

MONTANA ADMINISTRATIVE REGISTER

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MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 16

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 The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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 Adoption Notices 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 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 DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES
OF THE STATE OF MONTANA

In the matter of the repeal of ARM)	NOTICE OF PROPOSED REPEAL
37.30.2601, 37.30.2605, and)	
37.30.2608 pertaining to the)	NO PUBLIC HEARING
Vocational Rehabilitation Visual)	CONTEMPLATED
Medical Program)	

TO: All Concerned Persons

1. The Department of Public Health and Human Services proposes to repeal the above-stated rules.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Public Health and Human Services no later than 5:00 p.m. on September 6, 2024, to advise us of the nature of the accommodation that you need. Please contact Bailey Yuhas, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena MT 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail hhsadminrules@mt.gov.

3. The department proposes to repeal the following rules:

37.30.2601 VISUAL MEDICAL PROGRAM: PURPOSES

AUTH: 53-7-302, MCA
IMP: 53-7-302, MCA

37.30.2605 VISUAL MEDICAL PROGRAM: SERVICES

AUTH: 53-7-302, MCA
IMP: 53-7-302, MCA

37.30.2608 VISUAL MEDICAL PROGRAM: ELIGIBILITY REQUIREMENTS

AUTH: 53-7-302, MCA
IMP: 53-7-302, MCA

4. STATEMENT OF REASONABLE NECESSITY

ARM 37.30.2601, 37.30.2605, and 37.30.2608 comprise the entirety of the Visual Medical Program subchapter. The department seeks to repeal the rules, because

the Visual Medical Program no longer exists, and Medicaid now covers the services that were previously provided by the Visual Medical Program.

The Visual Medical Program had the purpose of "prevent[ing] blindness, restor[ing] sight, and provid[ing] appropriate treatment where loss of sight cannot be prevented or sight cannot be restored." ARM 37.30.2601. For this purpose, the Visual Medical Program provided the following services: "(a) diagnostic services; (b) surgery and treatment services; (c) hospitalization services; (d) prosthetic appliances, if determined to be necessary in treatment; (e) transportation services; and (f) follow-up services." ARM 37.30.2605.

The services provided by the Visual Medical Program are now provided by Medicaid. See ARM Title 37, chapters 84 and 86. With the implementation of Medicaid expansion, the funding for the Visual Medical Program was eliminated. The department seeks to repeal the rules to reduce confusion regarding a program that no longer exists.

Fiscal Impact

This proposed rule amendment has no fiscal impact. The program is no longer funded, and costs were shifted to Medicaid expansion.

5. The proposed rule changes are intended to be effective the day after the adoption notice is published.

6. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to: Bailey Yuhas, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena MT 59604-4210, no later than 5:00 p.m. on September 20, 2024. Comments may also be faxed to (406) 444-9744 or e-mailed to hhsadminrules@mt.gov.

7. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to Bailey Yuhas at the above address no later than 5:00 p.m., September 20, 2024.

8. If the agency receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. As the program provided by these rules is no longer funded, there are no people or members of associations who could be directly affected by the proposed action.

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

10. An electronic copy of this notice is available on the department's web site at <https://dphhs.mt.gov/LegalResources/administrativerules>, or through the Secretary of State's web site at rules.mt.gov.

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

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

/s/ Olivia Schuler
Olivia Schuler
Rule Reviewer

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

Certified to the Secretary of State August 13, 2024.

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

In the matter of the adoption of NEW) NOTICE OF PUBLIC HEARING ON
RULE I pertaining to HCBS quality) PROPOSED ADOPTION
assurance reviews)

TO: All Concerned Persons

1. On September 16, 2024, at 2:00 p.m., the Department of Public Health and Human Services will hold a public hearing via remote conferencing to consider the proposed adoption of the above-stated rule. Interested parties may access the remote conferencing platform in the following ways:

(a) Join Zoom Meeting at: <https://mt-gov.zoom.us/j/86356655288?pwd=NOaf3s9VOaetNV74CUHme6KQzL9Obt.1>, meeting ID: 863 5665 5288, and password: 783825; or

(b) Dial by telephone: +1 646 558 8656, meeting ID: 863 5665 5288, and password: 783825. Find your local number: <https://mt-gov.zoom.us/u/kdtNkf6bNL>.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Public Health and Human Services no later than 5:00 p.m. on September 2, 2024, to advise us of the nature of the accommodation that you need. Please contact Bailey Yuhás, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail hhsadminrules@mt.gov.

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

NEW RULE I HOME AND COMMUNITY BASED SERVICES FOR ELDERLY AND DISABLED PERSONS: QUALITY ASSURANCE REVIEWS (1) As used in this rule, the term "provider" means case management teams, independence advisors, and financial managers.

(2) The department will conduct comprehensive provider evaluations at least once every three years, to assure 1915(b) and 1915(c) waivers meet department and federal quality assurance requirements pursuant to 42 CFR 441.302.

(3) The department will conduct quality assurance reviews (QARs) on the provider's premises and/or through desk audits. Upon the department's request, providers must supply the documentation that the department determines is necessary to complete a QAR no later than 30 days following the request for documentation.

(4) The department will determine when reviews will take place. The department will assess compliance with the following service delivery standards:

(a) required documentation;

- (b) service plan completeness;
 - (c) service plan reevaluation requirements;
 - (d) health and safety requirements;
 - (e) principles of charting;
 - (f) waitlist requirements;
 - (g) plan facilitator requirements; and
 - (h) financial accountability.
- (5) The department will assess compliance with the following standards related to provider-prepared areas:
- (a) administration and use of the member survey;
 - (b) case manager qualifications;
 - (c) member involvement;
 - (d) serious occurrence reporting requirements; and
 - (e) quality improvement project reporting.
- (6) The department will review a provider's case samples comprising at least 10 percent of Big Sky Waiver members, along with a 5 percent random sample of members admitted during the specific review period.
- (7) Compliance requires that the provider meet all established standards in 86 percent of the cases reviewed, under both service delivery and provider-prepared standards.
- (a) If compliance is below 86 percent in both areas, or if it is 50 percent or less in one or both areas, the next QAR will be scheduled within one year.
 - (b) If compliance is below 86 percent in one or two areas, but more than 50 percent in both areas, the next QAR will be scheduled within two years.
 - (c) If compliance is 86 percent or greater in both areas, the next QAR will be scheduled in three years.
- (8) Incidents of non-compliance identified through a quality assurance communication (QAC) require a remediation plan or recovery of HCBS funds. Any QACs must be responded to and resolved by a provider within 30 days.

AUTH: 53-2-201, 53-6-113, 53-6-401, MCA
IMP: 53-2-201, 53-6-101, 53-6-401, MCA

4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) proposes to adopt NEW RULE I for quality assurance reviews of Big Sky Waiver providers, which include case management teams, independence advisors, and financial managers. The proposed rule would take a comprehensive approach to improving the quality assurance review process for providers.

The current policy governing the quality assurance review process is set forth in section 608 of the Big Sky Waiver Policy Manual. This policy is outdated due, in part, to changes in the performance measures for the upcoming waiver renewal. Additionally, the policy is not adopted and incorporated by reference in rule.

The department is proposing to replace the policy with NEW RULE I to provide standardized quality assurance review requirements that are intended to increase transparency and accountability, standardize data and monitoring, and create opportunities for providers to promote active beneficiary engagement in their service delivery model. The new rule would provide a consistent approach to collecting data for ensuring compliance with federal regulatory requirements under 42 CFR 441.302 and assurances made by the department in the 1915(b) and 1915(c) Big Sky Waiver. These proposed rule changes would also strengthen oversight of Big Sky Waiver member health and welfare.

Montana is required to submit an evidentiary report to the Centers for Medicare & Medicaid Services on each performance measure approximately 18 months prior to the waiver renewal date that includes remediation measures taken for each systemic and individual instance when a performance measure has less than 100% compliance. Adoption of the proposed rule would help ensure that Montana receives a 100% compliance rating on future evidentiary reports.

Fiscal Impact

There is no anticipated fiscal impact associated with this rulemaking.

5. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Bailey Yuhas, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail hhsadminrules@mt.gov, and must be received no later than 5:00 p.m., September 20, 2024.

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

7. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 5 above.

8. An electronic copy of this notice is available on the department's web site at <https://dphhs.mt.gov/LegalResources/administrativerules>, or through the Secretary of State's web site at rules.mt.gov.

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

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

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

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

/s/ Robert Lishman
Robert Lishman
Rule Reviewer

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

Certified to the Secretary of State August 13, 2024.

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

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 37.106.2602, 37.106.2603,) PROPOSED AMENDMENT AND
37.106.2606, 37.106.2609,) REPEAL
37.106.2616, 37.106.2620, and)
37.106.2621 and the repeal of ARM)
37.106.2608 pertaining to adult day)
care facilities)

TO: All Concerned Persons

1. On September 12, 2024, at 2:00 p.m., the Department of Public Health and Human Services will hold a public hearing via remote conferencing to consider the proposed amendment and repeal of the above-stated rules. Interested parties may access the remote conferencing platform in the following ways:

(a) Join Zoom Meeting at: <https://mt-gov.zoom.us/j/87079726876?pwd=unTm5ZTli1SOB88RyCaRZkUeu40Zbb.1>, meeting ID: 870 7972 6876, and password: 922811; or

(b) Dial by telephone: +1 646 558 8656, meeting ID: 870 7972 6876, and password: 922811. Find your local number: <https://mt-gov.zoom.us/j/87079726876?pwd=unTm5ZTli1SOB88RyCaRZkUeu40Zbb.1>.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Public Health and Human Services no later than 5:00 p.m. on August 29, 2024, to advise us of the nature of the accommodation that you need. Please contact Bailey Yuhas, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail hhsadminrules@mt.gov.

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

37.106.2602 GENERAL SERVICES, ADMINISTRATION AND STAFFING

(1) An adult day care center shall provide ~~the staff assistance to clients that each requires for~~ with activities of daily living, including but not limited to eating, walking, and grooming.

(2) remains the same.

(a) the other facility may provide to day care clients any of the services for which the other facility is licensed, subject to the limitation that overnight service to an adult day care client ~~may be provided for no more than seven successive nights is prohibited;~~

(b) and (c) remain the same.

(3) An adult day care center ~~that is not operated on the premises of another licensed health care facility~~ may not provide overnight service.

(4) and (5) remain the same.

