

Montana Code Annotated (MCA) 2005

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TITLE 50. HEALTH AND SAFETY

CHAPTER 5. HOSPITALS AND RELATED FACILITIES

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**50-5-101. (Temporary) Definitions.** As used in parts 1 through 3 of this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Accreditation" means a designation of approval.

(2) "Accreditation association for ambulatory health care" means the organization nationally recognized by that name that surveys ambulatory surgical centers upon their requests and grants accreditation status to the ambulatory surgical centers that it finds meet its standards and requirements.

(3) "Activities of daily living" 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.

(4) "Adult day-care center" means a facility, freestanding or connected to another health care facility, that provides adults, on a regularly scheduled basis, with the care necessary to meet the needs of daily living but that does not provide overnight care.

(5) (a) "Adult foster care home" means a private home or other facility that offers, except as provided in [50-5-216](#), only light personal care or custodial care to four or fewer disabled adults or aged persons who are not related to the owner or manager of the home by blood, marriage, or adoption or who are not under the full guardianship of the owner or manager.

(b) As used in this subsection (5), the following definitions apply:

(i) "Aged person" means a person as defined by department rule as aged.

(ii) "Custodial care" means providing a sheltered, family-type setting for an aged person or disabled adult so as to provide for the person's basic needs of food and shelter and to ensure that a specific person is available to meet those basic needs.

- (iii) "Disabled adult" means a person who is 18 years of age or older and who is defined by department rule as disabled.
- (iv) (A) "Light personal care" means assisting the aged person or disabled adult in accomplishing such personal hygiene tasks as bathing, dressing, and hair grooming and supervision of prescriptive medicine administration.
- (B) The term does not include the administration of prescriptive medications.
- (6) "Affected person" means an applicant for a certificate of need, a health care facility located in the geographic area affected by the application, an agency that establishes rates for health care facilities, or a third-party payer who reimburses health care facilities in the area affected by the proposal.
- (7) "Assisted living facility" means a congregate residential setting that provides or coordinates personal care, 24-hour supervision and assistance, both scheduled and unscheduled, and activities and health-related services.
- (8) "Capital expenditure" means:
- (a) an expenditure made by or on behalf of a health care facility that, under generally accepted accounting principles, is not properly chargeable as an expense of operation and maintenance; or
- (b) a lease, donation, or comparable arrangement that would be a capital expenditure if money or any other property of value had changed hands.
- (9) "Certificate of need" means a written authorization by the department for a person to proceed with a proposal subject to [50-5-301](#).
- (10) "Chemical dependency facility" means a facility whose function is the treatment, rehabilitation, and prevention of the use of any chemical substance, including alcohol, that creates behavioral or health problems and endangers the health, interpersonal relationships, or economic function of an individual or the public health, welfare, or safety.
- (11) "Clinical laboratory" means a facility for the microbiological, serological, chemical, hematological, radiobioassay, cytological, immunohematological, pathological, or other examination of materials derived from the human body for the purpose of providing information for the diagnosis, prevention, or treatment of a disease or assessment of a medical condition.
- (12) "College of American pathologists" means the organization nationally recognized by that name that surveys clinical laboratories upon their requests and accredits clinical laboratories that it finds meet its standards and requirements.
- (13) "Commission on accreditation of rehabilitation facilities" means the organization nationally recognized by that name that surveys rehabilitation facilities upon their requests and grants accreditation status to a rehabilitation facility that it finds meets its standards and requirements.
- (14) "Comparative review" means a joint review of two or more certificate of need applications that are determined by the department to be competitive in that the granting of a certificate of need to one of the applicants would substantially prejudice the department's review of the other applications.
- (15) "Congregate" means the provision of group services designed especially for elderly or disabled persons who require supportive services and housing.
- (16) "Construction" means the physical erection of a health care facility and any stage of the physical erection, including groundbreaking, or remodeling, replacement, or

renovation of an existing health care facility.

(17) "Council on accreditation" means the organization nationally recognized by that name that surveys behavioral treatment programs, chemical dependency treatment programs, residential treatment facilities, and mental health centers upon their requests and grants accreditation status to programs and facilities that it finds meet its standards and requirements.

(18) "Critical access hospital" means a facility that is located in a rural area, as defined in 42 U.S.C. 1395ww(d)(2)(D), and that has been designated by the department as a critical access hospital pursuant to [50-5-233](#).

(19) "Department" means the department of public health and human services provided for in [2-15-2201](#).

(20) "End-stage renal dialysis facility" means a facility that specializes in the treatment of kidney diseases and includes freestanding hemodialysis units.

(21) "Federal acts" means federal statutes for the construction of health care facilities.

(22) "Governmental unit" means the state, a state agency, a county, municipality, or political subdivision of the state, or an agency of a political subdivision.

(23) (a) "Health care facility" or "facility" means all or a portion of an institution, building, or agency, private or public, excluding federal facilities, whether organized for profit or not, that is used, operated, or designed to provide health services, medical treatment, or nursing, rehabilitative, or preventive care to any individual. The term includes chemical dependency facilities, critical access hospitals, end-stage renal dialysis facilities, home health agencies, home infusion therapy agencies, hospices, hospitals, infirmaries, long-term care facilities, intermediate care facilities for the developmentally disabled, medical assistance facilities, mental health centers, outpatient centers for primary care, outpatient centers for surgical services, rehabilitation facilities, residential care facilities, and residential treatment facilities.

(b) The term does not include offices of private physicians, dentists, or other physical or mental health care workers regulated under Title 37, including licensed addiction counselors.

(24) "Home health agency" means a public agency or private organization or subdivision of the agency or organization that is engaged in providing home health services to individuals in the places where they live. Home health services must include the services of a licensed registered nurse and at least one other therapeutic service and may include additional support services.

(25) "Home infusion therapy agency" means a health care facility that provides home infusion therapy services.

(26) "Home infusion therapy services" means the preparation, administration, or furnishing of parenteral medications or parenteral or enteral nutritional services to an individual in that individual's residence. The services include an educational component for the patient, the patient's caregiver, or the patient's family member.

(27) "Hospice" means a coordinated program of home and inpatient health care that provides or coordinates palliative and supportive care to meet the needs of a terminally ill patient and the patient's family arising out of physical, psychological, spiritual, social, and economic stresses experienced during the final stages of illness and dying and that includes formal bereavement programs as an essential component. The term includes:

(a) an inpatient hospice facility, which is a facility managed directly by a medicare-

certified hospice that meets all medicare certification regulations for freestanding inpatient hospice facilities; and

(b) a residential hospice facility, which is a facility managed directly by a licensed hospice program that can house three or more hospice patients.

(28) (a) "Hospital" means a facility providing, by or under the supervision of licensed physicians, services for medical diagnosis, treatment, rehabilitation, and care of injured, disabled, or sick individuals. Except as otherwise provided by law, services provided may or may not include obstetrical care, emergency care, or any other service allowed by state licensing authority. A hospital has an organized medical staff that is on call and available within 20 minutes, 24 hours a day, 7 days a week, and provides 24-hour nursing care by licensed registered nurses. The term includes:

(i) hospitals specializing in providing health services for psychiatric, developmentally disabled, and tubercular patients; and

(ii) specialty hospitals.

(b) The term does not include critical access hospitals.

(29) "Infirmarium" means a facility located in a university, college, government institution, or industry for the treatment of the sick or injured, with the following subdefinitions:

(a) an "infirmarium--A" provides outpatient and inpatient care;

(b) an "infirmarium--B" provides outpatient care only.

(30) (a) "Intermediate care facility for the developmentally disabled" means a facility or part of a facility that provides intermediate developmental disability care for two or more persons.

(b) The term does not include community homes for persons with developmental disabilities that are licensed under [53-20-305](#) or community homes for persons with severe disabilities that are licensed under [52-4-203](#).

(31) "Intermediate developmental disability care" means the provision of intermediate nursing care services, health-related services, and social services for persons with a developmental disability, as defined in [53-20-102](#), or for persons with related problems.

(32) "Intermediate nursing care" means the provision of nursing care services, health-related services, and social services under the supervision of a licensed nurse to patients not requiring 24-hour nursing care.

(33) "Joint commission on accreditation of healthcare organizations" means the organization nationally recognized by that name that surveys health care facilities upon their requests and grants accreditation status to a health care facility that it finds meets its standards and requirements.

(34) "Licensed health care professional" means a licensed physician, physician assistant, advanced practice registered nurse, or registered nurse who is practicing within the scope of the license issued by the department of labor and industry.

(35) (a) "Long-term care facility" means a facility or part of a facility that provides skilled nursing care, residential care, intermediate nursing care, or intermediate developmental disability care to a total of two or more individuals or that provides personal care.

(b) The term does not include community homes for persons with developmental disabilities licensed under [53-20-305](#); community homes for persons with severe disabilities, licensed under [52-4-203](#); youth care facilities, licensed under [52-2-622](#);

hotels, motels, boardinghouses, roominghouses, or similar accommodations providing for transients, students, or individuals who do not require institutional health care; or juvenile and adult correctional facilities operating under the authority of the department of corrections.

(36) "Medical assistance facility" means a facility that meets both of the following:

(a) provides inpatient care to ill or injured individuals before their transportation to a hospital or that provides inpatient medical care to individuals needing that care for a period of no longer than 96 hours unless a longer period is required because transfer to a hospital is precluded because of inclement weather or emergency conditions. The department or its designee may, upon request, waive the 96-hour restriction retroactively and on a case-by-case basis if the individual's attending physician, physician assistant, or nurse practitioner determines that the transfer is medically inappropriate and would jeopardize the health and safety of the individual.

(b) either is located in a county with fewer than six residents a square mile or is located more than 35 road miles from the nearest hospital.

(37) "Mental health center" means a facility providing services for the prevention or diagnosis of mental illness, the care and treatment of mentally ill patients, the rehabilitation of mentally ill individuals, or any combination of these services.

