may not exceed 180 days from their initial date of employment and further provided that during this exclusion period,

wages paid the learners may not be less than 50% of the minimum wage rate established in this part;

(i) retired or semiretired persons performing part-time incidental work as a condition of their residence on a farm or ranch;

(j) an individual employed in a bona fide executive, administrative, or professional capacity, as these terms are defined by regulations of the commissioner, or in an outside sales capacity, as defined in 29 CFR 541.5;

(k) an individual employed by the United States of America;

(l) resident managers employed in lodging establishments or ~~personal-care~~ assisted living facilities who, under the terms of their employment, live in the establishment or facility;

(m) a direct seller as defined in 26 U.S.C. 3508;

(n) a person placed as a participant in a public assistance program authorized by Title 53 into a work setting for the purpose of developing employment skills. The placement may be with either a public or private employer. The exclusion does not apply to an employment relationship formed in the work setting outside the scope of the employment skills activities authorized by Title 53.

(o) a person serving as a foster parent, licensed as a foster care provider in accordance with 52-2-621, and providing care without wage compensation to no more than six foster children in the provider's own residence. The person may receive reimbursement for providing room and board, obtaining training, respite care, leisure and recreational activities, and providing for other needs and activities arising in the provision of in-home foster care.

(p) an employee employed in domestic service employment to provide live-in companionship services, as defined in 29 CFR 552.6, for individuals who, because of age or infirmity, are unable to care for themselves as provided under section 213(a)(15) of the Fair Labor Standards Act, 29 U.S.C. 213.

(2) The provisions of 39-3-405 do not apply to:

(a) an employee with respect to whom the United States secretary of transportation has power to establish qualifications and maximum hours of service pursuant to the provisions of 49 U.S.C. 31502;

(b) an employee of an employer subject to 49 U.S.C. 10501 and 49 U.S.C. 60501, the provisions of part I of the Interstate Commerce Act;

(c) an individual employed as an outside buyer of poultry, eggs, cream, or milk, in their raw or natural state;

(d) a salesperson, parts person, or mechanic paid on a commission or contract basis and primarily

engaged in selling or servicing automobiles, trucks, mobile homes, recreational vehicles, or farm implements if the salesperson, parts person, or mechanic is employed by a nonmanufacturing establishment primarily engaged in the business of selling the vehicles or implements to ultimate purchasers;

(e) a salesperson primarily engaged in selling trailers, boats, or aircraft if the salesperson is employed by a nonmanufacturing establishment primarily engaged in the business of selling trailers, boats, or aircraft to ultimate purchasers;

(f) a salesperson paid on a commission or contract basis who is primarily engaged in selling advertising for a radio or television station employer;

(g) an employee employed as a driver or driver's helper making local deliveries who is compensated for the employment on the basis of trip rates or other delivery payment plan if the commissioner finds that the plan has the general purpose and effect of reducing hours worked by the employees to or below the maximum workweek applicable to them under 39-3-405;

(h) an employee employed in agriculture or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways that are not owned or operated for profit, that are not operated on a sharecrop basis, and that are used exclusively for supply and storing of water for agricultural purposes;

(i) an employee employed in agriculture by a farmer, notwithstanding other employment of the employee in connection with livestock auction operations in which the farmer is engaged as an adjunct to the raising of livestock, either alone or in conjunction with other farmers, if the employee is:

(i) primarily employed during a workweek in agriculture by a farmer; and

(ii) paid for employment in connection with the livestock auction operations at a wage rate not less than that prescribed by 39-3-404;

(j) an employee of an establishment commonly recognized as a country elevator, including an establishment that sells products and services used in the operation of a farm if no more than five employees are employed by the establishment;

(k) a driver employed by an employer engaged in the business of operating taxicabs;

(l) an employee who is employed with the employee's spouse by a nonprofit educational institution to serve as the parents of children who are orphans or one of whose natural parents is deceased or who are enrolled in the institution and reside in residential facilities of the institution so long as the children are in residence at the institution and so long as the employee and the employee's spouse reside in the facilities and receive, without cost, board and lodging from the institution and are together compensated, on a cash basis, at

an annual rate of not less than \$10,000;

(m) an employee employed in planting or tending trees; cruising, surveying, or felling timber; or transporting logs or other forestry products to a mill, processing plant, railroad, or other transportation terminal if the number of employees employed by the employer in the forestry or lumbering operations does not exceed eight;

(n) an employee of a sheriff's department who is working under an established work period in lieu of a workweek pursuant to 7-4-2509(1);

(o) an employee of a municipal or county government who is working under a work period not exceeding 40 hours in a 7-day period established through a collective bargaining agreement when a collective bargaining unit represents the employee or by mutual agreement of the employer and employee when a bargaining unit is not recognized. Employment in excess of 40 hours in a 7-day, 40-hour work period must be compensated at a rate of not less than 1 1/2 times the hourly wage rate for the employee.

(p) an employee of a hospital or other establishment primarily engaged in the care of the sick, disabled, aged, or mentally ill or defective who is working under a work period not exceeding 80 hours in a 14-day period established through either a collective bargaining agreement when a collective bargaining unit represents the employee or by mutual agreement of the employer and employee when a bargaining unit is not recognized. Employment in excess of 8 hours a day or 80 hours in a 14-day period must be compensated for at a rate of not less than 1 1/2 times the hourly wage rate for the employee.

