MONTANA ADMINISTRATIVE REGISTER

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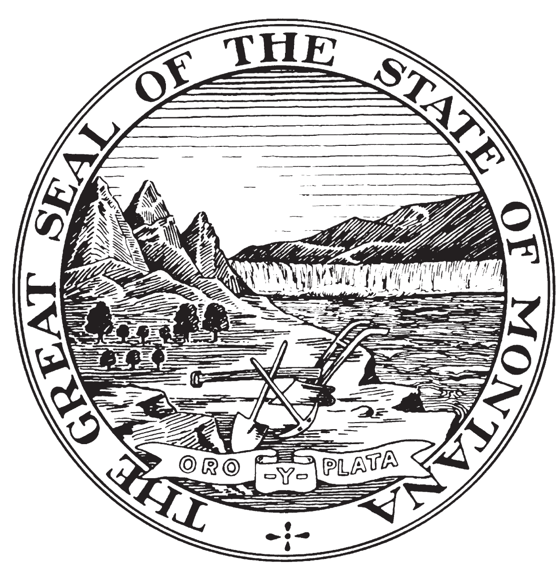

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 7

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 The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

Inquiries regarding the rulemaking process, including material found in the Montana Administrative Register and the Administrative Rules of Montana, may be made by calling the Secretary of State's Office, Administrative Rules Services, at (406) 438-6122.

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BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 10.56.101, 10.56.102, and 10.56.105 pertaining to Assessment Standards	))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On May 2, 2024, at 10:00 a.m., the Board of Public Education (board) will hold a public hearing in Room 152 of Montana State Capitol, in Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The board 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 board no later than 5:00 p.m. on April 22, 2024, to advise us of the nature of the accommodation that you need. Please contact McCall Flynn, Executive Director, 46 North Last Chance Gulch, P.O. Box 200601, Helena, MT, 59620-0601; or email bpe@mt.gov.

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

10.56.101 STATEWIDE ASSESSMENT (1) ~~By the authority of 20-2-121(12), MCA and ARM 10.55.603, the~~ The Board of Public Education adopts rules for ~~state level assessment~~ statewide assessments in the public schools and those private schools seeking accreditation.

(2) The Board of Public Education ~~(board)~~ recognizes that the primary purpose of assessment is to serve learning. ~~A balanced assessment system including formative, interim, and summative assessments aligned to state content standards, will provide an integrated approach to meeting both classroom learning needs and school and state level information needs.~~ An assessment system that includes multiple measures and is aligned to state content and program delivery standards will provide an integrated approach to inform student learning, progression, growth, and proficiency. ~~A balanced~~ An assessment system is structured to continuously improve teaching and learning and to inform education policy.

(3) The obligation for funding ~~the~~ statewide assessments is the responsibility of the state. This chapter may not be construed to require a school district to provide these assessments if the state does not have a current contract with test vendors for provision of these assessments to Montana school districts.

(4) The Superintendent of Public Instruction shall recommend in writing to the ~~board~~ Board of Public Education any modifications to the single system of ~~state level assessment~~ statewide assessments as set forth in (2). The ~~board~~ Board of Public Education may consider recommended modifications as an information item on an

agenda at a ~~board~~ Board of Public Education meeting. At that meeting, the ~~board~~ Board of Public Education may vote to list the recommendations as an action item on the agenda of a subsequent ~~board~~ Board of Public Education meeting. Unless approved by the ~~board~~ Board of Public Education, no recommended modifications are effective and no accredited schools may implement the recommended modifications.

(5) When developing a recommendation to the ~~board~~ Board of Public Education for adopting statewide assessments the Superintendent of Public Instruction will include implications including alignment to content standards.

(6) through (6)(b) remain the same.

(c) request approval from the ~~board~~ Board of Public Education to allow for census field testing before determining proficiencies.

AUTH: Mont. Const. Art. X, sec. 9, 20-2-121, MCA
IMP: Mont. Const. Art. X, sec. 9, 20-2-121, 20-7-402, MCA

10.56.102 PARTICIPATION (1) By the authority of 20-2-121(11), MCA, and ARM 10.55.603, the Board of Public of Education ~~(board)~~ adopts rules for statewide assessment in all public and accredited nonpublic schools.

(2) Statewide assessments approved by the Board of Public Education shall be administered in all public and accredited nonpublic schools.

(3) School districts shall annually administer statewide assessments to all students in accordance with state and federal laws and regulations that meet or exceed the following specifications:

(a) English language arts and mathematics assessments shall be aligned to Montana content standards in English language arts and mathematics and administered in grades 3-8 and ~~11~~ at least once in grades 9-12;

(b) Science assessments shall be aligned to Montana content standards for science and administered ~~in~~ not less than one time during grades ~~5, 8, and 11~~ 3-5, 6-9, and 10-12; and

(c) ~~Assessments shall be administered in the spring of each year.~~ Statewide assessments shall be administered in all public and accredited nonpublic schools within the statewide assessment windows established by the Superintendent of Public Instruction.

(4) ~~State-level~~ Statewide assessments aligned to Montana-English language proficiency standards shall be administered to all students identified as English Learners (EL) in grades ~~(~~K-12~~). These assessments shall be administered mid-school year.~~ within the statewide assessment windows established by the Superintendent of Public Instruction.

(5) remains the same.

(6) School districts shall use guidance provided by the Office of Public Instruction to inform parents/guardians about statewide assessments, pursuant to ARM 10.55.601 and 10.55.722, including:

(a) and (b) remain the same.

(c) when the information about student performance is provided to ~~teachers~~ relevant educators and specialists and parents/guardians;

(d) how ~~teachers~~ relevant educators and specialists, principals, and district officials use the information about student performance; and

(e) how parents/guardians can use that information to help their child.

AUTH: Mont. Const. Art. X, sec. 9, 20-2-121, MCA
IMP: Mont. Const. Art. X, sec. 9, 20-2-121, 20-7-402, MCA

10.56.105 REPORTING (1) The Superintendent of Public Instruction shall provide ~~a~~ an annual report of the ~~annual state~~ statewide assessment results to the Legislature and the Board of Public Education.

(2) The Superintendent of Public Instruction shall make available student assessment ~~data~~ results in compliance with confidentiality requirements of federal and state law ~~(20-7-104, MCA)~~. To facilitate transparency, the statewide assessment results released to the public shall be accompanied by a clear statement of the purpose, subject areas assessed, description of proficiency levels, and the percentage of students who participated in the assessments.

(3) ~~Statewide~~ Annual assessment results are a part of each student's permanent record as described in compliance with 20-1-213 and 20-7-104, MCA.

AUTH: Mont. Const. Art. X, sec. 9, 20-2-121, MCA
IMP: Mont. Const. Art. X, sec. 9, 20-2-121, 20-7-402, MCA

REASON: The board proposes these amendments to better align the assessment standards with the Elementary and Secondary Education Act (ESEA). This alignment allows assessments to be administered during broader grade bands rather than during specific grade levels. The proposed amendments also provide flexibility by establishing statewide assessment windows when the assessments could be administered during the school year. The proposed amendments also include cross-references to accreditation standards from ARM Title 10, chapter 55 to emphasize the importance of communication with parents/guardians about statewide assessments. The proposed amendments also include clarity and consistency of language used in the rules.

4. 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: McCall Flynn, Executive Director, 46 North Last Chance Gulch, P.O. Box 200601, Helena, Montana, 59620-0601; telephone (406) 444-0300; or email bpe@mt.gov and must be received no later than 5:00 p.m. on May 10, 2024.

5. McCall Flynn, executive director of the board, has been designated to preside over and conduct this hearing.

6. The board 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, email, 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 email unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in paragraph 4 or may be made by completing a request form at any rules hearing held by the board.

7. An electronic copy of this proposal notice is available through the Secretary of State's web site at http://sosmt.gov/ARM/Register.

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 board has determined that the amendment of the above-referenced rules will not significantly and directly impact small businesses.

/s/ McCall Flynn
McCall Flynn
Executive Director
Board of Public Education

/s/ Tim Tharp
Tim Tharp
Chair
Board of Public Education

Certified to the Secretary of State April 2, 2024.

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

In the matter of the repeal of ARM 12.2.306 pertaining to department liaisons	)))	NOTICE OF PUBLIC HEARING AND EXTENSION OF COMMENT PERIOD ON PROPOSED REPEAL

TO: All Concerned Persons

1. On February 23, 2024, the Department of Fish, Wildlife and Parks (FWP) published MAR Notice No. 12-625 pertaining to the public hearing on the proposed repeal of the above-stated rule at page 304 of the 2024 Montana Administrative Register, Issue Number 4.

2. On March 22, 2024, FWP conducted a public hearing on the proposed repeal of the above-stated rule as scheduled, and no members of the public appeared to provide comment. FWP held the meeting open for additional time before ending the hearing around 10:20 a.m. Shortly thereafter, FWP received notice from members of the public waiting on Zoom to comment and reporting receiving the message that the meeting never started. FWP then called into the meeting provided in the proposal notice and received the same message. Due to the technical difficulties experienced, FWP committed to holding another public hearing and extending the public comment period on the proposed action.

3. On May 3, 2024, at 9:00 a.m., the FWP will hold a public hearing via the ZOOM meeting platform to consider the proposed repeal of the above-stated rule. There will be no in-person hearing. Interested parties may access the telephonic public hearing in the following way:

Dial by telephone: +1 646 558 8656
Meeting ID: 816 5358 6426
Passcode: 883976

4. FWP 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 FWP no later than 5:00 p.m. on April 26, 2024, to advise us of the nature of the accommodation that you need. Please contact Regina Reynolds, Department of Fish, Wildlife and Parks, P.O. Box 200701, Helena, Montana, 59620-0701; telephone (406) 594-8073; or e-mail regina.reynolds@mt.gov.

5. Concerned persons may submit their data, views, or arguments orally at the telephonic hearing. Written data, views, or arguments may also be submitted to Erik Wickman, Department of Fish, Wildlife and Parks, P.O. Box 200701, Helena, Montana, 59620-0701; telephone (406) 444-7826; or e-mail erik.wickman@mt.gov, and must be received no later than 5:00 p.m., May 6, 2024.

6. FWP maintains a list of interested persons who wish to receive notice of rulemaking actions proposed by the FWP, the commission, or the board. Persons who want to have their name added to the list shall make a written request that includes the name and mailing or email address of the person to receive the notice. Written requests 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 completed online at https://public.govdelivery.com/accounts/MTFWP/subscriber/new.

/s/ Jaime MacNaughton
Jaime MacNaughton
Rule Reviewer

/s/ Dustin Temple
Dustin Temple
Director
Fish, Wildlife and Parks

Certified to the Secretary of State April 2, 2024.

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

In the matter of the amendment of ARM 12.9.1601, 12.9.1602, 12.9.1603, 12.9.1604, 12.9.1605, and 12.9.1606 pertaining to Montana Wildlife Habitat Improvement Act Termination Date and Eligible Expenditures	)))))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On May 2, 2024, at 10:00 a.m., the Department of Fish, Wildlife and Parks (department) will hold a public hearing via the ZOOM platform, to consider the proposed amendment of the above-stated rules.

Dial by telephone: 1 646 558 8656
Meeting ID: 890 7187 2717
Passcode: 893044

2. The department 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 5:00 p.m., on April 26, 2024, to advise us of the nature of the accommodation that you need. Please contact Regina Reynolds, Department of Fish, Wildlife and Parks, P.O. Box 200701, Helena, Montana, 59620-0701; telephone (406) 594-8073; or e-mail regina.reynolds@mt.gov.

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

12.9.1601 DEFINITIONS In addition to the definitions provided in 87-5-802, MCA, the following definitions apply to this subchapter:
(1) through (7) remain the same.
~~(8) This rule expires June 30, 2023, pursuant to 87-5-808, MCA.~~

AUTH: 87-5-808, MCA
IMP: 87-5-803, 87-5-804, 87-5-805, 87-5-806, 87-5-807, MCA

REASON: The 2023 Legislature passed HB 86, which repealed the sunset date for the Montana Wildlife Habitat Improvement Act.

12.9.1602 ELIGIBLE EXPENDITURES (1) Expenditures of grant and required non-federal matching funds may ~~only~~ be used for biological or mechanical control of noxious weeds, purchases and application of approved herbicides, seed purchases and application of seed~~;~~, other weed and soil treatment options and methods recommended by the advisory council to reduce noxious weeds and support native vegetation, and grazing costs as a component of an overall integrated noxious weed management plan, which includes the following:

(a) specified goods limited to herbicides and additives, biological control agents, or materials required for restoration, reseeding, or prescribed grazing management; and

(b) specified services limited to herbicide application; biocontrol agent release; seedbed preparation, seeding, and seedling maintenance; and installation of prescribed grazing infrastructure~~.~~; and

(c) vegetation monitoring, grant administration, and related administrative costs not to exceed 10% of the total project amount.

(2) remains the same.

~~(3) This rule expires June 30, 2023, pursuant to 87-5-808, MCA.~~

AUTH: 87-5-808, MCA
IMP: 87-5-803, 87-5-804, 87-5-805, 87-5-806, 87-5-807, MCA

REASON: The 2023 Legislature passed HB 86, which repealed the sunset date for the Montana Wildlife Habitat Improvement Act. HB 86 further expanded authorized eligible expenditures; therefore, the rule needed to be amended for statutory consistency.

12.9.1603 APPLICATION PROCEDURE (1) through (4) remain the same.

~~(5) This rule expires June 30, 2023, pursuant to 87-5-808, MCA.~~

AUTH: 87-5-808, MCA
IMP: 87-5-803, 87-5-804, 87-5-805, 87-5-806, 87-5-807, MCA

REASON: The 2023 Legislature passed HB 86, which repealed the sunset date for the Montana Wildlife Habitat Improvement Act

12.9.1604 GRANT APPLICATIONS (1) through (4) remain the same.

~~(5) This rule expires June 30, 2023, pursuant to 87-5-808, MCA.~~

AUTH: 87-5-808, MCA
IMP: 87-5-803, 87-5-804, 87-5-805, 87-5-806, 87-5-807, MCA

REASON: The 2023 Legislature passed HB 86, which repealed the sunset date for the Montana Wildlife Habitat Improvement Act.

12.9.1605 GRANT APPLICATION SCORING AND RANKING (1) through (3) remain the same.

~~(4) This rule expires June 30, 2023, pursuant to 87-5-808, MCA.~~

AUTH: 87-5-808, MCA
IMP: 87-5-803, 87-5-804, 87-5-805, 87-5-806, 87-5-807, MCA

REASON: The 2023 Legislature passed HB 86, which repealed the sunset date for the Montana Wildlife Habitat Improvement Act.

12.9.1606 GRANTS (1) through (6) remain the same.
~~(7) This rule expires June 30, 2023, pursuant to 87-5-808, MCA.~~

AUTH: 87-5-808, MCA
IMP: 87-5-803, 87-5-804, 87-5-805, 87-5-806, 87-5-807, MCA

REASON: The 2023 Legislature passed HB 86, which repealed the sunset date for the Montana Wildlife Habitat Improvement Act.

4. 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: ATTN: Andrew Amidon, Department of Fish, Wildlife and Parks, P.O. Box 200701, 1420 East Sixth Avenue, Helena, Montana, 59620-0701; or e-mail andrew.amidon@mt.gov, and must be received no later than 5:00 p.m., May 13, 2024.

5. Regina Reynolds and/or Benjamin Rowe, Department of Fish, Wildlife and Parks, have been designated to preside over and conduct this hearing.

6. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the Department or Commission. 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 the subject or subjects about which program the person wishes to receive notice. Notices will be sent by e-mail unless a mailing preference is noted in the request. Written requests may be mailed or delivered to: Montana Fish, Wildlife and Parks, Legal Unit, P.O. Box 200701, 1420 East Sixth Avenue, Helena, Montana, 59620-0701, or may be emailed to https://public.govdelivery.com/accounts/MTFWP/subscriber/new.

7. An electronic copy of this proposal notice is available through the Secretary of State's web site at http://sosmt.gov/ARM/Register.

8. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted by email on March 19, 2024. A correspondence was received on March 26, 2024 from the bill sponsor indicating the proposed changes properly encompass the intent of the bill.

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/ Benjamin Rowe
Benjamin Rowe
Rule Reviewer

/s/ Dustin Temple
Dustin Temple
Director
Fish, Wildlife and Parks

Certified to the Secretary of State April 2, 2024.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of ARM 24.33.401, 24.33.406, 24.33.411, 24.33.416, 24.33.421, 24.33.431, 24.33.441, 24.33.461, 24.33.471, and 24.33.475 and the repeal of ARM 24.33.445 and 24.33.486 pertaining to home inspector program	))))))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT AND REPEAL

TO: All Concerned Persons

1. On May 7, 2024, at 9:00 a.m., a public hearing will be held via remote conferencing to consider the proposed changes to the above-stated rules. There will be no in-person hearing. Interested parties may access the remote conferencing platform in the following ways:

a. Join Zoom Meeting, https://mt-gov.zoom.us/j/84169687633
Meeting ID: 841 6968 7633, Passcode: 616013
-OR-

b. Dial by telephone, +1 406 444 9999 or +1 646 558 8656
Meeting ID: 841 6968 7633, Passcode: 616013

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 department no later than 5:00 p.m., on April 30, 2024, to advise us of the nature of the accommodation that you need. Please contact the department at P.O. Box 1728, Helena, Montana 59624-1728; telephone (406) 444-5466; Montana Relay 711; or e-mail laborlegal@mt.gov.

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

24.33.401 DEFINITIONS As used in this subchapter, the following definitions apply:

(1) remains the same.

~~(2) "Department" means the Department of Labor and Industry.~~

(3) remains the same but is renumbered (2).

~~(4) "Home inspection business" means a sole proprietorship, a partnership, a limited liability company, a corporation, or any other business entity, which is required by law to register with the department before being able to lawfully perform home inspection for others.~~

~~(5) "Home inspection work" means the same as "home inspection" as provided by 39-9-102, MCA.~~

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

~~(7) "ICEC" means the independent contractor exemption certificate issued by the department pursuant to 39-71-417, MCA.~~

(8) through (13) remain the same but are renumbered (4) through (9).

AUTH: 39-9-102, 39-9-212, MCA
IMP: 39-9-212, MCA

REASON: "Department" is proposed to be repealed because it is statutorily defined. "Home inspection business" and "work" are proposed to be repealed because they have only their common meaning. "ICEC" is proposed to be repealed because it is statutorily defined.

24.33.406 FEE SCHEDULE (1) The following fees are charged by the department for home inspection businesses:

(a) through (e) remain the same.

~~(f) photocopies, per page 0.25~~

(2) remains the same.

AUTH: 39-9-103, MCA
IMP: 39-9-206, MCA

REASON: There is reasonable necessity to strike the fee for photocopies because it is not charged. A fee may nonetheless be applicable to public record requests.

24.33.411 INITIAL AND RENEWAL APPLICATION FOR HOME INSPECTION ~~BUSINESS~~ REGISTRATION (1) remains the same.

~~(2) The applicant shall provide the following information to the department:~~

~~(a) legal name of the home inspection business;~~

~~(b) type of business structure (sole proprietorship, partnership, LLC, etc.);~~

~~(c) mailing address of the business;~~

~~(d) physical address of the business, if different than the mailing address; and~~

~~(e) telephone number.~~

~~(3) The applicant shall provide a roster identifying each person who will perform home inspection work on behalf of the applicant.~~

~~(4) The applicant shall provide proof of training or examination for all home inspection workers on the roster, demonstrating that each worker on the roster meets the minimum initial qualifications as provided by ARM 24.33.431.~~

~~(5) The applicant shall provide proof that the applicant is a member of a national association for home inspectors.~~

~~(6) The applicant shall provide proof of required insurance coverages. Proof of insurance is demonstrated by:~~

~~(a) the policy declaration page;~~

~~(b) a binder of coverage; or~~

~~(c) a certificate of insurance issued by an authorized agent of the insurer.~~

~~(7) The following are the minimum per incident amounts of insurance coverage required for a home inspection business:~~

~~(a) for commercial general liability insurance, $100,000; and~~

~~(b) for errors and omission insurance, $100,000.~~

~~(8) An applicant may demonstrate proof of compliance with the workers' compensation insurance requirements by submitting either:~~

~~(a) proof of Montana workers' compensation insurance coverage; or~~

~~(b) proof that each home inspection worker listed on the roster holds a valid independent contractor exemption certificate issued by the department, where home inspection is a listed occupation for that worker.~~

~~(9) All insurance policies must be underwritten by an insurer authorized to provide that coverage under the laws of Montana.~~

<u>(2) An incomplete application will be deemed denied after 30 days. Within six months of the deemed denial, an applicant may submit the required information for consideration of the application. After six months, the applicant must reapply.</u>

<u>(3) Before a registration expires, a home inspection business may renew its registration by applying to the department and paying the required fee.</u>

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

~~(11) An applicant may complete an incomplete application during the six months following submission of the application before a new application fee will be charged. The applicant is not allowed to operate a home inspection business until the application is completed and approved by the department.~~

AUTH: 39-9-103, 39-9-212, MCA
IMP: 39-9-212, MCA

<u>REASON</u>: New (2) is proposed to clarify the requirements of an application and what occurs if an incomplete application is submitted. Sections (2) through (9) are repealed because they are substantially duplicative of statute. Additionally, the application is required to be submitted on departmental forms. As such, the additional required information will be set forth on the form and need not be reiterated here. Section (11) is proposed to be simplified and recodified as (2). New (3) is proposed to provide for renewals in this rule, allowing the repeal of ARM 24.33.445.

<u>24.33.416 APPROVAL OF APPLICATIONS</u> ~~(1) In order to be registered, the applicant shall submit a fully completed application to the department and pay the required fees.~~

~~(2)~~<u>(1)</u> An application may be made in person during regular business hours~~,~~ at the department's offices ~~at 1805 Prospect Avenue, Helena, Montana, or~~<u>,</u> submitted ~~via~~ <u>by</u> mail ~~to: Registration Section, Employment Relations Division, Department of Labor and Industry, P.O. Box 8011, Helena, MT 59604-8011~~<u>, or electronically as specified by the department</u>.

(3) remains the same but is renumbered (2).

~~(4) An applicant is not allowed to operate a home inspection business until the application is approved by the department.~~

~~(5) An applicant who is aggrieved by the department's denial of an application may request a hearing as provided by ARM 24.33.475.~~

AUTH: 39-9-103, 39-9-212, MCA
IMP: 39-9-212, MCA

REASON: Section (1) is proposed to be repealed as duplicative of 39-9-212(1), MCA. The address in (2) is out of date. To the extent the address is needed, it is set forth in the department's organizational rule and on the department's website. Section (4) is duplicative of 39-9-301, MCA. Section (5) is unnecessary because ARM 24.33.475 sets forth the right to appeal.

24.33.421 REGISTRATION REQUIRED FOR SUBCONTRACTORS AND INDEPENDENT CONTRACTORS (1) A home inspection worker who engages in subcontracting with a home inspection business of another shall individually register as a home inspection business~~, as required by ARM 24.33.411~~.

(2) A home inspection worker who is engaged as an employee of a registered home inspection business must be listed on the employer's roster and does not need to separately register as a home inspection business, if the home inspection worker never:

(a) and (b) remain the same.

AUTH: 39-9-103, 39-9-212, 39-71-203, MCA
IMP: 39-9-212, 39-71-417, MCA

REASON: The rule is proposed to be amended to clarify that employees must be listed on the roster.

