



MONTANA
ADMINISTRATIVE
REGISTER



DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES

NOTICE OF PROPOSED RULEMAKING

MAR NOTICE NO. 2026-323.1

Summary

Amendment of ARM 37.106.2801, 37.106.2802, 37.106.2805, 37.106.2809, 37.106.2810, 37.106.2814, 37.106.2816, 37.106.2824, 37.106.28929, 37.106.2836, 37.106.2839, 37.106.2866, 37.106.2899, 37.106.2899A, 37.106.2899B, 37.106.2899C, 37.106.2899D, 37.106.2899E, and 37.106.2899H and adoption of NEW RULE 1 pertaining to assisted living facility licensing

Hearing Date and Time

Thursday, March 12, 2026, at 11:00 a.m.

Virtual Hearing Information

Join Zoom Meeting: <https://mt-gov.zoom.us/j/82296010497?pwd=Qw8pQggtFmpirtKC8ggXWACfKbpJYP.1>

Meeting ID: 822 9601 0497 and Password: 396047

Dial by Telephone: +1 646 558 8656

Meeting ID: 822 9601 0497 and Password: 396047

Find your local number: <https://mt-gov.zoom.us/j/82296010497>

Comments

Comments may be submitted using the contact information below. Comments must be received by Friday, March 20, 2026, at 5:00 p.m.

Accommodations

The agency 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. Requests must be made by Thursday, February 26, 2026, at 5:00 p.m.

Contact

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Rulemaking Actions

AMEND

The rules proposed to be amended are as follows, stricken matter interlined, new matter underlined:

37.106.2801 SCOPE

- (1) The rules in this chapter pertain to facilities which provide personal care services. These rules constitute the basis for the licensure of assisted living facilities by the ~~Montana department of public health and human services~~ Department of Public Health and Human Services (DPPHS).

Authorizing statute(s): 50-5-103, 50-5-226, 50-5-227, MCA

Implementing statute(s): 50-5-225, 50-5-226, 50-5-227, MCA

37.106.2802 PURPOSE

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

- (2) An assisted living facility offers a suitable living arrangement for persons with a range of capabilities, disabilities, frailties, and strengths. In general, however, assisted living is not appropriate for individuals who are incapable of responding to their environment, expressing volition, interacting, or demonstrating any independent activity. For example, individuals in a persistent vegetative state who require long term nursing care should not be placed or cared for in an assisted living facility.

Authorizing statute(s): 50-5-103, 50-5-226, 50-5-227, MCA

Implementing statute(s): 50-5-225, 50-5-226, 50-5-227, MCA

37.106.2805 DEFINITIONS

The following definitions apply in this subchapter:

- (1) "Activities of daily living (ADLs)" means tasks usually performed in the course of a normal day in a resident's life that include eating, walking, mobility, dressing, grooming, bathing, toileting, and transferring.
- (2) "Administrator" means the person designated on the facility application or by written notice to the department as the person responsible for the daily operation of the facility and for the daily resident care provided in the facility.
- (3) "Advance directive" means a written instruction, such as a living will, a do_not_resuscitate (DNR) order, or durable power of attorney (POA) for health care, recognized under state law relating to the provision of health care when the individual is incapacitated.
- (4) "Ambulatory" means a person is capable of self_mobility, either with or without mechanical assistance. If mechanical assistance is necessary, the person is considered ambulatory only if they can, without help from another person, transfer, safely operate, and utilize the mechanical assistance, exit and enter the facility, and access all common living areas of the facility.
- (5) "Assisted living facility" is defined at 50-5-101, MCA.
- (6) "Change of ownership" means the transfer of ownership of a facility to any person or entity other than the person or entity to whom the facility's license was issued, including the transfer of ownership to an entity which is wholly owned by the person or entity to whom the facility's license was issued.
- (7) "Department" means the ~~department of public health and human services~~ Department of Public Health and Human Services (DPHHS).

- (8) "Direct care staff" means a person or persons who directly assist residents with personal care services and medication. It does not include housekeeping, maintenance, dietary, laundry, administrative, or clerical staff at times when they are not providing any of the above-mentioned assistance. Volunteers can be used for direct care, but may not be considered part of the required staff.
- (9) "Health care plan" means a written resident specific plan identifying what ongoing assistance with ~~activities of daily living~~ ADLs and health care services is provided on a daily or regular basis by a licensed health care professional to a category B, C, or D resident under the orders of the resident's practitioner. Health care plans are developed as a result of a resident assessment performed by a licensed health care professional who may consult with a multi-disciplinary team.
- (10) "Health care service" means any service provided to a resident of an assisted living facility that is ordered by a practitioner and required to be provided or delegated by a licensed, registered, or certified health care professional. Any other service, whether or not ordered by a physician or practitioner, that is not required to be provided by a licensed, registered, or certified health care professional is not to be considered a health care service.
- (11) "Involuntary transfer or discharge" means the involuntary discharge of a resident from the licensed facility or the involuntary transfer of a resident to a bed outside of the licensed facility. The term does not include the transfer of a resident from one bed to another within the same licensed facility, or the temporary transfer or relocation of the resident outside the licensed facility for medical treatment.
- (12) "License" means the document issued by the department that authorizes a person or entity to provide ~~personal care or~~ assisted living services.
- (13) "Licensed health care professional" means a licensed physician, physician assistant-certified, advanced practice registered nurse, or registered nurse who is practicing within the scope of the license issued by the ~~department of labor and industry~~ Department of Labor and Industry.
- (14) "Mechanical assistance" means the use of any assistive device that aids in the mobility and transfer of the resident. Assistive devices include braces, walkers, canes, crutches, wheelchairs, and similar devices.
- (15) "Medication administration" means an act in which a prescribed drug or biological is given to a resident by an individual who is authorized in accordance with state laws and regulations governing such acts.
- (16) "Mental disorder" means a clinically significant disturbance in an individual's cognition, emotional regulation, or behavior.
- (a) For the purpose of this subchapter, the term includes dementia, Alzheimer's disease, and traumatic brain injury.

