

MONTANA ADMINISTRATIVE REGISTER

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MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 7

The Montana Administrative Register (MAR or Register), a twice-monthly publication, has three sections. The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted. The Rule Adoption Section contains final rule notices which show any changes made since the proposal stage. All rule actions are effective the day after publication of the adoption notice unless otherwise specified in the final notice. The Interpretation Section contains the Attorney General's opinions and state declaratory rulings. Special notices and tables are found at the end of each Register.

Inquiries regarding the rulemaking process, including material found in the Montana Administrative Register and the Administrative Rules of Montana, may be made by calling the Secretary of State's Office, Administrative Rules Services, at (406) 444-9000.

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BEFORE THE DEPARTMENT OF TRANSPORTATION
OF THE STATE OF MONTANA

| | | |
|--------------------------------------|---|--------------------|
| In the matter of the amendment of |) | NOTICE OF PROPOSED |
| ARM 18.8.1501 and 18.8.1502 |) | AMENDMENT |
| pertaining to Motor Carrier Services |) | |
| Safety Requirements |) | NO PUBLIC HEARING |
| |) | CONTEMPLATED |

TO: All Concerned Persons

1. On May 14, 2018, the Department of Transportation proposes to amend the above-stated rules.

2. The Department of Transportation will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Department of Transportation no later than 5:00 p.m. on May 4, 2018, to advise us of the nature of the accommodation that you need. Please contact Dennis Hult, Department of Transportation, Motor Carrier Services Division, P.O. Box 201001, Helena, Montana, 59620-1001; telephone (406) 444-9237; fax (406) 444-6136; TTY Service (406) 444-7696 or (800) 335-7592; or e-mail dhult@mt.gov.

3. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

18.8.1501 MOTOR CARRIER SAFETY DEFINITIONS (1) remains the same.

(2) For purposes of intrastate commerce safety operations and subchapter 15 of these rules, the department adopts by reference the definitions found at 49 CFR 390.5 with the following clarifications:

(a) remains the same.

(b) "Farm vehicle" means ~~or "covered farm vehicle" is defined in 61-1-101, MCA, and has the additional meaning of a commercial motor vehicle that is used within 150 miles of the farm and is:~~

(i) controlled by a farmer and operated by the farmer or a person employed by the farmer as a private motor carrier of property including operation by employees or family members of the farmer;

(ii) being used to transport either in:

(A) agricultural products the transportation of the farmer's own ranch, farm, orchard, or dairy products from point of harvest to market; or

(B) farm machinery, farm supplies, or both, to or from a farm the transportation of farm supplies, commodities, or equipment to be used on the farmer's own ranch, farm, orchard, or dairy.

(iii) and (iv) remain the same.

(c) "Farmer" means any person ~~as defined in 49 CFR 390.5~~ who operates a

farm or is directly involved in the cultivation of land, crops, or livestock which are:

(i) owned by that person; or

(ii) under the direct control of that person.

(d) through (3)(a)(iv) remain the same.

AUTH: 61-10-155, MCA

IMP: 61-10-141, 61-10-154, MCA

REASON: The proposed amendment is necessary to comply with the February 5, 2018 Montana Seventh Judicial District Court Order in *Norby Inc. v. MDT*, declaring the previous August 19, 2017 amendments to ARM 18.8.1501 and 18.8.1502 implemented by MDT are "legally invalid." The Court further ordered the versions of ARM 18.8.1501 and 18.8.1502 prior to the August 19, 2017 amendments "have been reinstated and have full force and effect." The proposed amendments will return the rule language to its prior version.

18.8.1502 FEDERAL MOTOR CARRIER SAFETY RULES AND STATE MODIFICATIONS (1) through (2)(g) remain the same.

~~(h) For the purpose of 49 CFR 383.3 the commercial motor vehicle exception for operators of farm vehicles applies only to farm vehicles as defined in ARM 18.8.1501.~~

~~(i) For the purposes of 49 CFR 390.39, a covered farm vehicle is defined in ARM 18.8.1501.~~

AUTH: 61-10-155, MCA

IMP: 61-10-141, 61-10-154, MCA

REASON: The proposed amendment is necessary to comply with the February 5, 2018 Montana Seventh Judicial District Court Order in *Norby Inc. v. MDT*, declaring the previous August 19, 2017 amendments to ARM 18.8.1501 and 18.8.1502 implemented by MDT are "legally invalid." The Court further ordered the versions of ARM 18.8.1501 and 18.8.1502 prior to the August 19, 2017 amendments "have been reinstated and have full force and effect." The proposed amendments will return the rule language to its prior version.

4. Concerned persons may submit their data, views, or arguments concerning the proposed actions in writing to: Dennis Hult, Department of Transportation, P.O. Box 201001, Helena, Montana, 59620-1001; telephone (406) 444-9237; fax (406) 444-6136; TTY Service (406) 444-7696 or (800) 335-7592; or e-mail dhult@mt.gov, and must be received no later than 5:00 p.m., May 11, 2018.

5. If persons who are directly affected by the proposed actions wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to Dennis Hult at the above address no later than 5:00 p.m., May 11, 2018.

6. If the agency receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 745 persons based upon the 7,454 currently registered farm vehicles in Montana.

7. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in paragraph 4 above or may be made by completing a request form at any rules hearing held by the department.

8. An electronic copy of this proposal notice is available on the Department of Transportation website at www.mdt.mt.gov.

9. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

10. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of the above-referenced rules will not significantly and directly impact small businesses.

11. With regard to the requirements of 2-15-142, MCA, the department has determined that the amendment of the above-referenced rules will not have direct tribal implications.

/s/ Carol Grell Morris
Carol Grell Morris
Rule Reviewer

/s/ Michael T. Tooloey
Michael T. Tooley
Director
Department of Transportation

Certified to the Secretary of State April 3, 2018.

BEFORE THE DEPARTMENT OF CORRECTIONS
OF THE STATE OF MONTANA

In the matter of the adoption of NEW) NOTICE OF PUBLIC HEARING ON
RULE I pertaining to facilities exempt) PROPOSED ADOPTION
from geographic restrictions)
applicable to high-risk sexual)
offenders)

TO: All Concerned Persons

1. On May 4, 2018, at 2:00 p.m., the Department of Corrections will hold a public hearing in Small Meeting Room of the Lewis and Clark County Library, 120 S. Last Chance Gulch in Helena, Montana, to consider the proposed adoption of the above-stated rule.

2. The Department of Corrections will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Corrections no later than 5:00 p.m. on April 27, 2018, to advise us of the nature of the accommodation that you need. Please contact Kim Morrison, Department of Corrections, P.O. Box 201301, Helena, Montana, 59620-1301; telephone (406) 444-3803; fax (406) 444-4551; or e-mail KMorrison@mt.gov.

3. The department proposes to adopt the following rule:

NEW RULE I FACILITIES EXEMPT FROM GEOGRAPHIC RESTRICTIONS APPLICABLE TO HIGH-RISK SEXUAL OFFENDERS (1) The prisons, prison infirmaries, youth facilities, prerelease centers, substance use treatment facilities, and assessment and sanction centers at the following physical addresses, operated by the department or under contract to the department, were in operation before October 1, 2015. Offenders who are otherwise subject to the geographic restrictions in 45-5-513, MCA, are exempt from the geographic restrictions while incarcerated or in custody at the following addresses pursuant to court order, Board of Pardons and Parole order, or department placement:

- (a) 400 Conley Lake Road, Deer Lodge, MT 59722;
- (b) 701 South 27th Street, Billings, MT 59101;
- (c) 800 Casino Creek Drive, Lewistown, MT 59457;
- (d) 3800 Ulm North Frontage Road, Great Falls, MT 59404;
- (e) 440 Colorado Blvd., Glendive, MT 59330;
- (f) 50 Crossroads Drive, Shelby, MT 59474;
- (g) 2 Riverside Road, Boulder, MT 59632;
- (h) 4 N. Haynes Ave., Miles City, MT 59301;
- (i) 3109 1st Ave. North, Billings, MT 59101;
- (j) 66 W. Broadway, Butte, MT 59701;
- (k) 62 W. Broadway, Butte, MT 59701;
- (l) 675 S. 16th Ave., Bozeman, MT 59715;

- (m) 1019 15th Street North, Great Falls, MT 59401;
- (n) 805 Colleen Street, Helena, MT 59601;
- (o) 2350 Mullan Road, Missoula, MT 59808;
- (p) 1001 South 27th St., Billings, MT 59101;
- (q) 2340 Mullan Road, Missoula, MT 59808;
- (r) 801 Highway 48, Anaconda, MT 59711;
- (s) 111 West Broadway, Butte, MT 59701;
- (t) 725 Orofino Way, Warm Springs, MT 59756;
- (u) 1 Riverside Rd., Boulder, MT 59632;
- (v) 111 Skyline Dr., Lewistown, MT 59457; and
- (w) 700 Little Street, Glendive, MT 59330.

(2) Inclusion of a program or facility's address in this rule does not necessarily signify that high-risk sexual offenders are confined or treated at those locations or that they will be confined or treated at those locations in the future. The list serves as an inventory and management tool for the department to assist it in making appropriate placements of offenders while maintaining flexibility to use facilities to maximum efficiency within the parameters set by the legislature.

(3) No new or additional facility or program operated by the department or under contract to the department for the care, custody, and treatment of offenders under department jurisdiction has been constructed, designated, or commenced operations since October 1, 2015.

(4) If the department proposes to exempt offenders otherwise subject to the geographic restrictions in 45-5-513, MCA, while the offenders are in residence at a program or facility that commences operations at an address not listed in this rule after October 1, 2015, the department shall first conduct a public hearing in the community where the facility is located to receive oral or written public comments on the proposed exemption. Notice of the date, time, place, and purpose of the hearing shall be mailed to local and county governing bodies and law enforcement agencies not less than 20 days before the hearing. In addition, not less than 20 days before the hearing, the department shall cause notice of the hearing date, time, place, and purpose to be published in a newspaper of general circulation which serves the area where the program or facility will operate.

(5) The department also acknowledges that offenders under its supervision who are otherwise subject to the geographic restrictions in 45-5-513, MCA, may be housed at a facility operated by or under contract to the Department of Public Health and Human Services that was in operation prior to October 1, 2015.

AUTH: 45-5-513, MCA

IMP: 45-5-513, MCA

REASON: This proposed rule fulfills the rulemaking requirement imposed by the legislature under 45-5-513(4) and (5), MCA, relating to the placement of offenders in certain correctional facilities and residential treatment programs which, in the absence of the statutory exemption, might result in an offender being in violation of geographic restrictions on where high-risk sex offenders may reside. No new or additional prisons, programs, or facilities for offender care, custody, and treatment have been constructed, designated or commenced operations since October 1,

2015. The department opted to identify in this rule those prisons, programs, and facilities that were in operation before October 1, 2015, and under which offenders otherwise subject to 45-5-513, MCA, are exempt from the geographic restrictions while placed there by the department or pursuant to an order by a court or the Board of Pardons and Parole. By doing so, any new or additional prisons, programs, or facilities that are constructed, designated or which commence operations in the future will be readily identifiable by their absence from the lists of prisons, facilities, and program locations contained in this rule.

Offenders subject to 45-5-513, MCA, will not be eligible for placement in any new or additional prison, program, or facility constructed, designated or which commenced operations after October 1, 2015, unless the department first conducts a hearing, considers public comments, and makes an exemption decision under authority of 45-5-513(5), MCA.

4. Concerned persons may submit their data, views, or arguments concerning the proposed actions either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Quality Assurance Office, Department of Corrections, P.O. Box 201301, Helena, Montana, 59620-1301; fax (406) 444-4920; or e-mail KAughney2@mt.gov, and must be received no later than 5:00 p.m., May 11, 2018.

5. Lorraine Schneider, Department of Corrections, has been designated to preside over and conduct this hearing.

6. The department maintains a list of interested persons who have requested to receive notices of rulemaking actions proposed by the department. A person may request that their name be added to the interested persons list by submitting to the contact person shown in paragraph 4, the requesting person's name, mailing and e-mail addresses, and preferred method of receiving rulemaking notices. If receipt by email is preferred, also specify whether, in lieu of receiving the notice as an attachment, consent is given for the department to send electronic notification including a link to the proposal notice on the department's website or a description of the means of locating where the notice is available on the website.

7. The bill sponsor contact requirements of 2-4-302, MCA, apply. The sponsor was contacted by email and regular mail on May 15, 2017.

8. With regard to the requirements of 2-4-111, MCA, the department has determined that the adoption of the above-referenced rule will not significantly and directly impact small businesses.

/s/ Colleen E. Ambrose
Attorney
Rule Reviewer

/s/ Reginald D. Michael
Director
Department of Corrections

Certified to the Secretary of State April 3, 2018.

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

In the matter of the adoption of New) NOTICE OF PUBLIC HEARING ON
Rule I pertaining to Medicaid Auditor) PROPOSED ADOPTION
Evaluation Hearings)

TO: All Concerned Persons

1. On May 16, 2018, at 1:00 p.m., the Department of Public Health and Human Services will hold a public hearing in Room 207 of the Department of Public Health and Human Services Building, 111 North Sanders, Helena, Montana, to consider the proposed adoption of the above-stated rule.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Public Health and Human Services no later than 5:00 p.m. on May 4, 2018, to advise us of the nature of the accommodation that you need. Please contact Todd Olson, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-9503; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

3. The rule as proposed to be adopted provides as follows:

NEW RULE I MEDICAID OVERPAYMENT AUDITS AUDITOR EVALUATION HEARINGS (1) Within one year after the establishment of the contract auditor, and each subsequent year, the department will announce auditor evaluation hearing meetings via the department's website at www.dphhs.mt.gov and the State of Montana's public calendaring system. The meetings will provide an opportunity for the Medicaid provider community and the department to discuss appropriate conduct and determinations by contract auditors. The evaluation meetings' information will be published no less than 30 calendar days in advance of any annual meeting.

AUTH: 53-6-1409, MCA
IMP: 53-6-111, 53-6-1409, MCA

4. STATEMENT OF REASONABLE NECESSITY

Montana Medicaid, the HELP Program, and CHIP/Healthy Montana Kids (HMK) programs (Montana Healthcare Programs) are administered in Montana by the Department of Public Health and Human Services (department). The Montana Healthcare Programs are funded jointly by federal and state tax dollars. These funds are used to compensate health care provider claims for services rendered.

Federal law also requires the department to implement program integrity functions as safeguards against the misuse of Montana Healthcare Program benefits and overabundant billing. The department has implemented defined guidelines for services rendered and claim coding and providers enrolled with Montana Healthcare Programs agree to abide by these guidelines plus state and federal law. Audits are then conducted to identify potential claim underpayments and overpayments, which are addressed with a provider and, in some cases, corrected.

The department finds this rulemaking necessary as the 65th Montana Legislature passed Senate Bill 82, which became effective July 1, 2017, and requires the department provide greater clarity and transparency regarding its Montana Healthcare Program integrity reviews. This rule provides for the required auditor evaluation hearing meetings.

