

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 37.106.2602, 37.106.2603,) PROPOSED AMENDMENT AND
37.106.2606, 37.106.2609,) REPEAL
37.106.2616, 37.106.2620, and)
37.106.2621 and the repeal of ARM)
37.106.2608 pertaining to adult day)
care facilities)

TO: All Concerned Persons

1. On September 12, 2024, at 2:00 p.m., the Department of Public Health and Human Services will hold a public hearing via remote conferencing to consider the proposed amendment and repeal of the above-stated rules. Interested parties may access the remote conferencing platform in the following ways:

(a) Join Zoom Meeting at: <https://mt-gov.zoom.us/j/87079726876?pwd=unTm5ZTli1SOB88RyCaRZkUeu40Zbb.1>, meeting ID: 870 7972 6876, and password: 922811; or

(b) Dial by telephone: +1 646 558 8656, meeting ID: 870 7972 6876, and password: 922811. Find your local number: <https://mt-gov.zoom.us/j/87079726876?pwd=unTm5ZTli1SOB88RyCaRZkUeu40Zbb.1>.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Public Health and Human Services no later than 5:00 p.m. on August 29, 2024, to advise us of the nature of the accommodation that you need. Please contact Bailey Yuhas, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail hhsadminrules@mt.gov.

3. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

37.106.2602 GENERAL SERVICES, ADMINISTRATION AND STAFFING

(1) An adult day care center shall provide ~~the staff assistance to clients that each requires for~~ with activities of daily living, including but not limited to eating, walking, and grooming.

(2) remains the same.

(a) the other facility may provide to day care clients any of the services for which the other facility is licensed, subject to the limitation that overnight service to an adult day care client may be provided for no more than seven successive nights is prohibited;

(b) and (c) remain the same.

(3) An adult day care center ~~that is not operated on the premises of another licensed health care facility~~ may not provide overnight service.

(4) and (5) remain the same.

(6) There must be a written agreement between the center and each client or ~~other person responsible for the client~~ the client's legal representative pertaining to cost of care, type of care, services to be provided, and the manner by which the responsible party will be notified of significant changes in the client's condition and the need to seek emergency care for the client.

(7) ~~The family member or other person responsible for~~ legal representative of a client must be notified promptly if the client is removed from the center. A notation of the date of the contact and the person contacted must be made in the client's record.

(8) Each client must have access to a telephone ~~at a convenient location within the center.~~

(9) and (10) remain the same.

(11) Each adult day care center must employ ~~a manager~~ an administrator who must be in good physical and mental health, be of reputable and responsible moral character, and exhibit concern for the safety and well being of clients, and who:

(a) is at all times responsible for the center and ensures appropriate supervision of the clients; and

~~(b) has completed high school or has a general education development (GED) certificate;~~

~~(c)~~(b) has knowledge of and the ability to conform to the applicable laws and rules governing adult day care centers; ~~and~~

(12) The owner of an adult day care center who meets the qualifications listed in (11) ~~above~~ may serve as the ~~manager~~ administrator.

(13) The ~~manager~~ administrator must:

(a) through (f) remain the same.

(g) comply with the provisions of the Montana ~~Elder and Developmentally Disabled Abuse Prevention~~ Vulnerable Adult Prevention of Abuse Act, 52-3-801 et seq., MCA;

(h) remains the same.

(i) maintain a personnel record for each employee, including for substitute personnel, that meets the requirements of ARM 37.106.2620(3), and retain it for at least one year after the employee terminates employment; and

~~(j) maintain a list of the names, addresses, and telephone numbers of all employees, including substitute personnel, and ensure that all such lists for the prior 12 months are retained on the premises; and~~

~~(k)~~(j) maintain an ongoing census of clients, documenting their attendance, and retain census data covering at least the past 12 months.

(14) through (17) remain the same.

AUTH: 50-5-103, MCA

IMP: 50-5-103, MCA

37.106.2603 POLICIES AND PROCEDURES (1) through (1)(c)(iii) remain the same.

(iv) a disaster and fire plan meeting the requirements of ARM ~~37.106.2608 37.106.322~~.

(2) remains the same.

