

OFFICE OF THE GOVERNOR
STATE OF MONTANA

STEVE BULLOCK
GOVERNOR



MIKE COONEY
LT. GOVERNOR

TO: Montanans; all officers and agencies of the State of Montana
FROM: Governor Steve Bullock
DATE: July 13, 2020
RE: Directive implementing Executive Orders 2-2020 and 3-2020 and providing measures related to nursing homes, skilled nursing facilities, and senior and assisted living facilities.

Executive Orders 2-2020 and 3-2020 declare that a state of emergency exists in Montana due to the global outbreak of COVID-19 Novel Coronavirus.

During a declared state of emergency, the Governor may “control ingress and egress to and from an incident or emergency or disaster area, the movement of persons within the area, and the occupancy of premises within the area.” Section 10-3-104(2)(c), MCA. In addition, the Department of Public Health and Human Services (DPHHS or Department), acting under the Governor’s direction, may “issue written orders for correction” of “conditions of public health importance” through measures including “isolation and quarantine” and “abatement of public health nuisances.” Section 50-1-202, MCA. A condition of public health importance includes any “disease . . . that is identifiable on an individual or community level and that can reasonably be expected to lead to adverse health effects in the community.” Section 50-1-101(2), MCA. The Department, under the Governor’s direction, may take action to correct public health deficiencies in “buildings or facilities where persons assemble.” Section 50-1-203, MCA. The Department, under the Governor’s direction, may also impose quarantine and isolation measures to protect public health. Section 50-1-204, MCA. Montana law provides that these authorities will be utilized to respond to an “outbreak of disease,” § 10-3-103(4), MCA, and to “limit the transmission of the communicable disease,” *see, e.g.*, § 50-1-101(6), MCA.

After the initial March 15, 2020 Directive implementing Executive Orders 2-2020 and 3-2020, all non-essential visitation to nursing home facilities was suspended. On June 25, 2020, I 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 Centers for Medicare and Medicaid Services (CMS) and the Centers for Disease Control and Prevention (CDC).¹

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. A substantial number of deaths in the United States are estimated to be attributable to the resident population of such facilities. Recently, there has been an outbreak at an assisted living facility

¹ The CMS guidance, Ref. QSO-20-30-NH, is available at <https://www.cms.gov/files/document/qso-20-30-nh.pdf-0>. The safeguards against transmission toolkit is available at <https://www.cms.gov/files/document/covid-toolkit-states-mitigate-covid-19-nursing-homes.pdf>. The CDC guidance is available at <https://www.cdc.gov/coronavirus/2019-ncov/hcp/long-term-care.html>.

in Billings that has, to date, led to at least 90 infections and 7 deaths.

Accordingly, on July 8, 2020, I announced that DPHHS would be promulgating emergency rules setting forth strict infection control protocols and testing requirements for nursing homes, skilled nursing facilities, and senior and assisted living facilities. It is now necessary to bring the June 25, 2020 Directive in alignment with those rules and to require nursing homes and skilled nursing facilities to comply with CDC and CMS guidance to prevent further outbreaks.

Therefore, in accordance with the authority vested in me under the Constitution, Article VI, Sections 4 and 13, and the laws of the State of Montana, Title 10, Chapter 3 and Title 50, Chapter 1, MCA, and other applicable provisions of the Constitution and Montana law, I hereby direct the following measures be in place in the State of Montana, effective immediately:

- 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:
 - Visitation must be conducted in accordance with the strict screening, physical distancing, sanitation, hygiene, and other infection control protocols set forth in the CMS and CDC guidance applicable to nursing homes.
 - Before permitting visitation, facilities must review the applicable CDC and CMS guidance and ensure that they are able to follow the recommendations contained therein.
- 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:
 - Visitation must be conducted in accordance with the strict screening, physical distancing, sanitation, hygiene, and other infection control protocols set forth in the Department's July 13, 2020 Notice of Adoption of Temporary Emergency Rules
 - 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.
- To the extent it is in conflict with the provisions of this Directive, the June 25, 2020 Directive is superseded. No other Directive is amended, rescinded, or superseded except as expressly provided here.

Authorities: Sections 10-3-104, -103, -302, and -305, MCA; §§ 50-1-202, -101, -203, and -204, MCA; Executive Orders 2-2020 and 3-2020; Montana Constitution, Art. VI, Sections 4 and 13; and all other applicable provisions of state and federal law.

Limitations

- This Directive is effective immediately and expires at the end of the declared state of emergency in Executive Orders 2-2020 and 3-2020.
- This Directive shall be implemented consistent with applicable law and subject to the availability of appropriations.

- Nothing in this Directive shall be construed to limit, modify, or otherwise affect the authority granted by law to the Governor or any department, agency, political subdivision, officer, agent, or employee of the State of Montana, except as expressly provided in this Directive or other Directives now in effect implementing Executive Orders 2-2020 and 3-2020.
- This Directive is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the State of Montana, its departments, agencies, or entities, its officers, employees, or agents, or any other person.