~~(16)~~(17) "Mental health professional" means:

- (a) a certified professional person ~~under Title 53, chapter 21, part 1, MCA;~~
- (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) a marriage and family therapist under Title 37, chapter 37, MCA;
- (g) an advanced practice registered nurse, as provided for in 37-8-202, MCA, with a clinical specialty in psychiatric mental health and mental disorders nursing;
or
- (h) a physician assistant licensed under Title 37, chapter 20, MCA, with a clinical specialty in psychiatric mental health.

~~(17)~~(18) "Nursing care" means the practice of nursing as governed by 37-8-102(7), MCA and by administrative rules adopted by the Board of Nursing, found at ARM Title 24, chapter 159.

~~(18)~~(19) "Personal care" means the provision of services and care for residents who need some assistance in performing ~~the activities of daily living~~ ADLs.

~~(19)~~(20) "Practitioner" means an individual licensed by the Department of Labor and Industry who has assessment, admission, and prescription authority.

~~(20)~~(21) "PRN medication" means an administration scheme, in which a medication is not routine, is taken as needed, and requires the licensed health care professional or individual resident's own cognitive assessment and judgement for need and effectiveness.

~~(21)~~(22) "Resident" means anyone at least 18 years of age accepted for care in an assisted living facility.

~~(22)~~(23) "Resident agreement" means a signed, dated, written document that lists all charges, services, refunds, and move out criteria and complies with ARM 37.106.2823.

~~(23)~~(24) "Resident certification" means written certification by a licensed health care professional that the facility can adequately meet the particular needs of a resident. The licensed health care professional making the resident certification must have:

- (a) visited the resident on site; and
- (b) determined that the resident's health care status does not require services at another level of care.

~~(24)~~(25) "Resident's legal representative" or "resident's representative" means the resident's guardian, or if no guardian has been appointed, then the resident's family member or other appropriate person acting on the resident's behalf.

~~(25)~~(26) "Self-administration assistance" means providing necessary assistance to any resident in taking their medication, including:

- (a) removing medication containers from secured storage;
- (b) providing verbal suggestions, prompting, reminding, gesturing, or providing a written guide for self-administering medications;
- (c) handing a prefilled, labeled medication holder, labeled unit dose container, syringe or other labeled container from the pharmacy or a medication organizer as described in ARM 37.106.2847 to the resident;
- (d) opening the lid of the above container for the resident;
- (e) guiding the hand of the resident to self-administer the medication;
- (f) holding and assisting the resident in drinking fluid to assist in the swallowing of oral medications; and
- (g) assisting with removal of a medication from a container for residents with a physical disability which prevents independence in the act.

~~(26)~~(27) "Service coordination" means that the facility either directly provides or assists the resident to procure services including, but not limited to:

- (a) beauty or barber shop;
- (b) financial assistance or management;
- (c) housekeeping;
- (d) laundry;
- (e) recreation activities;
- (f) shopping;
- (g) spiritual services; and
- (h) transportation.

~~(27)~~(28) "Service plan" means a written plan for services developed by the facility with the resident or resident's legal representative which reflects the resident's capabilities, choices and, if applicable, measurable goals and risk issues. The plan is developed on admission and is reviewed and updated annually and if there is a significant change in the resident's condition. The development of the service plan does not require a licensed health care professional.

~~(28)~~(29) "Severe cognitive impairment" means the loss of intellectual functions, such as thinking, remembering, and reasoning, of sufficient severity to interfere with a person's daily functioning. Such a person is incapable of recognizing danger, self-evacuating, summoning assistance, expressing need, and/or making basic care decisions.

~~(29)~~(30) "Significant change" means a resident status or condition change that results in a change in service and care needs. This includes:

- (a) admission to, or discharge from hospice services;
- (b) a change in categorization; or
- (c) an accident or health event that changes the functional or cognitive abilities of the resident.

~~(30)~~(31) "Therapeutic diet" means a diet ordered by a physician or practitioner as part of treatment for a disease or clinical condition or to eliminate or decrease specific nutrients in the diet, (e.g., sodium) or to increase specific nutrients in the diet (e.g., potassium) or to provide food the resident is able to eat (e.g., mechanically altered diet).

~~(31)~~(32) "Third party services" means care and services provided to a resident by individuals or entities who have no fiduciary interest in the facility.

~~(32)~~(33) "Treatment" means a therapy, modality, product, device, or other intervention used to maintain well-being or to diagnose, assess, alleviate, or prevent a disability, injury, illness, disease, or other similar condition.

