

BEFORE THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES OF THE STATE OF MONTANA

In the matter of the adoption of New	)	NOTICE OF PUBLIC HEARING ON
Rules I through IX and the	)	PROPOSED ADOPTION AND
amendment of ARM 37.106.2802,	)	AMENDMENT
37.106.2803, 37.106.2804,	)	
37.106.2805, 37.106.2809,	)	
37.106.2814, 37.106.2815,	)	
37.106.2816, 37.106.2817,	)	
37.106.2821, 37.106.2822,	)	
37.106.2823, 37.106.2824,	)	
37.106.2829, 37.106.2835,	)	
37.106.2836, 37.106.2838,	)	
37.106.2847, 37.106.2849,	)	
37.106.2854, 37.106.2855,	)	
37.106.2860, 37.106.2866,	)	
37.106.2875, 37.106.2885,	)	
37.106.2886, 37.106.2896, and	)	
37.106.2904 pertaining to assisted	)	
living rules related to background	)	
checks and category D endorsement	)	

TO: All Concerned Persons

1. On December 30, 2021, at 11:00 a.m., the Department of Public Health and Human Services will hold a public hearing via remote conferencing to consider the proposed adoption and amendment of the above-stated rules. Interested parties may access the remote conferencing platform in the following ways:

(a) Join Zoom Meeting at: <https://mt-gov.zoom.us/j/81491514745>; meeting ID: 814 9151 4745; or

(b) Dial by telephone +1 646 558 8656; meeting ID: 814 9151 4745. Find your local number: <https://mt-gov.zoom.us/u/kTY6SkMTo>.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Public Health and Human Services no later than 5:00 p.m. on December 16, 2021, to advise us of the nature of the accommodation that you need. Please contact Heidi Clark, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail [dphhslegal@mt.gov](mailto:dphhslegal@mt.gov).

3. The rules as proposed to be adopted provide as follows:

NEW RULE I CATEGORY D: CONSTRUCTION (1) Category D services must be provided in a secured care unit and meet all requirements in ARM 37.106.316.

(2) A category D facility shall be either:

(a) a stand-alone secured facility; or

(b) a separate, secured unit attached to a category A, B, and/or C facility.

(3) A category D unit attached to a category A, B, and/or C facility must have a separate entrance/exit and impenetrable doors used to separate the Category D unit from the other units.

(4) The facility must devise a policy on how it plans to maintain security of the facility or unit.

(5) A category D facility or unit must have at least 1 seclusion room for every 24 residents. The room must meet the requirements set forth in [NEW RULE IX].

(6) A category D facility or unit must not use automatic door closures unless required. If required, such closures must be mounted on the public side of the door.

(7) All hardware and lights used in a category D facility or unit must be tamper-proof.

(8) All resident room doors must include a sight window.

(9) No more than one client must reside in a resident room.

AUTH: 50-5-103, 50-5-226, 50-5-227, MCA

IMP: 50-5-225, 50-5-226, 50-5-227, MCA

NEW RULE II CATEGORY D: ADMINISTRATOR QUALIFICATIONS (1) In addition to requirements in ARM 37.106.2873, an administrator for a category D facility must have a least 3 years' experience in the field of mental health.

(2) Of the 16 hours of annual continued education training required in ARM 37.106.2814, 8 hours must be in the field of mental health.

AUTH: 50-5-103, 50-5-226, 50-5-227, MCA

IMP: 50-5-225, 50-5-226, 50-5-227, MCA

NEW RULE III CATEGORY D: DISCLOSURE TO CATEGORY D

RESIDENTS (1) Each assisted living category D facility or unit must, prior to admission, inform the resident or resident's legal representative in writing of the following:

(a) the overall philosophy and mission of the facility regarding meeting the needs of residents with mental illness and the form of care or treatment offered;

(b) the process and criteria for admission and discharge;

(c) the process used for resident assessments;

(d) the process used to establish and implement a health care plan, including how the health care plan will be updated in response to changes in the resident's condition;

(e) staff training and continuing education practices;

(f) the physical environment and design features appropriate to support the functioning of mentally disabled residents, including features for the resident who requires seclusion and restraint;

- (g) the frequency and type of resident activities; and
- (h) any additional costs of care or fees.

(2) The facility must obtain from the resident or resident's legal representative a written acknowledgment that the information specified was provided. A copy of this written acknowledgment must be kept as part of the permanent resident file.

AUTH: 50-5-103, 50-5-226, 50-5-227, MCA

IMP: 50-5-225, 50-5-226, 50-5-227, MCA

NEW RULE IV CATEGORY D: STAFF (1) A category D facility must have the following staff:

(a) a registered nurse (RN) must be on duty or on call and available physically to the facility within one hour;

(b) a full-time licensed mental health professional. This person must be site-based; and

(c) direct care staff in sufficient number to meet the needs of the residents.

Direct care staff must be certified nursing assistants.

(2) In addition to requirements in ARM 37.106.2816, all staff must:

(a) be at least 18 years old;

(b) complete an FBI fingerprint background check upon hiring;

(c) complete 6 hours of annual training related to mental health;

(d) complete training requirements in ARM 37.106.2908; and

(e) complete training on de-escalation techniques and methods of managing resident behaviors.

(3) All staff must remain awake, fully dressed, and available on the unit at all times when they are on duty.

