

ADMINISTRATIVE RULE OF MONTANA

HEALTHCARE FACILITIES

37.106 Subchapter 21

Intermediate Care Facilities for the Developmentally Disabled

RULE

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37.106.2101 Intermediate Care Facilities for the Developmentally Disabled (ICF/DD):

Application of other Rules: Court Orders (1) To the extent that other licensure rules in ARM Title 37 conflict with the provisions of this subchapter, the provisions of this subchapter will apply to intermediate care facility for the developmentally disabled (ICF /DD) .

(2) Notwithstanding the requirements of this chapter, the facility shall comply with the terms and conditions of an order issued by a court of competent jurisdiction, including, but not limited to, the observance of any limitations placed upon a client's rights by the court.

History: Sec. [50-5-103](#) and [50-5-238](#), MCA; IMP, Sec. [53-5-103](#), [50-5-201](#) and [50-5-238](#), MCA; NEW, 2003 MAR p. 1322, Eff. 7/1/03.

37.106.2102 Definitions (1) "Abuse" is defined at [52-3-803](#) , MCA.

(2) "Administrator" means a designated individual having daily overall management responsibility for the operation of a facility.

(3) "Client" means an adult resident, 18 years of age or older, receiving services from a facility.

(4) "Comprehensive functional assessments" identify the client's presenting problems, disabilities, specific developmental strengths, specific developmental and behavioral management needs, and need for services. This assessment must take into consideration the client's age and the implications for treatment and habilitation at each stage.

(5) "Department" means the department of public health and human services.

(6) "Direct care staff" means present on-duty staff that provide personal care and habilitation services in each defined residential living unit as well as client support services.

(7) "Direct care services" are services provided by direct care staff of the facility.

(8) "Exploitation" is defined at [52-3-803](#) , MCA.

(9) "Facility" means an intermediate care facility for the developmentally disabled.

(10) "Guardian" means a person or entity appointed by a court in a proceeding under Title 72, chapter 5, MCA, to make decisions on behalf of an incapacitated adult.

(11) "Habilitation" is defined at [53-20-102](#) , MCA.

(12) "Individual treatment plan" means a written plan that outlines individualized treatment activities for the treatment and habilitation of the client.

(13) "Interdisciplinary team" means individuals representing the professions, disciplines or service areas that are relevant to identifying and serving the client's needs. The team uses comprehensive functional assessments to develop and maintain the individual treatment plan for each client.

(14) "Intermediate care facility for the developmentally disabled (ICF /DD) " means a long term care facility that provides intermediate developmental disability care.

(15) "Intermediate developmental disability care" is defined at [50-5-101](#) , MCA.

(16) "Long term care facility" is defined at [50-5-101](#) , MCA.

(17) "Neglect" is defined at [52-3-803](#) , MCA.

(18) "Preliminary evaluation" means evaluation of client's background information as well as currently valid assessments of functional, developmental, behavioral, social, health and nutritional status to determine if the facility can provide for the client's needs and if the client is likely to benefit from placement in the facility.

(19) "Program staff" means facility staff serving the needs of the client within the scope of their education and training.

(20) "Sexual abuse" is defined at [52-3-803](#) , MCA.

History: Sec. [50-5-103](#) and [50-5-238](#), MCA; IMP, Sec. [53-5-103](#), [50-5-201](#) and [50-5-238](#), MCA; NEW, 2003 MAR p. 1322, Eff. 7/1/03.

37.106.2105 Governing Body and Management (1) The facility must identify an individual or individuals to constitute the governing body of the facility. The governing body must:

- (a) exercise general policy, budget, and operating direction over the facility; and
- (b) appoint the administrator of the facility.

(2) The administrator appointed by the governing body shall, at a minimum:

- (a) hold a current Montana nursing home administrator license;
- (b) be a licensed health care professional; or
- (c) have equivalent credentials approved by the department.

History: Sec. [50-5-103](#) and [50-5-238](#), MCA; [IMP](#), Sec. [53-5-103](#), [50-5-201](#) and [50-5-238](#), MCA; [NEW](#), 2003 MAR p. 1322, Eff. 7/1/03.

37.106.2106 Compliance with Applicable Laws (1) The facility must be in compliance with all applicable provisions of state and local laws, regulations and codes.

History: Sec. [50-5-103](#) and [50-5-238](#), MCA; [IMP](#), Sec. [53-5-103](#), [50-5-201](#) and [50-5-238](#), MCA; [NEW](#), 2003 MAR p. 1322, Eff. 7/1/03.

37.106.2109 Client Records (1) The facility must develop and maintain a recordkeeping system that includes a separate record for each client and that documents the client's health care, treatment and habilitation, including preliminary evaluation, comprehensive functional assessments, individual treatment plan, progress notes, social information, and protection of the client's rights.

(2) The facility must keep confidential all information contained in the client's records, regardless of the form or storage method of the records.

(3) The facility must develop and implement policies and procedures governing the release of any client information, including consents necessary from the client or legal guardian.

(4) Any individual who makes an entry in a client's record must make it legibly, date it, and sign it.

(5) The facility must provide a legend to explain any symbol or abbreviation used in a client's record.

(6) The facility must provide each identified residential living unit with appropriate aspects of each client's record.

History: Sec. [50-5-103](#) and [50-5-238](#), MCA; [IMP](#), Sec. [53-5-103](#), [50-5-201](#) and [50-5-238](#), MCA; [NEW](#), 2003 MAR p. 1322, Eff. 7/1/03.

37.106.2110 Services Provided Under Agreements with Outside Providers (1) If a service required under this subchapter is not provided directly, the facility must have a written agreement with an outside program, resource, or service to furnish the necessary service, including emergency and other health care.

(2) The agreement must:

(a) contain the responsibilities, functions, objectives, and other terms agreed to by both parties; and

(b) provide that the facility is responsible for assuring that the outside services meet the standards for quality of services contained in this subchapter.

(3) The facility must assure that outside services meet the needs of each client.

History: Sec. [50-5-103](#), and [50-5-238](#), MCA; [IMP](#), Sec. [53-5-103](#), [50-5-201](#) and [50-5-238](#), MCA; [NEW](#), 2003 MAR p. 1322, Eff. 7/1/03.

