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## Gallatin City-County Health Department

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### EMERGENCY LOCAL HEALTH RULE RELATING TO COVID-19

EHR-2020-006

#### VISITATION AT NURSING HOMES, SKILLED NURSING FACILITIES, AND SENIOR AND ASSISTED LIVING FACILITIES

WHEREAS, a state of emergency exists in Montana due to the global outbreak of the COVID19 Novel Coronavirus;

WHEREAS, COVID-19 is a respiratory disease that can result in serious illness or death and can easily spread from person-to-person;

WHEREAS, the Centers for Disease Control and Prevention (CDC) identifies the potential public health threat posed by COVID-19 both globally and in the United States as "high" and has advised that person-to-person spread of the COVID-19 will continue to occur globally, including within the United States, Montana, and Gallatin County, Montana;

WHEREAS, the circumstances of this outbreak may exceed the capacity of the services, personnel, equipment, supplies and facilities of Gallatin County if proactive measures are not continued to mitigate and limit the spread of COVID-19 infections in the community;

WHEREAS, during the course of the pandemic, Montana Governor Steve Bullock has issued various directives to implement Executive Orders 2-2020 and 3-2020 declaring a state of emergency in Montana;

WHEREAS, through an initial March 15, 2020 directive, Governor Bullock suspended all non-essential visitation to nursing home facilities, except for certain compassionate care situations deemed as essential visitation (e.g. end of life);

WHEREAS, Governor Bullock issued directives on April 22, 2020 and May 19, 2020 establishing guidance and conditions for the phased reopening of businesses in Montana for Phases One and Two;

WHEREAS, under both the April 22<sup>nd</sup> and May 19<sup>th</sup> Directives, senior living and assisted living facilities were required to prohibit non-essential visitation;

WHEREAS, on May 1, 2020 and May 28, 2020, the Gallatin City-County Board of Health ("Board") approved Emergency Local Health Rules (EHR) 2020-003 and 2020-004, respectively, which adopted the guidance and conditions in Governor Bullock's Directives for the reopening of businesses in Gallatin County during Phases One and Two;



WHEREAS, the Gallatin City-County Health Officer (“Health Officer”) similarly issued Health Officer Orders (HO) 2020-003 and 2020-005 on May 1 2020 and May 28, 2020, respectively, to apply the guidance and conditions in the Governor’s Directives and Emergency Local Health Rules to the reopening of businesses in Gallatin County;

WHEREAS, under said Emergency Health Rules and the Health Officer Orders, and consistent with the Governor’s Directives, non-essential visitation at senior living and assisted living facilities remained prohibited in Gallatin County during Phases One and Two;

WHEREAS, on June 25, 2020, Governor Bullock issued a Directive permitting limited visitation of nursing homes, skilled nursing facilities, and senior and assisted living facilities in a manner consistent with guidance issued by the CDC and the Centers for Medicare and Medicaid Services (CMS);

WHEREAS, in permitting the limited visitation, the June 25<sup>th</sup> Directive recognized that, during the time that visitation was suspended, “residents of Montana’s senior and assisted living facilities have been physically isolated from their family and friends”;

WHEREAS, after a significant outbreak occurred at an assisted living facility in Yellowstone County, the Montana Department of Public Health and Human Services (DPHHS) adopted emergency rules establishing strict infection control protocols and testing requirements for assisted living facilities;

WHEREAS, on July 13, 2020, Governor Bullock issued a directive to bring his June 25<sup>th</sup> Directive in alignment with the DPHHS emergency rules and to require nursing homes and skilled nursing facilities to comply with CDC and CMS guidance to prevent further outbreaks;

WHEREAS, the July 13<sup>th</sup> Directive recognizes that “Montanans in nursing homes, skilled nursing facilities, and senior and assisted living facilities include many of those who are at the highest risk of developing serious complications from COVID-19 infection”;

WHEREAS, non-essential visitation at nursing homes, skilled nursing facilities, and senior assisted living facilities in Gallatin County remains prohibited during Phase Two pursuant to EHR 2020-003 and 2020-004 and HO-2020-003 and 2020-005;