AUTH: 50-5-103, MCA

IMP: 50-5-103, MCA

37.106.2606 CONSTRUCTION (1) and (2) remain the same.

~~(3) An adult day care center must meet the water supply system requirements of ARM 37.111.115 and the sewage system requirements of ARM 37.111.116.~~

~~(4)(3)~~ The department hereby adopts and incorporates by reference ARM ~~37.111.115~~ 37.111.110, which sets forth requirements for construction and maintenance of water supply systems, and ARM 37.111.116, which sets forth requirements for construction and maintenance of sewage systems. ~~Copies of the materials cited above are available from the Department of Public Health and Human Services, Quality Assurance Division, 2401 Colonial Drive, P.O. Box 202953, Helena, MT 59620-2953.~~

AUTH: 50-5-103, MCA

IMP: 50-5-103, MCA

37.106.2609 INFECTION CONTROL ~~(1) An adult day care center must ensure that each of its employees provides the center, prior to the time of employment, with documentation from a physician stating that the employee is free from communicable tuberculosis, and with the same documentation annually thereafter.~~

~~(2) The center must ensure that, on the first day of service and annually thereafter, each client in that center provides documentation from a physician showing that the client is free from communicable tuberculosis.~~

(3) remains the same but is renumbered (1).

(a) Any employee contracting a communicable disease that is transmissible to clients through food handling or personal care may not appear at work until the infectious disease can no longer be transmitted. The decision to return to work must be made by the ~~manager~~ administrator in accordance with the policies and procedures instituted by the center; and

(b) If, after admission, a client is suspected of having a communicable disease that would endanger the health and welfare of other clients, the ~~manager~~ administrator shall contact the client's physician and shall ensure that appropriate safety measures are taken on behalf of that client and the other clients.

AUTH: 50-5-103, MCA

IMP: 50-5-103, MCA

37.106.2616 FOOD SERVICE (1) through (1)(b) remain the same.

- (c) three meals per 24 16-hour period ~~to overnight clients~~.
- (2) and (3) remain the same.
- (4) Foods must be served in such amounts and in such a variety to meet the nutritional needs of each client.
- (5) remains the same.
- (6) Potentially hazardous food, such as meat and milk products, must be stored at ~~45~~ 41°F or below. Hot food must be kept at 140°F or above during preparation and serving.
- (7) Freezers must be kept at a temperature of 0°F or below and refrigerators must be kept at a temperature of ~~45~~ 41°F or below. Thermometers must be placed in the warmest area of the refrigerator and freezer to assure proper temperature.
- (8) through (12) remain the same.

AUTH: 50-5-103, MCA

IMP: 50-5-103, MCA

37.106.2620 CLIENT AND PERSONNEL RECORDS (1) and (2) remain the same.

- (3) The center must maintain a personnel record for each employee, ~~including for substitute personnel~~, that includes at least the following:
 - (a) employment application or contract;
 - (b) ~~employment contract~~ orientation;
 - (c) ~~TB test records~~;
 - (d) ~~references~~;
 - (e)(c) performance appraisals, if applicable; and
 - (f)(d) a description of any significant incident involving both the employee and a client and its consequences.

AUTH: 50-5-103, MCA

IMP: 50-5-103, MCA

37.106.2621 MEDICATIONS (1) and (2) remain the same.

- (3) The center must maintain for each client a medication administration record listing all medications ~~used and all doses taken or not taken by the client administered and those that are refused or not administered~~.

AUTH: 50-5-103, MCA

IMP: 50-5-103, MCA

- 4. The department proposes to repeal the following rule:

37.106.2608 DISASTER AND FIRE PLAN

AUTH: 50-5-103, MCA

IMP: 50-5-103, MCA

- 5. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) is proposing to amend ARM 37.106.2602, 37.106.2603, 37.106.2606, 37.106.2609, 37.106.2616, 37.106.2620, and 37.106.2621. The department is proposing to repeal ARM 37.106.2608.

The adult day care administrative rules have not had a full subchapter review and update since 2002. In review of this subchapter, amendment to several rules is required to bring licensure requirements up to current standards and practices. Additionally, the repeal of ARM 37.106.2608 is proposed since adult day care facilities already have disaster and fire plan requirements set forth in ARM 37.106.322, minimum standards for all health care facilities.