Authorizing statute(s): 50-5-103, 50-5-226, 50-5-227, MCA

Implementing statute(s): 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 electronically submitted ~~made~~ to the Department of Public Health and Human Services, 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) identity of each officer and director of the corporation, if organized as a corporation;

- (b) identity of each general partner if organized as a partnership or limited liability partnership;
 - (c) name of the administrator and administrator's qualifications;
 - (d) name, address, and phone number of the management company if applicable;
 - (e) physical location address, mailing address, and phone number of the facility;
 - (f) maximum number of A beds, B beds, C beds, and D beds in the facility;
 - (g) policies and procedures as outlined in ARM 37.106.2815; and
 - (h) resident agreement, as outlined in ARM 37.106.2823, intended to be used.
- (2) Every assisted living facility shall have distinct identification or name and shall notify the department in writing within 30 days prior to changing such identification or name.
- (3) Each assisted living facility shall promptly report to the department any plans to relocate the facility at least 30 days prior to effecting such a move.
- (4) In the event of an assisted living facility change of ownership, the new owners shall provide the department the following:
- (a) a completed application with fee;
 - (b) a copy of the fire inspection conducted within the past year;
 - (c) policies and procedures as prescribed in ARM 37.106.2815 or if applicable, a written statement indicating that the same policies and procedures will be used as required;
 - (d) a copy of the resident agreement as outlined in ARM 37.106.2823 to be used; and
 - (e) documentation of compliance with ARM 37.106.2814.
- (5) Under a change of ownership, the seller shall dispose of or return to the department the assisted living license under which the facility had been previously operated. This information ~~must~~ may be sent to the Department of Public Health and Human Services, Office of Inspector General, Licensure Bureau, ~~2401 Colonial Drive,~~ P.O. Box 202953, Helena, MT 59620-2953.

Authorizing statute(s): 50-5-103, 50-5-226, 50-5-227, MCA

Implementing statute(s): 50-5-225, 50-5-226, 50-5-227, MCA

37.106.2810 LICENSE RESTRICTIONS

- (1) A license is not subject to sale, assignment, or other transfer, voluntary or involuntary.
- (2) A license is valid only for the premises for which the original license was issued.
- (3) The license remains the property of the department and shall be disposed of or returned to the department upon closing or transfer of ownership.
 - (a) The address for returning the license is Department of Public Health and Human Services, Office of Inspector General, Licensure Bureau, ~~2401 Colonial Drive~~, P.O. Box 202953, Helena, MT 59620-2953.

Authorizing statute(s): 50-5-103, 50-5-226, 50-5-227, MCA

Implementing statute(s): 50-5-225, 50-5-226, 50-5-227, MCA

37.106.2814 ADMINISTRATOR

- (1) Each assisted living facility shall employ an administrator. The administrator is responsible for operation of the assisted living facility at all times and shall ensure 24-hour supervision of the residents.
- (2) The administrator must meet the following minimum requirements:
 - (a) be currently licensed as a nursing home administrator in Montana or another state; ~~or~~
 - (b) has successfully completed all of the ~~self-study~~ self-study modules of "A Management Reference for Executive Directors - Admin Level 1 Certificate Program," a component of the assisted living training system published by the Senior Living University (SLU) or an alternate, approved program; or
 - (c) be enrolled in and complete the ~~self-study~~ self-study course referenced in (2)(b), within six months from hire.
- (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 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) In the absence of the administrator, a staff member must be designated to oversee the operation of the facility. The administrator or designee shall be in charge, on call, and physically available on a daily basis as needed, and shall ensure there are sufficient, qualified staff so that the care, well-being, health, and safety needs of the residents are met at all times.
 - (a) If the administrator will be absent from the facility for more than 30 continuous days, the department shall be given written notice of the individual who has been appointed the designee. The appointed designee must meet all the requirements of (1) and (2).
- (5) The administrator or designee may not be a resident of the facility.
 - (a) A designee must:
 - (i) be age 18 or older; and
 - (ii) have demonstrated competencies required to assure protection of the safety and physical, mental, and emotional health of residents.
- (6) The administrator or designee shall:
 - (a) ensure that the current facility license or licenses are posted at a place in the facility that is accessible to the public at all times;
 - (b) oversee the day-to-day operation of the facility including:
 - (i) all personal care services for residents;
 - (ii) the employment, training, and supervision of staff and volunteers;
 - (iii) maintenance of buildings and grounds; and
 - (iv) record keeping; and
 - (c) protect the safety and physical, mental, and emotional health of residents.
- (7) The facility shall notify the department within five days of an administrator's departure or a new administrator's employment.
- (8) The administrator or designee shall initiate transfer of a resident through the resident and/or the resident's practitioner, appropriate agencies, or the resident's legal representative when the resident's condition is not within the scope of services of the assisted living facility.
- (9) The administrator or designee shall accept and retain only those residents whose needs can be met by the facility and who meet the acceptance criteria found in 50-5-226, MCA.
- (10) The administrator or designee must ensure that a resident who is ambulatory only with mechanical assistance is:

- (a) able to safely and independently self-evacuate the facility without the aid of an elevator or similar mechanical lift;
 - (b) have the ability to independently move past a building ~~code-approved~~ code-approved occupancy barrier or smoke barrier into an adjacent wing or building section; or
 - (c) reach and enter an approved area of refuge.
- (11) The administrator or designee shall ensure and document that orientation is provided to all employees at a level appropriate to the employee's job responsibilities.
- (12) The administrator or designee shall review every accident or incident causing injury to a resident and document the appropriate corrective action taken to avoid a reoccurrence.
- (13) The owner of an assisted living facility may serve as administrator, or in any staff capacity, if the owner meets the qualifications specified in these rules.