FISCAL IMPACT

The department does not contemplate any fiscal impact associated with the proposed adoption of New Rule I.

5. The department intends to apply this rule adoption retroactively to July 1, 2017. A retroactive application of the proposed rule adoption does not result in a negative impact to any affected party.

6. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Todd Olson, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail dphslegal@mt.gov, and must be received no later than 5:00 p.m., May 24, 2018.

7. The Office of Legal Affairs, Department of Public Health and Human Services, has been designated to preside over and conduct this hearing.

8. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 6 above or may be made by completing a request form at any rules hearing held by the department.

9. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was notified by letter on March 16, 2018.

10. With regard to the requirements of 2-4-111, MCA, the department has determined that the adoption of the above-referenced rule will not significantly and directly impact small businesses.

11. Section 53-6-196, MCA, requires that the department, when adopting by rule proposed changes in the delivery of services funded with Medicaid monies, make a determination of whether the principal reasons and rationale for the rule can be assessed by performance-based measures and, if the requirement is applicable, the method of such measurement. The statute provides that the requirement is not applicable if the rule is for the implementation of rate increases or of federal law.

The department has determined that the proposed program changes presented in this notice are not appropriate for performance-based measurement and therefore are not subject to the performance-based measures requirement of 53-6-196, MCA.

/s/ Flint Murfitt
Flint Murfitt
Rule Reviewer

/s/ Sheila Hogan
Sheila Hogan, Director
Public Health and Human Services

Certified to the Secretary of State April 3, 2018.

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

| | | |
|--------------------------------------|---|-----------------------------|
| In the matter of the adoption of NEW |) | NOTICE OF PUBLIC HEARING ON |
| RULES I and II, and amendment of |) | PROPOSED ADOPTION AND |
| ARM 37.80.101, 37.80.102, |) | AMENDMENT |
| 37.80.201, 37.80.205, 37.80.206, |) | |
| 37.80.301, 37.80.316, 37.80.501, and |) | |
| 37.80.502 pertaining to the Child |) | |
| Care Assistance Program's |) | |
| implementation of amendments to the |) | |
| Child Care and Development Block |) | |
| Grant Act and Final Rules at 45 CFR |) | |
| Part 98 |) | |

TO: All Concerned Persons

1. On May 3, 2018, at 10:00 a.m., the Department of Public Health and Human Services will hold a public hearing in the auditorium of the Department of Public Health and Human Services Building, at Helena, Montana, to consider the proposed adoption and amendment of the above-stated rules.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Public Health and Human Services no later than 5:00 p.m. on April 20, 2018, to advise us of the nature of the accommodation that you need. Please contact Todd Olson, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-9503; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

3. The rules as proposed to be adopted provide as follows:

NEW RULE I BEST BEGINNINGS CHILD CARE SCHOLARSHIP

PRESCHOOL (1) The Best Beginnings Child Care Scholarship will not reimburse child care services during preschool program hours at any of the following settings:

- (a) public or preschool settings, as defined in ARM 10.63.101;
- (b) state funded preschool programs; or
- (c) Head Start or other federally funded preschool programs.

(2) The Best Beginnings Child Care Scholarship will reimburse any licensed or registered child care provider for wraparound care, including before and after-school care, at the half-day rate.

AUTH: 53-4-212, MCA
IMP: 52-2-713, 53-4-611, MCA

NEW RULE II CARE PROVIDED IN THE CHILD'S HOME (1) Child care assistance paid for care provided in a child's home must be approved by the department's Early Childhood Services Bureau.

(2) Subsidized care provided in a child's home can only be paid to approved Family, Friend, and Neighbor and relative care providers.

(3) One of the following criteria must be met to receive payment for subsidized care in a child's home:

- (a) a child approved as a child with disabilities or a child with special needs;
- (b) a child of a teen parent; or
- (c) a child whose parent works non-traditional hours.

AUTH: 53-4-212, MCA

IMP: 52-2-713, 53-4-611, MCA

4. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

37.80.101 PURPOSE AND GENERAL LIMITATIONS (1) and (2) remain the same.

(3) The Child Care Assistance Program will be administered in accordance with:

(a) remains the same.

(b) the Montana Child Care Manual, dated ~~September 30, 2016~~ July 1, 2018, adopted and incorporated by this reference. The manual contains the policies and procedures utilized in the implementation of the department's Child Care Assistance Program. A copy of the manual is available at each child care resource and referral agency; at the Department of Public Health and Human Services, Human and Community Services Division, 111 N. Jackson St., P.O. Box 202925, Helena, MT 59620-2925; and on the department's web site at www.childcare.mt.gov.

AUTH: 52-2-704, 53-4-212, MCA

IMP: 52-2-702, 52-2-704, 52-2-713, 52-2-731, 53-2-201, 53-4-211, 53-4-601, 53-4-611, 53-4-612, MCA

37.80.102 DEFINITIONS As used in this chapter, the following definitions apply:

(1) through (4) remain the same.

(5) "Child care assistance" means ~~payment made~~ a subsidy for child care that is paid to a child care provider on behalf of a parent or guardian ~~for child care~~.

(6) remains the same.

(7) "Child care resource and referral agency (CCR&R agency)" or "resource and referral agency" means an agent of the department authorized to determine eligibility for benefits, process payment to providers, and carry out other functions as authorized by the department.

(8) through (17) remain the same.

(18) "Infant/toddler" for payment purposes means a child from birth to through the end of the 35th month of age.

(18) and (19) remain the same, but are renumbered (19) and (20).

(21) "Non-traditional hours of care" refers to the hours of care that fall outside of the traditional child care hours of 6 a.m. to 6 p.m. Monday through Friday.

~~(20)~~ (22) "Overpayment" means a payment of child care assistance to a parent or provider, by the department or its agent, that is ~~greater~~ more than the amount the parent or provider is properly authorized to receive by federal or state law. An overpayment may result from the intentional or unintentional action of a parent, guardian, provider, department, or department's agent.

(21) remains the same, but is renumbered (23).

(24) "Part-time child care" means care authorized for 30 hours or under per week on a regular basis.

(25) "Preschool" means an educational program or school environment targeted to children at age four and up to kindergarten entry.

(26) "Preschool-age child" for payment purposes means a child from thirty six months up to their sixth birthday.

(22) remains the same, but is renumbered (27).

(28) "Provider Rate" means the amount of reimbursement the department will pay an enrolled provider for child care provided to an eligible, enrolled child.

(23) remains the same, but is renumbered (29).

(30) "School-age child" for payment purposes means a child from six through the end of the 12th year of age.

(24) and (25) remain the same, but are renumbered (31) and (32).

AUTH: 52-2-704, 53-4-212, MCA

IMP: 52-2-704, 52-2-713, 52-2-721, 52-2-722, 52-2-723, 52-2-731, 53-2-201, 53-4-211, 53-4-601, 53-4-611, 53-4-612, MCA

37.80.201 NONFINANCIAL REQUIREMENTS FOR ELIGIBILITY AND PRIORITY FOR ASSISTANCE (1) through (4) remain the same.

(5) Due to limited funding for child care assistance, some households that meet all requirements for eligibility may not receive benefits. If there are insufficient funds to provide benefits to all eligible households, priority is as follows:

(a) A a household receiving assistance funded by the TANF program when participating in family investment agreement employability activities that require child care;

(b) A a household containing a child with special needs or a child with disabilities;

(c) A a household headed by a teen parent when otherwise eligible for child care assistance under ARM 37.80.201 through 37.80.502;

(d) a household experiencing homelessness; and

~~(d)~~ (e) All all other eligible non-TANF households.

(i) through (12) remain the same.

AUTH: 40-4-234, 52-2-704, 53-4-212, MCA

IMP: 52-2-704, 52-2-713, 52-2-721, 52-2-722, 52-2-723, 52-2-731, 53-2-201, 53-4-211, 53-4-601, 53-4-611, MCA

- 37.80.205 CHILD CARE RATES: PAYMENT REQUIREMENTS (1) ~~The hourly rate is paid for services provided less than six hours during a calendar day.~~
- (2) ~~The daily rate is paid for six to ten hours of service during a calendar day.~~
- (1) The department calculates provider rates based on market rate surveys required by the Child Care and Development Block Grant Act of 2014. A half-time day rate is calculated for six or less hours of care during a calendar day. A full-time day rate is calculated for more than six hours and up to 12 hours during a calendar day.
- (2) Provider rates are listed on the Early Childhood Services Bureau website for each child care provider type.
- (3) Child care authorization and corresponding certification authorization plans may authorize payment for extended care of more than ten 12 hours during a calendar day. When care is provided for ten to 16 more than 12 but less than 18 hours per day, the daily rate applies to the first ten hours of service. The hourly rate applies up to six hours of additional service the full-day rate multiplied by 1.25 will be paid. If When the authorization and corresponding certification authorization plan specifies service exceeding 16 18 hours of care during a calendar day, the state will pay twice the daily rate for each day in which care exceeds 16 hours the full-day rate multiplied by 1.5 will be paid.
- (4) remains the same.
- (5) The provider rates set forth in the Child Care Manual, section 1-4, are the maximum rates payable.
- (6) and (7) remain the same.
- (8) The department will only pay a fee for registering a child in a child care facility if the registration fee is charged to all who enroll in the facility.
- (a) The payment will not exceed thirty dollars.
- (b) The fee will be available to registered family, registered group, and licensed child care centers.
- (c) The fee must be listed on the monthly invoice the parent is charged.
- (8) remains the same, but is renumbered (9).

AUTH: 52-2-704, 53-4-212, MCA

IMP: 52-2-704, 52-2-713, MCA

- 37.80.206 ABSENT DAYS (1) Payment for absent days will only be made to licensed child care centers and registered family and group providers. Family, Friend, and Neighbor and relative care providers are not eligible for payment for absent days. The following requirements must be met for a qualified provider to be paid for a child's absent days:
- (a) ~~Absent days are available only for children receiving~~ The child must be in full-time child care. It is not available if the child is receiving care on a part-time basis.
- (b) and (c) remain the same.

(2) Child care providers may not charge ~~for children~~ for absent days if the parent has not indicated an intent to return the child to the facility ~~for additional child care services~~. The intent to return a child may be ~~manifested~~ documented either:

(a) and (b) remain the same.

(c) by actions of the parent ~~which~~ that would lead a reasonable person to believe ~~that~~ the child would be returning to the facility in the ~~foreseeable~~ near future.

(3) remains the same.

AUTH: 52-2-704, MCA

IMP: 52-2-704, MCA

37.80.301 REQUIREMENTS FOR CHILD CARE FACILITIES, COMPLIANCE WITH EXISTING RULES, CERTIFICATION (1) and (2) remain the same.

(3) Child care providers must be certified or recognized by the department or its designated agent as eligible to receive payment under this chapter. All applicable forms must be completed and submitted for approval. Registered and licensed facilities are approved by the Child Care Licensing Bureau Program of the department's Quality Assurance Division. Facilities licensed or registered by other entities must be recognized by the Child Care Licensing Bureau Program of the department's Quality Assurance Division.

(4) through (6) remain the same.

AUTH: 52-2-704, MCA

IMP: 52-2-704, 52-2-713, 52-2-721, 52-2-722, 52-2-723, 52-2-731, MCA

37.80.316 REQUIREMENTS AND PROCEDURES FOR CHILD CARE PAYMENTS (1) through (3) remain the same.

(4) In the case of direct payment to the parents, the parents and/or the provider bear sole responsibility:

(a) for obtaining provider registration through ARM ~~37.80.103~~ 37.95.103 prior to claiming payment for covered child care under this chapter; and

(b) remains the same.

(5) The provider must submit a claim for covered child care services on the billing form provided by the department. Except as provided in (4)(a), a completed billing form with all information and documentation necessary to process the claim must be received by the resource and referral agency of the department within 60 calendar days after the last day of the calendar month in which the service was provided. Timely filing of claims in accordance with the requirements of this rule is a prerequisite for payment. In addition:

(a) remains the same.

(b) The claim must indicate the child's actual attendance accurately, within ~~one quarter~~ half hour. The provider's claim may be rounded to the nearest ~~quarter~~ half hour of total daily attendance.

(c) through (e) remain the same.

(6) Once an invoice is submitted, invoices are processed within three business days by the child care resource and referral agency.

(6) remains the same, but is renumbered (7).

AUTH: 52-2-704, MCA

IMP: 52-2-704, 52-2-711, 52-2-713, MCA

37.80.501 TERMINATION OF CHILD CARE ASSISTANCE (1) Child care assistance will be terminated if any of the following occurs:

(a) remains the same.

(b) a parent ~~terminates the employment or training that made the parent eligible for child care assistance~~ has been given a grace period and does not meet the activity requirement at the end of the grace period;

(c) and (d) remain the same.

~~(e) the child care provider no longer meets licensing standards;~~

(f) and (g) remain the same, but are renumbered (e) and (f).

~~(h)~~ (g) the child has had a span of more than five unexplained absences reported by the child care facility specified in the authorization and corresponding authorization plan and there is no indication that the child will be receiving care at that facility in the near future; ~~or,~~

~~(i) the parent is no longer in compliance with an order or determination of the DPHHS' Child Support Enforcement Division, the parent has failed to report a change in the amount of child support the parent receives pursuant to a district court order that affects eligibility, or the parent has failed to report changes in circumstances concerning good cause reasons for the applicant or recipient not to pursue child support enforcement.~~

(2) When child care assistance is terminated due to the household's loss of eligibility, as specified in (1)(b), (c), ~~(f)~~ (e), ~~or (g)~~ (f), ~~or (i)~~, notice of termination must be sent to both the parent and the provider at least 15 calendar days prior to the effective date of termination, except for (1)~~(f)~~ (e) in which a ten-calendar-day notice is required. No notice is required from the state when child care is terminated by the parent or provider, or for the other reasons specified in (1)(a), (d), ~~(e)~~, or ~~(h)~~ (g).

(a) through (4) remain the same.

AUTH: 52-2-704, MCA

IMP: 52-2-704, MCA

37.80.502 CHILD CARE OVERPAYMENT (1) and (2) remain the same.

~~(3) The provider or the parent must repay the overpayment within 30 days after the department sends notice of the overpayment with a demand for repayment. The parent must repay the overpayment to the department. Failure to be current on accounts will make the parent ineligible for child care assistance from the department.~~

~~(4) If the provider or the parent fails to repay the overpayment within 30 days, the department may reduce future child care payments or increase household child care copayments until the overpayment is recovered in full. The provider must repay the overpayment to the department. Failure to be current on accounts will make the provider ineligible for child care assistance from the department.~~

(5) remains the same.

AUTH: 52-2-704, 53-4-212, MCA
IMP: 52-2-704, 52-2-713, MCA

5. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) administers the Best Beginnings Child Care Scholarship (BBCCS) program which is funded by federal funds through the Child Care Development Fund (CCDF) with some matching state general fund monies. The BBCCS program offers child care assistance for low income families with working parents, families referred by Temporary Assistance for Needy Families (TANF), and children with Child Protective Services (CPS). The BBCCS program has eligibility determined through Child Care Resource and Referral (CCR&R) agencies.