WHEREAS, pursuant to § 50-2-116(1)(f), MCA, the Gallatin City-County Board of Health (Board) has the duty to “identify, assess, prevent, and ameliorate conditions of public health importance through: (i) epidemiological tracking and investigation; (ii) screening and testing; (iii) isolation and quarantine measures; (iv) diagnosis, treatment, and case management; (v) abatement of public health nuisances; (vi) inspections; (vii) collecting and maintaining health information; (viii) education and training of health professionals; or (ix) other public health measures as allowed by law”;

WHEREAS, § 50-1-101(2), MCA, defines a “condition of public health importance” as “a disease, injury, or other condition that is identifiable on an individual or community level and that can reasonably be expected to lead to adverse health effects in the community;”

WHEREAS, the Board also has the duty pursuant to § 50-2-116(1)(g), MCA, to “protect the public from the introduction and spread of communicable disease or other conditions of public health importance, including through actions to ensure the removal of filth or other contaminants that might cause disease or adversely affect public health”;

WHEREAS, pursuant to § 50-2-118, MCA, a local health officer in carrying “out the purpose of the public health system . . . shall . . . (2) take steps to limit contact between people in order to protect the public health from imminent threats, including but not limited to ordering the closure of buildings or facilities where people congregate and cancelling events”, and “(5) pursue action with the appropriate court if this chapter or rules adopted by the local board or department under this chapter are violated”;

WHEREAS, per Chapter 1, Section 5 of the Gallatin City-County Health Code, the Board may adopt an Emergency Local Health Rule when it finds the rule: (1) “must be adopted to deal with an emergency situation affecting the public, health, safety, or welfare;” (2) “the emergency cannot be averted or remedied by any other administrative act;” and (3) at least two-thirds of the Board votes to approve the rule;

WHEREAS, per Section 50-2-116, MCA, COVID-19 is a condition of public health importance identifiable in the community and that can reasonably be expected to lead to significant adverse health effects for those most vulnerable to severe complications from COVID-19 infection, including residents at nursing homes, skilled nursing facilities, and senior and assisted living facilities in Gallatin County;

WHEREAS, the Board desires to adopt this Emergency Local Health Rule to allow limited visitation at nursing homes, skilled nursing facilities, and senior and assisted living facilities consistent with Governor Bullock’s July 13<sup>th</sup> Directive;

WHEREAS, the Board also desires to require these facilities to certify their compliance with CDC and CMS guidance before permitting visitation and to clarify that, if there has been a recent case of COVID-19 within the nursing home, visitation will be suspended for a period of time to reduce the risk of disease spread; ;

WHEREAS, this Emergency Health Rule also allows for the imposition of the criminal penalties provided at § 50-2-124, MCA, in addition to the civil remedies available; and

WHEREAS, for the foregoing reasons, the Board finds, pursuant to Chapter 1, Section 5 of the Gallatin City-County Health Code, that this Emergency Health Rule 2020-006 must be adopted to deal with an emergency situation affecting the public health, safety, or welfare, and this emergency cannot be averted or remedied by any other administrative act.

**NOW, THEREFORE, EFFECTIVE IMMEDIATELY, THE FOLLOWING EMERGENCY LOCAL HEALTH RULE IS ADOPTED:**

1. Nursing homes and skilled nursing facilities may allow visitors provided they comply with the following conditions and first give notice of the following safeguards to residents and family members:

- a. Visitation must be conducted in accordance with the strict screening, physical distancing, sanitation, hygiene, and other infection control protocols set forth in the CMS<sup>1</sup> and CDC<sup>2</sup> guidance applicable to nursing homes. All suggestive or recommended protocols therein (e.g. guidance using the term “should”) shall be construed and applied as mandatory requirements.
  - b. Before permitting visitation, facilities must review the applicable CDC and CMS guidance and certify in writing to the Gallatin City-County Health Department that they are able to follow and will comply with the recommendations contained therein. That written certification shall include a detailed summary demonstrating how the facility intends to implement policies and procedures in order to fulfill requirements related to COVID-19 testing, supply management and use of personal protective equipment, and implementation of screening and control measures set forth by the Montana Department of Health and Human Services in its July 13 Notice of Adoption of Temporary Rules relating to limiting exposure in assisted living facilities.
  - c. If there has been a recent case of COVID-19 within the nursing home, visitation will be suspended until there have been no new, nursing home onset COVID cases for 28 days. If a resident or staff member tests positive for COVID-19, visitation must be suspended until all residents and staff test negative for COVID-19 for a period of 28 days.
2. Assisted living facilities may allow visitors provided they comply with the following conditions and first give notice of the following safeguards to residents and family members:
    - a. Visitation must be conducted in accordance with the strict screening, physical distancing, sanitation, hygiene, and other infection control protocols set forth in the July 13, 2020 Notice of Adoption of Temporary Emergency Rules issued by DPHHS.<sup>3</sup> Before permitting visitation, facilities must certify in writing to the Gallatin City-County Health Department that they are able to follow and will comply with the protocols contained therein. That written certification shall include a detailed summary demonstrating how the facility intends to implement policies and procedures in order to fulfill requirements related to COVID-19 testing, supply management and use of personal protective equipment, and implementation of screening and control measures set forth by the Montana Department of Health and Human Services in its July 13 Notice of Adoption of Temporary Rules relating to limiting exposure in assisted living facilities.
    - b. Before resuming visitation, all facilities must have conducted—at a minimum—a single baseline COVID-19 test of all residents and staff (including volunteers and vendors who are in the facility on a weekly basis), and the facilities must have implemented an internal plan for weekly re-testing of all staff.