(6) There must be a written agreement between the center and each client or ~~other person responsible for the client~~ the client's legal representative pertaining to cost of care, type of care, services to be provided, and the manner by which the responsible party will be notified of significant changes in the client's condition and the need to seek emergency care for the client.

(7) ~~The family member or other person responsible for~~ legal representative of a client must be notified promptly if the client is removed from the center. A notation of the date of the contact and the person contacted must be made in the client's record.

(8) Each client must have access to a telephone ~~at a convenient location within the center.~~

(9) and (10) remain the same.

(11) Each adult day care center must employ ~~a manager~~ an administrator who must be in good physical and mental health, be of reputable and responsible moral character, and exhibit concern for the safety and well being of clients, and who:

(a) is at all times responsible for the center and ensures appropriate supervision of the clients; and

~~(b) has completed high school or has a general education development (GED) certificate;~~

~~(c)(b)~~ has knowledge of and the ability to conform to the applicable laws and rules governing adult day care centers; ~~and~~

(12) The owner of an adult day care center who meets the qualifications listed in (11) ~~above~~ may serve as the ~~manager~~ administrator.

(13) The ~~manager~~ administrator must:

(a) through (f) remain the same.

(g) comply with the provisions of the Montana ~~Elder and Developmentally Disabled Abuse Prevention~~ Vulnerable Adult Prevention of Abuse Act, 52-3-801 et seq., MCA;

(h) remains the same.

(i) maintain a personnel record for each employee, including for substitute personnel, that meets the requirements of ARM 37.106.2620(3), and retain it for at least one year after the employee terminates employment; and

~~(j) maintain a list of the names, addresses, and telephone numbers of all employees, including substitute personnel, and ensure that all such lists for the prior 12 months are retained on the premises; and~~

~~(k)(j)~~ maintain an ongoing census of clients, documenting their attendance, and retain census data covering at least the past 12 months.

(14) through (17) remain the same.

AUTH: 50-5-103, MCA

IMP: 50-5-103, MCA

37.106.2603 POLICIES AND PROCEDURES (1) through (1)(c)(iii) remain the same.

(iv) a disaster and fire plan meeting the requirements of ARM ~~37.106.2608 37.106.322~~.

(2) remains the same.

AUTH: 50-5-103, MCA

IMP: 50-5-103, MCA

37.106.2606 CONSTRUCTION (1) and (2) remain the same.

~~(3) An adult day care center must meet the water supply system requirements of ARM 37.111.115 and the sewage system requirements of ARM 37.111.116.~~

~~(4)(3)~~ The department hereby adopts and incorporates by reference ARM ~~37.111.115~~ 37.111.110, which sets forth requirements for construction and maintenance of water supply systems, and ARM 37.111.116, which sets forth requirements for construction and maintenance of sewage systems. ~~Copies of the materials cited above are available from the Department of Public Health and Human Services, Quality Assurance Division, 2401 Colonial Drive, P.O. Box 202953, Helena, MT 59620-2953.~~

AUTH: 50-5-103, MCA

IMP: 50-5-103, MCA

37.106.2609 INFECTION CONTROL ~~(1) An adult day care center must ensure that each of its employees provides the center, prior to the time of employment, with documentation from a physician stating that the employee is free from communicable tuberculosis, and with the same documentation annually thereafter.~~

~~(2) The center must ensure that, on the first day of service and annually thereafter, each client in that center provides documentation from a physician showing that the client is free from communicable tuberculosis.~~

(3) remains the same but is renumbered (1).

(a) Any employee contracting a communicable disease that is transmissible to clients through food handling or personal care may not appear at work until the infectious disease can no longer be transmitted. The decision to return to work must be made by the ~~manager~~ administrator in accordance with the policies and procedures instituted by the center; and

(b) If, after admission, a client is suspected of having a communicable disease that would endanger the health and welfare of other clients, the ~~manager~~ administrator shall contact the client's physician and shall ensure that appropriate safety measures are taken on behalf of that client and the other clients.

AUTH: 50-5-103, MCA

IMP: 50-5-103, MCA

37.106.2616 FOOD SERVICE (1) through (1)(b) remain the same.

- (c) three meals per 24 16-hour period ~~to overnight clients~~.
- (2) and (3) remain the same.
- (4) Foods must be served in such amounts and in such a variety to meet the nutritional needs of each client.
- (5) remains the same.
- (6) Potentially hazardous food, such as meat and milk products, must be stored at ~~45~~ 41°F or below. Hot food must be kept at 140°F or above during preparation and serving.
- (7) Freezers must be kept at a temperature of 0°F or below and refrigerators must be kept at a temperature of ~~45~~ 41°F or below. Thermometers must be placed in the warmest area of the refrigerator and freezer to assure proper temperature.
- (8) through (12) remain the same.

AUTH: 50-5-103, MCA

IMP: 50-5-103, MCA

37.106.2620 CLIENT AND PERSONNEL RECORDS (1) and (2) remain the same.

- (3) The center must maintain a personnel record for each employee, ~~including for substitute personnel~~, that includes at least the following:
 - (a) employment application or contract;
 - (b) ~~employment contract~~ orientation;
 - (c) ~~TB test records~~;
 - (d) ~~references~~;
 - (e)(c) performance appraisals, if applicable; and
 - (f)(d) a description of any significant incident involving both the employee and a client and its consequences.

AUTH: 50-5-103, MCA

IMP: 50-5-103, MCA

37.106.2621 MEDICATIONS (1) and (2) remain the same.

- (3) The center must maintain for each client a medication administration record listing all medications ~~used and all doses taken or not taken by the client administered and those that are refused or not administered~~.

AUTH: 50-5-103, MCA

IMP: 50-5-103, MCA

- 4. The department proposes to repeal the following rule:

37.106.2608 DISASTER AND FIRE PLAN

AUTH: 50-5-103, MCA

IMP: 50-5-103, MCA

- 5. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) is proposing to amend ARM 37.106.2602, 37.106.2603, 37.106.2606, 37.106.2609, 37.106.2616, 37.106.2620, and 37.106.2621. The department is proposing to repeal ARM 37.106.2608.

The adult day care administrative rules have not had a full subchapter review and update since 2002. In review of this subchapter, amendment to several rules is required to bring licensure requirements up to current standards and practices. Additionally, the repeal of ARM 37.106.2608 is proposed since adult day care facilities already have disaster and fire plan requirements set forth in ARM 37.106.322, minimum standards for all health care facilities.

ARM 37.106.2602

The department proposes amendment to this rule to replace the language pertaining to the requirements of assistance with the language of activities of daily living and overnight stays. Overnight stays are removed to align with the definition of an adult day care facility found in 50-5-101, MCA. The amendments also change "person responsible for client" to "client's legal representative," and "manager" to "administrator." These revised terms are the most used among health care and residential settings, and reflect current usage. Amendment is needed to (13)(g) to update the title of the law that is referenced, and removal of (13)(j) is proposed as there are separate requirements for staff files.

ARM 37.106.2603

The department proposes amendment to this rule to refer the disaster and fire plan requirements to the minimum standards for all health care facilities disaster and fire plan requirements located in ARM 37.106.322. This is necessary to provide consistency of expectations throughout all health care facilities.

ARM 37.106.2606

The department proposes amendment to this rule to combine the requirement to adhere to water supply and sewage systems requirements found in ARM Title 37, chapter 111, subchapter 1, instead of having two separate rules requiring the compliance with the rules. Since regulations are available online, the department proposes to remove the portion of the regulation that indicates that a copy of the cited materials can be requested from the department.

ARM 37.106.2608

The department proposes repeal of this rule. Disaster and fire planning is addressed in ARM Title 37, chapter 106, subchapter 3, under Minimum Standards for All Health Care Facilities, which is applicable to adult day care facilities. The minimum requirements are listed in that subchapter and are either repeated here or directly conflict with the requirements listed in ARM 37, chapter 106, subchapter 3. Repeal of this rule allows for consistency by using the minimum standards for all health care facilities.

ARM 37.106.2609

The department proposes amendment to this rule to remove the requirement for staff and client initial and annual tuberculosis screening and testing. Pursuant to Centers for Disease Control and Prevention (CDC) guidelines, annual TB screening and testing are not recommended unless there is a known exposure or ongoing transmission at a health care facility. Montana is listed as low risk, with the most recent data showing three cases in 2021.

Further, the department proposes to amend ARM 37.106.2609 to remove the reference to a "manager" and replace it with "administrator," referencing the most commonly used term.

ARM 37.106.2616

The department proposes amendment to this rule to require facilities to provide three meals per day for a client of an adult day care facility that remains at the facility for 16 hours or more. Section 50-5-101, MCA specifies adult day care facilities serve clients who do not remain at the facility overnight, so that terminology would be removed from (1)(c), to bring the rule into compliance with the statute. Further, the department proposes amendment to this rule to change the maximum temperature of a refrigerator in which food is kept from 45 to 41 degrees Fahrenheit. This would reflect current standards of food sanitation. Some additional wording changes are proposed for clarity.

ARM 37.106.2620

The department proposes amendment to this rule to update the required materials that must be found in client and staff files. The department removes the specific "substitute personnel" from the rule as the criteria must be for all personnel regardless of how often or when they work. The department proposes to add "employment contract" to (3)(a) after "application" as this would be one or the other, not both. The department also proposes to add orientation to (3)(b); it is important to document that staff are oriented to providing services to clients served at the adult day care facility. "If applicable" would be added to "performance appraisals," to coincide with standards that performance reviews/appraisals are not routinely done.

ARM 37.106.2621

The department proposes amendment to this rule to make clearer the requirement of documentation on the medication administration record. Medication that is administered, and medication that is missed or refused, would be documented on the medication administration record.

Fiscal Impact

These proposed rule amendments and repeal have no fiscal impact.

6. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be

submitted to: Bailey Yuhas, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail hhsadminrules@mt.gov, and must be received no later than 5:00 p.m., September 20, 2024.

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

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

9. An electronic copy of this notice is available on the department's web site at <https://dphhs.mt.gov/LegalResources/administrativerules>, or through the Secretary of State's web site at rules.mt.gov.

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

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

/s/ Flint Murfitt
Flint Murfitt
Rule Reviewer

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

Certified to the Secretary of State August 13, 2024.

BEFORE THE PUBLIC EMPLOYEES' RETIREMENT BOARD
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 2.43.3545 pertaining to)
distribution to participant and)
2.43.3546 pertaining to distribution)
upon death of participant)

TO: All Concerned Persons

1. On July 5, 2024, the Public Employees' Retirement Board published MAR Notice No. 2-43-649 pertaining to the proposed amendment of the above-stated rules at page 1498 of the 2024 Montana Administrative Register, Issue Number 13.