24.33.431 ~~MINIMUM INITIAL QUALIFICATIONS FOR A HOME INSPECTION WORKER~~ HOME INSPECTOR EXAMINATIONS AND COMPREHENSIVE EDUCATION COURSES ~~(1) An individual who intends to work as a home inspector shall document one of the following:~~

~~(a) the individual has passed the National Home Inspector Examination offered by the Examination Board of Professional Home Inspectors;~~

~~(b) the individual has passed the examination offered by an organization recognized by the department; or~~

~~(c) the individual has successfully completed a comprehensive educational program for home inspectors approved by the department.~~

~~(2)~~(1) Any organization wishing to be approved by the department for the purposes of offering an examination ~~under (1)(b)~~ for registration must apply to the department for approval of its examination. The organization must demonstrate that its examination is psychometrically valid, and covers at least the following topics:

(a) through (j) remain the same.

~~(3)~~(2) Any organization wishing to be approved by the department for the purposes of offering a comprehensive ~~educational program~~ home inspection instruction for home inspectors consisting of at least 40 hours of instruction ~~under (1)(c)~~ must apply to the department for recognition. The organization must demonstrate that its educational program is comprehensive and covers at least the ~~following~~ topics~~:~~ required for examination in (1).

~~(a) roofing;~~

~~(b) exterior;~~
~~(c) interior;~~
~~(d) structural;~~
~~(e) electrical;~~
~~(f) plumbing;~~
~~(g) heating and cooling (HVAC);~~
~~(h) insulation;~~
~~(i) fireplace and chimney; and~~
~~(j) ethical business practices, professional standards, and reports.~~

~~(4)~~(3) Any organization wishing to be approved by the department for the purposes of offering a comprehensive home inspection instruction educational program for home inspectors ~~under (1)(c)~~ must also demonstrate that it conducts a valid assessment of students' knowledge and understanding of the subject matter being taught in order to demonstrate successful completion. The organization shall describe in detail how the assessment is made, and the criteria by which a student is deemed to have successfully completed the educational program.

~~(5)~~(4) A list of organizations approved by the department to offer home inspector examinations is available by contacting the department's home inspection program, and can also be found at the department's web site~~: http://www.mtcontractor.com~~.

~~(6)~~(5) A list of formal home inspection educational programs approved by the department is available by contacting the department's home inspection program, and can also be found at the department's web site~~: http://www.mtcontractor.com~~.

AUTH: 39-9-103, 39-9-212, MCA
IMP: 39-9-212, MCA

REASON: Reasonable necessity exists to amend the catchphrase and (1) because the provisions are duplicative of 39-3-212, MCA. Amendments to (2) through (4) are proposed to align the rule language with 39-9-212, MCA, regarding instruction and examination. The websites listed in (5) and (6) are proposed to be removed because they are inaccurate and subject to change.

24.33.441 DUTY TO UPDATE ROSTER AND BUSINESS INFORMATION – SUSPENSION – REINSTATEMENT OF REGISTRATION (1) remains the same.

~~(2) A home inspection business shall demonstrate to the department that a home inspector added to the roster meets the minimum initial qualifications as provided by ARM 24.33.431.~~

~~(a) A person may not perform services as a home inspection worker until the home inspection business is notified by the department that the person has met the minimum initial qualifications as a home inspection worker.~~

~~(b) A home inspection worker registered pursuant to ARM 24.33.421 meets the minimum initial qualifications and may begin work immediately.~~

(3) through (5) remain the same but are renumbered (2) through (4).

AUTH: 39-9-103, 39-9-212, MCA
IMP: 39-9-212, MCA

REASON: Reasonable necessity exists to strike (2) because it is statutorily required to have a registration with the department to perform work. As such, the requirement is duplicative of others and need not be restated.

24.33.461 RECOGNITION OF CONTINUING EDUCATION COURSES

(1) through (4) remain the same.

(5) Continuing education programs offered or recognized by the following associations are deemed to be accepted by the department:

(a) American Society of Home Inspectors (ASHI); ~~and~~

(b) International Association of Certified Home Inspectors (InterNACHI)~~.~~; and

(c) department-approved comprehensive courses.

(6) remains the same.

(7) A list of recognized continuing education sponsors and courses is available on the department's home inspector web page.

~~(8) A list of approved continuing education courses from other content providers is available on the department's home inspector web page.~~

AUTH: 39-9-103, 39-9-212, MCA
IMP: 39-9-212, MCA

REASON: New (5)(c) is proposed to clarify that department-approved comprehensive courses meet the requirements for continuing education. Section (8) is proposed to be stricken because it can more easily be incorporated into (7).

24.33.471 PENALTIES – CIVIL FINES – INJUNCTIVE RELIEF (1) and (2) remain the same.

~~(3) The imposition of a civil fine does not preclude the department from taking any other enforcement action against the party. The department expressly reserves its right to seek injunctive relief for violations of Title 39, chapter 9, MCA.~~

AUTH: 39-9-103, 39-9-212, MCA
IMP: 39-9-206, 39-9-212, 39-9-301, ~~39-9-401,~~ MCA

REASON: Section (3) is proposed to be stricken because it is unnecessary to reserve in rule what exists in statute. The implementation citations are proposed to be updated because 39-9-401, MCA is not applicable to this rule.

24.33.475 DISPUTE RESOLUTION PROCESS (1) A person receiving an adverse decision may request a hearing within 15 days from when the adverse decision is sent. This request does not prohibit efforts at conciliation or mediation.

(2) and (3) remain the same.

~~(4) A party may appeal the hearing officer's decision to the unemployment insurance appeals board (UIAB) within ten days of the date the decision was sent.~~

~~(5) A party may appeal a board decision by requesting judicial review per 39-51-2410, MCA.~~

AUTH: 2-4-201, 39-9-103, 39-9-212, MCA
IMP: 2-4-603, 39-9-212, ~~39-9-401,~~ MCA

REASON: Section (1) is proposed to be amended to clarify that efforts at informal resolution are permissible. Sections (4) and (5) and the implementation citations are amended to reflect that 39-9-401, MCA is not applicable to this rule.

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

24.33.445 RENEWAL OF BUSINESS REGISTRATION

AUTH: 39-9-103, 39-9-212, MCA
IMP: 39-9-212, MCA

REASON: There is reasonable necessity to repeal this rule because it is substantially duplicative of statute, and the substance needed is proposed to be incorporated in ARM 24.33.411.

24.33.486 EDUCATION AND OUTREACH PROGRAM

AUTH: 39-9-103, 39-9-212, MCA
IMP: 39-9-206, MCA

REASON: There is reasonable necessity to repeal this rule because there is not a statutory requirement to use home inspector fees for education, or for business process to be set forth in rule.

5. Concerned persons may present their data, views, or arguments at the hearing. Written data, views, or arguments may also be submitted at dli.mt.gov/rules or P.O. Box 1728, Helena, Montana 59624. Comments must be received no later than 5:00 p.m., May 10, 2024.

6. An electronic copy of this notice of public hearing is available at dli.mt.gov/rules and sosmt.gov/ARM/register.

7. The agency maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the agency. Persons wishing to have their name added to the list may sign up at dli.mt.gov/rules or by sending a letter to P.O. Box 1728, Helena, Montana 59624 and indicating the program or programs about which they wish to receive notices.

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

9. Pursuant to 2-4-111, MCA, the agency has determined that the rule changes proposed in this notice will not have a significant and direct impact upon small businesses.

10. Department staff has been designated to preside over and conduct this hearing.

/s/ QUINLAN L. O'CONNOR	/s/ SARAH SWANSON
Quinlan L. O'Connor	Sarah Swanson, Commissioner
Rule Reviewer	DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State April 2, 2024.

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

In the matter of the amendment of ARM 24.126.301, 24.126.401, 24.126.412, 24.126.504, 24.126.511, 24.126.515, 24.126.701, 24.126.704, 24.126.2103, and 24.126.2301, the adoption of NEW RULES I and II, and the repeal of ARM 24.126.502, 24.126.507, 24.126.510, 24.126.2105, and 24.126.2304 pertaining to the Board of Chiropractors	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT, ADOPTION, AND REPEAL

TO: All Concerned Persons

1. On May 7, 2024, at 9:00 a.m., a public hearing will be held via remote conferencing to consider the proposed changes to the above-stated rules. There will be no in-person hearing. Interested parties may access the remote conferencing platform in the following ways:

a. Join Zoom Meeting, https://mt-gov.zoom.us/j/89695465046
Meeting ID: 896 9546 5046, Passcode: 252282
-OR-
b. Dial by telephone, +1 406 444 9999 or +1 646 558 8656
Meeting ID: 896 9546 5046, Passcode: 252282

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 department no later than 5:00 p.m., on April 30, 2024, to advise us of the nature of the accommodation that you need. Please contact the department at P.O. Box 1728, Helena, Montana 59624-1728; telephone (406) 444-5466; Montana Relay 711; or e-mail laborlegal@mt.gov.

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

24.126.301 DEFINITIONS ~~(1) "Chaperone" as used in ARM 24.126.2301 means an individual delegated to ensure proper behavior on the part of the provider and the patient during the course of a physical examination or treatment.~~

(1) "Chiropractic physiotherapy" means thermal, sound, light, mechanical, manual, hydrotherapy, rehabilitative, or other modes of care which may be administered, dispensed, ordered, or prescribed for the purpose of assisting a patient to achieve a timely and favorable clinical outcome.

(2) "College of chiropractic approved by the board" as used in 37-12-302, MCA, or "chiropractic college" as used in these rules, means a chiropractic college

accredited by the Council on Chiropractic Education (CCE) or other accrediting body in good standing with the United States Department of Education and the Council for Higher Education Accreditation. For foreign-trained applicants, the term means a chiropractic college accredited by a body in good standing with the Council on Chiropractic Education International (CCEI) or chiropractic education the board finds to be equivalent.

~~(2)~~(3) "Diagnostic x-ray" as used in 37-12-104, MCA, ~~shall mean~~ means any recognized form of diagnostic imaging including, but not limited to, x-ray, CAT scan, and MRI.

~~(3)~~(4) "Dietetic methods" as used in 37-12-104, MCA, ~~shall mean any service, when performed or ordered to be performed by any licensed chiropractor for therapeutic effects, which may employ recommending and/or giving of any food, vitamin, mineral, herb, enzyme, glandular product, homeopathic preparation, diet plan, or other nutritional substance not requiring a medical prescription~~ means the dispensing or prescribing of dietary supplements, nutritional therapies, or natural substances that are not drugs requiring a prescription.

(5) "Examination prescribed by the board" as used in 37-12-304, MCA, means:

(a) Parts I, II, III, and IV, and physiotherapy of the National Board of Chiropractic Examiners (NBCE) licensure examination; and

(b) a Montana jurisprudence examination.

~~(4) "New doc seminar" means a program provided by the board that is targeted to new licensees as a source of information on state laws and rules and other various topics. The program is open to all licensed chiropractors.~~

~~(5) "Physiotherapy" as used in 37-12-104, MCA, shall mean any service, when performed, or ordered to be performed, by any licensee, employing for therapeutic effects, physiological measures, activities, and devices for preventive and therapeutic purposes, physiological agents including, but not limited to, mechanical devices, heat, air, light, water, electricity, sound, exercise, rehabilitative procedures, massage, and mobilization, when performed for the purpose of diagnosis, evaluation, treatment, and instruction of the human body to detect, assess, correct, alleviate, prevent, and limit physical disability, injury, body malfunction, pain, mental condition by the aforementioned agents, or any other procedure taught in chiropractic colleges for the purpose of preventing, correcting, or alleviating a physiological or mental disability or condition.~~

AUTH: 37-1-131, 37-1-319, 37-12-201, MCA
IMP: 37-1-131, 37-12-104, 37-12-201, MCA

REASON: It is not necessary to define the term "chaperone" because of its common understanding and use as a generally accepted standard of care in context. In new (1), the term "chiropractic" is added to "physiotherapy" because that is the term used in the statute. The former (5) definition is redrafted at new (1) to be clear and concise, using the Federation of Chiropractic Licensing Boards' (FCLB) model language, except that to acknowledge the practice of unlicensed assistants, the word "ordered" is maintained from the former definition. Several clauses stricken in the former definition of physiotherapy either repeat the statute or improperly expand the scope of practice at 37-12-101 and 37-12-104, MCA. For example, defining the scope of practice as procedures taught in chiropractic college repeats the statute and treatment of a "mental disability" expands treatment beyond "adjustment or manipulation of the articulations and tissues of the body . . ." It is not necessary to define "new doc seminar" because the seminar is proposed to be repealed. See Reason under ARM 24.126.2104. New (2) and (5)(a) are moved to this rule from the application rule ARM 24.126.504 nearly verbatim. This placement makes it clear the board has rulemaking authority to define approved chiropractic schools and the licensing examination. In (2), the Council on Chiropractic Education (CCE) is maintained as the primary accrediting body, with new language referring to the United States Department of Education and the Council for Higher Education Accreditation (CHEA) noted as secondary sources for accreditation, especially if the CCE for some reason ceased to exist. CHEA is the non-governmental coordinating agency approved by the U.S. Department of Education to accredit individual institutions and programs in the U.S. The rule formerly referred to CCEI as an alternate accrediting body for the CCE when in fact the CCEI recognizes accrediting bodies in Australia, Europe, and Canada. The proposal correctly distinguishes the CCE from the CCEI and creates a pathway for foreign-educated persons whom the board deem to be equivalently educated. The definition of "examination" in (5) includes both the NCBE and the jurisprudence examination, and is necessary to authorize the board's examination requirements. New (4) is drafted to be clear and concise, again using FCLB model language. New (5)(b) is necessary to authorize the board's historical requirement for the jurisprudence exam. In the implementation citations, there is an unnecessary comma.

24.126.401 FEE SCHEDULE
(1) remains the same.
~~(2) Reexamination fee of jurisprudence (written) 100~~
(3) through (7) remain the same but are renumbered (2) through (6).

AUTH: 37-1-134, 37-12-201, MCA
IMP: 37-1-134, 37-1-141, 37-12-201, 37-12-302, 37-12-304, MCA

REASON: The fee is not necessary because the cost of administration of the jurisprudence examination should be included with the application fee, including retakes. Historically, the number of retakes has been negligible.

24.126.412 PREPAID TREATMENT PLANS (1) ~~Licensed chiropractors accepting~~ Any chiropractor who accepts prepayment for services planned, but not yet delivered must enter a written contract with the client that describes:

(a) ~~Establish an escrow account to hold all prepayment funds.~~ the services included;

~~(i)~~(b) ~~Funds may be removed from the escrow account following the delivery of services, in such amounts equal to the chiropractor's usual and customary charges for like services, with any discounted percentage contained in a written contract.~~ the amount of payment for those services;

~~(ii) Funds received in advance of the day services are delivered must be deposited into the escrow account in a timely manner.~~

~~(b)~~(c) ~~Maintain a contract for prepayment of services.~~ any discounts to be applied; and

(d) a clear process for cancellation of the contract and refund of the prepayment, less reasonable administrative fees.

(2) Chiropractors must:

(a) deposit the prepayment amounts in a federally insured financial institution within 10 business days of receipt of the prepayment;

(b) hold the money in trust in a separate account from all other accounts; and

(c) withdraw the amount of money stated in the contract only after providing the service.

(3) Chiropractors must document compliance with this rule.

AUTH: 37-1-131, 37-1-319, 37-12-201, MCA
IMP: 37-1-131, 37-1-319, 37-12-201, MCA

REASON: It is redundant to describe a "chiropractor" as "licensed" for the purpose of these rules. The remainder of (1) is redrafted to be clear, concise, and in chronological order. In (1), the rule proposes more specific consumer disclosures about the terms of the contract and replaces the ambiguous phrase "timely manner" with a 10-business-day period. In new (2), consistent with unprofessional conduct currently in effect at ARM 24.126.2103(1)(s) (to be replaced by new ARM 24.126.2103(3)(d)), it is a reasonable consumer protection measure to provide a right to cancel when circumstances no longer warrant treatment, when it is impossible to carry out the treatment, or when the treatment is not received in a reasonable amount of time. The proposal strikes the requirement to use an "escrow" account as too administratively burdensome and instead, requires the licensee to keep the funds separate from other funds and to document the intake and release of the money held in trust.

24.126.504 APPLICATION FOR CHIROPRACTOR LICENSE ~~BY EXAMINATION~~ ~~(1) Applicants for chiropractic licensure by examination must apply on forms provided by the department, accompanied by the appropriate fee per ARM 24.126.401, and submit the following:~~

~~(a) official transcripts sent directly from the educational institution to demonstrate the applicant achieved:~~

~~(i) a minimum of a bachelor's degree from an accredited college or university, except as provided in 37-12-302(3), MCA; and~~

~~(ii) graduation from a chiropractic college accredited by the Council on Chiropractic Education (CCE) or another accrediting body in good standing with the Council on Chiropractic Education International (CCEI);~~

~~(b) results of the national board examination (Part I, II, III, and IV, and physiotherapy) sent directly from the National Board of Chiropractic Examiners (NBCE);~~

~~(c) verification of licensure sent directly from all states in which the applicant has held or holds a license; and~~

~~(d) an original, unopened self-query of the National Practitioner Databank (NPDB).~~

~~(2) Applicants must also pass the state jurisprudence examination with a minimum score of 75 percent.~~

<u>(1) Each applicant for licensure must submit:</u>

<u>(a) a completed application form;</u>

<u>(b) the applicable fee; and</u>

<u>(c) documentary evidence satisfactory to the department that the applicant:</u>

<u>(i) meets the education and examination requirements for licensure set by board statute or rule (application by examination); or</u>

<u>(ii) meets the criteria for licensure by substantial equivalency under 37-1-304, MCA (application by endorsement) and 37-12-302(3), MCA; and</u>

<u>(iii) meets the character and fitness requirements to practice.</u>

<u>(2) The department will verify character and fitness through:</u>

<u>(a) the applicant's personal history questions submitted with the application;</u>

<u>(b) the license history in any jurisdiction where the applicant has held a chiropractic license;</u>

<u>(c) a query from the National Practitioner Databank (NPDB); or</u>

<u>(d) other sources of unprofessional conduct allegations.</u>

<u>(3) Applicants under (1)(c)(i) must take the jurisprudence examination with a minimum score of 75 percent.</u>

<u>(4) Applicants under (1)(c)(ii) are exempt from:</u>

<u>(a) taking the jurisprudence examination; and</u>

<u>(b) meeting the bachelor's degree requirement under 37-12-302(3), MCA.</u>

<u>(5) The board authorizes the department to deem applications from applicants who hold an active license in another state as routine and substantially equivalent to Montana if the state requires:</u>

<u>(a) graduation from a college of chiropractic approved by the board; and</u>

<u>(b) passage of parts I through IV of the NBCE. An applicant from a state that does not require passage of the physiotherapy portion of the NBCE must submit evidence of having passed that portion of the exam; and</u>

<u>(c) passage of the jurisprudence examination.</u>

<u>(6) All license applications expire within 1 year of initial submission to the department.</u>

AUTH: 37-1-131, 37-12-201, MCA
IMP: <u>37-1-105,</u> 37-1-131, <u>37-1-304, 37-12-302,</u> 37-12-304, MCA

<u>REASON</u>: The rule is rewritten to be clear and concise and avoid repeating the statute, except as needed to give guidance. The rule includes applicants by endorsement, formerly included at ARM 24.126.510 and proposed for repeal because of its redundancy to this rule. It is more efficient to address both types of applicants in a single rule. The distinction between applicant types is addressed in (1)(c)(i) and (ii). In (2) and (7), the rules are necessary to describe the department's authority and process to determine character and fitness for licensure and to issue the license. Section (3) expresses the board's requirement of the jurisprudence examination and defines the passing score. It is further necessary at (4)(a) to clarify

that eligible applicants by endorsement are eligible for licensure "without examination" per 37-1-304, MCA, and are exempt from the jurisprudence examination requirement. Section (4) acknowledges a unique exemption granted licensees from other states and certain graduates regarding the bachelor's degree based on 37-12-302, MCA. Section (5) guides staff to process applicants from a state that does not have substantially equivalent licensing standards to Montana. Section 37-12-302, MCA, specifically exempts licensees licensed in other states from having a bachelor's degree. Given this exemption, the board will recognize a doctorate degree from a board-approved college as the minimum requirement for out of state applicants. For the examination, all states currently require parts I through IV of the NBCE examination. According to the Federation of Chiropractic Licensing Boards, approximately 18 jurisdictions currently do not accept or require the physiotherapy portion of the exam. The proposed language replaces ARM 24.126.510(4) and requires applicants from these jurisdictions to prove they have taken the examination as a condition of qualifying for licensure. Focusing instead on the missing examination (i.e., the physiotherapy examination) is more tailored to determine the applicant's minimum qualifications than requiring the SPEC, which is broad in scope, addressing all parts of the NBCE, and is more costly than the physiotherapy portion ($1,500 versus $450 as of the date of this notice). Finally, the SPEC is intended for a different purpose: to address licensed individuals who have lapses, suspensions, or revocations of licenses. The board retains authority to require the SPEC in these instances. See, e.g., ARM 24.126.701 regarding inactive status. Section (6) provides an expiration for the application to maintain incentive for the applicant, maintain current information about the applicant, and allow a termination of applications for those not interested in following through with the application.

24.126.511 DISPLAY OF LICENSE (1) Licensees shall display their licenses in a publicly accessible location at any premises where the licensee practices, or present proof of current licensure upon request ~~of department personnel or members~~ of the public.

AUTH: 37-1-131, 37-12-201, MCA
IMP: 37-1-131, 37-12-201, MCA

REASON: The rule is vague as to whether the license must be displayed for the public to access. It is necessary to make licenses available so the public can scan the QR code on the license or in the alternative, to require the practitioner to provide proof of current licensure to the public upon request. It is not necessary to require proof to department personnel, because the department does not inspect chiropractic offices and would have digital access to real time license status if it did.

24.126.515 DRY NEEDLING (1) through (5) remain the same.

(6) Chiropractors performing dry needling must maintain proof of ~~appropriate~~ training ~~as~~ required by this rule. ~~Failure to provide proof of training upon the board's request may result in disciplinary action.~~

AUTH: 37-1-131, 37-12-201, MCA
IMP: 37-1-131, 37-12-101, 37-12-104, MCA

REASON: In (6), it is not necessary to state that failure to follow a law or rule is grounds to take disciplinary action because one unprofessional conduct rule makes that true for all laws and rules related to the practice of chiropractic. These clauses appear intermittently in the rules and are being systematically removed.

24.126.701 INACTIVE STATUS AND CONVERSION TO ACTIVE STATUS

(1) Licensees may ~~obtain an~~ request inactive status ~~chiropractic license upon submission of an application~~ during renewal or at any other time in writing. ~~While on inactive status, chiropractors may not practice chiropractic in Montana.~~

(2) Inactive licensees must pay the inactive renewal fee annually to avoid lapse, expiration, or termination of the license.

~~(2)~~(3) To convert to active status, inactive licensees must submit ~~an~~ the conversion to active status application form, pay the ~~required~~ difference between the inactive renewal and the active renewal fee, pay any accrued inactive renewal or late fees, and provide evidence that the applicant has:

(a) ~~all chiropractic licenses currently held in other jurisdictions are unrestricted with no pending discipline, and proof of either:~~

~~(i) having~~ practiced ~~full-time (no less than~~ at least 1500 hours each year ~~on inactive status)~~ under a chiropractic license in good standing in another state that requires continuing education substantially equivalent to that required in Montana; or

~~(ii)~~(b) ~~completion of~~ completed 12 hours of approved continuing education in the year ~~preceding the conversion~~ before applying for active status.