AUTH: 50-5-103, 50-5-226, 50-5-227, MCA

IMP: 50-5-225, 50-5-226, 50-5-227, MCA

NEW RULE V CATEGORY D: RESIDENT ASSESSMENTS (1) A category D facility must obtain or conduct three types of resident assessments for each resident:

(a) Prior to move in, the facility shall obtain the court determination documentation required in 50-5-224(3), MCA, as well as a full medical history and physical and mental health assessment.

(b) A resident needs assessment shall be completed within 7 days prior to admission to facility. The assessment shall be reviewed/updated quarterly, and upon significant change in status.

(c) The administrator, or designee, will request and retain copies of the healthcare assessment and written order for care completed monthly by the practitioner as defined in 50-50-226(5), MCA.

AUTH: 50-5-103, 50-5-226, 50-5-227, MCA

IMP: 50-5-225, 50-5-226, 50-5-227, MCA

NEW RULE VI CATEGORY D: HEALTH CARE PLAN (1) In addition to requirements in ARM 37.106.2875, the health care plan for a category D resident must include:

- (a) de-escalation techniques individualized to the resident;
- (b) circumstances when the resident may need to be isolated from other residents;
- (c) behaviors and/or situations in which a staff member may need to obtain orders for restraints and/or isolation; and
- (d) the requirements listed in ARM 37.106.2905.

(2) The health care plan must be reviewed and updated quarterly and upon significant change in status.

(3) Each direct care staff must document that they have reviewed and are capable of implementing each resident's health care plan.

AUTH: 50-5-103, 50-5-226, 50-5-227, MCA

IMP: 50-5-225, 50-5-226, 50-5-227, MCA

NEW RULE VII CATEGORY D: MEDICATION USE AND PHYSICIAN ORDERS (1) All category D residents must be assessed on their ability and be encouraged to self-administer their own medication. If a resident is unable or unwilling to self-administer his or her medication, a licensed nurse shall administer all medication and the resident must be classified as a category B resident.

(2) When a resident refuses a medication, the resident practitioner shall be notified within 24 hours and notification documented.

AUTH: 50-5-103, 50-5-226, 50-5-227, MCA

IMP: 50-5-225, 50-5-226, 50-5-227, MCA

NEW RULE VIII CATEGORY D: DISCHARGE (1) A comprehensive discharge plan directly linked to the behaviors and symptoms that resulted in admission and estimated length of stay must be developed upon admission.

(2) A resident's diversion order is discontinued when:

(a) the resident and facility choose to allow continued residency. A resident needs assessment must be completed to determine category and placement within facility;

(b) the resident chooses not to remain in the facility. The facility shall issue a 30-day notice and conduct discharge planning. Discharge planning must include involvement from community resources.

(3) A resident may be involuntarily discharged in less than 30 days if the resident:

(a) has a medical emergency;

(b) is suffering from an acute psychotic episode; or

(c) commits a crime that causes serious bodily injury, death, or property damage.

(4) All discharges must be discussed with the resident's practitioner in order to ensure collaboration on a safe and appropriate discharge location.

AUTH: 50-5-103, 50-5-226, 50-5-227, MCA

IMP: 50-5-225, 50-5-226, 50-5-227, MCA

NEW RULE IX CATEGORY D: SECLUSION ROOM REQUIREMENTS

(1) A category D facility or unit must have at least 1 room designated to be used for seclusion for every 24 beds.

(2) The location of these rooms must facilitate staff observation and monitoring of residents in these areas.

(3) Seclusion rooms may only be used by one resident at a time.

(4) Seclusion rooms must:

(a) be a minimum of 60 square feet, or if restraint beds are used a minimum of 80 square feet;

(b) be a minimum length of 7 feet and maximum wall length of 11 feet;

(c) be a minimum height of 9 feet;

(d) be accessed by an anteroom or vestibule that provides direct access to a toilet room;

(e) have door openings to the anteroom and toilet room with a minimum clear width of 3 feet 8 inches;

(f) be constructed to prevent hiding, escape, injury, or suicide;

(g) have walls designed to withstand direct and forceful impact and have materials that meet Class A or Class B finishes as defined by the 2012 NFPA 101;

(h) have monolithic ceilings;

(i) not contain outside corners or edges;

(j) have doors that swing out, have a clear opening of 3 feet 8 inches, and permit staff observation through a vision panel, while maintaining provisions for privacy;

(k) have tamper resistant fixtures, such as light fixtures, vent covers, and cameras;

(l) have electrical switches and outlets that are restricted within the seclusion room; and

(m) have door lever handles that point downward when in the latched or unlatched position, except for specifically designed anti-ligature hardware.

(5) A licensed nurse must provide residents with constant one on one supervision when in the seclusion room.

AUTH: 50-5-103, 50-5-226, 50-5-227, MCA

IMP: 50-5-225, 50-5-226, 50-5-227, MCA

4. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

37.106.2802 PURPOSE (1) The purpose of these rules is to establish standards for assisted living A, B ~~and~~ C, and D facilities. Assisted living facilities are a setting for frail, elderly, or disabled persons which provide supportive health and service coordination to maintain the residents' independence, individuality, privacy, and dignity.

(2) remains the same.