2. The Public Employees' Retirement Board has amended ARM 2.43.3545 as proposed.

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

2.43.3546 DISTRIBUTION UPON DEATH OF PARTICIPANT (1) through (3) remain as proposed.

(4) If the beneficiary is the participant's spouse, the spouse may, within 60 days of the participant's death, elect to defer distribution until a date no later than the date the participant would have attained:

(i) through (iii) remain as proposed but are renumbered (a) through (c).

4. The change is warranted due to an inadvertent misnumbering of the subsections in the proposal notice.

5. No comments or testimony were received.

/s/ Nicholas Domitrovich
Nicholas Domitrovich
Chief Legal Counsel
and Rule Reviewer

/s/ Maggie Peterson
Maggie Peterson
President
Public Employees' Retirement Board

Certified to the Secretary of State August 13, 2024.

BEFORE THE OFFICE OF PUBLIC INSTRUCTION
OF THE STATE OF MONTANA

In the matter of the adoption of NEW) NOTICE OF ADOPTION
RULE I pertaining to Education)
Savings Accounts)

TO: All Concerned Persons

1. On May 24, 2024, the Superintendent of Public Instruction published MAR Notice No. 10-16-133 pertaining to the public hearing on the proposed adoption of the above-stated rule at page 1085 of the 2024 Montana Administrative Register, Issue Number 10.

2. The Superintendent has adopted the following rule as proposed: NEW RULE I (10.16.4001).

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

COMMENT #1: Multiple commenters stated their opposition to HB 393 generally, but they did not provide additional, substantive comment about the proposed rule.

RESPONSE #1: The Superintendent appreciates the public comments. The issues raised by these public comments were not directed to the proposed rule, so the Superintendent does not have a specific response.

COMMENT #2: One commenter stated support for HB 393 generally but did not provide additional, substantive comment about the proposed rule.

RESPONSE #2: The Superintendent appreciates the public comment. The issue raised by this public comment was not directed to the proposed rule, so the Superintendent does not have a specific response.

COMMENT #3: Multiple commenters expressed concern that the proposed rule does not explain how the Office of Public Instruction will determine "allowable expenses."

RESPONSE #3: The Superintendent appreciates the public comments. The determination of allowable expenses is addressed in statute and, thus, does not need to be repeated in the rule implementing the statute.

COMMENT #4: Multiple commenters stated expressed opposition to any rule that would permit the use of public money to reimburse expenses paid to religious organizations and programs.

RESPONSE #4: The Superintendent appreciates the public comments. The statute does not prohibit such reimbursement, and the proposed rule is silent on that issue.

COMMENT #5: One commenter expressed opposition to HB 393 being a voucher system.

RESPONSE #5: The Superintendent appreciates the public comments. The statute sets forth a system for reimbursement, so the proposed rule does not establish a voucher system.

/s/ Robert Stutz
Robert Stutz
Rule Reviewer

/s/ Elsie Arntzen
Elsie Arntzen
Superintendent of Public Instruction
Office of Public Instruction

Certified to the Secretary of State August 13, 2024.

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

In the matter of the adoption of an) NOTICE OF ADOPTION OF
emergency rule closing Tower Rock) EMERGENCY RULE
State Park in Cascade County)

TO: All Concerned Persons

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

(a) The Tower Rock State Park fire has burned the interpretive trail area, which happens to be the only developed area of the park and where the public is guided.

(b) In order to protect the public from any injuries resulting from the fire, Tower Rock State Park is closed.

(c) Therefore, as this situation constitutes an imminent peril to public health, safety, and welfare, and this threat cannot be averted or remedied by any other administrative act, the department adopts the following emergency rule. The emergency rule will be sent as a press release to newspapers throughout the state. Also, signs informing the public of the partial closure will be posted at access points. The rule will be sent to interested parties and published as an emergency rule in Issue No. 16 of the 2024 Montana Administrative Register.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of the notice. If you require an accommodation, contact the department no later than 5:00 p.m. on September 6, 2024, to advise us of the nature of the accommodation that you need. Please contact Christina Bell, Fish, Wildlife and Parks, 1420 East Sixth Avenue, P.O. Box 200701, Helena, MT 59620-0701; telephone (406) 594-8071; or e-mail cbell@mt.gov.

3. The emergency rule is effective August 12, 2024, when this rule notice is filed with the Secretary of State.

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

NEW RULE I EMERGENCY CLOSURE OF TOWER ROCK STATE PARK

(1) Tower Rock State Park is located in Cascade County.

(2) Tower Rock State Park is closed to all public entry.

(3) This rule will expire as soon as the department determines the fire conditions improve and no longer present a risk to public health and safety. This will depend on weather conditions and the extent of the fire damage. Signs closing Tower Rock State Park will be removed when the rule is no longer effective.

AUTH: 2-4-303, 87-1-202, MCA

IMP: 2-4-303, 87-1-202, MCA

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

6. Concerned persons are encouraged to submit their comments to the department. Please submit comments along with names and addresses to: Christina Bell, Department of Fish, Wildlife and Parks, P.O. Box 200701, Helena, MT, 59602-0701; e-mail cbell@mt.gov. Any comments must be received no later than September 23, 2024.

7. The department maintains a list of interested persons who wish to receive notice of rulemaking actions proposed by the department or commission. Persons who wish to have their name added to the list shall make a written request that includes the name and mailing or email address of the person to receive the notice. Such written request may be mailed or delivered to Fish, Wildlife and Parks, Legal Unit, P.O. Box 200701, 1420 East Sixth Avenue, Helena, MT 59620-0701, or may be completed online at <https://public.govdelivery.com/accounts/MTFWP/subscriber/new>.

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

9. The special notice requirements of 2-4-303, MCA have been met. All committee members and staff of the Environmental Quality Council, with addresses provided on the Montana Legislature's website (leg.mt.gov), were contacted by e-mail on August 12, 2024.

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

/s/ Alexander Scolavino
Alexander Scolavino
Rule Reviewer

Certified to the Secretary of State August 12, 2024.

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the amendment of)	NOTICE OF AMENDMENT
ARM 17.8.102, 17.8.103, 17.8.202,)	
17.8.301, 17.8.302, 17.8.342,)	(AIR QUALITY)
17.8.604, 17.8.740, 17.8.744,)	
17.8.802, 17.8.902, 17.8.1002,)	
17.8.1107, 17.8.1202, 17.8.1313,)	
17.8.1402, and 17.8.1815 pertaining)	
to incorporation by reference of)	
federal air quality regulations)	

TO: All Concerned Persons

1. On June 7, 2024, the Department of Environmental Quality published MAR Notice No. 17-445 pertaining to the proposed amendment of the above-stated rules at page 1278 of the 2024 Montana Administrative Register, Issue Number 11.
2. The department has amended the above-stated rules as proposed.
3. No comments or testimony were received.

/s/ Nicholas Whitaker
 NICHOLAS WHITAKER
 Rule Reviewer

/s/ Sonja Nowakowski
 SONJA NOWAKOWSKI
 Director
 Department of Environmental Quality

Certified to the Secretary of State August 13, 2024.

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 17.36.103 pertaining to)
application contents) (WATER QUALITY)

TO: All Concerned Persons

1. On June 21, 2024, the Department of Environmental Quality (DEQ) published MAR Notice No. 17-447 pertaining to public hearing on the proposed amendment of the above-stated rule at page 1425 of the 2024 Montana Administrative Register, Issue Number 12.

2. The department has amended the above-stated rule 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 1: One commenter stated that if the Department of Natural Resources and Conservation (DNRC) no longer has to evaluate legal water availability, counties will be required to evaluate legal water sufficiency (under the Platting Act) without any information on legal availability.

RESPONSE 1: This rule change does not alter any informational requirements under the Platting Act, under which counties review new subdivisions. This rule change only alters informational requirements under the Sanitation in Subdivisions Act. DNRC decided they are unable to issue pre-determination letters, so the rule's current requirement under the Sanitation Act cannot be met by applicants or DEQ.

COMMENT 2: One commenter stated the determination of legal water availability is the responsibility of DEQ under 76-4-104, MCA.

RESPONSE 2: As discussed in the notice of proposed rulemaking, the department did not amend its subdivision rules to require a predetermination letter from DNRC until 2014. Upon further consideration, along with a decade of experience in administering the rule and recent court direction, DEQ has determined, in coordination with DNRC, that its role is distinct in this area of currently overlapping dependency where DEQ evaluates the physical presence and properties of water under the Sanitation in Subdivisions Act, whereas DNRC evaluates the validity of legal water availability under the Water Use Act. DEQ will continue to evaluate the quality, quantity, and dependability with regard to the factual existence and properties of water, while issues regarding the legal availability of water are best left to the agency with that expertise and to the local counties that review and approve subdivisions under the authority of the Platting Act.

COMMENT 3: One commenter stated this rule is the only means for a county to obtain the required information on legal water availability (before approving a preliminary plat).

RESPONSE 3: This rule change does not alter any informational requirements under the Platting Act, under which counties review new subdivisions. This rule change only alters informational requirements under the Sanitation in Subdivisions Act. DNRC decided they are unable to issue pre-determination letters, so the rule's requirement under the Sanitation Act cannot be met by applicants or DEQ.

COMMENT 4: One commenter stated DEQ statutes require evidence that a water supply is sufficient in terms of quality, quantity, and dependability. This includes legal water availability.

RESPONSE 4: See response to comment 2.

COMMENT 5: One commenter stated that by deleting this rule, without simultaneously adopting a replacement process, DEQ will not meet its statutory requirements.

RESPONSE 5: See response to comment 2. The legislature can pass statutory changes that identify each entity's overlapping roles and timing regarding legal water availability if they so choose.

COMMENT 6: One commenter stated DEQ failed to publish a Small Business Impact Analysis (SBIA), as required under the Montana Administrative Procedure Act (MAPA).

RESPONSE 6: MAPA only requires publication in the register if the agency determines there will be small business impacts. DEQ conducted the SBIA, determined that no significant impacts to small businesses were anticipated and submitted that analysis at the public hearing for this proposed rule on July 16, 2024, pursuant to MAPA.

COMMENT 7: One commenter disagreed that the SBIA will not significantly impact small businesses. The proposed change will cause great uncertainty in the review process and increase litigation which will draw out the approval process.

