

# MONTANA ADMINISTRATIVE REGISTER

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MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 9

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 The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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.

Page Number

TABLE OF CONTENTS

PROPOSAL NOTICE SECTION

ADMINISTRATION, Department of, Title 2

2-63-575 (State Lottery Commission) Notice of Proposed Amendment - Definitions - Retailer Applications, Required Rule Reading, Bonding, and Commission - Licenses - Business Changes - Electronic Funds Transfer - Tickets - Prizes - Winner Redemptions. No Public Hearing Contemplated. 908-916

FISH, WILDLIFE AND PARKS, Department of, Title 12

12-485 (Fish and Wildlife Commission) Notice of Proposed Amendment - Wake Restrictions Near Broadwater Bay of the Missouri River No Public Hearing Contemplated. 917-919

TRANSPORTATION, Department of, Title 18

18-170 Notice of Proposed Amendment - Right-of-Way Occupancy by Water and Sewer Facilities. No Public Hearing Contemplated. 920-924

LABOR AND INDUSTRY, Department of, Title 24

24-121-16 (Board of Barbers and Cosmetologists) Notice of Public Hearing on Proposed Amendment and Adoption - Definitions - Fees - Nonroutine Applications - Premises and General Requirements - Licensure by Credentialing With an Out-of-State License - Application for Postsecondary School Licensure - Application for Instructor License - Credited Hours for Montana-Licensed Individuals in a Cosmetology or Barbering Program - Instructor Requirements—Teacher-Training Programs - Salons/Booth Rental - Implements, Instruments, Supplies, and Equipment - Sanitizing and Disinfecting Implements and Equipment - Foreign-Educated Applicants. 925-935

24-156-84 (Board of Medical Examiners) Notice of Public Hearing on Proposed Amendment, Adoption, and Repeal - Fee Schedule - Examination - Renewals - Purpose and Authority - Definitions - Fees - Ankle Surgery Certification - Surgery Certification - Accreditation, Approval, and Standards - Physician Assistant Fees - Obligation to Report to Board - Medical Assistant—Delegation and Supervision - Practice Requirements for Physicians Using Telemedicine - Medical Assistant - Effect of Telemedicine License. 936-946

24-159-85 (Board of Nursing) Notice of Public Hearing on Proposed Amendment, Adoption, and Repeal - Definitions - Enhanced Nurse Licensure Compact Rules - Issuance of a License by a Compact State - Limitations on Multistate Licensure Privilege—Discipline - Information System. 947-948

24-216-23 (Board of Sanitarians) Notice of Public Hearing on Proposed Amendment and Repeal - Fee Schedule - Examination - Sanitarian-in-Training - Continuing Education - Inactive Status and Conversion From Inactive to Active Status - Unprofessional Conduct - Board Meetings - Seal of the Board - Applications - Renewal. 949-955

PUBLIC HEALTH AND HUMAN SERVICES, Department of, Title 37

37-840 Notice of Public Hearing on Proposed Amendment - Medicaid Outpatient Drug Services. 956-959

37-842 Notice of Public Hearing on Proposed Amendment - Hospice Reimbursement and Updates. 960-963

37-843 Notice of Public Hearing on Proposed Amendment - Durable Medical Equipment (DME). 964-968

RULE ADOPTION SECTION

STATE AUDITOR, Office of, Title 6

6-237 (Commissioner of Securities and Insurance) Corrected Notice of Adoption, Amendment, and Repeal - Medicare Supplement Insurance. 969

FISH, WILDLIFE AND PARKS, Department of, Title 12

12-482 Notice of Repeal - Classes of License Agents and Acceptable License Agent Security. 970

TRANSPORTATION, Department of, Title 18

18-167 (Transportation Commission and the Department) Notice of Amendment - Outdoor Advertising Control. 971-975

LABOR AND INDUSTRY, Department of, Title 24

24-111-26 (Board of Alternative Health Care) Notice of Amendment - Definitions - Fees - Nonroutine Applications - Naturopathic Physician Natural Substance Formulary List - Direct-Entry Midwife Apprenticeship Requirements - Direct-Entry Midwife Protocol Standard List Required for Application - Licensing by Examination - Licensure of Out-of-State Applicants - Conditions Which Require Physician Consultation or Transfer of Care - Midwives Continuing Education Requirements. 976-977

24-189-39 (Board of Psychologists) Notice of Amendment - Application Procedures for Behavior Analysts and Assistant Behavior Analysts. 978-979

SPECIAL NOTICE AND TABLE SECTION

Function of Administrative Rule Review Committee. 980-981

How to Use ARM and MAR. 982

Recent Rulemaking by Agency. 983-995

BEFORE THE STATE LOTTERY COMMISSION  
DEPARTMENT OF ADMINISTRATION  
OF THE STATE OF MONTANA

In the matter of the amendment of ARM ) NOTICE OF PROPOSED  
2.63.203, 2.63.204, 2.63.403, 2.63.404, ) AMENDMENT  
2.63.406, 2.63.407, 2.63.606, 2.63.607, )  
2.63.611, 2.63.801, 2.63.1002, ) NO PUBLIC HEARING  
2.63.1004, 2.63.1201, and 2.63.1202 ) CONTEMPLATED  
pertaining to definitions; retailer )  
applications, required rule reading, )  
bonding, and commission; licenses; )  
business changes; electronic funds )  
transfer; tickets; prizes; and winner )  
redemptions )

TO: All Concerned Persons

1. On June 12, 2018, the State Lottery Commission proposes to amend the above-stated rules with an effective date of July 1, 2018.

2. The State Lottery Commission 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, please contact the State Lottery Commission no later than 5:00 p.m. on May 23, 2018, to advise us of the nature of the accommodation that you need. Please contact Denise Blankenship, State Lottery, 2525 North Montana Avenue, P.O. Box 200544, Helena, Montana 59601; telephone (406) 444-5801; fax (406) 444-5830; TDD/Montana Relay Service (406) 444-9642; or by e-mail at dblankenship@mt.gov.

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

2.63.203 DEFINITIONS In addition to the definitions found in ~~32-7-103~~ 23-7-103, MCA, the following definitions apply to this chapter:

(1) "Chain" means three or more places of business having the same owner.

(2) "License" means the document issued by the lottery which authorizes a retailer to sell lottery ~~scratch~~ tickets at a fixed place of business.

(3) "Lottery ticket" means all lottery tickets, including scratch tickets and terminal-issued tickets.

~~(3)~~(4) "Place of business" means the premises where any Montana business is conducted and includes but is not limited to:

(a) retail businesses;

(b) businesses of religious, charitable, civic, or fraternal organizations;

(c) senior citizen centers; and

(d) businesses of the state or any of its political subdivisions.

~~(4)~~(5) "Provisional license" means a license issued by the director which temporarily authorizes a licensee to conduct the sale of lottery tickets pending processing of the license application ~~or renewal~~.

~~(5)~~(6) "Retailer" means a licensed ticket or chance sales agent provided for in 23-7-301, MCA.

(7) "Scratch Ticket" means a lottery ~~scratch~~ ticket that has a removable coating covering symbols that determine the amount of prize a player can win.

~~(6)~~(8) "Terminal-issued ticket" means a lottery ticket printed by a terminal connected to a computer.

AUTH: 23-7-202, MCA

IMP: 23-7-301, MCA

STATEMENT OF REASONABLE NECESSITY: The proposed amendment in the introductory phrase is to correct an inadvertent transposition of numbers in the MCA title number. Title 23, rather than 32, contains the laws governing the lottery. Many sections of these rules refer to all ticket types; however, ARM 2.63.203 does not include a term that encompasses all tickets. The Montana Lottery offers a few types of tickets beyond just scratch tickets. Therefore, clarification of the definition of "Lottery tickets" is proposed to include both "Scratch tickets" and "Terminal-issued tickets." The reference to renewal in (5) is proposed for deletion because ARM 2.63.610 requiring license renewal was previously repealed.

2.63.204 GENERAL PROVISIONS (1) The lottery shall provide ~~scratch and terminal-issued lottery games~~ lottery tickets and promotional coupons to the public whenever the director, with the commission's concurrence, finds it feasible and in the state's best interest.

(2) through (2)(g) remain the same.

(3) The director shall determine, with the commission's concurrence, the length of each ~~scratch~~ lottery game or promotional coupon. The starting date and closing date of each game or coupon must be publicly announced.

(4) The director shall adopt rules for ~~each scratch~~ all games, including, but not limited to:

(a) ~~definition of winners~~ prize structures;

(b) through (5) remain the same.

(6) The director may conduct a grand prize event in conjunction with the ~~scratch~~ games. The procedures for conducting preliminary drawings and for the grand prize event shall be determined by the director, subject to 23-7-102, MCA.

~~(7) The lottery shall provide a type of terminal issued game to the public whenever the director, with the concurrence of the commission, finds it feasible and in the best interest of the state.~~

AUTH: 23-7-202, MCA

IMP: 23-7-110, 23-7-202, 23-7-211, 23-7-212, 23-7-301, MCA

STATEMENT OF REASONABLE NECESSITY: The proposed amendments are necessary to conform terminology changes with amendments proposed to ARM

2.63.203. Additionally, amendment of (4)(a) is proposed to use current terminology defining the game winners for all game types. Removal of (7) is proposed because it duplicates ARM 2.63.204(1).

2.63.403 RETAILER APPLICATIONS AND FEES (1) A person interested in obtaining a license as a retailer shall:

(a) complete an eStop application and pay the required licensing fee on the state licensing system portal at [www.eStop.mt.gov](http://www.eStop.mt.gov); and

(b) file ~~an~~ a traditional or Montana sports action (MSA) lottery retailer application for a license ~~on an application form provided by the director~~ using the application forms on the Montana Lottery website at [www.montanalottery.com/en/view/retailers](http://www.montanalottery.com/en/view/retailers).

(2) There is a one-time non-refundable \$50 application fee for a traditional license.

(3) There is an annual \$75 fee for an MSA license, which is collected for and transferred to the Board of Horse Racing. To apply for an MSA license, a retailer must first have a current gaming license.

(2) remains the same, but is renumbered (4).

AUTH: 23-7-202, MCA

IMP: 23-7-202, 23-7-301, MCA

STATEMENT OF REASONABLE NECESSITY: Because there has been some confusion regarding licensing methods, the proposed amendments to this rule are necessary to clarify the process. The payment for a lottery license is completed through the state licensing system called eStop. This is not a physical form, but a web-based application and payment process. The eStop service is convenient and helps streamline the licensing process, reducing cost to businesses and government.

Traditional licenses are issued for convenience stores, grocery stores, markets, drug stores, restaurants, newsstands, and service stations. MSA licenses are issued for taverns, bars, lounges, casinos, and liquor stores.

There are no proposed cost increases; these are existing fees. The lottery believes it to be helpful to include the fees in rule so that customers know what the fees are.

2.63.404 RETAILER REQUIRED RULE READING (1) remains the same.

(a) read the lottery laws and commission rules of the ~~commission~~ concerning retail licenses and be familiar with ~~such~~ these laws and rules; and

(b) sign ~~an official log~~ all official application forms indicating that ~~he or she~~ the retailer is familiar with the laws and commission rules of the ~~commission~~ and agrees not to violate ~~such~~ these laws or rules.

AUTH: 23-7-202, MCA

IMP: 23-7-202, 23-7-301, MCA

STATEMENT OF REASONABLE NECESSITY: A log is no longer necessary as the Montana Lottery maintains physically signed documents from each retailer indicating compliance, so this reference should be removed. Additional changes are to improve readability.

2.63.406 RETAILER BONDING (1) The director may require a surety bond from the owner or corporation making the application to the lottery to become a ~~scratch ticket or terminal issue~~ lottery retailer. A determination for this bonding requirement is made based on the applicant's credit risk score exceeding a maximum allowable score of 30.

AUTH: 23-7-202, 23-7-301, MCA  
IMP: 23-7-301, MCA

STATEMENT OF REASONABLE NECESSITY: The proposed amendment to this rule is necessary to conform the language with proposed amendments to ARM 2.63.203.

2.63.407 RETAILER COMMISSION (1) Retailers who sell lottery tickets are entitled to a 5 percent base commission of the face value of tickets sold.

~~(a) Each retailer is assigned a scratch ticket sales base.~~

~~(b) For each scratch ticket quarterly sales period, the retailer's scratch tickets activated and not returned are measured against the assigned base.~~

~~(c) For each 2 percent increase in retailer's sales during the quarterly period over his established base sales, the retailer's commission shall be increased by an additional 0.5 percent, to a cap of 10 percent total commission for any quarterly period.~~

~~(d) Retailer scratch ticket sales bases may be adjusted annually at the discretion of the commission.~~

(2) Retailers who sell scratch tickets may increase the scratch ticket commission up to an additional 5 percent.

(a) Each retailer is assigned a scratch ticket sales base.

(b) For each sales quarter, the retailer's scratch tickets are measured against the assigned base by scratch tickets activated and not returned to the lottery.

(c) For each 2 percent increase in retailer's sales over the established base sales during the sales quarter, the retailer's commission must be increased by an additional 0.5 percent, not to exceed a 10 percent total commission for any quarter.

(3) Retailers who sell terminal-issued tickets designated in lottery policy may increase the terminal-issued commission for participating games up to an additional 5 percent.

(a) Each retailer is assigned a terminal-issued ticket sales base for participating games.

(b) For each sales quarter, the retailer's terminal-issued tickets are measured against the assigned base by gross sales for participating games.

(c) Retailers who achieve the minimum sales quarter growth requirement must receive an additional bonus rate commission for participating terminal-issued games, not to exceed a 10 percent total commission for any quarter.



(4) Retailer ticket sales bases, minimum requirements, and bonus rates may be adjusted annually at the discretion of the commission.

~~(e)~~(5) Annually, the director's staff shall review the plan for providing additional commissions to sales agents based on incremental sales and report to the commission. This review will include a recommendation for maintaining the existing plan or modifying the plan for the next year.

AUTH: 23-7-202, 23-7-301, MCA  
IMP: 23-7-202, 23-7-301, MCA

STATEMENT OF REASONABLE NECESSITY: The proposed addition of the commission for terminal-issued tickets is necessary because the scratch incentive program only provides a bonus opportunity for traditional retailers. The Lottery Commission believes it to be fair to provide that sales of designated terminal-issued tickets are eligible for commissions as well as giving both traditional and MSA retailers similar opportunity to earn a bonus. Additional proposed changes are to conform the language with proposed amendments to ARM 2.63.203 and to adhere to drafting conventions.

2.63.606 DUPLICATE LICENSES (1) Upon the loss, mutilation, or destruction of any license issued by the director, ~~the person holding such license may apply to the director for a duplicate~~ retailer shall submit a written request to replace the license to the director.

~~(2) The application shall be made on a form provided by the director.~~

~~(3)~~(2) The application request for a duplicate license shall must be accompanied by a statement signed under oath or penalty of perjury stating the details of the circumstances under which the license was lost, mutilated, or destroyed, and bearing a certification that ~~such~~ the license was, in fact, lost, mutilated, or destroyed.

~~(4)~~(3) The application request for a duplicate license shall must be accompanied by a fee of \$10.

~~(5)~~(4) The existing pieces of any mutilated or partially destroyed license shall be surrendered to the director at the time ~~application~~ a request for a duplicate license is made.

~~(6)~~(5) If a licensee finds ~~any~~ a lost license after a duplicate has been issued, the licensee shall immediately surrender such license to the director.

AUTH: 23-7-202, MCA  
IMP: 23-7-211, MCA

STATEMENT OF REASONABLE NECESSITY: Because no form is provided to the retailer to request a duplicate license, a written request by the retailer for a replacement license is all that is required, necessitating this amendment. Additional changes are to improve readability and follow drafting convention.

2.63.607 BUSINESS CHANGES (1) through (1)(d) remain the same.  
(e) changes in the board of directors; ~~and~~

- (f) change of business address; and
  - (g) any change of bank account information.
- (2) remains the same.

AUTH: 23-7-202, MCA  
IMP: 23-7-301, MCA

STATEMENT OF REASONABLE NECESSITY: Along with board members and address changes, the lottery consistently must remind retailers to notify the lottery of bank account changes that affect the weekly accounting sweep to avoid accounting issues. Adding this proposed requirement to the rule should help alleviate the problem.

2.63.611 REVOCATION OR SUSPENSION OF LICENSE (1) through (1)(f) remain the same.

(g) intentionally amassed packs of scratch tickets or taken other intentional actions to gain an advantage over other lottery sales locations while benefiting financially, either directly or indirectly, from sale of those tickets.

(2) through (5) remain the same.

AUTH: 23-7-202, MCA  
IMP: 23-7-301, MCA

STATEMENT OF REASONABLE NECESSITY: This proposed amendment is necessary to provide a bit broader definition to include intentional actions that may impact the integrity of the lottery such as preprinting tickets and clerk theft of winning tickets at the time of validation, known as palming, or pin-pricking tickets to determine a winning ticket before it is sold. The lottery has experienced these intentional actions, and it is important for licensees to know that their license could be revoked or suspended if these actions occur.

2.63.801 ELECTRONIC FUNDS TRANSFER (1) and (2) remain the same.

(3) The retailer shall bring any accounting error, bank account change, or dispute to the attention of the lottery before the next scheduled sweep.

(4) and (5) remain the same.

AUTH: 23-7-202, 23-7-301, MCA  
IMP: 23-7-301, MCA

STATEMENT OF REASONABLE NECESSITY: The changes to this rule are proposed because the timely notification of retailer changes to banking information is necessary to avoid accounting issues.

2.63.1002 SCRATCH LOTTERY TICKET PRICE (1) The price of a scratch lottery ticket ~~will be~~ is determined by the lottery commission. A retailer may not sell a lottery ticket for more than the price printed on the ticket. A retailer may give away tickets.

AUTH: 23-7-202, MCA  
IMP: 23-7-202, 23-7-301, MCA

STATEMENT OF REASONABLE NECESSITY: The proposed amendments are necessary to conform terminology changes with amendments proposed to ARM 2.63.203, and to improve grammar.

2.63.1004 SCRATCH LOTTERY TICKETS - RETAILER (1) The retailer is responsible for all lottery tickets after acceptance and bears the burden of any loss, including theft or damage.

AUTH: 23-7-202, MCA  
IMP: 23-7-202, 23-7-301, MCA

STATEMENT OF REASONABLE NECESSITY: The proposed amendment is necessary to conform terminology changes with amendments proposed to ARM 2.63.203.

2.63.1201 PRIZES (1) Winning tickets will be redeemed:  
(a) by any retailer for lottery tickets less than \$600; or  
(b) if the lottery ticket value is \$600 or more, by presenting the ticket, a claim form, and valid, unexpired photo identification to the lottery, either by mail or in person. Playslip and sales receipt may not be used to claim a prize. Acceptable types of identification include an original or copy of:  
(i) through (vii) remain the same.  
(2) A winning lottery ticket may be redeemed only by an organization with a federal employer's identification number or by an individual.  
(3) remains the same.  
(4) Unless otherwise provided in the rules for a specific game, a claimant shall sign the back of a winning lottery ticket.  
(5) The lottery may deny a claim for a winning lottery ticket if the ticket:  
(a) through (6) remain the same.  
(7) A lottery ticket is a bearer instrument until signed. The person who signs the lottery ticket is the bearer of the lottery ticket. Payment of any prize may be made to the bearer, and all liability of the lottery terminates upon such payment.  
(8) remains the same.  
(9) A lottery ticket not passing all validation checks is invalid and no prize may be paid on such ticket.  
(10) through (14) remain the same.