AUTH: 50-5-103, 50-5-226, 50-5-227, MCA  
IMP: 50-5-225, 50-5-226, 50-5-227, MCA

37.106.2803 APPLICATION OF RULES (1) through (3) remain the same.  
(4) Category D facilities must meet the requirements of ARM 37.106.2801 through 37.106.2886 and [NEW RULES I through IX].

AUTH: 50-5-103, 50-5-226, 50-5-227, MCA  
IMP: 50-5-225, 50-5-226, 50-5-227, MCA

37.106.2804 APPLICATION OF OTHER RULES (1) To the extent that other licensure rules in ARM Title 37, chapter 106, subchapter 3 conflict with the terms of ARM Title 37, chapter 106, subchapter ~~27~~ 28, the terms of subchapter ~~27~~ 28 will apply to assisted living facilities.

AUTH: 50-5-103, 50-5-226, 50-5-227, MCA  
IMP: 50-5-225, 50-5-226, 50-5-227, MCA

37.106.2805 DEFINITIONS The following definitions apply in this subchapter:

(1) through (15) remain the same.

(16) "Mental health professional" means:

(a) a certified professional person;

(b) a physician licensed under Title 37, chapter 3, MCA;

(c) a professional counselor licensed under Title 37, chapter 23, MCA;

(d) a psychologist licensed under Title 37, chapter 17, MCA;

(e) a social worker licensed under Title 37, chapter 22, MCA;

(f) an advanced practice registered nurse, as provided for in 37-8-202, MCA, with a clinical specialty in psychiatric mental health nursing; or

(g) a physician assistant licensed under Title 37, chapter 20, MCA, with a clinical specialty in psychiatric mental health.

~~(16)~~ (17) "Nursing care" means the practice of nursing as governed by Title 37, chapter 8, MCA, and by administrative rules adopted by the Board of Nursing, found at ARM Title 8 ~~24~~, chapter ~~32~~ 159, subchapters 1 through ~~47~~ 23.

(17) through (31) remain the same but are renumbered (18) through (32).

AUTH: 50-5-103, 50-5-226, 50-5-227, MCA  
IMP: 50-5-225, 50-5-226, 50-5-227, MCA

37.106.2809 LICENSE APPLICATION PROCESS (1) Application for a license accompanied by the required fee shall be made to the Department of Public Health and Human Services, ~~Quality Assurance Division~~ Office of Inspector General, Licensure Bureau, 2401 Colonial Drive, P.O. Box 202953, Helena, MT 59620-2953 upon forms provided by the department and shall include full and complete information as to the:

(a) through (e) remain the same.

- (f) maximum number of A beds, B beds and, C beds, and D beds in the facility;
- (g) through (5) remain the same.

AUTH: 50-5-103, 50-5-226, 50-5-227, MCA  
IMP: 50-5-225, 50-5-226, 50-5-227, MCA

37.106.2814 ADMINISTRATOR (1) remains the same.

(2) The administrator must meet the following minimum requirements:

(a) remains the same.

(b) has successfully completed all of the self study modules of "~~The Management Library for Administrators and Executive Directors~~" "A Management Reference for Executive Directors - Admin Level 1 Certificate Program," a component of the assisted living training system published by the ~~assisted living university (ALU)~~ Senior Living University (SLU) or an alternate, approved program; or

(c) remains the same.

(3) The administrator must show evidence of at least 16 contact hours of annual continuing education relevant to the individual's duties and responsibilities as administrator of the assisted living facility.

(a) A nursing home administrator license or the ~~ALU~~ SLU certification may count as 16 hours of annual continuing education but only for the calendar year in which the license or certification was initially obtained.

(4) through (13) remain the same.

AUTH: 50-5-103, 50-5-226, 50-5-227, MCA  
IMP: 50-5-225, 50-5-226, 50-5-227, MCA

37.106.2815 WRITTEN POLICIES AND PROCEDURES (1) A ~~policy~~ policies and procedures manual for the organization and operation of the assisted living facility shall be developed, implemented, kept current, and reviewed annually and as necessary to assure the continuity of care and day to day operations of the facility. Each review of the manual shall be documented, and the manual shall be available in the facility to staff, residents, residents' legal representatives, and representatives of the department at all times.

(2) remains the same.

(3) New policies, as developed, must be submitted to the department for review and approval.

AUTH: 50-5-103, 50-5-226, 50-5-227, MCA  
IMP: 50-5-225, 50-5-226, 50-5-227, MCA

37.106.2816 ASSISTED LIVING FACILITY STAFFING (1) remains the same.

(2) The administrator shall develop policies and procedures for ~~screening,~~ conducting criminal background checks, hiring, and assessing staff which include practices that assist the employer in identifying employees ~~that~~ who may pose risk or

threat to the health, safety, or welfare of any resident and provide written documentation of findings and the outcome in the employee's file.

(a) A name-based or FBI fingerprint background check shall be conducted on all employees who have accepted employment at an assisted living facility.

(i) The name-based background check shall be done through Criminal History Online Public Record Search (CHOPRS) through the Montana Department of Justice.

(ii) If an applicant has lived outside the state within the past five years, the assisted living facility must complete background checks in every state in which the applicant has resided within the past five years or conduct an FBI fingerprint background check.

