

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

In the Matter of:)	
)	
MONTANA DEVELOPMENTAL CENTER,)	
INTERMEDIATE CARE FACILITY FOR)	
DEVELOPMENTALLY DISABLED)	
310 4 TH Street)	
Boulder, Montana 59632)	

NOTICE OF VIOLATIONS and ORDER

TO: Gene Haire
Administrator
310 4th Street
Boulder, Montana 59632

The Montana Department of Public Health and Human Services (Department), pursuant to Section 50-5-114 of the Montana Code Annotated (MCA), hereby serves on the Montana Developmental Center ("MDC") Intermediate Care Facility for the Developmentally Disabled ("ICF-DD") the following Notice of Violations, Order to Immediately Cease New Admissions into the MDC ICF-DD from the MDC ICF-IID, Order For Immediate Corrective Action, to include putting into place, resources, procedures and interventions to eliminate the occurrence of abuse and neglect by staff and client to client abuse and neglect; and Order To Correct Violations, including to Increase Qualified Professional Staff and Supervision in the ICF-DD.

The Department issued a Notice of Violations and Order for Corrective Action (the "Order") on March 10, 2015 to MDC ICF-DD. Within one week of issuing the Order the Department received three incident "Closure Reports" from the Department of Justice, Division of Criminal Investigation, substantiating abuse and or neglect against

eight (8) members of the MDC ICF-DD staff (Report #FI150207, #FI150208 and #FI150210). Of the eight staff members, three members were substantiated against in two of the reports. Based on the information in these Department of Justice reports, the Department concludes that the MDC ICF-DD has not established and does not maintain a humane and safe environment for the residents. MDC ICF-DD staff is ill-trained and inadequately supervised resulting in their inability to properly engage with residents. This failure to adequately train and supervise has resulted in an increasingly hazardous situation that is affecting the safety of residents and staff. Staff does not recognize abusive situations or violations in policy, fails to intervene when abuse is occurring, whether client to client or staff to client, and has not reported and documented incidents of abuse as required. A breakdown in communication between supervisors, nurses and direct care staff has resulted in a dangerous and ineffective environment. Staff is not properly trained and/or does not utilize the training as instructed which has led to increased behaviors of residents. When physical restraint methods are used, the department has found those techniques are not consistently applied nor are they carried out in the manner in which the methods were taught.

The MDC ICF-DD staff is unable to protect the residents due to incompetent staffing and ineffective training thereby putting both residents and staff in danger. The situation at the MDC ICF-DD has grown increasingly hazardous for residents and staff resulting in an escalation of abuse reports, increased resident negative behaviors and an increase in improper and unnecessary resident physical restraints.

NOTICE OF VIOLATIONS

Violation #1: 53-20-163. Abuse of residents prohibited. (1) Any form of mistreatment, neglect, or abuse of a resident is prohibited.

(2) A residential facility shall publish in each cottage and building and circulate to staff a written policy statement that defines the facility's requirements for reporting and investigating allegations of mistreatment, neglect, or abuse and injuries from an unknown source.

(3) Each allegation of mistreatment, neglect, or abuse and each injury from an unknown source must be reported immediately to the superintendent of the facility and to the department of justice, and the residential facility shall maintain a written record that:

Violation #2: 53-20-142. Rights while in residential facility. Persons admitted to a residential facility for a period of habilitation have the following rights:

(1) Residents have a right to dignity, privacy, and humane care.

(9) Residents have a right to receive prompt and adequate medical treatment for any physical or mental ailments or injuries or physical disabilities and for the prevention of any illness or disability. The medical treatment must meet standards of medical practice in the community. However, nothing in this subsection may be interpreted to impair other rights of a resident in regard to involuntary commitment for mental illness, use of psychotropic medication, use of hazardous, aversive, or experimental procedures, or the refusal of treatment.

Violation #3: 53-20-146. Right not to be subjected to certain treatment procedures.

(2) Physical restraint may be employed only when absolutely necessary to protect the resident from injury or to prevent injury to others. Mechanical supports used to achieve proper body position and balance that are ordered by a physician are not considered a physical restraint. Restraint may not be employed as punishment, for the convenience of staff, or as a substitute for a habilitation program. Restraint may be applied only if alternative techniques have failed and only if the restraint imposes the least possible restriction consistent with its purpose. Use of restraints may be authorized by a physician, a developmental disabilities professional, or a qualified intellectual disability professional. Orders for restraints must be in writing and may not be in force for longer than 12 hours. Whenever physical restraint is ordered, suitable provision must be made for the comfort and physical needs of the resident restrained.

Violation #4: 37.106.2109 CLIENT RECORDS

(1) The facility must develop and maintain a recordkeeping system that includes a separate record for each client and that documents the client's health care, treatment and habilitation, including preliminary evaluation, comprehensive functional assessments, individual treatment plan, progress notes, social information, and protection of the client's rights.

(6) The facility must provide each identified residential living unit with appropriate aspects of each client's record.

Violation #5: 37.106.2119 PROFESSIONAL PROGRAM SERVICES

(1) Each client must receive the professional program services necessary to implement the treatment and habilitation program defined by each client's individual treatment plan.