37.106.2115 Client Protections, The Protection of Residents Rights (1) The facility must ensure the rights of all of the clients and must:

- (a) inform each client or legal guardian of the client's rights and the rules of the facility;
- (b) inform each client or legal guardian of the client's medical condition, developmental and behavioral status, attendant risks of treatment, and of the right to refuse treatment;
- (c) inform the individual client of their rights as a client of the facility, including the right to file complaints, the right to protection against any retaliation when filing a complaint and the right to due process;
- (d) allow the individual client to manage their financial affairs and teach them to do so to the extent of their capabilities;
- (e) ensure that each client is not subjected to abuse, sexual abuse, neglect, exploitation or punishment;
- (f) ensure that each client is free from unnecessary drugs and unnecessary physical restraints;
- (g) provide each client with the opportunity for personal privacy and ensure privacy during treatment and care of personal needs;
- (h) ensure that each client is not compelled to perform services for the facility and ensure that each client who does work for the facility is compensated for their efforts at prevailing wages and commensurate with their abilities;
- (i) ensure each client the opportunity to communicate, associate and meet privately with individuals and to send and receive unopened mail, except that these rights may be restricted as provided in Title 53, part 20, MCA;
- (j) ensure that each client has access to telephones with privacy for incoming and outgoing local and long distance calls, except that these rights may be restricted as provided in Title 53, part 20, MCA;
- (k) ensure that each client has the right to retain and use appropriate personal possessions and clothing, and ensure that each client is dressed in their own clothing each day, except that these rights may be restricted as provided in Title 53, part 20, MCA;
- (l) ensure the client the opportunity to participate in social, religious and community group activities, except that these rights may be restricted as provided in Title 53, part 20, MCA; and
- (m) permit a husband and wife who both reside in the facility to share a room. This right may only be limited by written order of the individual treatment planning team when there is no less restrictive means for preventing imminent bodily harm to either partner, or when either partner requests a separate room. The written order must explain the reason for the restriction and must be reviewed monthly by the individual treatment planning team if the restriction is to be continued.

(2) Any rights to which residents are entitled under this subchapter may be limited as provided in Title 53, part 20, MCA.

History: [50-5-103](#), [50-5-238](#), MCA; [IMP](#), [53-5-103](#), [50-5-201](#), [50-5-238](#), MCA; [NEW](#), 2003 MAR p. 1322, Eff. 7/1/03

37.106.2116 Client Finances (1) The facility must establish and maintain a system that:

- (a) assures a full and complete accounting of each client's personal funds entrusted to the facility on behalf of each client; and
- (b) precludes any commingling of a client's funds with facility funds or with the funds of any person other than another client.

(2) The client's financial record must be available on request to the client or legal guardian.

History: Sec. [50-5-103](#) and [50-5-238](#), MCA; [IMP](#), Sec. [53-5-103](#), [50-5-201](#) and [50-5-238](#), MCA; [NEW](#), 2003 MAR p. 1322, Eff. 7/1/03.

37.106.2117 Communication with Clients, Parents, and Guardians (1) The facility must:

- (a) promote participation of the legal guardian in the process of providing treatment and habilitation to a client unless their participation is unobtainable or inappropriate;
- (b) answer communications from the client's family and friends promptly and appropriately;
- (c) permit visits by the guardian to any area of the facility that provides direct client care services to the client, consistent with the right of that client's and other clients' privacy;
- (d) notify the client or client's guardian of changes in the client's condition including, but not limited to, serious illness, accident, death, abuse, or unauthorized absence in a timely manner as indicated by an assessment of the individual incident.

History: Sec. [50-5-103](#) and [50-5-238](#), MCA; [IMP](#), Sec. [53-5-103](#), [50-5-201](#) and [50-5-238](#), MCA; [NEW](#), 2003 MAR p. 1322, Eff. 7/1/03.

37.106.2118 Prevention, Investigation, and Reporting of Client Abuse, Sexual Abuse, Neglect and Exploitation (1) The facility must develop and implement written policies and procedures to prevent abuse, sexual abuse, neglect, or exploitation of the client.

(2) Facility staff must report all known or suspected incidents of client abuse, sexual abuse, neglect or exploitation to the facility administrator, and the facility administrator or his or her designee shall report said incidents to the department in accordance with the requirements of Title 52, chapter 3, part 8, MCA.

(3) The facility must develop and implement written policies and procedures for the investigation of allegations of client abuse, sexual abuse, neglect or exploitation.

(4) The results of all facility investigations of client abuse, sexual abuse, neglect or exploitation must be reported to the department when the investigation has been initiated and upon completion. If an allegation of client abuse, sexual abuse, neglect or exploitation is verified, appropriate corrective action must be taken.

History: Sec. [50-5-103](#) and [50-5-238](#), MCA; [IMP](#), Sec. [53-5-103](#), [50-5-201](#) and [50-5-238](#), MCA; [NEW](#), 2003 MAR p. 1322, Eff. 7/1/03.

37.106.2119 Professional Program Services (1) Each client must receive the professional program services necessary to implement the treatment and habilitation program defined by each client's individual treatment plan. In providing these services, professional program staff must work directly with each client and with paraprofessional, nonprofessional and other professional program staff who work with each client.

(2) The facility must have available program staff to carry out and monitor the interventions in accordance with the stated goals and objectives of every individual treatment plan.

(3) Program staff must participate as members of the interdisciplinary team in relevant aspects of the treatment and habilitation process.

(4) Professional program staff must be licensed, certified, or registered, as applicable, by the state of Montana to provide professional services.

(5) Program staff must serve the special needs of the client as defined by the individual treatment plan.

History: Sec. [50-5-103](#) and [50-5-238](#), MCA; [IMP](#), Sec. [53-5-103](#), [50-5-201](#) and [50-5-238](#), MCA; [NEW](#), 2003 MAR p. 1322, Eff. 7/1/03.

37.106.2125 Facility Staffing (1) The facility must not depend upon the client or volunteers to perform direct care services for the facility.

(2) There must be responsible direct care staff on duty and awake on a 24 hour basis, when any client is present, to take prompt, appropriate action in case of injury, illness, fire or other emergency.

(3) The facility must provide sufficient support staff so that direct care staff are not required to perform support services to the extent that these duties interfere with the exercise of their primary direct client care duties.