RESPONSE 7: The rule change will not significantly impact applications for DEQ COSAs for small businesses. The SBIA required the department analyze impacts of certain specific factors on small businesses, which is contained in that document finding that small businesses would not be significantly impacted by this rulemaking. Litigation potential is not required in that analysis. Further, DEQ is currently unable to approve approximately 50 files without the proposed rule change as the DNRC is no longer issuing the letters required by the current rule. The rule change does not impact water availability reviews under the Platting Act or the Water Use Act. See also the response to comment 2.

/s/ Jonathan Morgan
JONATHAN MORGAN
Rule Reviewer

/s/ Sonja Nowakowski
SONJA NOWAKOWSKI
Director
Department of Environmental Quality

Certified to the Secretary of State August 13, 2024.

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

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 24.7.303 pertaining to the)
unemployment insurance appeals)
board)

TO: All Concerned Persons

1. On July 5, 2024, the Unemployment Insurance Appeals Board (agency) published MAR Notice No. 24-7-419 regarding the public hearing on the proposed changes to the above-stated rule, at page 1519 of the 2024 Montana Administrative Register, Issue No. 13.

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

3. The agency has amended ARM 24.7.303 as proposed.

UNEMPLOYMENT INSURANCE APPEALS
BOARD, LAURA FIX, 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 August 13, 2024.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT AND
ARM 24.16.7556, 24.35.101,) REPEAL
24.35.111, 24.35.117, 24.35.133,)
24.35.202, and 24.35.204 and the)
repeal of ARM 24.16.7520 pertaining)
to independent contractors)

TO: All Concerned Persons

1. On July 5, 2024, the Department of Labor and Industry (agency) published MAR Notice No. 24-35-420 regarding the public hearing on the proposed changes to the above-stated rules, at page 1521 of the 2024 Montana Administrative Register, Issue No. 13.

2. On August 1, 2024, a public hearing was held on the proposed changes to the above-stated rules via the videoconference and telephonic platform. Comments were received by the deadline.

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

COMMENT 1: A commenter objected to the phrase "about two months" in the amendment to ARM 24.35.117(1), concerned that the rule is ambiguous as to a specific timeline.

RESPONSE 1: The comment is acknowledged, and the department agrees that the term is inherently non-specific. The department disagrees, however, that amendment is necessary. The rule sets forth a business process by which the department notifies the public generally and ICEC holders specifically of the approximate time period in which a reminder to renew the certificate will be sent. Prior to amendment, the rule also contained the ambiguous statement that "two months prior" to ICEC expiration, the reminder would issue. Month-based calculations are necessarily imprecise.

There is no statutory requirement that a reminder be issued by the department at all; even in the context of the reminder, there is no obligation to specify the reminder, or its timeline, in rule. The department recognizes the benefit of reminders to ICEC holders to avoid inadvertent termination expiration of the certificate. ICEC holders must renew their certificate based on expiration date, not based on the specific date of issuance of a reminder to renew.

The department will consider repealing the administrative rule statement in future rulemaking because business process need not be in rule. However, it has chosen

to retain the rule at this time, and has no intention at this time to stop the issuance of reminders.

4. The agency has amended ARM 24.16.7556, 24.35.101, 24.35.111, 24.35.117, 24.35.133, 24.35.202, and 24.35.204 as proposed.

5. The agency has repealed ARM 24.16.7520 as proposed.

/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 August 13, 2024.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 24.35.112 pertaining to)
independent contractor exemption)
certificate)

TO: All Concerned Persons

1. On July 5, 2024, the Department of Labor and Industry (agency) published MAR Notice No. 24-35-421 regarding the public hearing on the proposed changes to the above-stated rule, at page 1528 of the 2024 Montana Administrative Register, Issue No. 13.

2. On July 31, 2024, a public hearing was held on the proposed changes to the above-stated rule via the videoconference and telephonic platform. No comments were received by the deadline.

3. The agency has amended ARM 24.35.112 as proposed.

/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 August 13, 2024.

BEFORE THE DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 36.12.906 pertaining to the East)
Valley Controlled Groundwater Area)

TO: All Concerned Persons

1. On June 21, 2024, the Department of Natural Resources and Conservation published MAR Notice No. 36-222 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 1435 of the 2024 Montana Administrative Register, Issue Number 12.

2. The department has amended the above-stated rule 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 1: The commenter supports the proposed rule revision.

RESPONSE 1: The department appreciates the comment.

/s/ Molly Kelly _____
Molly Kelly
Rule Reviewer

/s/ Amanda Kaster _____
Amanda Kaster
Director
Natural Resources and Conservation

Certified to the Secretary of State August 13, 2024.

BEFORE THE DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 36.14.204, 36.14.205,)
36.14.206, and 36.14.207 pertaining)
to dam safety hazard determinations)

TO: All Concerned Persons

1. On June 21, 2024, the Department of Natural Resources and Conservation published MAR Notice No. 36-223 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 1438 of the 2024 Montana Administrative Register, Issue Number 12.

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

3. No comments or testimony were received.

/s/ Cameron Boster
Cameron Boster
Rule Reviewer

/s/ Amanda Kaster
Amanda Kaster
Director
Natural Resources and Conservation

Certified to the Secretary of State August 13, 2024.

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

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 37.40.702 pertaining to Home)
Health Services)

TO: All Concerned Persons

1. On May 24, 2024, the Department of Public Health and Human Services published MAR Notice No. 37-1068 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 1156 of the 2024 Montana Administrative Register, Issue Number 10.

2. The department has amended ARM 37.40.702 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 #1: A commenter expressed support for following federal regulations and maintaining administrative rules requiring physician involvement with patients.

RESPONSE #1: The department acknowledges this comment and believes the proposed rule changes are necessary to align with the federal regulation but continue to provide the opportunity for physician involvement with patients.

/s/ Robert Lishman
Robert Lishman
Rule Reviewer

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

Certified to the Secretary of State August 13, 2024.

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

In the matter of the amendment of)	NOTICE OF AMENDMENT AND
ARM 37.34.911, 37.34.925,)	REPEAL
37.34.926, 37.34.929, 37.34.930,)	
37.34.933, 37.34.937, 37.34.941,)	
37.34.942, 37.34.946, 37.34.960,)	
37.34.961, 37.34.963, 37.34.967,)	
37.34.968, 37.37.974, 37.34.978,)	
37.34.980, 37.34.981, 37.34.985,)	
37.34.986, 37.34.987, and 37.34.988)	
and the repeal of ARM 37.34.947,)	
37.34.950, 37.34.951, 37.34.973, and)	
37.34.989 pertaining to Medicaid)	
home and community based waiver)	
program)	

TO: All Concerned Persons

1. On June 7, 2024, the Department of Public Health and Human Services published MAR Notice No. 37-1073 pertaining to the public hearing on the proposed amendment and repeal of the above-stated rules at page 1348 of the 2024 Montana Administrative Register, Issue Number 11.

2. The department has amended the following rules as proposed: ARM 37.34.911, 37.34.925, 37.34.926, 37.34.929, 37.34.930, 37.34.937, 37.34.941, 37.34.942, 37.34.946, 37.34.960, 37.34.961, 37.34.963, 37.34.967, 37.34.968, 37.37.974, 37.34.978, 37.34.980, 37.34.981, 37.34.985, 37.34.986, 37.34.987, and 37.34.988.

3. The department has repealed the following rules as proposed: ARM 37.34.947, 37.34.950, 37.34.951, 37.34.973, and 37.34.989.

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:

37.34.933 0208 MEDICAID HOME AND COMMUNITY-BASED SERVICES PROGRAM: BEHAVIORAL SUPPORT SERVICES (1) and (2) remain as proposed.

(3) Level one services may be provided by:

(a) remains as proposed.

(b) the following professionals, under the supervision of a BCBA or BCBA-D:

(b)(i) an intermediate applied behavior analysis (ABA) professional; or a
~~person with an Institute for Applied Behavior Analysis (IABA); or~~

- (ii) a person with an Institute for Applied Behavior Analysis (IABA) certification; or
- (c) remains as proposed.
- (4) Level two services include all services identified in level one and:
 - (a) monitoring and overseeing BSS staff, including a registered behavior technician (RBT) or an intensive behavior assistant (IBA), who are directly implementing treatment; and
 - (b) remains as proposed.
- (5) Level two services may be provided by:
 - (a) and (b) remain as proposed.
 - (c) the following professionals, under the supervision of a BCBA or BCBA-D:
 - ~~(e)(i) an intermediate ABA professional; or a person with an IABA certification.~~
 - (ii) a person with an IABA certification.
- (6) remains as proposed.

AUTH: 53-6-113, 53-6-402, MCA
IMP: 53-6-101, 53-6-402, 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:

COMMENT #1: One commenter recommended eliminating the IABA certification option in ARM 37.34.933 because IABA does not offer a certification as described in policy or rule.

RESPONSE #1: While the department appreciates the commenter's recommendation, the removal of IABA certification of the IABA certification qualification would result in current waiver members losing access to behavior support services. Due to workforce shortages, it is important to have alternative qualifications in order to access behavioral support services. Furthermore, it is the department's understanding that the IABA advanced multi-element course is the replacement to the consultant certification. The department will convene a stakeholder workgroup to explore future alternatives to behavior support service qualifications.

COMMENT #2: One commenter recommended adding "and supervised by a BCBA or BCBA-D" for all categories of providers in ARM 37.34.933.

RESPONSE #2: The department agrees to adding the requested language to (3)(b) and (5)(c) to ensure appropriate oversight for the provision of the services. The department declines to add the language to all categories of providers because certain professionals named there have sufficient training and education so that additional supervision is not necessary.

COMMENT #3: One commenter recommended clarifying "intermediate professional" to include students working toward their BCBA or BCaBA certifications.

RESPONSE #3: The department clarifies that an intermediate professional is a graduate student who has completed basic coursework requirements for Behavior Analyst Certification Board® (BACB®) certification and is in the process of completing the experience portion of the eligibility requirements as delineated in the *Applied Behavior Analysis Treatment of Autism Spectrum Disorder: Practice Guidelines for Healthcare Funders and Managers Second Edition* issued by the BACB and/or the Council of Autism Service Providers as defined in DDP's Applied Behavior Analysis manual adopted by ARM 37.34.1902.

COMMENT #4: One commenter requested that the employment support services, including individual and community supports, reflect inclusive communities such as people with autism and developmental disabilities. The commenter suggests adopting employment first policies such as prevailing wages.

RESPONSE #4: The department thanks the commenter for the feedback. The intent of MAR Notice No. 37-1073 is to update administrative rule definitions to reflect what is currently approved in the 0208 Comprehensive Waiver. The 0208 Comprehensive Waiver provides a variety of supported employment services, including individual employment supports. The department will take under advisement the recommendation to pursue employment first policies.