The proposed rule changes are necessary to revise the department's policy manual for the program and conform the department's rules for the administration of the BBCCS program to the federal Child Care and Development Block Grant Act of 2014 and federal regulations at 45 CFR Part 98.

NEW RULE I

The department is proposing a new rule pertaining to preschool program hours. The Early Childhood Services Bureau (ECSB) has met with a policy work group with representation from the Best Beginnings Advisory Council, Head Start Directors, Child Care Directors, Early Childhood Project, Child Care Resource and Referral (CCR&R) Network, CCR&R eligibility staff, STARS preschool, and the Montana Head Start Association. ECSB's current practice is to pay some Head Start providers as child care providers for all child care hours including preschool program hours. The department is going to discontinue this practice. The department is proposing this rule to clarify payments cannot be made for preschool program hours funded by state or federal funds.

NEW RULE II

The department is proposing a new rule limiting when a child care subsidy will be paid for care provided in the child's home. The department is limiting payment for in-home care to children with disabilities or special needs, children of a teen parent, or children of a parent who works non-traditional hours.

ARM 37.80.101

This proposed rule amendment would adopt and incorporate by reference proposed revisions to the Early Childhood Services Bureau (ECSB) Child Care Policy Manual (manual) effective July 1, 2018. The proposed rule amendment is necessary to incorporate the manual revisions described below.

The department proposes to replace the terms "Certification Plan" with "Authorization Plan," "Certified Enrollment" with "Absent Days," "WoRC" with "Pathways," "FIA/EP" with "Employability/Service Plan," "GED" with "HiSET," "STARS" with "STARS to Quality," "Child Protective Services (CPS)" with "Child and Family Services Division (CFSD)," and "Re-certification" with "Redetermination" throughout the manual. These proposed term changes are necessary because commonly used terminology has changed.

The department proposes removing the term "Legally Certified Providers" throughout the manual. The proposed term change is necessary because legally certified providers are no longer a child care provider type qualified to receive payments for child care assistance.

Policy Section 1-1: Table of Contents

The department proposes changes to all subheadings to follow the formatting of the other policy manuals in the department's Human and Community Services Division.

Policy Section 1-2: Human & Community Services Division ECSB Organizational Chart

The department proposes updating to the current website address <http://dphhs.mt.gov/hcsd/ChildCare>.

Policy Section 1-3: Definitions

The department proposes to align the manual definitions with administrative rule. The department proposes to remove the following terms: "Absent Days," "Full-Time Child Care," "Full-time Field Experience and Class Time," and "Child with Special Needs" because the definitions are in ARM 37.80.102. The department proposes to remove "Infant" and "Toddler" due to proposed changes to ARM 37.80.102. The department proposes to revise the following definitions and remove language found in rule: "Child Care," "Graduated Eligibility," "Education Program," "Part-time Child Care," "Out-of-State Rate," "Slot," "Combination Full/Part Time Child Care," "Authorization of Service," and "Overpayment."

The department proposes to align the manual with ARM Title 37, chapter 95. The department proposes to remove the following definitions: "Child Care Center," "Family Child Care Home," "Group Child Care Home," and "Regular Basis" because the definitions are in chapter 95. The department proposes to remove "Certified Provider," "Legally Certified Provider (LCP)," "Legally Certified Provider In-Home Provider (LCI)," and "In Home Relative Care." The department proposes to revise the following definitions: "Child Care Resource & Referral Agency," "Appropriate Child Care," "Application Date," and "Provider."

The department proposes to align definitions with Policy Section 2-2a. The department proposes to remove the following definitions: "Good Cause Not to

Cooperate" with "Child Support Enforcement" and "In-compliance with Child Support" because the definitions are in the policy section. The department proposes to add "Child Support" because child support compliance is a requirement of the Best Beginning Child Care Scholarship (BBCCS). The department proposes to revise "Absent Parent" and "Parent Living Apart" for clarification. The department proposes to remove "Non-eligible parent" because any parent may apply for the BBCCS.

The department proposes to align definitions with Policy Section 1-11. The department proposes to remove the following definitions: "Administrative Review," "Fair Hearing," and "Request for a Fair Hearing" because the definitions are outlined in the policy section. The department proposes to revise "Adverse Action" to clarify "reasonable promptness" which is defined in Policy Section 2-1.

The department proposes to clarify Policy Section 2-3. The department proposes to revise "Attending (a Job Training or Educational Program)" with other proposed changes to the Policy Section 2-3. The department proposes to revise the following definitions: "Teen Parent," "Work-Study," and "Grace Period" because "work" is changed to "activity" in Policy Section 2-3. The department proposes to remove "Severe Disability" and replace it with "Individual with a Disability." In the definition "Individual with a Disability," language regarding the medical professionals who can verify a condition will be updated and expanded. The department proposes to revise "Job Training" and "Child Care Scholarship" following changes in the TANF policy manual. The department proposes to remove "Activity Requirement" because it refers to a term used in Policy Section 2-3 for a basic requirement of the Non-TANF program.

The department proposes to remove the following definitions from the manual: "Fill-the-Gap," "Medical Emergency," "Suspending a Scholarship," "Required Household Member," "Child Protective Services," and "Common Law Marriage" because these terms are referenced in other proposed changes. The department proposes to revise "Scholarship Reimbursement Rates" in Policy Section 1-4 to clarify the location of this information.

The department proposes to remove "Improper Payment" because it is a federally used term, and payment corrections are included in Policy Section 6-9.

Policy Section 1-4: Scholarship Rates

The department proposes revisions to clarify language in Policy Section 1-4. A child care provider must notify the Child Care Resource and Referral (CCR&R) agency when the child care provider chooses to change their provider type. The provider type may change the payment rates. The department proposes to remove the headings on "Infant Care" and "Out of State Rates" to be consistent with proposed payment rates in ARM 37.80.205 including child age increments and one statewide rate, which also includes out of state child care providers.

Policy Section 1-4a: Special Needs

The department proposes revisions to align with the current process for the special needs subsidy (subsidy). One-time expenses will no longer be allowed. Currently, all children on the subsidy receive an additional reimbursement amount for child care services. The process is the same for any child on the BBCCS. The documentation and approval period has been simplified. A 12-month eligibility for subsidy aligns with the family's 12-month eligibility period.

Policy Section 1-5: Child Care Sliding Fee Scale

The department proposes to remove redundant information already on the sliding fee scale document, which is available on the ECSB website.

Policy Section 1-6: Child Care Sliding Fee Scale

The department proposes to remove the address for USCIS, remove procedure about types of documentation that may be used for Montana residency, and align the child's age section with the definition of "child care" in ARM 37.80.102. The department proposes to clarify when a child's provider cannot be part of the household.

Policy Section 1-7: Parent Eligibility

The department proposes to revise the heading "General Rule" to clarify what requirements are needed when a parent applies for the Best Beginnings Child Care Scholarship (BBCCS). Each program type has a section in Policy Section 1-6. The department proposes to remove language about extreme cases because it is in ARM 37.80.201(1)(h).

The department proposes to remove "See Section 2 for Details" within the heading "Non-TANF Parent Overview See Section 2 for Details." This heading is only an overview. Income level and minimum work and/or school requirements for all non-TANF parents are also listed in Policy Section 2-3.

The department proposes to remove "See Section 3-1 for Details" within the heading, "Temporary Assistance for Needy Families (TANF) Cash Assistance Parents Overview See Section 3-1 for Details" to align with the TANF Policy manual. The department proposes to revise the heading, "Tribal TANF Parents Overview See Section 3-2 for Details" to clarify how Tribal TANF works for parents. A list of tribal communities has been removed because it may not be current.

The department proposes to revise the heading, "Child Protective Services (CPS) Child Care Eligibility Overview" to "Child and Family Services Division (CFSD) Child Care." Language regarding internal business processes was removed.

The department proposes to remove the headings "Supplemental Nutritional Assistance Program (SNAP) Employment & Training Program" and "Other Child Care Options." These are two options on how child care could be covered if a family was not eligible for the BBCCS. Regional CCR&R agencies can refer families to other community resources.

Policy Section 1-8: Provider Eligibility

The department proposes to clarify the definition of an eligible child care provider and what rules apply to them. The department will use the federal definition of relative under "eligible care provider" from the Child Care and Development Block Grant Act of 2014. The department proposes to remove the heading, "Providers Shall Maintain Their License, Registration or Payment Number" because the content does not match the subtitle. Maintaining a license or registration is addressed in the heading "Providers Losing Their Status Shall Notify Parents."

The department proposes to remove language regarding changing an address and simplify language regarding approval by the Child Care Licensing program (CCLP) for an out-of-jurisdiction child care provider. The department proposes to align the heading "Providers Shall Allow Access to Facility and Records" with proposed changes to Policy Section 6-8.

The department proposes to remove the headings "Providers Shall Bill for Actual Attendance within Limits of the Child Care Certification Plan" and "Providers Shall Submit Invoices within 60 days" because the information is in Policy Section 6-7 as "Actual Daily Attendance Supported by Sign in/Sign out Records" and "Timely Invoices". The department proposes to remove language regarding internal business processes.

Policy Section 1-9: Confidentiality

The department proposes to remove the heading "HIPAA" because the content has been added under "General Rule." The department proposes to clarify when a CCR&R agency is responsible for its own legal counsel. The department proposes to remove the heading "Agency Personnel" because it is outside the scope of the BBCCS. The department proposes to remove procedural language from the heading "Contractors." The department proposes to add a requirement that a CCR&R agency notify ECSB when a request about a case is made by law enforcement. The department proposes to revise "Release to Others" to clarify when an authorization to release information must be approved by department legal counsel.

Policy Section 1-10: Timely Notices and Termination

The department proposes to remove "Termination for Parents" because reasons for termination are listed in ARM 37.80.501. The department proposes to remove "Termination for Providers" because the terminated case is the responsibility of the

parent, not a child care provider. The department proposes to remove "Providers Shall Allow Access to Facility and Records" because it is in Policy Section 1-8. The department proposes to revise language to show a parent and provider receive a notice if a parent does not re-determine their case.

Policy Section 1-11: Fair Hearing Process

The department proposes to remove the 15 calendar day notice for provider termination because the CCLP monitors all child care provider types. The department proposes to remove "Adverse Actions" because it is defined in Policy Section 1-3.

The department proposes to clarify what is required on a complete application. The application is available online on the ECSB website and at all CCR&R agency locations. The department proposes to remove "CCR&R Business Process" and "Eligibility End Date" because both are included in procedure. The department proposes to clarify the eligibility begin date and remove procedure about processing an application.

The department proposes to remove references to "Legally Certified Providers" because it has been replaced by the term "Family, Friend, and Neighbor" and to allow parents additional options in submitting paperwork. A parent can provide documentation on enrolled credits and receipt of fees paid or a Training Verification Form to verify attendance in school or training. A parent can provide a Child Care Service Plan or the same information in writing.

The department proposes to revise language regarding a waiting list because current language may not reflect accurate implementation. Priorities are listed in ARM 37.80.201.

The department proposes to remove language about stop gap subsidy. This may be a resource available in some communities and a regional CCR&R agency will refer families to other community resources. The department proposes to remove special needs language because this information is covered in Policy Section 1-4a.

Policy Section 2-2: Household Requirements

The department proposes to revise language to align with other proposed Child Care Policy manual sections. The department proposes to remove language about a waiting list, common law marriage, and where to find the sliding fee scale.

The department proposes to remove references to visitation schedule documentation and the requirement to report when a child leaves a child care during an extended break such as during the summer to align with ARM 37.80.203, and remove procedural language.

The department proposes to add an exemption for the residency requirement until the family establishes a permanent address. This may be necessary as a family is experiencing homelessness.

Policy Section 2-2a: Child Support

The department proposes to clarify when a child is added to a household and when a change in open child support may be needed. The department proposes to remove references to what Child Support Enforcement Division (CSED) services are offered. The department proposes to clarify when an out of state child support case is not sufficient and when a case is required to be opened in Montana where it relates to eligibility of the BBCCS.

The department proposes to add a deceased parent as an exception to the child support compliance requirement. The department proposes to revise the length of time for a parent to meet the child support compliance requirement when the parent is going through a separation or divorce. The current practice does not give the parent time to proceed with legal actions.

The department proposes to remove language about determinations made by CSED because it is procedure. The department proposes to remove "Child Support as Unearned Income" because household income determination is in Policy Section 2-4. It is not current practice for CCR&R agency staff to inform CSED if a parent is approved for good cause. The department proposes to clarify when a parenting plan is necessary and increase the extension available when a parent is working on establishing a parenting plan.

Policy Section 2-3: Non-TANF Activity Requirements

The department proposes to revise the verification process when a parent is working for a child care facility. The department proposes a parent to submit a Work Verification Form to verify employment. This process is the same for any parent verifying work status. At annual re-determination, the parent must meet the approved caregiver requirements established by the CCLP.

The department proposes to remove the process for determining an initial partial month of employment because it is procedure. The department proposes to remove the word "Severe" from the heading "Parent with a Severe Disability."

The department proposes to revise language regarding attending school while employed and distance learning to align with ARM 37.80.201. The department proposes to remove "satisfactory progress" because it is not an indicator for completing a school activity requirement, and post-secondary education above a bachelor's degree is addressed in ARM 37.80.201. The department proposes to remove the exceptions to the work requirement for Non-TANF parents because it is procedure. The department proposes to remove language that authorized hours must mirror the approved child's activities as well as remove language regarding respite care. The department proposes to remove "Family Loses Eligibility" because

the policy section is not accurate. A family cannot lose eligibility during an authorization plan.

Policy Section 2-4: Household Income

The department proposes to remove procedure regarding case noting and to update the website information for the federal minimum wage. The department proposes to remove any references to TEAMS because this is an old database no longer used. Income is not determined a different way based on if you are a teen parent. The department proposes to clarify how child support is calculated as unearned income.

Policy Section 2-4a: Household Income – Self-Employment

The department proposes to clarify what types of documentation and business records are allowed when determining self-employment. Records from a bookkeeper or accountant are acceptable if not employed by the applicant.

Policy Section 2-5: Prospective Income

The department proposes to remove calculating income on a semi-monthly 13-week calculation basis because income can be calculated using semi-monthly (paid twice per month) or biweekly formulas. The department proposes to remove the required use of pay stubs. It would be at the parent's request to use for determining income eligibility.

Policy Section 2-6: Income Evaluation Table

The department proposes to add clarification regarding "Guardianship Income and Support Services," "Inheritance – Lump Sum," and "Inheritance – Recurring Payment." The department proposes to clarify "Per Diem" by explaining why it is not included as countable income and "Income Disregards – Child Support Paid Out-of-Home" by clarifying when the income a parent is paying toward child support can be deducted from the household income.

