

# ADMINISTRATIVE RULE OF MONTANA

## HEALTHCARE FACILITIES

### 37.100 Subchapter 3

#### Community Homes for Persons with Developmental Disabilities

##### RULE

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37.100.301 PURPOSE (1) The purpose of these rules is to establish licensing requirements for community homes for developmentally disabled persons.

(2) The purpose of a community home is to provide a family-oriented, home-like residence and related residential services to persons with developmental disabilities so as to enable those persons to enjoy a manner of living that is as close as possible to that considered to be normal in the community.

(3) Residents will reside in the least restrictive environment. Intervention will be the least intrusive into, and the least disruptive of, the person's life and represent the least departure from normal patterns of living that can be effective in meeting developmental needs. The person's developmental needs will be met through domiciliary services, personal-social assistance and program plans and training. Residents will be encouraged to engage in meaningful activity, to develop techniques to become increasingly more independent, and to interact with the community in which they reside.

History: Sec. [53-20-305](#), MCA; [IMP](#), Sec. [53-20-305](#), MCA; [NEW](#), 1983 MAR p. 1839, Eff. 12/16/83; [TRANS](#), from Dept. of SRS, 1987 MAR p. 1492, Eff. 7/1/87; [TRANS](#), from DFS, 1998 MAR p. 667.

37.100.302 DEFINITIONS For purposes of this subchapter, the following definitions apply:

(1) "Applicant" means a non-profit or state-operated entity which has completed and submitted to the department a license application/renewal request for the operation of a community home for persons with developmental disabilities.

(2) "Community home" means a family-oriented residence or home designed to provide facilities for persons with developmental disabilities, as defined in [53-20-302](#), MCA.

(3) "Community home staff" means those persons employed by a provider to directly participate in the care, supervision and guidance of the residents in a community home for persons with developmental disabilities.

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

(5) "Developmentally disabled person" means a person who has a developmental disability as defined in [53-20-202](#) (3), MCA.

(6) "Habilitation" means the process by which the staff assists developmentally disabled persons to acquire and maintain skills, to enable them to cope with their own demands, and to raise the level of their physical, mental and social functioning.

(7) "Individual habilitation plan (IHP)" means a written plan of intervention and action developed as provided for in ARM [46.8.105](#) by an interdisciplinary team of persons on the basis of a skill assessment and determination of the status and the needs of a developmentally disabled person.

(8) "Provider" means the person, corporation or other entity furnishing community home services to developmentally disabled persons.

(9) "Resident" means a developmentally disabled person who lives in and receives services from a community home.

(10) "Training" means an organized program for assisting developmentally disabled persons in acquiring, improving or maintaining particular skills.

History: Sec. [53-20-305](#), MCA; [IMP](#), Sec. [53-20-305](#), MCA; [NEW](#), 1983 MAR p. 1839, Eff. 12/16/83; [TRANS](#), from Dept. of SRS, 1987 MAR p. 1492, Eff. 7/1/87; [TRANS](#), from DFS, 1998 MAR p. 667.

37.100.307 LICENSE REQUIRED (1) The department will issue a license for a community home to any license applicant meeting requirements established by these rules. However, the department

may waive in whole or in part procedures for verifying compliance with the requirements of these rules upon receiving written documentation that:

(a) another state agency has already licensed or otherwise approved the operation of the community home, or

(b) a national or state recognized certification process has already been completed and has resulted in certification, accreditation, or other approval of the operation of the community home.

(c) Waiver of procedures for checking compliance as provided in this subsection may occur only where procedures proposed to be waived are clearly already provided for in the accreditation or approval process relied on by the licensing representative. Waiver of procedures must not result in the reduction of standards imposed through licensing requirements.

(2) The department will determine based upon a licensing study whether an applicant meets the requirements.

(3) The department will deny a license to any applicant that fails to meet the requirements established by these rules unless circumstances require that a temporary license be issued or the department determines it is appropriate to issue a provisional license.

(4) The department will issue a license annually on the expiration date of the previous year's license if:

(a) the provider makes written application for issuance at least 30 days prior to the expiration date of its current license; and

(b) the provider continues to meet all standards established by these rules, as determined by the department after a licensing study and upon receipt of certification by the state fire marshal and local health authority.