Authorizing statute(s): 50-5-103, 50-5-226, 50-5-227, MCA

Implementing statute(s): 50-5-225, 50-5-226, 50-5-227, MCA

37.106.2816 ASSISTED LIVING FACILITY STAFFING

- (1) The administrator shall develop minimum qualifications for the hiring of direct care staff and support staff.
- (2) The administrator shall develop policies and procedures for conducting criminal background checks, hiring, and assessing staff, which include practices that assist the employer in identifying employees 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) 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 unless the name-based background check yields nationwide results, or the facility may conduct a 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, or welfare of the residents in the facility.
 - (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) an overview of the facility's policies and procedures manual in areas relevant to the employee's job responsibilities;
 - (b) a review of the employee's job description;
 - (c) services provided by the facility;
 - (d) the Montana ~~Elder and Persons with Developmental Disabilities Abuse Prevention Act~~ Vulnerable Adult Prevention of Abuse Act found at in ~~52-3-801 et seq.~~ Title 52, chapter 3, part 8, MCA;
 - (e) the Montana Long-Term Care Resident Bill of Rights Act found at in ~~50-5-1101 et seq.~~ Title 50, chapter 5, part 11, MCA;
 - (f) staff who 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; and
 - (g) all direct care staff will receive, at minimum, two hours of training in dementia care upon hire and annually thereafter.
- (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 document that they have reviewed the plan and can perform the services required.
- (5) Direct care staff shall be trained in the use of the abdominal thrust maneuver and basic first aid. If the facility offers cardiopulmonary resuscitation (CPR), at least one person per shift shall hold a current CPR certificate.
- (6) The following rules must be followed in staffing the assisted living facility:
- (a) direct care staff shall have knowledge of the resident's needs and any events about which the employee should notify the administrator or the administrator's designated representative;

- (b) the facility shall have a sufficient number of qualified staff ~~on duty~~ on site 24 hours a day to meet the scheduled and unscheduled needs of each resident, to respond in emergency situations, and all related services, including:
 - (i) maintenance of order, safety, and cleanliness;
 - (ii) assistance with medication regimens;
 - (iii) preparation and service of meals;
 - (iv) housekeeping services and assistance with laundry; and
 - (v) assurance that each resident receives the supervision and care required by the service or health care plan to meet the resident's basic needs;
 - (c) an individual on each work shift shall have keys to all relevant resident care areas and access to all items needed to provide appropriate resident care;
 - (d) direct care staff may not perform any service for which they have not received appropriate documented training; and
 - (e) facility staff may not perform any health care service that has not been appropriately delegated under the Montana Nurse Practice Act or in the case of licensed health care professionals, that is beyond the scope of their license.
- (7) Employees and volunteers may perform support services, such as cooking, housekeeping, laundering, general maintenance and office work after receiving an orientation to the appropriate sections of the facility's policy and procedure manual. Any person providing direct care, however, is subject to the orientation and training requirements for direct care staff.
- (8) Volunteers may be utilized in the facility, but may not be included in the facility's staffing plan in lieu of facility employees. In addition, the use of volunteers is subject to the following:
- (a) volunteers must be supervised and be familiar with resident rights and the facility's policies and procedures which apply to their duties as a volunteer; and
 - (b) volunteers shall not assist with medication administration, delegated nursing tasks, bathing, toileting, or transferring.
- (9) Residents may participate voluntarily in performing household duties and other tasks suited to the individual resident's needs and abilities, but residents may not be used as substitutes for required staff or be required to perform household duties or other facility tasks.

Authorizing statute(s): 50-5-103, 50-5-226, 50-5-227, MCA

Implementing statute(s): 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~~ 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, and the resident's legal representative, as applicable, when:
 - (a) the resident's needs exceed the level of ADL services the facility provides;
 - (b) the resident exhibits behavior or actions that repeatedly and substantially interfere with the rights, health, safety, or well-being of other residents and the facility has tried prudent and reasonable interventions;
 - (i) documentation of the interventions attempted by the facility shall become part of the resident's record;
 - (c) the resident, due to severe cognitive decline, is not able to respond to verbal instructions, recognize danger, make basic care decisions, express needs, or summon assistance, except as permitted by ARM 37.106.2891 through 37.106.2898;
 - (d) the resident has a medical condition that is complex, unstable, or unpredictable and treatment cannot be appropriately developed in the assisted living environment;
 - (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;
 - (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~~ 30-day written move out notice shall, at a minimum, include the following:
 - (a) the reason for transfer or discharge;
 - (b) the effective date of the transfer or discharge;
 - (c) optional discharge locations;

- (d) a statement that the resident has the right to appeal the action to the department; and
 - (e) the name, address, and telephone number of the state long term care ombudsman.
- (3) A written notice of discharge in less than 30 days may be issued for the following reasons:
- (a) if a resident has a medical emergency;
 - (b) the resident exhibits behavior that poses an immediate danger to self or others; or
 - (c) if the resident has not resided in the facility for 30 days.
- (4) A resident has a right to a fair hearing to contest an involuntary transfer or discharge.
- (a) Involuntary transfer or discharge is defined in ARM 37.106.2805.
 - (b) A resident may exercise his or her right to appeal an involuntary transfer or discharge by submitting a written request for fair hearing to the Department of Public Health and Human Services, ~~Office of Inspector General, Office of Fair Administrative Hearings, P.O. Box 202953, 2401 Colonial Drive,~~ 202922, 2401 Colonial Drive, Helena, MT 59620-~~2953~~ 2922, within 30 days of notice of transfer or discharge.
 - (c) The parties to a hearing regarding a contested transfer or discharge are the facility and the resident contesting the transfer or discharge. The department is not a party to such a proceeding, and relief may not be granted to either party against the department in a hearing regarding a contested transfer or discharge.
 - (d) Hearings regarding a contested transfer or discharge shall be conducted in accordance with ARM ~~37.5.304, 37.5.305, 37.5.307, 37.5.313, 37.5.322, 37.5.325, and 37.5.334~~ Title 37, chapter 5, subchapter 3, and a resident shall be considered a claimant for purposes of these rules.
 - (e) The request for appeal of a transfer or discharge does not automatically stay the decision of the facility to transfer or discharge the resident. The hearing officer may, for good cause shown, grant a resident's request to stay the facility's decision pending a hearing.
 - (f) The hearing officer's decision following a hearing shall be the final decision for the purposes of judicial review under ARM 37.5.334.
- (5) The facility must assist with discharge to ensure safe and appropriate placement of the resident.