In providing these services, professional program staff must work directly with each client and with paraprofessional, nonprofessional and other professional program staff who work with each client.

- (2) The facility must have available program staff to carry out and monitor the interventions in accordance with the stated goals and objectives of every individual treatment plan.
- (3) Program staff must participate as members of the interdisciplinary team in relevant aspects of the treatment and habilitation process.
- (4) Professional program staff must be licensed, certified, or registered, as applicable, by the state of Montana to provide professional services.
- (5) Program staff must serve the special needs of the client as defined by the individual treatment plan.

Violation #6: 37.106.2126 DIRECT CARE STAFF

- (1) The facility must provide sufficient direct care staff to manage and supervise each client in accordance with their individual treatment plan.

Violation #7: 37.106.2127 STAFF TRAINING

- (1) The facility must provide each staff member with initial and continuing training that enables the employee to perform his or her duties effectively, efficiently, and competently.
- (2) For staff members who work with any client, training must focus on skills and competencies directed toward the client's developmental, behavioral, and health needs.
- (3) Staff must be able to demonstrate the skills and techniques necessary to administer interventions to manage the inappropriate behavior of any client.
- (4) Staff must be able to demonstrate the skills and techniques necessary to implement the individual treatment plan for each client for whom they are responsible.

Violation #8: 37.106.2136 PROGRAM IMPLEMENTATION

- (1) As soon as the interdisciplinary team has formulated a client's individual treatment plan, each client must be offered a continuous treatment and habilitation program consisting of needed interventions and services in sufficient number and frequency to support the achievement of the objectives identified in the individual treatment plan.
- (2) Except for those facets of the individual treatment plan that must be implemented only by licensed personnel, each client's individual treatment plan must be implemented by all staff who work with the client.

Violation #9: 37.106.2140 MANAGEMENT OF INAPPROPRIATE CLIENT BEHAVIOR

- (1) The facility must develop and implement written policies and procedures that govern the management of inappropriate client behavior only as allowed in 53-20-146, MCA. These policies and procedures must be consistent with the provisions of ARM 37.106.2139, and must:
 - (a) specify all facility-approved interventions to manage inappropriate client behavior;
 - (b) designate these interventions on a hierarchy to be implemented, ranging from most positive or least intrusive, to least positive or most intrusive;

- (c) ensure, prior to the use of more restrictive techniques, that the client's record documents that programs incorporating the use of less intrusive or more positive techniques have been tried systematically and demonstrated to be ineffective; and
- (2) Interventions to manage inappropriate client behavior must be employed with sufficient safeguards and supervision to ensure that the safety, welfare and civil and human rights of each client are adequately protected.
- (3) Techniques to manage inappropriate client behavior must never be used for disciplinary purposes, for the convenience of staff or as a substitute for a treatment and habilitation program.
- (4) The use of systematic interventions to manage inappropriate client behavior must be incorporated into the client's individual treatment plan.

The Administrator of the Montana Developmental Center Intermediate Care Facility for Developmentally Disabled has been unable to assure a safe environment for the residents at MDC ICF-DD. The number of substantiated reports of abuse and or neglect has increased at an alarming rate which places residents and staff at an unacceptable level of risk of harm.

Pursuant to Sections 50-5-114(1) and 2-4-631 MCA, Pursuant to Mont. Code Ann. § 50-5-114 (113), the Department hereby orders MDC-ICF-DD to comply with the following:

ORDER

- A. To cease new admissions into the MDC ICF-DD from the MDC ICF-IID, effective immediately, until additional information becomes available and immediate corrective action has proven to be effective.
- B. To submit a plan by March 30, 2015 describing interventions that ICF-DD will immediately put in place to provide a safe environment for residents and what measures will be put into place to implement C, D and E.
- C. Immediately increase qualified profession staff to adequately supervise residents and staff in each unit, implement individualized treatment plans and provide direct hands on staff training.
- D. Immediately report any and all aggressive behavior by residents and staff to the Department of Public Health and Human Services, Quality Assurance Licensure Bureau.

E. Immediately report any and all incidents where physical or mechanical restraints were utilized by staff to the Department of Public Health and Human Services, Quality Assurance Licensure Bureau.

F. Correct all alleged violations by April, 10, 2015.

NOTICE OF RIGHT TO ADMINISTRATIVE HEARING

Pursuant to §§ 50-5-114, MCA, Montana Developmental Center Intermediate Care Facility for Developmentally Disabled is hereby given notice that it has a right to a hearing. The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, MCA, would apply. This Order becomes final unless, within 30 days after this Notice is received, MDC ICF-DD requests, in writing, a hearing before the department. A request for hearing must be addressed to:

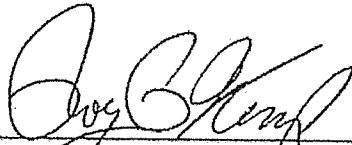
Office of Fair Hearings
Montana Department of Public Health and Human Services
201 Colonial Drive
P.O. Box 202953
Helena, Montana 59620-2953

Until issuance of a contrary decision by the department, this Order remains effective and enforceable.

DATED this 23rd day of March 2015.

MONTANA DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES

By: _____



Roy Kemp, Administrator
Division of Quality Assurance