(5) A community home may be licensed for two or more residents not to exceed eight and, with special written permission from the department, may be licensed for nine to twelve residents.

(6) The department may give special permission for a community home license for 9 to 12 residents if the state fire marshal verifies in writing that:

(a) a manually operated fire alarm system is installed.

(b) all sleeping rooms below street floor level have direct access to the outside of the building; and

(c) any corridor or space necessary for safe exit does not pass an exposed vertical opening; or

(d) there are suitable alternatives to (a) , (b) or (c) already in place and approved in writing by the state fire marshal.

(7) The department may issue a temporary license not to exceed 60 days to any applicant or provider who has not received a fire marshal or health department certification because of unavoidable delays in the certification process.

(8) The department may in its discretion issue a provisional license for any period, not to exceed 6 months, to any license applicant that has met all applicable requirements for fire safety and has submitted a written plan approved by the department to comply fully with all minimum requirements established by these rules within the time period covered by the provisional license.

(a) The department may renew a provisional license if the license applicant shows good cause for failure to comply fully with all minimum requirements within the time period covered by the prior provisional license, but the total time period covered by the initial provisional license and renewals may not exceed 1 year.

37.100.308 LICENSING PROCEDURES (1) An applicant shall apply for a community home license prior to the operation of such home or to the expiration of a current license. Application shall be made to the department upon forms provided by the department.

(2) The department will upon receipt of the application, conduct a study and evaluation of the applicant.

(3) If the department determines that an application or accompanying information is incomplete or erroneous, the applicant will be notified of the specific deficiencies or errors and shall submit the required or corrected information within 60 days. The department will not issue a license until it receives all required information.

(4) Each applicant shall promptly report to the department changes which would affect the current accuracy of information provided on the application.

(5) The department may waive in whole or in part the requirements of (2) of this rule, and/or any other procedures for checking compliance with the requirements of this **subchapter**, based on a proper waiver of such procedures under (1) of ARM [37.100.307](#).

History: Sec. [53-20-305](#), MCA; [IMP](#), Sec. [53-20-305](#), MCA; [NEW](#), 1983 MAR p. 1839, Eff. 12/16/83; [TRANS](#), from Dept. of SRS, 1987 MAR p. 1653, Eff. 7/1/87; [AMD](#), 1992 MAR p. 2277, Eff. 10/16/92; [TRANS](#), from DFS, 1998 MAR p. 667

37.100.3012 LICENSE REVOCATION, DENIAL OR SUSPENSION (1) The department may deny, revoke or suspend a community home license by written notification to the provider if the department determines that:

(a) the facility is not in compliance with fire safety requirements as evidenced in writing by the state fire marshal; or

(b) the program is not in substantial compliance with health rules or any other licensing requirements established by this subchapter; or

(c) the provider has made misrepresentations to the department, either negligent or intentional, regarding any aspect of its operations or facility.

(2) If any violation places a resident in a life-threatening situation the license may be immediately revoked.

History: Sec. [53-20-305](#), MCA; [IMP](#), Sec. [53-20-305](#), MCA; [NEW](#), 1983 MAR p. 1839, Eff. 12/16/83; [TRANS](#), from Dept. of SRS, 1987 MAR p. 1492, Eff. 7/1/87; [TRANS](#), from DFS, 1998 MAR p. 667.

37.100.316 Fair Hearings (1) Any person, corporation or other entity aggrieved by an adverse department action denying, revoking or suspending a license may request a fair hearing in accordance with

ARM [37.5.304](#), [37.5.305](#), [37.5.307](#), [37.5.310](#), [37.5.311](#), [37.5.313](#), [37.5.316](#), [37.5.318](#), [37.5.322](#), [37.5.325](#), [37.5.328](#), [37.5.331](#), [37.5.334](#) and [37.5.337](#).

(2) The provider shall cease operation of the community home pending the fair hearing in those instances where the revocation or suspension of the license is based upon actions that the department has determined are imminent life or health endangering situations.

History: Sec. [53-20-305](#), MCA; [IMP](#), Sec. [53-20-305](#), MCA; [NEW](#), 1983 MAR p. 1839, Eff. 12/16/83; [TRANS](#), from Dept. of SRS, 1987 MAR p. 1492, Eff. 7/1/87; [TRANS](#) & [AMD](#), from DFS, 2000 MAR p. 1653, Eff. 6/30/00.