History: Sec. [50-5-103](#) and [50-5-238](#), MCA; [IMP](#), Sec. [53-5-103](#), [50-5-201](#) and [50-5-238](#), MCA; [NEW](#), 2003 MAR p. 1322, Eff. 7/1/03.

37.106.2126 Direct Care Staff (1) The facility must provide sufficient direct care staff to manage and supervise each client in accordance with their individual treatment plan.

(2) Direct care staff must be provided by the facility in the following minimum ratios of direct care staff to clients:

(a) a staff to client ratio of 1 to 3.2 for each defined residential living unit serving:

(i) any severely and profoundly retarded client;

(ii) a client with severe physical disabilities;

(iii) any client who is aggressive, assaultive, or a security risk; or

(iv) any client who manifests severely hyperactive or psychotic-like behavior.

(b) for each defined residential living unit who serves any moderately retarded client, the staff to client ratio is 1 to 4.

(c) for each defined residential living unit who serves any client who functions within the range of mild retardation, the staff to client ratio is 1 to 6.4.

(3) The above staff to client ratios shall be calculated for each defined residential living unit based on the number of direct care staff who are present and on-duty during all shifts in a 24 hour period.

History: Sec. [50-5-103](#) and [50-5-238](#), MCA; [IMP](#), Sec. [53-5-103](#), [50-5-201](#) and [50-5-238](#), MCA; [NEW](#), 2003 MAR p. 1322, Eff. 7/1/03.

37.106.2127 Staff Training (1) The facility must provide each staff member with initial and continuing training that enables the employee to perform his or her duties effectively, efficiently, and competently.

(2) For staff members who work with any client, training must focus on skills and competencies directed toward the client's developmental, behavioral, and health needs.

(3) Staff must be able to demonstrate the skills and techniques necessary to administer interventions to manage the inappropriate behavior of any client.

(4) Staff must be able to demonstrate the skills and techniques necessary to implement the individual treatment plan for each client for whom they are responsible.

History: Sec. [50-5-103](#) and [50-5-238](#), MCA; [IMP](#), Sec. [53-5-103](#), [50-5-201](#) and [50-5-238](#), MCA; [NEW](#), 2003 MAR p. 1322, Eff. 7/1/03.

37.106.2131 Individual Residential Treatment and Habilitation Needs.(1) Each client must be offered a treatment and habilitation program which includes aggressive, consistent implementation of a program of specialized and generic training, treatment, health services and related services described in this subchapter, that is directed toward:

(a) the acquisition of the behaviors necessary for the client to function with as much self determination and independence as possible; and

(b) the prevention or deceleration of regression or loss of current optimal functional status.

History: Sec. [50-5-103](#) and [50-5-238](#), MCA; [IMP](#), Sec. [53-5-103](#), [50-5-201](#) and [50-5-238](#), MCA; [NEW](#), 2003 MAR p. 1322, Eff. 7/1/03.

37.106.2132 Admissions, Transfers, Discharge and Fair Hearing.(1) Admission decisions must be based on a preliminary evaluation of the client that is conducted or updated by the facility or by outside sources, except that admission procedures regarding clients which have been committed to the facility by a court of competent jurisdiction shall be conducted pursuant to Title 53, chapter 20, part 1, MCA.

(2) A preliminary evaluation must contain background information as well as currently valid assessments of functional, developmental, behavioral, social, health and nutritional status to determine if the facility can provide for the client's needs and if the client is likely to benefit from placement in the facility.

(3) If a client is to be either transferred or discharged from the facility, the facility must:

(a) have documentation in the client's record that the client was transferred or discharged for good cause; and

(b) provide a reasonable time to prepare the client or guardian for the transfer or discharge (except in emergencies) .

(4) At the time of the discharge, the facility must:

(a) develop a final summary of the client's developmental, behavioral, social, health and nutritional status and, with the consent of the client or legal guardian, provide a copy to authorized persons and agencies; and

(b) provide a post-discharge plan of care that will assist the client in adjusting to the new living environment.

(5) A resident has a right to a fair hearing to contest an involuntary transfer or discharge as provided at ARM [37.5.116](#).

History: Sec. [50-5-103](#) and [50-5-238](#), MCA; [IMP](#), Sec. [53-5-103](#), [50-5-201](#) and [50-5-238](#), MCA; [NEW](#), 2003 MAR p. 1322, Eff. 7/1/03.

37.106.2133 Individual Treatment Plans.(1) Each client must have an individual treatment plan developed by an interdisciplinary team that represents the professions, disciplines or service areas that are relevant to:

(a) identifying the client's needs, as described by the comprehensive functional assessments required in (3) ; and

(b) designing programs that meet the client's needs.

(2) Appropriate facility staff must participate in interdisciplinary team meetings. Participation by other agencies serving the client is encouraged. Participation by the client or the client's legal guardian is required unless that participation is unobtainable or inappropriate.

(3) Within 30 days after admission, the interdisciplinary team must perform accurate assessments or reassessments as needed to supplement the preliminary evaluation conducted prior to admission. The comprehensive functional assessment must take into consideration the client's age (for example a young adult, an elderly person) and the implications for treatment and habilitation at each stage, as applicable, and must:

- (a) identify the presenting problems and disabilities and where possible, their causes;
- (b) identify the client's specific developmental strengths;
- (c) identify the client's specific developmental and behavioral management needs;
- (d) identify the client's need for services without regard to the actual availability of the services needed; and

- (e) include physical development and health, nutritional status, sensory motor development, affective development, speech and language development and auditory functioning, cognitive development, social development, adaptive behaviors or independent living skills necessary for the client to be able to function in the community, and as applicable, vocational skills.

(4) Within 30 days after admission, the interdisciplinary team must prepare for each client an individual treatment plan that states the specific objectives necessary to meet the client's needs, as identified by the comprehensive assessment required by (3) , and the planned sequence for dealing with those objectives. These objectives must be:

- (a) stated separately, in terms of a single behavioral outcome;
- (b) assigned projected completion dates;
- (c) expressed in behavioral terms that provide measurable indices of performance;
- (d) organized to reflect a developmental progression appropriate to the individual; and
- (e) assigned priorities.

