Licensing Assisted Living Facilities

50-5-227. Licensing assisted living facilities. (1) The department shall by rule adopt standards for licensing and operation of assisted living facilities to implement the provisions of **50-5225** and **50-5-226**.

(2) The department may deny, suspend, or revoke the license of an assisted living facility if the department finds a demonstrated pattern of noncompliance with the employee background check requirements of **50-5-225**.

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

(a) category A facility serving residents requiring the level of care as provided for in **50-5-226**(2);

(b) category B facility providing skilled nursing care or other skilled services to five or fewer residents who meet the requirements stated in **50-5-226**(3);

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

(d) category D facility providing services to residents with mental disorders who may be a temporary harm to themselves or others and who require the level of care stated in **50-5-226**(5).

50-5-226(4) Category C Assisted Living

(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.

50-5-226(5) Category D Assisted Living

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

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

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

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

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

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

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

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

Montana Code Annotated 2023

TITLE 53. SOCIAL SERVICES AND INSTITUTIONS
CHAPTER 21. MENTALLY ILL
Part 1. Treatment of the Seriously Mentally Ill

Option For Diversion From Involuntary Commitment To Montana State Hospital

53-21-199. Option for diversion from involuntary commitment to Montana state hospital. (1) Subject to subsection (3), a person with a mental disorder who is detained under **53-21-120**(4) may, upon meeting the requirements in **50-5-226**(5), request diversion to a category D assisted living facility.

(2) If a court, after obtaining the results of an examination as provided in **53-21-123**, finds that a short-term inpatient treatment is inappropriate for a person who otherwise is eligible for involuntary commitment to the Montana state hospital, the court may initiate the process necessary to determine eligibility for residency in a category D assisted living facility.

(3) For a person to be eligible for diversion from the Montana state hospital to a category D assisted living facility, a court determination and an examination under **53-21-123** must indicate that the person:

(a) is not suffering acute psychosis;

(b) is experiencing behavioral patterns that may make the person a danger to self or others;

(c) is dependent on assistance for two or more activities of daily living; and

(d) is more likely to benefit from being in a category D assisted living facility than in the Montana mental health nursing care center or the Montana state hospital.

History: En. Sec. 1, Ch. 402, L. 2017; Sec. 50-5-224, MCA 2019; redes. 53-21-199 by Code Commissioner, 2019.

Created by LAWS

37.106.2898 REQUIREMENTS FOR SECURED UNITS: CATEGORY C (1) In addition to meeting all other requirements for assisted living facilities stated in this subchapter, if a secured distinct part or locked unit within a category C assisted living facility is designated for the exclusive use of residents with severe cognitive impairment, the facility must:

(a) staff the unit with direct care staff at all times there are residents in the unit;

(b) provide a separate dining area, at a ratio of 30 square feet per resident on the unit; and

(c) provide a common day or activities area, at a ratio of 30 square feet per resident on the unit. The dining area listed in (1)(b) or day rooms, sun porches and common areas accessible to all residents, may serve this purpose. (History: 50-5-103, 50-5-223, 50-5-227, MCA; IMP, 50-5-225, 50-5-226, 50-5-227, 50-5-228, MCA; NEW, 2004 MAR p. 1146, Eff. 5/7/04.)

37.106.2899 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 will 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 one seclusion room for every 24 residents. The room must meet the requirements set forth in 37.106.2899H.

(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. (History: 50-5-103, 50-5-226, 50-5-227, MCA; IMP, 50-5-225, 50-5-226, 50-5-227, MCA; NEW, 2022 MAR p. 1857, Eff. 9/24/22.)

37.106.2899A 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 three years of experience in the field of mental health and mental disorders.

(2) Of the 16 hours of annual continued education training required in ARM 37.106.2814, eight hours must be in the field of mental health and mental disorders. (History: 50-5-103, 50-5-226, 50-5-227, MCA; IMP, 50-5-225, 50-5-226, 50-5-227, MCA; NEW, 2022 MAR p. 1857, Eff. 9/24/22.)

37.106.2899B 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. (History: 50-5-103, 50-5-226, 50-5-227, MCA; IMP, 50-5-225, 50-5-226, 50-5-227, MCA; NEW, 2022 MAR p. 1857, Eff. 9/24/22.)

37.106.2899C 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 licensed mental health professional who 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 four hours of annual training related to mental health and mental disorders;

(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. (History: 50-5-103, 50-5-226, 50-5-227, MCA; IMP, 50-5-225, 50-5-226, 50-5-227, MCA; NEW, 2022 MAR p. 1857, Eff. 9/24/22.)

37.106.2899D CATEGORY D: RESIDENT ASSESSMENTS A category D facility must obtain or conduct three types of resident assessments for each resident:

(1) Prior to move in, the facility shall obtain the court determination documentation required in 53-21-199, MCA, as applicable, as well as a full medical history and physical and mental health and mental disorders assessment.

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

(3) 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 50-5-226(5), MCA. (History: 50-5-103, 50-5-226, 50-5-227, MCA; IMP, 50-5-225, 50-5-226, 50-5-227, MCA; NEW, 2022 MAR p. 1857, Eff. 9/24/22.)

37.106.2899E 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 seclusion; 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. (History: 50-5-103, 50-5-226, 50-5-227, MCA; IMP, 50-5-225, 50-5-226, 50-5-227, MCA; NEW, 2022 MAR p. 1857, Eff. 9/24/22.)

37.106.2899F 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's practitioner shall be notified within 24 hours and notification documented. (History: 50-5-103, 50-5-226, 50-5-227, MCA; IMP, 50-5-225, 50-5-226, 50-5-227, MCA; NEW, 2022 MAR p. 1857, Eff. 9/24/22.)

37.106.2899G 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 the 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 or resident's legal representative and the resident's practitioner to ensure collaboration on a safe and appropriate discharge location. (History: 50-5-103, 50-5-226, 50-5-227, MCA; IMP, 50-5-225, 50-5-226, 50-5-227, MCA; NEW, 2022 MAR p. 1857, Eff. 9/24/22.)