(b) The administrator may allow an employee to work provisionally pending the background check results so long as there are no indications the employee poses a risk or threat to the health, safety, and welfare of the residents in the facility

(i) Indications that an employee may pose a risk or threat to the health, safety, and welfare of the residents of the facility include self-reported or otherwise known history of abuse, neglect, or exploitation, pending legal proceedings, currently on parole or probation, or any other indicator the facility determines reasonable.

(c) An assisted living facility may not employ any person who meets the criteria of 50-5-225(4), MCA.

(3) New employees shall receive orientation and training in areas relevant to the employee's duties and responsibilities, including:

(a) through (c) remain the same.

(d) the Montana Elder and Persons with Developmental Disabilities Abuse Prevention Act found at 52-3-801 et seq., MCA; ~~and~~

(e) the Montana Long-Term Care Resident Bill of Rights Act found at 50-5-1101 et seq., MCA- ; ~~and~~

(f) staff that are responsible for assisting with self-administration of medication will receive orientation and training on resident medication administration records (MARs) and the five rights of medication administration.

(4) In addition to meeting the requirements of (3), direct care staff shall be trained to perform the services established in each resident service plan.

(a) Direct care staff will review each resident's current service plan or health care plan and sign indicating they have reviewed the plan and can perform the services required.

(5) through (9) remain the same.

AUTH: 50-5-103, 50-5-226, 50-5-227, MCA

IMP: 50-5-225, 50-5-226, 50-5-227, MCA

37.106.2817 EMPLOYEE FILES (1) remains the same.

(2) The following documentation from employee files must be made available to the department at all reasonable times, but shall be made available to the department within 24 hours after the department requests to review the files.

(a) and (b) remain the same.

(c) an initialed copy of the employee's job description; ~~and~~



(d) initialed documentation of employee orientation and ongoing training including documentation of Heimlich maneuver training, basic first aid, and CPR; and

(e) the results of the employee's criminal background check.

(3) and (4) remain the same.

AUTH: 50-5-103, 50-5-226, 50-5-227, MCA

IMP: 50-5-225, 50-5-226, 50-5-227, MCA

37.106.2821 RESIDENT APPLICATION AND NEEDS ASSESSMENT PROCEDURE (1) remains the same.

(2) The facility shall determine whether a potential resident meets the facility's admission requirements and that the resident is appropriate to the facility's license endorsement as either a category A, category B or category C, or category D facility, as specified in 50-5-226(2) through ~~(4)~~(5), MCA.

(3) through (5) remain the same.

(6) The resident's needs assessment shall be reviewed and updated annually or at any time the resident's needs change significantly.

AUTH: 50-5-103, 50-5-226, 50-5-227, MCA

IMP: 50-5-225, 50-5-226, 50-5-227, MCA

37.106.2822 RESIDENT SERVICE PLAN: CATEGORY A (1) Based on the initial resident's needs assessment, an initial service plan shall be developed for all category A residents within 24 hours of admission. The initial service plan shall be reviewed or modified within 60 days of admission to assure the service plan accurately reflects the resident's needs and preferences.

(2) remains the same.

(3) The resident's ~~needs assessment~~ and service plan shall be reviewed and updated annually, or at any time the resident's needs change significantly.

(4) remains the same.

AUTH: 50-5-103, 50-5-226, 50-5-227, MCA

IMP: 50-5-225, 50-5-226, 50-5-227, MCA

37.106.2823 RESIDENT AGREEMENT (1) An assisted living facility shall enter into a written resident agreement with each prospective resident prior to admission to the assisted living facility. The agreement shall be signed and dated by a facility representative and the prospective resident or the resident's legal representative. The facility shall provide the prospective resident or the resident's legal representative and the resident's practitioner, if applicable, a copy of the agreement and shall explain the agreement to them. The agreement shall include at least the following items:

(a) through (c) remain the same.

(d) a statement explaining the resident's responsibilities including ~~but not limited to~~ house rules, the facility grievance policy, facility smoking policy ~~and~~

policies, facility policy regarding pets, and the facility policy on medical and recreational marijuana use;

(i) a facility policy on medical marijuana must follow 50-46-318 and 50-46-320, MCA;

(e) through (2) remain the same.

AUTH: 50-5-103, 50-5-226, 50-5-227, MCA

IMP: 50-5-225, 50-5-226, 50-5-227, MCA

37.106.2824 INVOLUNTARY DISCHARGE CRITERIA (1) Residents shall be given a written 30-day notice when they are requested to move out. The administrator or designee shall initiate transfer of a resident through the resident's physician or practitioner, appropriate agencies, ~~or~~ and the resident's ~~for resident's~~ legal representative, as applicable, when:

(a) through (d) remain the same.

(e) the resident has had a significant change in condition that requires medical or psychiatric treatment outside the facility and at the time the resident is to be discharged from that setting to move back into the assisted living facility, appropriate facility staff have re-evaluated the resident's needs and have determined the resident's needs exceed the facility's level of service. Temporary absence for medical treatment is not considered a move out; ~~or~~

(f) the resident has failed to pay charges after reasonable and appropriate notice; or

(g) the facility ceases to operate.

(2) The resident's 30-day written move out notice shall, at a minimum, include the following:

(a) and (b) remain the same.

(c) ~~the location to which the resident is to be transferred or discharged~~ optional discharge locations;

(d) and (e) remain the same.

(3) A resident may be involuntarily discharged in less than 30 days written notice of discharge in fewer than 30 days may be issued for the following reasons:

(a) through (4) remain the same.

