50-5-1104. RIGHTS OF LONG-TERM CARE FACILITY RESIDENTS.

(1) The state adopts by reference for all long-term care facilities the rights for long-term care facility residents applied by the federal government to facilities that provide skilled nursing care or intermediate nursing care and participate in a medicaid or medicare program (42 U.S.C. 1395i-3(a) and 1396r(a), as implemented by regulation).

(2) In addition to the rights adopted under subsection (1), the state adopts for all residents of long-term care facilities the following rights:

(a) A resident or the resident’s authorized representative must be informed by the facility at least 30 days in advance of any changes in the cost or availability of services, unless to do so is beyond the facility’s control.

...(j) In case of involuntary transfer or discharge, a resident has the right to reasonable advance notice to ensure an orderly transfer or discharge. Reasonable advance notice requires at least 21 days’ written notification of any interfacility transfer or discharge except in cases of emergency or for medical reasons documented in the resident's medical record by the attending physician.

37.40.306 PROVIDER PARTICIPATION AND TERMINATION REQUIREMENTS

...(3) A provider must provide the department with 30 days advance written notice of termination of participation in the Medicaid program. Notice will not be effective prior to 30 calendar days following actual receipt of the notice by the department. Notice must be mailed or delivered to the Department of Public Health and Human Services, Senior and Long Term Care Division, 111 N. Sanders, P.O. Box 4210, Helena, MT 59604-4210.

...(b) In the event that discharge or transfer planning is necessary, the provider remains responsible to provide for such planning in an orderly fashion and to care for its residents until appropriate transfers or discharges are effected, even though transfer or discharge
may not have been completed prior to the facility's planned date of termination from the Medicaid program.

(4) A provider must notify a resident or the resident's representative of a transfer or discharge as required by 42 CFR 483.12(a)(4), (5) and (6). The notice must be provided using the form prescribed by the department. In addition to the notice contents required by 42 CFR 483.12, the notice must inform the recipient of the recipient's right to a hearing, the method by which the recipient may obtain a hearing and that the recipient may represent herself or himself or may be represented by legal counsel, a relative, a friend or other spokesperson. Notice forms are available upon request from the department. Requests for notice forms may be made to the Department of Public Health and Human Services, Senior and Long Term Care Division, 111 N. Sanders, P.O. Box 4210, Helena, MT 59604-4210.

37.40.307 NURSING FACILITY REIMBURSEMENT

...(10) The department will not reimburse a nursing facility for any patient day for which another nursing facility is holding a bed under the provisions of ARM 37.40.338(1), unless the nursing facility seeking such payment has, prior to admission, notified the facility holding a bed that the resident has been admitted to another nursing facility. The nursing facility seeking such payment must maintain written documentation of such notification.

37.40.338 BED HOLD PAYMENTS

(1) Except as provided in (6) through (9) for therapeutic home visits, payment will be made to a provider for holding a bed for a resident only if:

(a) the provider's facility is full and has a current waiting list of potential residents during each such bed day claimed for reimbursement;

(b) the resident for whom the bed is held is temporarily receiving medical services outside the facility, except in another nursing facility, and is expected to return to the provider;

(c) the cost of holding the bed will evidently be less costly than the possible cost of extending the hospital stay until an appropriate long term care bed would otherwise become available; and

(d) the provider has received written approval from the department's senior and long term care division as provided in (4).

(2) For purposes of (1), a provider will be considered full if:
(a) all Medicaid certified beds are occupied or being held for a recipient who is either temporarily receiving medical services outside the provider's facility or outside the facility on a therapeutic home visit; or

(b) as to gender, if all appropriate, available beds are occupied or being held. For example, if all beds are occupied or held except for one semi-private bed in a female room, the provider is full for purposes of hold days for male recipients.

(3) For purposes of (1), the provider must maintain and, upon request, provide to the department or its agents documentation that the absence is expected to be temporary and of the anticipated duration of the absence. Temporary absences which are of indefinite duration must be documented at least weekly by the provider to assure that the absence is indeed temporary.

(4) A provider’s request for the department’s written approval of bed hold days as required in (1) must be submitted to the department’s senior and long term care division on the form provided by the department within 90 days after the first day of the requested bed hold period. The request must include a copy of the waiting list applicable to each bed hold day claimed for reimbursement.

(5) Where the conditions of (1) through (4) are met, providers are required to hold a bed and may not fill the bed until these conditions are no longer met. The bed may not be filled unless prior approval is obtained from the department’s senior and long term care division. In situations where conditions of billing for holding a bed are not met, providers must hold the bed and may not bill Medicaid for the bed hold day until all conditions of billing are met and may not bill the resident under any circumstances.

(6) Payment will be made to a provider for holding a bed for a resident during a therapeutic home visit only if:

(a) the recipient's plan of care provides for therapeutic home visits;

(b) the recipient is temporarily absent on a therapeutic home visit; and

(c) the resident is absent from the provider's facility for no more than 72 consecutive hours per absence, unless the department determines that a longer absence is medically appropriate and has authorized the longer absence in advance of the absence. If a resident leaves the facility unexpectedly, on a weekend or a non business day for a visit longer than 72 hours, a provider must call in to the department on the next business day to receive prior authorization for the visit. If a resident is unexpectedly delayed while out on a therapeutic home visit, a provider must call the department and receive prior authorization if that delay will result in the visit exceeding 72 hours or obtain an extension for a visit that was previously approved by the department in excess of 72 hours.

(7) The department may allow therapeutic home visits for trial placement in the Home and Community Services (Medicaid Waiver) program.
(8) No more than 24 days per resident in each rate year (July 1 through June 30) will be allowed for therapeutic home visits.