37.100.320 FIRE, HEALTH AND SAFETY CERTIFICATION (1) Community homes are required by the Montana department of justice to comply with the fire safety requirements and procedures

found in ARM [23.7.110](#). A community home must comply with the certification requirements of ARM [23.7.110](#) to obtain licensure, and during licensure, the community home must remain current on its fire safety certification under ARM [23.7.110](#).

(2) A community home will only be licensed by the department if there is written certification from the local or state health authority that the home meets the following requirements:

(a) For an adequate and potable water supply, a community home must:

(i) connect to a public water supply system approved by the department of environmental quality; or

(ii) for community homes utilizing a non-public water system, the department hereby adopts and incorporates by reference the following circulars prepared by the department of environmental quality:

(A) circular #11 for springs.

(B) circular #12 for water wells.

(C) circular #17 for cisterns.

(D) the circulars mentioned in (A), (B) and (C) set forth the relevant water quality standards and are available from the Department of Environmental Quality, 1520 East Sixth Avenue, Helena, Montana 59620.

(iii) if a non-public water supply is used, submit a water sample for analysis at least quarterly to a laboratory licensed by the department of environmental quality.

(iv) repair or replace the water system when the supply:

(A) contains microbiological contaminants; or

(B) does not have the capacity to provide adequate water for drinking, cooking, personal hygiene, laundry, and water carried waste disposal.

(b) For sewage to be safely disposed of a community home must:

(i) connect to a public sewage system approved by the department of environmental quality; or

(ii) if a non-public system is utilized, the department hereby adopts and incorporates by reference bulletin 332, which sets forth standards for sewage disposal. A copy of bulletin 332 may be obtained from the Department of Environmental Quality, 1520 East Sixth Avenue, Helena, Montana 59620; and

(iii) repair or replace the sewage system whenever:

(A) it fails to accept sewage at the rate of application.

(B) seepage of effluent from or ponding of effluent on or around the system occurs.

(C) contamination of a potable water supply or state waters is traced to the system; or

(D) a mechanical failure occurs.

(c) For solid waste to be safely stored and disposed of a provider must:

(i) store all solid waste between collections in containers which have lids and are corrosion-resistant, flytight, watertight, and rodent-proof.

(ii) clean all solid waste containers as needed; and

(iii) utilize a private or municipal hauler to transport the solid waste at least weekly to a landfill site approved by the department of environmental quality.

(d) For safety and sanitation, a provider must comply with the following structural requirements:

(i) All rooms and hallways must be provided with at least 10 footcandles of light, and bathrooms and areas used for reading must be provided with at least 30 footcandles of light.

(ii) Floors and walls of rooms subject to large amounts of moisture must be smooth and non-absorbent.

(iii) Floor and wall mounted furnishings must be easily moved or mounted in such a way as to allow for easy cleaning.

(iv) Adequate toilet and bathing facilities must be provided:

(A) one toilet and one sink for every six residents.

- (B) one tub and shower for every eight residents.
- (C) drying space for wash cloths and towels; and
- (D) bathing facilities and stairs must be provided with anti-slip surfaces.
- (v) Food preparation facilities must be equipped with at least the following:
  - (A) facilities to adequately wash utensils and equipment.
  - (B) refrigeration equipment capable of maintaining foods at or below 45 E F.
  - (C) cooking facilities.
  - (D) adequate and clean food preparation and storage areas.
  - (E) equipment to ensure all food is transported, stored, covered, prepared and served in a sanitary manner.
- (vi) Separate storage of clean and dirty linen shall be provided.
- (vii) Storage space shall be available for the personal belongings of residents and for food, linen, equipment, and other household supplies.
- (viii) There shall be hot and cold water available in the home. Water temperature for hot water must be limited to 120 E F or below.
- (e) For adequate housekeeping a provider must insure that:
  - (i) the building and grounds are free, to the extent possible, of harborage for insects, rodents, and other vermin.
  - (ii) the floors, walls, ceilings, furnishings, and equipment are in good repair, free of hazards, clean and free from offensive odors.
  - (iii) cleaning equipment and supplies are provided in sufficient quantity to meet housekeeping needs of the facility; and
  - (iv) every provider must have and adhere to a maintenance policy and schedule which describes the regular maintenance of the home and yard. The maintenance policy shall include type of duties, methods and timelines relating to housekeeping, repairs, and general prevention of accidents and health dangers.
- (f) Poisonous compounds shall not be stored in food preparation areas or food storage areas or in any areas where residents may initiate unsupervised contact.
- (g) Drugs shall be stored under proper conditions of sanitation, temperature, light, moisture, ventilation, segregation, and security. Outdated and deteriorated drugs and drugs not being used must be removed and disposed of.
- (h) Use of home canned products other than jams, jellies and fruits is prohibited unless the home is approved as a commercial food processor.
- (3) Local health sanitarians are permitted to charge a reasonable fee for their inspection services to the applicant.