(4) Unless a licensee has been active in another jurisdiction, the board may require a licensee seeking to reactivate a license who has been inactive for five or more years preceding the reactivation request, to re-establish competency through examination, education, or supervised practice.

AUTH: 37-1-131, 37-1-319, MCA
IMP: 37-1-131, 37-1-319, MCA

REASON: The rule is rewritten to be clear and concise and to include standardized procedures and provisions, such as in (2), that are important to note and applicable to all boards and programs. More details are inserted in (3) to distinguish the type of application to be used, payment, and additional fees that may apply. It is not necessary to specify (3)(a), because that information is addressed in ARM 24.126.504. In (3)(b), a year can be more precisely measured from the date of the application than the ambiguous "conversion" date. New (4) implements board discretion to define the number of years of inactivity after which a licensee must demonstrate competency to reactive the license. The board determined that five years is an amount of time after which hands-on skill is likely to be lost and new technical information to emerge.

24.126.704 INTERN AND PRECEPTOR REGISTRATION (1) ~~Prior to acting as a preceptor to interns, licensees must register all interns with the board.~~ An intern may perform "chiropractic" and the "functions of a licensed chiropractor" as provided in Title 37, chapter 12, MCA and by this rule.

(2) "Intern" as used in 37-12-201, MCA, means a chiropractic student who has been approved by a chiropractic college to engage in a program to obtain clinical experience.

(3) "Preceptor" as used in 37-12-201, MCA, means a chiropractor licensed for at least three years in good standing and who has been accepted by a chiropractic college to act as a preceptor to an intern.

(4) Before acting as a preceptor to an intern, a chiropractor must provide to the department:

(a) the name and contact information of the intern; and

(b) the name and address of the chiropractic college sponsoring the preceptorship program and approving the chiropractor to act as the preceptor.

(5) The preceptor must:

(a) have and maintain a license in good standing during the preceptorship;

(b) be responsible for the acts and omissions of the intern;

(c) supervise no more than one intern at any time;

(d) identify the intern to patients in a manner that clearly identifies him or her as a student;

(e) require each patient to provide informed consent to treatment by the intern and provide the patient the option for the chiropractor to be present;

(f) provide direct supervision of the intern on the premises and while the intern is engaged in any patient care, be readily available to the patient and the intern;

(g) not allow the intern to sign insurance claims, workers' compensation claims, or other documents that require the signature of a chiropractor; and

(h) comply with the preceptorship program requirements.

AUTH: 37-12-201, MCA
IMP: 37-12-201, MCA

REASON: The 1993 legislature mandated the board to adopt rules to address "the registration of interns and preceptors . . . ," Ch. 275, L. Montana 1993. The board adopted ARM 24.126.704 setting requirements and limitations under which chiropractic students could gain their clinical experience and "obtain practical experience" with the supervising chiropractor being "present within the practice environment at all times when an intern is seeing patients." *See,* Notice of Proposed Rulemaking 1993 MAR p. 1592; Adoption Notice 1994 MAR p. 2713, eff. 10/14/94. On March 31, 2018, the board repealed the substantive provisions of the rule on the basis that the board "lacked authority to issue licenses to interns." MAR Notice No. 24-126-36. While accurate, this conclusion did not negate the authority of the board to define the registration process and the practice and conduct of the intern and the preceptor. The current rule merely repeats the statute and has resulted in practitioners asking the department for clarification on the scope of practice and requirements for a preceptorship. Testimony before the House Business & Economic Development Committee on January 20, 1993, shows intent to provide an exception to 37-12-301, MCA (unlawful to practice without chiropractic license) and "allow interns in their last year to practice under the supervision of a licensed doctor. . . ." The department submitted written testimony that the amendment would provide the legal authority to carry out a program that had been in effect "for years" allowing "interns from chiropractic colleges to practice under the direct, physical supervision of a licensed doctor of chiropractic . . ." Senate Public Health, Welfare & Safety Committee Hearing on HB 148, March 19, 1993, Exhibit 1. The proposed rule once again articulates the policy to allow an intern to practice as a licensed chiropractor under direct supervision, using clear and concise language and adding consumer protection measures about the identification of and consent for treatment by the intern.

24.126.2103 CONTINUING EDUCATION REQUIREMENTS ~~(1) Active licensees shall affirm an understanding of the duty to complete a minimum of 12 hours of continuing education (CE) during each renewal period per ARM 24.101.413.~~

~~(2) Licensees shall complete four hours of CE in professional boundaries and ethics every four-year reporting period. These hours shall be in addition to and not count toward the 12 hours of CE required each renewal period.~~

~~(3) New licensees shall:~~

~~(a) complete 12 hours of CE between the date of original Montana licensure and the end of the first full renewal period; and~~

~~(b) affirm their understanding of the requirement on the second renewal application.~~

~~(4) Licensees converting from inactive to active status shall comply with the CE requirements of ARM 24.126.701.~~

~~(5) The board may randomly audit up to 50 percent of renewed licensees.~~

~~(6) CE hours cannot be accumulated and carried over from one renewal period to the next.~~

~~(7) Licensees found to be in noncompliance with CE requirements may be subject to administrative suspension.~~

~~(8) A licensee may request an exemption from CE requirements due to hardship. Requests will be considered by the board.~~

(1) Each active licensee must complete 12 continuing education (CE) hours annually on or before the renewal date, September 1, subject to random audit. The CE requirement does not apply until the licensee's first full year of licensure. Each licensee is responsible to select continuing education in compliance with this rule.

(2) Only two of the 12 hours in (1) may be in the philosophy of chiropractic or practice management.

(3) CE hours do not accumulate or carry over to following years.

(4) The board and department do not preapprove CE programs unless they are provided by one of the following entities:

(a) national, regional, or state chiropractic associations;

(b) state licensing boards;

(c) academies;

(d) approved chiropractic colleges; or

(e) the Federation of Chiropractic Licensing Boards (FCLB) Providers of Approved Continuing Education (PACE).

(5) To be eligible to receive credit for continuing education, including from preapproved programs in (4), a CE program must:

(a) directly relate to the scope of practice and professional conduct of chiropractic defined in Title 37, chapter 12, MCA;

(b) be designed to maintain or increase competent or ethical practice, stay current in the profession, and enhance professional skills; and

(c) contain significant academic or practical content.

(6) CE programs that primarily promote, sell, or offer goods, products, or services to the profession or that primarily focus on personal growth or general well-being do not qualify for credit.

(7) A "CE program" means:

(a) an in-person class, lecture, conference, workshop, or seminar;

(b) virtual conferences or webinars with an opportunity for interactive discussion;

(c) a college or university course other than one required for initial qualification for licensure; and

(d) teaching, self-study, or publication of content that meets the eligibility criteria in (5).

(8) The licensee must maintain and make available for audit, certification of completion of the CE program, including course description, outline, agenda, or syllabi for two years from the date of CE program. Certification must include the following information:

(a) licensee name;

(b) course title and description of content;

(c) full name of the CE program provider;

(d) CE program date or dates; and

(e) number of CE hours earned.

(9) Licensees must affirm their understanding of the CE requirement on their renewal forms.

(10) The department, with respect to CE audits, shall decide the percentage to audit based on a statistically relevant sample of the total number of licensees and the compliance rate of past audits.

(11) The department may grant a request to waive a licensee's CE requirement based on extraordinary circumstances such as medical issues or disability, family or personal emergency, or natural disaster or catastrophic event.

AUTH: 37-1-131, 37-1-319, MCA
IMP: 37-1-131, 37-1-141, 37-1-306, 37-1-319, 37-1-321, MCA

REASON: The rule is rewritten to be clear and concise. A companion rule, ARM 24.126.2105, "acceptable continuing education," is repealed and with two exceptions, its contents are incorporated into this rule. The two exceptions are that licensees may no longer obtain credit for attending board meetings (see Reason for repealing ARM 24.126.2105) or for attending the "new doc seminar." The statement of reasonable necessity supporting the "new doc seminar" stated that providing this information "should alleviate common mistakes new practitioners make" and allow new chiropractors "to ask questions and become more familiar with the board's statutes and rules." Although well-meaning, providing this educational opportunity may conflict with statutorily mandated education and examinations that set minimum qualifications for licensure. Familiarizing new practitioners with board statutes and rules is the purpose of the jurisprudence examination. A single board member does not have authority to speak on behalf of the whole board and cannot be indemnified by the state for acts or omissions related to the information provided. Therefore, the board must exercise caution in providing informal opinions about its laws and rules. The substantive changes from the original rule include repealing in former (2) the ability to accumulate four ethics credits over four years because of the administrative difficulty of licensees and department auditors to track this information. The rule proposes to eliminate the mandatory ethics credit because the ethics credit is not commonly required by other states, the availability of ethics courses is limited, and there is no evidence to suggest a correlation between the incidence of complaints and the requirement. In new (1), it is not necessary to refer to another rule and including the actual date of the "renewal period" will be helpful to the reader. Section (3) is incorporated from ARM 24.126.2105. Former (3)(a) is restated at new (3) in a much clearer manner but with the same effect, and (3)(b) is moved to new (9). The new language waiving CE for the first year of licensure is easier to administer and understand than the current language. Former (4) and former (7) are unnecessary because they repeat the substance of an administrative rule and a statute, respectively. Former (7) is misleading because it repeats 37-1-321, MCA incompletely. In addition to administrative suspension, an individual may also be disciplined for failing to comply with CE requirements. New (5), (6), (7), and (8) contain language standardized for all boards and programs. New (9) is taken from former (1) and clarifies that under 37-1-306(2), MCA, licensees must not be required to submit evidence of CE to renew their license, and so are required to acknowledge their CE obligations. New (10) strikes language that repeats the statute and delegates to department staff to perform CE audits (which they already do) and to set the audit percentage on a formula applicable to all boards and programs instead of randomly chosen by the board or the department. New (11), formerly at (8), authorizes the department to act on behalf of the board and is another example of the type of discretion that is appropriate to delegate to staff rather than expending resources or time to take the question to the board.

24.126.2301 UNPROFESSIONAL CONDUCT (1) ~~For the purpose of implementing the provisions of 37-1-316, MCA, the board further defines unprofessional conduct as follows:~~ It is unprofessional conduct for a licensee or applicant to violate any statute, rule, or standard of care governing the practice of chiropractic.

~~(a) any representations to patients or prospective patients, whether communicated verbally, by advertisement, or through any other medium, that contains misstatements, falsehoods, distorted or fabulous statements, relative to:~~

~~(i) diagnosis, palpation, treatment, cure, or cost of services;~~

~~(ii) a fellow licensee, including statements which imply superiority over another licensee or health care professional; or~~

~~(iii) the licensee's particular abilities, qualifications, experience, features, or accomplishments regarding the licensee or the licensee's chiropractic practice.~~

~~(b) violating any provision of ARM 24.126.2304 regarding sexual misconduct or sexual relations with a patient;~~

~~(c) violating any state or federal statute or administrative rule regulating the practice of chiropractic including any statute or rule defining or establishing standards of patient care or professional conduct of practice;~~

~~(d) engaging in, or being involved in, "fee splitting" in which a licensee gives or receives payments or fees in referral of a patient to any professional or company offering payment in exchange for referrals to their products or services;~~

~~(e) soliciting or accepting, for services rendered, assigned payments from any third-party payer as payment in full, if the effect is to eliminate the need of payment by the patient of any required deductible or co-payment applicable on the patient's health benefit plan, except as hereinafter provided;~~

~~(f) billing charges or fees to a third-party payer or collecting from a third-party payer on behalf of a patient at a different rate than the charge or fee actually billed to or collected from the patient. In the case where services are provided at a reduced rate to a patient, any charge or fee billed to or collected from a third party must be based upon the actual reduced rate billed to the patient;~~

(2) In addition to the provisions of 37-1-316, MCA, the following is unprofessional conduct:

(a) committing any act of sexual abuse, sexual misconduct, or sexual exploitation regardless of whether the act is related to the licensee's practice;

(b) soliciting, engaging, or attempting to engage in any form of sexual relationship or sexual contact with a patient or a former patient, unless the chiropractor-patient relationship is terminated in writing and more than 90 days have passed since the termination;

~~(g)~~(c) ~~engaging in, or providing services or treatments which are in excess of those warranted by either the patients' condition and response or the practice technique, methodology, or modality applied and are not consistent with the seriousness of diagnosis~~ performing chiropractic services that exceed or do not support the clinical needs of the patient;

~~(h) participating in, or conducting, research projects on patients or the public without first obtaining written authorization from the board;~~

(i) and (j) remain the same but are renumbered (d) and (e).

~~(k)~~(f) performing ~~an~~ a sacrum/coccyx adjustment intrarectally unless the following conditions are met:

(i) remains the same.

~~(ii) the intra-rectal adjustment must be diagnosis related;~~

~~(iii)~~(ii) the adjustment is performed with the use of a disposable finger cot or rubber glove; and

~~(iv)~~(iii) a chaperone is present ~~at all times~~ when the patient is examined and treated intrarectally.

(l) remains the same but is renumbered (g).

~~(m) violating any state, federal, provincial, or tribal statute or administrative rule governing or affecting the professional conduct of any licensee;~~

~~(n) providing professional services while impaired by dangerous drugs or controlled substances;~~

~~(o)~~(h) failing to obtain an appropriate consultation or make an appropriate referral when the problem of the patient is beyond the licensee's training, experience, or competence;

~~(p)~~(i) failing to render adequate supervision, management, training, or control of auxiliary staff, interns, or ~~other persons, including preceptors, temporary permit holders, and/or~~ licensees practicing under the licensee's supervision or control according to generally accepted standards of practice;

~~(q) failing to cooperate with a board inspection or investigation in any material respect;~~ or

~~(r)~~(j) failing to keep adequate patient records that are legible and contain at a minimum:

(i) and (ii) remain the same.

(iii) relevant ~~symptomotology~~ symptomology;

(iv) through (viii) remain the same.

~~(s) entering into a contract which would obligate a patient to pay for care to be rendered in the future, unless the contract provides that the patient is entitled to a complete refund for any care not received within a reasonable amount of time;~~

~~(t) charging or collecting a clearly excessive fee. In determining if a fee is clearly excessive the board shall consider the fee or range of fees customarily charged in the state for similar services in light of modifying factors such as the time required, the complexity of the service, and the skill requisite to perform the service properly. This subdivision does not apply if there is a clear written contract for a fixed fee between the physician and the patient that has been entered into before the service was provided;~~

~~(u) engaging in the practice of chiropractic when the licensee's license is inactive, has expired, or has been suspended or revoked.~~

(3) It is unprofessional conduct for a licensee to engage in the following billing misconduct:

(a) giving or receiving money for referring patients to a company or another professional, also known as "fee splitting";

(b) charging or collecting from a private insurance company or government-funded insurance program the costs of treatment and waiving a patient's deductible or co-payment in the absence of a documented financial hardship;

(c) charging different fees to insurance companies and patients. A discounted fee to a patient must result in billing the same to the third-party payor; and

(d) charging a patient a clearly excessive fee or charging for services not rendered or not fully rendered.

AUTH: 37-1-131, 37-1-319, 37-12-201, MCA
IMP: 37-1-131, 37-1-141, 37-1-316, 37-1-319, 37-12-301, 37-12-322, MCA

REASON: The changes in (1) and (2) are designed to provide uniform language for all boards and programs and establish the premise in (1) that it is unprofessional conduct to violate any law governing the scope of a professional's practice. Former (1)(a) unnecessarily repeats 37-1-316(4) and (5), MCA, concerning false statements and representations in the conduct of the profession, and it is not necessary and perhaps even limiting to list how and when the representations occur, as is provided in (a)(i) through (iii). Further, these prohibitions may invoke First Amendment protection if they are not false or misleading, which is the standard used in 37-1-316, MCA. Former (1)(b) is replaced with standardized language for all boards and programs. It is necessary to extend the prohibition beyond patients and include conduct that is related to the practice. New (2)(c) is taken from ARM 24.126.2304, which is proposed to be repealed. This section will retain the prohibition against sexual contact with a patient or former patient for a period of 90 days after termination of the chiropractor-patient relationship. Former (1)(c) is addressed by inserted standardized language on complying with all laws at (1). Former (1)(d), (e), and (f) regarding billing are rewritten under new (3). Former (1)(g) is restated more concisely. Former (1)(h) is repealed because the department does not receive requests for this authorization. Former (1)(k) inserts "sacrum/coccyx" to specify the specific adjustment at issue, and former (1)(k)(ii) is repealed because it incorrectly implies that other treatments are not required to be based on a diagnosis. Former (1)(m) is replaced with standardized language at (1). Former (1)(n) unnecessarily and inadequately repeats 37-1-316(10), MCA. Former (1)(p) incorrectly used the term "preceptors" instead of "interns." Former (1)(q) is repetitive of former (1)(i). Former (1)(s) is not necessary because the content is covered by ARM 24.126.412 as amended to clarify a refund is due. Former (1)(t) is moved to new (3)(e) and redrafted to be clear and concise. Former (1)(u) is not necessary and covered by standardized language to comply with all laws. New (3)(a) is a revised statement of (1)(d); (3)(b) is revised (1)(e); (3)(c) is revised (1)(f); and (3)(d) is revised (1)(t) but uses concise and clear language suggested by the FCLB model conduct rules.

4. The new rules proposed to be adopted are as follows:

<u>NEW RULE I ADMINISTRATIVE SUSPENSIONS</u> (1) The board authorizes the department to:

(a) administratively suspend licenses for deficiencies set forth in 37-1-321(1)(a) through (e), MCA; or

(b) file a complaint regarding repeated or egregious deficiencies in (1)(a), or deficiencies with co-occurring misconduct allegations that directly implicate public safety and may warrant formal disciplinary action.

(2) An administrative suspension is not a negative, adverse, or disciplinary action under Title 37, MCA, and is not reportable under federal law and regulations implementing the Healthcare Practitioner Databank or the department's licensee lookup and license verification databank.

AUTH: 37-1-131, MCA
IMP: 37-1-321, MCA

<u>REASON</u>: Section 37-1-321, MCA permits the board to authorize the department to take certain non-disciplinary actions against licensees who are out of compliance with administrative licensure requirements. Licensees who fail to meet continuing education requirements, fail to respond to audits of continuing education, fail to pay required fees, fail to meet initial licensing requirements, or fail to comply with final

orders of the board, may be administratively suspended. The board authorized the department to take these actions previously by motion. Reasonable necessity exists to adopt this rule to formally, publicly, and accessibly reiterate that authorization so the public and licensees are aware of the authorization.

NEW RULE II DELEGATION OF TASKS (1) A chiropractor may delegate chiropractic physiotherapy to an auxiliary assistant employed by the chiropractor whom the chiropractor deems to be competent and safe in the context of an individual patient's circumstances.

(2) The chiropractor must:

(a) remain on the premises and supervise the auxiliary assistant; and

(b) assume full legal and ethical responsibility for tasks performed by the auxiliary assistant.

AUTH: 37-1-131, 37-12-201, MCA
IMP: 37-1-131, 37-12-104, 37-12-201, MCA

REASON: It is necessary to clarify that a chiropractor may delegate certain tasks to unlicensed assistants who are employed and supervised by the chiropractor, consistent with a long-standing practice in this state and intent that was not clearly articulated in the definition of "chiropractic physiotherapy" at ARM 24.126.301.

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

24.126.502 MILITARY TRAINING OR EXPERIENCE

AUTH: 37-1-145, MCA
IMP: 37-1-145, MCA

REASON: This rule is being repealed because rulemaking is no longer required with the passage of Ch. 390, L. 2023 (House Bill (HB) 583), which addresses the elements that were in this rule.

24.126.507 TEMPORARY PERMIT

AUTH: 37-1-131, 37-1-319, MCA
IMP: 37-1-131, 37-1-305, 37-1-319, MCA

REASON: Only one temporary permit has been issued in 12 years. The issue is whether the board thinks that a chiropractor at that point–waiting to finish sitting for the exam–is qualified to work without supervision. The statute, 37-1-305, MCA, will control and require the temporary permit only be available until passing the first exam available.

24.126.510 LICENSE BY ENDORSEMENT

AUTH: 37-1-131, MCA

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

REASON: Section (1) unnecessarily repeats 37-1-304, MCA. Sections (2), (4), and (5) are moved to ARM 24.126.504 and combined with procedures for examination candidates. Section (3) unnecessarily repeats ARM 24.101.401(12), which is a standardized rule for all boards and programs on the consideration of nonroutine applications.

24.126.2105 ACCEPTABLE CONTINUING EDUCATION

AUTH: 37-1-131, 37-1-319, MCA
IMP: 37-1-131, 37-1-141, 37-1-306, 37-1-319, MCA

REASON: Except for the "new doc seminar" referenced in (2), the content of this rule is rewritten to be clear and concise and incorporated into ARM 24.126.2103 and allows all content involving continuing education to be covered by a single rule. See Reason statement under ARM 24.126.2104 for repeal of "new doc seminar." In former (4), it is necessary to repeal the opportunity to obtain credits for attending board meetings because of difficulty for the executive officer and staff to track someone's attendance and length of time attending. Board meetings do not necessarily or consistently provide a sufficiently rigorous continuing education opportunity that are "directly related to the scope of practice."

24.126.2304 SEXUAL RELATIONS WITH A PATIENT AND SEXUAL MISCONDUCT

AUTH: 37-1-131, 37-1-319, MCA
IMP: 37-1-131, 37-1-316, 37-1-319, MCA

REASON: Section (2) is incorporated as unprofessional conduct. The remaining conduct is captured under other provisions of the unprofessional conduct rule at ARM 24.126.2301.

6. Concerned persons may present their data, views, or arguments at the hearing. Written data, views, or arguments may also be submitted at dli.mt.gov/rules or P.O. Box 1728, Helena, Montana 59624. Comments must be received no later than 5:00 p.m., May 10, 2024.

7. An electronic copy of this notice of public hearing is available at dli.mt.gov/rules and sosmt.gov/ARM/register.

8. The agency maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the agency. Persons wishing to have their name added to the list may sign up at dli.mt.gov/rules or by sending a letter to P.O. Box 1728, Helena, Montana 59624 and indicating the program or programs about which they wish to receive notices.

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

10. Pursuant to 2-4-111, MCA, the agency has determined that the rule changes proposed in this notice will not have a significant and direct impact upon small businesses.

11. Department staff has been designated to preside over and conduct this hearing.

BOARD OF CHIROPRACTORS
JULIE MURACK, DC, PRESIDENT

/s/ QUINLAN L. O'CONNOR	/s/ SARAH SWANSON
Quinlan L. O'Connor	Sarah Swanson, Commissioner
Rule Reviewer	DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State April 2, 2024.

BEFORE THE BOARD OF FUNERAL SERVICE
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of ARM 24.147.504 and 24.147.507 and the repeal of ARM 24.147.509 pertaining to the board of funeral service	)))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT AND REPEAL

TO: All Concerned Persons

1. On May 7, 2024, at 10:00 a.m., a public hearing will be held via remote conferencing to consider the proposed changes to the above-stated rules. There will be no in-person hearing. Interested parties may access the remote conferencing platform in the following ways:

a. Join Zoom Meeting, https://mt-gov.zoom.us/j/81345056492
Meeting ID: 813 4505 6492, Passcode: 766013
-OR-

b. Dial by telephone, +1 406 444 9999 or +1 646 558 8656
Meeting ID: 813 4505 6492, Passcode: 766013

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 department no later than 5:00 p.m., on April 30, 2024, to advise us of the nature of the accommodation that you need. Please contact the department at P.O. Box 1728, Helena, Montana 59624-1728; telephone (406) 444-5466; Montana Relay 711; or e-mail laborlegal@mt.gov.