ARM 37.106.2602

The department proposes amendment to this rule to replace the language pertaining to the requirements of assistance with the language of activities of daily living and overnight stays. Overnight stays are removed to align with the definition of an adult day care facility found in 50-5-101, MCA. The amendments also change "person responsible for client" to "client's legal representative," and "manager" to "administrator." These revised terms are the most used among health care and residential settings, and reflect current usage. Amendment is needed to (13)(g) to update the title of the law that is referenced, and removal of (13)(j) is proposed as there are separate requirements for staff files.

ARM 37.106.2603

The department proposes amendment to this rule to refer the disaster and fire plan requirements to the minimum standards for all health care facilities disaster and fire plan requirements located in ARM 37.106.322. This is necessary to provide consistency of expectations throughout all health care facilities.

ARM 37.106.2606

The department proposes amendment to this rule to combine the requirement to adhere to water supply and sewage systems requirements found in ARM Title 37, chapter 111, subchapter 1, instead of having two separate rules requiring the compliance with the rules. Since regulations are available online, the department proposes to remove the portion of the regulation that indicates that a copy of the cited materials can be requested from the department.

ARM 37.106.2608

The department proposes repeal of this rule. Disaster and fire planning is addressed in ARM Title 37, chapter 106, subchapter 3, under Minimum Standards for All Health Care Facilities, which is applicable to adult day care facilities. The minimum requirements are listed in that subchapter and are either repeated here or directly conflict with the requirements listed in ARM 37, chapter 106, subchapter 3. Repeal of this rule allows for consistency by using the minimum standards for all health care facilities.

ARM 37.106.2609

The department proposes amendment to this rule to remove the requirement for staff and client initial and annual tuberculosis screening and testing. Pursuant to Centers for Disease Control and Prevention (CDC) guidelines, annual TB screening and testing are not recommended unless there is a known exposure or ongoing transmission at a health care facility. Montana is listed as low risk, with the most recent data showing three cases in 2021.

Further, the department proposes to amend ARM 37.106.2609 to remove the reference to a "manager" and replace it with "administrator," referencing the most commonly used term.

ARM 37.106.2616

The department proposes amendment to this rule to require facilities to provide three meals per day for a client of an adult day care facility that remains at the facility for 16 hours or more. Section 50-5-101, MCA specifies adult day care facilities serve clients who do not remain at the facility overnight, so that terminology would be removed from (1)(c), to bring the rule into compliance with the statute. Further, the department proposes amendment to this rule to change the maximum temperature of a refrigerator in which food is kept from 45 to 41 degrees Fahrenheit. This would reflect current standards of food sanitation. Some additional wording changes are proposed for clarity.

ARM 37.106.2620

The department proposes amendment to this rule to update the required materials that must be found in client and staff files. The department removes the specific "substitute personnel" from the rule as the criteria must be for all personnel regardless of how often or when they work. The department proposes to add "employment contract" to (3)(a) after "application" as this would be one or the other, not both. The department also proposes to add orientation to (3)(b); it is important to document that staff are oriented to providing services to clients served at the adult day care facility. "If applicable" would be added to "performance appraisals," to coincide with standards that performance reviews/appraisals are not routinely done.

ARM 37.106.2621

The department proposes amendment to this rule to make clearer the requirement of documentation on the medication administration record. Medication that is administered, and medication that is missed or refused, would be documented on the medication administration record.

Fiscal Impact

These proposed rule amendments and repeal have no fiscal impact.

6. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be

submitted to: Bailey Yuhas, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail hhsadminrules@mt.gov, and must be received no later than 5:00 p.m., September 20, 2024.

7. The Office of Legal Affairs, Department of Public Health and Human Services, has been designated to preside over and conduct this hearing.

8. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 6 above.

9. An electronic copy of this notice is available on the department's web site at <https://dphhs.mt.gov/LegalResources/administrativerules>, or through the Secretary of State's web site at rules.mt.gov.

10. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

11. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment and repeal of the above-referenced rules will not significantly and directly impact small businesses.

/s/ Flint Murfitt
Flint Murfitt
Rule Reviewer

/s/ Charles T. Brereton
Charles T. Brereton, Director
Department of Public Health and Human
Services

Certified to the Secretary of State August 13, 2024.