(38) "Nonprofit health care facility" means a health care facility owned or operated by one or more nonprofit corporations or associations.

(39) "Offer" means the representation by a health care facility that it can provide specific health services.

(40) (a) "Outdoor behavioral program" means a program that provides treatment, rehabilitation, and prevention for behavioral problems that endanger the health, interpersonal relationships, or educational functions of a youth and that:

(i) serves either adjudicated or nonadjudicated youth;

(ii) charges a fee for its services; and

(iii) provides all or part of its services in the outdoors.

(b) "Outdoor behavioral program" does not include recreational programs such as boy scouts, girl scouts, 4-H clubs, or other similar organizations.

(41) "Outpatient center for primary care" means a facility that provides, under the direction of a licensed physician, either diagnosis or treatment, or both, to ambulatory patients and that is not an outpatient center for surgical services.

(42) "Outpatient center for surgical services" means a clinic, infirmary, or other institution or organization that is specifically designed and operated to provide surgical services to patients not requiring hospitalization and that may include recovery care beds.

(43) "Patient" means an individual obtaining services, including skilled nursing care, from a health care facility.

(44) "Person" means an individual, firm, partnership, association, organization, agency, institution, corporation, trust, estate, or governmental unit, whether organized for profit or not.

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

(46) "Practitioner" means an individual licensed by the department of labor and industry who has assessment, admission, and prescription authority.

(47) "Recovery care bed" means, except as provided in [50-5-235](#), a bed occupied for less

than 24 hours by a patient recovering from surgery or other treatment.

(48) "Rehabilitation facility" means a facility that is operated for the primary purpose of assisting in the rehabilitation of disabled individuals by providing comprehensive medical evaluations and services, psychological and social services, or vocational evaluation and training or any combination of these services and in which the major portion of the services is furnished within the facility.

(49) "Resident" means an individual who is in a long-term care facility or in a residential care facility.

(50) "Residential care facility" means an adult day-care center, an adult foster care home, an assisted living facility, or a retirement home.

(51) "Residential psychiatric care" means active psychiatric treatment provided in a residential treatment facility to psychiatrically impaired individuals with persistent patterns of emotional, psychological, or behavioral dysfunction of such severity as to require 24-hour supervised care to adequately treat or remedy the individual's condition. Residential psychiatric care must be individualized and designed to achieve the patient's discharge to less restrictive levels of care at the earliest possible time.

(52) "Residential treatment facility" means a facility operated for the primary purpose of providing residential psychiatric care to individuals under 21 years of age.

(53) "Retirement home" means a building or buildings in which separate living accommodations are rented or leased to individuals who use those accommodations as their primary residence.

(54) "Skilled nursing care" means the provision of nursing care services, health-related services, and social services under the supervision of a licensed registered nurse on a 24-hour basis.

(55) "Specialty hospital" means a specialty hospital as defined in [50-5-245](#).

(56) "State health care facilities plan" means the plan prepared by the department to project the need for health care facilities within Montana and approved by the governor and a statewide health coordinating council appointed by the director of the department.

(57) "Swing bed" means a bed approved pursuant to 42 U.S.C. 1395tt to be used to provide either acute care or extended skilled nursing care to a patient. (*Terminates July 1, 2007--sec. 6, Ch. 365, L. 2005.*)

**50-5-101. (Effective July 1, 2007). Definitions.** As used in parts 1 through 3 of this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Accreditation" means a designation of approval.

(2) "Accreditation association for ambulatory health care" means the organization nationally recognized by that name that surveys ambulatory surgical centers upon their requests and grants accreditation status to the ambulatory surgical centers that it finds meet its standards and requirements.

(3) "Activities of daily living" 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.

(4) "Adult day-care center" means a facility, freestanding or connected to another health care facility, that provides adults, on a regularly scheduled basis, with the care necessary to meet the needs of daily living but that does not provide overnight care.

(5) (a) "Adult foster care home" means a private home or other facility that offers, except as provided in [50-5-216](#), only light personal care or custodial care to four or fewer

disabled adults or aged persons who are not related to the owner or manager of the home by blood, marriage, or adoption or who are not under the full guardianship of the owner or manager.

(b) As used in this subsection (5), the following definitions apply:

(i) "Aged person" means a person as defined by department rule as aged.

(ii) "Custodial care" means providing a sheltered, family-type setting for an aged person or disabled adult so as to provide for the person's basic needs of food and shelter and to ensure that a specific person is available to meet those basic needs.

(iii) "Disabled adult" means a person who is 18 years of age or older and who is defined by department rule as disabled.

(iv) (A) "Light personal care" means assisting the aged person or disabled adult in accomplishing such personal hygiene tasks as bathing, dressing, and hair grooming and supervision of prescriptive medicine administration.

(B) The term does not include the administration of prescriptive medications.

(6) "Affected person" means an applicant for a certificate of need, a health care facility located in the geographic area affected by the application, an agency that establishes rates for health care facilities, or a third-party payer who reimburses health care facilities in the area affected by the proposal.

(7) "Assisted living facility" means a congregate residential setting that provides or coordinates personal care, 24-hour supervision and assistance, both scheduled and unscheduled, and activities and health-related services.

(8) "Capital expenditure" means:

(a) an expenditure made by or on behalf of a health care facility that, under generally accepted accounting principles, is not properly chargeable as an expense of operation and maintenance; or

(b) a lease, donation, or comparable arrangement that would be a capital expenditure if money or any other property of value had changed hands.

(9) "Certificate of need" means a written authorization by the department for a person to proceed with a proposal subject to [50-5-301](#).

(10) "Chemical dependency facility" means a facility whose function is the treatment, rehabilitation, and prevention of the use of any chemical substance, including alcohol, that creates behavioral or health problems and endangers the health, interpersonal relationships, or economic function of an individual or the public health, welfare, or safety.

(11) "Clinical laboratory" means a facility for the microbiological, serological, chemical, hematological, radiobioassay, cytological, immunohematological, pathological, or other examination of materials derived from the human body for the purpose of providing information for the diagnosis, prevention, or treatment of a disease or assessment of a medical condition.

(12) "College of American pathologists" means the organization nationally recognized by that name that surveys clinical laboratories upon their requests and accredits clinical laboratories that it finds meet its standards and requirements.

(13) "Commission on accreditation of rehabilitation facilities" means the organization nationally recognized by that name that surveys rehabilitation facilities upon their requests and grants accreditation status to a rehabilitation facility that it finds meets its standards and requirements.

(14) "Comparative review" means a joint review of two or more certificate of need applications that are determined by the department to be competitive in that the granting of a certificate of need to one of the applicants would substantially prejudice the department's review of the other applications.

(15) "Congregate" means the provision of group services designed especially for elderly or disabled persons who require supportive services and housing.

(16) "Construction" means the physical erection of a health care facility and any stage of the physical erection, including groundbreaking, or remodeling, replacement, or renovation of an existing health care facility.

(17) "Council on accreditation" means the organization nationally recognized by that name that surveys behavioral treatment programs, chemical dependency treatment programs, residential treatment facilities, and mental health centers upon their requests and grants accreditation status to programs and facilities that it finds meet its standards and requirements.

(18) "Critical access hospital" means a facility that is located in a rural area, as defined in 42 U.S.C. 1395ww(d)(2)(D), and that has been designated by the department as a critical access hospital pursuant to [50-5-233](#).

(19) "Department" means the department of public health and human services provided for in [2-15-2201](#).

(20) "End-stage renal dialysis facility" means a facility that specializes in the treatment of kidney diseases and includes freestanding hemodialysis units.

(21) "Federal acts" means federal statutes for the construction of health care facilities.

(22) "Governmental unit" means the state, a state agency, a county, municipality, or political subdivision of the state, or an agency of a political subdivision.

(23) (a) "Health care facility" or "facility" means all or a portion of an institution, building, or agency, private or public, excluding federal facilities, whether organized for profit or not, that is used, operated, or designed to provide health services, medical treatment, or nursing, rehabilitative, or preventive care to any individual. The term includes chemical dependency facilities, critical access hospitals, end-stage renal dialysis facilities, home health agencies, home infusion therapy agencies, hospices, hospitals, infirmaries, long-term care facilities, intermediate care facilities for the developmentally disabled, medical assistance facilities, mental health centers, outpatient centers for primary care, outpatient centers for surgical services, rehabilitation facilities, residential care facilities, and residential treatment facilities.

(b) The term does not include offices of private physicians, dentists, or other physical or mental health care workers regulated under Title 37, including licensed addiction counselors.

(24) "Home health agency" means a public agency or private organization or subdivision of the agency or organization that is engaged in providing home health services to individuals in the places where they live. Home health services must include the services of a licensed registered nurse and at least one other therapeutic service and may include additional support services.

(25) "Home infusion therapy agency" means a health care facility that provides home infusion therapy services.

(26) "Home infusion therapy services" means the preparation, administration, or furnishing of parenteral medications or parenteral or enteral nutritional services to an

individual in that individual's residence. The services include an educational component for the patient, the patient's caregiver, or the patient's family member.

(27) "Hospice" means a coordinated program of home and inpatient health care that provides or coordinates palliative and supportive care to meet the needs of a terminally ill patient and the patient's family arising out of physical, psychological, spiritual, social, and economic stresses experienced during the final stages of illness and dying and that includes formal bereavement programs as an essential component. The term includes:

(a) an inpatient hospice facility, which is a facility managed directly by a medicare-certified hospice that meets all medicare certification regulations for freestanding inpatient hospice facilities; and

(b) a residential hospice facility, which is a facility managed directly by a licensed hospice program that can house three or more hospice patients.