Authorizing statute(s): 50-5-103, 50-5-226, 50-5-227, MCA

Implementing statute(s): 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, 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) a completed resident agreement, in accordance with ARM 37.106.2823;
 - (b) updates of resident/provider agreements, if any;
 - (c) the service plan for all category A residents;
 - (d) resident's weight on admission and at least annually thereafter for category A residents or more often as the resident, or the resident's licensed health care professional, determine a weight check is necessary;
 - (i) a weight loss of 5% or more must be reported to the practitioner and the notification documented;
 - (e) reports of significant events including:
 - (i) documentation of the notice to the resident's practitioner;
 - (ii) steps taken to safeguard the resident; and
 - (iii) facility contacts with family members or another responsible party;
 - (f) a record of communication between the facility and the resident or their representative if there has been a change in the resident's status or a need to discharge; and
 - (g) the date and circumstances of the resident's final transfer, discharge, or death, including notice to responsible parties and disposition of personal possessions.
- (3) The resident file must be kept current. The file must be retained for a minimum of three years following the resident's discharge, transfer, or death.

Authorizing statute(s): 50-5-103, 50-5-226, 50-5-227, MCA

Implementing statute(s): 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) an individual towel rack;
 - (b) a handicap accessible mirror mounted or secured to allow for convenient use by both wheelchair bound residents and ambulatory persons;
 - (c) clean, flame-resistant, or non-combustible window treatments or equivalent, for every bedroom window. In a category D facility or unit, the use of blinds or curtains is not permissible. A flame-resistant or non-combustible window valance, 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 must only be silenced at the point of activation. A resident room that is designated as double occupancy must be equipped with a call system for both occupants. In category D facilities or units, resident bedroom call cords or strings in excess of 6 inches shall not be permitted; and
 - (e) for each multiple-bed room, either flame-resistant privacy curtains for each bed or movable flame-resistant screens to provide privacy upon the request of a resident.
- (2) Following the discharge of a resident, all of the equipment and bedding used by that resident and owned by the facility must be cleaned and sanitized.

Authorizing statute(s): 50-5-103, 50-5-226, 50-5-227, MCA

Implementing statute(s): 50-5-225, 50-5-226, 50-5-227, MCA

37.106.2839 ENVIRONMENTAL CONTROL

- (1) The assisted living facility shall provide a clean, comfortable, and well-maintained home that is safe for residents and employees at all times.

- (2) A minimum of 10-foot candles of light must be available in all rooms, with the following exceptions:
 - (a) all reading lamps must have a capacity to provide a minimum of 30-foot candles of light;
 - (b) all toilet and bathing areas must be provided with a minimum of 30-foot candles of light;
 - (c) general lighting in food preparation areas must be a minimum of 30-foot candles of light; and
 - (d) hallways must be illuminated at all times by at least a minimum of ~~five~~ 5-foot candles of light at the floor.
- (3) Temperature in resident rooms, bathrooms, and common areas must be maintained at a minimum of 68°F and may not exceed 85°F.
- (4) A resident's ability to smoke safely shall be evaluated and addressed in the resident's service or health care plan. If the facility permits resident smoking:
 - (a) the rights of non-smoking residents shall be given priority in settling smoking disputes between residents; and
 - (b) if there is a designated smoking area within the facility, it shall be designed to keep all contiguous, adjacent, or common areas smoke free.
- (5) An assisted living facility may designate itself as non-smoking provided that adequate notice is given to all residents or all applicants in the facility residency agreement.

Authorizing statute(s): 50-5-103, 50-5-226, 50-5-227, MCA

Implementing statute(s): 50-5-225, 50-5-226, 50-5-227, MCA

37.106.2866 CONSTRUCTION, BUILDING, AND FIRE CODES

- (1) Any construction of or alteration, addition, modification, or renovation to an assisted living facility must meet the requirements of the building code and fire marshal agencies having jurisdiction and be approved by the officer having jurisdiction to determine if the building and fire codes are met by the facility.
- (2) When a change in use, 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, C, or D license endorsement to a previously licensed category A facility.