AUTH: 50-5-103, 50-5-226, 50-5-227, MCA

IMP: 50-5-225, 50-5-226, 50-5-227, MCA

37.106.2829 RESIDENT FILE (1) At the time of admission, a separate file must be established for each category A, category B ~~or~~, category C, or category D resident. This file must be maintained on site in a safe and secure manner and must preserve the resident's confidentiality.

(2) The file shall include at least the following:

~~(a) the resident application form;~~

(b) through (e) remain the same but are renumbered (a) through (d).

~~(f) (e) reports of significant events including:~~

~~(i) the provider's response to the event;~~

(i) documentation of notice to resident's practitioner;

(ii) through (3) remain the same.

AUTH: 50-5-103, 50-5-226, 50-5-227, MCA  
IMP: 50-5-225, 50-5-226, 50-5-227, MCA

37.106.2835 RESIDENT UNITS (1) A resident of an assisted living facility who uses a wheelchair or walker for mobility, or who is a category B or category C, or category D resident, must not be required to use a bedroom on a floor other than the first floor of the facility that is entirely above the level of the ground, unless the facility is designed and equipped in such a manner that the resident can move between floors or to an adjacent international conference of building code officials approved occupancy/fire barrier without assistance and the below grade resident occupancy is or has been approved by the local fire marshal.

(2) through (4) remain the same.

AUTH: 50-5-103, 50-5-226, 50-5-227, MCA  
IMP: 50-5-225, 50-5-226, 50-5-227, MCA

37.106.2836 FURNISHINGS (1) Each resident in an assisted living facility must be provided the following at a minimum by the facility:

(a) and (b) remain the same.

(c) clean, flame-resistant or non-combustible window treatments or equivalent, for every bedroom window;

(i) in a category D facility or unit, the use of blinds or curtains is not permissible. A flame-resistant or non-combustible window valence, not exceeding 14 inches in length, may be used;

(d) an electric call system comprised of a fixed manual, pendant cordless or two-way interactive, UL or FM listed system which must connect resident rooms to the care staff center or staff pagers; and

(i) a resident room that is designated as double occupancy must be equipped with a call system for both occupants; and

(e) and (2) remain the same.

AUTH: 50-5-103, 50-5-226, 50-5-227, MCA  
IMP: 50-5-225, 50-5-226, 50-5-227, MCA

37.106.2838 RESIDENT TOILETS AND BATHING (1) through (3) remain the same.

(4) All doors to resident bathrooms shall open outward or slide into the wall and shall be unlockable from the outside.

(a) remains the same.

(b) Resident bathroom door locks must be operable, on the resident side of the door, with a single motion and may not require special knowledge for the resident to open.

(5) and (6) remain the same.

(7) Each resident bathroom or bathing room shall have ~~an~~ a fixed emergency call system reporting accessible to an individual collapsed on the floor that reports to

the staff location with an audible signal. The device must be silenced at the that location only ~~and shall be accessible to an individual collapsed on the floor.~~

(8) remains the same.

(9) In category D facilities or units, call cords or strings in excess of 6 inches shall not be permitted.

AUTH: 50-5-103, 50-5-226, 50-5-227, MCA

IMP: 50-5-225, 50-5-226, 50-5-227, MCA

37.106.2847 MEDICATIONS: PRACTITIONER ORDERS (1) remains the same.

(2) A prescription medication for which the dose or schedule has been changed by the practitioner must be noted in the resident's medication administration record ~~and the resident's service or health care plan by an appropriate licensed health care professional.~~

(3) Current practitioners' orders shall be documented and kept in all resident files.

AUTH: 50-5-103, 50-5-226, 50-5-227, MCA

IMP: 50-5-225, 50-5-226, 50-5-227, MCA

37.106.2849 MEDICATIONS: RECORDS AND DOCUMENTATION

(1) remains the same.

(2) The record shall include:

(a) through (d) remain the same.

(e) resident specific parameters and instructions for PRN medications;

(i) documentation of when and why a PRN was administered, and follow up documentation as to the effectiveness of the PRN;

(f) through (5) remain the same.

AUTH: 50-5-103, 50-5-226, 50-5-227, MCA

IMP: 50-5-225, 50-5-226, 50-5-227, MCA

37.106.2854 USE OF RESTRAINTS, SAFETY DEVICES, ASSISTIVE DEVICES, AND POSTURAL SUPPORTS (1) The facility shall comply with the rules governing the use, in long term care facilities, of restraints, safety devices, assistive devices ~~and,~~ postural supports, and seclusion rooms in long term care facilities. The provisions of ARM 37.106.2901, 37.106.2902, 37.106.2904, 37.106.2905, and 37.106.2908 shall apply.