3. GENERAL STATEMENT OF REASONABLE NECESSITY: It is necessary that these rules reflect the passage of Senate Bill (SB) 244, Ch. 355, L. 2023, amending the one-year mortician internship that was required after graduation from mortuary school to provide the option to begin the internship simultaneously with enrollment in either the first or second year of mortuary school. This will allow for a person to become licensed one year earlier than in the past, immediately after graduation from mortuary school. The amendments also reflect the statutory change that licensing and jurisprudence examinations are only required before licensure as a mortician and not before starting the mortician internship.

While proposing the changes resulting from SB 244, board staff reviewed internship regulations in other jurisdictions and those recommended by the International Conference of Funeral Service Examining Boards. These requirements include a minimum number of hours of training, training content, recordkeeping, and minimum supervisor requirements (e.g., holding a license in good standing). In comparison, the Montana regulation only sets forth the requirement for the intern to assist in or arrange the funeral and embalming of 25 bodies during the internship.

The board is considering that it is not necessary to adopt training content standards as recommended by the International Conference of Funeral Service Examining Boards, *Model Internship Guidelines.* However, as discussed in more detail in the reasons below, it is necessary to bring Montana standards closer to national standards for legal and practical reasons related to the public health, safety, and welfare, particularly with the possibility that an intern will have had no mortuary schooling. Further, having similar standards to other states will broaden reciprocity for Montana interns and morticians transferring their licenses to another state.

Other changes strike unnecessary, repetitive, or unclear language, and reorganize the rules for ease of use.

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

<u>24.147.504 MORTICIAN INTERNSHIP</u> ~~(1) An applicant for a mortician internship shall make application as provided at ARM 24.147.402. To qualify for a regular mortician's license, the intern shall complete the requirements set forth in this rule. The board shall recognize internships served in other jurisdictions that are substantially equivalent to the internship requirements in this rule.~~

~~(2) An intern must be an employee at a licensed mortuary under the supervision of a licensed mortician and assist in the complete funeral (embalming, dressing, arrangement of funeral) of at least 25 bodies over a period of at least one year, but no more than three years after passing the jurisprudence examination.~~

~~(3) In order to receive credit, an intern must serve for a continuous six-month period under the supervision of the same licensed mortician. The board may waive this requirement in cases involving closure of firm, hardship due to illness or death of supervising mortician, illness of intern, or such other emergency.~~

~~(4) The intern and supervisor each shall report to the board any change of sponsoring mortician within ten days.~~

~~(5) If after three years from passing the jurisprudence exam, the internship has not been completed, the intern may apply for reexamination of state law and rules, and upon passing, begin the internship anew. No credit will be given for prior time served in an internship.~~

~~(6) An intern mortician may perform all the duties and functions of a licensed mortician, as allowed and directed by the supervising mortician. Despite the supervising mortician having responsibility for the professional actions of the intern, as prescribed in Title 37, chapter 1, MCA, the board may take action to revoke, suspend, or discipline an intern license.~~

~~(a) "Supervision" has the meaning set forth in 37-19-101, MCA, and means the extent of oversight that a mortician believes an intern requires, based upon the intern's training, experience, judgment, and professional development. At a minimum, the term requires the supervisor, or in limited absences of the supervisor, a delegated licensed mortician to be available for consultation on all client-related activity performed by the intern, and requires direction, observation, and evaluation on a regular basis.~~

~~(b) Failure to appropriately supervise an intern may result in disciplinary action against the supervising mortician.~~

(1) To apply for a mortician intern license, an applicant must submit:

(a) a completed application and fee;

(b) documentary evidence satisfactory to the department that the applicant is either enrolled in or has graduated from an approved mortuary science educational program; and

(c) a completed supervisory agreement in a format approved by the department.

(2) To qualify for a mortician license, all mortician interns must prove, using a format approved by the department, that they have:

(a) completed at least 2,000 hours of supervised work at a licensed mortuary;

(b) made funeral arrangements or funeral directing for at least 25 cases; and

(c) embalmed at least 25 bodies.

(3) A "one-year internship" as used in 37-19-302, MCA, means the requirements in (2)(a) through (c) completed in no less than 12 months and no more than 36 months. Intern licenses have an expiration date of three years after the date issued.

(4) All interns and supervisors must maintain a current log of the requirements in (2) in a format approved by the department and produce the log if requested by the department.

(5) A mortuary must provide a copy of the log to any intern who leaves employment with the mortuary.

(6) The mortuary employing the intern, the supervising mortician, and the intern shall maintain a copy of the log for three years after the intern receives a mortician license or a total of seven years, whichever occurs first.

(7) All interns must notify the department within ten days:

(a) if they withdraw enrollment in mortuary school or enroll in a different mortuary school; and

(b) any change in the intern's supervisor or employment.

(8) All supervising morticians must:

(a) be currently licensed in Montana in good standing and have been licensed in any jurisdiction for a minimum of three years;

(b) supervise no more than three mortician interns;

(c) assume responsibility for the acts and omissions of the intern and be subject to license discipline for failing to supervise the intern, even while the intern is independently subject to license discipline; and

(d) notify the department within ten days of the change of supervising mortician, mortuary school enrollment, or employment of the intern by the mortuary.

(9) "Supervision" has the meaning in 37-19-101, MCA, and includes the supervising mortician's onsite direction, observation, and evaluation of the intern on a regular basis and, in limited absences of the supervisor, by a licensed mortician delegated to supervise.

AUTH: 37-1-131, 37-19-202, MCA
IMP: 37-1-131, 37-19-101, 37-19-302, 37-19-304, MCA

REASON: New (1) is redrafted to be clear and simple and deletes the last sentence of former (1) because it repeats 37-1-304, MCA. Subsection (1)(b) acknowledges the option from SB 244 to be enrolled in school to qualify as an intern, and (1)(c) authorizes the department to obtain the necessary information involving the supervisory relationship and clarifies the documents an applicant must produce in the application process. Former (2) is redrafted and deletes the examination prerequisite per SB 244.

New (2) and (3) clarify that a "one-year" internship must include a total number of hours over a minimum and maximum time. The 2,000 hours proposed is consistent with surrounding state requirements and the ICFSEB. New (2)(c) corrects an ambiguity in the former rule language and ensures that training is allocated to both embalming and the non-embalming portions of funeral services practice. The proposed 25/25 number of cases is consistent with surrounding state requirements and the ICFSEB, while accounting for Montana's rural population and high cremation rates. New (3) captures the idea in former (2) which allows for an extension of up to a third year to complete the internship. The new language simply and more efficiently calls for "one-year" to be defined in terms of total hours within a minimum and maximum range and grants the license for the entire three-year period, whether the intern requires that time or not. Former (3) is stricken because any benefit in requiring a six-month period under the same supervisor is outweighed by the unfairness of denying credit that has been earned. Reporting changes in employment or supervision in former (4) is retained in new (7) and (8). Former (5) must be stricken under SB 244 to remove the examination prerequisite, and former (6) is stricken because it repeats the definition of "intern" at 37-19-101(24), MCA. Language in former (6) regarding joint liability of the supervisor and intern is found in new (8).

New (4) through (6) clarify and standardize recordkeeping duties to memorialize and confirm the hourly and task-based requirements of the internship, under what circumstances to submit the log, and how long to keep it. The requirement is standard in other jurisdictions and necessary, because having no recordkeeping requirement could result in a loophole to avoid liability for failure to comply with internship requirements. New (7) clarifies the intern's reporting requirements contained in former (4) consistent with SB 244. New (8) clarifies that a supervising mortician must have minimum experience and a license in good standing as a necessary expectation of public health and safety and highly consistent requirement in similar professional licensing supervisory relationships. The board proposes a limit on the number of interns a single mortician has the ability to supervise safely and responsibly.

New (9) is taken from former (6)(a) and (b) clarifying that the level of supervision, although in the discretion of the supervising mortician, is meant to be onsite on a regular basis rather than remote. This clarification is necessary because interns under SB 244 may have had no mortuary schooling as compared to having graduated from mortuary school before SB 244. Even as the board intends for onsite and direct supervision, the statutory definition allows for supervisor discretion based on the individual intern and task, for which phone or video chat between supervisor and intern will suffice.

24.147.507 MORTICIAN LICENSES (1) ~~Applicants for licensure not currently licensed in another state or jurisdiction must submit a completed~~

~~application on forms provided by the department. Completed applications include appropriate fees and required documentation.~~ To apply for a mortician license, an applicant must submit:

(a) a completed application and fee;

(b) evidence of completion of the mortician internship or equivalent if completed in another jurisdiction; and

(c) evidence that the applicant has within 5 years preceding the application:

~~(2)~~(i) ~~Applicants must have a minimum of~~ received an associate degree in funeral service or mortuary science from a program accredited by the American Board of Funeral Service Education (ABFSE) or its successor ~~which consists of a minimum of 60 semester credits or 90 quarter credits. All transcripts must be certified and sent directly from the school(s).~~;

~~(3) Exceptions to the education requirements in (2) are as follows:~~

~~(a) if an applicant graduated or attended a foreign school or university instead of obtaining the required education from an accredited U.S. school or university as described in (2), the applicant must submit transcripts or other official documentation which will be evaluated by the board; and~~

~~(b) per ARM 24.147.508, relevant military training, service, or education which will be evaluated by the board.~~

~~(4) In addition to the education requirements for licensure, applicants must:~~

~~(a) have completed an internship as required in 37-19-302, MCA, and ARM 24.147.504;~~

~~(b)~~(ii) ~~have~~ passed ~~examinations as described in ARM 24.147.509~~ the National Board Examination of the International Conference of Funeral Service Examining Boards; and

~~(c) provide verification of any professional license(s) the applicant has ever held in any state or jurisdiction.~~

(iii) passed the Montana jurisprudence exam with a score of 75% or higher.

(2) Foreign-trained applicants who do not have an ABFSE accredited degree must have their transcripts evaluated by a board-approved agency for substantial equivalency with Montana mortician requirements.

~~(5)~~(3) Incomplete applications will automatically expire one year from the date the fee was received. If an application expires, the applicant must reapply and pay all appropriate fees.

AUTH: 37-1-131, 37-19-202, MCA
IMP: 37-1-131, 37-19-302, 37-19-303, MCA

REASON: Existing language in (1) is rewritten to be clear and concise and use similar language and organization in ARM 24.147.504(1). New (1)(b) includes language from 24.147.504(1) that allows an equivalent internship served in another state to be counted in Montana. New (1)(c) rewrites former (3) specifying the timing of graduation and exam passage before application for licensure is necessary to ensure competency measurements are recent. Elsewhere in former (3), language is stricken because it is unnecessary to have the examination requirements stated separately in ARM 24.147.509 and that rule is proposed to be repealed. It is not necessary to include language in former (4)(c) about how the department processes applications to implement 37-1-104, MCA, involving character and fitness requirements for licensure. New (2) restates language in former (5) involving foreign-trained applicants but clarifies that the applicant has the burden to arrange and pay for an agency to review an application because neither the board or department staff have that expertise. It is not necessary to repeat 37-1-145, MCA, regarding language for military-trained applicants.

5. The rule proposed to be repealed is as follows:

24.147.509 EXAMINATIONS

AUTH: 37-1-131, 37-19-202, MCA
IMP: 37-1-131, 37-19-302, 37-19-303, 37-19-304, MCA

REASON: The rule is repealed and the content placed in ARM 24.147.507.

6. Concerned persons may present their data, views, or arguments at the hearing. Written data, views, or arguments may also be submitted at dli.mt.gov/rules or P.O. Box 1728, Helena, Montana 59624. Comments must be received no later than 5:00 p.m., May 10, 2024.

7. An electronic copy of this notice of public hearing is available at dli.mt.gov/rules and sosmt.gov/ARM/register.

8. The agency maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the agency. Persons wishing to have their name added to the list may sign up at dli.mt.gov/rules or by sending a letter to P.O. Box 1728, Helena, Montana 59624 and indicating the program or programs about which they wish to receive notices.

9. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted on March 27, 2024, by electronic mail.

10. Pursuant to 2-4-111, MCA, the agency has determined that the rule changes proposed in this notice will not have a significant and direct impact upon small businesses.

11. Department staff has been designated to preside over and conduct this hearing.

BOARD OF FUNERAL SERVICE
JAMES AXELSON, CHAIR

/s/ QUINLAN L. O'CONNOR
Quinlan L. O'Connor
Rule Reviewer

/s/ SARAH SWANSON
Sarah Swanson, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State April 2, 2024.

BEFORE THE BOARD OF RESPIRATORY CARE PRACTITIONERS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of ARM 24.213.301, 24.213.401, 24.213.408, and 24.213.504, the adoption of NEW RULES I through III, and the repeal of ARM 24.213.402, 24.213.410, 24.213.415, 24.213.502, 24.213.2101, 24.213.2104, 24.213.2121, and 24.213.2301 pertaining to the board of respiratory care practitioners	)	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT, ADOPTION, AND REPEAL

TO: All Concerned Persons

1. On May 3, 2024, at 9:00 a.m., a public hearing will be held via remote conferencing to consider the proposed changes to the above-stated rules. There will be no in-person hearing. Interested parties may access the remote conferencing platform in the following ways:

a. Join Zoom Meeting, https://mt-gov.zoom.us/j/87320778205
Meeting ID: 873 2077 8205, Passcode: 295967
-OR-

b. Dial by telephone, +1 406 444 9999 or +1 646 558 8656
Meeting ID: 873 2077 8205, Passcode: 295967

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 department no later than 5:00 p.m., on April 26, 2024, to advise us of the nature of the accommodation that you need. Please contact the department at P.O. Box 1728, Helena, Montana 59624-1728; telephone (406) 444-5466; Montana Relay 711; or e-mail laborlegal@mt.gov.

3. <u>GENERAL REASONABLE NECESSITY</u>: In support of the Governor's Red Tape Relief Initiative, the Department of Labor and Industry (department) is conducting comprehensive reviews of the administrative rules of the professional licensing boards administratively attached to the department. This review focuses on updating rules to current standards and procedures, and eliminating unnecessary, redundant, and overburdensome regulations and those duplicated in statute. Other changes replace out-of-date terminology for current language and processes, and amend rules and catchphrases for accuracy, consistency, simplicity, better organization, and ease of use for customers and staff.

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

Following consideration of the department's suggested changes, the Board of Respiratory Care Practitioners (board) determined it is reasonably necessary to amend four rules, repeal eight rules, and adopt three new rules to align with the Red Tape Relief Initiative. The streamlined rules will increase department efficiencies by further standardizing procedures used among all licensing boards and programs. Where additional specific bases for a proposed action exist, the board will identify those reasons immediately following the specific rule.

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

<u>24.213.301 DEFINITIONS</u> (1) remains the same.

~~(2) "Conscious sedation" means the administration of a pharmacological agent by a respiratory care provider as prescribed by a physician.~~

~~(3)~~ <u>(2)</u> "Emergency procedures" ~~as that term is used in~~ <u>per</u> 37-28-102, MCA, includes, but is not limited to, physician-approved protocols relating to life-sustaining procedures in emergency situations in the absence of the immediate direction of a physician. Emergency respiratory care may also be provided during transportation of a patient and under any circumstances where an epidemic, public disaster, or other emergency necessitates respiratory care.

~~(4) "Formal pulmonary function testing" includes, but is not limited to:~~

~~(a) diffusion capacity studies; and~~

~~(b) complete lung volumes and flows.~~

~~(5) "Informal screening spirometry" includes, but is not limited to:~~

~~(a) peak expiration flow rate;~~

~~(b) screening spirometry forced expiration volume for one second;~~

~~(c) forced vital capacity; and~~

~~(d) simple vital capacity.~~

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

~~(7)~~ <u>(4)</u> ~~"Pulse oximetry,"~~ "~~pulmonary~~ <u>Pulmonary</u> function testing~~,~~" ~~and "spirometry" mean~~ <u>means</u> diagnostic procedures that, pursuant to the orders of a physician, may be performed only by or under clinical supervision of a licensed respiratory care practitioner ~~and/~~or other licensed health care provider who has met the minimum competency standards. ~~The individual performing pulmonary function testing and spirometry must meet minimum competency standards, as they currently exist, as established by the National Institute for Occupational Safety and Health (NIOSH) or the National Board for Respiratory Care (NBRC) certification examination for entry level respiratory therapist, certification examination for entry level pulmonary function technologist (CPFT) credential, or registry examination for Advanced Pulmonary Function Technologists (RPFT) specific to pulmonary function testing.~~

~~(8) For the purposes of 37-28-102(3)(a), MCA, "respiratory care" does not include the delivery, assembly, testing, simulated demonstration of the operation, or demonstration of safety and maintenance of respiratory therapy equipment by home medical equipment (HME) personnel to a client's home, pursuant to the written prescription of a physician. "Respiratory care" does include any instruction to the~~

~~client regarding clinical use of the equipment, or any monitoring, assessment, or other evaluation of therapeutic effects.~~

~~(Sections (8) and (1) are advisory only, but may be a correct interpretation of the law)~~

AUTH: 37-28-104, MCA
IMP: ~~37-28-101,~~ 37-28-102, MCA

REASON: The board is striking the definition of "conscious sedation" as overly broad and ineffective. Respiratory care practitioners are required to perform all services within their scope and training, pursuant to a physician's order and under qualified medical direction, including from medical directors of respiratory care services and departments or home-care agencies. This direction includes conscious sedation protocols and guidelines of employing facilities. Removing this definition aligns with the proposed repeal of ARM 24.213.502.

The board is striking (4) and (5) and amending (7) to align with amendments to ARM 24.213.504. The definition of "pulmonary function testing" applies to licensees performing such tests after qualifying under ARM 24.213.504. It is unnecessary to repeat the qualifications in the definition rule.

The board determined that it is reasonably necessary to remove (8) regarding delivery, assembly, and demonstration of respiratory therapy equipment by home medical equipment personnel. It is long known and accepted that these actions by home health personnel do not require an RCP license to perform. The board is striking the advisory designation to align with the repeal of (8). It is also reasonably necessary to strike the advisory designation for (1) as the board concluded that the definition of "clinical supervision" is not simply advisory in nature.

24.213.401 FEE SCHEDULE (1) The following fees are adopted:
(a) through (c) remain the same.
~~(d) Inactive license fee 50~~
(e) remains the same but is renumbered (d).

AUTH: 37-1-131, 37-1-134, 37-28-104, MCA
IMP: 37-1-134, 37-1-141, 37-28-104, 37-28-202, MCA

REASON: It is reasonably necessary to strike (1)(d) to align with the elimination of inactive status and the repeal of ARM 24.213.415 in this notice. The elimination of this fee will affect approximately seven licensees and result in a $350 decrease in annual revenue.

24.213.408 EXAMINATION (1) ~~The~~ Respiratory care practitioner applicants must pass the National Board for Respiratory Care certification examination for entry-level respiratory therapy practitioners ~~offered by the NBRC shall be the exam prescribed for licensing in this state~~.

~~(2) Applicants for original licensure shall provide evidence that they have successfully passed the examination.~~

AUTH: 37-1-131, 37-28-104, MCA
IMP: 37-1-131, 37-28-202, MCA

REASON: It is reasonably necessary to rewrite this rule for clarity and to remove unnecessary duplication of statutory requirements.

24.213.504 AUTHORIZATION TO PERFORM ~~FORMAL~~ PULMONARY FUNCTION TESTING ~~AND INFORMAL, BASIC SCREENING SPIROMETRY~~ (1) ~~A licensee is authorized to~~ Licensees may perform ~~formal~~ pulmonary function testing ~~and spirometry~~ if the individual has passed any one of the following certification or registry examinations:

(a) through (d) remain the same.

AUTH: 37-1-131, 37-28-104, MCA
IMP: 37-1-131, 37-28-102, MCA

REASON: The board determined it is reasonably necessary to amend this rule to address a licensee's request for clarification. Following discussion, the board is amending this rule and its catchphrase since spirometry is simply a type of pulmonary function testing and it is not necessary to list it specifically.

5. The proposed new rules are as follows:

NEW RULE I CONTINUING EDUCATION (1) Each respiratory care practitioner must obtain 12 continuing education (CE) units in the preceding 12 months, by the renewal deadline in ARM 24.101.413. One CE unit is equal to 50 minutes of instruction or coursework or as designated by the CE provider.

(2) Licensees affirm an understanding of their duty to comply with CE requirements as a part of license renewal.

(3) The CE requirements do not apply until a licensee's first full year of licensure.

(4) The board/staff does not preapprove CE programs or sponsors. Licensees must select quality programs that focus on protecting the health, safety, and welfare of the public and contribute to licensees' professional knowledge and competence. Acceptable CE activities:

(a) contribute to the licensee's knowledge and professional competence;
(b) contain significant intellectual or practical content; and
(c) are germane to the profession of a respiratory care practitioner.
(5) Acceptable CE activities include:
(a) seminars;
(b) workshops;
(c) conferences;
(d) college course work:
(i) one semester credit equals 15 CE units; and
(ii) one quarter credit equals ten CE units;
(e) teaching:

(i) eight credits maximum; and
(ii) two credits for each hour of presentation;
(f) papers, publications, journals, exhibits, videos, and independent study (eight credits maximum);
(g) in-service programs; and
(h) online courses, webinars, and correspondence courses.
(6) The department may randomly audit up to 50 percent of renewed licensees.
(7) Licensees must maintain CE records for one year following the reporting period and make the records available upon request. Documentation must include:
(a) licensee name;
(b) course title and description of content;
(c) presenter or sponsor;
(d) course completion date(s); and
(e) number of CE hours earned.
(8) Licensees found noncompliant with CE requirements may be subject to administrative suspension.
(9) Licensees may request exemption from CE requirements.
(10) The department, with respect to any CE audit it performs, shall determine the percentage to audit based on a statistically relevant sampling of the total number of licensees and the compliance rate of past audits.

AUTH: 37-1-131, 37-1-319, MCA
IMP: 37-1-131, 37-1-141, 37-1-306, 37-1-319, 37-1-321, MCA

REASON: The board is simplifying and reorganizing all continuing education (CE) provisions into this single rule. Additionally, CE reporting is being changed to a one-year period to sync with licensee's renewal period. This will simplify CE reporting for licensees, as well as further standardize the procedures used by the department's audit unit. The amount of required CE is not changing.

The board is specifying that an hour of CE credit may be either 50 minutes of instruction or as designated by the provider. This is to address questions and situations that have arisen and to provide direction to the audit unit staff.

It is reasonably necessary to relocate (5) from ARM 24.213.2104 as that rule is being repealed. The board is relocating and simplifying the exemption provision of ARM 24.213.2121 to (10) as that rule is being repealed. Also, due to today's widespread availability of CE, it is reasonable to no longer give credit for repeating identical courses.

Because the department audit unit conducts audits for all professional licensing boards and programs, it is reasonably necessary to clarify the process with (6) and (10).