(28) (a) "Hospital" means a facility providing, by or under the supervision of licensed physicians, services for medical diagnosis, treatment, rehabilitation, and care of injured, disabled, or sick individuals. Services provided may or may not include obstetrical care, emergency care, or any other service allowed by state licensing authority. A hospital has an organized medical staff that is on call and available within 20 minutes, 24 hours a day, 7 days a week, and provides 24-hour nursing care by licensed registered nurses. The term includes hospitals specializing in providing health services for psychiatric, developmentally disabled, and tubercular patients.

(b) The term does not include critical access hospitals.

(29) "Infirmiry" means a facility located in a university, college, government institution, or industry for the treatment of the sick or injured, with the following subdefinitions:

(a) an "infirmiry--A" provides outpatient and inpatient care;

(b) an "infirmiry--B" provides outpatient care only.

(30) (a) "Intermediate care facility for the developmentally disabled" means a facility or part of a facility that provides intermediate developmental disability care for two or more persons.

(b) The term does not include community homes for persons with developmental disabilities that are licensed under [53-20-305](#) or community homes for persons with severe disabilities that are licensed under [52-4-203](#).

(31) "Intermediate developmental disability care" means the provision of intermediate nursing care services, health-related services, and social services for persons with a developmental disability, as defined in [53-20-102](#), or for persons with related problems.

(32) "Intermediate nursing care" means the provision of nursing care services, health-related services, and social services under the supervision of a licensed nurse to patients not requiring 24-hour nursing care.

(33) "Joint commission on accreditation of healthcare organizations" means the organization nationally recognized by that name that surveys health care facilities upon their requests and grants accreditation status to a health care facility that it finds meets its standards and requirements.

(34) "Licensed health care professional" means a licensed physician, physician assistant, advanced practice registered nurse, or registered nurse who is practicing within the scope of the license issued by the department of labor and industry.

(35) (a) "Long-term care facility" means a facility or part of a facility that provides skilled nursing care, residential care, intermediate nursing care, or intermediate

developmental disability care to a total of two or more individuals or that provides personal care.

(b) The term does not include community homes for persons with developmental disabilities licensed under [53-20-305](#); community homes for persons with severe disabilities, licensed under [52-4-203](#); youth care facilities, licensed under [52-2-622](#); hotels, motels, boardinghouses, roominghouses, or similar accommodations providing for transients, students, or individuals who do not require institutional health care; or juvenile and adult correctional facilities operating under the authority of the department of corrections.

(36) "Medical assistance facility" means a facility that meets both of the following:

(a) provides inpatient care to ill or injured individuals before their transportation to a hospital or that provides inpatient medical care to individuals needing that care for a period of no longer than 96 hours unless a longer period is required because transfer to a hospital is precluded because of inclement weather or emergency conditions. The department or its designee may, upon request, waive the 96-hour restriction retroactively and on a case-by-case basis if the individual's attending physician, physician assistant, or nurse practitioner determines that the transfer is medically inappropriate and would jeopardize the health and safety of the individual.

(b) either is located in a county with fewer than six residents a square mile or is located more than 35 road miles from the nearest hospital.

(37) "Mental health center" means a facility providing services for the prevention or diagnosis of mental illness, the care and treatment of mentally ill patients, the rehabilitation of mentally ill individuals, or any combination of these services.

(38) "Nonprofit health care facility" means a health care facility owned or operated by one or more nonprofit corporations or associations.

(39) "Offer" means the representation by a health care facility that it can provide specific health services.

(40) (a) "Outdoor behavioral program" means a program that provides treatment, rehabilitation, and prevention for behavioral problems that endanger the health, interpersonal relationships, or educational functions of a youth and that:

(i) serves either adjudicated or nonadjudicated youth;

(ii) charges a fee for its services; and

(iii) provides all or part of its services in the outdoors.

(b) "Outdoor behavioral program" does not include recreational programs such as boy scouts, girl scouts, 4-H clubs, or other similar organizations.

(41) "Outpatient center for primary care" means a facility that provides, under the direction of a licensed physician, either diagnosis or treatment, or both, to ambulatory patients and that is not an outpatient center for surgical services.

(42) "Outpatient center for surgical services" means a clinic, infirmary, or other institution or organization that is specifically designed and operated to provide surgical services to patients not requiring hospitalization and that may include recovery care beds.

(43) "Patient" means an individual obtaining services, including skilled nursing care, from a health care facility.

(44) "Person" means an individual, firm, partnership, association, organization, agency, institution, corporation, trust, estate, or governmental unit, whether organized for profit or not.

- (45) "Personal care" means the provision of services and care for residents who need some assistance in performing the activities of daily living.
- (46) "Practitioner" means an individual licensed by the department of labor and industry who has assessment, admission, and prescription authority.
- (47) "Recovery care bed" means, except as provided in [50-5-235](#), a bed occupied for less than 24 hours by a patient recovering from surgery or other treatment.
- (48) "Rehabilitation facility" means a facility that is operated for the primary purpose of assisting in the rehabilitation of disabled individuals by providing comprehensive medical evaluations and services, psychological and social services, or vocational evaluation and training or any combination of these services and in which the major portion of the services is furnished within the facility.
- (49) "Resident" means an individual who is in a long-term care facility or in a residential care facility.
- (50) "Residential care facility" means an adult day-care center, an adult foster care home, an assisted living facility, or a retirement home.
- (51) "Residential psychiatric care" means active psychiatric treatment provided in a residential treatment facility to psychiatrically impaired individuals with persistent patterns of emotional, psychological, or behavioral dysfunction of such severity as to require 24-hour supervised care to adequately treat or remedy the individual's condition. Residential psychiatric care must be individualized and designed to achieve the patient's discharge to less restrictive levels of care at the earliest possible time.
- (52) "Residential treatment facility" means a facility operated for the primary purpose of providing residential psychiatric care to individuals under 21 years of age.
- (53) "Retirement home" means a building or buildings in which separate living accommodations are rented or leased to individuals who use those accommodations as their primary residence.
- (54) "Skilled nursing care" means the provision of nursing care services, health-related services, and social services under the supervision of a licensed registered nurse on a 24-hour basis.
- (55) "State health care facilities plan" means the plan prepared by the department to project the need for health care facilities within Montana and approved by the governor and a statewide health coordinating council appointed by the director of the department.
- (56) "Swing bed" means a bed approved pursuant to 42 U.S.C. 1395tt to be used to provide either acute care or extended skilled nursing care to a patient.

**History:** Ap. p. Sec. 2, Ch. 197, L. 1967; amd. Sec. 28, Ch. 349, L. 1974; Sec. 69-4102, R.C.M. 1947; Ap. p. Sec. 159, Ch. 197, L. 1967; amd. Sec. 1, Ch. 290, L. 1969; amd. Sec. 1, Ch. 197, L. 1971; amd. Sec. 1, Ch. 448, L. 1973; amd. Sec. 1, Ch. 150, L. 1974; amd. Sec. 1, Ch. 447, L. 1975; amd. Sec. 22, Ch. 187, L. 1977; R.C.M. 1947, 69-4102(1), 69-5201; amd. Sec. 1, Ch. 347, L. 1979; amd. Sec. 1, Ch. 432, L. 1981; amd. Sec. 1, Ch. 433, L. 1981; amd. Sec. 1, Ch. 324, L. 1983; amd. Secs. 1, 13, Ch. 329, L. 1983; amd. Sec. 7, Ch. 597, L. 1983; amd. Sec. 1, Ch. 641, L. 1983; amd. Sec. 9, Ch. 713, L. 1985; amd. Sec. 108, Ch. 370, L. 1987; amd. Sec. 1, Ch. 450, L. 1987; amd. Sec. 1, Ch. 477, L. 1987; amd. Sec. 13, Ch. 330, L. 1989; amd. Sec. 1, Ch. 616, L. 1989; amd. Sec. 1, Ch. 262, L. 1991; amd. Sec. 1, Ch. 764, L. 1991; amd. Sec. 1, Ch. 151, L. 1993; amd. Sec. 1, Ch. 590, L. 1993; amd. Sec. 21, Ch. 255, L. 1995; amd. Sec. 1, Ch. 366, L. 1995; amd. Sec. 2, Ch. 398, L. 1995; amd. Sec. 92, Ch. 418, L. 1995; amd. Sec. 250, Ch. 546, L.

1995; amd. Sec. 207, Ch. 42, L. 1997; amd. Sec. 3, Ch. 93, L. 1997; amd. Sec. 1, Ch. 99, L. 1997; amd. Sec. 2, Ch. 171, L. 1997; amd. Sec. 3, Ch. 188, L. 1997; amd. Sec. 4, Ch. 98, L. 1999; amd. Sec. 1, Ch. 133, L. 1999; amd. Sec. 4, Ch. 192, L. 2001; amd. Sec. 1, Ch. 366, L. 2001; amd. Sec. 2, Ch. 54, L. 2003; amd. Sec. 99, Ch. 114, L. 2003; amd. Sec. 1, Ch. 348, L. 2003; amd. Sec. 1, Ch. 401, L. 2003; amd. Sec. 1, Ch. 403, L. 2003; amd. Sec. 1, Ch. 365, L. 2005; amd. Sec. 23, Ch. 519, L. 2005.

**50-5-102. Repealed.** Sec. 27, Ch. 347, L. 1979.

**History:** En. Sec. 160, Ch. 197, L. 1967; R.C.M. 1947, 69-5202.

**50-5-103. Rules and standards -- accreditation.**

(1) The department shall adopt rules and minimum standards for implementation of parts 1 and 2.

(2) Any facility covered by this chapter shall comply with the state and federal requirements relating to construction, equipment, and fire and life safety.

(3) The department shall extend a reasonable time for compliance with rules for parts 1 and 2 upon adoption.

(4) Any hospital located in this state that furnishes written evidence required by the department, including the recommendation for future compliance statements to the department of its accreditation granted by the joint commission on accreditation of health care organizations, is eligible for licensure in the state for the accreditation period and may not be subjected to an inspection by the department for purposes of the licensing process. The department may, in addition to its inspection authority in [50-5-116](#), inspect any licensed health care facility to answer specific complaints made in writing by any person against the facility when the complaints pertain to licensing requirements. Inspection by the department upon a specific complaint made in writing pertaining to licensing requirements is limited to the specific area or condition of the health care facility to which the complaint pertains.