AUTH: 50-5-103, 50-5-226, 50-5-227, MCA

IMP: 50-5-225, 50-5-226, 50-5-227, MCA

37.106.2855 INFECTION CONTROL (1) The assisted living facility must establish and maintain infection control policies and procedures sufficient to provide a safe, sanitary, and comfortable environment ~~and to prevent the transmission of disease~~ to help prevent the development and transmission of communicable

diseases and infections. Such policies and procedures must include, at a minimum, the following requirements:

~~(a) any employee contracting a communicable disease that is transmissible to residents through food handling or direct care must not appear at work until the infectious diseases can no longer be transmitted. The decision to return to work must be made by the administrator or designee, in accordance with the policies and procedures instituted by the facility;~~

(a) a system for preventing, identifying, investigating, and controlling infections and communicable diseases for all residents, staff, volunteers, and visitors;

(b) standard and transmission-based precautions to be followed to prevent spread of infections;

(c) when and how isolation should be used for a resident, including:

(i) the type and duration of the isolation, depending upon the infectious agent or organism involved; and

(ii) a requirement that the isolation should be the least restrictive possible for the resident under the circumstances;

(d) the circumstances under which the facility must prohibit employees with a communicable disease or infected skin lesions from direct contact with residents or their food, if direct contact will transmit disease;

(b) and (c) remain the same but are renumbered (e) and (f).

(2) remains the same.

AUTH: 50-5-103, 50-5-226, 50-5-227, MCA

IMP: 50-5-225, 50-5-226, 50-5-227, MCA

37.106.2860 FOOD SERVICE (1) through (4) remain the same.

(5) The facility shall employ food service personnel suitable to meet the needs of the residents.

(a) remains the same.

(b) if the cook or other kitchen staff must assist a resident with direct care outside the food service area, they must properly wash their hands before returning to food service; and

~~(c) food service shall comply with the Montana administrative rule requirements for compliance with ARM Title 37, chapter 110, subchapter 2, food service establishments administered by the food and consumer safety section of the department of public health and human services.~~

(c) all food and drink are to be stored, at minimum, 4 inches off the floor; and

(d) a facility whose kitchen and dining services are inspected by the local county health department must provide the department a copy of their most recent inspection at the time of any survey.

(6) through (12) remain the same.

AUTH: 50-5-103, 50-5-226, 50-5-227, MCA

IMP: 50-5-225, 50-5-226, 50-5-227, MCA

37.106.2866 CONSTRUCTION, BUILDING, AND FIRE CODES (1) remains the same.

(2) When a change in use ~~and, ownership, or~~ building code occupancy classification occurs, licensure approval shall be contingent on meeting the building code and fire marshal agencies' standards in effect at the time of such a change. Changes in use include adding a category B ~~or, C, or D~~ license endorsement to a previously licensed category A facility.

(3) remains the same.

(4) Exit doors ~~shall not include locks which prevent evacuation~~ must be operable on the resident side of the door with a single motion and may not require special knowledge for the resident to open, except as approved by the fire marshal and building codes agencies having jurisdiction or in a secured unit or building that services category C or category D residents.

(5) through (13) remain the same.

AUTH: 50-5-103, 50-5-226, 50-5-227, MCA

IMP: 50-5-225, 50-5-226, 50-5-227, MCA

37.106.2875 RESIDENT HEALTH CARE PLAN: CATEGORY B

(1) Within 21 days of admission to a category B status, the administrator or designee shall assure that a written resident health care assessment and resident certification is performed on each category B resident.

(2) and (3) remain the same.

(4) The category B resident's health care plan shall be reviewed quarterly, and if necessary revised upon change of condition.

(5) remains the same.

AUTH: 50-5-103, 50-5-226, 50-5-227, MCA

IMP: 50-5-225, 50-5-226, 50-5-227, MCA

37.106.2885 ADMINISTRATION OF MEDICATIONS: CATEGORY B

(1) through (4) remain the same.

(5) Only the following individuals may administer medications to residents:

(a) and (b) remain the same.

(c) an unlicensed individual who is either employed by the facility or is working under third party contract with a resident or resident's legal representative and has been delegated the task under ARM Title 8 24, chapter ~~32~~ 159, subchapter 1 through 47 ~~23~~; and

(d) remains the same.

AUTH: 50-5-103, 50-5-226, 50-5-227, MCA

IMP: 50-5-225, 50-5-226, 50-5-227, MCA

37.106.2886 MEDICATIONS: RECORDS AND DOCUMENTATION: CATEGORY B (1) remains the same.

(2) The record shall include:

(a) through (d) remain the same.

- (e) resident specific parameters and instructions for PRN medications;
- (i) documentation of when and why a PRN was administered, and follow up documentation as to the effectiveness of the PRN;
- (f) through (5) remain the same.

AUTH: 50-5-103, 50-5-226, 50-5-227, MCA

IMP: 50-5-225, 50-5-226, 50-5-227, MCA

#### 37.106.2896 DISCLOSURES TO RESIDENTS: CATEGORY C

(1) remains the same.

(2) ~~The facility must obtain from the resident's legal representative a written acknowledgment that the information specified in (1) was provided. A copy of this written acknowledgment must be kept as part of the permanent resident file provide~~ a resident or resident's legal representative with written documentation of the information specified in (1). A copy of this exchange must be kept as part of the resident file.

AUTH: 50-5-103, 50-5-223, 50-5-227, MCA

IMP: 50-5-225, 50-5-226, 50-5-227, 50-5-228, MCA

#### 37.106.2904 USE OF RESTRAINTS, SAFETY DEVICES, ASSISTIVE DEVICES, AND POSTURAL SUPPORTS (1) and (2) remain the same.

(3) To the extent that a resident needs emergency care, restraints may be used for brief periods:

(a) remains the same.

(b) if a resident's unanticipated violent or aggressive behavior places the resident or others in imminent danger, ~~in which case~~ the resident does not have the right to refuse the use of restraints. In this situation:

(i) through (iii) remain the same.