History: Sec. [53-20-305](#), MCA; [IMP](#), Sec. [53-20-305](#), MCA; [NEW](#), 1983 MAR p. 1839, Eff. 12/16/83; [TRANS](#), from Dept. of SRS, 1987 MAR p. 1492, Eff. 7/1/87; [AMD](#), 1993 MAR p. 149, Eff. 1/29/93; [TRANS](#), from DFS, 1998 MAR p. 667.

- 37.100.321 PHYSICAL SITE REQUIREMENTS (1) The community home shall be located to facilitate the use of community resources. If the home is not within walking distance of community shopping, recreational and other community services; transportation shall be available at no cost or an affordable cost to the resident.
- (2) The design, construction and furnishings of the home shall be home-like and encourage a personalized atmosphere for residents.
  - (3) Each bedroom shall be limited to not more than three persons and shall include:
    - (a) floor to ceiling walls.
    - (b) one door which can be closed to allow privacy for residents.

(c) a minimal clear floor space of 7 feet x 9 feet shall be provided for a single bedroom; 13 feet x 9 feet for a double room; and 13 feet x 17 feet for a three-bed room. The space does not include closet space; and

(d) at least one window which can be opened.

(4) Lighting shall be available in all living areas as needed.

(5) A comfortable temperature shall be maintained.

(6) The building exterior and yard shall be in good repair and free from hazards such as protruding sharp objects, uncovered wells and cellars and yard maintenance equipment which may be used inappropriately.

(7) All plumbing fixtures shall be in good repair and properly functioning.

(8) Inspection of the heating system and hot water tank shall be made regularly.

(9) For community homes caring for wheelchair and/or other physically handicapped residents, the department hereby adopts and incorporates by reference the American National Standards: specifications for making buildings and facilities accessible to and usable by physically handicapped people. A copy of the specifications is available from the Department of Public Health and Human Services, Child and Family Services Division, Program Management Bureau, P.O. Box 202951, Helena, Montana 59620-2951.

History: Sec. [53-20-305](#), MCA; [IMP](#), Sec. [53-20-305](#), MCA; [NEW](#), 1983 MAR p. 1839, Eff. 12/16/83; [TRANS](#), from Dept. of SRS, 1987 MAR p. 1492, Eff. 7/1/87; [TRANS](#), from DFS, 1998 MAR p. 667.

### 37.100.322 STAFFING, STAFF RESPONSIBILITIES AND QUALIFICATIONS (1) The provider shall

have a sufficient number of appropriately qualified staff to supervise, care for, and train residents.

(2) There shall be a minimum of one staff person present who is directly responsible for resident care and activities when any resident is in the home. This requirement is not applicable if the resident or residents present in the home have been determined by their individual habilitation planning team to be competent in self-care in such situations.

(3) There shall be a minimum of one appropriately trained person who is directly responsible for planning, implementing, and reviewing each community home service and residents' program.

(4) The provider shall employ no staff person who has impairments to his/her ability to protect the health and safety of the residents or who would endanger the physical or psychological well being and progress of the residents.

(5) The provider shall provide an orientation for each new employee during the first week of employment. This orientation shall include familiarization with the residents and the rules of the home, behavior deceleration programs, medical concerns of clients and emergency procedures.

(6) The provider shall provide training for each new employee within the first 30 days of employment. This training shall include:

(a) familiarization with the residents and the community home's philosophy, organization, policies, activities, programs, practices, and goals.