AUTH: 23-7-202, MCA  
IMP: 23-7-202, 23-7-211, MCA

STATEMENT OF REASONABLE NECESSITY: The proposed amendments are necessary to conform terminology changes with amendments proposed to ARM 2.63.203.

2.63.1202 SCRATCH LOTTERY TICKET WINNER REDEMPTIONS

- (1) Retailers are responsible for the security of all winning lottery tickets they redeem. Retailers will bear the burden of any loss incurred as a result of:
- (a) multiple redemptions of winning lottery tickets;
  - (b) nonwinning lottery tickets redeemed in error as winning tickets; or
  - (c) failure to redeem winning lottery tickets in the manner determined by the director.

AUTH: 23-7-202, MCA

IMP: 23-7-202, MCA

STATEMENT OF REASONABLE NECESSITY: The proposed amendments are necessary to conform terminology changes with amendments proposed to ARM 2.63.203.

4. Concerned persons may submit their data, views, or arguments concerning the proposed actions to Anne Charpentier, Marketing and Sales Director for the Montana Lottery, at 2525 North Montana Avenue, Helena, Montana 59601; telephone (406) 444-7090; fax (406) 444-5830; or by e-mail to ACharpentier@mt.gov, and must be received no later than 5:00 p.m. on June 8, 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 Anne Charpentier at the above address no later than 5:00 p.m., on June 8, 2018.

6. If the commission receives requests for a public hearing on the proposed actions from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed actions; 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 80 persons based on the number of lottery retailers in the state.

7. The State Lottery Commission 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 4 above or may be made by completing a request form at any rules hearing held by the commission.

8. An electronic copy of this proposal notice is available through the department's web site at <http://doa.mt.gov/administrativerules>. The department strives to make the electronic copy of the notice conform to the official published version but advises all concerned persons that if a discrepancy exists between the official text of the notice and the department's online version of the notice, only the official text will be considered. In addition, although the department works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

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 commission has determined that the proposed rule amendments will not significantly and directly impact small businesses.

By: /s/ Wilbur Rehmann  
Wilbur Rehmann, Chair  
Montana Lottery Commission

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

Certified to the Secretary of State May 1, 2018.

BEFORE THE FISH AND WILDLIFE COMMISSION  
OF THE STATE OF MONTANA

In the matter of the amendment of ) NOTICE OF PROPOSED  
ARM 12.11.630 pertaining to wake ) AMENDMENT  
restrictions near Broadwater Bay of )  
the Missouri River ) NO PUBLIC HEARING  
) CONTEMPLATED

TO: All Concerned Persons

1. On June 15, 2018, the Fish and Wildlife Commission proposes to amend the above-stated rule.

2. The commission 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 no later than May 25, 2018, to advise us of the nature of the accommodation that you need. Please contact Jessica Snyder, Department of Fish, Wildlife and Parks, P.O. Box 200701, Helena, Montana, 59620-0701; telephone (406) 444-9785; or e-mail [jesssnyder@mt.gov](mailto:jesssnyder@mt.gov).

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

12.11.630 MISSOURI RIVER (1) In Broadwater County the Missouri River is closed to all swimming, boating, sailing and floating in the following areas:

- (a) between Toston dam and 300 feet downstream of the dam; and
- (b) the reservoir between the Toston dam and the boat barrier.

(2) In Cascade County ~~The following areas of the Missouri River are closed to use of any motor-propelled watercraft:~~

~~(a) in Cascade County;~~

(a)(i) is closed to the use of motorized watercraft that portion of the Missouri River from the Burlington Northern Railway Bridge No. 119.4 at Broadwater Bay in Great Falls to Black Eagle; and

~~(ii) that portion of the Missouri River from the Warden Bridge on 10th Avenue South in Great Falls to the floater take-out facility constructed near Oddfellows Park at Broadwater Bay as posted.~~

(b) is limited to a controlled no wake speed, as defined in ARM 12.11.101, 200 feet from the western shore as buoyed from the Warden Bridge on 10th Avenue to the Burlington Northern Railway Bridge No. 119.4 from May 1 to September 30.

AUTH: ~~23-1-106~~, 87-1-303, MCA

IMP: ~~23-1-106~~, 87-1-303, MCA

REASON: The commission originally proposed this rule amendment on November 9, 2017, as MAR Notice No. 12-478 at page 1993 of the 2017 Montana

Administrative Register, Issue Number 21. The commission approved adopting the language at their meeting on April 19, 2018. However, the adoption notice could not be published within the six months required by 2-4-305(7), MCA. The commission is now publishing the proposed amendment to comply with the requirements of the Montana Administrative Procedure Act.

The language is the same as it was when it was proposed in November and all comments received during that rulemaking process will be considered for this rule proposal. A hearing was held on December 5, 2017, when the amendment was first proposed, and testimony received at that hearing will be considered for this rule proposal.

As published in the original proposal notice, the following is the reason for the proposed amendment. On November 10, 1983, the commission proposed restricting motorized use on the Missouri River from the Warden Bridge on 10th Avenue to Oddfellows Park at Broadwater Bay to, "preclude the use of motor boats in an area that is designed to facilitate floaters who do not use motors." Also, at that time, the department anticipated "that the use of motors at an area designated for floaters would create a hazardous situation." Historically, the department has not designated or posted this area for nonmotorized or float use only.

The commission is proposing to amend the rule to remove the obsolete language regarding no motorized use and establish a seasonal 200 foot no wake zone on the western shoreline between the Warden Bridge and the Burlington Norther Railway Bridge No. 119.4 to protect private and public property and has not posted this area of the Missouri River as such making ARM 12.11.630(2)(a)(ii) obsolete and unnecessary. The department coordinated with the City of Great Falls and landowners on the shoreline to develop the rule language proposed by the commission.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to: Broadwater Bay Wake Zone, Department of Fish, Wildlife and Parks, 1600 Giant Springs Road, Great Falls, MT, 59405; or e-mail [fwpr4publiccom@mt.gov](mailto:fwpr4publiccom@mt.gov), and must be received no later than June 8, 2018.

5. If persons who are directly affected by the proposed action 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 Gary Bertellotti at the above address no later than 5:00 p.m., June 8, 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 6000 persons based on approximate population of Great Falls and the surrounding area.

7. The department maintains a list of interested persons who wish to receive notice of rulemaking actions proposed by the department or commission. 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.

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

/s/ Aimee Hawkaluk  
Aimee Hawkaluk  
Rule Reviewer  
Department of Fish, Wildlife and Parks

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

Certified to the Secretary of State May 1, 2018.



BEFORE THE DEPARTMENT OF TRANSPORTATION  
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF PROPOSED
ARM 18.7.202 and 18.7.206	)	AMENDMENT
pertaining to Right-of-Way	)	
Occupancy by Water and Sewer	)	NO PUBLIC HEARING
Facilities	)	CONTEMPLATED

TO: All Concerned Persons

1. On June 12, 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 June 1, 2018, to advise us of the nature of the accommodation that you need. Please contact Gabe Priebe, Utilities Engineering Manager, Department of Transportation, P.O. Box 201001, Helena, Montana, 59620-1001; telephone (406) 444-6080; fax (406) 444-7254; TTY Service (406) 444-7696 or (800) 335-7592; or e-mail gpriebe@mt.gov.

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

- 18.7.202 DEFINITIONS ~~(1) "Department" means the state of Montana department of transportation and its authorized agents and representatives.~~
- ~~(2) "State" means the state of Montana and the state of Montana department of transportation as a duly constituted agency thereof, and its employees.~~
- ~~(3) "Utility" means:~~
- ~~(a) All public utilities as defined by 69-3-101, MCA.~~
  - ~~(b) All common carrier pipelines as defined by 69-13-101, MCA, and~~
  - ~~(c) All rural cooperative, non-profit membership corporations organized under the Rural Electric and Telephone Cooperative Act, as set forth in 35-18-101 through 35-18-503, MCA.~~
- ~~(4) "Facility" means all pipes, mains, conduits, cables, wires, towers, poles and other equipment, structures and appliances built or installed by any utility or non-utility for the purpose of transporting, transmitting, furnishing and/or distributing hydro-carbons and the products thereof, electric power and energy, communication signals, water and sewage.~~
- ~~(5) "State highway project" means any highway construction project on a highway that is under the jurisdiction of the department of transportation.~~
- ~~(6) "Highway" means any highway under the jurisdiction of the department of transportation.~~

(7) "~~Highway right-of-way~~" means the land owned or controlled by the state of Montana Department of Transportation which is designated as highway right-of-way.

(8) "~~Highway structure~~" means any structure located on a highway that is under the jurisdiction of the Department of Transportation and constructed for the purpose of carrying vehicular, rail or pedestrian traffic over a depression, stream, obstacle, roadway, walkway or railroad.

(9) "~~Full controlled-access facility~~" means those portions of an interstate highway, throughway, or throughway intersection which the highway commission designates for through traffic or other federal-aid or state highways over, from, or to which the owners or occupants of abutting land or other persons have no easement of access, light, air, or view. It also means those portions of spurs of the interstate system which the highway commission designates as unsafe or impeded by unrestricted access of traffic from intersecting streets or alleys or public or private roads or ways of passage.

(10) "~~Retained facility~~" means an existing facility which occupies right-of-way required for a new highway project by virtue of a permit, right, or easement under which it was originally installed.

(11) "~~Clear recovery area~~" means that portion of the highway right-of-way as established by the department. Unless otherwise provided, the distance for this area shall be 9.144 meters (30 feet) from the outer edge of the outside travel lane on paved sections or 12.8016 meters (42 feet) from the centerline of the road on unpaved sections, or "clear zone" as defined by the 1989 edition of the AASHTO publication "Roadside Design Guide," whichever is greater. (Copies of all AASHTO publications referenced in these rules are available for inspection and copying at the department's offices in Helena. Copies of current AASHTO publications are available for purchase from the American Association of State Highway and Transportation Officials, Suite 225, 444 North Capital Street, NW, Washington, DC 20001.)

(12) "~~District~~" means the specific geographic area of the state designated by the department of transportation as a district. There are five district headquarters, which are currently located in Missoula, Butte, Great Falls, Billings, and Glendive.

(13) "~~District administrator~~" means the administrative head of each district or the designee of the district engineer.

(14) "~~Occupancy agreement,~~" "~~common use agreement,~~" or "~~encroachment permit~~" mean the documents the owner must secure from the department, prior to occupancy, showing the conditions of occupancy of highway right-of-way, whether such occupancy is overhead, underground, or on the surface.

(1) "Clear recovery area" means that portion of the highway right-of-way as established by the department. Unless otherwise provided, the distance for this area shall be 30 feet from the outer edge of the outside travel lane on paved sections or 42 feet from the centerline of the road on unpaved sections, or "clear zone" as defined by the 2011 edition of the AASHTO publication "Roadside Design Guide," whichever is greater. Copies of AASHTO publications are available for inspection and copying at the department's offices in Helena. Copies of current AASHTO publications are available for purchase at <https://bookstore.transportation.org/>.

(2) "Department" means the state of Montana Department of Transportation and its authorized agents and representatives.

(3) "District" means the specific geographic area of the state designated by the Department of Transportation as a district. There are five district headquarters, which are currently located in Missoula, Butte, Great Falls, Billings, and Glendive.

(4) "District administrator" means the administrative head of each district or the designee of the district engineer.

(5) "Facility" means all pipes, mains, conduits, cables, wires, towers, poles, and other equipment, structures, and appliances built or installed by any utility or non-utility for the purpose of transporting, transmitting, furnishing, and/or distributing hydro-carbons and the products thereof, electric power and energy, communication signals, water, and sewage.

(6) "Full controlled-access facility" means those portions of an interstate highway, throughway, or throughway intersection which the Highway Commission designates for through traffic or other federal-aid or state highways over, from, or to which the owners or occupants of abutting land or other persons have no easement of access, light, air, or view. It also means those portions of spurs of the interstate system which the Highway Commission designates as unsafe or impeded by unrestricted access of traffic from intersecting streets or alleys or public or private roads or ways of passage.

(7) "Highway" means any highway under the jurisdiction of the Department of Transportation.

(8) "Highway right-of-way" means the land owned or controlled by the State of Montana Department of Transportation which is designated as highway right-of-way.

(9) "Highway structure" means any structure located on a highway that is under the jurisdiction of the Department of Transportation and constructed for the purpose of carrying vehicular, rail, or pedestrian traffic over a depression, stream, obstacle, roadway, walkway, or railroad.

(10) "Occupancy agreement," "common use agreement," or "encroachment permit" means the documents the owner must secure from the department, prior to occupancy, showing the conditions of occupancy of highway right-of-way, whether such occupancy is overhead, underground, or on the surface.

(11) "Retained facility" means an existing facility which occupies right-of-way required for a new highway project by virtue of a permit, right, or easement under which it was originally installed.

(12) "State" means the State of Montana and the State of Montana Department of Transportation as a duly constituted agency thereof, and its employees.

(13) "State highway project" means any highway construction project on a highway that is under the jurisdiction of the Department of Transportation.

(14) "Utility" means:

(a) all public utilities as defined by 69-3-101, MCA, but including publicly owned water and sewer facilities;

(b) all common carrier pipelines as defined by 69-13-101, MCA; and

(c) all rural cooperative, non-profit membership corporations organized under the Rural Electric and Telephone Cooperative Act, as set forth in 35-18-101 through 35-18-503, MCA.

AUTH: 60-3-101, 60-4-402, MCA  
IMP: 60-3-101, 60-4-402, MCA

REASON: The proposed amendment is necessary to alphabetize all current definitions to meet State of Montana administrative rule formatting requirements. All definitions remain exactly as currently written, except as noted below:

New (1): The proposed amendment to (1) is necessary to update the references to clear zone measurements in feet, rather than meters, and to the 2011 edition of the AASHTO publication "Roadside Design Guide," with the current website address for purchase of the publication.

New (14)(a): The 2017 Legislature enacted Ch. 203, L. 2017 (HB 374), An Act Clarifying That Certain Utility Facilities May Occupy a Highway Right-of-Way; Requiring that Rules Adopted for Occupancy and Relocation of Utilities in Highway Right-of-Way Include Provisions for Publicly Owned Water and Sewer Facilities. The proposed amendment to ARM 18.7.202(14)(a) will conform to the new legislative changes by amending the definition of "Utility" as used in this subchapter to include publicly owned water and sewer facilities such as municipal, county, or consolidated city and county water and sewer districts, in accordance with the new statutory language found in 60-4-402, MCA.

18.7.206 AUTHORITY OF PRIVATE AND PUBLIC UTILITY LINES (1) All utilities defined in ~~(3)~~ of ARM 18.7.202, have authority under Montana law to occupy highway rights-of-way, and in event of relocation, are eligible for reimbursement pursuant to the laws of the state of Montana.

(2) remains the same.

AUTH: 60-3-101, 60-4-402, MCA  
IMP: 60-3-101, 60-4-402, MCA

REASON: The proposed amendment to ARM 18.7.206 is necessary to delete an incorrect cross-reference to ARM 18.7.202(3), as the correct section will be changed with the proposed alphabetization of the definitions.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to Gabe Priebe, Utilities Engineering Manager, Department of Transportation, P.O. Box 201001, Helena, Montana, 59620-1001; telephone (406) 444-6080; fax (406) 444-7254; TTY Service (406) 444-7696 or (800) 335-7592; or e-mail gpriebe@mt.gov, and must be received no later than 5:00 p.m., June 8, 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 Gabe Priebe at the above address no later than 5:00 p.m., June 8, 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 74 persons based on 742 community or combined water sewer districts listed on the Montana Drinking Water Watch website.

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 4 above or may be made by completing a request form on the department's website, or 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](http://www.mdt.mt.gov).

9. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted by email and U.S. Mail on July 14, 2017.

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. Tooley  
Michael T. Tooley  
Director  
Department of Transportation

Certified to the Secretary of State May 1, 2018.

BEFORE THE BOARD OF BARBERS AND COSMETOLOGISTS  
DEPARTMENT OF LABOR AND INDUSTRY  
STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF PUBLIC HEARING ON
ARM 24.121.301 definitions,	)	PROPOSED AMENDMENT AND
24.121.401 fees, 24.121.406	)	ADOPTION
nonroutine applications, 24.121.407	)	
premises and general requirements,	)	
24.121.603 licensure by credentialing	)	
with an out-of-state license,	)	
24.121.605 application for	)	
postsecondary school licensure,	)	
24.121.607 application for instructor	)	
license, 24.121.808 credited hours for	)	
Montana-licensed individuals in a	)	
cosmetology or barbering program,	)	
24.121.1103 instructor requirements -	)	
teacher-training programs,	)	
24.121.1301 salons/booth rental,	)	
24.121.1509 implements,	)	
instruments, supplies, and equipment,	)	
and 24.121.1511 sanitizing and	)	
disinfecting implements and	)	
equipment, and the adoption of NEW	)	
RULE I foreign-educated applicants	)	

TO: All Concerned Persons

1. On June 4, 2018, at 10:00 a.m., a public hearing will be held in the Large Conference Room, 301 South Park Avenue, 4th Floor, Helena, Montana, to consider the proposed amendment and adoption of the above-stated rules.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Barbers and Cosmetologists (board) no later than 5:00 p.m., on May 29, 2018, to advise us of the nature of the accommodation that you need. Please contact Dennis Clark, Board of Barbers and Cosmetologists, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2390; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; or dlibsdcos@mt.gov (board's e-mail).

3. GENERAL STATEMENT OF REASONABLE NECESSITY: As part of its periodic review of administrative rules, the board is proposing revisions throughout the rules. These amendments are intended to correct prior errors, improve readability, and better align the board's rules with statutory requirements.

Accordingly, the board has determined that reasonable necessity exists to amend certain rules at this time.

Additionally, the board has seen an increasing number of applicants who obtained a high school diploma, or its equivalent, or received professional training in a foreign country. Some of the documents submitted in support of these applications have later proven to be forgeries. Therefore, the board has determined it is reasonably necessary to amend certain existing rules and adopt one new rule to define foreign-educated applicants and require these applicants to obtain certification of their application documents by an approved third party prior to Montana licensure. Where additional specific bases for a proposed action exist, the board will identify those reasons immediately following that rule.

Authority and implementation citations are being amended to accurately reflect all statutes implemented through the rule and provide the complete sources of the board's rulemaking authority.

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

24.121.301 DEFINITIONS (1) through (20) remain the same.

(21) and (22) remain the same but are renumbered (25) and (21), respectively.

