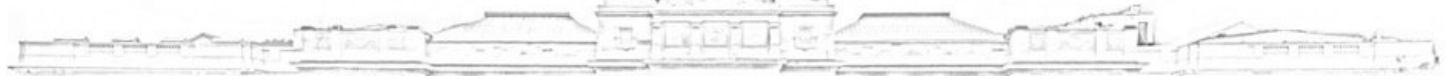




ADMINISTRATIVE RULES OF MONTANA



37.5.105 NURSING FACILITY RELATED CASES: APPLICABLE HEARING PROCEDURES

- (1) Hearings contesting a transfer or discharge of a nursing facility resident by a nursing facility are available to the extent granted in 42 CFR part 431, subpart E and shall be conducted in accordance with ARM 37.5.304, 37.5.305, 37.5.307, 37.5.310, 37.5.311, 37.5.313, 37.5.316, 37.5.322, 37.5.325, 37.5.328, 37.5.331, 37.5.334, and 37.5.337. A resident shall be considered a claimant for purposes of ARM 37.5.304, 37.5.305, 37.5.307, 37.5.310, 37.5.311, 37.5.313, 37.5.316, 37.5.322, 37.5.325, 37.5.328, 37.5.331, 37.5.334, and 37.5.337.
 - (a) Although the department is required by federal law to provide a hearing forum for hearings contesting a transfer or discharge of a nursing facility resident by a nursing facility, the department is not a party to the hearing. The contested action is the action of a nursing facility rather than the department. In such cases, relief may not be granted against the department.
- (2) Except as provided in (2)(a), department fair hearings for nursing facilities contesting a department action denying or terminating the facility's Medicaid provider agreement or imposing civil monetary penalties or other alternative remedies for noncompliance with the nursing facility participation requirements in 42 CFR part 483 are not available, because a hearing regarding the same action is available from the federal Medicare/Medicaid agency.
 - (a) A nursing facility that participates only in the Montana Medicaid program, and not in the Medicare program, and for whom no federal appeal is available with respect to the same issue is entitled to a hearing before the department to the extent granted in 42 CFR part 431, subpart D, with respect to a department action to deny or terminate participation in Medicaid or otherwise sanction the facility for noncompliance with the nursing facility participation requirements in 42 CFR part 483. To the extent a hearing is available under this rule, the hearing shall be conducted in accordance with and subject to the provisions of ARM 37.5.304, 37.5.305, 37.5.307, 37.5.310, 37.5.311, 37.5.313, 37.5.316, 37.5.318, 37.5.322, 37.5.325, 37.5.328, 37.5.331, 37.5.334, and 37.5.337 and 42 CFR part 431, subpart D.

Authorizing statute(s): 53-2-201, 53-6-113, MCA

Implementing statute(s): 53-6-113, MCA

History: NEW, 2000 MAR p. 1653, Eff. 6/30/00.