COMMENT #5: One commenter requested additional information regarding retirement services and adult day programs.

RESPONSE #5: The department thanks the commenter for the interest in services available under the 0208 Comprehensive Waiver. The intent of MAR Notice No. 37-1073 is to update administrative rule definitions to reflect what is currently approved in the 0208 Comprehensive Waiver. Day supports and activities is a 0208 comprehensive waiver service and was not included in this rulemaking. Retirement services are an 0208 Comprehensive Waiver service that are available to a waiver recipient who is age 62 or older, or who has limited ability to work due to health and safety issues. This service is intended to provide leisure, social, and community integration activities to eligible individuals who wish to receive this service.

COMMENT #6: One commenter asked what role case managers have in securing community supports during community living and housing transitions. Will the waiver case managers and other service providers be allowed to offer members assistance in searching for HUD apartments or are they only able to offer living options in group and congregate settings such as assisted living?

RESPONSE #6: The department notes this rulemaking did not propose changes to case management services and this comment is, accordingly, outside the scope of this rulemaking.

COMMENT #7: One commenter asked for clarification regarding the intent of remote monitoring service in congregate assisted living and group home settings. Is the intent to monitor and track stinging behaviors, difficulties between residents, or criminal behavior?

RESPONSE #7: The department thanks the commenter for the comment. The intent of MAR Notice No. 37-1073 is to update administrative rule definitions to reflect what is currently approved in the 0208 Comprehensive Waiver. Remote monitoring provides oversight and monitoring within a residential setting. Remote monitoring may only be used in supported living settings for the purpose of reducing or replacing the amount of residential habilitation needed for the waiver recipient to live safely and independently in their home. The purpose of remote monitoring is not to monitor or track criminal behavior. Remote monitoring staff training requirements are included in this administrative rule update.

COMMENT #8: One commenter requested clarification on environmental modifications. If modifications cannot expand the square footage of homes or replace carpet or systems that might be integral to home ownership or apartment living, does this disallow wider hallways for wheelchairs or Hoyer lifts?

RESPONSE #8: The department clarifies that environmental modifications may not include modifications which are of general utility such as carpeting, roof repair, or central air conditioning if they are not of direct-medical or remedial benefit to the waiver recipient. Because wider hallways for wheelchairs or Hoyer lifts are of direct-remedial benefit to the waiver recipient, these modifications are allowed. Modifications must be prior approved by the department.

COMMENT #9: One commenter recommended that environmental modifications take into consideration LIHEAP's coverage of heating and cooling expenses if substantial repairs or home rehabilitation is needed and requested to be funded through waiver services.

RESPONSE #9: The department appreciates the commenter's recommendation and will take this under advisement.

/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 August 13, 2024.

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

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 37.62.705 pertaining to Child)
Support Services Fee Schedule)

TO: All Concerned Persons

1. On June 21, 2024, the Department of Public Health and Human Services published MAR Notice No. 37-1091 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 1444 of the 2024 Montana Administrative Register, Issue Number 12.

2. The department has amended the above-stated rule as proposed.

3. No comments or testimony were received.

/s/ April Armstrong
April Armstrong
Rule Reviewer

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

Certified to the Secretary of State August 13, 2024.

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

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 37.34.3005 pertaining to the)
Developmental Disabilities Program)
Fiscal Year 2025 Rate Increase)

TO: All Concerned Persons

1. On June 7, 2024, the Department of Public Health and Human Services published MAR Notice No. 37-1092 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 1374 of the 2024 Montana Administrative Register, Issue Number 11.

2. The department has amended ARM 37.34.3005 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 #1: One commenter asked what plans are in place to regularly review and update rates to meet the real-time needs of members and providers.

RESPONSE #1: The department's goal is to ensure rates are adequate to cover the cost of delivering important services to Medicaid members. The department continues to develop additional mechanisms and processes to collect and analyze data and cost information to inform the department in calculating future proposed rate adjustments. Ultimately it is the legislature that must fund any proposed rate increases recommended by the department.

COMMENT #2: One commenter recommends rather than requiring a physician's prescription or referral for meal services, to have the referral come from the case manager to reduce barriers to program eligibility such as complexity, added cost, and access to care. The commenter further suggested that a strategy to help identify medical necessity could include incorporating member-reported chronic condition diagnoses, which could be documented as a part of the referral process.

RESPONSE #2: The department thanks the commenter for their recommendation and will take this recommendation under advisement for future amendments.

4. The rule amendment is to be applied retroactively to July 1, 2024.

/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 August 13, 2024.

BEFORE THE DEPARTMENT OF PUBLIC SERVICE REGULATION
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 38.3.401 pertaining to the)
completion of applications for motor)
carrier operating authority)

TO: All Concerned Persons

1. On June 21, 2024, the Department of Public Service Regulation published MAR Notice No. 38-3-263 pertaining to the proposed amendment of the above-stated rule at page 1448 of the 2024 Montana Administrative Register, Issue Number 12.

2. The department has amended the above-stated rule as proposed.

3. No comments or testimony were received.

/s/ Amanda S. Webster
Amanda S. Webster
Rule Reviewer

/s/ James Brown
James Brown
President
Public Service Commission

Certified to the Secretary of State August 13, 2024.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 42.39.601, 42.39.603,)
42.39.610, and 42.39.614 pertaining)
to revised marijuana sampling)
protocols and quality assurance)
testing requirements)

TO: All Concerned Persons

1. On May 24, 2024, the Department of Revenue (department) published MAR Notice No. 42-1071 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 1172 of the 2024 Montana Administrative Register, Issue Number 10.

2. On June 18, 2024, the department held a public hearing to consider the proposed amendment. The following commenters appeared and provided oral testimony to the proposed rulemaking: Susan Stanley, Sensicare Dispensary; Adam Arnold, Collective Elevation; Joanna Barney, Sacred Sun Farms; Kate Cholewa, Montana Cannabis Industry Association (MTCIA); Mariah Bond, Soultonix and Euphoria Wellness; Sahil Mehta, Soultonix and Euphoria Wellness; Christina Johnson, Nordic Labs; Jerry Spurlock, Firefly Dispensary; and Jennifer Hensley, Hensley and Associates on behalf of Fidelity Diagnostics Laboratory (Fidelity). The department received written comments from Evan Kajander, Apogee Gardens; Erica Siate; Susan Stanley; Kate Cholewa, MTCIA; Jennifer Hensley, Hensley and Associates for Fidelity; Pepper Petersen, Montana Cannabis Guild; Anthony Saur, The Green Bee; Jay Bostrom, Dancing Goat Gardens; and Keith Erwin, Integrity Analytics.

3. The department has amended ARM 42.39.603 as proposed.

4. The department has amended ARM 42.39.601, 42.39.610, and 42.39.614 as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

42.39.601 DEFINITIONS As used in this subchapter; the following definitions apply:

(1) through (7) remain as proposed.

~~(8) "As received" means the mass of the marijuana item as determined by the testing laboratory with no dry weight calculation applied.~~

(9) through (14) remain as proposed but are renumbered (8) through (13).

~~(15) "Container" means the vessel or receptacle that comes into physical contact with the marijuana item.~~

(16) through (23) remain as proposed but are renumbered (14) through (21).

~~(24)~~ (22) "Harvest lot" means the specifically identified quantity of marijuana provided in SOP-001 that is cultivated utilizing the same growing practices, harvested within a 72-hour period at the same location, and cured under uniform conditions. A harvest lot may contain multiple strains until ~~one day less than six months from date of adoption~~ February 23, 2025. Effective ~~six months from date of adoption~~ February 24, 2025, a harvest lot must not contain multiple strains and must be identical in strain.

(25) through (72) remain as proposed but are renumbered (23) through (70).

AUTH: 16-12-202, 16-12-209, MCA

IMP: 16-12-202, 16-12-209, MCA

42.39.610 QUALITY ASSURANCE SAMPLING PROTOCOL (1) through (13) remain as proposed.

(14) The department adopts and incorporates by reference the "Quality Assurance Sampling Protocol for Usable Marijuana, Marijuana Concentrates and Extracts, Marijuana-Infused Products, and Marijuana Pre-Rolls" SOP-001 (Version 3.0) (~~date of adoption~~ August 24, 2024), which describes the sampling protocol for marijuana, marijuana concentrates and extracts, marijuana-infused products, and marijuana pre-rolls. A copy of SOP-001 is available from the department electronically at www.mtrevenue.gov/cannabis and may also be obtained at 125 N. Roberts St., Helena, MT 59601.

AUTH: 16-12-202, 16-12-209, MCA

IMP: 16-12-202, 16-12-209, MCA

42.39.614 QUALITY ASSURANCE TESTING REQUIREMENTS (1) All marijuana items intended for final sale or transfer to a customer shall be tested in its final form. The addition of any ingredient or reagent after final quality assurance testing will require retesting with respect to the mandatory quality assurance testing requirements provided in the Quality Assurance Testing Requirements Appendix and the marijuana laws. The department adopts and incorporates by reference the Quality Assurance Testing Requirements Appendix (Version 1.0) (~~date of adoption~~ August 24, 2024), which provides quality assurance testing requirements from marijuana item classifications and subcategories and details specific contaminant testing requirements for these items. A copy of the Appendix is available from the department electronically at www.mtrevenue.gov/cannabis and may also be obtained at 125 N. Roberts St., Helena, MT 59601.

~~(2) All laboratory test sample results shall be reported into the seed-to-sale tracking system on an "as received" basis. Dry weight reporting or corrections are not permitted.~~

(3) remains as proposed but is renumbered (2).

~~(4)~~ (3) Composite laboratory test samples from the same or different harvest lots and test batches therein are strictly prohibited. Effective ~~six months from the date of adoption~~ February 24, 2025, multi-strain harvest lots and multi-strain composite laboratory test samples are prohibited.

~~(5)~~ (4) Usable marijuana: a licensee shall submit for testing all harvest lots and test batches therein of usable marijuana for the analyses required in Table 1.0a of the Appendix prior to final sale to a customer. Usable marijuana, including trim or manicure, shall also be tested for the analyses provided in Table 1.0a of the Appendix prior to use in the production of marijuana pre-rolls and direct marijuana-infused products. A licensee may ~~forge~~ forego testing of usable marijuana, including trim and manicure, only if that usable marijuana is subjected to solvent or non-solvent-based extraction for the production of marijuana concentrates and extracts.

(6) through (9) remain the same but are renumbered (5) through (8).