(22) "Foreign-educated applicant" means an applicant seeking licensure by the board who obtained a high school diploma, or the equivalent of a high school diploma, or professional training in any country outside of the U.S. or Canada.

(23) and (24) remain the same.

(25) through (34) remain the same but are renumbered (26) through (35).

~~(35)~~(36) "Supplemental barbering course" means a course of study in a licensed school offering a barbering or barbering nonchemical course, which consists of at least 125 hours in clipper cuts and 25 hours in facial, neck, and outline shaving, to licensed cosmetologists only an individual licensed in Montana or another jurisdiction, in order to meet the required educational needs for a barber or barber nonchemical license prior to taking the board-approved exam.

(36) and (37) remain the same but are renumbered (37) and (38).

AUTH: 37-1-131, ~~37-1-319~~, 37-31-203, 37-31-204, MCA

IMP: 37-1-131, 37-31-101, 37-31-203, 37-31-204, 37-31-303, 37-31-305, 37-31-309, 37-31-311, MCA

REASON: In 2015, the board amended its rules to recognize a "cafeteria approach" to evaluating licensure qualifications and scope of practice of applicants trained in other jurisdictions. Subsequently, the board has become aware that applicants licensed in other jurisdictions, such as licensed hair dressers, do not meet the qualifications for Montana licensure as a cosmetologist, barber, or barber nonchemical. The board concluded that such applicants should be allowed to take the supplemental barbering course to count toward educational requirements and is amending (36) accordingly.

24.121.401 FEES (1) through (11) remain the same.

~~(12) Renewal notices will be sent as specified in ARM 24.101.414.~~

(13) remains the same but is renumbered (12).

(13) Education evaluation and documentation verification fees for foreign-educated applicants must be paid directly to the approved credential-evaluating service as specified in [NEW RULE I].

(14) through (19) remain the same.

AUTH: 37-1-131, 37-1-134, 37-31-203, 37-31-323, MCA

IMP: 37-1-134, 37-1-141, 37-31-302, 37-31-304, 37-31-305, 37-31-311, 37-31-312, 37-31-323, MCA

REASON: The board is striking (12) because the referenced rule was repealed in 2015. Renewal parameters for all boards now fall within the standardized department licensing procedures.

24.121.406 NONROUTINE APPLICATIONS (1) through (1)(a)(ii) remain the same.

(iii) a misdemeanor conviction relating to sex or violence, or three or more misdemeanor convictions if the sentence imposed for any such conviction has not been fully discharged or if the convictions were entered within the past five years;

(iv) through (f) remain the same.

AUTH: 37-1-131, 37-31-203, MCA

IMP: 37-1-101, 37-1-131, ~~37-1-307~~, 37-31-203, MCA

REASON: Following questions from licensing staff, the board is amending this rule to establish a time restriction as to when the board considers certain misdemeanor convictions to be relevant to licensing applicants and therefore nonroutine. While the board previously set time restrictions as to relevancy of felony convictions or those involving use or sale of drugs, fraud, deceit, or theft, no such time restriction exists for applicants with three or more misdemeanor convictions or a single misdemeanor relating to sex or violence. The board concluded this may create an absurd result where the board must review as nonroutine every application involving three or more misdemeanor convictions or a single misdemeanor involving sex or violence, but not felony convictions or even those felony convictions involving sex or violence, under certain circumstances.

24.121.407 PREMISES AND GENERAL REQUIREMENTS (1) through (5) remain the same.

(6) Animals are permitted on the premises of a salon or shop as specified in 49-4-214, MCA. ~~only as follows:~~

~~(a) Animals assisting individuals with disabilities must be accompanied as specified in 49-4-214, MCA.~~

~~(b) Dogs may be permitted on the premises at any time at the discretion of the licensee, after the licensee:~~



- ~~(i) provides proof of current rabies vaccination records for each dog on the premises, and makes such proof available to the board inspector;~~
- ~~(ii) provides a certificate of insurance for liability insurance covering each dog on the premises and maintains a copy of the certificate on the premises; and~~
- ~~(iii) posts a legible sign at or near the entrance of the salon or shop indicating that there is a dog present on the premises.~~
- ~~(c) Fish are permitted in enclosed tanks or aquariums only.~~
- ~~(d) All other animals are prohibited on the premises of salons or shops at any time, unless the licensee has submitted a request for a variance that has been approved by the board as provided in rule.~~
- (7) remains the same.

AUTH: 37-1-131, 37-31-203, 37-31-204, MCA

IMP: 37-1-131, 37-31-204, 37-31-311, MCA

REASON: The board has long recognized that having animals in salons, shops, and schools poses sanitation and safety concerns. Upon reviewing the rules, the board concluded that no valid reason exists to distinguish dogs from other animals in these situations. The board has determined it is reasonably necessary to amend (6) to prohibit any animals in salons, shops, and schools, other than service animals as allowed by law.

24.121.603 LICENSURE BY CREDENTIALING WITH AN OUT-OF-STATE LICENSE (1) and (2) remain the same.

(3) To qualify for licensure by credentialing the applicant must submit the following documentation:

(a) For a barber license:

(i) and (ii) remain the same.

(iii) license verification from each state or jurisdiction the applicant has been licensed in, whether the license is current or not; ~~and~~

(iv) proof of high school diploma or its equivalent as provided in ARM 24.121.610; and

(v) either:

~~(iv)(A)~~ (A) proof of passage of a board-approved examination in barbering with appropriate passing scores; or

(B) proof of graduation from an approved school or course of barbering with at least 1,100 hours of training as provided in ARM 24.121.604.

(b) For a barber nonchemical license:

(i) and (ii) remain the same.

(iii) license verification from each state or jurisdiction the applicant has been licensed in, whether the license is current or not; ~~and~~

(iv) proof of high school diploma or its equivalent as provided in ARM 24.121.610; and

(v) either:

~~(iv)(A)~~ (A) proof of passage of a board-approved examination in barbering or barbering nonchemical with appropriate passing scores; or

(B) proof of graduation from an approved school or course of barbering or barbering nonchemical with at least 900 hours of training as provided in ARM 24.121.604.

(c) For a cosmetology license:

(i) and (ii) remain the same.

(iii) license verification from each state or jurisdiction the applicant has been licensed in, whether the license is current or not; ~~and~~

(iv) proof of high school diploma or its equivalent as provided in ARM 24.121.610; and

~~(iv)~~(v) proof of passage of a board-approved examination in cosmetology with appropriate passing scores.

(d) For an electrology license:

(i) and (ii) remain the same.

(iii) license verification from each state or jurisdiction the applicant has been licensed in, whether the license is current or not; ~~and~~

(iv) proof of high school diploma or its equivalent as provided in ARM 24.121.610; and

~~(iv)~~(v) proof of passage of a board-approved examination in electrology with appropriate passing scores.

(e) For a manicurist license:

(i) and (ii) remain the same.

(iii) license verification from each state or jurisdiction the applicant has been licensed in, whether the license is current or not; ~~and~~

(iv) proof of high school diploma or its equivalent as provided in ARM 24.121.610; and

~~(iv)~~(v) proof of passage of a board-approved examination in manicuring with appropriate passing scores.

(f) For an esthetician license:

(i) and (ii) remain the same.

(iii) license verification from each state or jurisdiction the applicant has been licensed in, whether the license is current or not; ~~and~~

(iv) proof of high school diploma or its equivalent as provided in ARM 24.121.610; and

~~(iv)~~(v) proof of passage of a board-approved examination in esthetics with appropriate passing scores.

(4) An out-of-state applicant applying for a license by credentialing must also meet the following requirements:

(a) To qualify for a barber license the applicant must possess a license type in good standing that includes scope of training and practice equal to ARM 24.121.604(2) and either have completed a course of training of at least 1,100 hours in a school or attest to ~~4,250~~ 2,200 hours of work experience as a licensed barber.

(b) To qualify for a barber nonchemical license the applicant must possess a license type in good standing that includes scope of training and practice equal to ARM 24.121.604(3) and either have completed a course of training of at least ~~800~~ 900 hours in a school or attest to ~~4,000~~ 1,800 hours of work experience as a licensed barber nonchemical.

(c) To qualify for a cosmetologist license the applicant must possess either:

(i) a license type in good standing that includes scope of training and practice equal to the cosmetologist requirements in ARM 24.121.604(4) and either have completed a course of training of at least 1,500 hours in a school or attest to ~~4,500~~ 3,000 hours of work experience as a licensed cosmetologist; or

(ii) remains the same.

(d) To qualify for an electrology license the applicant must possess a license type in good standing that includes the scope of training and practice equal to ARM 24.121.604(5) and either have completed at least ~~450~~ 600 hours of electrology training in a school or attest to at least ~~750~~ 1,200 hours of work experience as a licensed electrologist.

(e) To qualify for a manicurist license the applicant must possess a license type in good standing that includes the scope of training and practice equal to ARM 24.121.604(6) and either have completed at least ~~200~~ 400 hours of manicurist training in a school or attest to at least ~~750~~ 800 hours of work experience as a licensed manicurist.

(f) To qualify for an esthetician license the applicant must possess a license type in good standing that includes the scope of training and practice equal to ARM 24.121.604(7) and either have completed at least ~~400~~ 650 hours of esthetician training in a school or attest to at least ~~750~~ 1,300 hours of work experience as a licensed esthetician.

(g) For any other combinations or types of licensure such as hairstyling, braiding, or make-up artists, applying for licensure will be individually ~~assessed by review of~~ reviewed by the board to assess the respective licensing requirements, course curricula, and transcripts and ~~may require further review by the board.~~

~~(5) Applicants with foreign training will be considered nonroutine for the purposes of evaluating the education and qualifications and must:~~

~~(a) submit copies of their training and education curricula to the board;~~

~~(b) provide acceptable official translations of all supporting documents required for licensing and evaluation by the board. Acceptable translations are prepared by a reliable source such as a third party company or certified translator authorized to provide official translations to English, but translations prepared by the applicant or the applicant's relatives, coworkers, or friends are not acceptable. Documentation and contact information of the translator must be attached to the translation for the board to review and contact if necessary; and~~

~~(c) take and pass the board-approved examination. Proof of passage of the examination must be received from the source or another state licensing jurisdiction through a license verification.~~

~~(6) Applicants who obtained their training from Canada are not considered foreign for purposes of this rule.~~

~~(7) through (9) remain the same but are renumbered (5) through (7).~~

AUTH: 37-1-131, 37-31-203, MCA

IMP: 37-1-304, 37-31-303, 37-31-304, 37-31-305, 37-31-308, MCA

REASON: In 2015, the board substantially revised the license application rules. Since implementing the changes, the board has realized that Montana applicants might be at a disadvantage compared to out-of-state applicants since examination

applicants must show proof of a high school diploma or equivalent and complete more training than credentialing applicants. The board also examined the statutory requirements for licensure and determined all licensees should have a high school diploma or equivalent. The board is therefore amending (3) and (4) to better align credentialing licensure requirements with those for licensure by examination.

The board also determined it is reasonably necessary to amend (3)(a) and (b) to accurately reflect 37-31-304(2)(c), MCA. The statute provides that the board must license a barber or barber nonchemical license applicant without examination if the applicant holds an unencumbered license in another state and that state's course of study hour requirement is equal to or greater than Montana's.

The board also continues to recognize that relevant work experience should be considered toward licensure. However, the board has concluded that training in a licensed school provides intensive, directed education that is directly applicable to a person's ability to practice, while general work experience lacks these rigorous learning qualities. As such, the board has determined it is appropriate to amend (4) to require individuals who cannot meet the course of training requirement to attest to work experience of twice the number of hours required for in-school training.

Finally, the board recognizes foreign-educated applicants may apply either by examination or by credentialing, and is relocating (5) and (6) from this rule to establish all relevant requirements for foreign-educated applicants in NEW RULE I.

#### 24.121.605 APPLICATION FOR POSTSECONDARY SCHOOL LICENSURE

(1) through (4) remain the same.

(5) As part of the application, the school applicant shall submit a financial report prepared by a certified public accountant (CPA) indicating the financial solvency of the school. The CPA must affirm that the financial statements and documentation provided by the applicant to the CPA show that the school is reasonably projected to be solvent.

(6) through (10) remain the same.

(11) Applicants shall furnish the board with a blueprint or detailed scale drawing of the floor plan as part of the application for licensure. Floor plans lacking detailed scaled dimensions, including square footage, will not be accepted.

AUTH: 37-1-131, 37-31-203, 37-31-311, MCA

IMP: 37-1-131, 37-31-101, 37-31-302, 37-31-311, 37-31-312, MCA

REASON: The board intends school licensure applications to be rigorous to ensure students and the public served by the students are adequately protected. The board has determined, based on recently reviewed applications, that documents submitted in support of school applications were not meeting the intent of this rule. The board concluded that if schools are required to be solvent, it is reasonable to require an evaluation of such solvency from a qualified professional. As well, some floor plan drawings so lacked in detail the board had difficulty determining school layout, location of equipment, or school square footage. The board is amending (5) and (11) to provide more specificity in the required documentation.

24.121.607 APPLICATION FOR INSTRUCTOR LICENSE (1) remains the same.

(a) proof of high school diploma or its equivalent ~~as provided in ARM 24.121.610;~~

(b) through (4) remain the same.

AUTH: 37-1-131, 37-31-203, MCA

IMP: 37-1-131, 37-31-302, 37-31-303, 37-31-305, 37-31-308, MCA

REASON: In a 2015 rule project, the board inadvertently added the reference to ARM 24.121.610 in this rule. While board statutes require practitioners and instructors to have a high school diploma or its equivalent, 37-31-304, MCA, provides exceptions to this requirement for practitioners. The licensure statute for instructors, 37-31-305, MCA, does not allow instructor applicants to obtain an exemption from this requirement. Therefore, the board has determined it is reasonably necessary to remove the errant reference to the rule to comply with statutory requirements and reduce confusion for instructor license applicants.

24.121.808 CREDITED HOURS FOR MONTANA-LICENSED INDIVIDUALS IN A COSMETOLOGY OR BARBERING PROGRAM (1) remains the same.

(2) A Montana-licensed cosmetologist may apply for a barber license after completion of ~~an additional 150 hours in barbering;~~ a supplemental barbering course.

~~(a) 125 hours in clipper cutting; and~~

~~(b) 25 hours in straight razor shaving.~~

AUTH: 37-1-131, 37-31-203, 37-31-304, MCA

IMP: 37-1-131, 37-31-203, 37-31-304, MCA

REASON: Because "supplemental barbering course" is defined in ARM 24.121.301, the board is amending this rule to remove the redundant language in (2) and instead reference the defined term.

24.121.1103 INSTRUCTOR REQUIREMENTS - TEACHER-TRAINING PROGRAMS (1) through (5) remain the same.

(6) Upon completion by the student of at least 90 percent of the required course of study, and prior to graduating and receiving a diploma, the student may take the board-approved exam. ~~The final practical examination must include all components for evaluation as provided in ARM 24.121.1105.~~

AUTH: 37-1-131, 37-31-203, 37-31-311, MCA

IMP: 37-1-131, 37-31-305, 37-31-311, MCA

REASON: While reviewing and updating the rules, the board recognized that it is unreasonable and unnecessary to require the instructor practical examination to include all components provided for in ARM 24.121.1105. The current board-approved instructor exam tests in areas such as lesson plan content, use of teaching

aids, communication skills, and classroom interaction. The board is amending this rule to remove any conflict with the actual current practical examinations.

24.121.1301 SALONS/BOOTH RENTAL (1) remains the same.

(2) The board shall initially and annually, or when a complaint is received, inspect and approve all salons, shops, and booths.

~~(a) The most current inspection report must be made available to the inspector or designee upon request.~~

~~(b) Within ten days of an annual or complaint-driven inspection, the salon or shop owner, booth renter, or manager shall respond to all inspection report violations by submitting a detailed written response, including any corrective action taken, to the board office.~~

(3) through (12) remain the same.

AUTH: 37-1-131, 37-31-203, 37-31-204, MCA

IMP: 37-1-131, 37-31-204, 37-31-302, 37-31-309, 37-31-312, MCA

REASON: Board inspectors now have immediate electronic access to a licensee's past inspections. The board has therefore determined it is no longer necessary to require licensees to produce these reports to inspectors upon request and is striking the provision from this rule.

24.121.1509 IMPLEMENTS, INSTRUMENTS, SUPPLIES, AND EQUIPMENT (1) through (5) remain the same.

(6) Any and all implements, equipment, and instruments used to perform dermaplane and dermabrasion procedures including but not limited to blades, knives, scalpels, wires, and diamond friezes are prohibited. This does not include single-use lancets used during noninvasive procedures.

(7) through (9) remain the same.

AUTH: 37-1-131, 37-31-203, 37-31-204, MCA

IMP: 37-1-131, 37-31-203, 37-31-204, 37-31-312, MCA

REASON: The board recently learned that licensees consistently ask inspectors and the board office whether lancets are a prohibited item. The board concluded that current instruction and common practice in the industry allow lancets to be used in noninvasive procedures and is amending this rule to address the confusion.

24.121.1511 SANITIZING AND DISINFECTING IMPLEMENTS AND EQUIPMENT (1) through (4) remain the same.

(5) Electrical equipment, whether professional or consumer designed, which provides circulating, whirlpool, or vacuum effects ~~(for example, all pedicure stations, microdermabrasion machines, facial machines, nail drills, and body treatment equipment)~~ shall be cleaned and disinfected after each use. Such equipment shall also be flushed, cleaned, and disinfected on a regular basis. A record of such cleaning shall be kept on forms provided by the board and available upon client request or any salon inspection.

(6) through (12) remain the same.

AUTH: 37-1-131, 37-31-203, 37-31-204, MCA

IMP: 37-1-131, 37-31-204, 37-31-312, MCA

REASON: During the rule review process, the board concluded that language in (5) is clear enough on its face and the examples listed in parentheses create more confusion than would exist without the list. As such, the board has determined it is reasonably necessary to remove those examples from this rule.

5. The proposed new rule is as follows:

NEW RULE I FOREIGN-EDUCATED APPLICANTS (1) Foreign-educated applicants shall fulfill all requirements for licensure as stated in this chapter.

(2) All documents submitted by a foreign-educated applicant in support of applying for licensure must be certified by a board-approved credential-evaluating service.

(3) Foreign document evaluations must be delivered directly from the credential-evaluating service to the board.

(4) Applicants shall pay the credential-evaluating service for all costs of the evaluation.

AUTH: 37-1-131, 37-31-203, MCA

IMP: 37-1-131, 37-31-203, 37-31-304, 37-31-305, MCA

REASON: See the general statement of reasonable necessity regarding foreign-educated applicants.

6. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Board of Barbers and Cosmetologists, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or e-mail to [dlibsdcos@mt.gov](mailto:dlibsdcos@mt.gov), and must be received no later than 5:00 p.m., June 8, 2018.

7. An electronic copy of this notice of public hearing is available at [www.cosmetology.mt.gov](http://www.cosmetology.mt.gov) (department and board's web site). Although the department strives to keep its web sites accessible at all times, concerned persons should be aware that web sites may be unavailable during some periods, due to system maintenance or technical problems, and that technical difficulties in accessing a web site do not excuse late submission of comments.