(5) The department may consider as eligible for licensure during the accreditation period any health care facility located in this state, other than a hospital, that furnishes written evidence, including the recommendation for future compliance statements, of its accreditation by the joint commission on accreditation of healthcare organizations. The department may inspect a health care facility considered eligible for licensure under this section to ensure compliance with state licensure standards.

(6) The department may consider as eligible for licensure during the accreditation period any rehabilitation facility that furnishes written evidence, including the recommendation for future compliance statements, of accreditation of its programs by the commission on accreditation of rehabilitation facilities. The department may inspect a rehabilitation facility considered eligible for licensure under this section to ensure compliance with state licensure standards.

(7) The department may consider as eligible for licensure during the accreditation period any outpatient center for surgical services that furnishes written evidence, including the recommendation for future compliance statements, of accreditation of its programs by the accreditation association for ambulatory health care. The department may inspect an outpatient center for surgical services considered eligible for licensure under this section to ensure compliance with state licensure standards.

(8) The department may consider as eligible for licensure during the accreditation period any behavioral treatment program, chemical dependency treatment program, residential

treatment facility, or mental health center that furnishes written evidence, including the recommendation for future compliance statements, of accreditation of its programs by the council on accreditation. The department may inspect a behavioral treatment program, chemical dependency treatment program, residential treatment facility, or mental health center considered eligible for licensure under this section to ensure compliance with state licensure standards.

**History:** En. Sec. 171, Ch. 197, L. 1967; amd. Sec. 22, Ch. 366, L. 1969; amd. Sec. 3, Ch. 448, L. 1973; amd. Sec. 74, Ch. 349, L. 1974; R.C.M. 1947, 69-5213; amd. Sec. 2, Ch. 347, L. 1979; amd. Sec. 2, Ch. 432, L. 1981; amd. Sec. 1, Ch. 279, L. 1991; amd. Sec. 9, Ch. 415, L. 1993; amd. Sec. 3, Ch. 366, L. 1995; amd. Sec. 2, Ch. 99, L. 1997; amd. Sec. 4, Ch. 188, L. 1997; amd. Sec. 2, Ch. 401, L. 2003.

**50-5-104. Certain exemptions for spiritual healing institution.** Parts 1 through 3 and rules and standards adopted by the department may not authorize the supervision, regulation, or control of care or treatment of persons in any home or institution conducted for those who rely upon treatment by prayer or spiritual means in accordance with the creed or tenets of any well-recognized church or religious denomination. However, a license is required and the minimum standards referred to in [50-5-103\(2\)](#) apply.

**History:** En. Sec. 175, Ch. 197, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 69-5217(2); amd. Sec. 3, Ch. 347, L. 1979.

**50-5-105. Discrimination prohibited.**

(1) All phases of the operation of a health care facility must be without discrimination against anyone on the basis of race, creed, religion, color, national origin, sex, age, marital status, physical or mental disability, or political ideas.

(2) (a) A health care facility may not refuse to admit a person to the facility solely because the person has an HIV-related condition.

(b) For the purposes of this subsection (2), the following definitions apply:

(i) "HIV" means the human immunodeficiency virus identified as the causative agent of acquired immunodeficiency syndrome (AIDS) and includes all HIV and HIV-related viruses that damage the cellular branch of the human immune or neurological system and leave the infected person immunodeficient or neurologically impaired.

(ii) "HIV-related condition" means any medical condition resulting from an HIV infection, including but not limited to seropositivity for HIV.

(3) A person who operates a facility may not discriminate among the patients of licensed physicians. The free and confidential professional relationship between a licensed physician and patient must continue and remain unaffected.

(4) Except for a hospital that employs its medical staff, a hospital considering an application for staff membership or granting privileges within the scope of the applicant's license may not deny the application or privileges because the applicant is licensed under Title 37, chapter 6.

(5) This section does not preclude a hospital from limiting membership or privileges based on education, training, or other relevant criteria.

**History:** En. Sec. 175, Ch. 197, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 69-5217(1); amd. Sec. 4, Ch. 347, L. 1979; amd. Sec. 1, Ch. 152, L. 1989; amd. Sec. 1, Ch. 309, L. 1989; amd. Sec. 47, Ch. 472, L. 1997; amd. Sec. 31, Ch. 224, L. 2003.

**50-5-106. Records and reports required of health care facilities -- confidentiality.**

Health care facilities shall keep records and make reports as required by the department.

Before February 1 of each year, every licensed health care facility shall submit an annual report for the preceding calendar year to the department. The report must be on forms and contain information specified by the department. Information received by the department through reports, inspections, or provisions of parts 1 and 2 may not be disclosed in a way which would identify patients. A department employee who discloses information that would identify a patient must be dismissed from employment and subject to the provisions of [45-7-401](#) and [50-16-551](#), if applicable, unless the disclosure was authorized as permitted by law. Information and statistical reports from health care facilities which are considered necessary by the department for health planning and resource development activities must be made available to the public and the health planning agencies within the state. Applications by health care facilities for certificates of need and any information relevant to review of these applications, pursuant to part 3, must be accessible to the public.

**History:** En. Sec. 176, Ch. 197, L. 1967; R.C.M. 1947, 69-5218; amd. Sec. 5, Ch. 347, L. 1979; amd. Sec. 13, Ch. 329, L. 1983; amd. Sec. 26, Ch. 632, L. 1987; amd. Sec. 251, Ch. 546, L. 1995; amd. Sec. 4, Ch. 396, L. 2003.

**50-5-107. Unlawful use of word nursing.** It is unlawful for any facility operating in this state to use the word "nursing" in its name, signs, advertising, etc., unless that facility does in fact provide 24-hour nursing care by licensed nurses.

**History:** En. 69-5203.1 by Sec. 2, Ch. 448, L. 1973; R.C.M. 1947, 69-5203.1.

**50-5-108. Injunction.** The department may bring an action for injunction or other process against any person to:

- (1) restrain a facility from engaging in a prohibited activity that is endangering the health, safety, or welfare of any individual under the care of the facility;
- (2) enjoin a violation of part 1 or 2 of this chapter, or a violation of a rule, license provision, or order adopted or issued pursuant to part 1 or 2; or
- (3) require compliance with part 1 or 2 of this chapter or compliance with a rule, license provision, or order adopted or issued pursuant to part 1 or 2.

**History:** En. Sec. 178, Ch. 197, L. 1967; amd. Sec. 75, Ch. 349, L. 1974; R.C.M. 1947, 69-5220; amd. Sec. 6, Ch. 347, L. 1979; amd. Sec. 10, Ch. 415, L. 1993.

**50-5-109. Repealed.** Sec. 13, Ch. 415, L. 1993.

**History:** En. Sec. 179, Ch. 197, L. 1967; R.C.M. 1947, 69-5221; amd. Sec. 7, Ch. 347, L. 1979.

**50-5-110 reserved.**

**50-5-111. Prohibited activities.** It is unlawful to:

- (1) operate a facility without a license;
- (2) prevent, interfere with, or impede department investigation, department enforcement, department examination of relevant books and records, or activities of the department concerning the preservation of evidence; or
- (3) violate any provision of part 1 or 2 of this chapter or violate a rule, license provision, or order adopted or issued pursuant to part 1 or 2.

**History:** En. Sec. 1, Ch. 415, L. 1993.

**50-5-112. Civil penalties.**

- (1) A person who commits an act prohibited by [50-5-111](#) is subject to a civil penalty not to exceed \$1,000 for each day that a facility is in violation of a provision of part 1 or 2 of this chapter or of a rule, license provision, or order adopted or issued pursuant to part 1 or

2. The department or, upon request of the department, the county attorney of the county in which the health care facility in question is located may petition the court to impose the civil penalty. Venue for an action to collect a civil penalty pursuant to this section is in the county in which the facility is located or in the first judicial district.

(2) In determining the amount of penalty to be assessed for an alleged violation under this section, the court shall consider:

(a) the gravity of the violation in terms of the degree of physical or mental harm to a resident or patient;

(b) the degree of harm to the health, safety, rights, security, or welfare of a resident or patient;

(c) the degree of deviation committed by the facility from a requirement imposed by part 1 or 2 of this chapter or by a rule, license provision, or order adopted or issued pursuant to part 1 or 2; and

(d) other matters as justice may require.

(3) A penalty collected under this section must be deposited in the state general fund.

(4) In addition to or exclusive of the remedy provided in subsection (1), the department may pursue remedies available for a violation, as provided for in [50-5-108](#), or any other remedies available to it.

**History:** En. Sec. 2, Ch. 415, L. 1993; amd. Sec. 42, Ch. 422, L. 1997.

**50-5-113. Criminal penalties.** (1) A person is guilty of a criminal offense under this section if the person knowingly conceals material information about the operation of the facility or does any of the following and by doing so threatens the health or safety of one or more individuals entrusted to the care of the person:

(a) commits an act prohibited by [50-5-111](#);

(b) omits material information or makes a false statement or representation in an application, record, report, or other document filed, maintained, or used for compliance with the provisions of part 1 or 2 of this chapter or with rules, license provisions, or orders adopted or issued pursuant to part 1 or 2; or

(c) destroys, alters, conceals, or fails to file or maintain any record, information, or application required to be maintained or filed in compliance with a provision of part 1 or 2 of this chapter or in compliance with a rule, license provision, or order adopted or issued pursuant to part 1 or 2.

(2) A person convicted under subsection (1) is subject to a fine of not more than \$1,000 for the first offense and not more than \$2,000 for each subsequent offense for each day that a facility is in violation of a provision of part 1 or 2 of this chapter or of a rule, license provision, or order adopted or issued pursuant to part 1 or 2.