(b) first aid, emergency procedures and accident prevention techniques.

(c) the implementation of the normalization principle.

(d) knowledgeable and tactfully dealing with residents, relatives or guardians and visitors.

(e) meeting needs of residents through care, supervision, and training skills.

(f) attaining skill areas in which the employee has not reached the level of competence for the job.

(g) description of duties, responsibilities, limitations of authority and principal measures of accountability and performances.



(h) rights of residents which include at a minimum those rights as defined by the client's rights policy of the developmental disabilities program of the department of public health and human services (DD 441); and

(i) aversive and deprivation procedures policy as defined by the developmental disabilities program of the department of public health and human services (DD 442).

(7) The provider annually shall provide or obtain continuing training and education of the information listed in (5) and (6) (a) through (i) above for each direct care staff.

(8) The provider shall provide documentation and attendance records of training and orientation provided for all new and continuing employees. Agendas, general outlines, narratives, and other descriptions may be provided to describe the type of content of said training activities.

History: Sec. [53-20-305](#), MCA; [IMP](#), Sec. [53-20-305](#), MCA; [NEW](#), 1983 MAR p. 1839, Eff. 12/16/83; [TRANS](#), from Dept. of SRS, 1987 MAR p. 1492, Eff. 7/1/87; [TRANS](#), from DFS, 1998 MAR p. 667.

37.100.325 RESIDENT SUPPLIES AND EQUIPMENT (1) The provider shall provide the following:

(a) a separate bed of proper size and height for the resident.

(b) clean, comfortable mattress and appropriate bedding which shall be changed as needed and at least once a week.

(c) appropriate furnishings for storage of personal belongings, i.e., a chest of drawers.

(d) access to a mirror.

(e) curtains or window shades which provide privacy.

(f) tables, chairs, sofas, lamps, and other furnishings in a common living area for family-like comfort and use.

(g) at least two towels and wash cloths per resident, which are changed as needed and at least twice a week; and

(h) personal supplies and other hygienic necessities whenever the resident does not have the ability to provide these supplies.

(2) The provider shall insure that clothing purchase and care includes:

(a) clothing which is appropriate to the chronological ages considering personal choice; and

(b) clothing, which is of good quality, appropriate size, seasonable and in good repair.

History: Sec. [53-20-305](#), MCA; [IMP](#), Sec. [53-20-305](#), MCA; [NEW](#), 1983 MAR p. 1839, Eff. 12/16/83; [TRANS](#), from Dept. of SRS, 1987 MAR p. 1492, Eff. 7/1/87; [TRANS](#), from DFS, 1998 MAR p. 667.

37.100.330 RIGHTS (1) Intervention for the purposes of training shall be the least intrusive into, and the least disruptive of, the person's life and represent the least departure from normal patterns of living that can be effective in meeting developmental needs.

(2) The residents shall not be subjected to treatment of a manner which:

(a) includes abuse or neglect; and/or

(b) limits individual rights without due process.

(3) The utilization in training of aversive procedures or of procedures infringing upon individual rights must meet the approval of the developmental disabilities program of the department of public health and human services and must be presented in writing to the licensing worker.

History: Sec. [53-20-305](#), MCA; [IMP](#), Sec. [53-20-305](#), MCA; [NEW](#), 1983 MAR p. 1839, Eff. 12/16/83; [TRANS](#), from Dept. of SRS, 1987 MAR p. 1492, Eff. 7/1/87; [TRANS](#), from DFS, 1998 MAR p. 667.

37.100.331 HEALTH CARE (1) The provider shall assure each individual of appropriate health care by providing or arranging for:

- (a) a primary physician for each resident to provide for health needs.
- (b) at least an annual health check-up.
- (c) a primary dentist for each resident for at least annual check-ups.
- (d) family planning, counseling, mental health and other consultation when appropriate.
- (e) medication administration through the procedures listed in [53-20-204](#) (2) , MCA, and as prescribed;
- (f) modified and therapeutic diets as prescribed.
- (g) procedures for the detection of signs of injury, disease, abuse and emergency medical care.
- (h) drinking water throughout each day.
- (i) a variety of foods which meet the nutritional needs of the residents adjusted for age, sex and activity.
- (j) developing, reviewing, and recording weekly menus of meals served.
- (k) adequate meals in a family style manner, as appropriate to the individual residents, three times a day.
- (l) snacks at appropriate times each day.
- (m) a shower or tub bath daily at the most independent level possible and with due regard for privacy.
- (n) residents to brush their teeth daily; and
- (o) written procedures for emergency medical care.