- (3) Changes in the facility location, use or number of facility beds cannot be made without written notice to, and written approval received from, the department.
- (4) Exit doors 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. Deadbolt locks are prohibited on all doors.
- (5) Stairways, halls, doorways, passageways, and exits from rooms and from the building, shall be kept unobstructed at all times.
- (6) All operable windows and outer doors that may be left open shall be fitted with insect screens.
- (7) An assisted living care facility must have an annual fire inspection conducted by the appropriate local fire authority or the state fire marshal's office and maintain a record of such inspection for at least three years following the date of the inspection.
- (8) An employee and resident fire drill must be conducted at least two times annually, no closer than four months apart, and include residents, employees and support staff on duty and other individuals in the facility. A resident fire drill includes making a general announcement throughout the facility that a resident fire drill is being conducted or sounding a fire alarm.
- (9) Records of employee and resident fire drills must be maintained on the premises for 24 months from the date of the drill and include the date and time of the drill, names of the employees participating in the drill, and identification of residents needing assistance for evacuation.
- (10) A 2A10BC portable fire extinguisher shall be available on each floor of a facility licensed for 20 or more residents. Facilities licensed for less than 20 residents shall comply with the requirements of the fire authority having jurisdiction with respect to the number and location of portable fire extinguishers.
- (11) Portable fire extinguishers must be inspected, recharged, and tagged at least once a year by a person certified by the state to perform such services.
- (12) Smoke detectors installed and maintained pursuant to the manufacturer's directions shall be installed in all resident rooms, bedroom hallways, living room, dining room, and other open common spaces or as required by the fire authority having jurisdiction. An annual maintenance log of battery changes and other maintenance services performed shall be kept in the facility and made available to the department upon request.

- (13) If there is an inside designated smoking area, it shall be separate from other common areas, and provided with adequate mechanical exhaust vented to the outside.

Authorizing statute(s): 50-5-103, 50-5-226, 50-5-227, MCA

Implementing statute(s): 50-5-225, 50-5-226, 50-5-227, MCA

37.106.2899 CATEGORY D: CONSTRUCTION

- (1) All ~~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 ARM 37.106.2899H.
- ~~(6)~~(2) 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)~~(3) All hardware and lights used in a category D facility or unit must be tamper-proof.
- ~~(8)~~(4) All resident room doors must include a sight window.
- ~~(9)~~(5) No more than one client must reside in a resident room.

Authorizing statute(s): 50-5-103, 50-5-226, 50-5-227, MCA

Implementing statute(s): 50-5-225, 50-5-226, 50-5-227, MCA

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~~ at 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.

Authorizing statute(s): 50-5-103, 50-5-226, 50-5-227, MCA

Implementing statute(s): 50-5-225, 50-5-226, 50-5-227, MCA

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.

Authorizing statute(s): 50-5-103, 50-5-226, 50-5-227, MCA

Implementing statute(s): 50-5-225, 50-5-226, 50-5-227, MCA

37.106.2899C CATEGORY D: STAFF

- (1) ~~A~~ All category D ~~facility~~ facilities must have ~~the following staff:~~ direct care staff in sufficient number to meet the needs of the residents.
 - ~~(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; and
 - ~~(d) complete training requirements in ARM 37.106.2908; and~~
 - ~~(e)~~(d) 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.

Authorizing statute(s): 50-5-103, 50-5-226, 50-5-227, MCA

Implementing statute(s): 50-5-225, 50-5-226, 50-5-227, MCA

37.106.2899D CATEGORY D: RESIDENT ASSESSMENTS

- (1) ~~A~~ All category D ~~facility~~ facilities must obtain or conduct three types of resident assessments for each resident:
 - ~~(1)~~(a) 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)(b)~~ 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)(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 50-5-226(5), MCA.

Authorizing statute(s): 50-5-103, 50-5-226, 50-5-227, MCA

Implementing statute(s): 50-5-225, 50-5-226, 50-5-227, MCA

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 residents must include: de-escalation techniques individualized to the resident.
 - ~~(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.

Authorizing statute(s): 50-5-103, 50-5-226, 50-5-227, MCA

Implementing statute(s): 50-5-225, 50-5-226, 50-5-227, MCA

37.106.2899H CATEGORY D: SECLUSION ROOM REQUIREMENTS

- (1) A category D facility or unit providing D1 level of care must have at least one 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 rooms.
- (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, and a minimum of 80 square feet if restraint beds are used;
 - (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 National Fire Protection Association (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.

Authorizing statute(s): 50-5-103, 50-5-226, 50-5-227, MCA

Implementing statute(s): 50-5-225, 50-5-226, 50-5-227, MCA

ADOPT

The rule proposed to be adopted is as follows:

NEW RULE 1 CATEGORY D1: LEVEL OF CARE AND SERVICES TO RESIDENTS

- (1) A facility that chooses to admit or retain category D residents who have practitioner orders for restraint or seclusion or who are involuntarily admitted must apply as a category D1 assisted living facility.
- (2) In addition to the requirements set forth in ARM 37.106.2899, a category D1 facility must:
 - (a) either be a stand-alone secured facility or a separate, secured unit attached to a category A, B, and/or C facility;
 - (i) a category D1 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 D1 unit from the other units;
 - (b) devise a policy on how it plans to maintain security of the facility or unit; and
 - (c) have at least one seclusion room for every 24 residents. The room must meet the requirements set forth in ARM 37.106.2899H.
- (3) In addition to the requirements set forth in ARM 37.106.2899B, each category D1 facility or unit must, prior to admission, inform the resident or resident's legal representative of the circumstances and protocols for restraint and seclusions.
- (4) In addition to the requirements set forth in ARM 37.106.2899C, a category D1 facility must have:
 - (a) a registered nurse (RN) 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;
 - (c) direct care staff who are certified nursing assistants; and
 - (d) completed training requirements in ARM 37.106.2908.
- (5) In addition to the requirements set forth in ARM 37.106.2899E, a health care plan for a category D1 resident must include:
 - (a) circumstances when the resident may need to be isolated from other residents;

- (b) behaviors and/or situations in which a staff member may need to obtain orders for restraints and/or seclusion; and
- (c) the requirements listed in ARM 37.106.2905.