Policy Section 2-7: Redetermination

The department proposes to remove language about TANF and CPS cases because this section only applies to Non-TANF families. The forms are the same at initial application and annual re-determination. For this reason, the application forms align with Policy Section 2-1. The department proposes to remove language regarding the use of pay stubs rather than the work verification form, following Policy Section 2-4.

Policy Section 3-1: OPA, Pathways, CCR&R Coordination

The department proposes to revise this policy section to align with the TANF policy manual. The Child Care Under the Big Sky (CCUBS) computer database sends out

an eligibility renewal reminder 45 days from the end of the eligibility period. The ECSB has coordinated with TANF to align policies and utilize resources efficiently such as these notifications out of CCUBS.

Policy Section 3-2: Tribal TANF Coordination

The department proposes to revise this policy section to align with the TANF policy manual. The Child Care Under the Big Sky (CCUBS) computer database sends out eligibility renewal reminders 45 days from the end of the eligibility period.

Policy Section 3-3: Working Caretaker Relative Child Care

The department proposes to revise this full policy section to align with the TANF policy manual. The ECSB has coordinated with TANF to align policies and utilize resources efficiently.

Policy Section 4-1: CFSD & CCR&R Coordination

The department proposes to revise this policy section for clarity. CFSD refers children to the BBCCS for child care assistance. CFSD determines the eligibility period, the child care provider, and if a child should be referred. For example, the child may be a foster child or have refugee status. The department proposed to remove language regarding internal business processes.

Policy Section 4-2: Tribal IV-E and CFSD Child Care Referral Services

The department proposes to revise the full policy section for clarity. CFSD refers children to the Best Beginning Child Care Scholarship for child care assistance. CFSD decides on the eligibility period, the child care provider, and if a child should be referred. Language about how a case is set up or how to complete a referral is procedure and has been removed.

Policy Section 6-1: Referrals

The department proposes to revise this full policy section for clarity. Child care referrals are available to any parent or an agency such as CFSD; thus it is not necessary to list possible referral programs. The department proposes to remove procedure about the Referral Specialist or CCR&R agency selecting referral options and number of providers on the referral list. Language regarding data entry is not necessary because it is an expectation that accurate information will be entered into the computer database system. Child care provider types in child care referrals will now include Family, Friend, and Neighbors (FFN). Provider update language has been clarified. Providers must submit an annual update to be eligible for child care referrals.

Policy Section 6-3: Issuing the Authorization of Services and Authorization Plan

The department proposes to remove redundant information within the Authorization Plan, which is listed in ARM 37.80.317, and the length of the Authorization Plan, which is listed in ARM 37.80.202. Procedure was removed in describing travel time, maximum time, and minimum time. A change in child care provider is covered in Policy Section 6-5 and is not needed in this policy section. Authorization plans cover temporary changes as defined by 45 CFR, 98.21(a) (2017); thus policies on extending an authorization plan, rehabilitation, respite care, split work shift, study time, and continuity of care are no longer needed.

Policy Section 6-4: Copayment Requirements

The department proposes to clarify language. A child care provider indicates if a copayment has been paid on an invoice, and the provider chooses when to submit the invoice. Language has been removed about when the copayment must be paid because the exact day the copayment is paid is not required. A parent is notified if there is an unpaid copayment. This is listed in Policy Section 1-10 and does not need to be listed in this policy section.

Policy Section 6-5: Change Reporting

The department proposes to align with ARM 37.80.203. The number of required reported changes has decreased.

Policy Section 6-6: Absent Days and Continuity of Care

The department proposes to follow ARM 37.80.202. An authorization of services is for a twelve-month period and covers temporary changes. (45 CFR, 98.21(a)(2017)). The policies for suspending a case, fill-the-gap, jury duty, maternity leave, medical appointments, and medical emergency would all be covered under a temporary change. A grace period now covers the cessation of school or training. A policy reference to eligibility for TANF cash was removed. TANF cash policy is determined by the TANF program. Absent days will be available to licensed child care centers and registered family and home providers.

Policy Section 6-7: Invoice and Payment Processes

The department proposes to remove procedure on how to input data into the Child Care Under the Big Sky (CCUBS) computer database. Policy involving Legally Certified Providers (LCPs) has been removed because LCPs are no longer a child care provider type. A child care provider will be required to round up to the half hour instead of the quarter hour which will make it easier to report attendance for children. Unexplained absences have been revised to align with ARM 37.80.501. If five unexplained absences are reported to a Child Care Resource and Referral (CCR&R) agency, a case may be closed. Policy has been updated on when payments are made, how to report a problem with a payment, and how to submit a request for direct deposit.

Policy Section 6-8: Audits and Inquiries

The department proposes to rename the policy section from "Investigating and Auditing" to "Audits and Inquiries" because ECSB and CCR&R agency staff are not investigators. ECSB will direct a CCR&R agency on how to proceed with an audit.

Policy Section 6-9: Corrections & Overpayments

The department proposes to follow current practices in coordination with the Business and Financial Services Division (BFSD). Once an overpayment has been issued, BFSD determines how the overpayment will be pursued and tracked. The list of intentional program violations has been removed because ARM 37.80.506 lists intentional program violations.

Policy Section 7-1: STARS to Quality Program

The department proposes to revise this policy section to reflect current practices.

Policy Section 7-2: Career Development

The department proposes to align this policy section with training requirements in ARM Title 37, chapter 95. Language was added because incentives are available based on funding. Contact information for the early childhood project has been removed because it may change.

Policy Section 7-3a: Certified Infant Toddler Caregiver

The department proposes to clarify the training requirements for infant/toddler caregivers. Background information has been removed because the policy has been in place since 2011. Language on entering information in the Child Care Under the Big Sky (CCUBS) computer database has been removed because it is an internal business process.

Policy Section 7-3b: Preschool Teacher Certification

The department proposes to clarify the criteria necessary to qualify for certification. Procedure has been removed regarding instructor requirements. STARS to Quality requirements are listed. The preschool teacher certification is available to all child care providers.

Policy Section 7-3c: Certified Infant Toddler Caregiver Stipend

The department proposes to rename the policy section from "Certified Infant Toddler Caregiver Stipend Award" to "Certified Infant Toddler Course Completion Award." Language has been revised to clarify the application process and the criteria necessary to qualify for the stipend. Actual stipend amounts have been removed because these may change.

Policy Section 7-4a: Mini-Grants

The department proposes to clarify when a mini-grant may be used by a provider ending participation with STARS to Quality. Mini-grants are available if funding is available.

Policy Section 7-5a: Professional Development Incentive Awards

The department proposes to clarify the correct names for professional development incentive awards.

Policy Section 7-6: Provider Training

The department is proposing to align with training requirements in ARM Title 37, chapter 95.

ARM 37.80.102

The department proposes to add the following definitions: "preschool-age child," "infant/toddler," and "school-age child." These definitions will be used for payment purposes and align with ARM 37.95.623 for child-to-staff ratios and age ranges used by the Child Care Development Fund (CCDF) Act of 2014.

The department proposes to add definitions for "non-traditional hours of care" to clarify when a child may need care outside of normal business hours and therefore may need care provided in the child's home.

The department proposes to add "part-time child care" to clarify how it is different from "full-time child care."

The department proposes to add "preschool" to align with New Rule I. The age range in "preschool" follows a usual age range for child care settings.

ARM 37.80.201

The department proposes to add a household experiencing homelessness as a priority group if there were insufficient funds to provide benefits to all eligible households. The CCDF rules at 45 CFR 98.46(3) recognize a household experiencing homelessness as a priority group.

The department proposes to allow for a payment greater than the authorization plan on a case-by-case basis at the discretion of the ECSB.

ARM 37.80.205

The department proposes to revise payment rates based on information gathered from the 2016 Montana Child Care Market Rate Survey (survey). The survey was conducted by Montana State University for the department. The Child Care Development Fund (CCDF) Reauthorization Act of 2014 (Act) requires states to use survey information to set payment rates using results from the most recent market rate survey.

The department proposes to eliminate the current rate structure of fourteen rates and replace with one statewide rate because the survey recommends one statewide rate. A child care provider may see an increase or decrease from current child care subsidy payments. This will vary with each child care provider.

The department proposes three age increments: infant/toddler, preschool-age child, and school-age. Definitions are proposed in ARM 37.80.102. The age increment for infant/toddler expands the current age range for infant rates from newborn to 23 months to birth through the end of the 35th month. By expanding the age range for infant/toddlers, an increase in access and affordability for infant care is sought, a requirement from the Act and follow the administration of Children and Families' Caring for Our Children best practices.

The department proposes to reimburse all child care provider types listed in ARM 37.80.101. The department is proposing to pay a rate based on a full-time day and part-time day because the CCDF rules require payments be made on a full-time or part-time basis and do not allow for any increment of an hour or smaller for payment. The department is proposing that a part-time day is fewer than six hours of child care and a full-time day is more than six hours and less than 12.

The department proposes to revise payment calculations for payments over twelve hours. This is intended to simplify calculating an additional payment. Most payments for child care services are for fewer than twelve hours per day.

The department proposes to add a registration fee as required by the CCDF rules. The department proposes to cover a registration fee not to exceed \$30. It must be the same amount charged to private pay families. This will only be paid once per child at a child care provider and only if the provider charges a registration fee.

ARM 37.80.206

The department proposes to clarify which child care providers are eligible for absent days. Legally certified provider is no longer a child care provider type. When it was a provider type, those providers were not paid for absent days. Family, Friend, and Neighbors and relative care providers are new child care provider types that replaced legally certified providers. The department proposes these two new provider types are not eligible for absent days.

ARM 37.80.301

The department proposes to amend this rule to clarify that all registered and licensed child care facilities are approved by the Child Care Licensing Program of the department's Quality Assurance Division (QAD). These necessary, clarifying amendments are made in concert with amendments QAD made to certain Child Care Licensing Program administrative rules pursuant to MAR Notice No. 37-811, adopted February 10, 2018.

ARM 37.80.316

The department proposes to add language about the timeline for a provider to submit an invoice in a timely manner. The CCDF rules require that payments be made no later than 21 calendar days from receipt of a complete invoice for services.

ARM 37.80.501

The department proposes to clarify when child care assistance can be terminated. If a parent is no longer in compliance with the Child Support Enforcement Division, it does not affect eligibility on child care subsidy until the next annual re-determination. Also, if a child care provider is not meeting licensing standards, the parent's case would not be terminated but the department will not pay the child care provider the child care subsidy. The parent would have to choose an eligible child care provider or privately pay for child care services. A case is no longer terminated if a parent is not meeting an activity requirement. The parent is given a grace period; however, if at the end of the grace period, the parent is not meeting an activity requirement, a case would be terminated.

ARM 37.80.502

The department proposes to revise language about when a parent or provider is not eligible for child care assistance. When a parent or provider has an overpayment issued, the overpayment can be paid in one payment or in payments as an account with the Business and Financial Services Division (BFSD). The department proposes that a parent or provider must be current in their payment account with BFSD.

FISCAL IMPACT

The department expects the proposed rules will not have a fiscal impact to the state; all proposed rules will fall within the current budget of the Best Beginnings Child Care Scholarship (BBCCS) program.

The BBCCS program offers child care assistance for families with parents attending school and/or working under the Non-TANF program, families referred by Temporary Assistance for Needy Families (TANF), and children from Child Protective Services (CPS). As of August 2017, 3,186 children from Non-TANF families, 661 children referred by TANF, 109 children referred by the Working Caretaker Relative program,

21 children referred by Tribal IV-E, and 1,021 children referred by CPS were receiving child care assistance. There was a total of 4,998 unduplicated children.

As of August 2017, there were 260 licensed child care centers, 240 registered family providers, 413 registered group providers, and 237 legally certified providers. Child care providers may be small businesses. The department proposes revisions to child care provider rates and payment practices. The impact on an individual small business will be based on the number of children with child care assistance served by the child care provider and the rates the program charges. Also, the department proposes to pay registration fees for a child receiving child care assistance and only if the provider charges a registration fee. This is a benefit to child care providers and families with children receiving child care assistance.

6. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Todd Olson, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail dphhslegal@mt.gov, and must be received no later than 5:00 p.m., May 11, 2018.

7. The Office of Legal Affairs, Department of Public Health and Human Services, has been designated to preside over and conduct this hearing.

8. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 6 above or may be made by completing a request form at any rules hearing held by the department.

9. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

10. With regard to the requirements of 2-4-111, MCA, the department has determined that the adoption and amendment of the above-referenced rules will significantly and directly impact small businesses.

/s/ GERALYN DRISCOLL
Geraldyn Driscoll
Rule Reviewer

/s/ SHEILA HOGAN
Sheila Hogan, Director
Public Health and Human Services

Certified to the Secretary of State April 3, 2018.

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

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 37.107.118 and 37.107.305) PROPOSED AMENDMENT
pertaining to the Montana medical)
marijuana program)

TO: All Concerned Persons

1. On May 3, 2018, at 1:00 p.m., the Department of Public Health and Human Services will hold a public hearing in the auditorium of the Department of Public Health and Human Services Building, 111 North Sanders, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Public Health and Human Services no later than 5:00 p.m. on April 20, 2018, to advise us of the nature of the accommodation that you need. Please contact Todd Olson, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-9503; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

3. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

37.107.118 MARIJUANA AND MARIJUANA-INFUSED PRODUCTS PROVIDER LICENSEE REQUIREMENTS (1) through (5) remain the same.

(6) ~~A licensee may have up to 50 square feet of canopy space per registered cardholder:~~ will have a canopy assigned to them by the department according to the table below at the time of license approval. The department will monitor a licensee's number of registered cardholders quarterly. If a licensee is eligible for a different canopy, a licensee may request a canopy reassessment at any time. The department may also reassess a licensee's canopy, at any time, based on the licensee's number of registered cardholders.

| <u>Canopy</u> | <u># of Reg. Cardholders</u> | <u>Sq. Ft. Maximum</u> |
|------------------|------------------------------|------------------------|
| <u>Canopy 1*</u> | <u>Up to 20</u> | <u>400</u> |
| <u>Canopy 2</u> | <u>21 - 30</u> | <u>420</u> |
| <u>Canopy 3</u> | <u>31 - 40</u> | <u>580</u> |
| <u>Canopy 4</u> | <u>41 - 50</u> | <u>780</u> |
| <u>Canopy 5</u> | <u>51 - 70</u> | <u>1,060</u> |

| | | |
|------------------|--------------------|---------------|
| <u>Canopy 6</u> | <u>71 - 100</u> | <u>1,420</u> |
| <u>Canopy 7</u> | <u>101 - 130</u> | <u>1,900</u> |
| <u>Canopy 8</u> | <u>131 - 170</u> | <u>2,540</u> |
| <u>Canopy 9</u> | <u>171 - 230</u> | <u>3,400</u> |
| <u>Canopy 10</u> | <u>231 - 300</u> | <u>4,540</u> |
| <u>Canopy 11</u> | <u>301 - 400</u> | <u>6,060</u> |
| <u>Canopy 12</u> | <u>401 - 540</u> | <u>8,100</u> |
| <u>Canopy 13</u> | <u>541 - 720</u> | <u>10,820</u> |
| <u>Canopy 14</u> | <u>721 - 960</u> | <u>14,440</u> |
| <u>Canopy 15</u> | <u>961 - 1280</u> | <u>19,260</u> |
| <u>Canopy 16</u> | <u>1281 - 1710</u> | <u>25,700</u> |
| <u>Canopy 17</u> | <u>1711 - 2280</u> | <u>34,280</u> |
| <u>Canopy 18</u> | <u>2281 - 3050</u> | <u>45,720</u> |
| <u>Canopy 19</u> | <u>3051 - 4065</u> | <u>60,980</u> |
| <u>Canopy 20</u> | <u>4066 +</u> | <u>81,230</u> |

*Canopy 1 allows up to 400 square feet, but no greater canopy allocation than 20 square feet per registered cardholder.