History: Sec. [53-20-305](#), MCA; [IMP](#), Sec. [53-20-305](#), MCA; [NEW](#), 1983 MAR p. 1839, Eff. 12/16/83; [TRANS](#), from Dept. of SRS, 1987 MAR p. 1492, Eff. 7/1/87; [TRANS](#), from DFS, 1998 MAR p. 667.

37.100.335 RESIDENTS MONEY AND PERSONAL PROPERTY (1) The provider shall insure that the resident's personal money and personal property is not appropriated or misused by any other person or by the provider and its staff.

- (2) The provider is responsible for the accurate preparation and maintenance of a written record of each resident's personal property and personal money.
- (3) The provider will keep a current monthly record of each resident's income and sources of income. The monthly expenses, including room and board, for the provider will be determined at the time of admission and will be shown monthly as a deduction from the resident's income received.

History: [53-20-305](#), MCA; [IMP](#), [53-20-305](#), MCA; [NEW](#), 1983 MAR p. 1839, Eff. 12/16/83; [TRANS](#), from Dept. of SRS, 1987 MAR p. 1492, Eff. 7/1/87; [TRANS](#), from DFS, 1998 MAR p. 667.

37.100.340 RECORD KEEPING (1) The provider shall maintain a written record at the community home for each resident which shall include detailed administrative, training, and educational data. The resident's record shall include at least the following:

- (a) name, sex, birthdate, address, parents/relatives, guardianship, other vital statistics, admission and discharge.
- (b) nature of the resident's difficulties.
- (c) services needed by the resident and his/her family.
- (d) the treatment plan, goals of the plan, and anticipated duration of treatment and training.
- (e) measures taken to implement the plan, i.e. individual training programs;

- (f) evaluation of the services the resident received.
- (g) health records, psychiatric and psychological reports, educational information, assessments, official documentation, and financial arrangements including resident's income and expenditures related to services provided to resident.
- (h) resident's activities and incident reports.
- (2) Other written records kept at the community home shall include:
  - (a) fire safety requirements and compliance; evacuation of residents and staff; fire safety plans and results of monthly fire drills; and
  - (b) a list of social service and other service personnel involved with the residents.
- (3) The provider administrative file shall be maintained and shall be available upon request of the department. It shall contain at least the following current information and documents:
  - (a) governing structure including articles of incorporation and by-laws or other legal basis of existence;
  - (b) name and position of persons authorized to sign agreements of official documentation.
  - (c) board structure and composition with names, addresses and terms of membership.
  - (d) existing purchase of service agreements.
  - (e) insurance coverage.
  - (f) procedure for notifying parties of changes in facility's policy and programs.
  - (g) a current organizational chart.
  - (h) current written job descriptions for all employees, and the names of persons presently employed in those positions.
  - (i) records of orientation and training for each employee.
  - (j) personnel and programmatic policies and procedures; and
  - (k) written grievance procedures which are available to residents and staff.
- (4) All entries shall be in ink or indelible pencil, prepared at the time or immediately following the occurrence of the event being recorded, be legible, dated and signed by the person making the entry.
- (5) The provider is responsible for the accurate preparation, maintenance and storage of all residents, personal and home records.
- (6) The provider shall assure that all resident records are confidential in accordance with all applicable laws and rules and departmental policy.
- (7) Records for residents who have been released from the home shall be transferred with the resident or stored by the provider for a period of 5 years following the release.
- (8) When the home ceases operation, the provider shall notify the department in writing as to the location and storage of resident records.

History: Sec. [53-20-305](#), MCA; [IMP](#), Sec. [53-20-305](#), MCA; [NEW](#), 1983 MAR p. 1839, Eff. 12/16/83; [TRANS](#), from Dept. of SRS, 1987 MAR p. 1492, Eff. 7/1/87; [TRANS](#), from DFS, 1998 MAR p. 667.