8. The board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this board. 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 that the person wishes to receive notices regarding all board administrative rulemaking

proceedings or other administrative proceedings. The request must indicate whether e-mail or standard mail is preferred. Such written request may be sent or delivered to the Board of Barbers and Cosmetologists, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; faxed to the office at (406) 841-2305; e-mailed to [dlibsdcos@mt.gov](mailto:dlibsdcos@mt.gov); or made by completing a request form at any rules hearing held by the agency.

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

10. Regarding the requirements of 2-4-111, MCA, the board has determined that the amendment of ARM 24.121.301, 24.121.401, 24.121.406, 24.121.407, 24.121.603, 24.121.605, 24.121.607, 24.121.808, 24.121.1103, 24.121.1301, 24.121.1509, and 24.121.1511 will not significantly and directly impact small businesses.

Regarding the requirements of 2-4-111, MCA, the board has determined that the adoption of NEW RULE I will not significantly and directly impact small businesses.

Documentation of the board's above-stated determinations is available upon request to the Board of Barbers and Cosmetologists, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2390; facsimile (406) 841-2305; or to [dlibsdcos@mt.gov](mailto:dlibsdcos@mt.gov).

11. Dennis Clark, Executive Officer, has been designated to preside over and conduct this hearing.

BOARD OF BARBERS AND  
COSMETOLOGISTS  
ANGELA PRINTZ, ACTING PRESIDENT

/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 May 1, 2018.



BEFORE THE BOARD OF MEDICAL EXAMINERS  
DEPARTMENT OF LABOR AND INDUSTRY  
STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF PUBLIC HEARING ON
ARM 24.156.601 fee schedule,	)	PROPOSED AMENDMENT,
24.156.606 examination, 24.156.615	)	ADOPTION, AND REPEAL
renewals, 24.156.801 purpose and	)	
authority, 24.156.802 definitions,	)	
24.156.1002 fees, 24.156.1003 ankle	)	
surgery certification, 24.156.1409	)	
accreditation, approval, and	)	
standards, 24.156.1618 physician	)	
assistant fees, and 24.156.1621	)	
obligation to report to board; the	)	
adoption of New Rule I medical	)	
assistant–delegation and supervision,	)	
and New Rule II practice	)	
requirements for physicians using	)	
telemedicine; and the repeal of ARM	)	
24.156.640 medical assistant and	)	
24.156.810 effect of telemedicine	)	
license	)	

TO: All Concerned Persons

1. On June 6, 2018, at 1:00 p.m., a public hearing will be held in the Large Conference Room, 301 South Park Avenue, 4th Floor, Helena, Montana, to consider the proposed amendment, adoption, and repeal of the above-stated rules.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Medical Examiners (board) no later than 5:00 p.m., on May 30, 2018, to advise us of the nature of the accommodation that you need. Please contact Ian Marquand, Board of Medical Examiners, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2360; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; or dlibsmed@mt.gov (board's e-mail).

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

24.156.601 FEE SCHEDULE (1) through (1)(c) remain the same.  
 (d) Physician renewal fee (inactive) ~~400~~ 250  
 (e) through (3) remain the same.

AUTH: 37-1-134, ~~37-1-319~~, 37-3-203, 37-3-307, 37-3-308, 37-3-356, MCA  
IMP: 37-1-134, 37-1-141, 37-3-305, 37-3-307, 37-3-308, 37-3-309, 37-3-313, 37-3-356, MCA

REASON: Department rules provide that an inactive license renewal fee is 50 percent of the active renewal fee. Following a recommendation by department staff, and to align with and achieve efficiencies from standardized department renewal application fees and procedures, the board is amending the inactive renewal fee for physicians.

Authority and implementation citations are being amended to accurately reflect all statutes implemented through the rule and provide the complete sources of the board's rulemaking authority.

24.156.606 EXAMINATION (1) through (1)(b) remain the same.

(c) a passing score of ~~75 or more~~ on one of the following:

(i) through (iii) remain the same.

(d) for foreign medical graduates not eligible for the fifth pathway, a passing score of ~~75 or more~~ on ECFMG.

(2) remains the same.

(3) If an applicant fails to ~~obtain a score of 75 or more in pass~~ the first attempt at USMLE Step III, the applicant may be reexamined no more than five additional times.

(4) For exams taken prior to January 1, 2000, the board will accept the following combination of examinations, with passing scores on each ~~passed with a score of 75 or more for each component exam, in satisfaction of the examination requirement for licensure:~~

(a) through (e) remain the same.

(5) For exams taken after January 1, 2000, the board will accept only USMLE Steps 1, 2, and 3, ~~passed with a score of 75 or more for each step.~~

(6) The board will accept an examination by the National Board of Examiners for Osteopathic Physicians and Surgeons, or its successor, ~~passed with a score of 75 or more~~ with a passing score, regardless of date of examination.

AUTH: 37-3-203, MCA

IMP: 37-3-305, ~~37-3-306~~, ~~37-3-307~~, ~~37-3-308~~, 37-3-309, ~~37-3-311~~, MCA

REASON: Because the entities responsible for the U.S. Medical License Examination (USMLE) do not report numerical scores but report only whether an examinee passed the examination, the board determined it is reasonably necessary to amend this rule to require just the passing score. If older examination records indicate a passing score as set by the testing entity, whether a numerical score is included, the board notes that exam passage is the key fact.

Authority and implementation citations are being amended to accurately reflect all statutes implemented through the rule, provide the complete sources of the board's rulemaking authority, and delete references to repealed statutes.

24.156.615 RENEWALS (1) ~~Renewal notices will be sent as specified in ARM 24.101.414.~~

(2) through (4) remain the same but are renumbered (1) through (3).

(5) ~~Until March 31, 2016, a physician with a permanent license not engaged in the practice of medicine and who has retired from practice may renew this license as an inactive-retired licensee and pay the fee listed in ARM 24.156.601. A retired license may not be reactivated. The individual must reapply for a new original license. After March 31, 2016, inactive-retired status no longer will be granted.~~

(6) remains the same but is renumbered (4).

AUTH: 37-1-131, 37-1-319, ~~37-3-203~~, MCA

IMP: 37-1-131, 37-1-134, 37-1-141, 37-1-319, ~~37-3-313~~, MCA

REASON: The board is striking (1) because the referenced rule was repealed in 2015. Renewal parameters for all boards now fall within the standardized department licensing procedures.

Section (5) of this rule was intended to be in effect only through the 2016 physician licensure renewal period. The board determined it is reasonably necessary to delete the section now since the date has passed.

Authority and implementation citations are being amended to accurately reflect all statutes implemented through the rule and provide the complete sources of the board's rulemaking authority.

24.156.801 PURPOSE AND AUTHORITY (1) ~~These rules are promulgated to promote the efficient administration of the provisions of the Medical Practice Act, 37-3-341 through 37-3-349 regulate the practice of telemedicine by physicians pursuant to 37-3-301, MCA, regulating the practice of medicine across state lines.~~

AUTH: 37-3-203, 37-3-301, MCA

IMP: 37-3-102, 37-3-301, 37-3-341, MCA

REASON: This rule was originally adopted in 2000 to address the now repealed "telemedicine" license type. In 2015, Senate Bill 77 repealed the statutes referenced in this rule and amended 37-3-301, MCA, to require the board provide guidelines in rule for the practice of telemedicine by physicians. The board is therefore amending this rule to provide the correct statutory reference and state clearly the purpose and authority for the rules to follow.

Authority and implementation citations are being amended to accurately reflect all statutes implemented through the rule, provide the complete sources of the board's rulemaking authority, and delete reference to a repealed statute.

24.156.802 DEFINITIONS (1) "In-person encounter" means that a licensee and the patient are in the physical presence of each other during the physician-patient encounter.

(4) (4) "Practice of telemedicine" means the practice of telemedicine as defined in ~~37-3-342(1)~~ by 37-3-102, MCA.

~~(2) Exemptions to the practice of telemedicine are defined in 37-3-342(2), MCA.~~

~~(3) "Occasional telemedicine case" means the practice of medicine across state lines occurring less than five times in a calendar year or involves fewer than five patients in a calendar year.~~

~~(4) "Board" means the Board of Medical Examiners for the state of Montana created under 2-15-1841, MCA.~~

~~(5) "Telemedicine license" means a license issued by the board to practice telemedicine which:~~

~~(a) is only issued to an applicant who meets all of the requirements of 37-3-344 and 37-3-345, MCA; and~~

~~(b) limits the licensee to the practice of telemedicine as defined in these rules and only with respect to the specialty in which the licensee is board-certified or meets the current requirements to take the examination to become board-certified and on which the licensee bases the application for a telemedicine license pursuant to 37-3-345, MCA.~~

~~(6) (2) "Licensee" means the current holder of a telemedicine current license issued under 37-3-305 or 37-3-307, MCA, using telemedicine as defined by 37-3-102, MCA.~~

~~(3) "Physician-patient relationship" means that:~~

~~(a) the licensee agrees to undertake diagnosis and treatment of a person seeking medical services from a licensee; and~~

~~(b) the person agrees to be diagnosed and/or treated by the licensee whether or not there has been an in-person encounter between the licensee and the person.~~

AUTH: 37-3-203, 37-3-301, MCA

IMP: 37-3-102, 37-3-301, 37-3-342, MCA

REASON: The board determined it is reasonably necessary to amend this rule to update definitions following the 2015 repeal of the telemedicine licensure statutes in Senate Bill 77. The board considered how to amend this rule since 2015 and only recently came to agreement on the proposed language. The board is proposing definitions for "in-person encounter" and "physician-patient relationship" to align with and facilitate New Rule II in this notice.

Authority and implementation citations are being amended to accurately reflect all statutes implemented through the rule, provide the complete sources of the board's rulemaking authority, and delete reference to a repealed statute.

24.156.1002 FEES (1) through (1)(b) remain the same.

(c) inactive license renewal

400 250

(2) remains the same.

AUTH: 37-1-134, 37-6-106, MCA

IMP: 37-1-134, 37-1-141, 37-6-302, MCA

REASON: Department rules provide that an inactive license renewal fee is 50 percent of the active renewal fee. Following a recommendation by department staff, and to align with and achieve efficiencies from standardized department renewal application fees and procedures, the board is amending the inactive license renewal fee for podiatrists.

24.156.1003 ANKLE SURGERY CERTIFICATION (1) remains the same.

(a) submits proof of certification by the American Board of Podiatric Foot and Ankle Surgery or its successor(s) in foot and ankle surgery or reconstructive rearfoot/ankle surgery; or

(b) remains the same.

(c) submits proof of completion of a podiatric surgical residency approved in the year of the candidate's residency by the Council on Podiatric Medical Education or the American Board of Podiatric Foot and Ankle Surgery or its successor(s), and submits evidence satisfactory to the board of not fewer than 25 ankle surgeries performed by the applicant and proctored by a primary surgeon of record who is an orthopedic surgeon with foot and ankle experience or a doctor of podiatric medicine with ankle surgery certification within the five years immediately preceding the application.

(2) remains the same.

AUTH: 37-6-106, MCA

IMP: 37-6-107, MCA

REASON: The board became aware that the name of the entity responsible for national certification of foot and ankle surgery by podiatrists has changed. The board is amending this rule to utilize the correct name of the certifying entity and to allow for future changes of the entity's name without further amendment of this rule.

24.156.1409 ACCREDITATION, APPROVAL, AND STANDARDS

(1) through (2)(f) remain the same.

(g) Courses sponsored by a state acupuncture association or an acupuncture school shall be preapproved by the board.

(h) Teaching acupuncture in an accredited academic or continuing education program shall be accepted as continuing education.

(3) Licensees may claim five hours of self-study toward meeting the requirements of ARM 24.156.1408.

AUTH: 37-1-131, 37-1-319, 37-13-201, MCA

IMP: 37-1-131, 37-1-306, 37-13-201, MCA

REASON: Since its formation under this rule, the board's acupuncture committee has been charged with reviewing acupuncturist continuing education. After reviewing the results of multiple continuing education audits of acupuncturist licensees, the committee recommended in 2017 that the board acknowledge additional forms of continuing education and the board agreed. The committee and the board both determined these amendments will reduce the work of the

department audit unit in conducting continuing education audits and reduce the number of audit results reviewed by the committee.

24.156.1618 PHYSICIAN ASSISTANT FEES (1) through (1)(b) remain the same.

(c) inactive renewal fee

~~200~~ 150

(d) remains the same.

(2) Licensees desiring to activate an inactive physician assistant license must contact the board and pay an activation fee of ~~\$400~~ 150 and affirm that they have a current NCCPA certification.

(3) remains the same.

AUTH: 37-1-134, 37-20-202, MCA

IMP: 37-1-134, 37-1-141, 37-20-302, MCA

REASON: Department rules provide that an inactive license renewal fee is 50 percent of the active renewal fee. Following a recommendation by department staff, and to align with and achieve efficiencies from standardized department renewal application fees and procedures, the board is amending the inactive license renewal fee for physician assistants.

24.156.1621 OBLIGATION TO REPORT TO BOARD (1) through (3) remain the same.

(4) A physician assistant ~~is obligated to~~ may report suspected or known impairment of other health care providers to the appropriate licensing board, agency, or in lieu of the board or agency, may report to the endorsed professional assistance program.

AUTH: 37-1-131, ~~37-1-319~~, 37-3-203, ~~37-20-202~~, MCA

IMP: 37-1-131, 37-3-401, ~~37-3-405~~, MCA

REASON: During the rule review, the laws and rules committee discovered that this rule created a mandatory requirement that physician assistants report suspected or known impairment of other health care providers, while physicians are not so required. The board's committee questioned this inequitable situation, and the board determined it is reasonably necessary to amend this rule to comply with the statutory provisions for reporting of others' impairment in 37-3-401(2), MCA, by specifying that physician assistant reporting is voluntary.

Authority and implementation citations are being amended to accurately reflect all statutes implemented through the rule and provide the complete sources of the board's rulemaking authority.

4. The proposed new rules are as follows:

NEW RULE I MEDICAL ASSISTANT – DELEGATION AND SUPERVISION

(1) A health care provider authorized by 37-3-104, MCA, may delegate administrative and clinical tasks which are within the delegating health care provider's scope of practice to medical assistants who:

(a) work in the delegating health care provider's office under the general supervision of the delegating health care provider; and

(b) are known by the delegating health care provider to possess the education, training, knowledge, and skill to perform the delegated tasks in keeping with the standard of medical care owed by the delegating health care provider to the patient.

(2) A health care provider's knowledge of a medical assistant's education, training, knowledge, and skill to perform delegated tasks may be evidenced by:

(a) documentation of the medical assistant's graduation from an accredited medical assistant program;

(b) completion of education and training courses which are substantially equivalent to curriculum taught by accredited medical assistant programs;

(c) the delegating health care provider's personal knowledge of instruction, training, and experience provided directly to the medical assistant by the delegating health care provider; or

(d) other objective evidence known to the health care provider.

(3) A health care provider delegating administrative and/or clinical tasks to a medical assistant shall:

(a) require that the medical assistant record in the patient's medical records:

(i) the identity of the medical assistant to whom the health care provider has delegated tasks included in the patient's care; and

(ii) the clinical tasks delegated to the medical assistant;

(b) ensure through oversight and supervision that the medical assistant's performance of the delegated tasks meets the standard of medical care owed by the delegating health care provider to the patient;

(c) personally provide onsite direct supervision as defined by ARM 24.156.501 to a medical assistant to whom the health care provider has delegated:

(i) injections other than immunizations;

(ii) invasive procedures;

(iii) conscious sedation monitoring;

(iv) allergy testing;

(v) intravenous administration of blood products; or

(vi) intravenous administration of medication; and

(d) require medical assistants to wear a name badge which includes the title: "Medical Assistant".

(4) Health care providers shall not delegate to medical assistants:

(a) medical tasks which are outside the delegating health care provider's scope of practice;

(b) medical tasks which the delegating health care provider is not authorized to perform;

(c) surgery as defined in ARM 24.156.501;

(d) medical tasks which the medical assistant is not qualified by education, training, knowledge, and skill to perform in keeping with the standard of medical care owed by the delegating health care provider to the patient; or

(e) who previously held a health care provider license of any kind in any jurisdiction which was restricted, suspended, revoked, or voluntarily relinquished in lieu of discipline for unprofessional conduct in a health care profession.

AUTH: 37-3-104, 37-3-203, MCA

IMP: 37-3-102, 37-3-104, MCA

REASON: In 2017, the legislature passed House Bill 476 that allowed physician assistants to supervise and delegate tasks to medical assistants. Amendments to 37-3-104, MCA, required the board to adopt guidelines by administrative rule to implement the bill's provisions. Additionally, the board has not amended the current rule since its adoption in 2006. The board concluded that the rule is confusing and arcane and no longer reflects current practice in the medical field. Because the proposed amendments resulted in a complete rewrite of the current medical assistants' rule, the board is repealing ARM 24.156.640 and adopting this new rule in its place.

NEW RULE II PRACTICE REQUIREMENTS FOR PHYSICIANS USING TELEMEDICINE (1) Treatment of a patient who is physically located in Montana by a licensee using telemedicine occurs where the patient is physically located.

(2) The licensee using telemedicine in the treatment and care of patients in Montana shall adhere to the same standards of care required for in-person medical care settings.

(3) A physician-patient relationship may be established for purposes of telemedicine:

(a) by an in-person medical interview and physical examination when the standard of care requires an in-person encounter;

(b) by consultation with another licensee or health care provider who has a documented relationship with the patient and who agrees to participate in, or supervise, the patient's care; or

(c) through telemedicine if the standard of care does not require an in-person encounter.

(4) The licensee using telemedicine in patient care may prescribe Schedule II drugs to a patient only after first establishing a physician-patient relationship through an in-person encounter which includes a medical interview and physician examination.

(5) The licensee using telemedicine in patient care shall:

(a) make available to the patient verification of the licensee's identity and credentials;

(b) verify the identity of the patient;

(c) establish a physician-patient relationship prior to initiating care;

(d) obtain a medical history sufficient for diagnosis and treatment in keeping with the applicable standard of care prior to providing treatment, issuing prescriptions, or delegating the patient's medical services to other health care providers;

(e) delegate the patient's medical care only to health care providers:



- (i) who are known by the licensee to be qualified and competent to perform the delegated services;
- (ii) with whom the patient has an established provider-patient relationship; or
- (iii) who have physical or electronic access to the licensee for consultation and follow-up while the patient is under the licensee's or the delegee's care;
- (f) securely maintain and make timely available:
  - (i) to the patient or the patient's representative all relevant medical and billing records received or produced in connection with the patient's care; and
  - (ii) to other health care providers all medical records received or produced in connection with the patient's care.

AUTH: 37-3-203, 37-3-301, MCA  
IMP: 37-3-301, MCA

REASON: In 2015, Senate Bill 77 amended 37-3-301, MCA, to require that the board establish guidelines by administrative rule for the practice of telemedicine by physicians. After more than two years of review and discussion, the board only recently came to agreement on the necessary rule changes. The board concluded that it is reasonably necessary to adopt this new rule to provide an appropriate level of patient protection and physician responsibility without being burdensome to the affected licensees. Because the changes resulted in a complete rewrite of the current telemedicine rule, the board is repealing ARM 24.156.810 and adopting this new rule in its place.