(a) Square footage of canopy space is the total amount of square footage dedicated to live plant production at a registered premise consisting of the area of the floor, platform, or means of support or suspension of the plant and is measured horizontally starting from the outermost point of the furthest mature flowering plant in a designated growing space and continuing around the outside of all mature flowering plants located within the designated growing space;

(b) A licensee may designate multiple grow areas at a registered premises but those spaces must be separated by a physical boundary such as an interior wall or by at least eight feet of open space;

(c) total canopy size is calculated by multiplying 50 square feet of canopy by the number of registered cardholders; and

(d) remains the same, but is renumbered (c).

(7) through (18) remain the same.

AUTH: 50-46-344, MCA

IMP: 50-46-303, 50-46-308, 50-46-312, 50-46-319, 50-46-326, 50-46-328, 50-46-329, 50-46-330, MCA

37.107.305 MARIJUANA TESTING LABORATORY LICENSEE

REQUIREMENTS (1) through (14) remain the same.

(15) A licensee must provide and maintain, at its own expense, analytical testing laboratory professional liability insurance with an aggregate limit of one million dollars prior to the issuance of a license.

(16) A licensee must obtain and maintain a \$25,000 surety bond which names the department as loss payee in the event the licensee fails to adhere to the

security plan approved by the department, or it otherwise operates the facility in a manner that allows for or results in theft, loss, or diversion of marijuana items. A copy of the bond must be submitted to the department prior to a license being issued.

(17) In addition to the requirements contained in rule, the department has developed and published the METRC MT Testing Lab User Guide, dated April 10, 2018 (Guide), which it adopts and incorporates by reference. The purpose of the Guide is to implement requirements for testing laboratories. A copy of the Guide may be obtained from the department by a request in writing to the Department of Public Health and Human Services, Montana Marijuana Program, P.O. Box 202953, Helena, MT 59620-2953 or at <http://dphhs.mt.gov/marijuana>.

AUTH: 50-46-344, MCA

IMP: 50-46-303, 50-46-311, 50-46-312, 50-46-326, 50-46-328, 50-46-329, MCA

4. STATEMENT OF REASONABLE NECESSITY

ARM 37.107.118

The department proposes amendments to ARM 37.107.118 and its current allocation to providers of 50 square feet of canopy per cardholder, taking into consideration specific factors that 50-46-344, MCA, requires the department to consider. Subsection (2) of that statute sets forth the criteria the department must consider in establishing the canopy for a provider or marijuana-infused products provider:

- (a) safety and security issues;
- (b) the provision of adequate access to usable marijuana to accommodate the needs of registered cardholders; and
- (c) economies of scale and their effect on the ability of licensees to comply with regulatory requirements and undercut illegal market prices.

The department received comments from two interim legislative committees concerned that the current canopy design in rules do not meet legislative intent.

In addressing these concerns, the department considered information gathered from site visits, consultations with other state medical marijuana programs, and industry reporting related to marijuana yields per square foot. The department proposes a multi-level canopy allotment system that will give cardholders adequate access to medicine, while limiting the risk of overproduction by capping the amount of grow space based on the number of cardholders providers serve. The multi-level canopy allotment allows adequate space for current growing operations, while giving licensees the ability to increase their allotted canopy as their cardholder count increases. The department also proposes clarifying the measurement definition according to SB 333.

By allowing for variable production within the canopy proposal, economies of scale are encouraged in order for a provider to serve additional registered cardholders within a given canopy allotment while still maintaining equitable allocation. The canopy allotment addresses the market advantage given to larger providers under the current canopy calculations.

ARM 37.107.305

The department proposes amendments to ARM 37.107.305 to define bonding and insurance requirements for certified testing laboratories required by SB 333. In addition to the requirements contained in rule, the department has developed and published the METRC MT Testing Lab User Guide, dated April 10, 2018 (Guide), which it adopts and incorporates by reference. The purpose of the Guide is to implement requirements for quality assurance testing for laboratories and quality sampling protocols. The rule amendment also provides methods of access to the Guide through department resources.

Fiscal Impact

The department anticipates no fiscal impact arising from the proposed rulemaking.

5. The department intends to apply these rule amendments retroactively to April 10, 2018 in order to comply with the requirements of SB 333 (2017).

6. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Todd Olson, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail dphslegal@mt.gov, and must be received no later than 5:00 p.m., May 11, 2018.

7. The Office of Legal Affairs, Department of Public Health and Human Services, has been designated to preside over and conduct this hearing.

8. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 6 above or may be made by completing a request form at any rules hearing held by the department.

9. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was notified by electronic mail on March 29, 2018.

10. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of the above-referenced rules may significantly and directly impact small businesses.

/s/ Flint Murfitt
Flint Murfitt, Attorney
Rule Reviewer

/s/ Sheila Hogan
Sheila Hogan, Director
Public Health and Human Services

Certified to the Secretary of State April 3, 2018.

BEFORE THE OFFICE OF THE STATE PUBLIC DEFENDER
OF THE STATE OF MONTANA

In the matter of the amendment of ARM) NOTICE OF AMENDMENT AND
2.69.201, 2.69.203, and 2.69.301, and) REPEAL
the repeal of ARM 2.69.202 and)
2.69.601 pertaining to model rules,)
definitions, determination of indigency,)
and reasonable compensation)

TO: All Concerned Persons

1. On February 23, 2018, the Office of the State Public Defender published MAR Notice No. 2-69-573 pertaining to the public hearing on the proposed amendment and repeal of the above-stated rules at page 364 of the 2018 Montana Administrative Register, Issue Number 4.

2. The agency has amended and repealed the above-stated rules exactly as proposed.

3. No comments or testimony were received.

By: /s/ Rhonda Schaffer
Rhonda Schaffer, Director
Office of the State Public Defender

By: /s/ Michael P. Manion
Michael P. Manion, Rule Reviewer
Department of Administration

Certified to the Secretary of State April 3, 2018.

BEFORE THE FISH AND WILDLIFE COMMISSION
OF THE STATE OF MONTANA

In the matter of the amendment of)
ARM 12.11.610 and adoption of NEW)
RULES I through III pertaining to)
recreational use on the Bitterroot)
River)

CORRECTED NOTICE OF
AMENDMENT AND ADOPTION

TO: All Concerned Persons

1. On September 8, 2017, the Fish and Wildlife Commission (commission) published MAR Notice No. 12-475 pertaining to the public hearings on the proposed amendment and adoption of the above-stated rules at page 1451 of the 2017 Montana Administrative Register, Issue Number 17. On February 23, 2018, the commission published the notice of amendment and adoption at page 434 of the 2018 Montana Administrative Register, Issue Number 4.

2. Subsequent to the publication of the notice of amendment and adoption, the Department of Fish, Wildlife and Parks staff discovered that NEW RULES I through III should have been placed in a separate subchapter to be consistent with similar rules on other rivers. NEW RULE I BITTERROOT RIVER COMMERCIAL USE PERMIT was originally numbered ARM 12.11.611 but will officially be numbered ARM 12.11.6301, NEW RULE II BITTERROOT RIVER COMMERCIAL USE PERMIT RESTICTIONS was originally numbered ARM 12.11.612 but will officially be numbered ARM 12.11.6302, and NEW RULE III REVIEW OF RIVER RECREATION RULES FOR BITTERROOT RIVER was originally numbered ARM 12.11.613 but will officially be numbered ARM 12.11.6306.

3. The replacement pages for this corrected notice were submitted to the Secretary of State on March 31, 2018.

/s/ William Schenk
William Schenk
Rule Reviewer

/s/ Dan Vermillion
Dan Vermillion
Chair
Fish and Wildlife Commission

Certified to the Secretary of State April 3, 2018.

BEFORE THE DEPARTMENT OF FISH, WILDLIFE AND PARKS
OF THE STATE OF MONTANA

In the matter of the adoption of an) NOTICE OF ADOPTION OF AN
emergency rule closing the Smith) EMERGENCY RULE
River from Camp Baker to Eden)
Bridge)

TO: All Concerned Persons

1. The Department of Fish, Wildlife and Parks (department) has determined the following reasons justify the adoption of an emergency rule:

(a) There are intermittent ice jams on the Smith River that have caused the river to be impassable by recreationists. The steep canyon walls provide a perfect place for ice to collect and remain due to lack of sun exposure.

(b) Persons recreating on the river in these conditions would be subjected to:

(i) collisions with ice;

(ii) becoming stranded and having to hike out of steep canyon areas; or

(iii) drowning.

(c) Therefore, as this situation constitutes an imminent peril to public health, safety, and welfare, due to the combination of unsafe conditions and this threat cannot be averted or remedied by any other administrative act, the department adopts the following emergency rule. The emergency rule will be sent as a press release to newspapers throughout the state. Also, signs informing the public of the closure will be posted at access points. The rule will be sent to interested parties, and published as an emergency rule in Issue No. 7 of the 2018 Montana Administrative Register.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of the notice. If you require an accommodation, contact the department no later than 5:00 p.m. on April 27, 2018, to advise us of the nature of the accommodation that you need. Please contact Jessica Snyder, Fish, Wildlife and Parks, 1420 East Sixth Avenue, P.O. Box 200701, Helena, MT 59620-0701; telephone (406) 444-9785; or e-mail jesssnyder@mt.gov.

3. The emergency rule is effective April 3, 2018, when this rule notice is filed with the Secretary of State.

4. The text of the emergency rule provides as follows:

RULE I SMITH RIVER EMERGENCY CLOSURE (1) The closed portion of the Smith River is located in Meagher and Cascade Counties.

(2) The Smith River is closed to all floating on the river between Camp Baker and Eden Bridge.

(3) This rule will remain in effect until the department determines the river is again safe for boating.

AUTH: 2-4-303, 23-1-106, MCA
IMP: 2-4-303, 23-1-106, MCA

5. The rationale for the emergency rule is as set forth in paragraph 1.

6. Concerned persons are encouraged to submit their comments to the department. They should submit their comments along with their names and addresses to Colin Maas, Fish, Wildlife and Parks, 4600 Giant Springs Rd, Great Falls, MT 59405; or e-mail cmaas@mt.gov. Any comments must be received no later than May 11, 2018.

7. The department maintains a list of interested persons who wish to receive notice of rulemaking actions proposed by the department. Persons who wish to have their name added to the list shall make written request that includes the name and mailing address of the person to receive the notice and specifies the subject or subjects about which the person wishes to receive notice. Such written request may be mailed or delivered to Fish, Wildlife and Parks, Legal Unit, P.O. Box 200701, 1420 East Sixth Avenue, Helena, MT 59620-0701, or may be made by completing the request form at any rules hearing held by the department.

8. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

/s/ Martha Williams
Martha Williams
Director
Department of Fish, Wildlife and Parks

/s/ Zach Zipfel
Zach Zipfel
Rule Reviewer

Certified to the Secretary of State April 3, 2018.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
OF THE STATE OF MONTANA

| | | |
|---------------------------------------|---|-----------------------|
| In the matter of the adoption of New |) | NOTICE OF ADOPTION, |
| Rules I through IV, the amendment of |) | AMENDMENT, AND REPEAL |
| ARM 24.33.121, 24.33.131, |) | |
| 24.33.142, 24.33.151, 24.35.101, |) | |
| 24.35.111, 24.35.117, 24.35.121, |) | |
| 24.35.131, 24.35.202, 24.35.205, and |) | |
| 24.35.206, and the repeal of ARM |) | |
| 24.33.101, 24.35.141, and 24.35.207 |) | |
| pertaining to Construction Contractor |) | |
| Registration and the Independent |) | |
| Contractor Central Unit |) | |

TO: All Concerned Persons

1. On February 9, 2018, the Department of Labor and Industry (department) published MAR Notice No. 24-33-333 regarding the public hearing on the proposed adoption, amendment, and repeal of the above-stated rules, at page 235 of the 2018 Montana Administrative Register, Issue No. 3.

2. On March 1, 2018, a public hearing was held on the proposed adoption, amendment, and repeal of the above-stated rules in Helena. No members of the public commented on the proposed adoption, amendment, and repeal at the public hearing, and no members of the public commented during the rule comment period.

3. The department has adopted New Rules I (24.35.203), II (24.35.112), III (24.35.113), and IV (24.33.135) as proposed.

4. The department has amended ARM 24.33.121, 24.33.131, 24.33.142, 24.33.151, 24.35.101, 24.35.111, 24.35.117, 24.35.121, 24.35.131, 24.35.202, and 24.35.205 as proposed.

5. The department has repealed ARM 24.33.101, 24.35.141, and 24.35.207 as proposed.

6. Since publication of the proposal notice, the location, and therefore the number, of the facsimile machine for the independent contractor central unit has changed. Therefore, the department has amended ARM 24.35.206 with the following changes, stricken matter interlined, new matter underlined:

24.35.206 MEDIATION AND APPEAL OF DECISIONS REGARDING EMPLOYMENT STATUS (1) remains as proposed.

(2) A request for mediation may be filed in the following ways:

(a) and (b) remain as proposed.

(c) by facsimile to (406) 444-~~3465~~ 444-4140.

(3) remains as proposed.

/s/ Mark Cadwallader
Mark Cadwallader
Alternate Rule Reviewer

/s/ Galen Hollenbaugh
Galen Hollenbaugh, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State April 3, 2018.

BEFORE THE BOARD OF REAL ESTATE APPRAISERS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 24.207.504 pertaining to)
qualifying and continuing education)
requirements)

TO: All Concerned Persons

1. On January 12, 2018, the Board of Real Estate Appraisers (board) published MAR Notice No. 24-207-41 regarding the proposed amendment of the above-stated rule, at page 56 of the 2018 Montana Administrative Register, Issue No. 1.