(q) a firefighter who is working under a work period established in a collective bargaining agreement entered into between a public employer and a firefighters' organization or its exclusive representative;

(r) an officer or other employee of a police department in a city of the first or second class who is working under a work period established by the chief of police under 7-32-4118;

(s) an employee of a department of public safety working under a work period established pursuant to 7-32-115;

(t) an employee of a retail establishment if the employee's regular rate of pay exceeds 1 1/2 times the minimum hourly rate applicable under section 206 of the Fair Labor Standards Act of 1938, 29 U.S.C. 206, and if more than half of the employee's compensation for a period of not less than 1 month is derived from commissions on goods and services;

(u) a person employed as a guide, cook, camp tender, or livestock handler by a licensed outfitter as defined in 37-47-101;

(v) an employee employed as a radio announcer, news editor, or chief engineer by an employer in a second- or third-class city or a town;

(w) an employee of the consolidated legislative branch as provided in 5-2-503;

(x) an employee of the state or its political subdivisions employed, at the employee's option, on an occasional or sporadic basis in a capacity other than the employee's regular occupation. Only the hours that the employee was employed in a capacity other than the employee's regular occupation may be excluded from the calculation of hours to determine overtime compensation."

Section 2. Section 50-5-101, MCA, is amended to read:

"50-5-101. Definitions. As used in parts 1 through 3 of this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Accreditation" means a designation of approval.

(2) "Activities of daily living" means tasks usually performed in the course of a normal day in a resident's life that include eating, walking, mobility, dressing, grooming, bathing, toileting, and transferring.

~~(2)(3)~~ "Adult day-care center" means a facility, freestanding or connected to another health care facility, that provides adults, on a regularly scheduled basis, with the care necessary to meet the needs of daily living but that does not provide overnight care.

~~(3)(4)~~ (a) "Adult foster care home" means a private home or other facility that offers, except as provided in 50-5-216, only light personal care or custodial care to four or fewer disabled adults or aged persons who are not related to the owner or manager of the home by blood, marriage, or adoption or who are not under the full guardianship of the owner or manager.

(b) As used in this subsection ~~(3)~~ (4), the following definitions apply:

(i) "Aged person" means a person as defined by department rule as aged.

(ii) "Custodial care" means providing a sheltered, family-type setting for an aged person or disabled adult so as to provide for the person's basic needs of food and shelter and to ensure that a specific person is available to meet those basic needs.

(iii) "Disabled adult" means a person who is 18 years of age or older and who is defined by department rule as disabled.

(iv) (A) "Light personal care" means assisting the aged person or disabled adult in accomplishing such personal hygiene tasks as bathing, dressing, and hair grooming and supervision of prescriptive medicine

administration.

(B) The term does not include the administration of prescriptive medications.

~~(4)~~(5) "Affected person" means an applicant for a certificate of need, a health care facility located in the geographic area affected by the application, an agency that establishes rates for health care facilities, or a third-party payer who reimburses health care facilities in the area affected by the proposal.

(6) "Assisted living facility" means a congregate residential setting that provides or coordinates personal care, 24-hour supervision and assistance, both scheduled and unscheduled, and activities and health-related services.

~~(5)~~(7) "Capital expenditure" means:

(a) an expenditure made by or on behalf of a health care facility that, under generally accepted accounting principles, is not properly chargeable as an expense of operation and maintenance; or

(b) a lease, donation, or comparable arrangement that would be a capital expenditure if money or any other property of value had changed hands.

~~(6)~~(8) "Certificate of need" means a written authorization by the department for a person to proceed with a proposal subject to 50-5-301.

~~(7)~~(9) "Chemical dependency facility" means a facility whose function is the treatment, rehabilitation, and prevention of the use of any chemical substance, including alcohol, that creates behavioral or health problems and endangers the health, interpersonal relationships, or economic function of an individual or the public health, welfare, or safety.

~~(8)~~(10) "Clinical laboratory" means a facility for the microbiological, serological, chemical, hematological, radiobioassay, cytological, immunohematological, pathological, or other examination of materials derived from the human body for the purpose of providing information for the diagnosis, prevention, or treatment of a disease or assessment of a medical condition.

~~(9)~~(11) "College of American pathologists" means the organization nationally recognized by that name that surveys clinical laboratories upon their requests and accredits clinical laboratories that it finds meet its standards and requirements.

~~(10)~~(12) "Commission on accreditation of rehabilitation facilities" means the organization nationally recognized by that name that surveys rehabilitation facilities upon their requests and grants accreditation status to a rehabilitation facility that it finds meets its standards and requirements.

~~(11)~~(13) "Comparative review" means a joint review of two or more certificate of need applications that

are determined by the department to be competitive in that the granting of a certificate of need to one of the applicants would substantially prejudice the department's review of the other applications.

(14) "Congregate" means the provision of group services designed especially for elderly or disabled persons who require supportive services and housing.

~~(12)~~(15) "Construction" means the physical erection of a health care facility and any stage of the physical erection, including groundbreaking, or remodeling, replacement, or renovation of an existing health care facility.