(5) Each written training program designed to implement the objectives in the individual treatment plan must specify:

- (a) the methods to be used;
- (b) the schedule for use of the method;
- (c) the person responsible for the program;
- (d) the type of data and frequency of data collection necessary to be able to assess progress toward the desired objectives;
- (e) the inappropriate client behavior(s) , if applicable; and
- (f) provision for the appropriate expression of behavior and the replacement of inappropriate behavior, if applicable, with behavior that is adaptive or appropriate.

(6) The individual treatment plan must also:

- (a) describe relevant interventions to support the individual toward independence;
- (b) identify the location where program strategy information (which must be accessible to any person responsible for implementation) can be found;
- (c) include, for each client who lacks them, training in personal skills essential for privacy and independence (including, but not limited to, toilet training, personal hygiene, dental hygiene, self-feeding, bathing, dressing, grooming, and communication of basic needs) until it has been demonstrated that the client is developmentally incapable of acquiring them;
- (d) identify mechanical supports, if needed, to achieve proper body position, balance, or alignment. The plan must specify the reason for each support, the situations in which each is to be applied, and a schedule for the use of each support;
- (e) provide that each client who has multiple disabling conditions spend a major portion of each waking day out of bed and outside the bedroom area, moving about by various methods and devices whenever possible; and
- (f) include opportunities for client choice and self-management.

(7) Relevant portions of each client's individual treatment plan must be made available to appropriate staff, including staff of other agencies who work with the client and to the client or legal guardian.

History: Sec. [50-5-103](#) and [50-5-238](#), MCA; [IMP](#), Sec. [53-5-103](#), [50-5-201](#) and [50-5-238](#), MCA; [NEW](#), 2003 MAR p. 1322, Eff. 7/1/03.

37.106.2136 Program Implementation (1) As soon as the interdisciplinary team has formulated a client's individual treatment plan, each client must be offered a continuous treatment and habilitation program consisting of needed interventions and services in sufficient number and frequency to support the achievement of the objectives identified in the individual treatment plan.

(2) Except for those facets of the individual treatment plan that must be implemented only by licensed personnel, each client's individual treatment plan must be implemented by all staff who work with the client.

History: Sec. [50-5-103](#) and [50-5-238](#), MCA; [IMP](#), Sec. [53-5-103](#), [50-5-201](#) and [50-5-238](#), MCA; [NEW](#), 2003 MAR p. 1322, Eff. 7/1/03.

37.106.2137 Program Documentation (1) Data relative to accomplishment of the criteria specified in client individual treatment plan objectives must be documented in measurable terms.

(2) The facility must document significant events that are related to the client's individual treatment plan and assessments and that contribute to an overall understanding of the client's ongoing level and quality of functioning.

(3) The facility staff must prepare progress notes which indicate whether or not the stated individual treatment plan has been implemented, and the degree to which the client is progressing, or failing to progress, toward stated treatment objectives. The progress notes must be entered into the client's clinical record at least weekly and upon the occurrence of any significant change in the client's condition.

History: Sec. [50-5-103](#) and [50-5-238](#), MCA; [IMP](#), Sec. [53-5-103](#), [50-5-201](#) and [50-5-238](#), MCA; [NEW](#), 2003 MAR p. 1322, Eff. 7/1/03.

37.106.2138 Program Monitoring and Change (1) The facility must develop and implement written policies and procedures for the management of conduct between staff and the client. These policies and procedures must:

- (a) promote the growth, development and independence of the client;
- (b) address the extent to which the client's choice will be accommodated in daily decision-making, emphasizing self-determination and self-management, to the extent possible;
- (c) specify client conduct to be allowed or not allowed; and
- (d) be available to all staff, the client and the legal guardian.

(2) To the extent possible, each client must participate in the formulation of these policies and procedures.

(3) The client must not discipline any other client, except as part of an organized system of self-government, as set forth in facility policy.

History: Sec. [50-5-103](#) and [50-5-238](#), MCA; [IMP](#), Sec. [53-5-103](#), [50-5-201](#) and [50-5-238](#), MCA; [NEW](#), 2003 MAR p. 1322, Eff. 7/1/03.

37.106.2139 Management of Conduct Between Staff and Client (1) The facility must develop and implement written policies and procedures for the management of conduct between staff and the client. These policies and procedures must:

- (a) promote the growth, development and independence of the client;
- (b) address the extent to which the client's choice will be accommodated in daily decision-making, emphasizing self-determination and self-management, to the extent possible;
- (c) specify client conduct to be allowed or not allowed; and
- (d) be available to all staff, the client and the legal guardian.

(2) To the extent possible, each client must participate in the formulation of these policies and procedures.

(3) The client must not discipline any other client, except as part of an organized system of self-government, as set forth in facility policy.

History: Sec. [50-5-103](#) and [50-5-238](#), MCA; [IMP](#), Sec. [53-5-103](#), [50-5-201](#) and [50-5-238](#), MCA; [NEW](#), 2003 MAR p. 1322, Eff. 7/1/03.

37.106.2140 Management of Inappropriate Client Behavior (1) The facility must develop and implement written policies and procedures that govern the management of inappropriate client behavior only as allowed in [53-20-146](#), MCA. These policies and procedures must be consistent with the provisions of ARM [37.106.2139](#), and must:

- (a) specify all facility-approved interventions to manage inappropriate client behavior;
- (b) designate these interventions on a hierarchy to be implemented, ranging from most positive or least intrusive, to least positive or most intrusive;
- (c) ensure, prior to the use of more restrictive techniques, that the client's record documents that programs incorporating the use of less intrusive or more positive techniques have been tried systematically and demonstrated to be ineffective; and
- (d) address the following:
 - (i) the use of secured units;
 - (ii) the use of observation and seclusion rooms;
 - (iii) the use of physical restraints;
 - (iv) the use of time out procedures;
 - (v) the use of appropriate medication to manage inappropriate behavior;
 - (vi) the application of painful or noxious stimuli;
 - (vii) the staff members who may authorize the use of specified interventions; and
 - (viii) a mechanism for monitoring and controlling the use of such interventions.

(2) Interventions to manage inappropriate client behavior must be employed with sufficient safeguards and supervision to ensure that the safety, welfare and civil and human rights of each client are adequately protected.

(3) Techniques to manage inappropriate client behavior must never be used for disciplinary purposes, for the convenience of staff or as a substitute for a treatment and habilitation program.

(4) The use of systematic interventions to manage inappropriate client behavior must be incorporated into the client's individual treatment plan.