2. The board has thoroughly considered the comments received. A summary of the comments and the board responses are as follows:

COMMENT 1: Numerous commenters opposed amending ARM 24.207.504 to allow applicants to obtain 100% of qualifying education through online courses instead of limiting it to 50%. The commenters questioned if sufficient data exists to support the board's conclusion that the current rule acts as a barrier to entry to practice. The commenters argued that in-person courses are invaluable in helping candidates develop personal relationships with other candidates and allow for sharing ideas and data, especially because Montana is a "non-disclosure" state (i.e., sales prices are not part of the public record). The commenters stated that the personal relationships and connections obtained through in-person education improve the public's trust in Montana licensed real estate appraisers.

RESPONSE 1: The board does not dispute the value of networking among real estate appraiser professionals and notes that the amendment will not prohibit candidates from choosing to attend face-to-face educational opportunities. However, the board rejects the idea that networking at qualifying education events is a viable method to obtain sales price data. To obtain accurate information, real estate appraisers in Montana subscribe to the Multiple Listing Service or similar services that collect sales prices.

While candidates may have previously been content to travel out of state for education, trainees have recently requested the board waive the in-person education component and allow all education to be taken online. These requests, coupled with information that there are few or no qualifying in-person education courses offered in Montana, demonstrated sufficient evidence of a barrier to practice. This amendment will also spare trainees the extra time and expense for travel, lodging, and meals to obtain qualifying education outside of Montana.

The board recognizes there is a shortage of real estate appraisers in the state of Montana. Further, in-person, face-to-face training is not a requirement of the Appraisal Qualifications Board of the Appraisal Foundation. Lacking evidence that

in-person education is superior to online education, the board rejects the conclusion that in-person training is "better."

The mission of the board is to set and enforce minimum qualifications for licensure. The qualifying education component and necessary hours of experience are required as a prerequisite to taking an examination. If a candidate is successful in passing the examination, the license applicant has demonstrated the necessary minimum qualifications for licensure.

COMMENT 2: One commenter supported the amendment, stating that allowing all qualification education to be obtained online is reasonable and will help maintain adequate numbers of qualified appraisers.

RESPONSE 2: The board appreciates all comments received in the rulemaking process.

3. The board has amended ARM 24.207.504 exactly as proposed.

BOARD OF REAL ESTATE APPRAISERS
THOMAS STEVENS, CERTIFIED
GENERAL APPRAISER
PRESIDING OFFICER

/s/ DARCEE L. MOE
Darcee L. Moe
Rule Reviewer

/s/ GALEN HOLLENBAUGH
Galen Hollenbaugh, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State April 3, 2018.

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

In the matter of the amendment of)
ARM 37.51.102, 37.51.306,)
37.95.102, 37.95.140, 37.95.160,)
37.95.184, and the repeal of ARM)
37.51.307 pertaining to revisions in)
immunization requirements for)
attendance in child care facilities and)
in foster homes)

CORRECTED NOTICE OF
AMENDMENT AND REPEAL

TO: All Concerned Persons

1. On November 9, 2017, the Department of Public Health and Human Services published MAR Notice No. 37-814 pertaining to the public hearing on the proposed amendment and repeal of the above-stated rules at page 2022 of the 2017 Montana Administrative Register, Issue Number 21. On January 26, 2018 the department published the notice of amendment and repeal at page 191 of the 2018 Montana Administrative Register, Issue Number 2.

2. In the department's amendments to ARM 37.51.102, six new definitions were added to the rule, and others were amended or renumbered. In the amended rule, the department inadvertently omitted the renumbering of existing definitions (8) and (9). The rule, as amended in corrected form, reads as follows:

37.51.102 YOUTH FOSTER HOMES: DEFINITIONS The following definitions apply to youth foster home licensing rules:

- (1) through (14) remain as adopted.
- (8) and (9) remain the same, but are renumbered (15) and (16).

3. The effective date of the rule remains June 1, 2018. The replacement pages for this corrected notice were submitted to the Secretary of State on April 2, 2018.

/s/ Nicholas Domitrovich
Nicholas Domitrovich
Rule Reviewer

/s/ Sheila Hogan
Sheila Hogan, Director
Public Health and Human Services

Certified to the Secretary of State April 3, 2018.

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

| | | |
|---------------------------------------|---|-------------------------|
| In the matter of the amendment of |) | NOTICE OF AMENDMENT AND |
| ARM 37.27.136, 37.27.137, |) | REPEAL |
| 37.27.138, 37.27.902, 37.27.903, |) | |
| 37.86.3515, 37.88.101, 37.88.907 |) | |
| and the repeal of ARM 37.27.906, |) | |
| 37.86.3501, 37.86.3502, 37.86.3503, |) | |
| 37.86.3505, 37.86.3506, 37.86.3507, |) | |
| 37.88.110, 37.88.201, 37.88.205, |) | |
| 37.88.206, 37.88.301, 37.88.305, |) | |
| 37.88.306, 37.88.601, 37.88.605, |) | |
| 37.88.606, 37.88.901, 37.88.903, |) | |
| 37.88.906, 37.88.908, 37.88.909 |) | |
| pertaining to Adult Mental Health and |) | |
| Substance Use Disorder |) | |

TO: All Concerned Persons

1. On February 9, 2018, the Department of Public Health and Human Services published MAR Notice No. 37-835 pertaining to the public hearing on the proposed amendment and repeal of the above-stated rules at page 273 of the 2018 Montana Administrative Register, Issue Number 3.

2. The department has amended ARM 37.27.136, 37.27.137, 37.27.138, 37.27.903, 37.86.3515, and 37.88.907 as proposed. The department has repealed ARM 37.27.906, 37.86.3501, 37.86.3502, 37.86.3503, 37.86.3505, 37.86.3506, 37.86.3507, 37.88.110, 37.88.201, 37.88.205, 37.88.206, 37.88.301, 37.88.305, 37.88.306, 37.88.601, 37.88.605, 37.88.606, 37.88.901, 37.88.903, 37.88.906, 37.88.908, and 37.88.909 as proposed.

3. The department has amended the following rules as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

37.27.902 MEDICAID SUBSTANCE USE DISORDER SERVICES:
AUTHORIZATION REQUIREMENTS (1) remains as proposed.

(2) In addition to the requirements contained in rule, the department has developed and published the ~~Addictive and Mental Disorders Division, Medicaid Services Provider Manual for Adult Mental Health and Substance Use Disorder~~ Addictive and Mental Disorders Division Medicaid Services Provider Manual for Substance Use Disorder and Adult Mental Health (Manual), dated ~~April 1, 2018~~ May 1, 2018, which it adopts and incorporates by reference. The purpose of the Manual is to implement requirements for utilization management and services. A copy of the Manual may be obtained from the department by a request in writing to the

Department of Public Health and Human Services, Addictive and Mental Disorders Division, 100 N. Park, Ste. 300, P.O. Box 202905, Helena, MT 59620-2905 or at <http://dphhs.mt.gov/amdd.aspx>.

AUTH: 53-6-113, 53-24-204, 53-24-208, 53-24-209, MCA
IMP: 53-6-101, 53-24-204, 53-24-208, 53-24-209, MCA

37.88.101 MEDICAID MENTAL HEALTH SERVICES FOR ADULTS, AUTHORIZATION REQUIREMENTS (1) remains as proposed.

(2) In addition to the requirements contained in rule, the department has developed and published the ~~Addictive and Mental Disorders Division, Medicaid Services Provider Manual for Adult Mental Health and Substance Use Disorder~~ Addictive and Mental Disorders Division Medicaid Services Provider Manual for Substance Use Disorder and Adult Mental Health (Manual), dated ~~April 1, 2018~~ May 1, 2018, which it adopts and incorporates by reference. The purpose of the Manual is to implement requirements for utilization management and services. A copy of the Manual may be obtained from the department by a request in writing to the Department of Public Health and Human Services, Addictive and Mental Disorders Division, 100 N. Park, Ste. 300, P.O. Box 202905, Helena, MT 59620-2905 or at <http://dphhs.mt.gov/amdd.aspx>.

(3) through (5) remain as proposed.

AUTH: 53-2-201, 53-6-113, MCA
IMP: 53-2-201, 53-6-101, 53-6-111, 53-6-113, MCA

4. The department has thoroughly considered the comments and testimony received. A summary of the comments received and the department's responses are as follows:

COMMENT #1: Many commenters questioned the overall proposed Medicaid Services Provider Manual for Adult Mental Health and Substance Use Disorder, April 1, 2018 (manual) design, components, perceived increases in service requirements and clinical components and service title changes. Many commenters critiqued the proposed severe and disabling mental illness (SDMI) and substance use disorder (SUD) worksheets. Many commenters pointed out discrepancies, language variances, prior authorization and continued stay timeframe inconsistencies, conflicts with current administrative rule, confusing terminology, unnecessary service coordination, and exclusion of services provided concurrently which limit access to necessary supports.

RESPONSE #1: In response to comments, the department recognizes that the proposed manual has discrepancies, language variances, inconsistencies, and confusing terminology. The department will make amendments to the manual to try to alleviate these concerns. Our intent for the manual is to be a comprehensive source of information for providers regarding services provided through the department's Addictive and Mental Disorders Division (AMDD). Ultimately, we hope

the manual will be easy to read and be thorough regarding services, utilization review requirements, and limits.

The department has considered the comments about the manual and will make the following revisions based on public comment.

- The department will remove:
 - Any proposed specific concurrent services limitation with day treatment including Intensive Community-Based Rehabilitation (ICBR); and
 - group therapy with adult group home concurrent services limitation.

This will not apply to any hospital or secure services such as acute inpatient hospitalization. The department maintains the requirement that services duplicative in nature cannot be provided concurrently and the onus is on clear provider documentation. The department asserts it is not appropriate to require members receiving adult group home, adult foster care, or ICBR services to attend day treatment; it is the member's choice.

The department has decided to remove proposed individual and group therapy mental health and SUD outpatient therapy limits.

- The department has removed proposed targeted case management (TCM) limits.
- The department will ensure that throughout the manual that Program of Assertive Community Treatment (PACT) can be prior authorized for up to 180 days and PACT continued stay reviews can be up to 180 days, depending on need.
- The department will amend the name of "Secure Crisis Diversion" to "Crisis Stabilization Program" to be consistent with department administrative rules pertaining to licensure and will reduce the response time for prior authorization (PA) requests to two business days. The name change ensures that both voluntary and secure crisis diversion are covered in the manual. The department has added additional language related to voluntary crisis services for clarity.
- The department will clarify submission of documentation for acute services must be within 36 hours.
- The department will remove the word "therapeutic" from the Adult Group Home and Adult Foster Care titles, will remove mental health therapy components from Adult Group Home and Adult Foster Care, and modify the medical necessity criteria for Adult Group Home and Adult Foster Care so that it is less restrictive.

- The department will remove the adult group therapy component for day treatment. The department will modify the medical necessity criteria for day treatment so that it is less restrictive.
- The department will clarify that a member receiving PACT services should be receiving those services in the setting most convenient to the member, which will generally be in the community and not the clinic. The member's choice must be documented in the member's treatment plan.
- The department has asked for clarification from Centers for Medicare and Medicaid Services (CMS) related to the billing of multiple groups on a single day. Until we receive clear guidance, providers should adhere to written department guidance and Current Procedural Terminology (CPT) definitions and limitations.
- The department was asked to remove "private mental health professional" from the provider requirements in ICBR. We cannot find this statement in the manual. We did find this statement in IMR and that is referenced in RESPONSE #14.
- The department will remove references to "Mental Health Center" (MHC) from individual and group outpatient therapy and only reference MHC for services that must be provided by such entity.
- The department will add language to clarify that Federally Qualified Health Clinics (FQHC) and lookalikes must adhere to the behavioral health service requirements.
- The department will remove the billing requirements section throughout the manual.
- The department recognizes that commenters have a preferred organization for certain parts of the manual but not all commenters agreed what that organization should be. The department made some changes to the organization of the manual as follows:
 - Repeated reference to the forms, which contain the directions for submittal, from the Utilization Management section in the At-A-Glance section and the SUD section to ensure it is clear to providers how and where to get forms for utilization review.
 - Moved Amended Coordination of Services section under Utilization Management.
 - Moved Members Leaving a Correction Facility section under the Purpose section and amended the language to make it generalized to members who are required to receive services by any other entity.
 - Moved the SDMI and SUD definition to the Definition section.

- Moved the Administrative Review/Fair Hearing section into Section 1, Utilization Management.
- The department made the following changes to the manual for clarity and readability:
 - Added a statement that services with limitations include an exception clause for CBPRS and Day TX found to be medically necessary in the At-A-Glance section.
 - Amended the wording for DSM diagnosis to be consistent throughout the manual.
 - Removed the confidentiality statement because it is already provided elsewhere.
 - Uncapitalized M in "manual" throughout the document.
 - Referred to At-A-Glance section under Continued Stay Review section for all services where utilization review is required.
 - Cover page:
 - Removed the word "Proposed."
 - Amended the effective date to May 1, 2018 from April 1, 2018.
 - Changed the title due to confusion that this manual is only related to Adult Substance Use Disorder services.
 - Purpose:
 - Added a clarifying statement that this manual replaces the Medicaid portion of the CD Provider manual, but not the Non-Medicaid portion of that manual.
 - Added information clarifying that the manual is adopted and incorporated into rule and provided rule cross-references.
 - Coordination of Services Provided Concurrently Section:
 - Removed the directives from this section and left in the requirement that services may not be duplicated and are subject to recovery if duplication occurs.
 - Definitions:
 - Moved the SDMI and SUD definition to the Definition section.
 - Added a definition for DSM.
 - Added Individualized Treatment Plan and updated the acronym formatting.
 - Section 1, Utilization Management:
 - Reworded the Authorization section under Section 1, Utilization Management.
 - Changed the title of "Pending Authorization" to "Pending Request."
 - Removed the language from the Denial section that a physician is the only party who may issue a denial. Also removed "A denial may be issued with additional days..." because this sentence was confusing.
 - Changed wording in Desk Review section to "physician reviewer" to be consistent with the language used in the Peer-to-Peer section.
 - At-A-Glance:
 - Added a column specifying the diagnostic criteria for each service.

- Updated to reflect amendments to the utilization management of the services.
 - Added SUD Intensive Outpatient Services (ASAM 2.1).
 - Section 3, Medicaid Adult Mental Health Services:
 - Removed title Section 3, retitled, and now under Section 2.
 - Moved the SDMI clinical guidelines requirements paragraph to this section.
 - Acute Inpatient Hospital Services:
 - Moved the part of the definition down to Provider Requirements section that were provider requirements.
 - Updated the diagnostic criteria language in the Medical Necessity Criteria for consistency.
 - Updated UR Required Forms to specify only needed for OOS facilities.
 - Day TX Service:
 - Amended requirements to remove reference to half-day.
 - Concurrent Services Guide:
 - Has been removed and moved to each service section.
- Though it is not a Medicaid service, the department intends to work with state-approved providers who provide psychoeducation, a Non-Medicaid service, as part of their contracts to ensure that classes provided as part of intensive outpatient SUD treatment may be billed to the SUD treatment contracts.