(3) In determining the amount of penalty to be assessed for an alleged violation under this section, the court shall consider:

(a) the gravity of the violation in terms of the degree of physical or mental harm to a resident or patient;

(b) the degree of harm to the health, safety, rights, security, or welfare of a resident or patient;

(c) the degree of deviation committed by the facility from a requirement imposed by part 1 or 2 of this chapter or by a rule, license provision, or order adopted or issued pursuant to part 1 or 2; and

(d) other matters as justice may require.

(4) Prosecution under this section does not bar enforcement under any other section of this chapter or pursuit of any other appropriate remedy by the department.

(5) Venue for prosecution pursuant to this section is in the county in which the facility is located or in the first judicial district.

(6) A penalty collected under this section must be deposited in the state general fund.

**History:** En. Sec. 3, Ch. 415, L. 1993; amd. Sec. 43, Ch. 422, L. 1997.

**50-5-114. Administrative enforcement -- notice -- order for corrective action.**

(1) If the department believes that a violation of a provision of part 1 or 2 of this chapter or of a rule adopted or a condition or limitation imposed by a license issued pursuant to part 1 or 2 has occurred, it may serve written notice on the alleged violator or the violator's agent personally or by certified mail. The notice must specify the provision of part 1 or 2 of this chapter or the rule or license condition or limitation alleged to have been violated and the facts alleged to constitute the violation. The notice must inform the alleged violator of the right to a hearing and that the contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to the hearing. The notice may include an order to take necessary corrective action, including ceasing new admissions, relocating residents, or ceasing the violation within a reasonable period of time stated in the order. The order becomes final unless, within 30 days after the notice is received, the person named requests in writing a hearing before the department. On receipt of the request, the department shall schedule a hearing. Until issuance of a contrary decision by the department, a department order concerning corrective action remains effective and enforceable.

(2) If, after a hearing held under subsection (1), the department finds that a violation has occurred, it shall issue an appropriate order for the prevention, abatement, or control of the violation involved or the taking of other corrective action. As appropriate, an order issued as part of a notice or after a hearing may prescribe the date by which the violation must cease and the time limits for particular action in preventing, abating, or controlling the violation. If, after a hearing on an order contained in a notice, the department finds that a violation has not occurred or is not occurring, it shall declare the order void.

(3) The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing conducted pursuant to this section.

(4) Instead of or in addition to issuing the order provided for in subsection (1), the department may:

(a) require that the alleged violators appear before the department for a hearing at a time and place specified in the notice and answer the charges; or

(b) initiate action under any other applicable provisions of part 1 or 2 of this chapter.

(5) Before acting under this section, the department shall attempt to obtain voluntary compliance through a warning, conference, or any other appropriate means.

(6) In connection with a hearing held pursuant to this section, the department may and on application by a party shall compel the attendance of witnesses and the production of evidence on behalf of any party.

**History:** En. Sec. 4, Ch. 415, L. 1993; amd. Sec. 252, Ch. 546, L. 1995.

**50-5-115. Receiverships.**

(1) If receivership has not already been instituted under medicaid or medicare, upon notice to the facility, the department may file a complaint in district court for receivership under any of the following conditions in addition to applicable conditions listed in [27-20-102](#):

(a) a facility is operating without a license and residents are in danger of serious physical or mental harm;

(b) a facility intending to close has not made arrangements within 30 days before closure for the orderly transfer of residents;

(c) a facility is abandoned by an owner; or

(d) a life threatening situation exists for the residents of the facility.

(2) If the department believes or has received notice from the department of justice that there is an emergency that presents or might present an immediate and serious threat to the health or safety of patients or residents of a facility, a receiver may be appointed by the court upon an ex parte application by the department. If a receiver is appointed upon an ex parte application, notice must be given by the department to the facility within 24 hours of issuance of the receivership order and a hearing must be offered the facility by the court within 10 days of issuance of the order to determine whether the order will be continued.

(3) The department shall maintain a list of persons qualified to act as receivers.

(4) The selection, appointment, and removal of receivers must be consistent with Title 27, chapter 20, parts 2 and 3.

(5) Whenever possible, receivers must be paid from the income of the facility. However, receivers may be paid from the patient protection account provided for in [50-5-232](#). The court shall direct the amount of payments to be made to the receiver, the payments to be made by the receiver, and the order of payments made to the receiver or to other entities. Payments owed to a facility that are made to the receiver must be used to discharge any obligation of the entity making the payments owed to the facility.

(6) The powers and duties of the receiver include:

(a) the duty to protect the health, welfare, and safety of the residents;

(b) the power to hire, discipline, and fire staff;

(c) the power to collect debts due to the facility;

(d) the power to settle labor disputes;

(e) the power to petition the court to set aside unreasonable contracts or leases entered into by the facility management;

(f) the power to make capital investments in the facility with court approval; and

(g) all other powers granted receivers by [27-20-302](#).

**History:** En. Sec. 5, Ch. 415, L. 1993; amd. Sec. 3, Ch. 514, L. 1995.

**50-5-116. Facility inspections.** (1) In addition to its annual licensure inspections, as provided by [50-5-204](#), the department may inspect any facility for compliance with part 1 or 2 of this chapter or for compliance with a rule, license provision, or order adopted or issued pursuant to part 1 or 2.

(2) An authorized representative of the department may inspect a facility and associated property without prior notice to the owner or staff of the facility whenever the department considers it necessary. The authorized representative must be given access to all records and an opportunity to copy the records.

**History:** En. Sec. 6, Ch. 415, L. 1993.

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**50-5-201. License requirements.**

(1) A facility or licensee considering construction of or alteration or addition to a health care facility shall submit plans and specifications to the department for preliminary

inspection and approval prior to commencing construction.

(2) A person may not operate a health care facility unless the facility is licensed by the department. Licenses may be issued for a period of 1 to 3 years in duration. A license is valid only for the person and premises for which it was issued. A license may not be sold, assigned, or transferred.

(3) Upon discontinuance of the operation or upon transfer of ownership of a facility, the license must be returned to the department.

(4) Licenses must be displayed in a conspicuous place near the admitting office of the facility.

**History:** En. Sec. 161, Ch. 197, L. 1967; amd. Sec. 105, Ch. 349, L. 1974; R.C.M. 1947, 69-5203; amd. Sec. 2, Ch. 37, L. 1979; amd. Sec. 8, Ch. 347, L. 1979; amd. Sec. 1, Ch. 405, L. 1991; amd. Sec. 11, Ch. 415, L. 1993.

**50-5-202. License fees.** The department shall collect fees for each license issued for deposit in the state general fund as follows:

(1) facilities with 20 beds or less--\$20;

(2) facilities with 21 beds or more--\$1 per bed.

**History:** En. Sec. 162, Ch. 197, L. 1967; amd. Sec. 1, Ch. 282, L. 1975; R.C.M. 1947, 69-5204.

**50-5-203. Application for license.** The procedure to apply for a license is as follows:

(1) At least 30 days prior to the opening of a facility and after that no later than the expiration date of the license, application is made to the department accompanied by the license fee.

(2) The application shall contain:

(a) the name and address of the applicant if an individual, the name and address of each member if a firm, partnership, or association, or the name and address of each officer if a corporation;

(b) the location of the facility;

(c) the name of the person or persons who will manage or supervise the facility;

(d) the number and type of patients or residents for which care is provided;

(e) any information which the department may require pertaining to the number, experience, and training of employees;

(f) information on ownership, contract, or lease agreement if operated by a person other than the owner.

**History:** En. Sec. 163, Ch. 197, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; amd. Sec. 2, Ch. 282, L. 1975; R.C.M. 1947, 69-5205; amd. Sec. 2, Ch. 405, L. 1991.

**50-5-204. Issuance and renewal of licenses -- inspections.**

(1) After receipt of a new application and notice that the facility is ready to be inspected, the department or its authorized agent shall conduct an initial inspection of the facility within 45 days.

(2) After receipt of an application for renewal of a license, the department or its authorized agent shall inspect the facility without prior notice to the operator or staff.

(3) If the department determines that the facility meets minimum standards and the proposed or existing staff is qualified, the department shall issue a license for a period of 1 to 3 years in duration.

(4) If minimum standards are not met, the department may issue a provisional license for less than 1 year if operation will not result in undue hazard to patients or residents or if

the demand for accommodations offered is not met in the community.

(5) The minimum standards that home health agencies must meet in order to be licensed must be as outlined in 42 U.S.C. 1395x(o), as amended, and in rules implementing it that add minimum standards.

(6) The department may inspect a licensed health care facility whenever it considers it necessary. The entire premises of a licensed facility must be open to inspection, and access to all records must be granted at all reasonable times.

**History:** En. Sec. 164, Ch. 197, L. 1967; R.C.M. 1947, 69-5206; amd. Sec. 9, Ch. 347, L. 1979; amd. Sec. 1, Ch. 5, Sp. L. 1981; amd. Sec. 1, Ch. 443, L. 1985; amd. Sec. 1, Ch. 143, L. 1987; amd. Sec. 3, Ch. 405, L. 1991; amd. Sec. 4, Ch. 366, L. 1995.

**50-5-205. Repealed.** Sec. 27, Ch. 347, L. 1979.

**History:** En. Sec. 165, Ch. 197, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; amd. Sec. 23, Ch. 187, L. 1977; R.C.M. 1947, 69-5207.

**50-5-206. Repealed.** Sec. 27, Ch. 347, L. 1979.

**History:** En. Sec. 166, Ch. 197, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 69-5208.

**50-5-207. Denial, suspension, or revocation of health care facility license -- provisional license.**

(1) The department may deny, suspend, or revoke a health care facility license if any of the following circumstances exist:

(a) The facility fails to meet the minimum standards pertaining to it prescribed under [50-5-103](#).

(b) The staff is insufficient in number or unqualified by lack of training or experience.