~~(13)~~(16) "Critical access hospital" means a facility that is located in a rural area, as defined in 42 U.S.C. 1395ww(d)(2)(D), and that has been designated by the department as a critical access hospital pursuant to 50-5-233.

~~(14)~~(17) "Department" means the department of public health and human services provided for in 2-15-2201.

~~(15)~~(18) "End-stage renal dialysis facility" means a facility that specializes in the treatment of kidney diseases and includes freestanding hemodialysis units.

~~(16)~~(19) "Federal acts" means federal statutes for the construction of health care facilities.

~~(17)~~(20) "Governmental unit" means the state, a state agency, a county, municipality, or political subdivision of the state, or an agency of a political subdivision.

~~(18)~~(21) (a) "Health care facility" or "facility" means all or a portion of an institution, building, or agency, private or public, excluding federal facilities, whether organized for profit or not, that is used, operated, or designed to provide health services, medical treatment, or nursing, rehabilitative, or preventive care to any individual. ~~The term does not include offices of private physicians, dentists, or other physical or mental health care workers regulated under Title 37, including chemical dependency counselors.~~ The term includes chemical dependency facilities, critical access hospitals, end-stage renal dialysis facilities, health maintenance organizations, home health agencies, home infusion therapy agencies, hospices, hospitals, infirmaries, long-term care facilities, medical assistance facilities, mental health centers, outpatient centers for primary care, outpatient centers for surgical services, rehabilitation facilities, residential care facilities, and residential treatment facilities.

(b) The term does not include offices of private physicians, dentists, or other physical or mental health care workers regulated under Title 37, including chemical dependency counselors.

~~(19)~~(22) "Health maintenance organization" means a public or private organization that provides or arranges for health care services to enrollees on a prepaid or other financial basis, either directly through provider employees or through contractual or other arrangements with a provider or group of providers.

~~(20)~~(23) "Home health agency" means a public agency or private organization or subdivision of the agency or organization that is engaged in providing home health services to individuals in the places where they live. Home health services must include the services of a licensed registered nurse and at least one other therapeutic service and may include additional support services.

~~(21)~~(24) "Home infusion therapy agency" means a health care facility that provides home infusion therapy services.

~~(22)~~(25) "Home infusion therapy services" means the preparation, administration, or furnishing of parenteral medications or parenteral or enteral nutritional services to an individual in that individual's residence. The services include an educational component for the patient, the patient's caregiver, or the patient's family member.

~~(23)~~(26) "Hospice" means a coordinated program of home and inpatient health care that provides or coordinates palliative and supportive care to meet the needs of a terminally ill patient and the patient's family arising out of physical, psychological, spiritual, social, and economic stresses experienced during the final stages of illness and dying and that includes formal bereavement programs as an essential component. The term includes:

- (a) an inpatient hospice facility, which is a facility managed directly by a medicare-certified hospice that meets all medicare certification regulations for freestanding inpatient hospice facilities; and
- (b) a residential hospice facility, which is a facility managed directly by a licensed hospice program that can house three or more hospice patients.

~~(24)~~(27) "Hospital" means a facility providing, by or under the supervision of licensed physicians, services for medical diagnosis, treatment, rehabilitation, and care of injured, disabled, or sick individuals. Services provided may or may not include obstetrical care, emergency care, or any other service allowed by state licensing authority. A hospital has an organized medical staff that is on call and available within 20 minutes, 24 hours a day, 7 days a week, and provides 24-hour nursing care by licensed registered nurses. The term includes hospitals specializing in providing health services for psychiatric, mentally retarded, and tubercular patients, but does not include critical access hospitals.

~~(25)~~(28) "Infirmarium" means a facility located in a university, college, government institution, or industry for the treatment of the sick or injured, with the following subdefinitions:

- (a) an "infirmarium--A" provides outpatient and inpatient care;
- (b) an "infirmarium--B" provides outpatient care only.

~~(26)~~(29) "Intermediate developmental disability care" means the provision of nursing care services, health-related services, and social services for persons with developmental disabilities, as defined in 53-20-102, or for individuals with related problems.

~~(27)~~(30) "Intermediate nursing care" means the provision of nursing care services, health-related services, and social services under the supervision of a licensed nurse to patients not requiring 24-hour nursing care.

~~(28)~~(31) "Joint commission on accreditation of healthcare organizations" means the organization nationally recognized by that name that surveys health care facilities upon their requests and grants accreditation status to a health care facility that it finds meets its standards and requirements.

(32) "Licensed health care professional" means a licensed physician, physician assistant-certified, advanced practice registered nurse, or registered nurse, who is practicing within the scope of the license issued by the department of labor and industry.

~~(29)~~(33) (a) "Long-term care facility" means a facility or part of a facility that provides skilled nursing care, residential care, intermediate nursing care, or intermediate developmental disability care to a total of two or more individuals or that provides personal care.

(b) The term does not include community homes for persons with developmental disabilities licensed under 53-20-305; community homes for persons with severe disabilities, licensed under 52-4-203; youth care facilities, licensed under 52-2-622; hotels, motels, boardinghouses, roominghouses, or similar accommodations providing for transients, students, or individuals who do not require institutional health care; or juvenile and adult correctional facilities operating under the authority of the department of corrections.