Providers and members with manual questions on an ongoing basis are encouraged to contact the Addictive and Mental Disorders Division at 406-444-9344. The department appreciates the commenter's willingness to provide input on the manual through the public comment process. Going forward, the department will open the manual and rule as needed to make changes.

COMMENT #2: Several commenters questioned whether implementing utilization review would save the department money, allow appropriate access to services, or delay reimbursement to providers. Several commenters expressed concern that additional paperwork for prior authorization, continued stay reviews, and SDMI and SUD worksheets are an administrative burden without a corresponding rate increase and the exclusion of documentation as a billable component of many services. Several commenters stated the proposed SDMI and SUD worksheets have limited value and the department seems to question the clinical judgement of providers.

RESPONSE #2: Utilization review is a best practice that helps maintain adherence to a budget by ensuring the member is receiving medically necessary services at the appropriate level of care, thus allowing Medicaid dollars to go as far as they can in treating a population of members. The department will evaluate these changes and analyze results going forward and may need to adjust. Variables the department intends to monitor include:

- Trends in member utilization

- Denials and deferments
- Number of providers
- Length of stays

The department depends on providers for the Medicaid program safety net and does not question the professional judgement of providers.

Capturing the provider's clinical determination on the proposed SDMI Definition and SDMI Level of Impairment worksheet and proposed SUD Risk Rating and Level of Care worksheet (SDMI and SUD worksheets) ensures the medical necessity of services by documenting the initial and periodic assessment of the member's condition, thus ensuring the continued service need at the appropriate level of care. The department considered additional utilization review instead of documentation, but determined documentation would present less of a cost and administrative burden to providers than additional utilization review. The proposed SDMI and SUD worksheets provide an objective and consistent assessment tool to determine the appropriate level of care and the tools assume that the provider clinician will make the best judgement for the member.

COMMENT #3: One commenter asked if the proposed manual replaces the Substance Use Disorders Services CD Provider manual.

RESPONSE #3: Yes, in part. The proposed manual replaces the Medicaid portion of the CD Provider manual. The Non-Medicaid portion of the CD Provider manual will be moved into the manual in a future proposed rulemaking.

COMMENT #4: Many commenters made statements regarding rate reductions, changes in Medicaid medical benefits, changes to children's mental health and TCM benefits, aligning substance use providers to the Resource Based Relative Value Scale (RBRVS) reimbursement method, and provided comments to amendments in prior department rulemaking under MAR Notice Nos. 37-788 and 37-828. Several commenters questioned why additional utilization management would be applied to already decimated rates.

RESPONSE #4: The department acknowledges the frustration related to budgetary changes within the department, but these comments are outside the scope of this rulemaking. See RESPONSE #2 regarding utilization management.

COMMENT #5: Many commenters expressed concern over whether the proposed outpatient therapy limits are subject to telehealth and the billable originating and distance site code for telehealth Q3014.

RESPONSE #5: As stated in RESPONSE #1, the department will remove all outpatient therapy limits from the manual.

Regarding the Q3014 code, Medicaid reimburses providers for medically necessary telemedicine services furnished to eligible members. Telemedicine is not itself a unique service, but a means of providing selected services approved by Medicaid.

Providers may only bill procedure codes for which they are already eligible to bill. Services not otherwise covered by Medicaid are not covered when delivered via telemedicine. The use of telecommunication equipment does not change prior authorization or any other Medicaid requirements established for the services being provided. See the Montana Medicaid Provider website (<http://medicaidprovider.mt.gov>) for more information.

COMMENT #6: Several commenters asked why the department is imposing a limit of eight members for a group therapy session.

RESPONSE #6: The department will revise this limit to 16 members. Substantial research supports between eight and 12 members in a group for substance use treatment.

COMMENT #7: Several commenters asked if new service limits apply to a calendar or state fiscal year, if unused services are prorated or carry over, when the effective date of the limit is in relation to the current fiscal year and the effective date of the proposed rulemaking.

RESPONSE #7: The department has determined that instead of initiating new limits for TCM, utilization trends will be monitored. The department has decided not to pursue outpatient therapy limits now. See RESPONSE #1.

COMMENT #8: Many commenters questioned whether regulations in the Patient Protection and Affordable Care Act and Montana law regarding parity were being followed.

RESPONSE #8: The department believes we are following the Patient Protection and Affordable Care Act and the Montana law regarding parity.

COMMENT #9: Many commenters expressed concerns with the content and requirements in the proposed SDMI and SUD worksheets. One commenter suggested combining the proposed SDMI definition and Level of Care worksheet into one document for simplicity. One commenter requests clarification of several components of the proposed SUD worksheet. The form states the provider must submit with prior authorization requests the current medication administration record, physical exam, and current labs. The commenter seeks clarification if this applies to American Society of Addiction Medicine (ASAM) 3.7 and 3.5 levels of care and proposes amending the medication administration record language to "current medication list, if available." The commenter states providers may be unable to obtain records from private physicians and asks if the phrase "current labs" refers to urinalysis testing or a full panel and seeks a definition of "current." One commenter requests clarification of the required frequency of reassessing the level of care for the member with the proposed worksheet. One commenter questions how incarcerated members will obtain this information while incarcerated. One commenter equates this to requiring a member to see a doctor just to see another doctor.

RESPONSE #9: In response to comments, the department will revise the SDMI worksheets into one document.

The department will clarify on the SUD worksheet and manual the requirements for utilization review by level of care (3.1, 3.5, and 3.7) that align with ASAM criteria. Additionally, members who meet criteria for 3.7 level of care can be admitted and provide required documentation for the prior authorization within 36 hours of admission.

The requirement to provide medical information will be revised to note that medication records will be included if available. A physical exam and current labs will only be required to justify a prior authorization at an ASAM 3.7 level of care but will not be required prior to placement. The exam and labs must be completed within 24 hours of placement and submitted to the department's contractor within 36 hours. The department does not wish to delay placement at this level of care; however, a prior authorization for billing will not be issued until all paperwork has been received.

COMMENT #10: One commenter stated as an accredited child advocacy center under the umbrella of a federally qualified health center (FQHC) they are required to practice evidence based interventions. The two models used by FQHCs, TF-CBT and PCIT, require 12-18 and 14-18 sessions respectively. Some of their members will not meet the SED or SDMI definition thus compromising the fidelity of these interventions.

RESPONSE #10: As noted in RESPONSE #1, the limits for outpatient therapy will be removed from the manual. The youth limit rulemaking was promulgated by the department under MAR Notice No. 37-828 and is outside the scope of this proposed rulemaking.

COMMENT #11: Many commenters opposed the limit of 96 units (24 hours) of TCM per state fiscal year. Several commenters stated two hours of TCM a month is inadequate and the continued stay authorization of up to 24 units (six hours) is insufficient. One commenter states requiring the provider to track units is an administrative burden. One commenter asks how an FQHC will adhere to the limit as they bill a bundled rate at one unit regardless of how many units of TCM they provide that day. One commenter asked that SUD women and children's homes be excluded from the limit. One commenter states the reduction of TCM services will result in fewer mental health providers serving Montana due to access to clinical supervision and practicum experience for licensure were not achievable.

RESPONSE #11: The department will not limit TCM now; see RESPONSE #1. The department will revise both the SDMI and SUD worksheets; see RESPONSE #7.

Providers are required to document services billed to Medicaid as defined in ARM 37.85.414, which is not an additional requirement. Targeted case managers are not required to be licensed mental health professionals. TCM is not a direct clinical

service and therefore does not affect the supervised clinical activities required for licensure.

COMMENT #12: One commenter states the continued stay review for PACT should be eliminated as there are some clients who will remain in this service for the remainder of their lifetime.

RESPONSE #12: Prior authorization and continued stay reviews for PACT are necessary to ensure the member is treated in the least restrictive level of care based on medical necessity. We will monitor this process. If it seems like the length of stay should be longer for PACT based on the evidence, we will consider increasing in a future rulemaking.

COMMENT #13: Many commenters opposed the implementation of an eight-unit (two hours per day) limit for Community Based Psychiatric Rehabilitation and Supports (CBPRS). Two commenters state the limit of two hours per day of CBPRS negatively impacts the quality of the service. One commenter states per current rule completing documentation for utilization management would not be a reimbursable activity for CBPRS. One commenter states the department is reducing the reimbursement rate for CBPRS. One commenter asks if CBPRS will continue to be allowed for nursing homes and waiver programs.

RESPONSE #13: The department recognizes the impact the reductions may have on Medicaid providers and vulnerable Montanans. All Medicaid budget reductions cause concern. These reductions are necessary to keep the department within its authorized appropriation while maintaining the core Medicaid services required by the federal government and provide optional community based service programs. Completing utilization management paperwork is not a component of this service. The department is not proposing to reduce the rate for CBPRS or make changes to nursing home or waiver services in this rulemaking.

Exceptions to the CBPRS limit will be reimbursed if the exception to limit form is submitted and the member meets the medical necessity criteria.

COMMENT #14: One commenter states the following: (1) it is unreasonable that the Illness Management and Recovery (IMR) requirements include "private licensed mental health professional, a licensed mental health professional associated with a MHC, or licensure candidates (under clinical supervision)" because the service requires training in an approved curriculum and feels the department is raising the level of provider credentials; (2) in service requirements should be removed as the service is member driven and should not be based on a comprehensive assessment; and (3) in service requirements should be removed as IMR is provided on a fee for service basis and it serves no purpose to require that it be provided once a week. The commenter further states a mental health professional associated with a SUD program and trained peers should be allowed to provide this service.

RESPONSE #14: The department will revise the manual language as IMR is not required to be provided by a licensed mental health professional associated with a MHC, or a licensure candidate (under clinical supervision) associated with a MHC. The practitioner providing IMR services must be trained in IMR services, as IMR is an evidence-based service program for managing mental illness. IMR services are based on a current member's comprehensive assessment. The department will remove the once a week requirement from the service requirement section.

A mental health center is the only approved provider type for IMR and the department will remove the private mental health professional from the provider requirements.

COMMENT #15: One commenter asks when the rules for peer support will be coming out to support changes in service delivery.

RESPONSE #15: Currently, the department has not received legislatively appropriated funds for Medicaid peer support services. SUD peer support services are available to contracted state-approved programs for SUD and co-occurring diagnoses and coverage is outlined in the CD Provider manual. The department has plans to issue an RFP for peer services for mental health using federal block grant dollars.

COMMENT #16: One commenter stated that the best practice for dialectical behavior therapy (DBT) is group therapy followed by individual therapy and proposes 12 groups with six hours of individual therapy.

RESPONSE #16: The department is not proposing changes to the therapy service of DBT. DBT is reimbursed with a HCPCS code outside of the CPT codes.

COMMENT #17: One commenter asks for clarification regarding the member leaving a correctional facility and being court ordered to treatment. If the member no longer meets the medical necessity criteria for the level of care or loses Medicaid eligibility how does the provider seek reimbursement from the Department of Corrections? One commenter states the SMART program is solely dependent on revenue from providing ACT classes, SUD evaluations, treatment court referrals, and level 2.1 and 1.0 services and is concerned how this will relate to court ordered services. One commenter asked whether someone involved with probation or CPS can get more TCM units.

RESPONSE #17: The proposed rulemaking defines medical necessity criteria to ensure the member is treated in the least restrictive level of care. If the member does not meet the criteria for the level of care a lower level of care should be utilized. The comment regarding Medicaid eligibility is outside the scope of this proposed rulemaking. The process for obtaining payment court-ordered services is outside the scope of this proposed rulemaking. Medical necessity is not based on involvement with another agency, such as probation or CPS, but rather, medical necessity.

COMMENT #18: One commenter requests clarification for secure crisis services regarding voluntary entry to the service and if voluntary entry is subject to utilization management.

RESPONSE #18: Continued stay reviews for secure crisis services (renaming to crisis stabilization program) are required for services exceeding five days and do not require initial prior authorization. The department has added language to the description of voluntary crisis services for clarity. See RESPONSE #1.

COMMENT #19: One commenter states the day treatment client to staff ratio of ten clients to one staff member infringes on management of staffing and the restriction is financially unfeasible and requests the language be removed.

RESPONSE #19: This requirement is in ARM 37.106.1937.

COMMENT #20: A few commenters stated that the proposed rule and corresponding manual contradict the intent and the programming of the ASAM criteria.

RESPONSE #20: The department is proposing to repeal old rules which conflict with current ASAM guidelines. The proposed manual will be reflective of current ASAM guidelines.

COMMENT #21: Many commenters have asked how the utilization management process will work, where should they submit the documentation to, and many expressed concerns regarding the required documentation for SUD services as outlined on the SUD High-Risk Rating and Level of Care worksheet.

RESPONSE #21: The department will be hosting a provider training. It was originally scheduled on March 22 and 23, 2018, but will be rescheduled. When it is rescheduled the department will send information to provider lists and details will be found at: <http://dphhs.mt.gov/amdd>.

COMMENT #22: One commenter states the manual appears to prohibit a SUD provider from billing mental health therapy if co-occurring treatment is necessary and being delivered within the SUD program. One commenter states throughout the manual it is referenced that anyone who holds a behavioral health license with SUD in their scope of practice may do assessments and treatment, but leaves out licensed addictions counselors which is required for assessments and treatment.

RESPONSE #22: The department agrees with the commenter that co-occurring treatment is necessary. To be clear, a licensed addiction counselor is a person with a behavioral health license, and SUD is within the scope of their practice. We have clarified this in the definitions section of the manual. The manual will be consistent with both statute and Montana Board of Behavioral Health licensure administrative rules.

COMMENT #23: One commenter states the concurrent services for outpatient therapy in residential and inpatient settings appears to be a violation of the Patient Protection and Affordable Care Act for parity in mental health and SUD services, i.e. refusing to pay for therapy relating to a co-occurring SUD disorder while the member is receiving inpatient treatment for mental illness. The commenter asks for clarification if a collaborating provider could deliver outpatient SUD services concurrent with services delivered in these programs.

RESPONSE #23: See RESPONSE #1. The concurrent services guide has been removed and moved to each service section.

COMMENT #24: One commenter states the proposed language in ARM 37.27.138 regarding referral, transfer, discharge, aftercare, and follow-up services that ensure continuity of care would constitute a financial hardship if they are mandatory and asks the department to describe the method of payment for this requirement. One commenter states the department has eliminated any option for level 1 services unless the member starts at that level of care. The commenter states a member must meet medical necessity criteria for level 2.1 for additional services and seems contradictory to the proposed rule language requiring aftercare.

RESPONSE #24: The requirement of referral, transfer, discharge, aftercare, and follow-up services has been a requirement to maintain a program's state-approved chemical dependency programs status; therefore is not a new requirement. The department disagrees with the commenter's assessment of the elimination of ASAM 1.0 services, but has eliminated outpatient therapy limits.

