

SENATE BILL NO. 306

INTRODUCED BY T. JACOBSON

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A BILL FOR AN ACT ENTITLED: "AN ACT DIRECTING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO ESTABLISH MINIMUM STAFFING REQUIREMENTS FOR CATEGORY C ASSISTED LIVING FACILITIES WITH EIGHT OR MORE BEDS; AMENDING SECTION 50-5-226, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

**Section 1.** Section 50-5-226, MCA, is amended to read:

**"50-5-226. Placement in assisted living facilities.** (1) 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) An assisted living facility licensed as a category A facility under 50-5-227 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) An assisted living facility licensed as a category B facility under 50-5-227 may not admit or retain a



1 category B resident unless each of the following conditions is met:

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

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

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

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

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

11 (f) The resident must have a signed health care assessment, renewed on a quarterly basis by a licensed  
12 health care professional who:

13 (i) actually visited the facility within the calendar quarter covered by the assessment;

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

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

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

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

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

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

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

25 (5) (a) An assisted living facility licensed as a category D facility under 50-5-227 may not admit or retain  
26 a category D resident unless each of the conditions in subsections (5)(b) and (5)(c) is met or a court has ordered  
27 diversion as provided in subsection (5)(d).

28 (b) The resident must be dependent on assistance for two or more activities of daily living and may  
29 require skilled nursing care or other services that may be provided or arranged for by either the facility or the  
30 resident or provided for in the facility agreement.

1 (c) The resident must be assessed by a practitioner or adjudged by a court as having been or potentially  
2 being a danger to self or others. The practitioner shall submit both a health care assessment, renewed on a  
3 monthly basis, and a written order for care that:

4 (i) provides information on behavioral patterns under which the category D resident may pose a threat  
5 to others and may need to be kept separate from other category D residents or residents in other categories of  
6 assisted care;

7 (ii) lists the conditions under which the category D resident can be reasonably, temporarily restrained,  
8 using protective restraints, medications, or confinement to avoid harm to the resident or others;

9 (iii) includes a reason why a category D assisted living facility is more appropriate than other options for  
10 care and provides an assessment of the resident's needs and plan for care; and

11 (iv) indicates the timeframe over which the resident's health care status has remained the same or  
12 changed.

13 (d) A court may order a diversion from an involuntary commitment to Montana state hospital or from the  
14 Montana mental health nursing care center as provided in 50-5-224 or 53-21-127. A diversion ordered pursuant  
15 to 50-5-224 may be an involuntary commitment but must be treated as provided in 53-21-181.

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

18 (7) The department shall develop standardized forms and education and training materials to provide  
19 to the assisted living facilities and to the licensed health care professionals who are responsible for the signed  
20 statements provided for in subsection (3)(f). The use of the standardized forms is voluntary.

21 (8) The department shall provide by rule:

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

24 (i) physical and mental standards for residents of assisted living facilities;

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

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

29 (b) standards to be used by a facility and, if appropriate, by a screening agency to screen residents and  
30 prospective residents to prevent residence by individuals referred to in subsections (3) through (5). An individual

1 subject to 46-14-301 is not eligible to be placed in a category D assisted living facility.

2 (c) a method by which the results of any screening decision made pursuant to rules established under  
3 subsection (8)(b) may be appealed by the facility operator or by or on behalf of a resident or prospective resident;

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

7 (e) standards for operating a category B assisted living facility, which must include the standards for a  
8 category A assisted living facility and additional standards for assessment of residents, care planning,  
9 qualifications and training of staff, prevention and care of pressure sores, and incontinence care; ~~and~~

10 (f) standards for operating a category C and a category D assisted living facility, which must include the  
11 standards for a category B assisted living facility and additional standards for resident assessment, the provision  
12 of specialty care to residents with cognitive impairments, and additional qualifications of and training for the  
13 administrator and direct-care staff. The standards for a category D assisted living facility must also include  
14 specific safety and restraint training.

15 (g) for category C assisted living facilities with eight beds or more, requirements for the minimum number  
16 of direct-care staff that must be on duty at a given time to provide adequate care, expressed as a ratio of  
17 residents to staff or of residents to staff hours."

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19 NEW SECTION. Section 2. Effective date. [This act] is effective on passage and approval.

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