Authorizing statute(s): 50-5-101, 50-5-201, 50-5-203, 50-5-204, 50-5-207, 50-5-226, 50-6-401, 50-5-226, MCA

Implementing statute(s): 50-5-101, 50-5-201, 50-5-203, 50-5-204, 50-5-207, 50-5-226, 50-6-401, 50-5-226, MCA

General Reasonable Necessity Statement

The Department of Public Health and Human Services (department) is proposing to amend ARM 37.106.2801, 37.106.2802, 37.106.2805, 37.106.2809, 37.106.2810, 37.106.2814, 37.106.2816, 37.106.2824, 37.106.2829, 37.106.2836, 37.106.2839, 37.106.2866, 37.106.2899, 37.106.2899A, 37.106.2899B, 37.106.2899C, 37.106.2899D, 37.106.2899E, 37.106.2899H, and adopt NEW RULE 1.

The 2025 Legislature enacted Senate Bill 516, which updates the licensing requirements for facilities licensed by the department. The bill was signed by the Governor on May 5, 2025. The 2025 Legislature enacted Senate Bill 524, revising laws relating to category D assisted living facilities. This bill was signed by the Governor on May 12, 2025. The department proposes the amendments noted above and the adoption of NEW RULE 1. These amendments and the adoption of NEW RULE 1 are necessary to update the licensing requirements for assisted living facilities for clear and concise requirements regarding what individuals may be served in these facilities, what services must be provided and the documentation to provide evidence of services rendered, and what measures must be met to ensure the health, safety, and welfare of the residents residing in these facilities. Amendments to the category D requirements are necessary to identify the different levels of care that category D may provide, as well as the specific requirements a facility must meet for each level of care, including staff, facility specifications, and documentation.

NEW RULE 1

The department proposes to adopt this new rule to create a designation of Category D level of care that can still facilitate the provisions for restraint and seclusion if a Category D resident has a practitioner's orders for these services. These provisions are necessary to ensure the health, safety, and welfare of residents who may require restraint or seclusion during their stay at a category D assisted living facility. These provisions are intended only for assisted living facilities that opt to apply for category D endorsement and accept this "D1" level of care.

ARM 37.106.2801

The proposed amendment is to capitalize the name Department of Public Health and Human Services. This is necessary as the department is a formal entity.

ARM 37.106.2802

The proposed amendment to this rule adds the term “physically” to the “disabled persons” definition, and amends “supportive health” to “support in activities of daily living (ADL), health.” This is necessary to specify the intended population meant to be served at assisted living facilities (ALFs) and the services these facilities are to provide. It is necessary to ensure that only individuals who meet the criteria for ALF care are residing at these facilities.

ARM 37.106.2805

The proposed amendments to this rule are required to update and add definitions pertinent to the licensing requirements for Assisted Living Facilities, and to renumber rule numbers as needed. “Personal care services” is removed from (12) as that level of service was specific to Person Care Homes, which is no longer a licensed facility type. Section (13) capitalizes the Department of Labor and Industry for formalities of a legal entity. An added definition of “mental disorder” is necessary to ensure that it is clearly determined what type of disorders are eligible to be served within category D assisted living facilities.

ARM 37.106.2809

The proposed amendments to this rule remove the Office of the Inspector General’s (OIG) address for applying for a license. This is necessary as the application process is now online and no longer requires a mailed-in application, and prevents the requirement for a rule update if the physical address of the division changes. The amendment also allows a provider to dispose of their license upon its termination. This is necessary because licenses no longer need to be mailed back to OIG, as we maintain an electronic copy in our licensing system. The final amendment removes the physical address location if a facility mails a copy of the license back. Removing the physical address, but leaving the post office box address, allows the department to avoid updating rules whenever there is a change in location for the division.

ARM 37.106.2810

The proposed amendment allows a provider to dispose of their license upon its termination. Licenses no longer need to be mailed back to the Office of Inspector General (OIG), as we maintain an electronic copy in our licensing system. Additionally, the amendment removes the physical address location if a facility mails a copy of the license back. Removing the physical address, but leaving the post office box address, allows the department to avoid updating rules whenever there is a change in location for the division.

ARM 37.106.2814

The proposed amendments in (2) are necessary to update grammatically with the hyphenated words. The proposed amendments to (10) specify the required independent ability of a resident to self-evacuate, move past building-approved occupancy barriers, or reach an area of refuge. These amendments are necessary to ensure that residents who cannot independently

transition to these areas or refuge during a fire are not admitted or retained on floors other than the ground-level floor. Those who require assistance with evacuation must be maintained on ground level so that evacuation assistance by staff or EMS services can be easily, quickly, safely, and efficiently rendered, thereby increasing the chances of successful evacuations.

ARM 37.106.2816

The proposed amendment to (3) updates the name of the law in 52-3-801, MCA. This is necessary to align with the current legal terminology. The amendment to (6) specifies that staff must be on site 24 hours a day at an assisted living facility. This is necessary as the previous language “on duty” was argued to mean that a staff member could be on duty but not on site. To ensure that the scheduled and unscheduled needs of residents are met and to maintain the health, safety, and welfare of the residents, a staff member must be on site 24 hours a day.

ARM 37.106.2824

The proposed amendment to (1) is necessary to update grammatically with the hyphenated words. Amendments in (4) update the name and contact information for the Office of Administrative Hearings. This is necessary to ensure that providers provide discharged residents and their legal representatives with accurate information on whom to contact to request a fair hearing. Additional amendments refer the right to a fair hearing to the full title, chapter, and subchapter that is referenced, instead of listing each individual administrative rule. This is necessary to provide a clear and concise reference.

