

OFFICE OF THE GOVERNOR
STATE OF MONTANA

STEVE BULLOCK
GOVERNOR



MIKE COONEY
LT. GOVERNOR

TO: Montanans; all officers and agencies of the State of Montana
FROM: Governor Steve Bullock
DATE: June 25, 2020
RE: Directive implementing Executive Orders 2-2020 and 3-2020 and providing measures related to senior living and assisted living facilities.

Executive Orders 2-2020 and 3-2020 declare that a state of emergency exists in Montana due to the global outbreak of COVID-19 Novel Coronavirus.

During a declared state of emergency, the Governor may “control ingress and egress to and from an incident or emergency or disaster area, the movement of persons within the area, and the occupancy of premises within the area.” Section 10-3-104(2)(c), MCA. In addition, the Department of Public Health and Human Services (DPHHS or Department), acting under the Governor’s direction, may “issue written orders for correction” of “conditions of public health importance” through measures including “isolation and quarantine” and “abatement of public health nuisances.” Section 50-1-202, MCA. A condition of public health importance includes any “disease . . . that is identifiable on an individual or community level and that can reasonably be expected to lead to adverse health effects in the community.” Section 50-1-101(2), MCA. The Department, under the Governor’s direction, may take action to correct public health deficiencies in “buildings or facilities where persons assemble.” Section 50-1-203, MCA. The Department, under the Governor’s direction, may also impose quarantine and isolation measures to protect public health. Section 50-1-204, MCA. Montana law provides that these authorities will be utilized to respond to an “outbreak of disease,” § 10-3-103(4), MCA, and to “limit the transmission of the communicable disease,” *see, e.g.*, § 50-1-101(6), MCA.

Since the initial March 15, 2020 Directive implementing Executive Orders 2-2020 and 3-2020, all non-essential visitation to nursing home facilities has been suspended. On April 22, 2020, I issued a Directive providing for the phased reopening of Montana. That Directive continued the suspension of visitation to senior and assisted living facilities. As a result, except for very narrow circumstances surrounding essential healthcare provider visitation and compassionate (*e.g.*, end-of-life) visitation, residents of Montana’s senior and assisted living facilities have been physically isolated from their family and friends.

On May 18, 2020, the Centers for Medicare and Medicaid Services (CMS) issued a guidance for nursing home reopening that lays out benchmarks for facilities to use to determine when outside visitation of residents can resume, and safeguards to be implemented to protect against transmission of COVID-19 into those facilities.¹ The Centers for Disease Control and Prevention (CDC) have also issued guidance for managing and preventing the spread of COVID-19 in nursing homes and skilled

¹ The CMS guidance, Ref. QSO-20-30-NH, is available at <https://www.cms.gov/files/document/qso-20-30-nh.pdf-0>. The safeguards against transmission toolkit is available at <https://www.cms.gov/files/document/covid-toolkit-states-mitigate-covid-19-nursing-homes.pdf>.

nursing facilities.² Both CMS and CDC guidance contemplate strict hygiene and other COVID-19 prevention measures to allow safe visitation, but also afford facilities the flexibility to decide whether and how visitation may resume given the individual circumstances of the facility and the community in which it is located. Now that Montana is in Phase II of reopening, Montanans requiring care in senior and assisted living facilities should have access to limited visitation, subject to these stringent safety and health measures. I have determined that these changes that align Montana with federal guidance and best practices are necessary to respond to the emergency.

Therefore, in accordance with the authority vested in me under the Constitution, Article VI, Sections 4 and 13, and the laws of the State of Montana, Title 10, Chapter 3 and Title 50, Chapter 1, MCA, and other applicable provisions of the Constitution and Montana law, I hereby direct the following measures be in place in the State of Montana, effective immediately:

- Subject to the conditions set forth in this Directive, senior and assisted living facilities may allow visitors after giving notice of the recommended safeguards to residents and family members.
 - Visitation should be conducted in accordance with the strict screening, physical distancing, sanitation, hygiene, and other infection control protocols set forth in the CMS and CDC guidance applicable to nursing homes.
 - Before permitting visitation, facilities should review the applicable CDC and CMS guidance and ensure that they are able to follow the recommendations contained therein.
- To the limited extent that the March 15, 2020 and April 22, 2020 Directives conflict with the provisions of this Directive, they are superseded. No other Directive is amended, rescinded, or superseded except as expressly provided here.

Authorities: Sections 10-3-104, -103, -302, and -305, MCA; §§ 50-1-202, -101, -203, and -204, MCA; Executive Orders 2-2020 and 3-2020; Montana Constitution, Art. VI, Sections 4 and 13; and all other applicable provisions of state and federal law.

Limitations

- This Directive is effective immediately and expires at the end of the declared state of emergency in Executive Orders 2-2020 and 3-2020.
- This Directive shall be implemented consistent with applicable law and subject to the availability of appropriations.
- Nothing in this Directive shall be construed to limit, modify, or otherwise affect the authority granted by law to the Governor or any department, agency, political subdivision, officer, agent, or employee of the State of Montana, except as expressly provided in this Directive or other Directives now in effect implementing Executive Orders 2-2020 and 3-2020.
- This Directive is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the State of Montana, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

² The guidance is available at <https://www.cdc.gov/coronavirus/2019-ncov/hcp/long-term-care.html>.