(iv) ~~the licensed nurse shall document in the resident's clinical record file~~ the circumstances requiring the restraints and the duration; and

(v) ~~a restrained resident must be monitored as their condition warrants, and restraints must be removed as soon as the need for emergency care has ceased and the resident's safety and the safety of others can be assured; ; and~~

(vi) a licensed nurse must provide one on one supervision to a resident any time a restraint is applied.

(4) through (8) remain the same.

AUTH: 50-5-103, 50-5-226, 50-5-227, 50-5-1205, MCA

IMP: 50-5-103, 50-5-226, 50-5-227, 50-5-1201, 50-5-1202, 50-5-1204, MCA

### 5. STATEMENT OF REASONABLE NECESSITY

The 2017 legislature enacted Senate Bill 272, an act creating a new license for assisted living facilities for those with dementia or other mental disorders who might be a harm to themselves or others, providing an involuntary commitment diversion option, amending laws related to involuntary commitment to address the added

diversion alternative, and amending 50-5-224, 50-5-226, 50-5-227, 53-21-122, 53-21-123, 53-21-127, 53-21-181, and 53-21-198, MCA. The bill was signed by the Governor on May 17, 2017, and became effective on October 1, 2017.

The Department of Public Health and Human Services (department) proposes to adopt New Rules I through IX establishing new minimum standards for category D assisted living facilities. The proposed new rules are necessary to establish licensing and regulation to ensure the health and safety of individuals residing in a category D assisted living facility in accordance with Senate Bill 272.

The 2019 legislature enacted House Bill 566, an act requiring background checks for all assisted living facility employees and amending 50-5-225 and 50-5-227, MCA. The bill was signed by the Governor on May 7, 2019. The department proposes to amend administrative rules to reflect the requirement to conduct criminal background checks, what forms of background checks can be conducted, the allowance of an employee working provisionally pending the background check results, and the need for the records of the results of such background checks to be kept in the employee files. The proposed new rules are necessary to establish licensing and regulation regarding background checks for assisted living facility employees in accordance with Senate Bill 566.

The department proposes to update the language used in this subchapter to reflect current practices and to be consistent with the terminology of other agencies involved with the assisted living facilities.

#### NEW RULE I

The department proposes to adopt this new rule to inform assisted living providers of the construction requirements of a category D facility or unit.

#### NEW RULE II

The department proposes to adopt this new rule to establish minimum requirements for administrators of category D assisted living facilities.

#### NEW RULE III

The department proposes to adopt this new rule to specify that category D assisted living facilities must inform a category D resident, or their representative, of the facility's overall philosophy and mission of the facility, criteria for move-in and discharge, process for resident assessment, process for developing and implementing a health care plan, the requirements of staff training, the facility's physical environment and design features, the frequency and type of resident activities the facility offers, any additional costs of care fees, and documentation on how the facility can keep all the residents safe. The category D facility must provide some way of indicating that this information has been provided to the resident or the resident's legal representative.

#### NEW RULE IV



The department proposes to adopt this new rule to establish minimum requirements for the type, qualifications, and training of direct care staff in a category D assisted living facility.

NEW RULE V

The department proposes to adopt this new rule to specify the time frame, frequency, and retention of resident assessments for category D residents in category D assisted living facilities.

NEW RULE VI

The department proposes to adopt this new rule to specify what information is required on a health care plan for a category D resident in an assisted living facility.

NEW RULE VII

The department proposes to adopt this new rule to specify medication administration guidelines for category D residents in category D assisted living facilities, and to specify when a category D resident's doctor and practitioner need to be notified of refused medication.

NEW RULE VIII

The department proposes to adopt this new rule to specify discharge planning and documentation of discharges.

NEW RULE IX

The department proposes to adopt this new rule to specify the construction requirements of a seclusion room within a category D facility, and to specify the supervision requirements of a resident in a seclusion room.

ARM 37.106.2802

The department proposes a change to this rule to include facilities with a category D endorsement in the coverage of this rule.

ARM 37.106.2803

The department proposes a change to this rule to apply this rule to facilities with a category D endorsement.

ARM 37.106.2804

The department proposes a change to this rule to update current information for the subchapter identified.

ARM 37.106.2805

The department proposes a change to this rule to include the definition of a "mental health professional," and to update the current title, chapter, and subchapter information for the Board of Nursing.

ARM 37.106.2809

The department proposes a change to this rule to include the requirement for addressing the number of category D beds in an assisted living facility.

ARM 37.106.2814

The department proposes a change to this rule to update the educational requirements for assisted living facility administrators.

ARM 37.106.2815

The department proposes a change to this rule to include a requirement timeframe for reviewing policies, and to require facilities to submit new policies to the department for review.

ARM 37.106.2816

The department proposes a change to this rule to include the requirement for the facility administrator to have a policy on conducting criminal background checks, the types of background checks that a facility can conduct, the ability for an employee to work provisionally pending the results of a background check, and indication of criteria that would make someone ineligible to work in an assisted living facility. The department also proposes a change to this rule to include the requirement for staff who assist with self-administration of medication to receive additional training, and that all direct care staff document review of resident service plans.

ARM 37.106.2817

The department proposes a change to this rule to include that the results of a criminal background check must be kept in the employee's file.