COMMENT #25: One commenter states the 24-hour staffing for SUD Clinically Managed Low-Intensity Residential (ASAM 3.1) is inconsistent with ASAM criteria. The commenter points out that mental health group home does not require 24-hour staffing in the manual and states mandatory 24-hour staffing in a ASAM 3.1 will result in the closure of all programs at this level of care due to fiscal impact. One commenter asks if a 24-hour crisis line and onsite security cameras are considered 24-hour staffing. The commenter states they have the house manager living on site in an apartment who they could utilize for an on-call or emergency response.

RESPONSE #25: The department will revise the manual to clarify that staffing requirements are subject to ARM 37.106.1491. Mental health group homes are subject to ARM 37.106.1938 which does not require 24-hour staffing.

COMMENT #26: One commenter questions the criteria between mental health group homes and 3.1 homes. The commenter states they are similar in scope and requests clarification of substantive differences between the services to address variances in the rate and prior authorization or continued stay review length for mental health group homes versus 3.1 homes.

RESPONSE #26: This is outside the scope of this rulemaking but the department appreciates the comment and will take into consideration for future rulemaking.

COMMENT #27: One commenter questions if there is a limit for biopsychosocial assessments in a state fiscal year.

RESPONSE #27: A limit currently does not apply to this code, but documentation of the medical necessity of the need for the assessment must be present in the member record as with any other Medicaid service.

COMMENT #28: One commenter asked if the proposed rulemaking is in effect for adult services only or if it applies to adolescents, specifically the adolescent 3.5 halfway home single gender residential high intensity program.

RESPONSE #28: All service requirements reflected for SUD in this rule and proposed manual for limitations, prior authorization requirements, and continued stay reviews apply to all ages. This clarification will be added to the manual.

COMMENT #29: One commenter states the outpatient therapy limits impact requirements for women who reside in women and children's homes who must maintain treatment hours to receive TANF funds which are necessary public funds that allow them to remain in the home.

RESPONSE #29: The process for obtaining payment for TANF services are outside the scope of this proposed rulemaking. Outpatient therapy limits are being removed. See RESPONSE #1.

COMMENT #30: One commenter states the SUD outpatient services section removes the requirement for assessment and screening and all admissions criteria are removed as well as counselor licensure requirements.

RESPONSE #30: The ASAM criteria is referenced in the manual and includes assessment and admission criteria. The proposed SUD worksheet contains assessment, screening, and admission criteria. The department is not responsible for licensure of behavioral health professionals.

COMMENT #31: One commenter states there are no references in the manual to an interdisciplinary treatment team; however, there is a reference to interdisciplinary treatment plans. The commenter states there are no references to trauma-informed care or motivational enhancement strategies.

RESPONSE #31: The department promotes, not requires, an interdisciplinary treatment plan. The department also supports trauma-informed care and motivational enhancement when those are appropriate practices, but leaves that to the provider to determine.

COMMENT #32: One commenter questions whether MCDC is affected by the proposed rulemaking.

RESPONSE #32: All changes in this rulemaking process apply to all Medicaid providers, including the Montana Chemical Dependency Center (MCDC).

COMMENT #33: One commenter states detox services are not included in the manual and requests clarification of prior authorization for this service. The commenter also asks if the 5-day requirement for residential services includes a detox stay or is that after.

RESPONSE #33: The only detoxification services that require utilization review are provided within the ASAM level of care 3.7. See RESPONSE #9.

COMMENT #34: The commenter asks if there will be block grant or grant resources given the exclusion of ICBR from most services. One commenter asks for clarification of ICBR and asks if the designation of ICBR is given to the member or the facility. The commenter asks if the ICBR is approved via a contracting process and who the contract is between.

RESPONSE #34: ICBR is an available Medicaid service with an all-inclusive rate at a group home setting providing rehabilitation services. ICBR is an intensive group home service and not a member designation. Currently, block grant resources will not be given for ICBR services. ICBR services are a designation of services performed in a group home setting. ICBR services are not a contracted service. Providers interested in ICBR services can call AMDD for further clarification.

COMMENT #35: One commenter asked the value of the Magellan contract.

RESPONSE #35: AMDD is currently contracted with Magellan for \$342,000 to perform mental health utilization review for SFY18. We also paid this same amount in SFY17. AMDD is currently negotiating a SUD utilization review contract with Magellan for a proposed contracted amount of \$129,586 for April – June 2018, paid through SUD block grant funds.

COMMENT #36: Commenters asked who made the decisions for cuts, what their qualifications are, and whether the rural/frontier nature of the state was factored in the calculations. Commenters asked why the department didn't do a cost study.

RESPONSE #36: The proposed cuts were generated by AMDD leadership and forwarded to department leadership after the special legislative session in November 2017, when it became apparent that to meet the division's budget this biennium controls on spending would need to be enforced. The proposed cuts were approved by department leadership. The department did not have time or funding to do a cost study due to the need to stay within budget this biennium.

COMMENT #37: One commenter stated that there is an underlying negative attitude from the Addictive and Mental Disorders Division (AMDD) and Medicaid towards SUD programs and counselors in the field. The commenter states that they are treated as if they are fundamentally dishonest, every effort is made to control them and guard against fraud, and the documentation requirements are overwhelming. The commenter asserts these factors are dismantling SUD treatment in the state and making it impossible to provide effective treatment.

RESPONSE #37: The department does not believe providers are fundamentally dishonest. The department believes that all behavioral health treatment is important. The department proposes to implement utilization review for two reasons. First, the implementation of utilization review is a best practice that can help programs maintain adherence to a budget, which is vitally important this biennium. Utilization review helps to ensure that members receive appropriate care at the least restrictive level of care. Secondly, the Centers for Medicare and Medicaid Services (CMS) require a state who receives federal participation in the reimbursement of Medicaid programs to manage the use of those benefits. 42 CFR 456 requires the state to implement utilization control that:

- (a) Safeguards against unnecessary or inappropriate use of Medicaid services and against excess payments;
- (b) Assesses the quality of those services; and
- (c) Provides for the control of the utilization of all services provided.

The documentation requirements are in place to provide evidence that services were medically necessary and appropriate to meet the needs of the members we serve, not to be overwhelming for providers.

It is not the department's intent or goal to dismantle SUD treatment in Montana, but ensure it is provided according to the federal and state requirements including 42 CFR 456, 42 CFR 433, and 42 CFR 455.

COMMENT #38: Several commenters questioned duplication of utilization management and Surveillance and Utilization Review (SURS) functions.

RESPONSE #38: The department does not believe the SURS retrospective review is a duplication of prior authorization and continued stay reviews, which help ensure members are in the right level of service or be moved to a higher or lower level of appropriate service. SURS retrospective review is a federally mandated check to ensure that Medicaid programs have rigorous oversight.

COMMENT #39: One commenter states the department makes it difficult to access the information regarding the proposed rulemaking and it is not right or legal to have a comment period without telling providers they have the chance to comment. Several commenters stated they were only informed of the proposed changes by members providing a copy of the member letter outlining benefit changes they received prior to the public hearing for this rulemaking.

RESPONSE #39: The department maintains an interested parties list for notification of proposed rulemaking. Individuals who wish to have their name added need to make a written request (or by email), as provided in 2-4-302, MCA. A public hearing is also held for most proposed rulemakings, providing a public forum for comments and an avenue for the submission of written or emailed comments. Requests to be added to the department's interested persons' list may be sent to the department's Office of Legal Affairs, as described in every department notice of proposed rulemaking, or directly to AMDD at: Interested Parties Coordinator, Department of Public Health and Human Services, Addictive and Mental Disorders Division, 100 North Park, Ste. 300 PO Box 202905 Helena, MT 59620-2905 fax 406-444-9389 or e-mail hhsamdemail@mt.gov.

Lastly, Medicaid members are required to have 30 days' notice of changes to Medicaid benefits, which is in line with the member letter publication.

COMMENT #40: Many commenters requested the manual be delayed until July 1, 2018. Many commenters requested the opportunity to work with the department in revising the manual and the proposed SDMI and SUD worksheets.

RESPONSE #40: The department appreciates the commenter's willingness to provide input on the manual through the public comment process; however, the department cannot delay the manual until July 1, 2018, because of a need to meet budgetary goals. The department did delay the manual for one month to address stakeholder concerns and will work with providers on a continual basis to monitor services and respond to concerns. It is the department's intention that the manual and corresponding administrative rules be revised or updated as needed. Providers and members are encouraged to contact the Addictive and Mental Disorders Division at 406-444-9344 with manual or program questions.

COMMENT #41: Many commenters expressed concern about service reductions, limits, and new medical necessity criteria. Many commenters illustrated their comments with shared stories of recovery, hope, dismay, ethical concerns, and provider and department responsibility. Commenters expressed general trepidation regarding the proposed changes including increased use of higher levels of care and involvement with courts and corrections systems and other unintended consequences including disparate impact on certain populations over others. Several commenters state the department appears to single out mental health providers and SUD providers and ignores the waste and abuse of other Medicaid programs and other government programs. Some commenters gave additional suggestions to generate revenue, thus making cuts unnecessary. Several commenters submitted suggestions to improve delivery and access to services including implementing managed care, new computerized data systems, electronic health records, telehealth, and prioritizing resource allocations, improving access in Indian country, and suggested new service models or questioned why services currently under development are not included in this rulemaking. One commenter proposes several substantial changes and suggestions for the overall prior authorization process including selective application based on provider performance

or adherence to contractual agreements, transparency and communication between the department, providers, and patients, ensuring continuity of care, and adoption of automation. Many commenters provided additional information with their comments including studies, legislative reports, best practices, evidence based practices, clinical opinions, statistics about mental health and substance use, citations of the Americans with Disabilities Act, concerns for business models and retaining clinical staff and workforce shortages. Several commenters mentioned the "Addressing Substance Use Disorder in Montana: Strategic Plan Interim Draft Report" as absent from the rulemaking and manual and conflicting with the proposed rulemaking.

RESPONSE #41: The department recognizes the impact any provider rate reductions may have on Medicaid providers, workforce issues, and vulnerable Montanans, and hopes the reductions have the least number of ramifications and unintended consequences of all the possible action to mitigate the budget. All Medicaid budget reductions cause concern and are not implemented lightly; however; these reductions are necessary to allow the department to stay within its authorized appropriation while maintaining the core Medicaid services required by the federal government and community based service programs. The department had to implement limits to avoid cutting entire services altogether. Under normal circumstances the department values a longer and more thorough communication and collaboration with the public, both providers and members. The difficulty under this circumstance was the severe budget shortfall, resulted in required immediate actions to severely reduce department spending. The department appreciates the suggestions for service and access improvements, savings or service models in reports, studies, best practices, statistics, citations, delivery systems, improving access and services in Indian country, overall delivery enhancements, implementation of new standards, and offers of collaboration with stakeholders. The addition of services and implementation or integration of new or existing systems is outside the scope of this rulemaking. The department is committed to implementing strategies as identified in the Strategic Plan but must also meet necessary budgetary restrictions.

The department did not address comments outside this rulemaking.

5. These rule amendments and repeals are effective May 1, 2018.

/s/ Jorge Quintana
Jorge Quintana
Rule Reviewer

/s/ Sheila Hogan
Sheila Hogan, Director
Public Health and Human Services

Certified to the Secretary of State April 3, 2018.

NOTICE OF FUNCTION OF ADMINISTRATIVE RULE REVIEW COMMITTEE

Interim Committees and the Environmental Quality Council

Administrative rule review is a function of interim committees and the Environmental Quality Council (EQC). These interim committees and the EQC have administrative rule review, program evaluation, and monitoring functions for the following executive branch agencies and the entities attached to agencies for administrative purposes.

Economic Affairs Interim Committee:

- Department of Agriculture;
- Department of Commerce;
- Department of Labor and Industry;
- Department of Livestock;
- Office of the State Auditor and Insurance Commissioner; and
- Office of Economic Development.

Education and Local Government Interim Committee:

- State Board of Education;
- Board of Public Education;
- Board of Regents of Higher Education; and
- Office of Public Instruction.

Children, Families, Health, and Human Services Interim Committee:

- Department of Public Health and Human Services.

Law and Justice Interim Committee:

- Department of Corrections; and
- Department of Justice.

Energy and Telecommunications Interim Committee:

- Department of Public Service Regulation.

Revenue and Transportation Interim Committee:

- Department of Revenue; and
- Department of Transportation.

State Administration and Veterans' Affairs Interim Committee:

- Department of Administration;
- Department of Military Affairs; and
- Office of the Secretary of State.

Environmental Quality Council:

- Department of Environmental Quality;
- Department of Fish, Wildlife and Parks; and
- Department of Natural Resources and Conservation.

Water Policy Interim Committee (where the primary concern is the quality or quantity of water):

- Department of Environmental Quality;
- Department of Fish, Wildlife and Parks; and
- Department of Natural Resources and Conservation.

These interim committees and the EQC have the authority to make recommendations to an agency regarding the adoption, amendment, or repeal of a rule or to request that the agency prepare a statement of the estimated economic impact of a proposal. They also may poll the members of the Legislature to determine if a proposed rule is consistent with the intent of the Legislature or, during a legislative session, introduce a bill repealing a rule, or directing an agency to adopt or amend a rule, or a Joint Resolution recommending that an agency adopt, amend, or repeal a rule.

The interim committees and the EQC welcome comments and invite members of the public to appear before them or to send written statements in order to bring to their attention any difficulties with the existing or proposed rules. The mailing address is P.O. Box 201706, Helena, MT 59620-1706.

HOW TO USE THE ADMINISTRATIVE RULES OF MONTANA AND THE MONTANA ADMINISTRATIVE REGISTER

Definitions: **Administrative Rules of Montana (ARM)** is a looseleaf compilation by department of all rules of state departments and attached boards presently in effect, except rules adopted up to three months previously.

Montana Administrative Register (MAR or Register) is an online publication, issued twice-monthly, containing notices of rules proposed by agencies, notices of rules adopted by agencies, and interpretations of statutes and rules by the Attorney General (Attorney General's Opinions) and agencies (Declaratory Rulings) issued since publication of the preceding Register.

Use of the Administrative Rules of Montana (ARM):

- | | |
|------------------|--|
| Known Subject | 1. Consult ARM Topical Index. Update the rule by checking recent rulemaking and the table of contents in the last Montana Administrative Register issued. |
| Statute | 2. Go to cross reference table at end of each number and title which lists MCA section numbers and department corresponding ARM rule numbers. |

RECENT RULEMAKING BY AGENCY

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies that have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through December 31, 2017. This table includes notices in which those rules adopted during the period September 30, 2017, through December 31, 2017, occurred and any proposed rule action that was pending during the past 6-month period. (A notice of adoption must be published within six months of the published notice of the proposed rule.) This table does not include the contents of this issue of the Montana Administrative Register (MAR or Register).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through December 31, 2017, this table, and the table of contents of this issue of the Register.

This table indicates the department name, title number, notice numbers in ascending order, the subject matter of the notice, and the page number(s) at which the notice is published in the 2017 and 2018 Montana Administrative Registers.

To aid the user, the Accumulative Table includes rulemaking actions of such entities as boards and commissions listed separately under their appropriate title number.

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