(5) Standing or as needed programs to control inappropriate behavior are not permitted.

History: Sec. [50-5-103](#) and [50-5-238](#), MCA; [IMP](#), Sec. [53-5-103](#), [50-5-201](#) and [50-5-238](#), MCA; [NEW](#), 2003 MAR p. 1322, Eff. 7/1/03.

37.106.2144 Observation and Seclusion Rooms (1) A client may be placed in a an observation and seclusion room from which egress is prevented only as allowed in [53-20-146](#), MCA and only if the following conditions are met:

- (a) The placement is required because of an emergency situation requiring immediate action or for other therapeutic purposes.
- (b) The client is under the direct constant visual supervision of designated staff.
- (c) The door to the room may be locked. The lock must comply with the standards for locks in ARM [37.106.2163](#)(9).

(d) A licensed professional shall examine the client and provide written approval within the first three hours of placement unless the client has a long history of episodic violence. In these cases the examination and approval shall be obtained within the first 12 hours of placement.

(2) Placement of a client in an observation and seclusion room must be reassessed and documented in writing every hour. A client cannot be placed in an observation and seclusion room for more than 24 continuous hours.

(3) A client placed in an observation and seclusion room must be protected from hazardous conditions including, but not limited to, presence of sharp corners and objects, uncovered light fixtures, unprotected electrical outlets.

(4) A record of observation and seclusion activities must be kept.

(5) An intermediate care facility for the developmentally disabled shall:

(a) designate specific rooms designed for observation/ seclusion purposes; and

(b) develop policies and procedures for the use and maintenance of the

observation/seclusion rooms.

History: Sec. [50-5-103](#) and [50-5-238](#), MCA; [IMP](#), Sec. [53-5-103](#), [50-5-201](#) and [50-5-238](#), MCA; [NEW](#), 2003 MAR p. 1322, Eff. 7/1/03.

37.106.2145 Physical Restraints(1) The facility may employ physical restraint only as allowed in [53-20-146](#) , MCA and only as:

(a) an emergency measure, but only if absolutely necessary to protect the client or others from injury; or

(b) a health-related protection prescribed by a physician, but only if absolutely necessary during the conduct of a specific medical or surgical procedure, or only if absolutely necessary for client protection during the time that a medical condition exists.

(2) The facility must not issue orders for restraint on a standing or as needed basis.

(3) A client placed in restraint must be checked at least every 30 minutes by staff trained in the use of restraints, released from the restraint as quickly as possible, and a record of these checks and usage must be kept.

(4) Restraints must be designed and used so as not to cause physical injury to the client and so as to cause the least possible discomfort.

(5) Opportunity for motion and exercise must be provided for a period of not less than 10 minutes during each two hour period in which restraint is employed, and a record of such activity must be kept.

(6) A licensed professional shall examine the client and provide written approval for restraint within the first three hours of placement and shall monitor and record the client's progress every 24 hours thereafter.

History: Sec. [50-5-103](#) and [50-5-238](#), MCA; [IMP](#), Sec. [53-5-103](#), [50-5-201](#) and [50-5-238](#), MCA; [NEW](#), 2003 MAR p. 1322, Eff. 7/1/03.

37.106.2146 Drug Usage(1) Drugs used for control of inappropriate behavior must be approved by the interdisciplinary team and be used only as an integral part of the client's individual treatment plan that is directed specifically toward the reduction of and eventual elimination of the behaviors for which the drugs are employed.

(2) Drugs used for control of inappropriate behavior must not be used until it can be justified that the harmful effects of the behavior clearly outweigh the potentially harmful effects of the drugs.

(3) Drugs used for control of inappropriate behavior must be monitored closely, in conjunction with the physician and the drug regimen review requirement at ARM [37.106.2153](#), for desired responses and adverse consequences by facility staff.

History: Sec. [50-5-103](#) and [50-5-238](#), MCA; [IMP](#), Sec. [53-5-103](#), [50-5-201](#) and [50-5-238](#), MCA; [NEW](#), 2003 MAR p. 1322, Eff. 7/1/03.

37.106.2150 Health Care and Physician Services (1) The facility must ensure the availability of physician services 24 hours a day.

(2) The physician must develop, in coordination with licensed nursing personnel, a medical care plan of treatment for a client if the physician determines that an individual client requires 24 hour licensed nursing care. This plan must be integrated in the individual treatment plan.

(3) The facility must provide or obtain preventive and general medical care as well as annual physical examinations of each client that at a minimum include the following:

(a) evaluation of vision and hearing;

(b) immunizations, using as a guide the recommendations of the public health service advisory committee on immunization practices or of the committee on the control of infectious diseases of the American academy of pediatrics;

(c) routine screening laboratory examinations as determined necessary by the physician, and special studies when needed; and

(d) tuberculosis control, appropriate to the facility's population, and in accordance with the recommendations of the American college of chest physicians or the rule of diseases of the chest of the American academy of pediatrics, or both.

(4) To the extent permitted by Montana law, the facility may utilize physician assistants and nurse practitioners to provide physician services as described in this rule.

(5) A physician must participate in:

(a) the establishment of each newly admitted client's initial individual treatment plan; and

(b) if appropriate, the review and update of an individual treatment plan as part of the interdisciplinary team process either in person or through written report to the interdisciplinary team.

History: Sec. [50-5-103](#) and [50-5-238](#), MCA; [IMP](#), Sec. [53-5-103](#), [50-5-201](#) and [50-5-238](#), MCA; [NEW](#), 2003 MAR p. 1322, Eff. 7/1/03.

37.106.2151 Nursing Services and Staff (1) The facility must provide each client with nursing services in accordance with their needs, including:

(a) participation as appropriate in the development, review, and update of an individual treatment plan as part of the interdisciplinary team process;

(b) the development, with a physician, of a medical care plan of treatment for a client when the physician has determined that an individual client requires such a plan;

(c) for each client who is certified as not needing a medical care plan, a review of their health status which must:

(i) be by a direct physical examination;

(ii) be by a licensed nurse;

(iii) be on a quarterly or more frequent basis depending on client need;

(iv) be recorded in the client's record; and

(v) result in any necessary action (including referral to a physician to address client health problems) ;

(d) other nursing care as prescribed by the physician or as identified by client needs; and

(e) implementation of appropriate protective and preventive health measures that include, but are not limited to:

(i) training any client and staff as needed in appropriate health and hygiene methods;

(ii) control of communicable diseases and infections, including the instruction of other personnel in methods of infection control; and

(iii) training of direct care staff in detecting signs and symptoms of illness or dysfunction, first aid for accidents or illness, and basic skills required to meet the health needs of the client.