~~(30)~~(34) "Medical assistance facility" means a facility that meets both of the following:

(a) provides inpatient care to ill or injured individuals before their transportation to a hospital or that provides inpatient medical care to individuals needing that care for a period of no longer than 96 hours unless a longer period is required because transfer to a hospital is precluded because of inclement weather or emergency conditions. The department or its designee may, upon request, waive the 96-hour restriction retroactively and on a case-by-case basis if the individual's attending physician, physician assistant-certified, or nurse practitioner determines that the transfer is medically inappropriate and would jeopardize the health and safety of the individual.

(b) either is located in a county with fewer than six residents a square mile or is located more than 35 road miles from the nearest hospital.

~~(31)~~(35) "Mental health center" means a facility providing services for the prevention or diagnosis of mental illness, the care and treatment of mentally ill patients, the rehabilitation of mentally ill individuals, or any combination of these services.

~~(32)~~(36) "Nonprofit health care facility" means a health care facility owned or operated by one or more nonprofit corporations or associations.

~~(33)~~(37) "Offer" means the representation by a health care facility that it can provide specific health services.

~~(34)~~(38) "Outpatient center for primary care" means a facility that provides, under the direction of a licensed physician, either diagnosis or treatment, or both, to ambulatory patients and that is not an outpatient center for surgical services.

~~(35)~~(39) "Outpatient center for surgical services" means a clinic, infirmary, or other institution or organization that is specifically designed and operated to provide surgical services to patients not requiring hospitalization and that may include recovery care beds.

~~(36)~~(40) "Patient" means an individual obtaining services, including skilled nursing care, from a health care facility.

~~(37)~~(41) "Person" means an individual, firm, partnership, association, organization, agency, institution, corporation, trust, estate, or governmental unit, whether organized for profit or not.

~~(38)~~(42) "Personal care" means the provision of services and care for residents who need some assistance in performing the activities of daily living.

~~(39)~~ "~~Personal-care facility~~" means a facility in which personal care is provided for residents in either a category A facility or a category B facility as provided in 50-5-227.

(43) "Practitioner" means an individual licensed by the department of labor and industry who has assessment, admission, and prescription authority.

~~(40)~~(44) "Recovery care bed" means, except as provided in 50-5-235, a bed occupied for less than 24 hours by a patient recovering from surgery or other treatment.

~~(41)~~(45) "Rehabilitation facility" means a facility that is operated for the primary purpose of assisting in the rehabilitation of disabled individuals by providing comprehensive medical evaluations and services, psychological and social services, or vocational evaluation and training or any combination of these services and in which the major portion of the services is furnished within the facility.

~~(42)~~(46) "Resident" means an individual who is in a long-term care facility or in a residential care facility.

~~(43)~~(47) "Residential care facility" means an adult day-care center, an adult foster care home, a ~~personal-care~~ an assisted living facility, or a retirement home.

~~(44)~~(48) "Residential psychiatric care" means active psychiatric treatment provided in a residential treatment facility to psychiatrically impaired individuals with persistent patterns of emotional, psychological, or behavioral dysfunction of such severity as to require 24-hour supervised care to adequately treat or remedy the individual's condition. Residential psychiatric care must be individualized and designed to achieve the patient's discharge to less restrictive levels of care at the earliest possible time.

~~(45)~~(49) "Residential treatment facility" means a facility operated for the primary purpose of providing residential psychiatric care to individuals under 21 years of age.

~~(46)~~(50) "Retirement home" means a building or buildings in which separate living accommodations are rented or leased to individuals who use those accommodations as their primary residence.

~~(47)~~(51) "Skilled nursing care" means the provision of nursing care services, health-related services, and social services under the supervision of a licensed registered nurse on a 24-hour basis.

~~(48)~~(52) "State health care facilities plan" means the plan prepared by the department to project the need for health care facilities within Montana and approved by the governor and a statewide health coordinating council appointed by the director of the department.

~~(49)~~(53) "Swing bed" means a bed approved pursuant to 42 U.S.C. 1395tt to be used to provide either acute care or extended skilled nursing care to a patient."

Section 3. Section 50-5-225, MCA, is amended to read:

"50-5-225. ~~Personal-care~~ Assisted living facilities -- services to residents. ~~A personal-care facility must provide the following services to facility residents:~~ (1) An assisted living facility shall, at a minimum, provide or make provisions for:

~~(1)(a) residential personal services, such as laundry, housekeeping, food service, and either providing or making available provision for local transportation;~~

~~(2)(b) personal assistance services, such as assistance by staff as required by residents in eating, walking, dressing, grooming, and similar routine living tasks assistance with activities of daily living, as provided for in the facility admission agreement and that do not require the use of a licensed health care professional or a licensed practical nurse;~~

~~(3)(c) recreational activities; and~~

- ~~(4)(d) supervision of assistance with self-medication;~~
- ~~(e) 24-hour onsite supervision by staff; and~~
- ~~(f) assistance in arranging health-related services, such as medical appointments and appointments related to hearing aids, glasses, or dentures.~~

~~(2) An assisted living facility may provide, make provisions for, or allow a resident to obtain third-party provider services for:~~

- ~~(a) the administration of medications consistent with applicable laws and regulations; and~~
- ~~(b) skilled nursing care or other skilled services related to temporary, short-term, acute illnesses, which may not exceed 30 consecutive days for one episode or more than a total of 120 days in 1 year."~~

Section 4. Section 50-5-226, MCA, is amended to read:

"50-5-226. Placement in ~~personal-care~~ assisted living facilities. (1) ~~A personal-care~~ An assisted living facility may provide personal-care services to a resident who is 18 years of age or older and in need of the personal care for which the facility is licensed under 50-5-227.