NEW RULE II UNPROFESSIONAL CONDUCT (1) In addition to the provisions of 37-1-316, MCA, it is unprofessional conduct for respiratory care practitioners to:
(a) violate a federal, state, or local law or rule relating to the conduct of the profession;

(b) fail to cooperate with or respond to a department request or investigation;
(c) fail to adequately supervise according to generally accepted standards of practice;
(d) engage in abusive billing practices;
(e) fail to report an incident of unsafe practice or unethical conduct of another licensee to the licensing authority;
(f) fail to maintain and secure appropriate patient records as required by state and federal regulations;
(g) fail to provide records when requested to do so by the patient or legal representative;
(h) practice under unsanitary or unsafe conditions;
(i) discontinue professional services, unless:
(i) services are completed;
(ii) the person requests the discontinuation;
(iii) alternative or replacement services are arranged; or
(iv) the person is given reasonable opportunity to arrange alternative or replacement services; and
(j) commit any act of sexual abuse, misconduct, or exploitation whether or not it is related to the licensee's practice.

AUTH: 37-1-131, 37-1-319, MCA
IMP: 37-1-131, 37-1-316, 37-1-319, MCA

REASON: The department is repealing ARM 24.213.2301 and replacing it with this rule to replace overly specific language with more broadly applicable statements to facilitate use and eliminate more detailed "laundry lists." These amendments will facilitate the board's disciplinary processes by utilizing standard language among the licensing boards and programs.

This new rule further eliminates unnecessary duplication with the unprofessional conduct statute, 37-1-316, MCA. Instead of stating specific state or federal regulations to follow, the department is including (1)(a) to require licensees comply with all applicable laws and regulations. It is reasonably necessary to strike several provisions regarding prescriptions as prescribing medications is outside the scope of care for respiratory care practitioners. Provisions for delegation to unlicensed persons are stricken as exceeding statutory authority. The board is eliminating failure to comply with continuing education requirements as this is addressed under administrative suspension procedure, rule, and law.

NEW RULE III ADMINISTRATIVE SUSPENSION (1) The board authorizes the department to:
(a) administratively suspend licenses for deficiencies set forth in 37-1-321(1)(a) though (e), MCA; or
(b) file a complaint pertaining to the deficiencies in (1) that are based on repeated or egregious conduct, or that have co-occurring misconduct allegations that directly implicate public safety and may warrant formal disciplinary action.
(2) An administrative suspension is not a negative, adverse, or disciplinary action under Title 37, MCA, and is not reportable under federal law and regulations

implementing the Healthcare Practitioner Databank or the department's licensee lookup and license verification databank.

AUTH: 37-1-131, MCA
IMP: 37-1-321, MCA

REASON: Section 37-1-321, MCA, permits the board to authorize the department to take certain non-disciplinary actions regarding licensees who are out of compliance with administrative licensure requirements such as not meeting continuing education requirements, failing to respond to continuing education audits, not paying required fees, not meeting initial licensing requirements, and noncompliance with board final orders. The board authorized the department to take these actions previously by motion. It is reasonably necessary to adopt this rule to formally, publicly, and accessibly reiterate that authorization, so the public and licensees are aware of the authorization.

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

24.213.402 APPLICATION FOR LICENSURE

AUTH: 37-1-131, 37-28-104, MCA
IMP: 37-1-101, 37-1-104, 37-1-131, 37-1-134, 37-1-141, 37-28-201, 37-28-202, MCA

REASON: It is reasonably necessary to repeal this rule as it unnecessarily duplicates statutory requirements and standardized application procedures utilized for all licensing boards.

24.213.410 MILITARY TRAINING OR EXPERIENCE

AUTH: 37-1-145, MCA
IMP: 37-1-145, MCA

REASON: The 2023 Montana Legislature enacted Chapter 390, Laws of 2023 (HB 583), an act generally revising licensing and certification laws for military members, military spouses, and veterans. The bill will become effective July 1, 2024.

It is reasonably necessary to repeal this rule to align with the bill's amendments to 37-1-145, MCA. The amended statute provides for all boards and programs to accept relevant military education, training, or service toward license qualifications. Specific board or program rules are no longer needed.

24.213.415 INACTIVE STATUS

AUTH: 37-1-131, 37-1-319, 37-28-104, MCA
IMP: 37-1-131, 37-1-319, MCA

REASON: It is reasonably necessary to repeal this rule and eliminate inactive status for respiratory care practitioners. The historically consistent small number of inactive RCP licensees (currently less than a half a percent of total active licensees) does not justify the staffing and costs associated with monitoring and renewing them.

24.213.502 TRAINING–CONSCIOUS SEDATION

AUTH: 37-1-131, 37-28-104, MCA
IMP: 37-1-131, 37-28-101, 37-28-102, MCA

REASON: It is reasonably necessary to repeal this rule as it unnecessarily duplicates statutory provisions. Section 37-28-102, MCA, requires that respiratory care practitioners provide services pursuant to a physician's order and under qualified medical direction, including from medical directors of respiratory care services and departments or home-care agencies. This direction includes protocols and guidelines of employing facilities.

24.213.2101 CONTINUING EDUCATION REQUIREMENTS

AUTH: 37-1-131, 37-1-319, MCA
IMP: 37-1-131, 37-1-141, 37-1-306, 37-1-319, 37-1-321, MCA

REASON: The board is repealing this rule and replacing it with NEW RULE I. See the REASON for NEW RULE I.

24.213.2104 ACCEPTABLE CONTINUING EDUCATION

AUTH: 37-1-131, 37-1-319, MCA
IMP: 37-1-131, 37-1-306, 37-1-319, MCA

REASON: The board is repealing this rule to no longer provide a list of acceptable CE offerings. Since 2019, the board no longer preapproves CE courses or providers, and instead provided guidance in ARM 24.213.2101 for licensees to select appropriate, quality courses. It is unnecessary and nonsensical to continue to maintain a "preapproved" list. For simplicity and ease of use, ARM 24.213.2101 is being repealed and replaced with NEW RULE I. Additionally, relevant guidance provisions in (2) are being incorporated into NEW RULE I.

24.213.2121 WAIVER OF CONTINUING EDUCATION REQUIREMENT

AUTH: 37-1-131, 37-1-319, MCA
IMP: 37-1-131, 37-1-306, 37-1-319, MCA

REASON: The provisions in this rule are relocated to NEW RULE I.

24.213.2301 UNPROFESSIONAL CONDUCT

AUTH: 37-1-131, 37-1-319, 37-28-104, MCA
IMP: 37-1-131, 37-1-316, 37-1-319, MCA

REASON: The department is repealing this rule and replacing it with NEW RULE II. See the REASON for NEW RULE II.

7. Concerned persons may present their data, views, or arguments at the hearing. Written data, views, or arguments may also be submitted at dli.mt.gov/rules or P.O. Box 1728, Helena, Montana 59624. Comments must be received no later than 5:00 p.m., May 10, 2024.

8. An electronic copy of this notice of public hearing is available at dli.mt.gov/rules and sosmt.gov/ARM/register.

9. The agency maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the agency. Persons wishing to have their name added to the list may sign up at dli.mt.gov/rules or by sending a letter to P.O. Box 1728, Helena, Montana 59624 and indicating the program or programs about which they wish to receive notices.

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

11. Pursuant to 2-4-111, MCA, the agency has determined that the rule changes proposed in this notice will not have a significant and direct impact upon small businesses.

12. Department staff has been designated to preside over and conduct this hearing.

BOARD OF RESPIRATORY CARE PRACTITIONERS
BRIAN CAYKO, PRESIDING OFFICER

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

/s/ SARAH SWANSON
Sarah Swanson, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State April 2, 2024.

BEFORE THE COMMISSIONER OF SECURITIES AND INSURANCE
OFFICE OF THE MONTANA STATE AUDITOR

In the matter of the amendment of ARM 6.6.8801, 6.6.8805, 6.6.8806, 6.6.8807, 6.6.8808, 6.6.8820, and 6.6.8841 and the repeal of ARM 6.6.8850 and 6.6.8851 pertaining to Network Adequacy for Managed Care	NOTICE OF AMENDMENT AND REPEAL

TO: All Concerned Persons

1. On February 9, 2024, the Commissioner of Securities and Insurance, Office of the Montana State Auditor (CSI) published MAR Notice No. 6-285 pertaining to the proposed amendment and repeal of the above-stated rules at page 155 of the 2024 Montana Administrative Register, Issue Number 3.

2. A public hearing was not contemplated or requested. CSI received no comments or testimony on the rules proposed to be amended or repealed.

3. CSI has amended ARM 6.6.8801, 6.6.8805, 6.6.8806, 6.6.8807, 6.6.8808, 6.6.8820, and 6.6.8841 as proposed.

4. CSI has repealed ARM 6.6.8850 and 6.6.8851 as proposed.

/s/ Ole Olson	*/s/ Mary Belcher*
Ole Olson	Mary Belcher
Rule Reviewer	Deputy Auditor
	Commissioner of Securities and Insurance,
	Office of the Montana State Auditor

Certified to the Secretary of State April 2, 2024.

BEFORE THE COMMISSIONER OF SECURITIES AND INSURANCE
OFFICE OF THE MONTANA STATE AUDITOR

In the matter of the amendment of ARM 6.6.8901, 6.6.8905, 6.6.8906, 6.6.8907, 6.6.8910, 6.6.8911, 6.6.8915, and 6.6.8916, the repeal of ARM 6.6.8920 and 6.6.8921, and the adoption of NEW RULE I pertaining to Quality Assurance for Managed Care Plans	)	NOTICE OF AMENDMENT AND REPEAL

TO: All Concerned Persons

1. On February 9, 2024, the Commissioner of Securities and Insurance, Office of the Montana State Auditor (CSI) published MAR Notice No. 6-286 pertaining to the proposed amendment, repeal, and adoption of the above-stated rules at page 162 of the 2024 Montana Administrative Register, Issue Number 3.

2. A public hearing was not contemplated or requested. One written comment was received on March 8, 2024, by hand delivery to CSI offices. CSI's response to the comment is set forth in paragraph 6 below.

3. CSI has amended ARM 6.6.8901, 6.6.8905, 6.6.8906, 6.6.8907, 6.6.8910, 6.6.8911, 6.6.8915, and 6.6.8916 as proposed.

4. CSI has repealed ARM 6.6.8920 and 6.6.8921 as proposed.

5. CSI does not adopt NEW RULE I.

6. CSI has thoroughly considered the comment provided, which relates to NEW RULE I that was proposed in MAR Notice No. 6-286. The comment expressed concerns that NEW RULE I makes no allowance for a formal meeting, discussion, or negotiation by and between the CSI and an insurer in an attempt to reach a mutually agreeable corrective action plan. The comment stated that NEW RULE I provides no guarantee that future CSI administrations would agree to engage in any pre-recommendation discussions and encouraged CSI to incorporate a provision expressly providing for the ability of the parties to engage in pre-recommendation discussions in an attempt to reach a mutually agreeable corrective action plan.

CSI's response to the comment is that CSI is not adopting NEW RULE I. CSI has done so because the determination of compliance and, consequently, a particular recommended corrective action under 33-36-401, MCA, may vary widely depending on the circumstances, and therefore CSI has decided to handle communication and notices related to these issues on a case-by-case basis. In addition, 33-36-401(1), MCA, does not require a formal meeting, discussion, or negotiation with a health carrier before determining compliance or making a corrective action recommendation. In making the rules in this manner, CSI has not eliminated the possibility of discussions between CSI and the health carrier during the process of determining compliance and making recommendations set forth in 33-36-401, MCA, but simply declines to require it, which is consistent with other subject matters regulated by CSI. If the corrective action proceeds to an enforcement action pursuant to 33-36-401(2), MCA, the action is governed by the Montana Administrative Procedure Act, which involves notice of a proposed action and the opportunity for the carrier to request a hearing, or, alternatively, an informal disposition. *See* 2-4-601, *et seq.*, MCA.

/s/ Ole Olson	*/s/ Mary Belcher*
Ole Olson	Mary Belcher
Rule Reviewer	Deputy Auditor
	Commissioner of Securities and Insurance,
	Office of the Montana State Auditor

Certified to the Secretary of State April 2, 2024.

BEFORE THE DEPARTMENT OF COMMERCE
OF THE STATE OF MONTANA

In the matter of the adoption of NEW RULE I pertaining to the administration of the Regional Assistance Program	))))	NOTICE OF ADOPTION

TO: All Concerned Persons

1. On February 9, 2024, the Department of Commerce published MAR Notice No. 8-99-210 pertaining to the public hearing on the proposed adoption of the above-stated rule at page 169 of the 2024 Montana Administrative Register, Issue Number 3.

2. The department has adopted NEW RULE I (8.99.1401) as proposed.

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

COMMENT NO. 1: Multiple commenters requested simplification of the application process. Specifically, one commenter requested the removal of barriers while retaining accountability measures, suggesting a process that resembles that used prior to the passage of SB 540 to provide supplemental funds to partners. Separate commenters also alluded to a return to the previous process, which would blend these dollars with statutory appropriations each organization receives leading to management of a singular budget versus two.

RESPONSE NO. 1: Legal analysis prior to the development of the SB 540 Regional Assistance Program (RAP) guidelines determined that the previous process of transferring money directly to regions and convention and visitor bureaus (CVBs) under the marketing plan approval authority of the Tourism Advisory Council is not in line with the statute defining the authority of the Tourism Advisory Council (2-15-1816, MCA). Therefore, the process for application and funding identified in the proposed SB 540 Regional Assistance Program guidelines will not be changed. In terms of any additional administrative burden (i.e., budget management and reporting), the guidelines allow for 20% of the funding to be used for administrative expenses including personnel. Therefore, no adjustments to the guidelines will occur.

COMMENT NO. 2: A commenter requested the department to consider industry representation on the RAP application review committee. This would include, specifically, committee members who pay the lodging and facility use tax. An additional commenter also made the request to enhance the RAP application review committee, by requiring one Montana lodging industry member from the private sector who collects and remits lodging taxes and one representative from a destination marketing organization (DMO).

RESPONSE NO. 2: The makeup of an application review committee is not established in guidelines. Therefore, the guidelines will not be amended. Additionally, it is unclear what is meant by "members who pay the lodging and facility use tax." Any visitor paying a nightly rate to a lodging facility in the state would be considered someone who pays the lodging and facility use tax. We do not anticipate having a lodging consumer on the committee. Lodging facilities remit the lodging and facility use tax to the Department of Revenue. They do not pay the tax. Finally, having a DMO on a review committee for a program in which DMOs are the eligible recipients of funds presents a conflict of interest.

COMMENT NO. 3: A commenter said that a four-week window for submitting applications is a challenge. However, the commenter did not recommend a preferred timeframe.

RESPONSE NO. 3: A four-week application window allows for turnaround of funds to eligible organizations within the current fiscal year. It is also in line with application periods of other Department of Commerce grants programs. Therefore, the four-week application window will remain as is.

COMMENT NO. 4: Multiple comments were received saying that distributing 25% of the total funds up front and reimbursing the remaining funds is a challenge for a small organization, due to lack of operating funds to execute projects and administrative burden. However, these commenters did not suggest a specific alternative. Another commenter also said that 25% up front presents a hardship to their organization. They suggested 50% up front and 50% two quarters later in the fiscal year, or quarterly. An additional commenter also said that limiting to 25% of funding up front is an issue. Their suggestion is to provide 100% of the funds up front or to break the funds into a couple distributions paid in advance (versus reimbursement).

RESPONSE NO. 4: After consideration, the department has decided to adjust the guidelines to issue quarterly disbursements. Quarterly payments will be initiated upon contract signature. Quarterly reports will be required to illustrate the appropriate expenditure of the previous quarter's funding and progress toward contract deliverables prior to the next quarterly disbursement. In order to be considered appropriately expended, RAP recipients will be required to illustrate in the quarterly report that the previous quarter's funds were 85% expended during the quarter, along with a plan for how the remaining 15% will be expended, or it must be demonstrated that 100% of the quarterly funds upon which they are reporting are committed for expenditure by the end of a designated future quarter. Though the department anticipates that initial disbursement will occur prior to the end of FY24, the first quarterly reporting deadline will not occur until September 30, 2024, and will continue on a quarterly basis from there (December 31, March 31, and June 30). If a quarterly report has not been received by the department 30 days after the due date, then the department will consider the region or CVB to be in breach of contract.

COMMENT NO. 5: A commenter has requested clearer guidance on fund usage and fewer restrictions.

RESPONSE NO. 5: Given there were no specific recommendations to consider, no updates will be made to the guidelines.

COMMENT NO. 6: A commenter requested the addition of language to the guidelines that establishes a timeline for application approval and notification of award. They suggested language that the department has 30 days to review the applications and issue the funds requested or notify the applicants their request is denied, or additional information is needed.

RESPONSE NO. 6: It is not necessary to include timelines for processing and approval of applications to be included within program guidelines. Therefore, this request will not be added.

COMMENT NO. 7: A commenter requested a simplification of the application process by reworking the five items under section H to simplify and to delete item #2 since it is duplicative of provisions requested in item #1.

RESPONSE NO. 7: Provisions in item H(1) are specific to the inclusion of key performance indicators (KPIs) in alignment with those used to measure performance by the department. Provisions in H(2) are specific to the requirement for proposed use of the funds to be tied, in detail, to regional or state resiliency plans, the Destination MT strategic plan, and/or the state's tourism marketing plan to illustrate alignment and facilitate collective impact. Given these are distinct requirements and not duplication, no adjustment will be made to the guidelines.

COMMENT NO. 8: A commenter requested that the determination of initial award amount be equal to the difference between new revenue from the most recent four quarters of lodging tax collections and not on the difference between their most recent Tourism Advisory Council-approved budget and the minimums established in the current guidelines.

RESPONSE NO. 8: The department has determined it will not adjust this guideline.

COMMENT NO. 9: A commenter requested the application cycle open no later than February 1 and close March 31, or open two funding windows per year in part to make the program available to newly recognized organizations.

RESPONSE NO. 9: The guidelines currently state that the RAP will open no sooner than March every two years. The March date was intended to accommodate the dispersal of FY24 funds after the completion of the administrative rulemaking process in the program's first year. This date can be amended in the guidelines 6 months after the guidelines become effective. At that point, the department can adjust the guidelines to launch in February.

Separately, the current guidelines under review will be amended to create an interim application cycle in February (starting February 2025 and continuing two years after) to allow for newly recognized and contracted eligible organizations to apply to the program.

/s/ John Semmens
John Semmens
Rule Reviewer

/s/ Mandy Rambo
Mandy Rambo
Deputy Director
Department of Commerce

Certified to the Secretary of State April 2, 2024.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 10.53.301 through 10.53.305 pertaining to English Language Proficiency Content Standards	))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On February 9, 2024, the Board of Public Education (board) published MAR Notice No. 10-53-139 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 172 of the 2024 Montana Administrative Register, Issue Number 3.

2. The board has amended the following rules as proposed: ARM 10.53.301, 10.53.302, 10.53.303, 10.53.304, and 10.53.305.

3. No comments or testimony were received.

4. The rules amended in this notice are effective July 1, 2025.

/s/ McCall Flynn	/s/ Tim Tharp
McCall Flynn	Tim Tharp
Executive Director	Chair
Board of Public Education	Board of Public Education

Certified to the Secretary of State April 2, 2024.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the adoption of NEW RULE I and NEW RULE II pertaining to early literacy targeted intervention programs	))))	NOTICE OF ADOPTION

TO: All Concerned Persons

1. On December 8, 2023, the Board of Public Education (board) published MAR Notice No. 10-54-292 pertaining to the public hearing on the proposed adoption of the above-stated rules at page 1656 of the 2023 Montana Administrative Register, Issue Number 23.

2. The board has adopted the following rules as proposed: NEW RULE I (ARM 10.54.901) and NEW RULE II (ARM 10.54.902).

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

<u>COMMENT 1</u>: One commenter opposed the requirement in NEW RULE I and NEW RULE II that prohibits a child from being evaluated for the purposes of participating in the early literacy targeted interventions unless requested by the child's parent or guardian.

<u>RESPONSE</u>: The board disagreed with Comment 1 and stated that the parental notification requirements are prescribed in the early literacy targeted intervention statute in 20-7-1803(4), MCA.

4. The rules adopted in this notice are effective April 13, 2024.

<u>/s/ McCall Flynn</u>	<u>/s/ Tim Tharp</u>
McCall Flynn	Tim Tharp
Executive Director	Chair
Board of Public Education	Board of Public Education

Certified to the Secretary of State April 2, 2024.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 10.63.101, 10.63.102, 10.63.103, 10.63.104, 10.63.107, 10.63.109, 10.63.110, 10.63.111, 10.63.112, 10.63.113, 10.63.114, and 10.63.115 and the repeal of ARM 10.63.108 pertaining to early childhood education standards	)	NOTICE OF AMENDMENT AND REPEAL

TO: All Concerned Persons

1. On February 9, 2024, the Board of Public Education (board) published MAR Notice No. 10-63-270 pertaining to the public hearing on the proposed amendment and repeal of the above-stated rules at page 185 of the 2024 Montana Administrative Register, Issue Number 3.

2. The board has repealed the following rule as proposed: ARM 10.63.108.

3. The board has amended the following rules as proposed: ARM 10.63.101, 10.63.102, 10.63.103, 10.63.104, 10.63.107, 10.63.109, 10.63.110, 10.63.111, 10.63.112, 10.63.113, 10.63.114, and 10.63.115.

4. No comments or testimony were received.

5. The rules amended and repealed in this notice are effective April 13, 2024.

/s/ McCall Flynn	/s/ Tim Tharp
McCall Flynn	Tim Tharp
Executive Director	Chair
Board of Public Education	Board of Public Education

Certified to the Secretary of State April 2, 2024.

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the amendment to ARM 17.74.350, 17.74.351, 17.74.352, 17.74.353, 17.74.354, 17.74.355, 17.74.356, 17.74.357, 17.74.358, 17.74.359, 17.74.360, 17.74.362, 17.74.363, 17.74.364, 17.74.365, 17.74.366, 17.74.367, 17.74.368, 17.74.369, and 17.74.409, and repeal of ARM 17.74.343, 17.74.370, 17.74.371, and 17.74.372 pertaining to incorporation by reference; asbestos project permitting and management; and training and accreditation of asbestos-related occupations	)	NOTICE OF AMENDMENT AND REPEAL (ASBESTOS)

TO: All Concerned Persons

1. On December 8, 2023, the Department of Environmental Quality published MAR Notice No. 17-436 pertaining to the public hearing on the proposed amendment and repeal of the above-stated rules at page 1660 of the 2023 Montana Administrative Register, Issue Number 23.

2. The department has amended the following rules as proposed: ARM 17.74.350, 17.74.351, 17.74.352, 17.74.353, 17.74.354, 17.74.355, 17.74.356, 17.74.358, 17.74.359, 17.74.360, 17.74.362, 17.74.363, 17.74.364, 17.74.365, 17.74.366, 17.74.367, 17.74.368, 17.74.369, and 17.74.409.

3. The department has repealed the following rules as proposed: ARM 17.74.343, 17.74.370, 17.74.371, and 17.74.372.

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

<u>17.74.357 STANDARDS AND METHODS FOR CLEARING ASBESTOS PROJECTS AND REQUIREMENTS FOR PERSONS CLEARING ASBESTOS PROJECTS</u> (1) and (2) remain as proposed.

(3) Final visual inspection and clearance sampling and analysis must be conducted as follows:

(a) remains as proposed.

(b) a person collecting final air clearance samples shall:

(i) and (ii) remain as proposed.