~~(10)~~ (9) Use of any untested marijuana item as an ingredient in the production of marijuana concentrates and extracts, marijuana-infused products, and marijuana pre-rolls, or any marijuana item therein is prohibited. Use of any untested marijuana item, except for usable marijuana – including trim and manicure – in the production of concentrates and extracts is prohibited.

(11) and (12) remain the same but are renumbered (10) and (11).

~~(13)~~ (12) The laboratory test sample and related lot or test batch fail quality assurance testing for filth and foreign matter screening if the results are greater than the following action levels:

(a) 5.0 percent of stems 3mm or more in diameter; ~~and~~ or

(b) 2.0 percent of seeds or other foreign matter.

(14) through (19) remain the same but are renumbered (13) through (18).

AUTH: 16-12-202, 16-12-209, MCA

IMP: 16-12-202, 16-12-209, 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:

COMMENT 1: Ms. Stanley commented that the department has gone too far with the statement of reasonable necessity for the definitions of "harvest lot" and "process lot"; that the current definition of "harvest lot" allows for egregious sample compositing by diluting contaminants to below the sensitivity of the analytical instrumentation, which drastically increases the probability of contaminated product entering the market. Ms. Stanley continued that it would be impossible and costly to dilute a contaminated sample into a five-pound lot to the point that you could not even detect it on analytical instrumentation; and provided examples of batch strains and composites with various parts per million Spinosad. This is an insult to the industry to imply that there are cultivators and manufacturers who are egregiously diluting contaminated products into composite test batches that cannot be detected by sensitive analytical instrumentation.

RESPONSE 1: The department is mandated to ensure product safety and consumer protection, and Ms. Stanley does not have the benefit of the department's testing or sampling experiences and perspective. The department stands by the statement of reasonable necessity provided for in the rulemaking.

Compositing numerous individually sold strains of either marijuana flower or process lots of concentrates and extracts into laboratory test sample(s) for contaminant testing increases the probability of contaminated product entering the market. And larger numbers of individual products composited together further increase that risk. Though it appears that pesticides are the focus of Ms. Stanley's discussion, equally important are mycotoxin exposure, residual solvents, and microbiological contamination; each with varying action limits that must be met to ensure consumers are provided with access to safe products.

Ms. Stanley's examples in her comments also mischaracterize the sample compositing process which occurs in the laboratory. Sample compositing is done at a 1:1 ratio, and not by how many pounds of different strains a licensee puts into a harvest lot test batch. Many laboratory extraction procedures use anywhere between 0.2 grams to 1.0 grams of product per individual sample extraction. If ten samples are composited together at a 1:1 ratio for a 0.5-gram laboratory extraction sample, only 0.05 grams of each strain is making up that 0.5 gram extracted sample to be run on the analytical instrumentation. This equates to a ten times dilution factor which is applied to each of the results of the ten strains. Should any of those strains have a contaminant issue that is at, or above, a given contaminant action level, the other strains in the laboratory extraction sample have effectively diluted and masked the issue. If that strain or process lot had been tested individually, the problem product would have been easily identified and marked as "test failed" in the seed-to-sale tracking system.

COMMENT 2: All commenters provided feedback to the department's proposed revisions to the definition of "harvest lot" in ARM 42.39.601, which currently allows for multi-strain compositing for testing but will not be allowed six months from adoption of this rulemaking in favor of a single-strain lot requirement.

Comments expressed objection or reservation to single-strain harvest lot test batch provided in Section 7.1.1 of the Quality Assurance Sampling Protocol for Usable Marijuana, Marijuana Concentrates and Extracts, Marijuana-Infused Products, and Marijuana Pre-Rolls SOP-001 document (SOP-001).

Commenters contend that smaller cultivators focus on providing more marijuana strains in smaller quantities and it is that variety that separates them from larger cultivators who are able to scale production to fit single-strain harvest lot requirements. These commenters also suggested the department allow limited, multi-strain harvest lots for smaller (e.g., tier 1 and tier 2) producers.

Mr. Kajander questions whether single-strain testing applies only to flower. Does the requirement apply to single strain testing of concentrates? Mr. Kajander opines that single-strain flower testing may be palatable but single-strain concentrate testing will be costly.

Comments were also received stating that the elimination of multi-strain testing puts pressure on testing costs that could be offset by larger harvest lot sizes—another suggestion of the commenters.

RESPONSE 2: Single-strain testing requirements have been proposed before – albeit withdrawn – and have been previously discussed with industry. Based on that prior feedback, the department proposed a six-month transition period

in this rulemaking before the new requirement becomes enforceable. The department believes the transition provides licensees time to analyze and adjust their business practices to comply with the new testing standard.

The department is aware of industry concerns that additional testing requirements affect product pricing and industry ability to compete with the black market. The issue is not unique to Montana. The department has observed other states' cannabis regulatory processes, and believes the proposed requirements are a good balance between maintaining public health and limiting the illicit market. The department notes that states which mandated single-strain testing and additional pesticide and contaminants did so because medical and adult-use consumers primarily desire quality products.

As for allowing small producers to continue under multi-strain harvest lots, the department responds that the benefits of such a proposal do not justify the increased difficulty of administering multiple testing requirements for licensees given the number of strains and harvest lots grown and regularly changing tier sizes of cultivators. Licensed laboratories each use different methodology and instrumentation as well, making that approach unnecessarily complicated and difficult to regulate.

The department is also monitoring multiple lawsuits that are likely to open the state to interstate commerce and other states' products which already meet the expanded testing protocols proposed in this rulemaking. The department reiterates that this rulemaking is necessary to position Montana marijuana producers so they will be able to compete in an expanded industry instead of pursuing after-the-fact solutions to a newly opened market.

The department responds to Mr. Kajander that the rules do not prevent manufacturers from using multiple strains of marijuana within a process lot of concentrate and extract. The definition of "process lot" provides that "test batches from the same or different harvest lots" can be used in a process lot of marijuana concentrate or extract. However, laboratory test samples composed of different process lots cannot be composited together for the purposes of quality assurance compliance testing under ARM 42.39.614(3).

The department addresses harvest lot size comments in Response 3.

COMMENT 3: As an extension of Comment 2, the department received multiple comments that an increase in the size of the harvest lot test batch size in Section 7.1.1 of SOP-001 is necessary – especially with the adoption of the single-strain harvest lot testing requirement. Most commenters provided some version of their own proposed resolutions, like in Comment 2, or compared other states' protocols and suggested that Montana should adopt a harvest lot size of 20 to 25 pounds, if a "no limit" harvest lot size cannot be considered.

The department also received comments that advocated for the department to take a cautionary approach before increasing harvest lot test batch sizes because larger test batch sizes will negatively impact smaller cultivators, who focus on a larger variety of strains from smaller harvests versus larger cultivators who produce fewer strains to scale.

RESPONSE 3: The harvest lot test batch size has been in place since SOP-001 was adopted by the Cannabis Laboratory Program while at the Department of Public Health and Human Services. Test batch size, while related to multi-batch/single-strain quality assurance testing, was not proposed for amendment by the department in this rulemaking, and comments regarding non-proposed changes are outside the scope of this rulemaking.

Even if the department were amenable to making such a change in response to the comments, it could not be accomplished under the Montana Administrative Procedure Act (MAPA) without adversely affecting the timely implementation of these rules and adoption of SOP-001 and Appendix before the closure of most agency rulemaking in the final quarter-year preceding a legislative session (see 2-4-305(11), MCA).

The department continues its willingness to engage with industry stakeholders and policymakers about future adjustments to harvest lot sizes. But the department and industry need to analyze the data and outcomes from the implementation of this rulemaking, the revised marijuana product testing standards, and the actual fiscal impact from the five-pound test batch under the new quality assurance testing requirements before any proposal to adjust test batch size is developed.

COMMENT 4: The department received multiple comments regarding the proposed definition for "as received" in ARM 42.39.601(8), which would exclude dry weight correction of potency results in the testing of marijuana flower.

Many comments questioned the benefit to changing the system and believe the disallowance of dry-weight reporting is a disservice to the consumer because dry-weight reporting provides the consumer with a consistent parameter when making purchase decisions. If marijuana potency is based on "as received" reporting, it is variable/relative to the moisture content of the marijuana submitted for testing. Commenters fear adding more variability to the system will act as an incentive for some licensees to dry out their product, which would result in an inferior product with higher THC and will only result in increased sales of inferior product.

Some testing laboratory comments offered that changing the way that labs calculate potency is also not consistent with federal guidelines for hemp.

Mr. Erwin commented his belief that reporting on a dry weight basis increases the potency, and as a result, consumers will dose more than intended.

Commenters requested the department remove the proposed definition upon adoption of the rulemaking.

RESPONSE 4: Based on the comments, the department has removed the definition from ARM 42.39.601(8) and the reference from ARM 42.39.614(2).

COMMENT 5: The department received comments from MTCIA and Fidelity regarding ARM 42.39.614(5) and (10). The commenters believe the two sections contradict one another, and they request additional clarification. Section (5) allows usable marijuana to be untested if it is subjected to extraction for extracts and concentrates, and (10) prohibits untested marijuana to be used as an ingredient in concentrates and extracts.

Fidelity sees the inclusion of the phrase "as an ingredient" as creating the disconnect.

While Fidelity expressed its support for the term "usable marijuana" used throughout the rulemaking proposal and the existing rules, it notes there is no stated definition provided for it. While the term may be inferred from ARM 42.39.614(5), an actual definition is preferred because of its frequency of use.

Mr. Bostrom proposes the removal of much of ARM 42.39.614 regarding marijuana pre-rolls, usable marijuana, and the prohibition of untested marijuana.

The department also received a comment of a typographic error in (5) for the word "forego."

RESPONSE 5: The comments are well taken and based on the comments, the department has amended ARM 42.39.614(10), renumbered as (9), to rectify the problematic phrasing.

Regarding Fidelity's request for a definition of "usable marijuana" the term is defined in 16-12-102(42)(a) and (b), MCA. The language ". . . and includes trim and manicure . . ." found in ARM 42.39.614(9) was added to provide additional clarity as to what usable marijuana encompasses.

While the department appreciates Mr. Bostrom's comments, the department declines to implement those changes in lieu of the above-described amendments to ARM 42.39.614.

The department has also corrected the typographic error.