(2) The facility must:

- (a) employ or arrange for licensed nursing services sufficient to care for the client's health needs including any client with a medical care plan;
- (b) utilize registered nurses as appropriate and required by Montana law to perform the health services specified in this rule;
- (c) have a formal arrangement with a registered nurse to be available for verbal or on site consultation to the licensed practical or vocational nurses (if utilizing only licensed practical or vocational nurses to provide health services) ; and
- (d) permit non-licensed nursing personnel who work with any client under a medical care plan to do so only under the supervision of licensed persons.

(3) Nurses providing services in the facility must have a current license to practice in Montana.

History: Sec. [50-5-103](#) and [50-5-238](#), MCA; [IMP](#), Sec. [53-5-103](#), [50-5-201](#) and [50-5-238](#), MCA; [NEW](#), 2003 MAR p. 1322, Eff. 7/1/03.

37.106.2152 Dental Services and Staff (1) The facility must provide or make arrangements for comprehensive dental diagnostic and treatment services for each client from qualified personnel, including licensed dentists and dental hygienists either through organized dental services in-house or through arrangement.

(2) If appropriate, dental professionals must participate in the development, review and update of an individual treatment plan as part of the interdisciplinary process either in person or through written report to the interdisciplinary team.

(3) The facility must provide education and training in the maintenance of oral health.

(4) Comprehensive dental diagnostic services must include:

(a) a complete extraoral and intraoral examination, using all diagnostic aids necessary to properly evaluate the client's oral condition, not later than one month after admission to the facility (unless the examination was completed within 12 months before admission) ;

(b) periodic examination and diagnosis performed at least annually, including radiographs when indicated and detection of manifestations of systemic disease; and

(c) a review of the results of examination and entry of the results in the client's dental record.

(5) Comprehensive dental treatment services must include:

(a) the availability for emergency dental treatment on a 24 hour basis by a licensed dentist; and

(b) dental care needed for relief of pain and infections, restoration of teeth, and maintenance of dental health.

(6) If the facility maintains an in-house dental service, the facility must keep a permanent dental record for each client with a dental summary maintained in the client's living unit. If the facility does not maintain an in-house dental service, the facility must obtain a dental summary of the results of dental visits and maintain the summary in the client's living unit.

History: Sec. [50-5-103](#) and [50-5-238](#), MCA; [IMP](#), Sec. [53-5-103](#), [50-5-201](#) and [50-5-238](#), MCA; [NEW](#), 2003 MAR p. 1322, Eff. 7/1/03.

37.106.2153 Pharmacy Services and Drug Regimen Review (1) The facility must provide or make arrangements for the provision of routine and emergency drugs and biologicals to each client. Drugs and biologicals may be obtained from community or contract pharmacists or the facility may maintain a licensed pharmacy.

(2) A pharmacist with input from the interdisciplinary team must review the drug regimen of each client at least quarterly, and:

(a) report any irregularities in the client's drug regimen to the prescribing physician and interdisciplinary team; and

(b) prepare a record of each client's drug regimen reviews which must be maintained by the facility.

(3) As appropriate, the pharmacist must participate in the development, implementation, and review of each client's individual treatment plan either in person or through written report to the interdisciplinary team.

(4) The facility must maintain an individual medication administration record for each client. History: Sec. [50-5-103](#) and [50-5-238](#), MCA; [IMP](#), Sec. [53-5-103](#), [50-5-201](#) and [50-5-238](#), MCA; [NEW](#), 2003 MAR p. 1322, Eff. 7/1/03.

37.106.2154 Drug Administration, Storage and Recordkeeping (1) Drugs used for control of inappropriate behavior must be approved by the interdisciplinary team and be used only as an integral part of the client's individual treatment plan that is directed specifically toward the reduction of and eventual elimination of the behaviors for which the drugs are employed.

(2) Drugs used for control of inappropriate behavior must not be used until it can be justified that the harmful effects of the behavior clearly outweigh the potentially harmful effects of the drugs.

(3) Drugs used for control of inappropriate behavior must be monitored closely, in conjunction with the physician and the drug regimen review requirement at ARM [37.106.2153](#), for desired responses and adverse consequences by facility staff.

History: Sec. [50-5-103](#) and [50-5-238](#), MCA; [IMP](#), Sec. [53-5-103](#), [50-5-201](#) and [50-5-238](#), MCA; [NEW](#), 2003 MAR p. 1322, Eff. 7/1/03.

37.106.2160 Laboratory Services (1) If a facility chooses to provide laboratory services, the laboratory must meet the requirements specified in 42 CFR part 493.

(2) If the laboratory chooses to refer specimens for testing to another laboratory, the referral laboratory must be certified in the appropriate specialties and subspecialties of service in accordance with the requirements of 42 CFR part 493.

History: Sec. [50-5-103](#) and [50-5-238](#), MCA; [IMP](#), Sec. [53-5-103](#), [50-5-201](#) and [50-5-238](#), MCA; [NEW](#), 2003 MAR p. 1322, Eff. 7/1/03.

37.106.2161 Physical Environment (1) The facility must not:

(a) house any client of a grossly different age, developmental level, and social need in close physical or social proximity unless the housing is planned to promote the growth and development of all those housed together; or

(b) segregate the client solely on the basis of their physical disabilities. It must integrate the client who has ambulation deficits or who is deaf, blind, or has a seizure disorder, etc., with others of comparable social and intellectual development.

(2) Bedrooms must:

(a) be rooms that have at least one outside wall;

(b) be equipped with or located near toilet and bathing facilities;

(c) accommodate no more than four clients;

(d) measure at least 80 square feet per client in multiple client bedrooms and at least 100 square feet in single client bedrooms; and

(e) have walls that extend from floor to ceiling.

(3) If a bedroom is below ground level, it must have a window that is:

(a) usable as a second means of escape by the client occupying the room; and

(b) no more than 44 inches (measured to the window sill) above the floor unless the facility is surveyed under the health care occupancy chapter of the Life Safety Code (LSC), 2000 edition,

in which case the window must be no more than 36 inches (measured to the window sill) above the floor.