(c) The applicant or any person managing it has been convicted of a felony and denial of a license on that basis is consistent with [37-1-203](#) or the applicant otherwise shows evidence of character traits inimical to the health and safety of patients or residents.

(d) The applicant does not have the financial ability to operate the facility in accordance with law or rules or standards adopted by the department.

(e) There is cruelty or indifference affecting the welfare of the patients or residents.

(f) There is misappropriation of the property or funds of a patient or resident.

(g) There is conversion of the property of a patient or resident without the patient's or resident's consent.

(h) Any provision of parts 1 through 3 is violated.

(2) The department may reduce a license to provisional status if as a result of an inspection it is determined that the facility has failed to comply with a provision of part 1 or 2 of this chapter or has failed to comply with a rule, license provision, or order adopted or issued pursuant to part 1 or 2.

(3) The denial, suspension, or revocation of a health care facility license is not subject to the certificate of need requirements of part 3.

(4) The department may provide in its revocation order that the revocation is in effect for up to 2 years. If this provision is appealed, it must be affirmed or reversed by the court.

**History:** En. Sec. 167, Ch. 197, L. 1967; R.C.M. 1947, 69-5209; amd. Sec. 10, Ch. 347, L. 1979; amd. Sec. 12, Ch. 415, L. 1993; amd. Sec. 253, Ch. 546, L. 1995.

**50-5-208. Hearing required.**

(1) A license may not be denied, suspended, or revoked without notice and an opportunity for a hearing before the department.

(2) Notice must be given the applicant or licensee of a date, not less than 15 days after mailing or service, for a hearing before the department.

(3) The decision of the department is final 30 days after it is mailed or served unless the applicant or licensee commences an action in the district court to appeal the decision. An appeal must be in the district court where the facility is located or will be located.

**History:** En. Sec. 168, Ch. 197, L. 1967; amd. Sec. 73, Ch. 349, L. 1974; R.C.M. 1947, 69-5210; amd. Sec. 254, Ch. 546, L. 1995.

**50-5-209. Repealed.** Sec. 27, Ch. 347, L. 1979.

**History:** En. Sec. 177, Ch. 197, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 69-5219.

**50-5-210. Department to make rules -- standards for hospices.**

(1) The department shall by rule establish standards for the licensure of a hospice. These standards must consider the terminally ill patient and the patient's family as a unit and require service delivery through a medically directed interdisciplinary team of professionals and volunteers acting under a defined hospice administration.

(2) A hospice must meet the standards of care defined by law for any skilled care it provides that normally would be provided by a licensed facility such as a hospital, skilled nursing facility, or home health agency.

(3) The department shall by rule establish standards for the licensure of a residential hospice facility.

(4) The department shall by rule establish standards for the licensure of a freestanding inpatient hospice facility in accordance with medicare certification regulations contained in 42 CFR, part 418, subparts C through E, as adopted by the department. To be licensed by the department, the facility must be managed directly by a medicare-certified hospice.

**History:** En. Sec. 2, Ch. 324, L. 1983; amd. Sec. 2, Ch. 151, L. 1993.

**50-5-211. Hospital hospice programs -- exemptions from separate licensure.** A hospice program provided by a hospital need not be separately licensed if the department finds that such program meets the standards of [50-5-210](#).

**History:** En. Sec. 3, Ch. 324, L. 1983.

**50-5-212. Organ procurement program required.** The administrator of a hospital licensed under this chapter shall as a condition of licensure under [50-5-201](#):

(1) establish a written protocol for the identification of potential organ donors that:

(a) assures that families of potential organ donors are made aware of the option of organ or tissue donation and their option to decline;

(b) encourages discretion and sensitivity with respect to the circumstances, views, and beliefs of families of potential organ donors; and

(c) requires that a qualified organ procurement agency be notified of potential organ donors;

(2) designate and train a person or persons to represent him for purposes of requesting an anatomical gift as provided in [72-17-213](#); and

(3) make known to the public that the hospital has an organ procurement program as described in subsection (1).

**History:** En. Sec. 3, Ch. 219, L. 1987; amd. Sec. 1, Ch. 540, L. 1989.

**50-5-213. Requirements for home infusion therapy services.** An agency providing home infusion therapy services shall directly provide either the home infusion therapy

services or skilled nursing services and may either directly provide or may arrange for the provision of the other services.

**History:** En. Sec. 10, Ch. 366, L. 1995.

**50-5-214. Requirements for retirement homes.** A retirement home shall offer meals or central kitchens but may not offer nursing or personal-care services to the residents, other than by a contract with a third party.

**History:** En. Sec. 11, Ch. 366, L. 1995.

**50-5-215. Standards for adult foster care homes.** The department may adopt rules establishing standards for the licensing of adult foster care homes. The standards must provide for the safety and comfort of the residents and may be adopted by the department only after receiving the advice and recommendations of the state fire prevention and investigation program of the department of justice in relation to fire and safety requirements for adult foster care homes.

**History:** En. Sec. 12, Ch. 366, L. 1995.

**50-5-216. Limitation on care provided in adult foster care home.**

(1) Except as provided in this section, the types of care offered by adult foster care homes are limited to light personal care or custodial care and may not include skilled nursing care.

(2) An adult foster care home may be licensed to provide care for an adult receiving state-funded services through the developmental disabilities program of the department or for an adult who resided in the home before reaching 18 years of age, even though the adult is:

- (a) in need of skilled nursing care;
- (b) in need of medical, physical, or chemical restraint;
- (c) nonambulatory or bedridden;
- (d) incontinent to the extent that bowel or bladder control is absent; or
- (e) unable to self-administer medications.

(3) An adult foster care home that applies for a license under subsection (2) shall provide the department with a copy of the statement required in subsection (4).

(4) A resident of an adult foster care home licensed under subsection (2) must have a certification in the form of a signed statement, renewed on an annual basis, from a physician, a physician assistant, a nurse practitioner, or a registered nurse, whose work is unrelated to the operation of the home and who has actually visited the home within the year covered by the statement and certifies that:

- (a) the services available to the resident in the home or in the community, or services that may be brought into the home from the community, including nursing services or therapies, are appropriate for meeting the health care or other needs of the resident; and
- (b) the health care status of the resident does not necessitate placing the resident in a more intensive residential service setting.

(5) As used in this section, "skilled nursing care" means 24-hour care supervised by a registered nurse or a licensed practical nurse under the orders of an attending physician.

**History:** En. Sec. 13, Ch. 366, L. 1995; amd. Sec. 2, Ch. 133, L. 1999; amd. Sec. 24, Ch. 519, L. 2005.

**50-5-217 through 50-5-219 reserved.**

**50-5-220. Licensure of outdoor behavioral programs -- exemption.**

(1) The department shall provide for licensure of a qualified outdoor behavioral program that accepts public funding. An outdoor behavioral program that does not accept public funds or governmental contracts is exempt from licensure.

(2) The department shall develop administrative rules for licensure that must include program requirements, staff requirements, staff-to-youth ratios, staff training and health requirements, youth admission requirements, water and nutritional requirements, health care and safety, environmental requirements, infectious disease control, transportation, and evacuation. The department may accept accreditation by a nationally recognized accrediting or certifying body but may not require the accreditation.

**History:** En. Sec. 2, Ch. 348, L. 2003.

**50-5-221. Repealed.** Sec. 13, Ch. 415, L. 1993.

**History:** En. Sec. 11, Ch. 347, L. 1979.

**50-5-222 through 50-5-224 reserved.**

**50-5-225. Assisted living facilities -- services to residents.**

(1) An assisted living facility shall, at a minimum, provide or make provisions for:

(a) personal services, such as laundry, housekeeping, food service, and local transportation;

(b) assistance with activities of daily living, as provided for in the facility admission agreement and that do not require the use of a licensed health care professional or a licensed practical nurse;

(c) recreational activities;

(d) assistance with self-medication;

(e) 24-hour onsite supervision by staff; and

(f) assistance in arranging health-related services, such as medical appointments and appointments related to hearing aids, glasses, or dentures.

(2) An assisted living facility may provide, make provisions for, or allow a resident to obtain third-party provider services for:

(a) the administration of medications consistent with applicable laws and regulations; and

(b) skilled nursing care or other skilled services related to temporary, short-term, acute illnesses, which may not exceed 30 consecutive days for one episode or more than a total of 120 days in 1 year.

**History:** En. Sec. 1, Ch. 597, L. 1983; amd. Sec. 3, Ch. 54, L. 2003.

**50-5-226. Placement in assisted living facilities.**

(1) An assisted living facility may provide personal-care services to a resident who is 18 years of age or older and in need of the personal care for which the facility is licensed under [50-5-227](#).

(2) An assisted living facility licensed as a category A facility under [50-5-227](#) may not admit or retain a category A resident unless each of the following conditions is met:

(a) The resident may not require physical or chemical restraint or confinement in locked quarters, but may consent to the use of safety devices pursuant to Title 50, chapter 5, part 12.

(b) The resident may not have a stage 3 or stage 4 pressure ulcer.

(c) The resident may not have a gastrostomy or jejunostomy tube.

(d) The resident may not require skilled nursing care or other skilled services on a continued basis except for the administration of medications consistent with applicable laws and regulations.