(iii) ensure the air is continually agitated in all potentially occupied areas, utilizing <u>at least</u> one 20-inch box fan or its cubic feet per minute equivalent per 10,000 cubic feet of work area, ~~to create~~ <u>in a manner that creates</u> maximum air disturbance. Agitating the air in the work area prior to final air clearance sampling is not required for unoccupied areas such as crawl spaces; and

(iv) through (9) remain as proposed.

AUTH: 75-2-503, MCA
IMP: 75-2-503 MCA

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

<u>COMMENT #1</u>: A commenter noted that the inclusion of "suspect" within ARM 17.74.354(4)(a) should be changed to "confirmed/presumed" when identifying estimated quantities.

<u>RESPONSE #1</u>: The department believes that estimating the amount of suspect material at the time of the visual inspection/collection of samples adds accuracy to the inspection report under (7). This estimation would be subsequently required if the material is later assumed or confirmed positive. The department believes collection of this information at the time of the visual inspection is both practical and efficient and does not believe a revision to the current proposal is needed.

<u>COMMENT #2</u>: A commenter suggested that rather than strike language currently within ARM 17.74.354(4)(e), inspectors should be allowed to utilize professional judgment to determine materials that are not suspect.

<u>RESPONSE #2:</u> In the reasonable necessity statement for proposed revisions to ARM 17.74.354(6)(a), the department provided a detailed explanation of the reasons supporting all material with the exception of glass, untreated wood, and metal being considered "suspect." Even without EPA guidelines, extending professional judgment to the inspection process could lead to inconsistency from individual to individual in evaluating materials and subsequently determining regulatory requirements. The department does not believe a revision to the current proposal is needed.

<u>COMMENT #3</u>: Two commenters objected to the deletion of ARM 17.74.354(4)(d)(iii) and (4)(e), stating the materials listed in those subsections are not considered suspect by EPA.

<u>RESPONSE #3</u>: In the reasonable necessity statement for proposed revisions to ARM 17.74.354(6)(a) the department provided a detailed explanation of the reasons supporting all material, with the exception of glass, untreated wood, and metal, being considered "suspect". Even without EPA guidelines, extending professional judgment to the inspection process could lead to inconsistency from individual to

individual in evaluating materials and subsequently determining regulatory requirements. The department does not believe a revision to the current proposal is needed.

COMMENT #4: Two commenters objected to the department's proposal to no longer allow composite analysis for wallboard systems under ARM 17.74.354(5)(b), stating that the proposed change would seem to be more stringent than the federal rule.

RESPONSE #4: The department reviewed the proposal to revise "compositing" requirements during the conceptual stage of rulemaking and believes that the proposed rule amendment would not make the state rules more stringent than comparable federal regulations or guidelines that address the same circumstances. The department's reasoning, in both the reasonable necessity statement for the proposal notice and the department's stringency analysis, noted that because Montana's regulatory threshold is much smaller than the federal threshold in the asbestos NESHAP, the EPA's determination was based on and addressed a different circumstance. Therefore, the requirements of 75-2-207, MCA, would not apply and subsequently the department was not required to prepare an estimate under 75-2-207(2)(b), MCA, regarding the increased costs to building owners associated with disallowing the composite analysis of wallboard systems. Nevertheless, the department did provide information, as required, within the "Small Business Impact Statement" stating, "The proposed rules do not directly create any new fees for small businesses. However, because asbestos project permit fees in ARM 17.74.406 are based in part on the asbestos unit measurement (AUMs) for the asbestos project, proposed changes to the manner in which wallboard systems are to be sampled may result in additional asbestos project permit fees for asbestos projects involving wallboard systems."

COMMENT #5: A commenter suggested that the term "untreated wood" found in proposed ARM 17.74.354(6)(a) be changed to "unprocessed wood."

RESPONSE #5: The inclusion of "untreated wood" was based on informal stakeholder draft rule review. During the informal stakeholder process, the definitions of "untreated" (not preserved, improved, or altered by the use of a chemical, physical, or biological agent) and "unprocessed" (not altered from an original state) were discussed and the consensus was that "untreated" provided greater clarity. The department does not believe a revision to the current proposal is needed.

COMMENT #6: A commenter noted that the word "maximum" contained within ARM 17.74.357(3)(b)(iii) should be struck due to equipment specifications proposed in rule and the lack of a proper definition of the term.

RESPONSE #6: While the department's proposal included language regarding equipment specifications, it recognizes that the specific configuration of work areas is subject to individual site conditions. Rather than include language addressing issues of specific cubic feet per minute air disruption, methodologies, and the assessment of areas with poor air flow, the department recognizes the professional discretion of the individual evaluating the work area for general re-occupancy. The department believes that the term "maximum" reflects the best practice; however, the department believes that the rule language could be clarified and has revised the rule.

COMMENT #7: A commenter noted that the Montana Code Annotated does not distinguish between regulated asbestos-containing material (RACM) and non-friable material, although only RACM is permitted. The commenter stated that the requirement to list non-friable material on project permit applications is inconsistent and leads to substantial confusion for owners/operators.

RESPONSE #7: The department has carefully reviewed the requirements for notifications under the asbestos NESHAP at 40 CFR 61.145(b)(4)(vi). To remain as stringent as federal regulations, the department must continue to request information on Category I and Category II nonfriable asbestos-containing material remaining in the affected part of the facility and does not believe a revision to the proposal is appropriate.

COMMENT #8: A commenter requested clarification on the new volume measurement inclusion regarding permitting levels.

RESPONSE #8: The department discussed the inclusion of volume in the 2020 fee rule revision and incorporated a definition for "Asbestos Unit Measurement," which included volume. The department had incorporated this unit of measurement for material as the result of its existence within the asbestos NESHAP at 40 CFR 61.145(a) and the inability of industry to properly calculate fees for materials not meeting linear or square foot measurements. The department does not believe a revision to the current proposal is needed.

/s/ *Angela Colamaria*
ANGELA COLAMARIA
Rule Reviewer

/s/ *Christopher Dorrington*
CHRISTOPHER DORRINGTON
Director
Department of Environmental Quality

Certified to the Secretary of State April 2, 2024.

BEFORE THE UNEMPLOYMENT INSURANCE APPEALS BOARD
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of ARM 24.7.101, 24.7.303, 24.7.304, 24.7.305, 24.7.306, and 24.7.308 and the repeal of ARM 24.7.312 pertaining to the Unemployment Insurance Appeals Board)	NOTICE OF AMENDMENT AND REPEAL

TO: All Concerned Persons

1. On February 9, 2024, the Unemployment Insurance Appeals Board (agency) published MAR Notice No. 24-7-388 regarding the public hearing on the proposed changes to the above-stated rules, at page 202 of the 2024 Montana Administrative Register, Issue No. 3.

2. On February 29, 2024, a public hearing was held on the proposed changes to the above-stated rules via the videoconference and telephonic platform. No comments were received by the deadline.

3. The agency has amended ARM 24.7.101, 24.7.303, 24.7.304, 24.7.305, 24.7.306, and 24.7.308 as proposed.

4. The agency has repealed ARM 24.7.312 as proposed.

UNEMPLOYMENT INSURANCE APPEALS BOARD, LAURA FIX, CHAIR

/s/ QUINLAN L. O'CONNOR	/s/ SARAH SWANSON
Quinlan L. O'Connor	Sarah Swanson, Commissioner
Rule Reviewer	DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State April 2, 2024.

BEFORE THE DEPARTMENT OF LIVESTOCK
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 32.15.102 pertaining to records to be kept	)))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On August 25, 2023, the Department of Livestock (department) published MAR Notice No. 32-23-340 pertaining to the proposed amendment of the above-stated rule at page 860 of the 2023 Montana Administrative Register, Issue Number 16. On December 8, 2023, the department published an amended notice on the proposed amendment at page 1735 of the 2023 Montana Administrative Register, Issue Number 23.

2. The department has amended the above-stated rule as proposed in the December 8, 2023 amended notice of proposed amendment.

3. No comments or testimony were received.

<u>/s/ Lindsey R. Simon</u>
Lindsey R. Simon
Rule Reviewer

<u>/s/ Michael S. Honeycutt</u>
Michael S. Honeycutt
Executive Officer
Department of Livestock

Certified to the Secretary of State April 2, 2024.

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

In the matter of the amendment of ARM 37.27.902, 37.88.101, and 37.89.201 pertaining to Chemical Dependency Programs and Medicaid Mental Health Services	)	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On October 20, 2023, the Department of Public Health and Human Services published MAR Notice No. 37-1039 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 1292 of the 2023 Montana Administrative Register, Issue Number 20.

2. The department has amended the following rules as proposed: ARM 37.27.902, 37.88.101, and 37.89.201.

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

<u>COMMENT #1</u>: A commenter stated, "The majority of Montanans are above poverty line. Therefore, it's theorized that most Mobile Crisis Responses will not be reimbursable by Medicaid. MCR teams are expected to respond to all calls regardless of ability to pay. Further, it would be nearly impossible to financially clear an individual prior to arrival at a crisis. It is requested that the state block grant be expanded to allow coverage up to 417% above FPL."

<u>RESPONSE #1</u>: The department has reviewed the comment and will amend the policy to increase the federal poverty limit (FPL) for department coverage under the Non-Medicaid Mental Health Crisis Services Fee Schedule to cover individuals not otherwise Medicaid eligible with income between 0-200% FPL for the following services: psychotherapy for crisis, targeted case management, and crisis receiving and stabilization program. The intent is to mirror the FPL in the Non-Medicaid Substance Use Disorder Fee Schedule. Additionally, the department will remove FPL limits for individuals not otherwise Medicaid eligible for Mobile Crisis Response Services and Mobile Crisis Care Coordination Services covered by the Non-Medicaid Mental Health Crisis Services Fee Schedule.

<u>COMMENT #2</u>: A commenter referred to Policy 001NM, which states, "State funding for behavioral health crisis services is available..." and asked if "State funding" referred to block grants. If so, is an agency required to be approved for block grant funding to be reimbursed for services provided to clients who meet the requirements stated in Policy 001NM.

<u>RESPONSE #2</u>: Policy 001NM indicates that block grant funding, provided under a federal block grant, is available to "cover certain substance use disorder (SUD) services." Reimbursement of non-Medicaid substance use disorder services requires a contract awarded through a Request for Proposal (RFP). Providers are not required to be approved for block grant funding for reimbursement of Non-Medicaid Mental Health Crisis Services, which requires a provider to be enrolled in Montana Medicaid.

<u>COMMENT #3</u>: A commenter asked, "If an agency needs to be approved for block grant funding, is there an opportunity to modify previously submitted requests for block grant funding based on this new information?"

<u>RESPONSE #3</u>: As noted in Response #2, providers are not required to be approved for block grant funding for reimbursement of Non-Medicaid Mental Health Crisis services.

<u>COMMENT #4</u>: A commenter asked if the department could clarify whether Targeted Case Management services listed on the Non-Medicaid Mental Health Crisis services fee schedule refers to both Mental Health TCM and SUD TCM, or just one of those.

<u>RESPONSE #4</u>: Targeted Case Management (TCM) services listed under Non-Medicaid Mental Health Crisis services is intended to be Mental Health TCM. The requirements for Mental Health TCM can be found in Policy 405.

<u>COMMENT #5</u>: The department received a comment regarding Policy 215NM – Case Consultation. A commenter asked, "How is Case Consultation billed? It is not listed as a service on the Non-Medicaid Mental Health Crisis Services Fee Schedule." The commenter also noted existing billing codes in the most current American Medical Association's (AMA) Common Procedural Terminology (CPT) manual that cover consultative care services.

<u>RESPONSE #5</u>: Fee schedules are not part of this rulemaking. The department notes that case consultation is listed on the Substance Use Disorder (SUD) Non-Medicaid Fee Schedule found on the Montana Healthcare Programs Provider Information website, https://medicaidprovider.mt.gov/.

<u>COMMENT #6</u>: A commenter stated, "MCR teams likely don't have access to see if a client is enrolled in other Medicaid services, therefore, won't be able to determine if a service component of Mobile Crisis Response services would overlap with any other service components that a client may be receiving through other Medicaid funded services."

<u>RESPONSE #6</u>: Agencies operating Mobile Crisis Response Programs will be enrolled in Montana Medicaid as crisis providers and will have access to the provider web portal.

COMMENT #7: A commenter identified a typographical error in Non-Medicaid Mental Health Crisis Services policy 001 and suggests correction from "Pyschotherapy" to "Psychotherapy."

RESPONSE #7: The department agrees with this comment and will make the identified change in Policy 001NM.

COMMENT #8: A commenter gave the following example: someone calls for Mobile Crisis Response services, but the client is also receiving ASAM 2.1 IOP services and the IOP policy states "Provider must arrange for 24/7 crisis services." It is unrealistic and poor client care for Mobile Crisis Response to either not respond to the call because the client is enrolled in another program, or essentially redirect the crisis call back to the IOP provider in order to arrange crisis services for the client. The commenter then asked, "If Mobile Crisis Response provides services to a client enrolled in a Medicaid service with overlapping service components, will Mobile Crisis Response services not be reimbursed by Medicaid?"

RESPONSE #8: The IOP Policy 525 does not require that service providers of SUD Intensive Outpatient (IOP) provide 24/7 crisis services. The policy requires that IOP providers arrange for crisis services (e.g., answering machine message referring clients to 988 after normal business hours). Additionally, IOP and mobile crisis response services are not listed as concurrent services, pursuant to Policy 230. Please refer to Policy 230 for additional guidance regarding concurrent services.

COMMENT #9: A commenter stated, "It also makes it difficult for Mobile Crisis Response providers to know if they are actually going to be reimbursed for the service because they are not able to tell if a client may have overlapping service components from other programs/services."

RESPONSE #9: The department acknowledges this may be difficult, but Medicaid does not allow concurrent reimbursement of services that share any service components because of federal Medicaid regulations which prohibit duplicative billing. Policy 230 indicates, "Services must not be provided to a member at the same time as another service if the service is the same in nature and scope regardless of funding source, including federal, state, local, and private entities." Additional CMS guidance regarding separate encounters provided on the same day can be found at: https://www.cms.gov/files/document/mln1783722-proper-use-modifiers-59-xe-xp-xs-and-xu.pdf.

COMMENT #10: A commenter stated, "We would hope that both Crisis Receiving and Crisis Care Coordination could bill for their services, as long as the timeframe/duration of the services did not overlap within that day, even if the service were provided on the same day or if a client saw their MH Outpatient Therapist in the morning and then Mobile Crisis Response services responded in the evening."

RESPONSE #10: The commenter's understanding of this aligns with the department's intentions and meets requirements found in Policy 230.

COMMENT #11: A commenter would like clarification: "A client is enrolled in a program that has overlapping service components, but the client is not engaged in one of the overlapping service components because, it is not required that each member receiving X bundle receive every service component listed above. Medically necessary services must be provided and documented in the individualized treatment plan and the services received must be documented clearly in the member's treatment file."

RESPONSE #11: The department understands this to be a request for clarification as to whether these services would constitute concurrent services. If the service components are required to be made available, and the timeframe/duration of services overlap, these would be considered concurrent services. Please refer to Policy 230 for additional guidance regarding concurrent services.

COMMENT #12: A commenter asked for clarification regarding Policy 230. Is the state saying that one or both of the service providers cannot be reimbursed by Medicaid for their services because the services were provided on the same day? Or is it reimbursable as long as the services were not provided at the same time during that day?

RESPONSE #12: Daily and weekly bundled rates timeframes are dependent on the services being provided. Policy 230 states, "Services must not be provided to a member at the same time as another service if the service is the same in nature and scope regardless of funding source, including federal, state, local, and private entities." Additional CMS guidance regarding separate encounters provided on the same day can be found at: https://www.cms.gov/files/document/mln1783722-proper-use-modifiers-59-xe-xp-xs-and-xu.pdf.

COMMENT #13: A commenter asked for clarification of Policy 230. The commenter asked, "How does Medicaid define time? Is time based on literal service time, not allowing overlapping services (service A is billed from 12:00-1:00 and service B is billed from 12:45 to 1:45 – then the 15 minutes of overlap between 12:45 and 1:00 cannot be reimbursed); or is time based on services billed for on one day (first service is received from 12:00-1:00 on 1/1/2023 and second service is from 1:00-2:00 on 1/1/2023); or is time based on client enrollment in a program, which would span multiple days (if client is enrolled in IOP for 5 weeks, the provider cannot bill for any other services throughout the 5 week period)."

RESPONSE #13: The department understands this to be a request for clarification as to whether these services would constitute concurrent services. If the service components are required to be made available, and the timeframe/duration of services overlap, these would be considered concurrent services. The unit of time for billable services is outlined on department fee schedules. Please refer to Policy 230 for additional guidance regarding concurrent services.

COMMENT #14: A commenter asked for the federal regulation that defines concurrent service reimbursement. The commenter asked if the department could provide the federal Medicaid regulations that are referenced in Policy 230 regarding the prohibition of duplicative billing.

RESPONSE #14: There are several federal regulations indicating non-duplication of payment, including 42 U.S. Code sec. 1396b, 42 CFR Part 431.958, and 42 CFR Part 447.45.

COMMENT #15: A commenter asked if a client is in any of the services listed in Policy 230 as not reimbursable concurrently with Mobile Crisis Response, and a Mobile Crisis Response team responds to a call that night, will Mobile Crisis Response services not be reimbursed?

RESPONSE #15: The client could not receive Mobile Crisis Response Services at the same time as one of the services listed. For example, Mobile Crisis Response Services would not be reimbursed if the Mobile Crisis Response team responded to a facility at night. If the client is not in a facility at the time of the response and instead in the community, Mobile Crisis Response services would be reimbursable.

COMMENT #16: A commenter asked for clarification regarding the reference to ARM 37.86.3305 in Policy 230. Per ARM 37.86.3305 - Case Management Services, General Provisions, (1) "Case management plan and setting goals" and (10) "A case management plan must be developed jointly by the case manager and the client and, where appropriate, the client's caregivers."

RESPONSE #16: The reference to ARM 37.86.3305 is not correct. The department intended the reference to be ARM 37.86.3306, which discusses "Case Management Services: General Eligibility." The department will update the Policy to identify the correct rule.

COMMENT #17: A commenter asked the department to clarify if the Crisis Care Coordinator must complete the requirements listed in ARM 37.86.3305.

RESPONSE #17: No. As indicated in response #16, the reference to ARM 37.86.3305 is incorrect and will be updated.

COMMENT #18: A commenter asked if a client is in a program that includes care coordination/care management and Mobile Crisis Response responds to a call at night, then Crisis Care Coordination follows up and works with the client for 14 days, will Crisis Care Coordination services not be reimbursed?

RESPONSE #18: The Mobile Crisis Care Coordination service provider is required to follow up to ensure the client has been connected to ongoing services. If the ongoing services has a case management or care coordination component, then the provider would be reimbursed for the follow-up to ensure the client is connected to a service provider, but would not receive reimbursement for further mobile crisis care coordination once the client is receiving case management or care coordination through the ongoing services.

COMMENT #19: A commenter recommended the following language be deleted or moved from Policy 452 to Policy 454: follow up to ensure that member's crisis is resolved, or that they have successfully been connected to ongoing services.

RESPONSE #19: The department acknowledges the comment, but will not be making the recommended change because the identified requirement is a federal requirement by the Centers for Medicare & Medicaid Services for all mobile crisis response services.

COMMENT #20: A commenter recommended amending language in Policy 452 by changing "Referrals to outpatient care" to "referrals for further care" because Mobile Crisis Response will still refer a client to services based on their assessed need, regardless of if that's outpatient, inpatient/hospitalization services.

RESPONSE #20: The department agrees with the commenter. Policy 452 will be amended to include "referrals to outpatient care and/or other appropriate care."

COMMENT #21: A commenter asked for Policy 452 to reference the specific statute that is referenced by the following language, Title 37, MCA, Clinical Mental Health Professional.

RESPONSE #21: The statute is 53-21-102, MCA. The department will amend the policy to reference this statute.

COMMENT #22: Multiple commenters stated concern about the following requirement in Policy 452: "Qualified to provide a biopsychosocial assessment." It was noted stated that MCR services are provided by mental health centers, and under ARM 37.106.1915, mental health centers do not complete biopsychosocial assessments.

RESPONSE #22: Policy 452 does not require Mobile Crisis Response Services to be provided exclusively by mental health centers. It indicates a licensed clinical mental health professional needs to be part of the mobile crisis response and that professional be able to provide a biopsychosocial assessment within their scope of practice under their Montana license. ARM 37.106.1915, which is not part of this rulemaking, does not reference Mobile Crisis Response Services.

COMMENT #23: A commenter asked for a definition of "abbreviated intake assessments" found in ARM 37.106.1987.

RESPONSE #23: ARM 37.106.1987 is contained in the OIG licensing rules and is, thus, outside the scope of this rulemaking.

COMMENT #24: Multiple commenters asked for clarification around the following language in Policy 452: "(4) All staff must be trained in trauma-informed care, de-escalation strategies, harm reduction, and any other trainings, as specified by the State in the provider approval process." Commenters asked the department to share the specified trainings that are required of providers, as these were not provided during the provider approval process.

RESPONSE #24: The department acknowledges the comment. The department's intent was to follow SAMHSA's guidance for the Crisis Now Model, which also lists suicide awareness. Policy 452 will be amended to include suicide awareness and to remove the general language that refers to any other trainings.

COMMENT #25: A commenter asked if a mobile crisis response team/provider arrives on scene that happens to be a hospital or other facility, is Mobile Crisis Response reimbursable by Medicaid?

RESPONSE #25: Medicaid reimbursement of mobile crisis response services is not allowable in a hospital or other facility. Mobile Crisis Response services are required to be delivered in the community, pursuant to the Crisis Now Model.

COMMENT #26: Multiple commenters asked if a MCR team is connected to client via phone/telehealth while en route to scene, is this time reimbursable by Medicaid?

RESPONSE #26: The reimbursement for mobile crisis response team service is not allowable during crisis calls or while a team member is en route. Services can only be reimbursed when at least one member of the mobile crisis responding team is on-site. However, psychotherapy for crisis services is allowable via telehealth, which seems to be applicable in this example.

COMMENT #27: A commenter asked if the warm handoff for ongoing care required in Policy 452 happens outside of the initial response by the MCR team, is this billable under Mobile Crisis Response services? For example, if MCR responds to initial call from 1:00-2:00, but warm handoff for ongoing services is not available until a few hours later, say at 5:00.

RESPONSE #27: The warm handoff described here by the commenter is Mobile Crisis Care Coordination, not Mobile Crisis Response services, and would have to follow the requirements for Mobile Crisis Care Coordination.

COMMENT #28: A commenter asked if Mobile Crisis Care Coordination services may be provided up to 14 days after the member receives Mobile Crisis Response Services as described in Policy 454 or 72 hours as indicated in the Non-Medicaid Mental Health Crisis services fee schedule.

RESPONSE #28: The department intends to update fee schedules in a future rulemaking to align with Policy 454 and the approved Medicaid State Plan. The department currently intends make such changes to the fee schedules to be retroactive.

COMMENT #29: A commenter indicated that ARM 37.106.1976 allows hospitals to be an outpatient crisis response facility. How does this work if the crisis work is in a hospital?

RESPONSE #29: ARM 37.106.1976 is contained in the OIG licensing rules and is, thus, outside the scope of this rulemaking.

COMMENT #30: A commenter asked for clarification regarding the following service components in Policy 454: "Services include the availability of the following: (a) assessment of needs; (b) linkage with necessary social, medical, and behavioral health services; (c) crisis planning; and (d) follow-up." The commenter asked if it is up to the discretion of the provider to determine how to meet the service requirements, or does the State have guidelines/recommendations for meeting these service requirements?