~~(2) A resident of a personal-care~~ An assisted living facility licensed as a category A facility under 50-5-227 ~~may obtain third-party provider services for skilled nursing care for no more than 20 consecutive days at a time;~~ may not admit or retain a category A resident unless each of the following conditions is met:

(a) The resident may not require physical or chemical restraint or confinement in locked quarters, but may consent to the use of safety devices pursuant to Title 50, chapter 5, part 12.

(b) The resident may not have a stage 3 or stage 4 pressure ulcer.

(c) The resident may not have a gastrostomy or jejunostomy tube.

(d) The resident may not require skilled nursing care or other skilled services on a continued basis except for the administration of medications consistent with applicable laws and regulations.

(e) The resident may not be a danger to self or others.

(f) The resident must be able to accomplish activities of daily living with supervision and assistance based on the following:

(i) the resident may not be consistently and totally dependent in four or more activities of daily living as a result of a cognitive or physical impairment; and

(ii) the resident may not have a severe cognitive impairment that renders the resident incapable of expressing needs or making basic care decisions.

~~(3) A resident of a personal-care~~ An assisted living facility licensed as a category B facility under 50-5-227 must have a signed statement from a physician agreeing to the resident's admission to the facility if the resident is may not admit or retain a category B resident unless each of the following conditions is met:

~~(a) in need of~~ The resident may require skilled nursing care or other services for more than 30 days for an incident, for more than 120 days a year that may be provided or arranged for by either the facility or the resident, and as provided for in the facility agreement;.

~~(b) in need of medical, physical, or chemical restraint;~~

~~(c) nonambulatory or bedridden;~~

~~(d) incontinent to the extent that bowel or bladder control is absent; or~~

~~(e) unable to self-administer medications.~~

(b) The resident may be consistently and totally dependent in more than four activities of daily living.

(c) The resident may not require physical or chemical restraint or confinement in locked quarters, but may consent to the use of safety devices pursuant to Title 50, chapter 5, part 12.

(d) The resident may not be a danger to self or others.

(e) The resident must have a practitioner's written order for admission as a category B resident and written orders for care.

~~(4)(f) A~~ The resident of a category B personal-care facility who needs skilled nursing care must have a signed ~~statement~~ health care assessment, renewed on a quarterly basis by a ~~physician, a physician assistant-certified, an advanced practice registered nurse, or a registered nurse, whose work is unrelated to the operation of the facility and~~ licensed health care professional who:

~~(a)(i)~~ actually visited the facility within the calendar quarter covered by the ~~statement~~ assessment;

~~(b)(ii)~~ has certified that the particular needs of the resident can be adequately met in the facility; and

~~(c)(iii)~~ has certified that there has been no significant change in health care status that would require another level of care.

(4) An assisted living facility licensed as a category C facility under 50-5-227 may not admit or retain a category C resident unless each of the following conditions is met:

(a) The resident has a severe cognitive impairment that renders the resident incapable of expressing needs or of making basic care decisions.

(b) The resident may be at risk for leaving the facility without regard for personal safety.

(c) Except as provided in subsection (4)(b), the resident may not be a danger to self or others.

(d) The resident may not require physical or chemical restraint or confinement in locked quarters, but may consent to the use of safety devices pursuant to Title 50, chapter 5, part 12.

(5) For category B and C residents, the assisted living facility shall specify services that it will provide in the facility admission criteria.

~~(5)(6)~~ The department shall develop standardized forms and education and training materials to provide to the ~~personal-care~~ assisted living facilities and to the ~~physicians, physician assistants-certified, advanced practice registered nurses, or registered nurses~~ licensed health care professionals who are responsible for the signed statements provided for in subsection ~~(4) (3)(f)~~. The use of the standardized forms is voluntary.