ARM 37.106.2829

The proposed amendment to this rule requires practitioners to notify residents if they show a weight loss of 5% or more. This is necessary as many significant weight losses can indicate other health-related concerns or a decline in a resident's overall well-being. Practitioner notification will allow a professional to determine if interventions or testing are required.

ARM 37.106.2836

The proposed amendment to this rule requires a bedroom call system to be silenced only at the point of activation. This is already a requirement of all call systems per AIA Guidelines, which all health care facilities must adhere to, according to the Minimum Standards for All Healthcare Facilities located in ARM Title 37, chapter 106, subchapter 3. Adding this requirement makes it easier to reference for Assisted Living providers and may enhance compliance with this requirement.

ARM 37.106.2839

The proposed amendment to this rule requires providers to maintain temperatures in resident rooms, bathrooms, and common areas at 85°F or below. Frail and elderly individuals can have significant and detrimental outcomes from extreme heat. Their skin is thinner, they tend to have a difficult time consuming adequate amounts of water, and many times they take medications that contribute to dehydration. It is necessary to ensure that the areas in which residents live and reside within these facilities do not exceed temperatures that could further dehydrate and cause detrimental health effects.

ARM 37.106.2866

The proposed amendment to this rule specifies that deadbolt locks are prohibited on all doors. This requirement aligns with the requirements in the NFPA referenced in ARM Title 37, chapter 106, subchapter 3, which indicates no special tool or knowledge to open the door shall be required to open a door. This ensures that doors are locked by single-action doorknobs only, allowing the vulnerable population being served in these facilities to swiftly and efficiently egress in the event of an emergency, without having to determine how many locks, what kind, or how to unlock a door. Adding this requirement makes it easier for assisted living providers to reference and may enhance compliance with this requirement.

ARM 37.106.2899

The proposed amendments to this rule specify that the requirements outlined in the rule apply to all category D assisted living facilities and remove the requirements for residents requiring a higher level of care. This is necessary to implement separate standards for a basic category D assisted living facility and a category D facility that provides services to residents with higher-level care needs, as described in NEW RULE 1.

ARM 37.106.2899A

The proposed amendment to this rule changes “a least” to “at least,” which is necessary to correct a typo.

ARM 37.106.2899B

The proposed amendment to this rule removes the requirement to include features for residents who require seclusion and restraint. This is necessary because these requirements are added to the NEW RULE 1 requirements, as restraint and seclusion are specific to residents with higher-level care needs.

ARM 37.106.2899C

The proposed amendments to this rule specify that the requirements outlined in the rule apply to all category D assisted living facilities and remove the requirements for residents requiring a higher level of care. This is necessary to implement separate standards for a basic category D assisted living facility and a category D facility that provides services to residents with higher-level care needs, as described in NEW RULE 1.

ARM 37.106.2899D

The proposed amendments to this rule specify that the requirements outlined in the rule apply to all category D assisted living facilities and remove the requirements for residents requiring a higher level care. This is necessary to implement separate standards for a basic category D assisted living facility and a category D facility that provides services to residents with higher-level care needs, as described in NEW RULE 1.

ARM 37.106.2899E

The proposed amendments to this rule specify that the requirements outlined in the rule apply to all category D assisted living facilities and remove the requirements for residents requiring higher-level care. This is necessary to implement separate standards for a basic category D assisted living facility and a category D facility that provides services to residents with higher-level care needs, as described in NEW RULE 1.

ARM 37.106.2899H

The proposed amendments to this rule specify that the requirements in this rule are specific to category D1, which is necessary as category D1 provides services to residents with higher-level care needs, as described in NEW RULE 1.

Small Business Impact

Pursuant to 2-4-111, MCA, the Department of Public Health and Human Services has determined that the proposed rule amendment to ARM 37.106.2802 may cause an impact on some small businesses.

The amendment to ARM 37.106.2802 is to align with the amendment made to 50-5-226, MCA, that states, “the resident requires physical assistance with at least one activity of daily living” to meet the requirements of a category A resident in assisted living facilities. This rule amendment also specifies that an assisted living facility’s purpose is to maintain a setting for “frail, elderly, or physically disabled persons which provide support in activities of daily living (ADL), health, and service coordination to maintain residents’ independence, individuality, privacy, and dignity.”

Through routine licensing onsite inspections and inspections conducted due to complaints received, the Office of Inspector General has recognized that there are several assisted living facilities whose occupants are young, physically abled individuals who are residing at these facilities for room and board and medication management. This is not the intended purpose of assisted living facilities, and the law and rule amendments reflect the intended purposes.

The Office of Inspector General estimates that there are fewer than ten small businesses that this may impact. This estimation is made through the Licensing Bureau’s knowledge of a few facilities whose residents currently may no longer fit the criteria of an assisted living facility category A resident, and therefore, will have to find other more appropriate placement or community resources.

The amendment to the Montana Code Annotated reference above has been in effect since October 1, 2025. Facilities have been notified of the change to statute. If there are residents that no longer meet criteria, the facilities should be currently working on finding other appropriate discharge. The Licensure Bureau is willing to work through these challenges with providers.

This bill may directly impact some small businesses.

Bill Sponsor Notification

The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor of SB 516 and SB 524 from the 2025 Legislative Session was notified by electronic mail on October 31, 2025.

Interested Persons

The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the department. 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 emailed, mailed or otherwise delivered to the contact person above.

Rule Reviewer

Greg Henderson

Approval

Charles T. Brereton, Director

Department of Public Health and Human Services