(9) The provider must submit to the department's Senior and Long Term Care Division a request for a therapeutic home visit bed hold, on the appropriate form provided by the department, within 90 days of the first day a resident leaves the facility for a therapeutic home visit. Reimbursement for therapeutic home visits will not be allowed unless the properly completed form is filed timely with the department's Senior and Long Term Care Division.

(10) Approvals or authorizations of bed hold days obtained from county offices will not be valid or effective for purposes of this rule.

### 37.40.416 RESIDENT RIGHTS

(3) Each resident who is entitled to Medicaid benefits has a right to be informed by the provider in writing, at the time of admission to the swing-bed or, when the resident becomes eligible for Medicaid of:

(a) the items and services that are included in the swing-bed per diem rate for which the resident may not be charged, i.e., those items included in nursing facility services under ARM 37.40.302(14) or ancillary services under ARM 37.40.330(1); and

(b) those other items and services that the provider offers and for which the resident may be charged, and the amount of charges for those services; and

(c) changes made to the items and services specified in (3)(a) and (b).

### 37.40.420 RESIDENT TRANSFER AND DISCHARGE RIGHTS

(1) The resident has the following transfer and discharge rights. Transfer and discharge includes movement of a resident to a bed outside of the swing-bed hospital facility whether or not that bed is in the same physical plant. Transfer and discharge does not refer to movement of a resident to a bed within the same certified facility.

(2) The facility must permit each resident to remain in the facility and may not transfer or discharge the resident from the facility unless any one or more of the following apply:

(a) the transfer or discharge is necessary for the resident’s welfare and the resident’s needs cannot be met in the facility;

(b) the transfer or discharge is appropriate because the resident’s health has improved sufficiently so the resident no longer needs the services provided by the facility;
(c) the safety of individuals in the facility is endangered;
(d) the health of individuals in the facility would otherwise be endangered;
(e) the resident has failed, after reasonable and appropriate notice, to pay for (or to have paid under Medicare or Medicaid) a stay at the facility. For a resident who becomes eligible for Medicaid after admission to a facility, the facility may charge a resident only allowable charges under Medicaid;
(f) the facility ceases to operate; or
(g) an appropriate nursing facility bed is available within a 25 mile radius of the swing-bed hospital, as provided in ARM 37.40.405.

(3) When the facility transfers or discharges a resident, the facility must document the reason for transfer or discharge in the resident’s clinical record. The documentation must be made by the resident’s physician when transfer or discharge is necessary under (2)(a) and (b), or a physician when transfer or discharge is necessary under (2)(d).

(4) Before a facility transfers or discharges a resident, the facility must:
(a) notify the resident and, if known, a family member or legal representative of the resident of the transfer or discharge and the reasons for the move in writing and in a language and manner they understand;
(b) record the reasons in the resident’s clinical record; and
(c) include in the notice the items described in (6) through (6)(f).

(5) Notice of transfer or discharge must be made by the facility at least 30 days before the resident is transferred or discharged except when:
(a) the safety of individuals in the facility would be endangered;
(b) the health of the individuals in the facility would be endangered;
(c) the resident’s health improves sufficiently to allow a more immediate transfer or discharge;
(d) an immediate transfer or discharge is required by the resident’s urgent medical needs;
(e) a resident has not resided in the facility for 30 days; or
(f) transfer is required within 72 hours because an appropriate nursing facility bed is available within a 25 mile radius of the swing-bed hospital. In such cases, the facility must provide notice within 24 hours of determining that the nursing facility bed is available.

(6) The written notice of transfer or discharge must include the following:

(a) the reason for transfer or discharge;

(b) the effective date of transfer or discharge;

(c) the location to which the resident is transferred or discharged;

(d) a statement that the resident has the right to appeal the action to the fair hearings office at the department of public health and human services;

(e) the name, address and telephone number of the long term care ombudsman in the governor’s office on aging; and

(f) for nursing facility residents with developmental disabilities and nursing facility residents who are mentally ill, the mailing address and telephone number of the Montana advocacy program, inc.

(7) A facility must provide sufficient preparation and orientation to residents to ensure safe and orderly transfer or discharge from the facility.

37.40.421 RESIDENT POST DISCHARGE RIGHTS

(1) When the facility anticipates discharge, a resident must have a discharge summary that includes:

(a) a recapitulation of the resident’s stay;

(b) a final summary of the resident’s status which includes:

(i) medically defined conditions and prior medical history;

(ii) medical status measurement;

(iii) physical and mental functional status;

(iv) sensory and physical impairments;

(v) nutritional status and requirements;

(vi) special treatments or procedures;
(vii) mental and psychosocial status;
(viii) discharge potential;
(ix) dental condition;
(x) activities potential;
(xi) cognitive status;
(xii) drug therapy; and

c) a post discharge plan of care that is developed with the participation of the resident and family, which will assist the resident to adjust to the new living environment.

TITLE 50. HEALTH AND SAFETY
CHAPTER 5. HOSPITALS AND RELATED FACILITIES
PART 11: LONG-TERM HEALTH CARE FACILITIES

50-5-1104. RIGHTS OF LONG-TERM CARE FACILITY RESIDENTS.
(2) In addition to the rights adopted under subsection (1), the state adopts for all residents of long-term care facilities the following rights:

... (j) In case of involuntary transfer or discharge, a resident has the right to reasonable advance notice to ensure an orderly transfer or discharge. Reasonable advance notice requires at least 21 days' written notification of any inter-facility transfer or discharge except in cases of emergency or for medical reasons documented in the resident's medical record by the attending physician.