COMMENT 6: MTCIA, Ms. Barney, and Mr. Spurlock commented that marijuana tinctures are not adequately defined or qualified under the rules and SOP-001. Ms. Barney comments that SOP-001 v.1 and v.2 identified a tincture as a concentrate, but tincture is also included as an example in the definition of an "edible marijuana infused product (edible)." Ms. Barney opines that a concentrate is a concentration of the resin from the marijuana plant; it is not the concentrate that is diluted in a carrier oil or another substance that would be safely assumed as an edible or ingestible product. Further, a concentrate needs to be an infused-edible.

Ms. Barney also commented that department enforcement of packaging for tinctures has been inconsistent. Ms. Barney noted her experience that department inspectors requested the repackaging and retesting of her tinctures as a concentrate to an edible.

MTCIA and Ms. Barney request tinctures be removed from the definition of "solvent-based marijuana concentrate and extract" in ARM 42.39.601, or in the alternative, distinguish tinctures (alcohol vs. olive oil base, for example) in the concentrate and infused-edible definitions. Similarly, Mr. Spurlock questions whether two rules for solvent-based products and edibles are necessary to provide adequate guidance to licensees who manufacture tinctures as the two different product types.

MTCIA and Ms. Barney also note that the proposed definition change has a significant impact on packaging and possession limits as tinctures are customarily sold in a one-ounce (30 ml) size and inclusion of tinctures here would create a limit of 8 ml.

RESPONSE 6: The commenters are correct that tinctures may be a concentrate and an edible. Proper classification of a tincture (concentrate or edible) and its potency are a fact-dependent analysis, as the commenters recognize. The definition correctly identifies where a tincture should be placed, particularly for the purposes of testing. Additionally, the department disagrees that an olive oil-based product falls under the purview of a tincture. Olive oil-based products made by incorporating a solvent-based or non-solvent based marijuana concentrate and extract into olive oil would be considered an indirect marijuana-infused product.

Tincture potency remains governed by 16-12-224, MCA, but the inclusion of tincture as an example of an edible marijuana-infused product in ARM 42.39.102(12) was implemented to clarify tinctures' statutory potency variation allowance enacted under HB 229 (2023) amendments to 16-12-224, MCA. The department understands this unintentionally created conflicting language under what product type tinctures fall.

The department disagrees that removing tincture from the definition of solvent-based concentrate and extract solves this issue. In fact, tinctures are only referred to in statute once – in 16-12-224(8)(iii), MCA – regarding an 800mg/package THC limit.

However, a tincture as an edible extract has different serving size and package limitations, as found in 16-12-224(8)(iv) MCA, and also allows for a ten percent manufacturing variance in potency.

ARM 42.39.102 is not proposed for amendment in this rulemaking and the department is unable to clarify those definitions at this time for the reasons expressed in the second paragraph of Response 3. The department also prefers a legislative change to the MMRTA to clarify tinctures. However, should the conflicting language remain after the passing of the 2025 Legislature, the department is amenable to correction through future rulemaking.

Finally, the department understands Ms. Barney's comments regarding tinctures and packaging enforcement, her concerns for clarity and consistency of terms, and that a lack of clarity could have operational impacts for licensees. While the department does not have any details of Ms. Barney's encounter as of this date, the department is willing to respond to Ms. Barney independently from this rulemaking if her issues remain.

COMMENT 7: Several comments were received about the proposed definitions of "final form" and "final packaging" in ARM 42.39.601. The comments indicate an inconsistency between what is proposed in the rule and what is provided in SOP-001. Ms. Barney commented that SOP-001 states that edibles need to be tested in final packaging vs. final form, infused pre-rolls do not have to be in final packaging before being tested, and vape cartridges do not have to be in final packaging before being tested.

Mr. Mehta commented his desire for increased clarity on final form packaging requirements because businesses are trying to scale up production and final packaging affects equipment purchases. He notes if tests are required in the final packaging, labeling machines cannot be run which increases costs to manufacturers.

Fidelity commented its support the definition of "final form" as it eliminates potential confusion. While Fidelity supports all the other definitions, they elevate the importance of keeping this proposed definition in the adopted version of rules.

RESPONSE 7: The department believes SOP-001 is clear as to which marijuana items need to be in final packaging prior to sample collection for testing. All marijuana items intended for sale to consumers must be in final form per ARM 42.39.614(1). Section 7.5.1 of SOP-001 (concerning marijuana-infused products) states ". . . the process lot shall be in its final packaging and a serving size shall be designated by the licensee." It is the department's intent to test marijuana-infused products from their final packaging to ensure contamination from the packaging is not imparted onto the product itself.

Section 7.4.1 of SOP-001 (concerning vapor cartridges) makes no indication of final package, but instead states ". . . the process lot shall be packaged into cartridges by the licensee prior to laboratory test sample collection and final quality assurance compliance testing." It is the department's intent to test marijuana vapor products from the cartridge to ensure contamination from the cartridge is not imparted into the product itself.

Given the nature of how pre-rolls are constructed, typically with a paper wrapping, the department does not believe that the inclusion of final packaging is required at this time. Therefore, a final packaging designation was not included in Section 7.6.1 of SOP-001.

COMMENT 8: Mr. Mehta questions the accuracy of the department's economic impact statement used in the proposal notice. He questions the analysis of the data, whose business model was used, and which test methods were used.

Ms. Johnson also commented that she conducted an internal analysis of her largest and smallest clients, most of which use multi-strain harvest lots. The results were that testing costs would increase by 66 percent. Ms. Johnson also commented that laboratories should look at the laboratory's current testing methods and decide whether they can actually do an interim period that allows for people to actually expand, grow, and get some help with that transition period.

RESPONSE 8: As a response to Mr. Mehta, specifically, but also for the benefit of all commenters regarding testing cost increases associated with single-strain testing, the department's economic impact statement was developed by reviewing seed-to-sale tracking laboratory testing data from calendar year 2023 to estimate how many flower and concentrate testing samples represented composited strain test samples. This was done to project an annual increase in flower and concentrate test counts in an environment where composite testing was no longer allowed.

After reviewing the 2023 testing data, the department estimated that 66.1 percent of test samples were composited. The cost estimation model utilized the composite sample estimate and projected a downward strain consolidation factor of 33 percent. This consolidation factor was estimated due to the likelihood that cultivators and manufacturers will adjust their harvests and production in an environment of non-composite test samples to focus on their highest yield and most

efficiently produced strains. This 33 percent strain consolidation factor reduced the projected annual statewide test count increase for flower and concentrate from 66.1 percent to the 44.3 percent statewide test count increase that was used to estimate cost impacts in the study (66.1 x 33 downward factor = 44.3 percent increase).

The department determined it was not feasible to calculate a custom projected, non-compositing test count increase for each licensee based on 2023 harvest, manufacturing, and testing data. For this reason, the non-compositing cost estimation model applied the projected 44.3 percent annual flower and concentrate test count increase proportionately to all licensees' 2023 flower and concentrate test counts. These estimated test count increases by license were then multiplied by market test pricing (i.e., tests conducted by licensed marijuana testing laboratories at their designated cost, outside of the department), establishing a low and high projected annual cost range. Finally, licensee groupings were determined by 2023 annual dispensary revenue ranges as provided in the original economic impact statement, to model and estimate potential testing cost increases for the industry in an environment with non-composite testing.

The department produced estimates to project cost impacts due to this rulemaking and respects Nordic Labs conducting its own due diligence and providing public comment on their calculations.

Given that the department's own cost impact model first identified a potential test count increase of 66 percent (if no adjustments were made to strain counts in an environment of non-composite testing), before projecting the potential for industry strain consolidation to arrive at an estimated annual statewide flower and concentrate test count increase of 44.3 percent; a projected 66 percent test count increase is feasible.

The department reiterates that any projected costs paid by licensees to the licensed testing laboratory of their choice are only estimates, and the department does not control what licensees are charged for testing. Projected test count increases may prove to not be proportionate to projected test cost increases.

In a testing environment where annual test count volume may increase for flower and concentrate in an approximate range of 44.3 percent to 66.1 percent, testing labs may decide to lower their prices given a significant increase in testing volume. Any downward adjustment in testing fees would influence the department's cost impact study to overestimate actual cost. The department reiterates that this cost impact statement is an estimate, and actual testing cost increases in the environment of non-composited test samples may vary.

As for Ms. Johnson's comments regarding laboratory testing practices or perceived efficiencies, those fall outside the scope of the rulemaking and the department declines to respond.

COMMENT 9: The department also received comments relative to what the commenters refer to as "double testing" or "redundant testing" requirements. The commenters ask for clarification whether marijuana joints are required to be tested twice; the same question applies to infused pre-rolls.

RESPONSE 9: There is no requirement in statute or rule, nor a definition, for double testing or redundant testing, and the department refers these commenters to ARM 42.39.614, which provides the necessary guidance.

The department notes that producers often test bulk marijuana flower before it is used in intermediate products like concentrates and extracts. Depending on a product life cycle, intermediate products may have their own testing requirements before they may be sold to a consumer. So additional testing in this scenario – and associated testing costs – are a byproduct of the producer's independent business decision to have the source marijuana flower tested, arguably prematurely, depending on the parameters provided in ARM 42.39.614 and SOP-001.

But a positive aspect of testing marijuana flower before its use in any intermediate product is the assurance that the flower meets initial testing requirements, where absent a first test, an intermediate product's quality assurance testing is unknown.

COMMENT 10: Mr. Arnold commented objection to harvest lot size and single strain lot requirements, as stated in Comments 2 and 3, and that the implementation of industry regulation is akin to " . . . death by 1,000 cuts." Mr. Arnold continued commentary outside the scope of the rulemaking but indicated his willingness to engage in litigation with others in industry against the department to resolve their issues with agency rulemaking.

RESPONSE 10: All department rulemaking is conducted in compliance with MAPA, and the promulgation of cannabis industry rules and regulations is a task delegated to the department by the legislature, which the department pursues considering the needs and public policy goals stated in the Montana Marijuana Regulation and Taxation Act (MMRTA). If Mr. Arnold believes that any rulemaking was not adopted in substantial compliance with the MMRTA and MAPA, then he has recourse in the court system to pursue his complaint, and where the department will assert its defense.

COMMENT 11: Fidelity supports the proposed definition of contaminant in ARM 42.39.601(16) and proposes a change in the test failure provisions in ARM 42.39.614(13) by changing " . . . ; and" at the end of (a) to " . . . ; or." Otherwise, samples that are 80 percent 3mm or more stems or 80 percent seeds or other foreign matter could pass testing. Then Fidelity suggests removing (13) altogether to better align with contaminants under 16-12-209, MCA.