(4) The facility must provide each client with:

(a) a separate bed of proper size and height for the convenience of the client;

(b) a clean, comfortable mattress;

(c) bedding appropriate to the weather and climate; and

(d) functional furniture and individual closet space in the client's bedroom with clothes racks and shelves accessible to the client and appropriate to the client's needs.

(5) The facility must provide:

(a) space and equipment for daily out-of-bed activity for each client who is not yet mobile, except those who have a short-term illness or any client for whom out-of-bed activity is a threat to health and safety; and

(b) suitable storage space, accessible to the client, for personal possessions, such as TVs, radios, prosthetic equipment and clothing.

(6) The facility must:

(a) provide toilet and bathing facilities appropriate in number, size and design to meet the needs of the client;

(b) provide for individual privacy in toilets, bathtubs and showers; and

(c) in areas of the facility where the client who has not been trained to regulate water temperature and is exposed to hot water, ensure that the temperature of the water does not exceed 110 ° F.

(7) Each client bedroom in the facility must have:

(a) at least one window to the outside; and

(b) direct outside ventilation by means of windows, air conditioning or mechanical ventilation.

(8) The facility must:

(a) maintain the temperature and humidity within a normal comfort range by heating, air conditioning or other means; and

(b) ensure that the heating apparatus does not constitute a burn or smoke hazard to the client.

(9) The facility must have:

(a) floors that have a resilient, nonabrasive and slip-resistant surface;

(b) nonabrasive carpeting, if the area used by a client is carpeted and serves a client who lies on the floor or ambulates with parts of their bodies, other than feet, touching the floor; and

(c) exposed floor surfaces and floor coverings that promote mobility in an area used by a client and promote maintenance of sanitary conditions.

(10) The facility must:

(a) provide sufficient space and equipment that includes adequately equipped and sound treated areas for hearing and other evaluations if they are conducted in the facility. This enables staff to provide the client with needed services as required by this subchapter and as identified in each client's individual treatment plan in:

(i) dining;

(ii) living;

(iii) health services;

(iv) recreation; and

(v) program areas;

(b) furnish and maintain in good repair and teach the client to use and to make informed choices about the use of:

(i) dentures;

(ii) eyeglasses;

- (iii) hearing and other communications aids;
- (iv) braces; and
- (v) other devices identified by the interdisciplinary team as needed by the client; and
- (c) provide adequate clean linen and dirty linen storage areas.

(11) The facility must:

- (a) use lead free paint inside the facility; and
- (b) remove or cover interior paint or plaster containing lead so that it is not accessible to the client.

History: Sec. [50-5-103](#) and [50-5-238](#), MCA; *IMP*, Sec. [53-5-103](#), [50-5-201](#) and [50-5-238](#), MCA; *NEW*, 2003 MAR p. 1322, Eff. 7/1/03.

37.106.2162 Emergency Plan and Procedures (1) The facility must develop and implement detailed written plans and procedures to meet all potential emergencies and disasters such as fire, severe weather, and a missing client.

(2) The facility must communicate, periodically review, make the plan available and provide training to the staff.

(3) The facility must hold evacuation drills at least quarterly for each shift of personnel and under varied conditions to:

- (a) ensure that all personnel on all shifts are trained to perform assigned tasks;
- (b) ensure that all personnel on all shifts are familiar with the use of the facility's fire protection features; and
- (c) evaluate the effectiveness of emergency and disaster plans and procedures.

(4) The facility must:

- (a) actually evacuate the clients during at least one drill each year on each shift;
- (b) make special provisions for the evacuation of a client with a physical disability;
- (c) file a report and evaluation on each evacuation drill;
- (d) investigate all problems with evacuation drills, including accidents, and take corrective action; and

(e) during fire drills, a client may be evacuated to a safe area in the facility certified under the health care occupancies chapter of the LSC .

History: Sec. [50-5-103](#) and [50-5-238](#), MCA; *IMP*, Sec. [53-5-103](#), [50-5-201](#) and [50-5-238](#), MCA; *NEW*, 2003 MAR p. 1322, Eff. 7/1/03.

37.106.2163 Secured Units (1) A secured unit within a facility shall have a written policy outlining resident admission criteria, transfer criteria and discharge criteria for the secured unit.

(2) Provisions should be made for secured unit residents to access large group activities when provided by the facility, e.g., holiday activities, etc. except as contraindicated by factors identified within their individual treatment plans.

(3) A secured unit within a facility is considered a separate unit. A staff station shall be located within the secured unit. The station shall provide at a minimum the following:

- (a) provisions for charting;
- (b) provisions for hand washing;
- (c) provisions for medication storage and preparation;
- (d) telephone access; and

(e) a nurse/staff call system as required by the "Guidelines for the Construction and Equipment of Hospital and Medical Facilities", as adopted in ARM [37.106.302](#).

(4) The nurse/staff call system for a secured unit within a facility shall report to the unit nurse/staff station. The call system may also annunciate the call at another location, such as a main nurse station.

(5) A secured unit within a facility shall provide for a nourishment station. The nourishment station shall contain a work counter, refrigerator, storage cabinets and a sink for serving nourishments between meals. Ice for patient consumption should be provided by icemaker-dispenser units. The nourishment station should include space for trays and dishes used for nonscheduled meal service. Hand washing facilities shall be in or immediately accessible from the nourishment station.

(6) Dining, activities and day space must be provided at a ratio of 30 square feet per resident, with at least 14 square feet dedicated to the dining space.

(7) Resident rooms must be at a ratio of 100 square feet for single bedrooms and 80 square feet for multiple bedrooms. The room square footage should not include bathrooms, door swings, alcoves or vestibules. No more than four residents shall reside in a single room, except in new construction which limits single rooms to two residents.

(8) Each resident must have access to a toilet without requiring them to enter the corridor except as contraindicated by factors identified within their individual treatment plans.