~~(6)(7)~~ The department shall provide by rule:

(a) an application or placement procedure informing a prospective resident and, if applicable, the resident's ~~physician practitioner~~ of:

(i) physical and mental standards for residents of ~~personal-care~~ assisted living facilities;

(ii) requirements for placement in a facility with a higher standard of care if a resident's condition deteriorates; and

(iii) the services offered by the facility and services that a resident may receive from third-party providers while the resident in lives at the facility;

(b) standards to be used by a facility and, if appropriate, by a screening agency to screen residents and prospective residents to prevent residence by individuals referred to in ~~subsection~~ subsections (3) and (4);

(c) a method by which the results of any screening decision made pursuant to rules established under subsection ~~(6)(b) (7)(b)~~ may be appealed by the facility operator or by or on behalf of a resident or prospective resident;

(d) standards for operating a category A ~~personal-care~~ assisted living facility, including standards for the physical, structural, environmental, sanitary, infection control, dietary, social, staffing, and recordkeeping components of a facility and the storage and administration of over-the-counter and prescription medications; and

(e) standards for operating a category B ~~personal-care~~ assisted living facility, which must include the standards for a category A ~~personal-care~~ assisted living facility and additional standards for assessment of residents, care planning, qualifications and training of staff, ~~restraint use and reduction~~, prevention and care of pressure sores, and incontinence care, ~~and the storage and administration of drugs~~; and

(f) standards for operating a category C assisted living facility, which must include the standards for a category B assisted living facility and additional standards for resident assessment, the provision of specialty care

to residents with cognitive impairments, and additional qualifications of and training for the administrator and direct-care staff."

Section 5. Section 50-5-227, MCA, is amended to read:

"50-5-227. Licensing ~~personal-care~~ assisted living facilities. (1) The department shall by rule adopt standards for licensing and operation of ~~personal-care~~ assisted living facilities to implement the provisions of 50-5-225 and 50-5-226.

(2) The following licensing categories must be used by the department in adopting rules under subsection (1):

- (a) category A ~~is a facility providing personal care to residents who may not be:~~
 - ~~(i) in need of skilled nursing care;~~
 - ~~(ii) in need of medical, chemical, or physical restraint;~~
 - ~~(iii) nonambulatory or bedridden;~~
 - ~~(iv) incontinent to the extent that bowel or bladder control is absent; or~~
 - ~~(v) unable to self-administer medications; or serving residents requiring the level of care as provided for in 50-5-226(2);~~

(b) category B ~~is a facility providing personal care~~ skilled nursing care or other skilled services to five or fewer residents who ~~may be:~~

- ~~(i) in need of skilled nursing care;~~
- ~~(ii) in need of medical, chemical, or physical restraint;~~
- ~~(iii) nonambulatory or bedridden;~~
- ~~(iv) incontinent to the extent that bowel or bladder control is absent; or~~
- ~~(v) unable to self-administer medications meet the requirements stated in 50-5-226(3); or~~

(c) category C facility providing services to residents with cognitive impairments requiring the level of care stated in 50-5-226(4).

(3) A single facility meeting the applicable requirements for a category A facility may additionally be licensed to provide category B or category C services with the approval of the department.

~~(3)~~(4) The department may by rule establish license fees, inspection fees, and fees for patient screening. Fees must be reasonably related to service costs."

Section 6. Section 50-5-1202, MCA, is amended to read:

"50-5-1202. Definitions. As used in this part, the following definitions apply:

- (1) "Department" means the department of public health and human services provided for in 2-15-2201.
- (2) "Long-term care facility" means a licensed facility that provides skilled nursing care or intermediate nursing care or that is ~~a personal-care~~ an assisted living facility, as defined in 50-5-101.
- (3) "Medical symptom" means an indication of a physical or psychological condition or of a physical or psychological need expressed by the patient.
- (4) "Physician" includes an advanced practice registered nurse to the extent permitted by federal law.
- (5) "Resident" means a person who lives in a long-term care facility.
- (6) (a) "Safety devices" means side rails, tray tables, seatbelts, and other similar devices.
- (b) The term does not include protective restraints as defined in 21 CFR 880.6760."

Section 7. Section 50-8-101, MCA, is amended to read:

"50-8-101. Definitions. As used in this part, the following definitions apply:

- (1) "Department" means the department of public health and human services provided for in 2-15-2201.
- (2) "Facility" means:
 - (a) nonmedical facilities including:
 - (i) mental health transitional living facilities; and
 - (ii) inpatient freestanding or intermediate transitional living facilities for alcohol or drug treatment or emergency detoxification;
 - (b) community homes for persons with developmental disabilities, community homes for physically disabled persons, and adult foster family care homes;
 - (c) youth care facilities;
 - (d) public accommodations, including roominghouses, retirement homes, hotels, and motels;
 - (e) health care facilities or services, including hospitals, skilled and intermediate nursing home services, and intermediate care nursing home services for the mentally retarded;
 - (f) freestanding medical facilities or care, including infirmaries, kidney treatment centers, and home health agencies; and
 - (g) ~~personal-care~~ assisted living facilities.
- (3) "Inspecting authority" means the department or agency authorized by statute to perform a given

inspection necessary for certification for licensure.

(4) "Licensing agency" means the agency that is authorized by statute to issue the license."

Section 8. Section 52-1-104, MCA, is amended to read:

"52-1-104. Department authorized to provide and set standards for supplementary payments. (1)

Except as provided in this section, the department ~~shall have the authority to~~ may provide supplementary payments from state funds to recipients of supplemental security income for the aged, blind, or disabled under Title XVI of the Social Security Act of the United States or any future amendments ~~thereto~~ to that act.

(2) The department ~~shall have the authority to~~ may establish standards of assistance and apply them uniformly throughout the state and ~~to~~ may determine individuals eligible for and the amount of ~~such~~ supplementary payments under federal and state guidelines.