5. The rules proposed to be repealed are as follows:

24.156.640 MEDICAL ASSISTANT

AUTH: 37-3-104, 37-3-203, MCA  
IMP: 37-3-104, MCA

REASON: See REASON for New Rule I.

24.156.810 EFFECT OF TELEMEDICINE LICENSE

AUTH: 37-3-203, MCA  
IMP: 37-3-342, 37-3-348, 37-3-349, MCA

REASON: See REASON for New Rule II.

6. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Board of Medical Examiners, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or e-mail to [dlibsdmed@mt.gov](mailto:dlibsdmed@mt.gov), and must be received no later than 5:00 p.m., June 8, 2018.

7. An electronic copy of this notice of public hearing is available at [www.medicalboard.mt.gov](http://www.medicalboard.mt.gov) (department and board's web site). Although the department strives to keep its web sites accessible at all times, concerned persons should be aware that web sites may be unavailable during some periods, due to system maintenance or technical problems, and that technical difficulties in accessing a web site do not excuse late submission of comments.

8. The board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this board. 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 that the person wishes to receive notices regarding all board administrative rulemaking proceedings or other administrative proceedings. The request must indicate whether e-mail or standard mail is preferred. Such written request may be sent or delivered to the Board of Medical Examiners, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; faxed to the office at (406) 841-2305; e-mailed to [dlibsmed@mt.gov](mailto:dlibsmed@mt.gov); or made by completing a request form at any rules hearing held by the agency.

9. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. Senator Debby Barrett (SB 77) was contacted on October 12, 2015, by telephone. Representative Denise Hayman (HB 476) was contacted on August 8, 2017, by regular mail.

10. Regarding the requirements of 2-4-111, MCA, the board has determined that the amendment of ARM 24.156.601, 24.156.606, 24.156.615, 24.156.801, 24.156.802, 24.156.1002, 24.156.1003, 24.156.1409, 24.156.1618, and 24.156.1621 will not significantly and directly impact small businesses.

Regarding the requirements of 2-4-111, MCA, the board has determined that the adoption of NEW RULES I and II will not significantly and directly impact small businesses.

Regarding the requirements of 2-4-111, MCA, the board has determined that the repeal of ARM 24.156.640 and 24.156.810 will not significantly and directly impact small businesses.

Documentation of the board's above-stated determinations is available upon request to the Board of Medical Examiners, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2360; facsimile (406) 841-2305; or to [dlibsmed@mt.gov](mailto:dlibsmed@mt.gov).

11. Ian Marquand, Executive Officer, has been designated to preside over and conduct this hearing.

BOARD OF MEDICAL EXAMINERS  
TANJA BREKKE, L.AC., PRESIDENT

/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 May 1, 2018.

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

In the matter of the amendment of	)	NOTICE OF PUBLIC HEARING ON
ARM 24.159.501 definitions, the	)	PROPOSED AMENDMENT,
adoption of New Rule I enhanced	)	ADOPTION, AND REPEAL
nurse licensure compact rules, and the	)	
repeal of ARM 24.159.504 issuance of	)	
a license by a compact state,	)	
24.159.507 limitations on multistate	)	
licensure privilege - discipline, and	)	
24.159.510 information system	)	

TO: All Concerned Persons

1. On March 30, 2018, the Board of Nursing (board) published MAR Notice No. 24-159-85 pertaining to the proposed amendment, adoption, and repeal of the above-stated rules at page 624 of the 2018 Montana Administrative Register, Issue Number 6.

2. The notice of proposed amendment, adoption, and repeal is amended as follows because an association having not less than 25 members who will be directly affected has requested a public hearing.

3. On June 5, 2018, at 9:00 a.m., a public hearing will be held in the Large Conference Room, 301 South Park Avenue, 4th Floor, Helena, Montana, to consider the proposed amendment, adoption, and repeal of the above-stated rules.

4. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the board no later than 5:00 p.m., on May 29, 2018, to advise us of the nature of the accommodation that you need. Please contact Sharon Peterson, Board of Nursing, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2375; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; or nurse@mt.gov (board's e-mail).

5. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Board of Nursing, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or e-mail to nurse@mt.gov, and must be received no later than 5:00 p.m., June 8, 2018.

6. An electronic copy of this notice of public hearing is available at nurse.mt.gov (department and board's web site). Although the department strives to

keep its web sites accessible at all times, concerned persons should be aware that web sites may be unavailable during some periods, due to system maintenance or technical problems, and that technical difficulties in accessing a web site do not excuse late submission of comments.

7. The board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this board. 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 that the person wishes to receive notices regarding all board administrative rulemaking proceedings or other administrative proceedings. The request must indicate whether e-mail or standard mail is preferred. Such written request may be sent or delivered to the Board of Nursing, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, faxed to the office at (406) 841-2305, e-mailed to nurse@mt.gov, or made by completing a request form at any rules hearing held by the agency.

8. Dylan Gallagher, Board Counsel, has been designated to preside over and conduct this hearing.

BOARD OF NURSING  
N. GREGORY KOHN, PRESIDENT

/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 May 1, 2018.

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

In the matter of the amendment of	)	NOTICE OF PUBLIC HEARING ON
ARM 24.216.402 fee schedule,	)	PROPOSED AMENDMENT AND
24.216.503 examination, 24.216.506	)	REPEAL
sanitarian-in-training, 24.216.2102	)	
continuing education, 24.216.2104	)	
inactive status and conversion from	)	
inactive to active status, and	)	
24.216.2301 unprofessional conduct,	)	
and the repeal of 24.216.401 board	)	
meetings, 24.216.403 seal of the	)	
board, 24.216.501 applications, and	)	
24.216.2101 renewal	)	

TO: All Concerned Persons

1. On June 6, 2018, at 9:00 a.m., a public hearing will be held in the Small Conference Room, 301 South Park Avenue, 4th Floor, Helena, Montana, to consider the proposed amendment and repeal of the above-stated rules.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Sanitarians (board) no later than 5:00 p.m., on May 30, 2018, to advise us of the nature of the accommodation that you need. Please contact Steve Gallus, Board of Sanitarians, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2370; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; or dlibsdsan@mt.gov (board's e-mail).

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

24.216.402 FEE SCHEDULE

(1) remains the same.

~~(2) Examination~~ \_\_\_\_\_ 350

~~(3) Reexamination~~ \_\_\_\_\_ 350

(4) through (8) remain the same but are renumbered (2) through (6).

~~(9) The board may approve an outside vendor to administer exams; in those cases, there is a vendor fee set by the exam vendor. Current fee amounts for the sanitarian examination are available at the board office.~~

~~(10) Examination and reexamination fees in (2) and (3) apply only to those exams given in paper format at the board office.~~

AUTH: 37-1-134, 37-40-203, MCA

IMP: 37-1-134, 37-1-141, 37-40-301, 37-40-302, MCA

REASON: The board determined it is reasonably necessary to amend this rule and repeal the examination and reexamination fees. The board is amending ARM 24.216.503 to specify a national exam and no longer collects fees for examination or reexamination. Because the board has not collected any exam fees for several years, these changes will have no discernable fiscal impact on applicants.

The board is repealing (9) and (10) to align with proposed amendments to ARM 24.216.503. The board will no longer contract with an exam vendor, and no longer administers exams in paper format at the board office.

24.216.503 EXAMINATION (1) Except as provided in ~~(6)~~ (3), all applicants must pass an the National Environmental Health Association (NEHA) examination approved by the board prior to licensure. Upon approval of the application set forth in ARM 24.216.501 and 24.216.506, ~~unless the applicant has already passed the examination as provided in (7), the applicant shall pay the examination fee and make arrangements to take the examination approved by the board.~~ Examination candidates are responsible for complying with any requirements of the testing agency.

~~(2) An overall score of 68 percent will be required to pass the examination.~~

~~(3) The board shall inform candidates of the result of their examinations in writing within ten days of receipt of the results from the testing agency. No score will be released over the telephone or via facsimile. The board staff shall discuss score-related matters with the candidate or the candidate's legal representative only.~~

~~(4)~~ (2) Applicants who fail the examination and wish to reschedule to take the examination must pay the reexamination fee, and schedule and sit for the examination. Applicants who fail the examination twice shall wait 60 days before taking the examination again must meet the standards for reexamination set by NEHA.

~~(5) If after one year of receipt of an application, an applicant has not passed the examination, a new application and application fee will be required to sit for the examination.~~

(6) remains the same but is renumbered (3).

~~(7) An applicant who provides proof the applicant has already achieved the score provided in (2) on the board-approved examination is not required to retake the examination.~~

AUTH: 37-1-131, 37-40-203, MCA

IMP: 37-1-131, 37-40-302, MCA

REASON: Following a rule review and board process analysis, the board is amending this rule to specify the approved licensure examination, which the board has accepted for many years. Because the board does not create or administer the exam, and has no control over the passing rate, it is reasonably necessary to amend this rule to remove these provisions, which are established and directed by the examination provider.

24.216.506 SANITARIAN-IN-TRAINING (1) remains the same.

~~(2) A sanitarian-in-training must work under the supervision of a licensed sanitarian. The supervising sanitarian must submit a plan for supervision for approval by the board. The supervising sanitarian must file quarterly reports with the board regarding the status and progress of the sanitarian-in-training. As part of the application, an applicant for sanitarian-in-training shall include a plan of supervision, signed by the supervising sanitarian.~~

(a) The plan of supervision shall include:

~~(i) an estimate of time of supervision provided~~ the estimated start and end date of supervision;

~~(ii) number of hours of supervision and/or training to be provided per month;~~  
and

~~(iii) method of maintaining contact and supervision, including an alternate supervisor in cases of unavailability of designated supervisor; and~~

~~(iv) an affirmation that the supervision and/or training must be conducted pursuant to practicing the profession of a sanitarian, as defined in 37-40-101(3), MCA.~~

~~(b) A sanitarian-in-training who satisfies the requirements of ARM 24.216.502(3) shall inform the board regarding his or her participation in a general microbiology course.~~

~~(b) A record of supervision must be maintained by the sanitarian-in-training and submitted to the board at the end of the supervision relationship. The record of supervision must include:~~

~~(i) dates of supervision and/or training;~~

~~(ii) content summary, reflecting the training and supervision the sanitarian-in-training received regarding practicing the profession of a sanitarian as defined in 37-40-101(3), MCA; and~~

~~(iii) attestation of the record by the supervising sanitarian. Falsification or misrepresentation of the record of supervision shall be considered unprofessional conduct and may result in discipline of the supervisor's license.~~

(3) remains the same.

(4) A sanitarian-in-training permit is valid for a period of one year. A sanitarian-in-training who meets all the minimum standards for licensure is eligible to take the examination in Montana. ~~There is no limit to the number of times a sanitarian-in-training may take the examination during the one-year exemption period.~~

AUTH: 37-1-131, 37-40-203, MCA

IMP: 37-1-131, 37-40-101, 37-40-203, MCA

REASON: The board is amending and reorganizing this rule to address numerous questions from sanitarians-in-training and supervising sanitarians about reporting requirements and the board's expectations for supervision plans.

Following discussion, the board is amending (2) to no longer require that supervisors submit quarterly status reports. The board decided that it is more relevant to require sanitarians-in-training to maintain supervision records and submit



them at the end of the supervision period. The board is specifying the required contents of the supervision record in (2)(b).

Following amendment, sanitarians-in-training will no longer report their participation in the microbiology course. Because the course is a requirement for registered sanitarian licensure and is included as part of the application, the board is striking this unnecessary requirement from this rule.

The board is amending (4) to align with the proposed changes to ARM 24.216.503 to use the National Environmental Health Association (NEHA) examination standards and procedures. After amendment, all examination applicants will be subject to the same exam standards and processes, including sanitarians-in-training.

24.216.2102 CONTINUING EDUCATION (1) through (5) remain the same.

(6) The following continuing education programs are approved by the board for continuing education credit:

(a) Workshops, seminars, and educational conferences, and course work related to the practice of a registered sanitarian sponsored by the National Environmental Health Association, ~~the~~ Montana Environmental Health Association, ~~the~~ Montana Department of Environmental Quality, Centers for Disease Control, Food and Drug Administration, and ~~the~~ Montana Department of Public Health and Human Services; and

(b) remains the same.

~~(7) Continuing education may be obtained by correspondence course work through the National Environmental Health Association, Centers for Disease Control, Food and Drug Administration, and other organizations, subject to approval by the board.~~

(8) remains the same but is renumbered (7).

AUTH: 37-1-319, 37-40-203, MCA

IMP: 37-1-306, 37-40-203, MCA

REASON: The board is amending this continuing education rule to address questions and confusion as to whether the board accepts all programs sponsored by the listed agencies, or just those relating to sanitarian practice. Following discussion, the board is updating and reorganizing the rule to display current approved providers and expand the acceptable methods of CE delivery.

24.216.2104 INACTIVE STATUS AND CONVERSION FROM INACTIVE TO ACTIVE STATUS (1) remains the same.

(2) A licensee may not use the initials R.S. or practice as a sanitarian in the state of Montana while the license is on inactive status.

(3) remains the same.

AUTH: 37-1-319, 37-40-203, MCA

IMP: 37-1-319, 37-40-301, 37-40-302, MCA

REASON: Following a board member's inquiry, the board determined it is reasonably necessary to amend this rule and clarify that licensees may not use the initials R.S. while on inactive status and not actively practicing. Licensees on inactive status may not practice, and 37-40-301 and 37-40-302, MCA, require an active license to represent oneself as a registered sanitarian.

Implementation citations are being amended to accurately reflect all statutes implemented through the rule.

24.216.2301 UNPROFESSIONAL CONDUCT (1) through (1)(c) remain the same.

(d) failure to properly supervise a sanitarian-in-training in accordance with the ~~board-approved plan~~ ARM 24.216.506;

(e) remains the same.

~~(f) failure to display current sanitarian license in a conspicuous place.~~

(f) falsification or misrepresentation of the record of supervision by the supervising sanitarian.

AUTH: 37-1-319, 37-40-203, MCA

IMP: 37-1-316, 37-1-319, 37-40-203, ~~37-40-307,~~ MCA

REASON: The board determined it is reasonably necessary to amend this rule to update the actions considered by the board as unprofessional conduct. The board is amending the rule at (1)(d) and (f) to align with and implement the changes proposed to the supervision requirements in ARM 24.216.506.

The board is also amending this rule to remove the requirement to display a current license in a conspicuous place. Noting that many sanitarians perform most duties away from an office setting where a license is displayed, the board also concluded that the requirement to provide proof of licensure upon request in (1)(e) makes this requirement unnecessary.

Implementation citations are being amended to accurately reflect all statutes implemented through the rule and delete reference to a repealed statute.

4. The rules proposed to be repealed are as follows:

24.216.401 BOARD MEETINGS

AUTH: 37-40-203, MCA

IMP: 37-40-201, MCA

REASON: The board is repealing this unnecessary rule as the department, in providing administrative services to the licensing boards, conducts all board meetings in an efficient, standardized manner.

24.216.403 SEAL OF THE BOARD

AUTH: 37-40-203, MCA

IMP: 37-40-203, MCA

REASON: The board is repealing this outdated and unnecessary rule, as the board no longer uses a seal in current board practices.

24.216.501 APPLICATIONS

AUTH: 37-40-203, MCA  
IMP: 37-40-301, 37-40-302, MCA

REASON: The board is repealing this unnecessary rule because the department administers standardized application and licensure processes for all professional and occupational licensure boards.

24.216.2101 RENEWAL

AUTH: 37-1-141, 37-40-203, MCA  
IMP: 37-1-141, MCA

REASON: The board is repealing this unnecessary rule because the department administers a standardized renewal process for all professional and occupational licensing boards, and this rule merely references the department rules on renewals.

5. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Board of Sanitarians, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or e-mail to [dlibsdsan@mt.gov](mailto:dlibsdsan@mt.gov), and must be received no later than 5:00 p.m., June 8, 2018.

6. An electronic copy of this notice of public hearing is available at [www.sanitarian.mt.gov](http://www.sanitarian.mt.gov) (department and board's web site). Although the department strives to keep its web sites accessible at all times, concerned persons should be aware that web sites may be unavailable during some periods, due to system maintenance or technical problems, and that technical difficulties in accessing a web site do not excuse late submission of comments.

7. The board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this board. 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 that the person wishes to receive notices regarding all board administrative rulemaking proceedings or other administrative proceedings. The request must indicate whether e-mail or standard mail is preferred. Such written request may be sent or delivered to the Board of Sanitarians, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; faxed to the office at (406) 841-2305; e-mailed to [dlibsdsan@mt.gov](mailto:dlibsdsan@mt.gov); or made by completing a request form at any rules hearing held by the agency.

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

9. Regarding the requirements of 2-4-111, MCA, the board has determined that the amendment of ARM 24.216.402, 24.216.503, 24.216.506, 24.216.2102, 24.216.2104, and 24.216.2301 will not significantly and directly impact small businesses.

Regarding the requirements of 2-4-111, MCA, the board has determined that the repeal of ARM 24.216.401, 24.216.403, 24.216.501, and 24.216.2101 will not significantly and directly impact small businesses.

Documentation of the board's above-stated determinations is available upon request to the Board of Sanitarians, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2370; facsimile (406) 841-2305; or to dlibsdsan@mt.gov.

10. Steve Gallus, Executive Officer, has been designated to preside over and conduct this hearing.

BOARD OF SANITARIANS  
SUSAN FOSTER, R.S.  
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 May 1, 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 37.86.1102, 37.86.1103, and ) PROPOSED AMENDMENT  
37.86.1105 pertaining to Medicaid )  
outpatient drug services )

TO: All Concerned Persons

1. On May 31, 2018, at 3:00 p.m., the Department of Public Health and Human Services will hold a public hearing in Room 107 of the Department of Public Health and Human Services Building, 111 North Sanders, at 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 May 21, 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:

37.86.1102 OUTPATIENT DRUGS, REQUIREMENTS (1) through (6) remain the same.

(7) The department may pay for nonrebatabable API bulk powders and excipients compounded in accordance with ARM 37.86.1105~~(4)~~(5).

(8) through (11) remain the same.

AUTH: 53-2-201, 53-6-113, MCA

IMP: 53-2-201, 53-6-101, 53-6-113, 53-6-141, MCA

37.86.1103 OUTPATIENT DRUGS, FRAUD, WASTE, AND ABUSE

(1) through (7) remain the same.

(8) The use of tamper-resistant pads for written prescriptions is required. The department follows ARM ~~24.174.510~~ 24.174.831 established by the Montana Board of Pharmacy to define tamper-resistant prescriptions.

(9) remains the same.