- (e) The resident may not be a danger to self or others.
- (f) The resident must be able to accomplish activities of daily living with supervision and assistance based on the following:
  - (i) the resident may not be consistently and totally dependent in four or more activities of daily living as a result of a cognitive or physical impairment; and
  - (ii) the resident may not have a severe cognitive impairment that renders the resident incapable of expressing needs or making basic care decisions.
- (3) An assisted living facility licensed as a category B facility under [50-5-227](#) may not admit or retain a category B resident unless each of the following conditions is met:
  - (a) The resident may require skilled nursing care or other services for more than 30 days for an incident, for more than 120 days a year that may be provided or arranged for by either the facility or the resident, and as provided for in the facility agreement.
  - (b) The resident may be consistently and totally dependent in more than four activities of daily living.
  - (c) The resident may not require physical or chemical restraint or confinement in locked quarters, but may consent to the use of safety devices pursuant to Title 50, chapter 5, part 12.
  - (d) The resident may not be a danger to self or others.
  - (e) The resident must have a practitioner's written order for admission as a category B resident and written orders for care.
  - (f) The resident must have a signed health care assessment, renewed on a quarterly basis by a licensed health care professional who:
    - (i) actually visited the facility within the calendar quarter covered by the assessment;
    - (ii) has certified that the particular needs of the resident can be adequately met in the facility; and
    - (iii) has certified that there has been no significant change in health care status that would require another level of care.
- (4) An assisted living facility licensed as a category C facility under [50-5-227](#) may not admit or retain a category C resident unless each of the following conditions is met:
  - (a) The resident has a severe cognitive impairment that renders the resident incapable of expressing needs or of making basic care decisions.
  - (b) The resident may be at risk for leaving the facility without regard for personal safety.
  - (c) Except as provided in subsection (4)(b), the resident may not be a danger to self or others.
  - (d) The resident may not require physical or chemical restraint or confinement in locked quarters, but may consent to the use of safety devices pursuant to Title 50, chapter 5, part 12.
- (5) For category B and C residents, the assisted living facility shall specify services that it will provide in the facility admission criteria.
- (6) The department shall develop standardized forms and education and training materials to provide to the assisted living facilities and to the licensed health care professionals who are responsible for the signed statements provided for in subsection (3)(f). The use of the standardized forms is voluntary.
- (7) The department shall provide by rule:
  - (a) an application or placement procedure informing a prospective resident and, if applicable, the resident's practitioner of:

- (i) physical and mental standards for residents of assisted living facilities;
- (ii) requirements for placement in a facility with a higher standard of care if a resident's condition deteriorates; and
- (iii) the services offered by the facility and services that a resident may receive from third-party providers while the resident lives at the facility;
- (b) standards to be used by a facility and, if appropriate, by a screening agency to screen residents and prospective residents to prevent residence by individuals referred to in subsections (3) and (4);
- (c) a method by which the results of any screening decision made pursuant to rules established under subsection (7)(b) may be appealed by the facility operator or by or on behalf of a resident or prospective resident;
- (d) standards for operating a category A assisted living facility, including standards for the physical, structural, environmental, sanitary, infection control, dietary, social, staffing, and recordkeeping components of a facility and the storage and administration of over-the-counter and prescription medications; and
- (e) standards for operating a category B assisted living facility, which must include the standards for a category A assisted living facility and additional standards for assessment of residents, care planning, qualifications and training of staff, prevention and care of pressure sores, and incontinence care; and
- (f) standards for operating a category C assisted living facility, which must include the standards for a category B assisted living facility and additional standards for resident assessment, the provision of specialty care to residents with cognitive impairments, and additional qualifications of and training for the administrator and direct-care staff.

**History:** En. Sec. 2, Ch. 597, L. 1983; amd. Sec. 1, Ch. 140, L. 1985; amd. Sec. 2, Ch. 590, L. 1993; amd. Sec. 5, Ch. 366, L. 1995; amd. Sec. 255, Ch. 546, L. 1995; amd. Sec. 1, Ch. 331, L. 2001; amd. Sec. 4, Ch. 54, L. 2003.

**50-5-227. Licensing assisted living facilities.**

- (1) The department shall by rule adopt standards for licensing and operation of assisted living facilities to implement the provisions of [50-5-225](#) and [50-5-226](#).
- (2) The following licensing categories must be used by the department in adopting rules under subsection (1):
  - (a) category A facility serving residents requiring the level of care as provided for in [50-5-226](#)(2);
  - (b) category B facility providing skilled nursing care or other skilled services to five or fewer residents who meet the requirements stated in [50-5-226](#)(3); or
  - (c) category C facility providing services to residents with cognitive impairments requiring the level of care stated in [50-5-226](#)(4).
- (3) A single facility meeting the applicable requirements for a category A facility may additionally be licensed to provide category B or category C services with the approval of the department.
- (4) The department may by rule establish license fees, inspection fees, and fees for patient screening. Fees must be reasonably related to service costs.

**History:** En. Sec. 3, Ch. 597, L. 1983; amd. Sec. 3, Ch. 590, L. 1993; amd. Sec. 6, Ch. 366, L. 1995; amd. Sec. 256, Ch. 546, L. 1995; amd. Sec. 5, Ch. 54, L. 2003.

**50-5-228. Limited licensing.** The department may grant a license that is provisional upon the correction of noncompliance with provisions of [50-5-225](#) through [50-5-228](#) or rules

adopted pursuant to [50-5-225](#) through [50-5-228](#). A provisional license may be granted only for a specific period of time and may not be renewed.

**History:** En. Sec. 4, Ch. 597, L. 1983; amd. Sec. 208, Ch. 42, L. 1997.

**50-5-229. Repealed.** Sec. 13, Ch. 415, L. 1993.

**History:** En. Sec. 5, Ch. 597, L. 1983.

**50-5-230. Repealed.** Sec. 13, Ch. 415, L. 1993.

**History:** En. Sec. 6, Ch. 597, L. 1983.

**50-5-231. Repealed.** Sec. 13, Ch. 415, L. 1993.

**History:** En. Secs. 2, 3, Ch. 433, L. 1981.

**50-5-232. Patient protection account -- deposit of funds.**

(1) There is a patient protection account in the state special revenue fund.

(2) There is deposited in the patient protection account money received by the department in the form of gifts, grants, reimbursements, or appropriations from any source that are intended to be used for the purposes of the account.

(3) The funds deposited in the patient protection account may be used only:

- (a) to pay for the costs of a receivership; and
- (b) to pay for the cost of department-initiated relocation of residents.

(4) Penalties collected pursuant to part 1 or 2 of this chapter must be deposited in the state general fund.

**History:** En. Sec. 7, Ch. 415, L. 1993; amd. Sec. 44, Ch. 422, L. 1997.

**50-5-233. Designation of critical access hospitals -- adoption of rules.**

(1) The department may designate as a critical access hospital a facility that:

(a) is:

(i) located more than 35 road miles or, in the case of a facility located in mountainous terrain or where only secondary roads exist, more than 15 road miles from a hospital or another critical access hospital; or

(ii) a necessary provider of health care services to residents of the area where the facility is located;

(b) provides 24-hour emergency care that is necessary for ensuring access to emergency care services in the area served by the facility;

(c) complies with the bed limitations adopted by rule, not to exceed the number specified in 42 U.S.C. 1395i-4(c)(2)(B), (c)(2)(E), and (f);

(d) provides inpatient acute care for a period not exceeding 96 hours, as determined on an average, annual basis for each patient;

(e) complies with the staffing requirements of 42 U.S.C. 1395i-4(c)(2)(B)(iv); and

(f) operates a quality assessment and performance improvement program and follows appropriate procedures for review of utilization of services as specified in 42 U.S.C. 1395x(aa)(2)(I).

(2) The department shall adopt rules to implement this section, including the following:

(a) standards for determining whether the facility qualifies as a necessary provider pursuant to subsection (1)(a)(ii);

(b) standards for determining whether the 24-hour emergency care provided is necessary to ensure that the area served by the facility has adequate access to emergency care services;

(c) procedures for applying for and receiving designation as a critical access hospital; and

(d) designation of the maximum number of beds allowed pursuant to subsection (1)(c) and consistent with federal law.

**History:** En. Sec. 5, Ch. 192, L. 2001; amd. Sec. 1, Ch. 7, L. 2005.

**50-5-234 reserved.**

**50-5-235. Hourly limitation waivable by department or department's designee.** The department or the department's designee may waive the 24-hour limitation related to recovery care beds, as defined in [50-5-101](#), as that limitation applies to a particular bed, if the attending physician of the individual occupying the bed determines that the waiver is medically appropriate. The waiver may be granted by the department before or after the 24-hour limitation is exceeded.

**History:** En. Sec. 2, Ch. 366, L. 2001.

**50-5-236 through 50-5-237 reserved.**

**50-5-238. Licensure of intermediate care facility for developmentally disabled -- rulemaking.**

(1) The department shall adopt procedures for licensing intermediate care facilities for the developmentally disabled. A person may not operate an intermediate care facility for the developmentally disabled without a license. The application for a license must include:

- (a) the name and address of the applicant;
- (b) the location of the intermediate care facility for the developmentally disabled;
- (c) the name of the person or persons who will manage or supervise the intermediate care facility for the developmentally disabled;
- (d) the number of persons with developmental disabilities who will receive care at the intermediate care facility for the developmentally disabled; and
- (e) other information required by the department by rule.

(2) The department may adopt rules establishing standards for licensing intermediate care facilities for the developmentally disabled. The standards must address the protection of residents' rights, individual resident treatment and habilitation needs, staffing requirements, including qualifications, resident behavior and facility practices, health care services, physical environment, dietetic services, and recordkeeping.

**History:** En. Sec. 5, Ch. 403, L. 2003.

**50-5-239 through 50-5-244 reserved.**

**50-5-245. (Temporary) Department to license specialty hospitals -- standards -- definition -- moratorium.**

(1) The department shall license specialty hospitals using the requirements for licensure of hospitals and the procedure provided for in parts 1 and 2 of this chapter.

(2) As used in this section, "specialty hospital" means a specialty hospital as defined in 42 U.S.C. 1395nn.

(3) Notwithstanding the requirements of subsection (1), the department may not license a specialty hospital until July 1, 2007. (*Terminates July 1, 2007--sec. 6, Ch. 365, L. 2005.*)

**History:** En. Sec. 2, Ch. 365, L. 2005.

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TITLE 50. HEALTH AND SAFETY

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**50-5-1101. Short title.** This part may be cited as the "Montana Long-Term Care Residents' Bill of Rights".