(9) A secured unit within a facility shall comply with the following requirements for special locking arrangements. In buildings protected throughout by an approved supervised automatic fire detection system or approved supervised automatic sprinkler system, the doors in low and ordinary hazard areas may be equipped with approved, listed, locking devices which shall:

(a) unlock upon actuation of an approved supervised automatic fire detection system or approved supervised automatic sprinkler;

(b) unlock upon loss of power controlling the lock or locking mechanism;

(c) all locks used must be electromagnetic. The use of mechanical locks, such as a dead bolt is not permitted;

(d) all secured doors must have a manual electronic key release;

(e) provisions must be made for the rapid removal of occupants by such reliable means as the remote control of the locks. Typically, this is done by placing a staff accessible switch at the nurses station which is capable of releasing all doors; and

(f) all the locks on all secured doors must automatically release upon any of the following conditions:

(i) the actuation of the approved supervised automatic fire alarm system;

(ii) the actuation of an approved supervised automatic sprinkler system; or

(iii) upon the loss of the power controlling the locks or locking mechanisms.

History: Sec. [50-5-103](#) and [50-5-238](#), MCA; [IMP](#), Sec. [53-5-103](#), [50-5-201](#) and [50-5-238](#), MCA; [NEW](#), 2003 MAR p. 1322, Eff. 7/1/03.

37.106.2164 Fire Protection (1) The facility must meet the applicable provisions of either the health care occupancies chapters or the residential board and care occupancies chapter of the Life Safety Code (LSC) , 2000 edition, of the National Fire Protection Association (NFPA) , 2000 edition, which is incorporated by reference. A copy of the LSC , 2000 edition, may be obtained from the National Fire Protection Association, Batterymarch Park, Quincy, MA 02269.

(a) The department may apply a single chapter of the LSC to the entire facility or may apply different chapters to different buildings or parts of buildings as permitted by the LSC .

(b) A facility that meets the LSC definition of a residential board and care occupancy and that has 16 or fewer beds must have its evacuation capability evaluated in accordance with the Evacuation Difficulty Index of the LSC (Appendix F) .

(2) For facilities that meet the LSC definition of a health care occupancy:

(a) the department may waive, for a period it considers appropriate, specific provisions of the LSC if:

(i) the waiver would not adversely affect the health and safety of the clients; and

(ii) rigid application of specific provisions would result in an unreasonable hardship for the facility.

History: Sec. [50-5-103](#) and [50-5-238](#), MCA; [IMP](#), Sec. [53-5-103](#), [50-5-201](#) and [50-5-238](#), MCA; [NEW](#), 2003 MAR p. 1322, Eff. 7/1/03.

37.106.2170 Infection Control (1) The facility must provide a sanitary environment to avoid sources and transmission of infections. There must be policies and procedures for the prevention, control and investigation of infection and communicable diseases.

(2) The facility must implement successful corrective action in affected problem areas.

(3) The facility must maintain a record of incidents and corrective actions related to infections.

(4) The facility must prohibit employees with symptoms or signs of a communicable disease from direct contact with the client and their food.

(5) All staff shall use the proper hand washing techniques after providing direct care to a resident.

History: Sec. [50-5-103](#) and [50-5-238](#), MCA; [IMP](#), Sec. [53-5-103](#), [50-5-201](#) and [50-5-238](#), MCA; [NEW](#), 2003 MAR p. 1322, Eff. 7/1/03.

37.106.2171 Dietetic Services (1) Each client must receive a nourishing, well-balanced diet including modified and specially-prescribed diets.

(2) A qualified dietitian must be employed either full-time, part-time or on a consultant basis at the facility's discretion.

(3) If a qualified dietitian is not employed full-time, the facility must designate a person to serve as the director of food services.

(4) The client's interdisciplinary team, including a qualified dietitian and physician, must prescribe all modified and special diets including those used as a part of a treatment to manage inappropriate client behavior.

(5) Foods proposed for use as a primary reinforcement of adaptive behavior are evaluated in light of the client's nutritional status and needs.

(6) Unless otherwise specified by medical needs, the diet must be prepared at least in accordance with the "Nutrition and Your Health: Dietary Guidelines for Americans", 2000, 5th edition of the recommended dietary allowances published by the Food and Nutrition Board of the National Research Council, National Academy of Sciences, adjusted for age, sex, disability and activity.

(7) Each client must receive at least three meals daily, at regular times comparable to normal mealtimes in the community with:

(a) not more than 14 hours between a substantial evening meal and breakfast of the following day, except on weekends and holidays when a nourishing snack is provided at bedtime, 16 hours may elapse between a substantial evening meal and breakfast; and

(b) not less than 10 hours between breakfast and the evening meal of the same day.

(8) Food must be served:

(a) in appropriate quantity;

- (b) at appropriate temperature;
 - (c) in a form consistent with the developmental level of the client; and
 - (d) with appropriate utensils.
- (9) Food served to the client individually and uneaten must be discarded.

(10) Menus must:

- (a) be prepared in advance;
- (b) provide a variety of foods at each meal;
- (c) be different for the same days of each week and adjusted for seasonal changes; and
- (d) include the average portion sizes for menu items.

(11) Menus for food actually served must be kept on file for 60 days.

(12) The facility must:

- (a) serve meals for each client, including persons with ambulation deficits, in dining areas, unless otherwise specified by the interdisciplinary team or a physician;
- (b) provide table service for each client who can and will eat at a table, including a client in a wheelchair;
- (c) equip areas with tables, chairs, eating utensils, and dishes designed to meet the developmental needs of each client;
- (d) supervise and staff dining rooms adequately to direct self-help dining procedure, to assure that each client receives enough food and to assure that each client eats in a manner consistent with his or her developmental level; and
- (e) ensure that each client eats in an upright position, unless otherwise specified by the interdisciplinary team or a physician.

History: Sec. [50-5-103](#) and [50-5-238](#), MCA; [IMP](#), Sec. [53-5-103](#), [50-5-201](#) and [50-5-238](#), MCA; [NEW](#), 2003 MAR p. 1322, Eff. 7/1/03.

37.106.2180 Facility Fair Hearing (1) A facility has the right to appeal licensure decisions as outlined in [50-5-208](#), MCA.

(2) The department shall follow the hearing procedure for fair hearings as outlined at ARM [37.5.117](#).

History: Sec. [50-5-103](#) and [50-5-238](#), MCA; [IMP](#), Sec. [53-5-103](#), [50-5-201](#) and [50-5-238](#), MCA; [NEW](#), 2003 MAR p. 1322, Eff. 7/1/03.