AUTH: 53-2-201, 53-6-113, MCA

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

37.86.1105 OUTPATIENT DRUGS, REIMBURSEMENT (1) through (3) remain the same.

(4) ~~In-state~~ All pharmacy providers that are new to the Montana Medicaid program are assigned the maximum dispensing fee in ARM 37.85.105(3)(f)(i) until a dispensing fee questionnaire, as provided in (3), can be completed for six months of operation. At that time, a new dispensing fee is assigned which is the lower of the dispensing fee calculated in accordance with (3) for the pharmacy or the maximum allowed dispensing fee provided in (3)(b). If the provider fails to submit the six-month dispensing fee questionnaire, the provider will receive a dispensing fee in an amount equal to the lowest calculated cost to dispense assigned that year.

(5) through (13) remain the same.

AUTH: 53-2-201, 53-6-113, MCA

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

#### 4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) proposes to amend ARM 37.86.1102, 37.86.1103, and 37.86.1105 to reflect amendments made to sources, authority, or the current Medicaid state plan which are cross-referenced in these rules. It is necessary for the department to apply these amendments to ensure the referenced rules and other conferred authority to the department are correctly referenced.

Specifically, the department proposes to apply the following amendments:

##### ARM 37.86.1102

The department proposes to amend ARM 37.86.1102(7) to accurately reflect the payment of nonrebtable API bulk powder and excipient compounds from ARM 37.86.1105(4) to 37.86.1105(5).

##### ARM 37.86.1103

The department proposes to amend ARM 37.86.1103(8) to reflect the transfer of the cross-referenced Montana Board of Pharmacy's rule defining tamper-resistant prescriptions from ARM 24.174.510 to ARM 24.174.831.

##### ARM 37.86.1105

The department proposes to amend ARM 37.86.1105(4) by striking the words "In-state" and replacing it with "All." This amendment will permit the department to comply with the approved pharmacy state plan in its business with providers new to Montana Medicaid who are assigned the maximum pharmacy dispensing fee. This amendment is necessary because the Centers for Medicare and Medicaid (CMS) and the department agreed to assign all newly enrolled pharmacies - some of which

are new to Montana - the maximum dispensing fee, until a dispensing fee questionnaire can be completed after six months of operation when a new dispensing fee is assigned. Without this amendment, the department cannot comply with its agreement with CMS.

### FISCAL IMPACT

The department does not anticipate any fiscal impact associated with the proposed rulemaking.

5. The department intends the proposed rule amendments to be applied effective July 1, 2018.

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](mailto:dphslegal@mt.gov), and must be received no later than 5:00 p.m., June 8, 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 amendment of the above-referenced rules 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/ Brenda K. Elias  
Brenda K. Elias  
Rule Reviewer

/s/ Laura Smith for  
Sheila Hogan, Director  
Public Health and Human Services

Certified to the Secretary of State May 1, 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 37.40.815 and 37.40.830 ) PROPOSED AMENDMENT  
pertaining to hospice reimbursement )  
and updates )

TO: All Concerned Persons

1. On May 31, 2018, at 11:00 a.m., the Department of Public Health and Human Services will hold a public hearing in Room 107 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 May 21, 2018, to advise us of the nature of the accommodation that you need. Please contact Gwen Knight, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

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

37.40.815 HOSPICE, ELECTION AND WAIVER OF OTHER BENEFITS

(1) through (6) remain the same.

(7) The hospice chosen by the eligible individual, or their representative, must file a the original Notice of Election (NOE) or a copy, with the department within five calendar days ~~after the effective date of the election statement of the start of~~ Medicaid Hospice Services. NOEs must be sent to the Senior & Long Term Care Division, 111 N. Sanders, P.O. Box 4210, Helena, MT 59604-4210. The department may waive the consequences of failure to submit a timely filed NOE. A hospice must fully document and furnish any requested documentation to the department for a determination of exception.

(8) remains the same.

AUTH: 53-6-113, MCA

IMP: 53-6-101, MCA

37.40.830 HOSPICE, REIMBURSEMENT (1) through (11) remain the same.

(12) The hospice fee schedules are effective ~~January 1, 2018~~ October 1, 2017. Copies of the department's current fee schedules are posted at

<http://medicaidprovider.mt.gov> and may be obtained from the Department of Public Health and Human Services, Health Resources Division, 1401 East Lockey, P.O. Box 202951, Helena, MT 59602-2951.

AUTH: 53-6-113, MCA  
IMP: 53-6-101, MCA

#### 4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) proposes to amend ARM 37.40.815 and 37.40.830 to specify when the Notice of Election must be filed for Medicaid hospice services for individuals, and to change the effective date for the new fee schedule for Medicaid hospice.

##### ARM 37.40.815

The department proposes amending ARM 37.40.815(7) to ensure the department complies with Medicaid requirements for submission of hospice Notice of Election requirements.

##### ARM 37.40.830

The department proposes amending ARM 37.40.830(12) to change the effective date of its Medicaid hospice reimbursement fee schedule from January 1, 2018 to October 1, 2017, in accordance with changes in the federal hospice reimbursement rates set by the Centers for Medicare and Medicaid Services (CMS) in the Federal Register effective October 1, 2017. Medicaid hospice incorporates the Medicare reimbursement methodology and the reimbursement updates as specified in the Federal Register. The proposed fee schedule implements an approximate, aggregate reimbursement rate increase of one percent as computed and published by CMS, which will apply to providers in all 56 counties. A 1% increase in the hospice reimbursement rate equals approximately \$53,000 of the Montana Medicaid Hospice program budget of \$5.3 million.

Montana hospice rates are affected by a wage index applied geographically by county. The Fiscal Year (FY) 2018 wage index for Carbon, Yellowstone, and Golden Valley Counties has increased by approximately 1.1%. The FY 2018 wage index for Cascade County has decreased by approximately 20.9% and has decreased for Missoula County by approximately 2.2%. All other Montana counties are subject to the FY 2018 Montana rural wage index rate which has increased by approximately 0.9%.

Four hospice providers, two of whom are no longer active Medicaid providers, will be subject to a hospice reimbursement rate decrease of two percent because they failed to comply with federal quality data submission requirements during the prior fiscal year. A copy of the proposed hospice fee schedule can be found at <http://medicaidprovider.mt.gov/proposedfs>.

### Fiscal Impact

Proposed amendments to ARM 37.40.830 will have a fiscal impact on the hospice program. Funds impacted will be from federal Medicaid fund course (03585) and general fund course (01100). In Fiscal Year (FY) 2017, approximately 453 Medicaid recipients received the hospice benefit.

A majority of the Medicaid hospice program's approximately \$5.3 million budget provides reimbursement for hospice services provided in nursing facilities in the form of room and board for inpatient nursing facility hospice.

Montana hospice rates are affected by a wage index applied geographically by county. The Fiscal Year (FY) 2018 wage index for Carbon, Yellowstone, and Golden Valley Counties has increased by approximately 1.1%. The FY 2018 wage index for Cascade County has decreased by approximately 20.9% and has decreased for Missoula County by approximately 2.2%. All other Montana counties are subject to the FY 2018 Montana rural wage index rate which has increased by approximately 0.9%.

Four hospice providers, two of whom are no longer active Medicaid providers, will be subject to a hospice reimbursement rate decrease of two percent because they failed to comply with federal quality data submission requirements during the prior fiscal year. A copy of the proposed hospice fee schedule can be found at <http://medicaidprovider.mt.gov/proposedfs>.

5. The increase in hospice rates will be retroactive to October 1, 2017. Decreases in hospice rates will not be applied retroactively and will be effective upon adoption of rule.

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: Gwen Knight, 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](mailto:dphhslegal@mt.gov), and must be received no later than 5:00 p.m., June 8, 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 amendment of the above-referenced rules will not significantly and directly impact small businesses except in Cascade and Missoula Counties. Montana hospice rates are affected by a wage index applied geographically by county. Except for five counties, the Fiscal Year (FY) 2018 rural wage index for all Montana counties increased by approximately 0.9%. The FY 2018 wage index increased by approximately 1.1% for Carbon, Yellowstone, and Golden Valley Counties. The FY 2018 wage index decreased by approximately 20.9% for Cascade County and by approximately 2.2% for Missoula County, which will reduce hospice rates in those counties.

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/ Francis X. Clinch  
Francis X. Clinch  
Rule Reviewer

/s/ Laura Smith for  
Sheila Hogan, Director  
Public Health and Human Services

Certified to the Secretary of State May 1, 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 37.40.305, 37.40.330, ) PROPOSED AMENDMENT  
37.86.1801, 37.86.1802, and )  
37.86.1806 pertaining to durable )  
medical equipment (DME) )

TO: All Concerned Persons

1. On May 31, 2018, at 11:30 a.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 N. Sanders, at 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 May 21, 2018, to advise us of the nature of the accommodation that you need. Please contact Gwen Knight, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; 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:

37.40.305 NURSING FACILITY SERVICES: REIMBURSABLE SERVICES

(1) Nursing facility services include but are not limited to the following or any similar items:

(a) ~~all general nursing services, including but not limited to administration of oxygen and medications, handfeeding, incontinence care, tray service, nursing rehabilitation services, enemas, and routine pressure sore/decubitis treatment; the practice of nursing, as defined in 37-8-102, MCA, which must be rendered in conformity with the Standards of Professional Nursing Practice from the American Nurses Association;~~

(b) through (e) remain the same.

(f) items used by individual residents which are reusable and expected to be available, including but not limited to:

(i) through (xxix) remain the same.

(xxx) wheelchairs (standard) in a range of sizes, weights, and accessories to meet the needs of nursing facility residents; and

(xxxi) through (h) remain the same.

AUTH: 53-2-201, 53-6-113, MCA

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

37.40.330 SEPARATELY BILLABLE ITEMS (1) through (4) remain the same.

(5) Durable medical equipment and medical supplies which are not nursing facility services in ARM 37.40.302 and which are intended to treat a ~~unique~~ condition of the recipient which cannot be met by ~~routine~~ nursing care, may be billed separately ~~by the medical supplier in accordance with department rules applicable to such services.~~

(a) Powered wheelchairs are not covered.

(b) The department may reimburse a nursing facility for a specialized (non-powered) wheelchair for a nursing facility resident if the nursing facility demonstrates that the specialized wheelchair:

(i) is necessary to treat a condition of the recipient which cannot be met by nursing care;

(ii) cannot reasonably be used by another nursing facility resident;

(iii) is the least costly option;

(iv) is necessary to meet the recipient's mobility-related activities of daily living; and

(v) is not intended for the recipient's independence or the convenience of the recipient, the recipient's caretaker, or the provider.

(c) The department will reimburse for medically necessary custom-molded wheelchair positioning equipment for a nursing home resident.

(6) through (10) remain the same.

AUTH: 53-2-201, 53-6-113, MCA

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

37.86.1801 PROSTHETIC DEVICES, DURABLE MEDICAL EQUIPMENT, AND MEDICAL SUPPLIES, DEFINITIONS (1) "Durable medical equipment and supplies" means the most economical equipment or supplies that are medically necessary to treat a health problem or a physical condition. The equipment or supplies must be appropriate for use in a ~~patient's home, residence, school, or workplace~~ any setting in which life activities take place, as defined at 42 CFR 440.70(c)(1) (2018). Equipment or supplies that are useful or convenient, but are not medically necessary to treat an illness or injury do not qualify for Medicaid coverage.

(2) through (4) remain the same.

AUTH: 53-2-201, 53-6-113, MCA

IMP: 53-6-101, 53-6-141, MCA

37.86.1802 PROSTHETIC DEVICES, DURABLE MEDICAL EQUIPMENT, AND MEDICAL SUPPLIES, GENERAL REQUIREMENTS (1) These requirements are in addition to those contained in rule provisions generally applicable to Medicaid providers. Requirements for prosthetic devices, durable medical equipment, and

medical supplies utilized by nursing facility residents are contained in the department's rules governing nursing facility reimbursement, ~~when the~~ The nursing facility bills for separately billable items as a skilled nursing durable medical equipment provider as outlined in ARM 37.40.330.

(2) through (4) remain the same.

~~(5) Reimbursement for nursing home residents includes:~~

~~(a) medically necessary custom molded wheelchair positioning equipment used by nursing home residents not covered under nursing home per diem (see department nursing home rules). A copy of the Medicaid criteria may be obtained from the Department of Public Health and Human Services, Health Resources Division, 1401 East Lockey, P.O. Box 202951, Helena, MT 59620-2951.~~

~~(6)~~ (5) The following items are not reimbursable by the program:

(a) through (r) remain the same.

(s) items included for members residing in the nursing home facilities, except for prosthetic devices, as defined at 42 CFR 440.120(c) (2018) per diem rate;

(t) through (7) remain the same.

AUTH: 53-2-201, 53-6-113, MCA

IMP: 53-2-201, 53-6-101, 53-6-111, 53-6-113, 53-6-141, MCA

#### 37.86.1806 PROSTHETIC DEVICES, DURABLE MEDICAL EQUIPMENT, AND MEDICAL SUPPLIES, REIMBURSEMENT REQUIREMENTS

(1) Requirements for the purchase or rental of prosthetic devices, durable medical equipment, medical supplies and related maintenance, repair, and services are as follows:

(a) through (d) remain the same.

~~(e) Reimbursement for prosthetic devices, durable medical equipment, medical supplies and related maintenance, repair and services utilized by nursing facility residents and billed by a nursing facility is subject to the limits in the department's rules governing nursing facility reimbursement.~~

(2) through (7) remain the same.

AUTH: 53-2-201, 53-6-113, MCA

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

#### 4. STATEMENT OF REASONABLE NECESSITY

The proposed amendments update the Prosthetic Devices, Durable Medical Equipment (DME), and medical supplies rules as well as the Nursing Facility rules to reflect the Home Health Services requirements as they are defined in 42 CFR 440.70(c)(1) (2018). These changes will be effective July 1, 2018.

In February 2016, the Centers for Medicare and Medicaid Services (CMS) revised federal regulations relating to Medicaid home health services to ensure certain rule definitions were consistent with newly passed federal healthcare legislation and with certain reauthorized federal healthcare acts. One requirement provides that state Medicaid programs must pay for DME supplied to nursing facility residents from the

Medicaid nursing facilities program rather than from the durable medical equipment program.

These proposed amendments effectuate that federal requirement and provide that DME supplied to nursing facility residents will no longer be paid through the state's durable medical equipment program and now will be paid from the Medicaid nursing program.

The proposed rules also propose to amend the rule relative to separately billed items in nursing facilities to ensure that the rule accurately reflects the department's policy that Medicaid does not cover powered wheelchairs for nursing facility residents.

The department will make appropriate changes before July 1, 2018, to both Program's Provider Manuals as well as post-Provider notices to the <http://medicaidprovider.mt.gov> website to inform providers of these program changes.

#### ARM 37.40.305

The department is proposing to amend ARM 37.40.305 because the Senior and Long-Term Care Division has refined the definition of standard wheelchairs to ensure that the rule accurately reflects the department's policy. Specifically, Medicaid does not reimburse for powered wheelchairs for residents of nursing facilities.

#### ARM 37.40.330

The department is proposing to amend ARM 37.40.330(5) to eliminate the option of providers billing the DME program for services and specifying how they are billed separately by the medical supplier in accordance with department rules applicable to such services.

#### ARM 37.86.1801

The department is proposing to amend the definition in ARM 37.86.1801(1) for durable medical equipment and supplies for use in any setting in which normal life activities take place, as defined in 42 CFR 440.70(c)(1) (2018).

#### ARM 37.86.1802

The department is proposing to amend ARM 37.86.1802 to reflect that DME for nursing facility residents should be billed as separately billable items and ensuring that the nursing program will pay for the items and not the state's durable medical equipment program.

#### ARM 37.86.1806



The department is proposing to remove (1)(e) in ARM 37.86.1806. This section is no longer necessary in this rule if DME for nursing home residents is paid by the nursing home services.

Fiscal Impact

The funds for State Fiscal Year (SFY) 2018 are \$197,419.18 for durable medical equipment provided in skilled nursing facilities. These funds will be transferred from Durable Medical Equipment to Nursing Home Services. State funds equal \$68,346.52 and federal funds equal \$129,072.66. This is only a transfer of funds; therefore, there will be no fiscal impact at this time.

The proposed rule amendments will have no effect to the estimated 268 nursing home members nor will these changes affect the estimated 442 DME and Home Health providers.

5. 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: Gwen Knight, 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](mailto:dphhslegal@mt.gov), and must be received no later than 5:00 p.m., June 8, 2018.

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

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 5 above or may be made by completing a request form at any rules hearing held by the department.

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

9. 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.

/s/ Brenda K. Elias  
Brenda K. Elias  
Rule Reviewer

/s/ Laura Smith for  
Sheila Hogan, Director  
Public Health and Human Services

Certified to the Secretary of State May 1, 2018.



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

In the matter of the repeal of ARM ) NOTICE OF REPEAL  
12.3.202 and ARM 12.3.208 )  
pertaining to Classes of License )  
Agents and Acceptable License )  
Agent Security )

TO: All Concerned Persons

1. On March 16, 2018, the Department of Fish, Wildlife and Parks (department) published MAR Notice No. 12-482 pertaining to the proposed repeal of the above-stated rules at page 520 of the 2018 Montana Administrative Register, Issue Number 5.

2. The department has repealed the above-stated rules as proposed.

3. The department received one comment on the proposal and offers the following response:

COMMENT #1: One comment was received in general support of repealing these rules as the ALS system and weekly electronic transfers are in place and this would be a positive change as it would save money and time for license agents as well as the department.

RESPONSE #1: The department appreciates your participation and support in this rulemaking process.

/s/ Zach Zipfel  
Zach Zipfel  
Rule Reviewer

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

Certified to the Secretary of State May 1, 2018.

BEFORE THE TRANSPORTATION COMMISSION  
OF THE STATE OF MONTANA

In the matter of the amendment of ) NOTICE OF AMENDMENT  
ARM 18.6.238 pertaining to Outdoor )  
Advertising Control )

TO: All Concerned Persons

1. On March 16, 2018, the Transportation Commission (commission) and the Department of Transportation (department) published MAR Notice No. 18-167 pertaining to the proposed amendment of the above-stated rule at page 525 of the 2018 Montana Administrative Register, Issue Number 5.

2. The commission and the department have amended ARM 18.6.238 as proposed, but with the following changes (new matter underlined, deleted matter interlined):

18.6.238 COMMUNITY WELCOME TO SIGNS (1) and (2) remain as proposed.

(3) Welcome to signs must not contain any form of commercial advertising. The name only, without any promotional information, of a sponsor, benefactor, or support group may be recognized on welcome to signs ~~located outside of the public right-of-way~~. Names of sponsors, benefactors, or support groups must be secondary to the welcome to sign. The area of the welcome to sign dedicated to a sponsor, benefactor, or sponsor group name must not be larger than one third the total size of the welcome to sign.

(4) through (13) remain as proposed.

AUTH: 61-8-203, 75-15-121, MCA  
IMP: 61-8-203, 75-15-111, 75-15-113, MCA

3. The commission and the department have thoroughly considered the comments received. A summary of the comments received and the commission's and department's responses are as follows:

COMMENT NO. 1: Fourteen comments were received in support of the proposed rule amendments.