RESPONSE #30: The department appreciates the comment and will amend the referenced (b) and (c) language in Policy 454 to clarify, as follows: "(b) linkage with necessary services, which includes facilitating and coordinating treatment and services among other professionals and agencies; (c) individualized crisis planning to create or update a range of planning tools, including a safety plan, which is a prioritized list of coping strategies and sources of support." The department believes that the following components are self-explanatory and require no additional clarification: assessment of needs ((a)) and follow-up ((d)).

COMMENT #31: The department received a comment regarding Policy 452: Service Requirements: Section 4. The commenter suggested language be changed to clarify law enforcement's involvement during the crisis response. The commenter suggested changing "Services must be able to be dispatched and able to respond without law enforcement" to allow mobile crisis teams to work 90% side by side with law enforcement during a crisis due to additional risks to crisis teams without law enforcement present.

RESPONSE #31: The department appreciates the comment. The referenced language in Policy 452 is based on federal guidance. It does not preclude law enforcement from being involved in a crisis response. The expectation is that mobile crisis response services are not contingent on law enforcement co-response.

COMMENT #32: A commenter asked if the crisis facility moves the patient into ongoing outpatient services or the patient is already in that facility's outpatient services, will a note that indicates the patient is discharged from "crisis" rather than an entire discharge summary meet client discharge requirements in ARM 37.106.1989.

RESPONSE #32: The requirement for crisis facilities established under ARM 37.106.1989 does not apply to mobile crisis response services and mobile crisis care coordination. ARM 37.106.1989 is contained in the OIG licensing rules and is, thus, outside the scope of this rulemaking.

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

/s/ Charles T. Brereton
Charles T. Brereton, Director
Department of Public Health and Human Services

Certified to the Secretary of State April 2, 2024.

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

In the matter of the adoption of NEW RULES I through XCVI and the repeal of ARM Title 37, chapter 95 pertaining to licensure of day care facilities	)))))	NOTICE OF ADOPTION AND REPEAL

TO: All Concerned Persons

1. On October 20, 2023, the Department of Public Health and Human Services published MAR Notice No. 37-1044 pertaining to the public hearing on the proposed adoption and repeal of the above-stated rules at page 1297 of the 2023 Montana Administrative Register, Issue Number 20.

2. The department has adopted the following rules as proposed: NEW RULE I (37.96.101), NEW RULE II (37.96.102), NEW RULE III (37.96.103), NEW RULE IV (37.96.106), NEW RULE V (37.96.107), NEW RULE VI (37.96.108), NEW RULE VII (37.96.111), NEW RULE VIII (37.96.112), NEW RULE IX (37.96.113), NEW RULE X (37.96.114), NEW RULE XI (37.96.117), NEW RULE XII (37.96.118), NEW RULE XIII (37.96.121), NEW RULE XIV (37.96.122), NEW RULE XV (37.96.201), NEW RULE XVI (37.96.202), NEW RULE XVII (37.96.205), NEW RULE XVIII (37.96.206), NEW RULE XIX (37.96.301), NEW RULE XX (37.96.302), NEW RULE XXI (37.96.303), NEW RULE XXII (37.96.306), NEW RULE XXIII (37.96.307), NEW RULE XXIV (37.96.308), NEW RULE XXV (37.96.311), NEW RULE XXVI (37.96.312), NEW RULE XXVII (37.96.313), NEW RULE XXVIII (37.96.401), NEW RULE XXIX (37.96.402), NEW RULE XXX (37.96.403), NEW RULE XXXI (37.96.404), NEW RULE XXXII (37.96.407), NEW RULE XXXIII (37.96.408), NEW RULE XXXIV (37.96.409), NEW RULE XXXV (37.96.410), NEW RULE XXXVI (37.96.413), NEW RULE XXXVII (37.96.414), NEW RULE XXXVIII (37.96.415), NEW RULE XXXIX (37.96.501), NEW RULE XL (37.96.502), NEW RULE XLI (37.96.505), NEW RULE XLII (37.96.506), NEW RULE XLIII (37.96.601), NEW RULE XLIV (37.96.602), NEW RULE XLV (37.96.603), NEW RULE XLVI (37.96.604), NEW RULE XLVII (37.96.607), NEW RULE XLVIII (37.96.608), NEW RULE XLIX (37.96.609), NEW RULE L (37.96.612), NEW RULE LI (37.96.613), NEW RULE LII (37.96.614), NEW RULE LIII (37.96.615), NEW RULE LIV (37.96.618), NEW RULE LV (37.96.619), NEW RULE LVI (37.96.620), NEW RULE LVII (37.96.623), NEW RULE LVIII (37.96.624), NEW RULE LIX (37.96.701), NEW RULE LX (37.96.704), NEW RULE LXI (37.96.705), NEW RULE LXII (37.96.708), NEW RULE LXIII (37.96.801), NEW RULE LXIV (37.96.802), NEW RULE LXV (37.96.805), NEW RULE LXVI (37.96.806), NEW RULE LXVII (37.96.809), NEW RULE LXVIII (37.96.810), NEW RULE LXIX (37.96.901), NEW RULE LXX (37.96.902), NEW RULE LXXI (37.96.903), NEW RULE LXXII (37.96.904), NEW RULE LXXIII (37.96.907), NEW RULE LXXIV (37.96.908), NEW RULE LXXV (37.96.909), NEW RULE LXXVI (37.96.910), NEW RULE LXXVII (37.96.913), NEW

RULE LXXVIII (37.96.914), NEW RULE LXXIX (37.96.915), NEW RULE LXXX (37.96.918), NEW RULE LXXXI (37.96.1001), NEW RULE LXXXII (37.96.1002), NEW RULE LXXXIII (37.96.1003), NEW RULE LXXXIV (37.96.1004), NEW RULE LXXXV (37.96.1005), NEW RULE LXXXVI (37.96.1008), NEW RULE LXXXVII (37.96.1101), NEW RULE LXXXVIII (37.96.1102), NEW RULE LXXXIX (37.96.1103), NEW RULE XC (37.96.1104), NEW RULE XCI (37.96.1107), NEW RULE XCII (37.96.1108), NEW RULE XCIII (37.96.1111), NEW RULE XCIV (37.96.1112), NEW RULE XCV (37.96.1113), and NEW RULE XCVI (37.96.1116).

3. The department has repealed the following rules as proposed: ARM Title 37, chapter 95.

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

COMMENT 1: A commenter stated a preschool definition should be added to NEW RULE I(4)(d), including hours per week a preschool can be open to not be licensed.

RESPONSE 1: The department will keep current proposed text. The proposed rule is consistent with 52-2-703(4)(b), MCA, which excludes from the definition of day-care facility "any group facility established chiefly for educational purposes that limits its services to children who are 3 years of age or older." Since preschools likely fall into this exclusion, contained in NEW RULE I(4)(d), the department declines to amend this proposed definition.

COMMENT 2: A commenter stated NEW RULE I(10) should include gender, gender identify, sexual orientation, and pregnancy.

RESPONSE 2: The proposed definition is consistent with Montana state law and federal Child Care and Development Fund (CCDF) requirements. (See 49-1-102, MCA; 45 CFR § 98.48). Accordingly, the department declines to add any additional language.

COMMENT 3: A commenter stated NEW RULE I(12) reads that the only reason a family child care provider would become registered is to receive subsidy payments and does not list Child and Adult Food Program (CACFP) or STARS to Quality.

RESPONSE 3: The department appreciates the comment. The proposed definition is illustrative, and does not serve as an exhaustive list of the benefits that come with being a registered facility. The department believes the proposed language provides clarity without being dispositive.

COMMENT 4: A commenter stated NEW RULE I(20)(b) should only refer to child care centers, since they are the only provider type licensed.

RESPONSE 4: The department agrees that child care centers are required to be licensed. However, school-age and drop-in care facilities may choose to be licensed. Accordingly, it is appropriate not to limit NEW RULE I(20)(b) to child care centers. Proposed NEW RULE I(20)(b) specifically defines a condition that may be placed on a facility's license, regardless of whether the license is required or voluntary. The department believes proposed NEW RULE I(20)(b) is accurate and applies only to licensing.

COMMENT 5: A commenter requested clarification on whether a homeschooled child would be included in the total counted children in a child care home setting under NEW RULE III.

RESPONSE 5: Likely yes. If a homeschooled child is the child of the owner of the facility or a staff member, and is present in the child care space during child care hours, that child would be counted in the applicable child-to staff-ratios. The exception in (2)(a) allows some flexibility in child-to-staff ratios when an owner's child, who attends school full time, is present in the facility before or after school hours.

COMMENT 6: A commenter stated it was unclear how Family, Friend, and Neighbor (FFN) and Relative Care Exempt (RCE) providers would be approved for registration if they were not subject to a pre-inspection and cannot get a provisional registration in NEW RULE VII(1) and (2).

RESPONSE 6: The department would issue a registration once the FFN or RCE provider meets the requirements outlined in NEW RULE VI.

COMMENT 7: A commenter voiced support for the emphasis on FFN and RCE providers because it will allow more access to the Best Beginnings Child Care Scholarship.

RESPONSE 7: The department thanks the commenter for their support.

COMMENT 8: Many commenters voiced support for the school-age licensing track, commenting that the proposed new license will allow a variety of programs to become licensed, and that the proposal aligns with school-age children's needs.

RESPONSE 8: The department thanks commenters for their support. The department believes the school-age licensing track will make it easier for facilities serving school-age children to meet health and safety requirements without needless regulatory burden.

COMMENT 9: A commenter stated the school-age licensing track will allow more school-age programs to open, thus, opening child care slots for younger children in child care centers and in home-based facilities.

RESPONSE 9: The department appreciates the support. Throughout this process, the department has striven to propose regulations that will increase access to child care without sacrificing quality.

COMMENT 10: A commenter stated that the school-age licensing track will allow them to pursue licensing and accept the Best Beginnings Child Care Scholarship.

RESPONSE 10: The department encourages the school-age programs becoming licensed. Once licensed, a school-age provider would be eligible to enroll children whose families receive Best Beginnings Child Care Scholarships. The department hopes that such licenses will provide access to care to more Montana children, and steady enrollment for providers.

COMMENT 11: A commenter requested clarification on NEW RULE XVI(1)(a) on passive and active learning experiences.

RESPONSE 11: The department reviewed the current proposed text, and does not believe that a change to the regulatory text is needed. The department clarifies that NEW RULE XVI(1) outlines that a licensed or registered child care provider must have a written plan of daily activities and routines, and should include both passive and active learning experiences. The new rule designates activities by age group and indicates all age groups should have dedicated outdoor time. The department believes these minimum requirements help ensure children participate in quality activities during the day, but without imposing undue regulatory burden on providers.

COMMENT 12: A commenter suggested adding a requirement for a consistent child care staff in NEW RULE XVII.

RESPONSE 12: The department's role is to set health and safety standards for child care facilities. This does not require that the same child care staff work with children each day. The department helps ensure children receive safe and quality care without needless regulatory burden on providers. NEW RULE XVII sets forth required routines and activities if providers care for infants and toddlers. However, within the child-to-staff ratios under NEW RULE IV, the staffing decisions necessary for the delivery of the required care remain at the discretion of each individual provider.

COMMENT 13: A commenter suggested adding any conversation within the child's hearing should not involve humiliation, shaming, or insulting in NEW RULE XVIII(1)(b).

RESPONSE 13: The department believes the commenter's suggestion is encompassed in NEW RULE XVIII(1)(b).

COMMENT 14: A commenter supported the list of required documents listed in NEW RULE XXII(3).

RESPONSE 14: The department thanks the commenter for their support.

COMMENT 15: A commenter requested clarification on whether the special dietary instructions listed NEW RULE XXIV(3)(f) replaces the infant feeding schedule.

RESPONSE 15: No, the requirements for infant feeding and the infant feeding schedule are outlined in NEW RULE LXI. The special dietary instructions in NEW RULE XXIV(3)(f) would apply to any child older than an infant. The special dietary needs of infants are addressed in NEW RULE LXI.

COMMENT 16: A commenter requested clarification on what constitutes a mental health emergency in NEW RULE XXVII(3)(f).

RESPONSE 16: The department believes that the proposed list of required notifications in NEW RULE XXVIII(3), read as a whole, is instructive to the commenter: situations that require emergency services or affect the physical or mental health, welfare, or safety of children in care must be reported to the department.

COMMENT 17: A commenter suggested adding language to NEW RULE XXXI(4)(c) to list the department instead of authorized persons.

RESPONSE 17: The department thanks the commenter, but will keep current proposed text. As is clear from the text, department representatives may not be the only authorized persons who may need to access child care facilities.

COMMENT 18: A commenter suggested adding a specific number to NEW RULE XXXII(4) when referencing spacing between children.

RESPONSE 18: The department appreciates the commenter's input, but will keep current proposed text. The department recognizes that every child care facility is configured differently. The proposed rule text allows for customization depending on the layout of a particular facility, while still requiring safe sleeping spaces be maintained for each child.

COMMENT 19: A commenter requested clarification on how the department will monitor if problems occur during an emergency drill if NEW RULE XXXV does not require these problems to be documented.

RESPONSE 19: NEW RULE XXXV provides that, while a child care provider does not need to document if there is a problem during a drill, the child care provider "should identify problems that occurred during a drill and take corrective actions." The department will monitor if the required number of yearly drills are being conducted in each facility. Requiring drills will help ensure providers are practicing, assessing, and adjusting their emergency responses.

<u>COMMENT 20:</u> A commenter suggested removing pacifiers and other attachments to NEW RULE XXXVIII(2)(a)(iv) for a sleeping infant.

<u>RESPONSE 20:</u> The department will keep current proposed text. Under the proposed new rule, the only item allowed in the crib with an infant is a pacifier that does not include a string. This proposed rule recognizes that parents may choose a pacifier as their infant's comfort item during naps or sleep time.

<u>COMMENT 21:</u> A commenter suggested adding language in NEW RULE XLII allowing children under six months old to wear clothing designed to protect from UV rays as an alternative to sunscreen.

<u>RESPONSE 21:</u> NEW RULE XLII(2) requires child care staff to take appropriate precautions to minimize the risk of any child suffering sunburn or suffering heat stroke, and that children under six months old should be kept out of direct sunlight. NEW RULE XLII(2)(a) states that sunscreen must be applied to children over six months old when outdoor conditions dictate. NEW RULE XLII does not require sunscreen use for children under six months old.

<u>COMMENT 22:</u> A commenter supported the addition of NEW RULE X to support child care providers.

<u>RESPONSE 22:</u> The department thanks the commenter for their support.

<u>COMMENT 23:</u> Numerous commenters voiced opposition to NEW RULE LXV, which would exempt children from receiving required vaccinations, in certain circumstances, before enrolling in licensed or registered child care. Commenters gave varying reasons for opposition: personal experience, personal religious views, professional opinion, and parental choice.

<u>RESPONSE 23:</u> The department disagrees. After the conclusion of the 2021 Legislative Session, the department assessed the child care vaccination requirements, in light of the enactment of Senate Bill 215, the Montana Religious Freedom Restoration Act (RFRA), codified at 27-33-101 through 27-33-105, MCA, with which the department is obligated to comply. Montana RFRA prohibits state action that substantially burdens a person's exercise of religion, unless the action is essential to further a compelling state interest and is the least restrictive means of furthering that compelling governmental interest. Many religiously observant families object to certain childhood vaccines on religious grounds because such vaccines were developed using cell lines derived from aborted fetal tissue. Because the child care rules currently provide opportunity for a religious exemption to only one childhood vaccine – while providing for medical exemptions – the department concluded that the failure to provide for a religious exemption for families with a religious objection to any of the required vaccines likely violates Montana RFRA. The proposed rules address this issue, and ensure compliance with Montana RFRA.

<u>COMMENT 24:</u> Numerous commenters voiced support for the religious exemption from immunizations. Commenters gave varying reasons: personal experience, professional opinion, and parental choice.

<u>RESPONSE 24:</u> The department appreciates the support.

<u>COMMENT 25:</u> A commenter requested religion be defined when requesting a religious exemption.

<u>RESPONSE 25:</u> NEW RULE LXV states that an exemption to immunization on religious grounds must be maintained on an Affidavit of Exemption on Religious Grounds Form (HES-113) prescribed by the department for exemptions from school-based immunization requirement. In proposing this rule, the department relied on the statutory requirements for documentation of religious exemptions for school children pursuant to 20-5-405(1), MCA. To help ensure continuity as children transition from child care settings into school, and to avoid imposing any additional burdens, the department declines to impose definitions that are not statutorily required by 20-5-405, MCA.

<u>COMMENT 26:</u> A commenter asked if a child is attending swimming lessons with a swimming instructor, whether the child care facility staff would need to be in the water.

<u>RESPONSE 26:</u> The child care provider would need to comply with the supervision practices for children in and around water as proposed in NEW RULE XXXVI.

<u>COMMENT 27:</u> Commenters stated child care centers should not be required to accept a child with a religious exemption; instead, a child care center should be able to opt out.

<u>RESPONSE 27:</u> The department declines to make the suggested revision. It proposed NEW RULE LXV so a home-based child care provider has the option whether they enroll children who are not vaccinated in accordance with the recommended minimum immunization requirements. (NEW RULE LXIV.) Home-based providers would have to maintain policies and procedures to inform parents and guardians if the child care provider accepts children with exemptions from required vaccines. This proposal would give choice to families with medical or religious exemptions, allow for parental choice in any additional vaccines a parent may choose for their child, and give in-home providers the choice to set policies to align with the needs of their own households.
Under the proposal, child care centers would not have the same flexibility (1) to ensure there are child care settings supporting parents' and guardians' needs and choices regarding vaccinations; and (2) because the concerns that led to the proposal to provide flexibility for in-home providers do not apply to child care centers. Home-based business owners caring for mixed age groups are allowed autonomy in their choice to serve vaccination-exempt children; this will allow home-based providers to make choices for their own health and the health of their family

members and the children in their care, who may not be old enough to be vaccinated. In contrast, child care centers are required to separate children by age group to protect younger children who have not yet had the opportunity to be vaccinated.
The department carefully weighed the needs of children receiving child care, their parents and guardians, and those of providers. It is the position of the department that, consistent with requirements and analyses established by Montana RFRA, NEW RULE LXV balances the medical and religious autonomy of all.

COMMENT 28: Commenters stated a child care center should be required to inform all parents and/or guardians if a child is attending and has a religious exemption.

RESPONSE 28: The department does not support regulations that have the potential to release private medical information about any child receiving child care. A child care center may share a general policy with parents and guardians that the center enrolls children with religious exemptions to immunization requirements. Moreover, the department declines to create notification rules based on the reason for vaccination exemption. Under current child care regulations, a child is not required to have any vaccination which is medically contraindicated. This provision is unchanged in proposed NEW RULE LXV.

COMMENT 29: Commenters stated a child care center will have ages mixing at pick up and drop off or when children are part of a sibling group.

RESPONSE 29: The department recognizes that a sibling group may be mixed at pick up and drop off, like the sibling group mixes when they are at home. Similarly, children of different ages may have incidental contact during pick up and drop off at a child care center. Again, this reflects interactions children have during their daily lives outside of a child care center. Child care centers are required to follow health and safety regulations to minimize the spread of illness, including separating children into age groups.

COMMENT 30: Commenters stated allowing a family or group child care provider to choose to accept a religious exemption was discrimination against religious beliefs.

RESPONSE 30: The department respectfully disagrees. Montana RFRA prohibits state action that substantially burdens a person's exercise of religion, unless the action is essential to further a compelling state interest and is the least restrictive means of furthering that compelling state interest. The department proposed NEW RULE LXV so a home-based child care provider, but not a child care center, has the option whether they enroll children who are not vaccinated in accordance with the recommended minimum immunization requirements (NEW RULE LXIV). Home-based providers would have to maintain policies and procedures to inform parents and guardians if the child care provider accepts children with exemptions from required vaccines. This proposal would give choice to families with medical or religious exemptions, allow for parental choice in any additional vaccines a parent may choose for their child, and give in-home providers the choice to set policies to

align with the needs of their own households. Home-based business owners caring for mixed age groups are allowed autonomy in their choice to serve vaccination-exempt children; this will allow home-based providers to make choices for their own health and the health of their family members and the children in their care, who may not be old enough to be vaccinated. The department heard from some home-based child care providers who have immunocompromised family members that, because of their health concerns, they would be forced to stop providing child care if they had to take unvaccinated children into their homes. This would negatively impact the availability of quality child care in Montana where 60% of Montana counties already qualify as child care deserts. The need to protect the health of vulnerable Montanans and to address the lack of access to quality child care – which prevents many Montanans from working full time – are compelling justifications the department has taken into account in carefully tailoring this rule.
The department carefully weighed the needs of children receiving child care, their parents and guardians, and those of home-based providers. Consistent with the requirements and analyses established by Montana RFRA, proposed NEW RULE LXV balances the medical and religious autonomy of all, and does not unlawfully discriminate against those with religious objections to certain vaccines.

<u>COMMENT 31:</u> A commenter stated the religious exemption from immunizations ignores legislative intent because no religious exemption law was passed.

<u>RESPONSE 31:</u> The department acknowledges that, during the 2023 Legislative Session, Senate Bill 450 (SB 450) proposed a religious and a general, conscience-based exemption to required vaccinations for children attending child care and that the bill ultimately died in committee. The department, however, rejects the idea that the Legislature's consideration of, but failure to adopt, specific legislation on religious exemptions for child care vaccination requirements means that the department is somehow ignoring its statutory obligations or legislative intent. The comment ignores the fact that the Legislature adopted Montana RFRA in 2021, and that the department is obligated to comply with it. Montana RFRA compels the department to adopt a mechanism by which families with a religious objection to certain vaccines can be exempted from the child care vaccination requirement.
Moreover, by the time of the 2023 Legislative Session, the department had already indicated that it had the statutory authority – and the obligation under Montana RFRA – to establish, administratively, a religious exemption from the child care vaccination requirements. The department had twice proposed (and served on the applicable interim committee) rule packages that would have established such an exemption and, in October 2022, it issued guidance on non-enforcement of the vaccination requirements if the failure to comply was a result of a religious objection. In the department's view, no action (or inaction) by the Legislature that does not relieve the department of the obligation to comply with Montana RFRA can undercut the department's need to comply with that statute or constitute binding legislative intent that would preclude the department from establishing a religious exemption from the child care vaccination requirement based on Montana RFRA.

COMMENT 32: A commenter requested clarification of "any state's official parent-maintained immunization record" as defined in NEW RULE LXVI.

RESPONSE 32: The department believes the proposed rule is clear. If any other state in the United States has an official immunization record that can be maintained by a parent or guardian, it may be used as documentation of immunization status for purposes of enrolling a child in Montana child care.

COMMENT 33: A commenter stated a school cannot share immunization records with an after-school program due to FERPA and questioned what would occur in case of an outbreak.

RESPONSE 33: The department proposes a simplified way for immunization records to be maintained when an after-school program is located at a school. If a child care program does not have legal access to immunization records, a parent or guardian would be required to submit immunization records at the time of enrollment in the child care program (or authorize the school to release such records to the child care program).

NEW RULE XLI, Management of Illness, specifies when children must be excluded from child care facilities due to illness, regardless of vaccination status. Licensed or registered child care facilities would be required to adhere to this regulation in the event a child is ill.