(3) The department may not provide supplementary payments under subsection (1) for persons who are residents of category B ~~personal-care~~ assisted living facilities licensed pursuant to 50-5-227."

Section 9. Section 52-3-811, MCA, is amended to read:

"52-3-811. Reports. (1) When the professionals and other persons listed in subsection (3) know or have

reasonable cause to suspect that an older person or a person with a developmental disability known to them in their professional or official capacities has been subjected to abuse, sexual abuse, neglect, or exploitation, they shall:

(a) if the person is not a resident of a long-term care facility, report the matter to:

(i) the department or its local affiliate; or

(ii) the county attorney of the county in which the person resides or in which the acts that are the subject of the report occurred;

(b) if the person is a resident of a long-term care facility, report the matter to the long-term care ombudsman appointed under the provisions of 42 U.S.C. 3027(a)(12) and to the department. The department shall investigate the matter pursuant to its authority in 50-5-204 and, if it finds any allegations of abuse, sexual abuse, neglect, or exploitation contained in the report to be substantially true, forward a copy of the report to the county attorney as provided in subsection (1)(a)(ii).

(2) If the report required in subsection (1) involves an act or omission of the department that may be construed as abuse, sexual abuse, neglect, or exploitation, a copy of the report may not be sent to the department

but must be sent instead to the county attorney of the county in which the older person or the person with a developmental disability resides or in which the acts that are the subject of the report occurred.

(3) Professionals and other persons required to report are:

(a) a physician, resident, intern, professional or practical nurse, physician's assistant, or member of a hospital staff engaged in the admission, examination, care, or treatment of persons;

(b) an osteopath, dentist, denturist, chiropractor, optometrist, podiatrist, medical examiner, coroner, or any other health or mental health professional;

(c) an ambulance attendant;

(d) a social worker or other employee of the state, a county, or a municipality assisting an older person or a person with a developmental disability in the application for or receipt of public assistance payments or services;

(e) a person who maintains or is employed by a roominghouse, retirement home or complex, nursing home, group home, adult foster care home, adult day-care center, or ~~personal-care~~ assisted living facility or an agency or individual that provides home health services or personal care in the home;

(f) an attorney, unless the attorney acquired knowledge of the facts required to be reported from a client and the attorney-client privilege applies;

(g) a peace officer or other law enforcement official;

(h) a person providing services to an older person or a person with a developmental disability pursuant to a contract with a state or federal agency; and

(i) an employee of the department while in the conduct of the employee's duties.

(4) Any other persons or entities may, but are not required to, submit a report in accordance with subsection (1)."

Section 10. Section 53-6-101, MCA, is amended to read:

"53-6-101. Montana medicaid program -- authorization of services. (1) There is a Montana medicaid program established for the purpose of providing necessary medical services to eligible persons who have need for medical assistance. The Montana medicaid program is a joint federal-state program administered under this chapter and in accordance with Title XIX of the Social Security Act, 42 U.S.C. 1396, et seq., as may be amended. The department of public health and human services shall administer the Montana medicaid program.

(2) Medical assistance provided by the Montana medicaid program includes the following services:

- (a) inpatient hospital services;
 - (b) outpatient hospital services;
 - (c) other laboratory and x-ray services, including minimum mammography examination as defined in 33-22-132;
 - (d) skilled nursing services in long-term care facilities;
 - (e) physicians' services;
 - (f) nurse specialist services;
 - (g) early and periodic screening, diagnosis, and treatment services for persons under 21 years of age;
 - (h) ambulatory prenatal care for pregnant women during a presumptive eligibility period, as provided in 42 U.S.C. 1396a(a)(47) and 42 U.S.C. 1396r-1;
 - (i) targeted case management services, as authorized in 42 U.S.C. 1396n(g), for high-risk pregnant women;
 - (j) services that are provided by physician assistants-certified within the scope of their practice and that are otherwise directly reimbursed as allowed under department rule to an existing provider;
 - (k) health services provided under a physician's orders by a public health department; and
 - (l) federally qualified health center services, as defined in 42 U.S.C. 1396d(l)(2).
- (3) Medical assistance provided by the Montana medicaid program may, as provided by department rule, also include the following services:
- (a) medical care or any other type of remedial care recognized under state law, furnished by licensed practitioners within the scope of their practice as defined by state law;
 - (b) home health care services;
 - (c) private-duty nursing services;
 - (d) dental services;
 - (e) physical therapy services;
 - (f) mental health center services administered and funded under a state mental health program authorized under Title 53, chapter 21, part 2;
 - (g) clinical social worker services;
 - (h) prescribed drugs, dentures, and prosthetic devices;
 - (i) prescribed eyeglasses;
 - (j) other diagnostic, screening, preventive, rehabilitative, chiropractic, and osteopathic services;