RESPONSE: MDT acknowledges receipt of the comments in support and appreciates all public comment on its proposed rule amendments.

COMMENT NO. 2: One comment was received stating ARM 18.6.238(3) should not state sponsor acknowledgements must be placed "outside public right-of-way," as that is too broad of a term, but should use "state-controlled right-of-way" instead. The comment also stated the rule should not limit sponsor acknowledgements to signs placed outside public right-of-way, as the rule limitations of name of sponsor

only and restricted sign size are sufficient to protect MDT concerns with sponsor acknowledgements in the right-of-way.

RESPONSE: MDT agrees with the comment and will amend the rule as shown above to delete the phrase "located outside of the public right-of-way."

COMMENT NO. 3: One comment was received stating ARM 18.6.238(4)(b) which requires local governments to verify that at least two specific locations outside right-of-way have been considered but were unavailable before a right-of-way encroachment permit is granted should be deleted or amended to remove the requirement for a minimum of two unavailable locations. The comment stated the requirement increases the burden of time, resources and process on local governments and does not further the statutory intent for control of outdoor advertising. The comment stated the requirement limits the use and leveraging of existing public right-of-way in favor of using otherwise developable property to presumably transfer state liability to local government at potentially greater cost to Montana taxpayers.

RESPONSE: MDT's primary intent is always to place signs outside right-of-way whenever possible for traffic safety reasons. The proposed amendment to ARM 18.6.238(4)(b) will clarify a right-of-way (encroachment permit) location is secondary, after efforts to place the sign in a safer location outside right-of-way have been exhausted. MDT notes the welcome to sign process has always required verification of two unavailable locations outside right-of-way, and this requirement has not changed with the current amendments.

COMMENT NO. 4: One comment was received stating ARM 18.6.238(4)(c) on prohibiting signs which distract from official traffic control messages should not add the phrase "as determined by the department." The comment stated the rule contains no standards or criteria for this determination. The comment stated the standards or criteria should be adopted as part of these rule amendments for consistency sake among different communities or department districts.

RESPONSE: MDT is required to comply with the Federal Highway Administration Manual on Uniform Traffic Control Devices (MUTCD) for traffic control signs. The rule amendment allows different proposed sign designs from different communities to be evaluated based on the specific proposed design for concurrence and lack of conflict with the MUTCD.

COMMENT NO. 5: One comment was received stating ARM 18.6.238(5)(i) prohibiting signs in locations outside right-of-way but which must be maintained by accessing them through right-of-way reduces the flexibility of a municipality to place the signs in locations that work best for their community. The comment stated the department should reconsider this restriction, and if necessary address any risk through requiring an encroachment permit.

RESPONSE: MDT has never allowed any permitted sign of any type to be maintained through the highway right-of-way due to safety concerns. Additionally, since the rule amendments will now allow welcome to signs adjacent to interstate (full access control) highways, the safety risk for use of right-of-way for maintenance would be even higher. MDT cannot disregard safety issues for sign maintenance issues. Under the rule amendment, any welcome to sign which first requires an encroachment permit must follow all MDT encroachment permit requirements (e.g., traffic control) for entry onto the right-of-way.

COMMENT NO. 6: One comment was received stating ARM 18.6.238(7) and (14) stating welcome to signs will not be considered in determining the minimum spacing requirements for other permitted OAC signs would allow other signs which may obscure the welcome to signs that are already in place. The comment stated this policy would completely obliterate the right of local governments in obtaining an OAC permit. The comment stated the amendment makes no sense to arbitrarily prefer private off-premise advertising signs over existing public welcome-to signs.

RESPONSE: The proposed rule amendment to ARM 18.6.238(7) was proposed for the benefit of local government applicants. If the standard off-premise billboard spacing requirements were to be applied to welcome to signs, it would significantly reduce the available sign locations due to the presence of numerous permitted billboards already in place along highways leading into and out of the communities. The proposed amendment will actually offer greater opportunity for community sign locations, rather than giving any "preference" to private off-premise advertising signs, which might otherwise serve to block desired locations simply due to their current locations.

COMMENT NO. 7: One comment was received stating ARM 18.6.238(9) removes the existing duties and responsibilities for placement and maintenance of welcome to signs and provides instead they will be addressed through encroachment permits. The comment stated the department should instead adopt sign installation and maintenance standards or criteria, so all parties understand the requirements and restrictions prior to initiation of the permit process, and different expectations are not imposed on different communities in different MDT districts.

RESPONSE: Standards and criteria for encroachment permits are contained in the encroachment permit application and form and are standard throughout the state. An applicant may review encroachment permit standards at any time prior to application. The applicants for sign permit locations within right-of-way will already know the encroachment permit standards and criteria prior to application for the sign permit, as the encroachment permit must be obtained first.

COMMENT NO. 8: One comment was received stating ARM 18.6.238(13) should not remove the "grandfather" clause for existing welcome to signs and require local governments to submit an application for an OAC permit within one year of the rule adoption. The comment stated the imposition of this requirement on existing off-premise billboards would raise serious concerns about vested property rights, yet

MDT has no similar concerns with requiring all local governments to bring their welcome to signs into compliance with these new requirements. The comment suggested the "lawful" approach is to keep the rule language that acknowledges existing non-conforming welcome to signs and provide a process for future modification approval or denial of such signs.

RESPONSE: MDT cannot "grandfather" existing signs or designate the signs as "non-conforming" under existing federal and state statutes, rules, and the Federal-State Agreement on Outdoor Advertising. The proposed rule amendments will allow MDT to evaluate the safety issues of any existing welcome to signs within right-of-way, and require application for an encroachment permit, where one does not exist. The proposed amendment will also allow MDT to evaluate conformance with outdoor advertising control rules for all existing signs, whether within or outside right-of-way.

COMMENT NO. 9: One comment was received stating ARM 18.6.238(10) requiring a local government to submit a modification application and obtain MDT approval prior to modifications other than routine maintenance will change an existing modification process into a "nebulous" process with unknown standards and criteria. The comment stated the rule did not define "routine maintenance." The comment stated MDT should adopt definitions, standards, and criteria as part of these rule amendments, so all parties understand the requirements and different expectations are not imposed on different communities in different MDT districts.

RESPONSE: The proposed amendments mirror existing ARM standards found in ARM 18.6.252 on upgrade or relocation of conforming off-premise commercial advertising signs. Thus, modifications such as change in height, location, width, area on which copy appears, etc. would require a modification application and MDT approval. MDT already evaluates modification applications for other types of permitted signs and notes those permit holders are able to distinguish between routine maintenance and other greater modifications to signs.

COMMENT NO. 10: One comment was received stating ARM 18.6.238(12) gives MDT unlimited authority to deny any welcome to sign permit that may negatively impact the traveling public but does not define the term or give standards or criteria for denial. The comment stated this type of "open and unspecified authority" can cause unnecessary cost, time, and resources of local governments that do not know the requirements. The comment stated MDT should adopt definitions, standards, and criteria as part of these rule amendments, so all parties understand the requirements and different expectations are not imposed on different communities in different MDT districts.

RESPONSE: MDT must retain the ability to evaluate individual sign permit applications for traffic safety issues—especially for right-of-way locations—and OAC rule compliance based on the specific location of a proposed community sign. MDT's OAC program staff continue to be available to local governments to offer guidance at any stage of the permit application process.

/s/ Carol Grell Morris  
Carol Grell Morris  
Rule Reviewer

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

/s/ Barb Skelton  
Barb Skelton  
Chair  
Transportation Commission

Certified to the Secretary of State May 1, 2018.



BEFORE THE BOARD OF ALTERNATIVE HEALTH CARE  
DEPARTMENT OF LABOR AND INDUSTRY  
STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF AMENDMENT
ARM 24.111.301 definitions,	)	
24.111.401 fees, 24.111.407	)	
nonroutine applications, 24.111.511	)	
naturopathic physician natural	)	
substance formulary list, 24.111.602	)	
direct-entry midwife apprenticeship	)	
requirements, 24.111.603 direct-entry	)	
midwife protocol standard list required	)	
for application, 24.111.604 licensing	)	
by examination, 24.111.605 licensure	)	
of out-of-state applicants, 24.111.611	)	
conditions which require physician	)	
consultation or transfer of care, and	)	
24.111.2103 midwives continuing	)	
education requirements	)	

TO: All Concerned Persons

1. On January 12, 2018, the Board of Alternative Health Care (board) published MAR Notice No. 24-111-26 regarding the public hearing on the proposed amendment of the above-stated rules, at page 34 of the 2018 Montana Administrative Register, Issue No. 1.

2. On February 6, 2018, a public hearing was held on the proposed amendment of the above-stated rules in Helena. One comment was received by the February 9, 2018, deadline.

3. The board has thoroughly considered the comment received. A summary of the comment and the board's response is as follows:

COMMENT 1: One commenter expressed support for the proposed changes to ARM 24.111.511.

RESPONSE 1: The board appreciates all comments received during the rulemaking process.

4. The board has amended ARM 24.111.301, 24.111.401, 24.111.407, 24.111.511, 24.111.602, 24.111.603, 24.111.604, 24.111.605, 24.111.611, and 24.111.2103 exactly as proposed.

BOARD OF ALTERNATIVE HEALTH CARE  
NANCY PATTERSON, ND  
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 May 1, 2018.

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

In the matter of the amendment of ) NOTICE OF AMENDMENT  
ARM 24.189.901 and 24.189.907 )  
pertaining to application procedures )  
for behavior analysts and assistant )  
behavior analysts )

TO: All Concerned Persons

1. On March 16, 2018, the Board of Psychologists (board) published MAR Notice No. 24-189-39 regarding the public hearing on the proposed amendment of the above-stated rules, at page 540 of the 2018 Montana Administrative Register, Issue No. 5.

2. On April 6, 2018, a public hearing was held on the proposed amendment of the above-stated rules in Helena. Two comments were received by the April 13, 2018, deadline.

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

COMMENT 1: Several commenters supported the proposed amendments and thanked the board for its timely response to concerns regarding licensing delays caused by applicants needing to obtain character references from licensed behavior analysts.

RESPONSE 1: The board appreciates all comments received during the rulemaking process, and thanks the stakeholders for their patience and assistance during the implementation of behavior analyst and assistant behavior analyst licensure.

COMMENT 2: Several commenters requested the board consider utilizing ARM 1.3.313 to adopt emergency rules if the changes to ARM 24.189.901 and 24.189.907 will become effective after May 2018.

RESPONSE 2: The board appreciates all comments received during the rulemaking process, and notes that the emergency rules process was deemed inapplicable for this rule project prior to initiating these changes. These amendments will be effective May 12, 2018.

4. The board has amended ARM 24.189.901 and 24.189.907 exactly as proposed.

BOARD OF PSYCHOLOGISTS  
JAMES MURPHEY, Ph.D., CHAIRPERSON

/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 May 1, 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.<br>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.

### ADMINISTRATION, Department of, Title 2

2-2-568	Procedural Rules, p. 1, 426
2-13-566	Public Safety Answering Point Certification, Funding, and Monitoring, p. 2363, 427
2-13-574	Public Safety Answering Point - Allowable Uses of Funds - Decertification and Funding Reduction - Reporting, Monitoring, and Recordkeeping, p. 351, 608
2-21-557	Recruitment and Selection Policy, p. 1309, 90, 571
2-21-563	Employee Records Management Policy, p. 1316, 1443, 92
2-59-567	Renewal Fees for Mortgage Brokers, Lenders, Servicers, and Originators, p. 7
2-59-570	Regulation of Privately Insured Credit Unions, p. 124, 628
2-59-571	Annual Reporting for Consumer Loan Licensees - Escrow Business Reference Updates - Mortgage Definitions - Mortgage Renewal Fees - Escrow Funds Held by Mortgage Companies, p. 357, 822



(Public Employees' Retirement Board)

- 2-43-564 Adoption by Reference of the State of Montana Public Employee Defined Contribution Plan Document and the State of Montana Public Employee Deferred Compensation (457) Plan Document, p. 4, 433
- 2-43-565 Investment Policy Statement for the Defined Contribution Retirement Plan - Investment Policy Statement for the 457(b) Deferred Compensation Plan, p. 354, 821

(Board of County Printing)

- 2-67-569 Rates for County Legal Advertising, p. 230, 610

(Office of the State Public Defender)

- 2-69-573 Model Rules - Definitions - Determination of Indigency - Reasonable Compensation, p. 364, 716

AGRICULTURE, Department of, Title 4

- 4-16-236 Pesticide Housekeeping Changes, p. 2261, 626, 1948
- 4-17-239 Nursery Program, p. 1319, 1949
- 4-17-240 Pesticides, p. 1322, 1950
- 4-17-241 Seed Labeling - Viability Information, p. 1445, 2180
- 4-17-242 Mediation Services, p. 1926, 2431
- 4-17-243 Montana Pulse Crop Committee, p. 2373, 301, 823
- 4-17-244 Montana Cherry Research and Market Development Program, p. 2379, 302
- 4-18-245 Montana State Grain Laboratory Fee Schedule, p. 127, 629
- 4-18-246 Fertilizer Regulations, p. 134, 630
- 4-18-247 Feed and Pet Food Regulations, p. 138, 631
- 4-18-248 Pesticide Registration Regulations, p. 758
- 4-18-249 Pesticide Container Recycling Program - Waste Pesticide Disposal Program, p. 763

STATE AUDITOR, Office of, Title 6

(Commissioner of Securities and Insurance)

- 6-230 Air Ambulance - Hold Harmless Dispute Resolution, p. 1069, 1877
- 6-231 Unfair Discrimination - Accreditation Fees - Small Employer Reinsurance - Insure Montana Program - Managed Care Community Networks, p. 1078, 1887
- 6-232 Replacement of Life Insurance - Medicare Select - Life Insurance Illustrations - Funeral Insurance - Title Insurance - Group Coordination of Benefits - Loss Cost Advisory Rate Filings - Hazardous Financial Conditions - Audited Reports and Annual Statements - Holding Company Systems - Guaranty Association - Actuarial Opinions - Captive Insurers - Mortality Tables - Viatical Settlement Agreements, p. 1186, 1888

- 6-233 Agency Rulemaking and Contested Case Procedures - Agency Debt Collection Practices, p. 1200, 1889
- 6-234 Insurance Producer Licensing - Electronic Filing of the Appointment and Termination of Insurance Producers, p. 1206, 1890
- 6-235 Establishment or Revision of Classifications for Various Industries for Supplementing the NCCI Basic Manual - Updates to the Public Participation Guidelines, p. 1324, 2182
- 6-236 Corporate Governance Annual Disclosures, p. 1536, 2183
- 6-237 Medicare Supplement Insurance, p. 1542, 572
- 6-238 Patient-Centered Medical Homes, p. 1574, 2277
- 6-239 Credit for Reinsurance, p. 1929, 2432
- 6-240 Independent Liability Fund Definitions and Penalties, p. 10, 825
- 6-241 and other rules - Valuation of Life Insurance Policies, p. 13, 826
- 6-242 Public Adjusters, p. 142
- 6-243 Health Maintenance Organizations, p. 369

COMMERCE, Title 8

- 8-94-156 Governing the Submission and Review of Applications for Funding Under the Treasure State Endowment Program (TSEP), p. 512, 827
- 8-94-157 Administration of the 2019 Biennium Federal Community Development Block Grant (CDBG) Program – Planning Grants, p. 515, 828
- 8-111-158 Definitions - Housing Credit Allocation Procedure, p. 517, 828

EDUCATION, Title 10

(Board of Public Education)

- 10-64-279 School Bus Requirements, p. 391, 1891
- 10-64-281 School Bus Requirements, p. 2381, 303
- 10-64-282 School Bus Requirements, p. 611

(Superintendent of Public Instruction)

- 10-1-128 Soliciting Applications for Membership on a Negotiated Rulemaking Committee to Amend ARM 10.55.701 to Require a Policy for Suicide Prevention Programs in Schools, p. 1577
- 10-1-129 Soliciting Applications for Membership on a Negotiated Rulemaking Committee to Amend ARM 10.55.701 to Require a Policy for Implementation of All Hazard Emergency and Response Plans, p. 771
- 10-13-128 Traffic Education, p. 1210, 1650

FISH, WILDLIFE AND PARKS, Department of, Title 12

- 12-473 Dog Training, p. 585, 1447, 2075
- 12-474 Disease Management, p. 1328, 1951
- 12-479 Wildlife Habitat Noxious Weed Grant Program, p. 17, 632
- 12-480 Pilot Program for Aquatic Invasive Species in the Flathead Basin, p. 23, 586
- 12-482 Classes of License Agents and Acceptable License Agent Security, p. 520
- 12-483 Closing the Smith River From Camp Baker to Eden Bridge, p. 718

(Fish and Wildlife Commission)

- 12-475 Recreational Use on the Bitterroot River, p. 1451, 434, 717
- 12-478 Wake Restrictions on Broadwater Bay of the Missouri River, p. 1993

ENVIRONMENTAL QUALITY, Department of, Title 17

- 17-391 Technologically Enhanced Naturally Occurring Radioactive Material (TENORM) Waste, p. 1331, 1932
- 17-392 Adoption of a New Version of Department Circular DEQ-8, p. 1580, 522
- 17-394 Wind Generation Facility Decommissioning and Bonding, p. 1995, 94
- 17-396 Nutrient Standards Variances, p.377

(Board of Environmental Review)

- 17-393 Incorporation by Reference - Definitions - Applicability - Operating Permit Program Overview - Applicability of Air Quality Rules, p. 1933, 438
- 17-395 Water Quality Standards, p. 2383, 830

TRANSPORTATION, Department of, Title 18

- 18-165 Fuel Tax Bridge and Road Safety and Accountability Program, p. 1717, 2278
- 18-166 Motor Fuels Tax Collection and IFTA, p. 148, 588
- 18-168 Motor Carrier Services Safety Requirements, p 681

(Transportation Commission)

- 18-167 Outdoor Advertising Control, p. 525

CORRECTIONS, Department of, Title 20

- 20-4-64 Facilities Exempt From Geographic Restrictions Applicable to High-Risk Sexual Offenders, p. 684
- 20-7-65 Boot Camp Incarceration Program, p. 1455, 1952

JUSTICE, Department of, Title 23

- 23-2-248 Affidavit of Indigence - Statement of Inability to Pay Court Costs and Fees, p. 1724, 176
- 23-3-246 Ignition Interlock Devices, p. 1598, 589
- 23-12-250 Investigative Complaint Review - Student's Ranking at the Montana Law Enforcement Academy, p. 2388, 304
- 23-16-247 Loans to Licensees From Institutional and Noninstitutional Sources - Use of Checks and Debit Cards for Gambling Activities - Prohibition on Use of Credit Cards for Gambling - Sports Pool Wagers - Applications, Fees, and Issuance of Video Gambling Machine Permits, p. 1352, 1893

(Public Safety Officers Standards and Training Council)

- 23-13-246 Certification of Public Safety Officers, p. 1213, 1953

LABOR AND INDUSTRY, Department of, Title 24

Boards under the Business Standards Division are listed in alphabetical order by chapter following the department notices.