**History:** En. Sec. 1, Ch. 582, L. 1987.

**50-5-1102. Findings and purpose.**

(1) The legislature finds and declares that many residents of long-term care facilities are isolated from the community and lack the means to assert their rights.

(2) The purpose of this part is to:

(a) establish and recognize the fundamental civil and human rights to which residents of long-term care facilities are entitled; and

(b) provide for the education of residents and staff regarding these rights.

**History:** En. Sec. 2, Ch. 582, L. 1987.

**50-5-1103. Definitions.** As used in this part, the following definitions apply:

(1) "Administrator" means a person who is licensed as a nursing home administrator under Title 37, chapter 9, and who administers, manages, or supervises a long-term care facility.

(2) "Authorized representative" means:

(a) a person who has a general power of attorney for a resident;

(b) a person appointed by a court to manage the personal or financial affairs of a resident;

(c) a representative payee;

(d) a resident's next of kin; or

(e) a sponsoring agency.

(3) "Department" means the department of public health and human services provided for in [2-15-2201](#).

(4) "Facility" or "long-term care facility" means a facility or part of a facility licensed under Title 50, chapter 5, to provide skilled nursing care, intermediate nursing care, or personal care.

(5) "Long-term care ombudsman" means the individual appointed to fulfill the requirement of 42 U.S.C. 3027(a)(12) that the state provide an advocate for residents of long-term care facilities.

(6) "Resident" means a person who lives in a long-term care facility.

**History:** En. Sec. 3, Ch. 582, L. 1987; amd. Sec. 94, Ch. 418, L. 1995; amd. Sec. 259, Ch. 546, L. 1995.

**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.
  - (b) Regardless of the source of payment, each resident or the resident's authorized representative is entitled, upon request, to receive and examine an explanation of the resident's monthly bill.
  - (c) Residents have the right to organize, maintain, and participate in resident advisory councils. The facility shall afford reasonable privacy and facility space for the meetings of the councils.
  - (d) A resident has the right to present a grievance on the resident's own behalf or that of others to the facility or the resident advisory council. The facility shall establish written procedures for receiving, handling, and informing residents or the resident advisory council of the outcome of any grievance presented.
  - (e) A resident has the right to ask a state agency or a resident advocate for assistance in resolving grievances, free from restraint, interference, or reprisal.
  - (f) During a resident's stay in a long-term care facility, the resident retains the prerogative to exercise decisionmaking rights in all aspects of the resident's health care, including placement and treatment issues such as medication, special diets, or other medical regimens.
  - (g) The resident's authorized representative must be notified in a prompt manner of any significant accident, unexplained absence, or significant change in the resident's health status.
  - (h) A resident has the right to be free from verbal, mental, and physical abuse, neglect, or financial exploitation. Facility staff shall report to the department and the long-term care ombudsman any suspected incidents of abuse under the Montana Elder and Persons With Developmental Disabilities Abuse Prevention Act, Title 52, chapter 3, part 8.
  - (i) Each resident has the right to privacy in the resident's room or portion of the room. If a resident is seeking privacy in the resident's room, staff members should make reasonable efforts to make their presence known when entering the room.
  - (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.
  - (k) If clothing is provided to the resident by the facility, it must be of reasonable fit.
  - (l) A resident has the right to reasonable safeguards for personal possessions brought to the facility. The facility shall provide a means for safeguarding the resident's small items of value in the resident's room or in another part of the facility where the resident must have reasonable access to the items.

(m) The resident has the right to have all losses or thefts of personal possessions promptly investigated by the facility. The results of the investigation must be reported to the affected resident.

(3) The administrator of the facility shall adopt whatever additional measures are necessary to implement the residents' rights listed in subsections (1) and (2) and meet any other requirements relating to residents' health and safety that are conditions of participation in a state or federal program of medical assistance.

**History:** En. Sec. 4, Ch. 582, L. 1987; amd. Sec. 43, Ch. 16, L. 1991; amd. Sec. 21, Ch. 255, L. 1995; amd. Sec. 209, Ch. 42, L. 1997.

**50-5-1105. Long-term care facility to adopt and post residents' rights.**

(1) The administrator of each long-term care facility shall:

(a) adopt a written statement of rights applicable to all residents of its facility, including as a minimum the rights listed in [50-5-1104](#);

(b) provide each resident, at the time of his admission to the facility, a copy of the facility's statement of residents' rights, receipt of which the resident or his authorized representative shall acknowledge in writing;

(c) provide each resident with a written statement of any change in residents' rights at the time the change is implemented, receipt of which the resident or his authorized representative shall acknowledge in writing; and

(d) train and involve staff members in the implementation of residents' rights as expressed in the statement adopted by the facility.

(2) Each staff member shall affirm in writing that he has read and understands the facility's statement of residents' rights.

(3) The administrator of the facility shall post in a conspicuous place visible to the public a copy of the facility's statement of residents' rights, presented in a format that can be read easily by the residents and by the public.

**History:** En. Sec. 5, Ch. 582, L. 1987.

**50-5-1106. Resident's rights devolve to authorized representative.** The rights and responsibilities listed in [50-5-1104](#) and [50-5-1105](#) devolve to the resident's authorized representative when the resident:

(1) exhibits a communication barrier;

(2) has been found by his physician to be medically incapable of understanding these rights; or

(3) has been adjudicated incompetent by a district court.

**History:** En. Sec. 6, Ch. 582, L. 1987.

**50-5-1107. Enforcement of residents' rights.** The requirements of [50-5-1104](#) through [50-5-1106](#) are included in the minimum standards considered by the department in reviewing applications for license, as provided in [50-5-204](#).

**History:** En. Sec. 7, Ch. 582, L. 1987.

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TITLE 50. HEALTH AND SAFETY

CHAPTER 5. HOSPITALS AND RELATED FACILITIES

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**50-5-1201. Use of safety devices -- request and consent -- allowed individuals -- intent.**

(1) The following individuals may request the use of and provide informed consent for the use of certain safety devices aimed at ensuring the physical safety of the resident by reducing the risk of falls and injuries associated with a resident's medical symptom even if the resident cannot easily remove the device or the device restricts the resident's total freedom of movement:

(a) a resident;

(b) a family member of a resident who is unable to make decisions because the resident has a communication barrier or has been found by a physician to be medically incapable of granting informed consent, as provided in [50-5-1203](#);

(c) a guardian, as defined in [72-1-103](#); or

(d) a person granted the power of attorney for health care decisions.

(2) A concern for a resident's physical safety or a resident's fear of falling may provide the basis for a medical symptom. A safety device may not be used for the convenience of staff or for disciplinary purposes.

(3) This part is intended to provide residents and authorized or designated representatives with the authority to request and consent to the use of safety devices but is not intended to interfere with the right of licensed health care providers acting within their scope of practice to recommend and order treatments and services, including physical restraints, for residents in their care.

**History:** En. Sec. 1, Ch. 347, L. 2001.

**50-5-1202. Definitions.** As used in this part, the following definitions apply:

(1) "Department" means the department of public health and human services provided for in [2-15-2201](#).

(2) "Long-term care facility" means a licensed facility that provides skilled nursing care or intermediate nursing care or that is an assisted living facility, as defined in [50-5-101](#).

(3) "Medical symptom" means an indication of a physical or psychological condition or of a physical or psychological need expressed by the patient.

(4) "Physician" includes an advanced practice registered nurse to the extent permitted by federal law.

(5) "Resident" means a person who lives in a long-term care facility.

(6) (a) "Safety devices" means side rails, tray tables, seatbelts, and other similar devices.

(b) The term does not include protective restraints as defined in 21 CFR 880.6760.

**History:** En. Sec. 2, Ch. 347, L. 2001; amd. Sec. 6, Ch. 54, L. 2003.

**50-5-1203. Procedures -- informed consent -- physician involvement.**

(1) Upon receiving a request for use of a safety device, a long-term care facility shall inform the requestor of the alternatives and risks associated with the use of the safety device. The long-term care facility shall provide the requested safety device to the resident upon receipt of:

- (a) a signed consent form authorizing its use and acknowledging receipt of specific information about available alternatives and risks; and
- (b) a written order from the attending physician that specifies the circumstances under and the duration for which the safety device may be used and the medical symptoms that the safety device is intended to address.

(2) The requirements of subsection (1) do not apply if a side rail or other device is used only as an assistive device and does not restrict the resident's movement from bed or chair.

**History:** En. Sec. 3, Ch. 347, L. 2001.

**50-5-1204. Long-term care facility procedures.** A long-term care facility that provides a safety device under [50-5-1203](#) shall:

- (1) document that the procedures outlined in [50-5-1203](#) have been followed;
- (2) monitor the use of the safety device in accordance with accepted standards of practice;
- (3) reevaluate the resident's need for the safety device, no less than quarterly, in consultation with the resident, the resident's family, and the attending physician.

**History:** En. Sec. 4, Ch. 347, L. 2001.

**50-5-1205. Survey compliance and department enforcement -- rulemaking authority.**

(1) The department is granted rulemaking authority for the purposes of implementing this part.

(2) When determining compliance with state and federal standards for the use of a safety device, the department is bound by the statements and determinations contained in the attending physician's order regarding medical symptoms. A written order from the attending physician that contains statements and determinations regarding medical symptoms is sufficient evidence of the medical necessity of the safety device.

(3) A long-term care facility may not be subject to fines, civil penalties, or other state or federal survey enforcement remedies solely as the result of allowing the use of a safety device as authorized in this part.

(4) This section does not preclude the department from taking action to protect the safety and health of the resident if there is clear and convincing evidence that:

- (a) the use of the safety device has jeopardized the health and safety of the resident; and
- (b) the long-term care facility has failed to take reasonable measures to protect the health and safety of the resident.

**History:** En. Sec. 5, Ch. 347, L. 2001.