- (k) inpatient psychiatric hospital services for persons under 21 years of age;
 - (l) services of professional counselors licensed under Title 37, chapter 23;
 - (m) hospice care, as defined in 42 U.S.C. 1396d(o);
 - (n) case management services as provided in 42 U.S.C. 1396d(a) and 1396n(g), including targeted case management services for the mentally ill;
 - (o) inpatient psychiatric services for persons under 21 years of age, as provided in 42 U.S.C. 1396d(h), in a residential treatment facility, as defined in 50-5-101, that is licensed in accordance with 50-5-201; and
 - (p) any additional medical service or aid allowable under or provided by the federal Social Security Act.
- (4) Services for persons qualifying for medicaid under the medically needy category of assistance as described in 53-6-131 may be more limited in amount, scope, and duration than services provided to others qualifying for assistance under the Montana medicaid program. The department is not required to provide all of the services listed in subsections (2) and (3) to persons qualifying for medicaid under the medically needy category of assistance.
- (5) In accordance with federal law or waivers of federal law that are granted by the secretary of the U.S. department of health and human services, the department of public health and human services may implement limited medicaid benefits, to be known as basic medicaid, for adult recipients who are eligible because they are receiving financial assistance, as defined in 53-4-201, as the specified caretaker relative of a dependent child under the FAIM project and for all adult recipients of medical assistance only who are covered under a group related to a program providing financial assistance, as defined in 53-4-201. Basic medicaid benefits consist of all mandatory services listed in subsections (2)(a) through (2)(l) but may include those optional services listed in subsections (3)(a) through (3)(p) that the department in its discretion specifies by rule. The department, in exercising its discretion, may consider the amount of funds appropriated by the legislature and whether the provision of a particular service is commonly covered by private health insurance plans. However, a recipient who is pregnant, meets the criteria for disability provided in Title II of the Social Security Act, 42 U.S.C. 416, et seq., or is less than 21 years of age is entitled to full medicaid coverage.
- (6) The department may implement, as provided for in Title XIX of the Social Security Act, 42 U.S.C. 1396, et seq., as may be amended, a program under medicaid for payment of medicare premiums, deductibles, and coinsurance for persons not otherwise eligible for medicaid.
- (7) The department may set rates for medical and other services provided to recipients of medicaid and may enter into contracts for delivery of services to individual recipients or groups of recipients.

(8) The services provided under this part may be only those that are medically necessary and that are the most efficient and cost-effective.

(9) The amount, scope, and duration of services provided under this part must be determined by the department in accordance with Title XIX of the Social Security Act, 42 U.S.C. 1396, et seq., as may be amended.

(10) Services, procedures, and items of an experimental or cosmetic nature may not be provided.

(11) If available funds are not sufficient to provide medical assistance for all eligible persons, the department may set priorities to limit, reduce, or otherwise curtail the amount, scope, or duration of the medical services made available under the Montana medicaid program.

(12) Community-based medicaid services, as provided for in part 4 of this chapter, must be provided in accordance with the provisions of this chapter and the rules adopted under this chapter.

(13) Medicaid payment for ~~personal-care~~ assisted living facilities may not be made unless the department certifies to the director of the governor's office of budget and program planning that payment to this type of provider would, in the aggregate, be a cost-effective alternative to services otherwise provided."

Section 11. Section 87-2-802, MCA, is amended to read:

"87-2-802. Veterans in VA hospitals and residents of state institutions and long-term care facilities, nursing care facilities, ~~personal-care~~ assisted living facilities, and community homes for persons with disabilities. (1) ~~Any~~ A veteran who is a patient residing at a hospital operated by the department of veterans affairs, within or outside the state, and residents of all institutions under the jurisdiction of the department of public health and human services may fish without a license. The residents shall carry a permit on a form prescribed by the department and signed by the superintendent of the institution in lieu of a license.

(2) Upon annual application by managers or directors of licensed long-term care facilities and ~~personal-care~~ assisted living facilities as defined in 50-5-101, community homes for persons with developmental disabilities licensed under 53-20-305, and community homes for persons with severe disabilities licensed under 52-4-203, the department shall allow supervised residents to fish without the otherwise required license during any activities approved by the facilities and homes."

Section 12. Name change -- directions to code commissioner. Wherever a reference to a personal-care facility appears in legislation enacted by the 2003 legislature, the code commissioner is directed to change it to a reference to an assisted living facility.

- END -

I hereby certify that the within bill,
HB 0051, originated in the House.

Chief Clerk of the House

Speaker of the House

Signed this _____ day
of _____, 2019.

President of the Senate

Signed this _____ day
of _____, 2019.

HOUSE BILL NO. 51

INTRODUCED BY E. CLARK

BY REQUEST OF THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES

AN ACT GENERALLY REVISING THE LICENSURE OF PERSONAL-CARE FACILITIES; CHANGING THE NAME OF "PERSONAL-CARE FACILITY" TO "ASSISTED LIVING FACILITY" FOR PURPOSES OF HEALTH CARE FACILITY LICENSURE; REVISING THE REQUIREMENTS FOR THE TYPES OF RESIDENTS SERVED BY ASSISTED LIVING FACILITIES; PROVIDING FOR A NEW CATEGORY C THAT CLASSIFIES COGNITIVELY IMPAIRED RESIDENTS WHO ARE SERVED BY ASSISTED LIVING FACILITIES FOR LICENSURE PURPOSES; AND AMENDING SECTIONS 39-3-406, 50-5-101, 50-5-225, 50-5-226, 50-5-227, 50-5-1202, 50-8-101, 52-1-104, 52-3-811, 53-6-101, AND 87-2-802, MCA.