- 24-11-329 Unemployment Insurance, p. 153, 638
- 24-16-331 Payment of Wages, Minimum Wage, and Overtime, p. 25, 439
- 24-17-327 Prevailing Wage Rates for Public Works Projects, p. 2009, 183
- 24-17-334 Classification of Workers for Heavy Construction Services on Public Works Projects, p. 232, 841
- 24-21-332 Employer Apprenticeship Tax Credit, p. 163, 639
- 24-22-324 Incumbent Worker Training Program, p. 1734, 2433
- 24-29-323 Utilization and Treatment Guidelines for Workers' Compensation Injuries, p. 1362, 1458, 2185
- 24-29-330 Value of Housing Furnished by an Employer for Workers' Compensation Purposes, p. 2391, 640
- 24-29-335 Workers' Compensation Facility Service Rules and Rates and Conversion Factors, p. 613
- 24-33-333 Construction Contractor Registration - Independent Contractor Central Unit, p. 235, 720

(Workers' Compensation Court)

- 24-5-328 Annual Review - Pretrial Identification of Witnesses and Exhibitions - Withdrawal of Attorney, p. 2111, 305

(Board of Personnel Appeals)

- 24-26-336 Public Sector Collective Bargaining, p. 382

(Board of Alternative Health Care)

- 24-111-26 Definitions - Fees - Nonroutine Applications - Naturopathic Physician Natural Substance Formulary List - Direct-Entry Midwife

Apprenticeship Requirements - Direct-Entry Midwife Protocol Standard List Required for Application - Licensing by Examination - Licensure of Out-of-State Applicants - Conditions Which Require Physician Consultation or Transfer of Care - Midwives Continuing Education Requirements, p. 34

(Board of Architects and Landscape Architects)

24-114-36 Board Organization - Public Participation - Definitions - Fee Schedule - Architect Seal - Fee Abatement - Military Training or Experience - Architect Examination - Architect Licensure by Examination - Licensure of Applicants Registered in Another State - Architect Emeritus Status - Landscape Architect Licensure by Examination - Education and Experience Required for Landscape Architect Licensure - Landscape Architect Examinations - Landscape Architect Licensure by Endorsement - Landscape Architect Seal - Architect Continuing Education Requirements - Unprofessional Conduct - Screening and Adjudication Panels - Solicitation of Business by Nonresident Architects - Architects-In-Training - Renewals - Replacement Licenses, p. 976, 2076

(Board of Barbers and Cosmetologists)

24-121-15 Licensure by Examination - School Operating Standards - School Curricula - Credited Hours for Montana-Licensed Individuals in a Cosmetology or Barbering Program, p. 1364, 1956

(Board of Chiropractors)

24-126-36 Fees - Fee Abatement - Applications - Military Training or Experience - License by Examination - Temporary Permit - License by Endorsement - Display of License - Inactive Status and Conversion to Active Status - Intern and Preceptor Registration - Impairment Evaluator Standards - Continuing Education Requirements - Approved Continuing Education, p. 45, 645

(Board of Dentistry)

24-138-72 Definition of Nonroutine Application - Dentist Licensure by Credential - Dental Hygiene Limited Access Permit - Licensure of Retired or Nonpracticing Dentist or Dental Hygienist for Volunteer Service - Restricted Temporary Licensure of Nonresident Volunteer Dentists and Dental Hygienists - Exemptions and Exceptions - Minimum Qualifying Standards - Minimum Monitoring Standards - Infection Control - Renewals, p. 1601, 2281

24-138-74 Functions for Dental Hygienists - Limited Access Permit Treatment Guidelines—Practicing Under Public Health Supervision - Dental Hygiene Limited Access Permit - Subject Matter Acceptable for Dentist and Dental Hygienist Continuing Education - Requirements and Restrictions - Limited Prescriptive Authority—Qualifications—Allowable Percentages of Topical Agents, p. 386

(State Electrical Board)

- 24-141-38 Military Training or Experience - Unprofessional Conduct - Screening Panel - Board Meetings - Apprentice Registration - Renewals - Complaint Procedure, p. 1743, 306

(Board of Funeral Service)

- 24-147-38 Applications for Cemetery Licenses - Transfer of Cemetery Ownership - Prearranged, Prefinanced, or Prepaid Funerals - Requirements for Sale of At-Need, Preneed, and Prepaid Funeral Arrangements - Trust Funds—General - Cemetery Perpetual Care and Maintenance Trust Accounts - Financial Records - Annual Reporting Requirements - Audits - Mortuary and Crematory Preneed Trust Accounts - Restrictions on Use of Cemetery Funds, p. 1461, 2187
- 24-147-39 Definitions - Inspections – Mortuaries, Branch Establishments, and Crematories - Transportation and Custody of Human Remains - Out-of-State Mortician Licenses - Mortuary and Branch Establishment Operation Standards - Mortuary and Branch Establishment Licenses and Temporary Permits - Crematory Licenses, Temporary Permits, and Operation Standards - Continuing Education Requirements – Morticians - Unprofessional Conduct - Mortician Licenses - Examinations - Name Change, Closure, Transfer, or Sale – Mortuary, Branch Establishment, Crematory, or Cemetery - Change of Mortician-In-Charge or Crematory Operator-In-Charge - Nonlicensed Personnel - Sponsors, p. 2251, 440

(Board of Massage Therapy)

- 24-155-6 Licensure by Examination - Licensure of Out-of-State Applicants - Nonroutine Applications, p. 1085, 2193
- 24-155-7 Licensure by Examination - Licensure of Out-of-State Applicants - Continuing Education Requirements - Unprofessional Conduct - School Instructors and Assistants Requiring a License in Massage Therapy and Exemption, p. 618

(Board of Nursing)

- 24-159-84 Direct Supervision and Standards Related to the Practical Nurse's and Registered Nurse's Role in Cosmetic Procedures, p. 1232, 186
- 24-159-85 Definitions - Enhanced Nurse Licensure Compact Rules - Issuance of a License by a Compact State - Limitations on Multistate Licensure Privilege—Discipline - Information System, p. 624

(Board of Optometry)

- 24-168-43 Licensure Requirements - Military Training or Experience - General Practice Requirements - Unprofessional Conduct - Screening Panel - Ophthalmological Diagnostic Permissible Drugs, p. 1474, 307, 442

(Board of Outfitters)

- 24-171-37 Outfitter Records - Safety and First Aid Provisions - Watercraft Identification - Outfitter Qualifications - Successorship - Fishing Outfitter Operations Plan - Operations Plans and Amendments – Renewals, p. 428, 1900
- 24-171-38 Outfitter Assistants - Unprofessional Conduct and Misconduct, p. 530

(Board of Pharmacy)

- 24-174-69 Fee Schedule - Internship Requirements - Foreign Intern Requirements, p. 1235, 1653
- 24-174-70 Examination for Licensure as a Registered Pharmacist - Requirements to Become a Clinical Pharmacist Practitioner - Requirements for Submitting Prescription Registry Information to the Board - Screening Panel - Complaint Procedure - Legal Suspension or Revocation, p. 535

(Board of Physical Therapy Examiners)

- 24-177-34 Military Training or Experience - Foreign-Trained Physical Therapist Applicants - Continuing Education - List of Licensed Physical Therapists, p. 1748, 443

(Board of Private Security)

- 24-182-35 Organization - Procedural Rules - Public Participation - Definitions - Fee Schedule - Identification Pocket Card - Insurance and Surety Bond Requirements - Regulations of Uniform - Qualification of Firearms for Armed Endorsement - Requalification Required Annually - Required Information for Application - Military Training or Experience - Written Examination - Temporary Practice Permit - Private Investigator Trainee - Certified Firearms Instructor - Company Licensure and Branch Offices - Firearms Training Courses - Private Investigator Training Program - Private Security Guard Training Program - Security Alarm Installer Training Program - Alarm Response Runner Training Program - Standards for Continuing Education - Annual Continuing Education Requirements - Non-approved Activities - Auditing of Continuing Education Hours - Inactive Status and Conversion to Active Status - Alarm Response Runner - Private Investigator - Private Security Guard - Process Server - Resident Manager - Security Alarm Installer - Nonroutine Applications - Experience Requirements, p. 823, 1957

(Board of Psychologists)

- 24-189-36 Application Procedures - Exemptions - Minimum Standards - Licensure of Foreign-Trained Psychologists - Competency - Limits of Confidentiality - Continuing Education Program Options - Continuing Education Implementation - Practice of Psychology, p. 992, 1654
- 24-189-37 Behavior Analysts and Assistant Behavior Analysts Licensure, Continuing Education, and Unprofessional Conduct, p. 1240, 1656

- 24-189-38 Renewal Dates and Requirements - Psychologist Application Procedures - Minimum Standards - Work Samples-Examinations - Licensure as a Psychologist by Experience (Senior) - Nonroutine Psychologist Applications - Nonroutine Behavior Analyst or Assistant Behavior Analyst Applications, p. 2394, 844
- 24-189-39 Application Procedures for Behavior Analysts and Assistant Behavior Analysts, p. 540

(Board of Public Accountants)

- 24-201-50 Definitions - Licensing - Renewals - Continuing Education - Complaint Procedures - Credit for Blended Learning - Professional Conduct, p. 1088, 2283

(Board of Real Estate Appraisers)

- 24-207-41 Qualifying and Continuing Education Requirements, p. 56, 722

(Board of Realty Regulation)

- 24-210-44 Definitions - Fee Schedule - Trust Account Requirements - General License Administration Requirements - Inactive Licenses - Inactive to Active License Status - Renewals - Unprofessional Conduct - Disciplinary Guidelines—Public Notice - Property Management Trust Account Requirements - Inactive Status - Unprofessional Conduct for Property Management Licensees, p. 2400

(Board of Respiratory Care Practitioners)

- 24-213-20 Abatement of Renewal Fees - Continuing Education Requirements - Nonroutine Applications, p. 1752

(Board of Behavioral Health)

- 24-219-31 Certification of Behavioral Health Peer Support Specialists (CBHPSS), p. 1757, 444

(Board of Speech-Language Pathologists and Audiologists)

- 24-222-27 Definitions - Fees - Unprofessional Conduct - Limited Licenses - Supervised Professional Experience, p. 1479, 2079

(Board of Veterinary Medicine)

- 24-225-40 Definitions - Nonroutine Applications - Temporary Permits - Veterinarian Licenses - Veterinarian Examinations - Licensure of Out-of-State Veterinarian - Continuing Education - Continuing Education Instructors - Record-Keeping Standards - Management of Infectious Wastes - Inspection and Sanitation - Occasional Case Exemption, p. 774



LIVESTOCK, Department of, Title 32

- 32-17-285 Additional Requirements for Cattle - Importation of Cattle From Mexico - Identification of Alternative Livestock With the Exclusion of Omnivores and Carnivores - Requirements for Mandatory Surveillance of Montana Alternative Livestock Farm Cervidae for Chronic Wasting Disease, p. 1001, 1101, 1661
- 32-17-286 Deeded Land Grazing Permits - Freeze Branding - County Line Grazing Permits - Brands Enforcement Division Fees, p. 252, 648
- 32-17-287 Animal Health Division Fees, p. 59, 449
- 32-18-289 Board Oversight of Agency Actions, p. 391, 543, 846

(Board of Milk Control)

- 32-18-288 Milk Control Assessments, p. 62, 450

NATURAL RESOURCES AND CONSERVATION, Department of, Title 36

- 36-12-196 Water Right Permitting, p. 1485, 1608, 451

PUBLIC HEALTH AND HUMAN SERVICES, Department of, Title 37

- 37-736 Medicaid Substance Use Disorder Services, p. 1258, 2081
- 37-743 Clarifying Contents of Healthy Montana Kids (HMK) Evidence of Coverage - Adopting the Medicaid Ambulance Contracts, p. 861, 1905, 2286
- 37-768 Targeted Case Management, p. 1103, 1906
- 37-788 Updating the Effective Dates of Non-Medicaid and Medicaid Fee Schedules to January 1, 2018, p. 1006, 2287
- 37-789 Revising Nursing Facility Reimbursement Rates for State Fiscal Year 2018, p. 1121, 1670
- 37-793 Promising Pregnancy Care Program, p. 595, 1769, 2303
- 37-795 Updating the Federal Poverty Index Guidelines for the Montana Telecommunications Access Program, p. 864, 2082
- 37-797 Updating Durable Medical Equipment Rules to Reflect a Sole-Source Provider for the Purchase of Breast Pumps, p. 773, 2140, 189
- 37-798 Changes to the Non-Medicaid Services Provider Manual, p. 776, 1908
- 37-799 Graduate Medical Education Payment Program, p. 1268, 2083
- 37-800 Expanding the Children's Special Health Services, p. 257, 847
- 37-801 Behavioral Health Targeted Case Management Fee Schedule, p. 1038, 2305
- 37-802 Amendments to Fee Schedules, p. 1043, 2312
- 37-804 Low-Income Weatherization Assistance Program (LIWAP), p. 1126, 2197
- 37-805 Revising Nursing Facility Reimbursement Rates for State Fiscal Year 2018, p. 1133, 2320
- 37-806 Montana Medical Marijuana Program, p. 1273, 1911

- 37-807 Amendment of Birth Certificate Gender Designations - Issuance of a Replacement Certificate, p. 1609, 2436
- 37-808 Health and Economic Livelihood Partnership (HELP) Program, p. 1772, 2326
- 37-809 Child Support Guidelines for the Calculation of Support Obligations, p. 1781, 2441
- 37-810 Updating Medicaid Fee Schedules With Medicare Rates and Effective Dates, p. 2012, 2443
- 37-811 Federal Child Care and Development Block Grant Reauthorization Act - Disaster and Emergency Planning - Health and Safety Requirements for Child Care Facilities, p. 2141, 308, 591
- 37-812 Physician-Related Services Manual, p. 2019, 2445
- 37-814 Revisions in Immunization Requirements for Attendance in Child Care Facilities and in Foster Homes, p. 2022, 191, 724
- 37-818 Direct Care Wage Effective Dates, p. 2034, 196
- 37-820 Montana Medical Marijuana Program, p. 2037, 321, 592
- 37-823 Low Income Energy Assistance Program (LIEAP), p. 2173, 108
- 37-824 Updating Residential Treatment Facilities Rules, p. 260, 848
- 37-826 Medicaid Auditor Evaluation Hearings, p. 687
- 37-827 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, p. 2418, 457
- 37-828 Medicaid Rate, Service, and Benefit Changes, p. 67, 458
- 37-830 Foster Care Licensing Requirements, p. 394, 849
- 37-831 Update of the Supplemental Nutrition Program for Women, Infants, and Children (WIC), p. 788
- 37-832 Increase of Laboratory Fees, p. 265, 649
- 37-833 Passport to Health Program Updates - Repeal of Health Improvement Program Rules, p. 268, 650
- 37-834 Update of the Healthcare Effectiveness Data and Information Set (HEDIS), p. 793
- 37-835 Adult Mental Health and Substance Use Disorder, p. 273, 725
- 37-836 Discontinuance of the Supplemental Disproportionate Share Hospital Payment, p. 545, 797
- 37-837 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, p. 690
- 37-838 Updating Medicaid Fee Schedules With Medicare Rates - Updating Effective Dates, p. 798
- 37-839 Montana Medical Marijuana Program, p. 711
- 37-841 Healthy Montana Kids (HMK) Dental Benefits, p. 811

PUBLIC SERVICE REGULATION, Department of, Title 38

- 38-5-238 Pipeline Safety, p. 2274, 334
- 38-5-239 Small Water Utility Rules, p. 166

- 38-5-240 Creation of a Legally Enforceable Obligation Involving Qualifying Facilities - Access to Avoided Cost Modeling Data for a Qualifying Facility - Definitions, p. 550

REVENUE, Department of, Title 42

- 42-2-971 Livestock Reporting and Per Capita Fees—Honey Bees, p. 1277, 1672  
42-2-972 Tax Exemptions for Nonfossil Energy Systems - Taxable Rate Reductions for Value-Added Property - Department's Notification of Property Tax Liens, p. 1280, 1674  
42-2-973 Resident Military Salary Exclusion, p. 1284, 1676  
42-2-974 Conditions for Operating a Brewery - Production Threshold - Beer Reporting Requirements, p. 1286, 2085  
42-2-975 Deadlines for Classification and Appraisal Reviews - Consideration of Sales Price and Fee Appraisals as Market Value Indicators, p. 1374, 2088  
42-2-976 Property Tax Exemption Applications - Exemptions for Veterans' Organizations - Exemption Notifications to County Treasurers - Valuation of Condominiums and Townhomes, p. 1383, 2090  
42-2-977 Land Classification - Natural Disaster Reduction - Forest Land Eligibility and Valuation, p. 1390, 2198  
42-2-978 Calculating the Elderly Homeowner/Renter Tax Credit, p. 1494, 2092  
42-2-979 Pass-Through Entities, p. 1500, 2094  
42-2-980 Property Tax Assistance Programs, p. 1612, 2201  
42-2-981 Tax Credits, p. 1620, 2095  
42-2-982 Coal Valuation for Coal Gross Proceeds - Coal Severance Tax on Coal Production, p. 1637, 2204  
42-2-983 Employer Apprenticeship Tax Credit, p. 1647, 2096  
42-2-984 Carryforward and Carryback Provisions of Corporate Net Operating Losses, p. 1787, 2327  
42-2-985 Allocation and Apportionment of Income of Multistate Corporate Taxpayers Necessitated by House Bill 511, L. 2017 - Department's Method of Administering the Corporate Income Tax Regarding Unitary Multistate Taxpayers Whose Montana Activity Is Reflected Through Multiple Entities, p. 1790, 2328  
42-2-986 Apportionment and Allocation of Income for Financial Institutions, p. 1844, 2337  
42-2-987 Trended Depreciation Schedules for Valuing Property, p. 1854, 2341  
42-2-988 Office of Dispute Resolution (ODR), p. 294, 652  
42-2-989 Pension and Annuity Income Exclusions - Dependent Exemptions - Medical Care Savings Accounts, p. 398, 851  
42-2-990 Withholding Taxes, p. 413, 853  
42-2-991 Apportionment and Allocation of Income Reported by Pass-Through Entities and Guaranteed Payments to Individual Partners, p. 419, 854  
42-2-992 Quota Areas - Competitive Bidding Process for Alcoholic Beverage Licenses, p. 555  
42-2-993 Oil and Gas Tax Rates, p. 814

42-2-994 Office of Dispute Resolution (ODR) Liquor License Protests and  
Liquor Matters, p. 818

SECRETARY OF STATE, Office of, Title 44

44-2-226 Access to Documents and Fees for Copies, p. 1137, 1677

44-2-227 Online Filing of Annual Reports, p. 1290, 1678

44-2-228 Scheduled Dates for the 2018 Montana Administrative Register, p.  
1506, 1959

(Commissioner of Political Practices)

44-2-229 Campaign Finance Reporting, Disclosure, and Practices, p. 1509,  
1875, 2342

MONTANA ADMINISTRATIVE  
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