COMMENT 34: Commenters stated illnesses will easily be spread to families due to unvaccinated children, causing loss of work time and productivity.

RESPONSE 34: The department notes NEW RULE XLI, Management of Illness, specifies when a child must be excluded due to illness and when a parent or guardian must be notified of symptoms. Additionally, parents and guardians must also exercise their own common sense and judgment on when to keep their children out of child care due to illness.

COMMENT 35: A commenter stated any individual diagnosed with a reportable illness, listed in NEW RULE XLI, Management of Illness, must be excluded until a local health authority clears a person to attend per ARM Title 37, chapter 114.

RESPONSE 35: Proposed NEW RULE XLI would update many exclusion and inclusion criteria (when a child must be sent home because of illness and when they can stay in, or return to, child care) to align with current standards from the American Academy of Pediatrics. It would also align exclusion requirements with House Bill 702 (HB 702) passed in the 2021 Legislative Session, which barred discrimination based on immunization status. HB 702 excludes from the bar on discrimination vaccination requirements set forth for day care facilities pursuant to Title 52, chapter 2, part 7, MCA (Montana Child Care Act). However, other child care rules that do not constitute "vaccination requirements" are subject to HB 702's bar on vaccination status discrimination. Current ARM 37.95.140(8) makes distinctions between people

based on their vaccination status, and the proposed rule would remove this distinction to align with the applicable requirements of HB 702.
NEW RULE XLI does not preclude local health authorities from performing their legal duties.

COMMENT 36: A commenter stated local public health authorities must be able to exclude anyone infected with a communicable disease or not entirely immunized from a child care facility when an outbreak occurs.

RESPONSE 36: Please see Response 35.

COMMENT 37: A commenter requested ARM 37.95.140(8) be reinstated, requiring anyone including child care facility staff not immunized to be removed from the child care facility until the outbreak is over.

RESPONSE 37: Current ARM 37.95.140(8) makes distinctions between people based on their vaccination status, and the proposed rules would remove this distinction to align with the applicable requirements of HB 702. For additional analysis, please see Response 35.

COMMENT 38: A commenter stated NEW RULE XLI(3) would require a person be excluded from child care facilities if they are exhibiting any of the listed symptoms, and would also require a health care evaluation before the person could return. The commenter further stated that a person may not seek medical attention if the symptoms are caused by a minor health concern.

RESPONSE 38: The symptoms enumerated in NEW RULE XLI(3) (i.e., uncontrolled coughing, breathing difficulty or wheezing, stiff neck, irritability, persistent crying, poor food or fluid intake, progressive rash with any other symptoms, a seizure, persistent abdominal pain for two or more hours, intermittent abdominal pain associated with fever) are severe and could indicate an illness that both threatens the well-being of the ill child and the other children in care. The proposed changes align with standards from the American Academy of Pediatrics. The department believes proposed NEW RULE XLI(3) helps ensure child care facilities remain healthful without imposing an undue burden on parents and guardians.

COMMENT 39: Commenters disagreed with the removal of written immunization records for child care facility staff.

RESPONSE 39: The department proposes to streamline recordkeeping requirements to decrease the burden on child care programs, to increase the interest in child care staff positions, and to support provider recruitment and retention. Under the current regulations, staff members are required to provide documentation of at least one dose of Tdap vaccine, and for all adults born in or after 1957, one dose of MMR vaccine.
The proposed rule change eliminates this minimal staff vaccination documentation requirement. The department found that many would-be child care employees

simply did not have access to this information, which delayed or prevented their hiring. This change would also align child care staff vaccination requirements with staff vaccination requirements applicable in public school settings.

COMMENT 40: A commenter stated registration and license applications should be submitted with a concurrent review by local public health, building, and fire authorities through the Environmental Health Tool Kit.

RESPONSE 40: The department thanks the commenter for the suggestion, but the department will adopt the rule as proposed. The department notes that inspection requirements vary under the proposed rules depending on the facility type. To reduce regulatory burden at the time of license or registration application and renewal, the proposed rules do not apply a one-size-fits-all approach to inspections.

COMMENT 41: A commenter suggested adding language to NEW RULE VII requiring a child care center to obtain a health inspection before licensing.

RESPONSE 41: The department proposes to issue a 90-day provisional license after the pre-inspection is passed. During the 90-day provisional license period, a child care center can get a health inspection. The department believes the issuance of a provisional license allows providers to start caring for children once the department is satisfied that the provider has met baseline safety and quality standards, while still providing time to come into total regulatory compliance. Also, the provisional licensing time gives the department the opportunity to observe the facility in operation during the provisional licensing period.
The department made this proposal recognizing that it takes time to arrange the necessary health inspections; this approach allows facilities to offer needed child care slots while working towards complete licensing compliance. Department oversight and the limited time period during which a facility may operate under the provisional license status help ensure children are safely cared for during this time.

COMMENT 42: A commenter disagreed with moving five-year olds into a category that requires a lower staff-to-child ratio, stating that the change will cause issues for child care providers serving this age group.

RESPONSE 42: The department is required to make this rule change in order to implement House Bill 422 (HB 422) from the 2023 Legislative Session. HB 422 made age-based changes to the child-to-staff ratios for children receiving care in child care centers.

COMMENT 43: A commenter stated HB 422 would lead to staff burnout with higher ratios.

RESPONSE 43: HB 422 determines what the maximum child-to-staff ratio must be. However, nothing in HB 422 or the rule changes that the department is adopting to implement HB 422 would preclude any child care provider from using a lower child-to-staff ratio if it determines that having more staff per child better suits the needs of their business, employees, and children in care.

COMMENT 44: A commenter requested revised language in NEW RULE XXXVIII(6) to add specific steps of wash, rinse, and sanitize with effective sanitizer.

RESPONSE 44: The department believes the proposed rule is clear and concise.

COMMENT 45: A commenter requested revised language in NEW RULE XXXVIII(8), changing from plastic or canvas to non-absorbent, easily cleanable material.

RESPONSE 45: The department believes the proposed rule is concise and includes the acceptable and safe materials for cot and mat surfaces.

COMMENT 46: A commenter requested NEW RULE XLIV(1)(a) be removed because the school equipment may not be used by a school-age program operating out of the school.

RESPONSE 46: In NEW RULE XLIV(1)(a), a license applicant would indicate if the commercial or public space (which could include a school) that is being used by the facility has already had an annual public health inspection. If so, this inspection record should be provided to the department and no additional annual public health inspection is required. The department places the responsibility on the applicant to provide a copy of the public health inspection, but it also allows an opportunity for an applicant to reduce the burden of multiple public health inspections.

COMMENT 47: A commenter asked who would grant a written plan to waive any environmental health chapter in NEW RULE XLIV(2).

RESPONSE 47: The department's Child Care Licensing Bureau would ultimately approve all regulatory waivers. During the waiver request review process, the department will consult with the appropriate public health authorities on any requested waiver of environmental rules.

COMMENT 48: A commenter requested revised language in NEW RULE XLVII(3) to align with school administrative rules because many child care centers do not have an HVAC system.

RESPONSE 48: This rule is intended to address facilities that use centralized ventilation systems and air filters, and not to impose additional requirements on facilities.

COMMENT 49: A commenter requested revised language in NEW RULE XLIX(3) to specify 100°-120°F is the required temperature for hot water at a hand sink that is supplied with both hot and cold water.

RESPONSE 49: The department believes NEW RULE XLIX(3) is clear and concise because it states hand sinks in all licensed and registered facilities must maintain water at a temperature of at least 100°F and not more than 120°F. This would include all hand sinks, so it is unnecessary to specify that hand sinks must be supplied by both hot and cold water with hot water meeting the 100°-120°F temperature requirement.

COMMENT 50: A commenter requested revised language in NEW RULE XLIX to require soap and towels at sinks.

RESPONSE 50: NEW RULE XLVII(2) requires soap and towels at sinks. To keep the proposed rules as concise and nonduplicative as possible, identical requirements will not appear in multiple rules.

COMMENT 51: A commenter suggested adding language in NEW RULE XLIX to include a mandatory bathing area.

RESPONSE 51: NEW RULE LIV outlines requirements if a child care facility chooses to have a bathing area. The department notes that there are other ways of cleaning children that do not require a dedicated bathing facility. This proposed rule outlines minimum requirements for bathing facilities in child care settings that choose to have a bathing area without imposing regulatory requirements that may not be feasible or desirable for those that do not have a dedicated bathing area.

COMMENT 52: A commenter asked if there would be approval for a sanitizer other than bleach.

RESPONSE 52: Unscented household bleach is readily available and inexpensive. The instructions outlined in NEW RULE LII(1)(b) (sanitation as it relates to cleaning and sanitizing toys), NEW RULE LVII (swimming pool sanitization), and NEW RULE LIII (cleaning surfaces used for diapering) are easy to understand and utilize. The department believes these proposed rules outline easily attainable practices without having to imagine every possible variation of available sanitizers.

COMMENT 53: A commenter requested revised language in NEW RULE LI(2) to include the steps to handle laundry outlined in current ARM 37.111.121.

RESPONSE 53: The department believes the proposed rule is clear and concise. The proposed rule is focused on the desired outcome, which is clean laundry that is not contaminated by soiled laundry and which does not present a health hazard to children. This rule decreases the current regulatory burden on child care providers while still establishing minimum safety requirements regarding soiled laundry.

COMMENT 54: A commenter requested revised language in NEW RULE LII(1)(b), adding additional requirements for adequate sanitation, how often toys should be washed, to add a step to air dry, and to add a requirement to use chemical strips for any sanitizers used.

RESPONSE 54: NEW RULE LII(1)(b) contains instructions on how to clean toys in a bleach and water solution, then in the sanitizing cycle of a dish washer or rinsed with clean hot water, then air dried. The process is easy to follow. The addition of a chemical test strip is unnecessary if the process outlined in NEW RULE LII(1)(b) is followed.

COMMENT 55: A commenter stated supervision could be difficult if the diapering area is separate from play areas at registered child care facilities.

RESPONSE 55: NEW RULE LIII(1)(a) requires the diaper changing area be separate from food preparation and play areas. The department believes this is a minimally intrusive requirement that helps ensure there is not contamination between diapering and eating and playing areas.

COMMENT 56: A commenter suggested changing "wash basin" to "hand sink" in NEW RULE LIII(1)(b).

RESPONSE 56: The department will keep current proposed text. A diapering area may not contain a hand sink, so NEW RULE LIII(1)(b) would allow a child care provider to use a wash basin for diapering needs. This allows for flexibility in meeting the health and safety requirements while protecting sanitation standards.

COMMENT 57: A commenter suggested revised language in NEW RULE LIII(1)(h) to specify sanitizer concentration and use of test strips.

RESPONSE 57: The department will keep current proposed rule text. NEW RULE LIII(1)(h) contains instructions on how to sanitize the diapering area with a bleach to water solution, then rinse with clean water, and finally to air dry. The process is easy to follow. The addition of a chemical test strip is unnecessary if the process outlined in NEW RULE LIII(1)(b) is followed.

COMMENT 58: A commenter suggested revised language in NEW RULE LIII(1)(k) to include mandatory handwashing, and to specify where the diapering station and hand sink should be located.

RESPONSE 58: The department will keep the current proposed text. NEW RULE XLVIII outlines that staff, volunteers, and children at licensed and registered child care facilities must learn and follow good handwashing practices. The proposed rule further requires soap and towels or hand-drying devices at all hand washing sinks. Since the location and layout of child care facilities vary, the department has only proposed requirements on what is required at a hand washing sink, not where hand sinks must be located. NEW RULE LIII(1)(k) requires the hands of a diapered child be washed after changing, but it does not require a hand sink be located in a specific place.

<u>COMMENT 59:</u> A commenter suggested revised language in NEW RULE LIII(2) to change the water sampling from January and June to once between April-June and once between September-October.

<u>RESPONSE 59:</u> The department retained the same water source testing requirements in ARM 37.95.225(1)(b) for NEW RULE LV(2)(a). The department has been utilizing testing in January and June since 2006 and has found no issues with the timing of required testing.

<u>COMMENT 60:</u> A commenter suggested adding language in NEW RULE LV(2)(c) that a corrective action plan would be sent to the local public health authority.

<u>RESPONSE 60:</u> The department will keep current proposed text. The department will notify the local public health authority if there is a public health concern regarding a child care facility's water supply.

<u>COMMENT 61:</u> A commenter suggested adding a required food safety course to NEW RULE LVIII.

<u>RESPONSE 61:</u> NEW RULE LVIII outlines minimum food safety requirements to meet licensing and registration standards. The department believes that the proposed rule helps reduce the risk of foodborne illness, without overburdening providers, especially home-based providers, with unduly prescriptive regulations.

<u>COMMENT 62:</u> A commenter suggested adding language in NEW RULE LVIII(1)(e) to dictate the steps for proper handwashing.

<u>RESPONSE 62:</u> The department will keep current proposed text. NEW RULE XLVIII requires child care facilities, except RCEs, to learn and follow good handwashing practices. Additionally, the same rule requires these facilities to post handwashing signs in certain areas as reminders of good hygiene practice. The department believes these regulations are sufficient.

<u>COMMENT 63:</u> A commenter requested clarification on language in NEW RULE LVIII(2)(a) that a registered child care provider can serve home-canned food so long as the provider is not participating in the Child and Adult Care Food Program (CACFP).

<u>RESPONSE 63</u>: The rule change would prohibit a registered child care facility from serving home-canned food to children, regardless of the facility's participation in CACFP. The department has no way of ensuring home-canned foods were prepared or maintained safely.

<u>COMMENT 64:</u> A commenter suggested adding instructions in NEW RULE LVIII(2)(c) on how to cool down and reheat food.

RESPONSE 64: The department will keep current proposed rule text. NEW RULE LVIII specifies a desired outcome–that is, reducing the risk of foodborne illnesses in child care facilities. The department is setting the desired outcome and granting facilities needed flexibility when determining how to meet these regulatory guidelines.

COMMENT 65: A commenter suggested adding a requirement in NEW RULE LVIII on where to store and how to use chemicals, a requirement to fit all dirty dishes in a dishwasher at one time, a requirement that food should be protected from cross contamination, and clarification that household refrigerators may be used in child care centers.

RESPONSE 65: NEW RULE XXIX outlines where and how cleaning products can be stored. The department is setting the desired outcome for each step, and allowing child care facilities and their staff to determine how the requirement will be met. It is the department's position that other proposed rules being adopted in this adoption notice adequately address this commenter's concerns without being duplicative, unduly prescriptive, or overly burdensome. For example, NEW RULE LVIII(4) specifies that a domestic style dishwasher must use the heat option to dry dishes, and NEW RULE LVIII(5)(a) outlines how dishes must be hand washed. The rules address good dishwashing practices.

NEW RULE LVIII(2)(b) requires food served family-style to be disposed of after a meal service, and NEW RULE LVIII(2)(c)(ii) does not allow new and old food to be mixed. The department proposes to meet health and safety standards for food stored in a refrigerator in NEW RULE LVIII(2)(c). The department's position is that these proposed rules are adequate to help ensure healthy facilities.

The proposed rules do not prohibit the use of household, or non-commercial, refrigerators in child care centers. Again, the department intends the food preparation and handling regulations to provide minimum standards necessary to reduce the risk of foodborne illnesses. Individual providers have the flexibility and autonomy to decide how these standards are met based on their individual facilities.

COMMENT 66: A commenter requested clarification on language in NEW RULE LX on who will determine compliance with Child and Adult Care Food Program (CACFP) food guidelines.

RESPONSE 66: Child care providers participating or interested in participating in CACFP should refer questions to their sponsor organization.

COMMENT 67: A commenter suggested if a child is in a choking incident the parent or guardian should be notified in NEW RULE XXIX.

RESPONSE 67: NEW RULE XXI(1)(e) requires a child care provider to have written policies on calling parents or guardians when a child is injured. The department believes this proposed new rule addresses notification requirements in the event of a choking event.

COMMENT 68: A commenter suggested adding language to NEW RULE XXIX(2) to include any material labeled keep out of reach of children.

RESPONSE 68: The department appreciates the comment. The items enumerated in NEW RULE XXIX(2) are in addition to NEW RULE XXIX(1), which states providers are responsible for keeping hazardous materials and objects inaccessible to children in care. The department believes that these safety provisions are adequate to encompass materials that need to be kept out of reach of children. Providers are also expected to use common sense when identifying potentially hazardous materials and not rely solely on labeling.

COMMENT 69: A commenter requested clarification on who would test lead paint in NEW RULE XXIX(4)(f).

RESPONSE 69: To provide appropriate flexibility, the department has chosen to identify the requirement, but declines to prescribe the person(s) or organization(s) that can conduct these tests for providers.

COMMENT 70: A commenter disagreed with NEW RULE XXIX(5) not prohibiting guns from being stored on a child care facility's premise.

RESPONSE 70: Child care facilities can be located in both commercial and residential property. The department's role is to adopt and enforce health and safety standards for children in care, so as to ensure their health, safety, and well-being, not to restrict gun ownership on the part of child care providers. NEW RULE XXIX(5) helps ensure children in child care do not have access to guns or ammunition, while not impermissibly limiting legal access to guns.

COMMENT 71: A commenter suggested adding language to NEW RULE XXIX(8)(a) to increase the diameter of toys and objects from one inch to 1.25 inches.

RESPONSE 71: The department has retained the same standards for diameter of objects in ARM 37.95.121(8) for NEW RULE XXIX(8)(a). These standards have been in place since 2018, and it is the department's position that this regulation best protects children from the hazard of choking.

COMMENT 72: Commenters supported the option to hire a 16-year-old as outlined in NEW RULE LXXII(3)(b) and NEW RULE LXXV(1)(b).

RESPONSE 72: The department thanks commenters for their support.

COMMENT 73: A commenter stated home-based family and group child care providers should be licensed, not registered.

RESPONSE 73: Section 52-2-703(12), MCA, provides that family day-care homes and group day-care homes shall be registered. The department's rules must be in compliance with this statutory provision.

COMMENT 74: A commenter supported child care staff being called Early Childhood Teachers.

RESPONSE 74: The department thanks the commenter for their support.

5. In the event that the Children, Families, Health, and Human Services Interim Committee withdraws its written objection pursuant to 2-4-406(2), MCA, the effective date is April 13, 2024. In the event that the Children, Families, Health, and Human Services Interim Committee does not withdraw its written objection pursuant to 2-4-406(2), MCA, the effective date is the day after final adjournment of the regular session of the 69th Legislature. The department will publish a notice confirming the effective date.

/s/ Heidi Sanders
Heidi Sanders
Rule Reviewer

/s/ Charles T. Brereton
Charles T. Brereton, Director
Department of Public Health and Human Services

Certified to the Secretary of State April 2, 2024

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

In the matter of the amendment of ARM 37.50.501, 37.50.502, 37.50.505, 37.50.510, and 37.50.511 and the repeal of ARM 37.50.506 pertaining to foster care support services	))))))	NOTICE OF AMENDMENT AND REPEAL

TO: All Concerned Persons

1. On January 12, 2024, the Department of Public Health and Human Services published MAR Notice No. 37-1051 pertaining to the public hearing on the proposed amendment and repeal of the above-stated rules at page 34 of the 2024 Montana Administrative Register, Issue Number 1.

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

3. No comments or testimony were received.

4. The department intends to apply the above-stated rule amendments and rule repeal retroactively to July 1, 2023.

/s/ Mark Prichard	/s/ Charles T. Brereton
Mark Prichard	Charles T. Brereton, Director
Rule Reviewer	Department of Public Health and Human Services

Certified to the Secretary of State April 2, 2024.

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

In the matter of the adoption of NEW RULE I pertaining to the Autism Grant Program	)))	NOTICE OF ADOPTION

TO: All Concerned Persons

1. On January 12, 2024, the Department of Public Health and Human Services published MAR Notice No. 37-1055 pertaining to the public hearing on the proposed adoption of the above-stated rule at page 38 of the 2024 Montana Administrative Register, Issue Number 1.

2. The department has adopted NEW RULE I (37.34.2901) as proposed.

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

<u>COMMENT #1</u>: One commenter expressed support and appreciation for this rulemaking.

<u>RESPONSE #1</u>: The department appreciates the commenter's support.

<u>COMMENT #2</u>: One commenter asked if a request for proposals will be posted on the DPHHS eMACS system.

<u>RESPONSE #2</u>: The department will provide further information and instructions about the request for proposals process for the autism grant program. It currently plans for proposals to be submitted through Submittable.com. The applicant would be required to create an account and search for the Autism Facilities Grant Program by clicking the "Discover" button on the top of the screen. Creating an account with Submittable is free, and there is no cost for applying through Submittable. Due to the timing of filing this adoption notice, the deadline for submitting proposals has been extended to May 6, 2024.

<u>/s/ Brenda K. Elias</u>	<u>/s/ Charles T. Brereton</u>
Brenda K. Elias	Charles T. Brereton, Director
Rule Reviewer	Department of Public Health and Human Services

Certified to the Secretary of State April 2, 2024.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 42.13.402, 42.13.406, 42.13.701, and 42.13.702 pertaining to beer and wine tax reporting changes to implement HB 124 and SB 20 (2023)	)	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On February 9, 2024, the Department of Revenue published MAR Notice No. 42-1075 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 237 of the 2024 Montana Administrative Register, Issue Number 3.

2. On March 1, 2024, the department held a public hearing to consider the proposed amendment. Debra Pitassy of the Montana Beer and Wine Distributors Association appeared and provided brief commentary in support for the rulemaking. No other interested persons appeared, and the department received no written comments in support of, or opposition to, the rulemaking.

3. The department has amended the above-stated rules as proposed.

/s/ Todd Olson
Todd Olson
Rule Reviewer

/s/ Scott Mendenhall
Scott Mendenhall
Deputy Director of Revenue

Certified to the Secretary of State April 2, 2024.

NOTICE OF FUNCTION OF ADMINISTRATIVE RULE REVIEW COMMITTEES

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 (Commissioner of Securities and Insurance)
- Office of Economic Development
- Division of Banking and Financial Institutions
- Alcoholic Beverage Control Division
- Cannabis Control Division

Education Interim Committee

- State Board of Education
- Board of Public Education
- Board of Regents of Higher Education
- Office of Public Instruction
- Montana Historical Society
- Montana State Library

Children, Families, Health, and Human Services Interim Committee

- Department of Public Health and Human Services

Law and Justice Interim Committee

- Department of Corrections
- Department of Justice

Energy and Telecommunications Interim Committee

- Department of Public Service Regulation

Revenue Interim Committee

- Department of Revenue
- Montana Tax Appeal Board

State Administration and Veterans' Affairs Interim Committee

- Department of Administration
- Montana Public Employee Retirement Administration
- Board of Investments
- Department of Military Affairs
- Office of the Secretary of State
- Office of the Commissioner of Political Practices

Transportation Interim Committee

- Department of Transportation
- Motor Vehicle Division (Department of Justice)

Environmental Quality Council

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

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

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

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

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

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

Use of the Administrative Rules of Montana (ARM):

Known Subject

1. Consult ARM Topical Index.
Update the rule by checking recent rulemaking and the table of contents in the last Montana Administrative Register issued.

Statute

2. Go to cross reference table at end of each number and title which lists MCA section numbers and department corresponding ARM rule numbers.

RECENT RULEMAKING BY AGENCY

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies that have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through December 31, 2023. This table includes notices in which those rules adopted during the period October 20, 2023, through March 22, 2024, 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, 2023, 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 2023 or 2024 Montana Administrative Register.

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

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