SECOND EXTENSION AND AMENDMENT OF EMERGENCY LOCAL HEALTH RULE RELATING TO COVID-19

EHR-2020-006-B

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

WHEREAS, a state of emergency continues to exist in Montana and Gallatin County due to the global outbreak of the COVID-19 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 the outbreak will exceed the capacity of the services, personnel, equipment, supplies and facilities of Gallatin County if proactive measures are not instituted to mitigate and limit the spread of COVID-19 infections in the community;

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

WHEREAS, on June 25 and July 13, 2020, Governor Bullock issued Directives permitting limited visitation at 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 25th 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, the July 13th Directive acknowledged 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, on August 27, 2020, the Gallatin City-County Board of Health (“Board”) adopted Emergency Local Health Rule (EHR) 2020-006, limiting visitation at nursing homes, skilled
nursing facilities, and senior and assisted living facilities consistent with Governor Bullock’s June 25th and July 13th Directives;

WHEREAS, EHR-2020-006 also required these facilities to certify their compliance with CDC and CMS guidance before permitting visitation and clarified that, should a resident or staff member test positive for COVID-19, non-essential visitation must be temporarily suspended;

WHEREAS, EHR-2020-006 also allowed for the imposition of the criminal penalties provided at § 50-2-124. MCA. in addition to the civil remedies available under law;

WHEREAS, pursuant to Section 5.2 of Chapter 1, Gallatin City-County Health Code, EHR-2020-006 was set to expire ninety days after its adoption, on November 25, 2020;

WHEREAS, through EHR-2020-006-A, the Board readopted and extended EHR-2020-006 for an additional ninety-day period, ending on February 4, 2021;

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 § 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, especially those residing at nursing homes, skilled nursing facilities, and senior and assisted living facilities;

WHEREAS, the daily 7-day rolling average of COVID-19 cases reported in the United States reached a high point of the pandemic in January, with an average of more than 240,000 cases reported each day;

WHEREAS, the death toll of people infected with COVID-19 in the United States surpassed an average of 3,200 deaths per day in January as calculated using a 7-day rolling average;

WHEREAS, hospital and health care facilities in several regions of the United States have reached or exceeded patient capacity, creating staffing and resource shortages and imperiling the quality of care of the healthcare system;

WHEREAS, the number and rate of deaths in Gallatin County has increased through the autumn and winter, and at least 41 people diagnosed COVID-19 have died in Gallatin County, the large majority occurring since October 1, 2020;

WHEREAS, recent scientific evidence estimates that more than half of all COVID-19 cases are spread by people with no symptoms of the disease, a characteristic of the virus that allows it to spread more rapidly and readily;

WHEREAS, uncontrolled spread of COVID-19 in the community leads to increased hospitalizations and deaths and makes it difficult or impossible to prevent spread in nursing homes, assisted living facilities, and other institutions that care for people at high risk;

WHEREAS, Gallatin County is experiencing an increase in the number of laboratory-confirmed cases of COVID-19 and the surge in cases is expected to increase during the winter months;

WHEREAS, the Board therefore desires to readopt and extend EHR-2020-006 for an additional ninety-day period, expiring April 20, 2020;

WHEREAS, readopting and extending EHR-2020-006 is necessary to help protect the most vulnerable individuals in Gallatin County who reside at nursing homes, skilled nursing facilities, and senior and assisted living facilities from the increasing community spread of the virus;

WHEREAS, the Board also desires to amend EHR-2020-006 to recognize revised guidance issued by the Centers for Medicare and Medicaid Services (CMS) for visitation at nursing homes, which allows visitation to resume if at least 14 days, rather than 28 days, have passed since either a staff member or resident has tested positive for COVID-19;

WHEREAS, for the foregoing reasons, the Board finds, pursuant to Chapter 1, Section 5 of the Gallatin City-County Health Code, that Emergency Local Health Rule 2020-006 must be amended and extended 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.

EHR-2020-006-B
Page 3 of 4
NOW, THEREFORE, EFFECTIVE IMMEDIATELY, EMERGENCY LOCAL HEALTH RULE 2020-006 is amended and extended as follows:

1. Section 1(c) is amended as follows, with deletions in strike-through and additions underlined:

   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 2814 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 2814 days.

2. Section 2(c) is amended as follows, with deletions in strike-through and additions underlined:

   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 assisted living onset COVID cases for 2814 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 2814 days.

3. EHR-2020-006, as amended by this EHR-2020-006-B, is extended for an additional ninety (90) days, ending on April 20, 2021.

4. All other provisions of EHR 2020-006, not amended by this EHR-2020-006-B, remain in full force and effect.

DATED this 20th day of January, 2021.

Becky Franks, Chair
Gallatin City-County Board of Health

ATTEST:

Eric Semerad, Clerk & Recorder