ARM 37.106.2821

The department proposes a change to this rule to include the requirement for addressing if a category D resident is appropriate for admission to the facility using a resident needs assessment. The department proposes a change to this rule to also update the requirement to adhere to the additional portion of 50-5-226, MCA. The department proposes a change to this rule to include the annual review of a resident needs assessment under this rule.

ARM 37.106.2822

The department proposes a change to this rule to provide a specific timeframe in which a resident service plan must be developed, and to remove the portion of the annual review of a resident needs assessment from this rule.

ARM 37.106.2823

The department proposes a change to this rule to include the requirement for an assisted living facility to develop a policy on medical and recreational use of marijuana and provide guidelines on what the policy must include pursuant to 50-46-318 and 50-46-320, MCA.

ARM 37.106.2824

The department proposes a change to this rule to provide assisted living facilities more flexibility in determining a discharge location when issuing a 30-day written discharge notice. Additionally, the department proposes a change to this rule to add a reason to issue a 30-day written discharge notice. The department proposes to further change this rule to include that a written notice requirement for a discharge of fewer than 30-days' notice.

ARM 37.106.2829

The department proposes a change to this rule to include the requirement for a separate resident file to be kept for each category D resident. The department proposes to remove the requirement for a resident application and require documented practitioner notification for all resident significant events.

ARM 37.106.2835

The department proposes a change to this rule to include the requirement for a category D resident to not be required to use a bedroom on a floor other than the first floor of the facility that is entirely above the level of the ground, unless the facility is designed and equipped in such a manner that the resident can move between floors or to an adjacent international conference of building code officials approved occupancy/fire barrier without assistance and any below grade resident occupancy is or has been approved by the local fire marshal.

ARM 37.106.2836

The department proposes a change to this rule to provide category D assisted living facilities the requirements for window furnishings. The department proposes a change to this rule to specify that a double-occupancy room must be equipped with a call system for both occupants in the room.

ARM 37.106.2838

The department proposes a change to this rule to provide category D assisted living facilities the requirements for call system cords or strings. The department proposes further change to this rule to align the regulations on the doorknobs that are used for resident bathrooms and the requirement of a fixed call system in the bathroom with the current NFPA 101 and AIA guidelines.

ARM 37.106.2847

The department proposes to change this rule to remove the requirement that medication changes be noted in the service plan or health care plan by a licensed health care professional. The department proposes to further change this rule to require that current practitioners' orders be kept in all category A resident files.

ARM 37.106.2849

The department proposes to change this rule to require specific documentation on the medication administration record of PRN medication administration.

ARM 37.106.2854

The department proposes a change to this rule to include the need for adhering to seclusion room requirements.

ARM 37.106.2855

The department proposes a change to this rule to require assisted living facilities to have detailed policies on preventing and mitigating communicable disease and infections.

ARM 37.106.2860

The department proposes a change to this rule to remove the requirements of ARM Title 37, chapter 110, subchapter 2. These requirements were repealed in a previous rulemaking.

ARM 37.106.2866

The department proposes a change to this rule to include the requirement of the need for licensure approval of changes in a category D assisted living facility. The department proposes to further change this rule to include a change of ownership as a requirement for licensure to be based on meeting building code and fire marshal agencies standards for licensure, to specify that exit doors must be single motion.

ARM 37.106.2875

The department proposes a change to this rule to update the requirement to adhere to the additional portion of 50-5-226, MCA. The department proposes to further change this rule to reflect the requirement of certification by a licensed healthcare professional for category B residents, and a review of the health care plan quarterly.

ARM 37.106.2885

The department proposes to change this rule to update the title, chapter, and subchapter information that address the Board of Nursing regulations.

ARM 37.106.2886

The department proposes to change this rule to require more documentation on the medication administration record of PRN medication administration for category B residents.

ARM 37.106.2896

The department proposes to amend this rule to modify the requirements of the facility for disclosing to the resident or the resident's legal representative information regarding the category C facility's processes.

ARM 37.106.2904

The department proposes a change to this rule to include the need for a licensed nurse to provide one on one supervision to a resident any time a restraint is applied.

Fiscal Impact

The department does not expect there to be any fiscal impact related to the adoption and amendment of these rules except as follows: category D is an optional

endorsement; unless a facility elects to provide category D services, there is no fiscal impact on a facility. Regarding background checks, some facilities were previously conducting background checks while others were using alternative means to screen employees as was required in the previous rule. There may be a fiscal impact for those facilities who were not previously utilizing the services of a criminal background check contractor.

6. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Heidi Clark, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail [dphslegal@mt.gov](mailto:dphslegal@mt.gov), and must be received no later than 5:00 p.m., January 7, 2022.

7. The Office of Legal Affairs, Department of Public Health and Human Services, has been designated to preside over and conduct this hearing.

8. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 6 above or may be made by completing a request form at any rules hearing held by the department.

9. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The department attempted to contact the primary bill sponsors by email, mail, and phone on August 3, 2021.

10. With regard to the requirements of 2-4-111, MCA, the department has determined that the adoption and amendment of the above-referenced rules will not significantly and directly impact small businesses.

/s/ Flint Murfitt  
Flint Murfitt  
Rule Reviewer

/s/ Adam Meier  
Adam Meier, Director  
Public Health and Human Services

Certified to the Secretary of State November 30, 2021.