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<sup>1</sup> The CMS guidance, Ref. QSO-20-30-NH, is available at <https://www.cms.gov/files/document/qso-20-30-nh.pdf-0>.

<sup>2</sup> The CDC guidance is available at <https://www.cdc.gov/coronavirus/2019-ncov/hcp/long-term-care.html>.

<sup>3</sup> The Temporary Emergency Rules, Ref. Mont. Admin. Reg. Notice 37-924 are available at <http://www.mtrules.org/gateway/ShowNoticeFile.asp?TID=9907>.

- c. If there has been a recent case of COVID-19 within the assisted living facility, visitation will be suspended until there have been no new, nursing home onset COVID cases for 28 days. If a resident or staff member tests positive for COVID-19, visitation must be suspended until all residents and staff test negative for COVID-19 for a period of 28 days.
- d. Independent Senior Living Facilities may follow the state and local guidelines for Assisted Living Facilities, but may relax those guidelines to reflect the needs of the residents and staff of their particular Facility, while otherwise following other general state and local guidelines related to Covid-19.

**Scope and Enforcement**

1. Violations of this Emergency Rule may be enforced pursuant to Sections 50-2-118, 50-2-123 and 50-2-124, MCA, which state:

**50-2-118. Powers and duties of local health officers.** In order to carry out the purpose of the public health system, in collaboration with federal, state, and local partners, local health officers or their authorized representative shall:

- (5) pursue action with the appropriate court if this chapter or rules adopted by the local health board or department under this chapter are violated.

**50-2-123. Compliance order authorized.** If a person refuses or neglects to comply with a written order of a state or local health officer within a reasonable time specified in the order, the state or local health officer may cause the order to be complied with and initiate an action to recover any expenses incurred from the person who refused or neglected to comply with the order. The action to recover expenses shall be brought in the name of the city or county.

**50-2-124. Penalties for violations.** (1) A person who does not comply with rules adopted by a local board is guilty of a misdemeanor. On conviction, the person shall be fined not less than \$10 or more than \$200.

(2) Except as provided in 50-2-123 and subsection (1) of this section, a person who violates the provisions of this chapter or rules adopted by the department under the provisions of this chapter is guilty of a misdemeanor. On conviction, the person shall be fined not less than \$10 or more than \$500 or be imprisoned for not more than 90 days, or both.

(3) Each day of violation constitutes a separate offense.

(4) Fines, except justice's court fines, must be paid to the county treasurer of the county in which the violation occurs.

2. This Rule expires ninety (90) days after the date of its adoption, as set forth below.

3. This Emergency Rule shall control in the case of any conflict with an existing rule of the Board or an existing order of the Gallatin City-County Health Officer.
4. Notwithstanding the foregoing, if the Gallatin City-County Health Officer issues an Order following the adoption of this Emergency Rule regarding visitation at any facility that is listed in this regulation, the regulation with more stringent restrictions shall control.

**Severability**

If any provision of this Emergency Rule, in whole or in part, is found to be invalid by a court of competent jurisdiction, such decision will not affect the validity of the remaining provisions of this Rule.

DATED this 27<sup>th</sup> day of August, 2020.

  
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Becky Franks, Chair  
Gallatin City-County Board of Health

ATTEST:   
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Eric Semerad, Clerk & Recorder