RESPONSE 11: The department finds the comments compelling but does not fully agree. Based on the comments, the department has amended ARM 42.39.614(13)(a) and (b) to change the connector to "or" instead of "and."

The department partially agrees that filth and foreign matter are not contaminants. The current thresholds for seed and stems may not present an inherent health concern on par with other mandated testing. However, they influence quality measures for product entering the market. Fidelity proposed only removing the seed and stem threshold, but did not provide a suggestion for other elements that could be assessed to satisfy the department's statutory obligation to

determine the presence of levels of foreign matter. The department is aware of other filth and foreign matter components such as animal excrement, hair, insects, and microplastics that could have compliance thresholds. However, implementing these changes cannot be accomplished at this time for the reasons expressed in the second paragraph of Response 3.

It is also worth noting that a "test failed" status for filth and foreign matter does not mean the flower in question must be destroyed. The flower could be remediated by processing it into a concentrate or extract, thereby reducing financial burden(s) for a test failed result. The department believes the current threshold for seeds and stems is adequately set and also notes a low failure rate for filth and foreign matter testing.

COMMENT 12: Fidelity requested clarity regarding the proposed amendments for new ARM 42.39.614(11)(f). Fidelity asks whether the department is asking for all of the cannabinoids that appear on the certificate of analysis in addition to those required in (11)(a) through (e) to be reported to METRC. If yes, Fidelity contends the change would require testing labs to make significant and time-consuming changes to their data reporting systems—if it is even possible given the current METRC configuration.

RESPONSE 12: The department responds that the requirements are clear. Further, METRC is capable of this functionality. However, given that testing laboratories may benefit from a transition period to implement this requirement, the department will delay implementation of the requirement until September 24, 2024, which is 30 days from adoption of this rulemaking.

COMMENT 13: The department received extensive commentary via email from Ms. Siate, which could be generally categorized as strong advocacy against industry use of pesticides at all levels. Ms. Siate is also a strong advocate for random blind sampling of marijuana cultivators and the work of the marijuana testing laboratories.

The department notes that despite the proposed rulemaking and expanded quality assurance testing requirements in the rules, SOP-001, and the Appendix, Ms. Siate objects to the rulemaking as not going far enough because the department is not fulfilling its "mandate to ensure safety and keep up with national knowledge and trends." In support of her position, Ms. Siate submitted a lengthy newspaper article from the Los Angeles Times newspaper dated June 14, 2024, titled "The Dirty Little Secret of California's Legal Weed." Ms. Siate requested that agency and Cannabis Control Division management read the article and that it be entered into the record as a part of her testimony.

Ms. Siate proceeded to give a recitation of personal events related to the cannabis industry in Montana and provided several lengthy comments, a number of which fall outside the scope of the rulemaking.

RESPONSE 13: The department thanks Ms. Siate for her comments and for provision of the newspaper article which can be viewed online at

<https://www.latimes.com/california/story/2024-06-14/the-dirty-secret-of-californiaslegal-weed> or in the department's rulemaking file.

Since many of Ms. Siate's comments fall outside the scope of the rulemaking, the department declines to respond. The remainder of Ms. Siate's comments have been aggregated with other comments to this rulemaking.

COMMENT 14: Fidelity commented under SOP-001, Pesticide Action Levels, that the footnote to this table instructs that "pyrethrins should be measured as the cumulative residues of pyrethrin 1, cinerin 1, and jasmolin 1 (CAS numbers 121-21-1, 25402-06-6, and 4466-14-2 respectively)." As cinerin 1 and jasmolin 1 traditionally make up a statistically insignificant amount of pyrethrins, we suggest that they should be measured as the cumulative residues of pyrethrin 1 and pyrethrin 2, which are the majority of the insecticide constituents.

Fidelity also requested a change to Section 6.3.1 of SOP-001 to begin with ". . . is an employee of the testing laboratory and . . ." (continue the text of the subsection)."

RESPONSE 14: The department understands that cinerin I (CAS 25402-06-6) and jasmolin I (CAS 4466-14-2) constitute a small portion of the cumulative of pyrethrins. However, this does not necessarily mean the results of these components are insignificant. Other states that test for pyrethrins test for cinerin I, jasmolin I, and pyrethrins I, or pyrethrin I and pyrethrin I, or cinerin I, jasmolin I, pyrethrin I, cinerine II, jasmolin II, and pyrethrin II. At this time, the department believes maintaining the pesticide list in the Appendix is satisfactory and is not out of step with other state's marijuana regulations.

The department believes the suggestion for section 6.3.1 of SOP-001 is unnecessary, and refers Fidelity to the new term "testing laboratory sampler" in ARM 42.39.601 which includes language clarifying a testing laboratory sampler is an employee of the testing laboratory.

COMMENT 15: Several commenters expressed objection to the requirement that a testing laboratory sampler must physically verify the count of a package submitted for testing. The perspectives came from testing laboratories as well as cultivators, manufacturers, and dispensaries, but shared the opinion that the requirement is an administrative burden due to the amount of time that it takes to physically verify products submitted for testing, such as marijuana pre-rolls. Further, monitoring, inspecting, and regulating are the job of the department and its inspectors, and it is the job of the department to interpret laws and rules and apply those interpretations to the industry.

Mr. Erwin commented that the requirement creates a clear conflict of interest between a testing laboratory and its customer.

Commenters have requested the removal of the requirement or the easing of the requirement such that the department is satisfied that product is not being deviated from testing while taking time constraints of all of the parties concerned into account.

RESPONSE 15: The department disagrees and notes that the requirements have been in place since SOP-001 was first adopted under the Department of Public Health and Human Services. Verifying that an entire test batch is presented to the testing laboratory sampler ensures that a truly random and representative sample is collected from the entire test batch; and doing so provides the most representative sample from which test results are derived and further ensures that the label on the marijuana item accurately reflects the product.

In Section 7.1.4 of SOP-001, the weight confirmation for flower test batches was reduced from all flower test batches to one to reduce the time burden on laboratories while also spot checking the process.

Pre-rolls are addressed in Section 7.6 of SOP-001, and those sample increments are specified and very clear.

The department disagrees with Mr. Erwin that marijuana testing laboratories are put in a conflicting position because they fulfill a specific role in Montana's marijuana regulatory construct under 16-12-202, 16-12-206, and 16-12-209, MCA. The department contends that testing laboratories are aware of their unique position in the industry because they effectively implement the department's quality assurance testing protocols and indirectly affect what product can be sold in Montana with the safety of Montana consumers as a primary mission.

COMMENT 16: In addition to shared comments previously responded to, Mr. Saur commented concerns with heavy metals testing, pre-roll testing for potency, and sample sizes for vape cartridges and edibles.

Mr. Kajander shared Mr. Saur's question about the changes to heavy metals testing.

Mr. Saur also requested the department define the term "increment." He states that the term is used consistently by the department but is not clearly defined. He adds that he wants to calculate how much a testing laboratory will take before sampling and it is necessary in the calculation of the cost of goods sold. Is one serving an increment, or is one package an increment?

Mr. Erwin also commented to the proposed definition of "increments" and "container." For container, it is unclear to Mr. Erwin how this is supposed to work with prepackaged products. Does each product have its own "container," or is the individual product package considered the "marijuana item"? For increments, how does this definition apply in SOP-001 regarding sampling required "increments"?

RESPONSE 16: The department responds to Messrs. Saur and Kajander that the only change to heavy metal testing was a minor word change – "will" to "shall" – and there has been no substantive change to heavy metal testing protocols from current requirement or how a random test might occur.

The department agrees that a general definition of "sample increment" may be helpful for clarity, particularly for licensees other than laboratories. However, even though ARM 42.39.614 was a part of the this rulemaking, the suggested definitional change cannot be accomplished at this time for the reasons expressed in the second paragraph of Response 3.

The existing tables 1.0, 2.0, 3.0, 4.0, 5.0, and 6.0 along with Sections 7.4.8, 7.5.7, and 7.6.7 in SOP-001 also direct the reader as to what and how much a sample increment is per product type.

The department agrees that the term "container," as proposed, may cause confusion with regards to product packaging. The department has removed the term from ARM 42.39.601 and will work within the existing terms for product packaging.

COMMENT 17: Mr. Bostrom commented strong support for the rulemaking. He states that these amendments are essential for improving marijuana product testing protocols to ensure the highest safety standards for Montana's consumers. He commends the department's initiative to expand, improve, and clarify these rules to address the evolving marijuana industry in Montana.

Mr. Bostrom continued by emphasizing the importance of testing pre-rolls in final form. He asks how industry can be certain that the flower claimed to be in the final pre-roll is actually what is present, especially since typical practice involves using leftover flower from larger testing lots designated for sale as flower the practice can result in significant discrepancies in potency and quality. Mr. Bostrom quotes evidence of discrepancy research from California and highlights the necessity of final form testing.

Mr. Erwin also shares many of the concerns with Mr. Bostrom and posits whether the definition of "pre-roll" may be too broad. Mr. Erwin states that under the definition, you can make different pre-rolls that are likely to yield different test results but meet the definition as proposed since batches of pre-rolls could be made in a 48-hour period that have the same strain but different amounts of each strain.

Regarding marijuana pre-rolls, Messrs. Saur and Kajander commented the protocol needs to clarify when pre-rolls should be tested for potency. The current wording suggests retesting is needed if potency is expected to change, likely referring to infused pre-rolls and strain blends. Is compliant, tested flower that is simply ground and rolled into pre-rolls expected to change the potency?

Do licensees have to test pre-rolls if the material has aged and licensees are suspicious that the THC has potentially degraded? Or does this just apply if a licensee infuses or otherwise alters the joints, or combines materials in a way that would result in different expected testing results than the tested flower batch being used to make the joints?

Messrs. Saur and Kajander claim it is crucial to define these scenarios clearly to avoid redundant testing.

RESPONSE 17: The department thanks Mr. Bostrom for his support of the rulemaking and appreciates his position regarding current practices and issues with pre-roll testing, in which the department agrees.

The department disagrees with Mr. Erwin that the definition of "pre-roll" is too broad. Additionally, small differences in the amount of single strain ground flower between individual pre-rolls of the same process lot is not expected to affect the potency results of the product as potency for this product type is reported as a percentage and is not weight dependent. ARM 42.39.614(8) provides typical examples of when the potency of a pre-roll is expected to change, including multi-strain pre-rolls and all infused pre-rolls. However, other scenarios may exist, and

considerations may need to be given to the age or storage conditions of the flower used. Compliantly tested single-strain flower that is ground and manufactured into pre-rolls is not expected to change the potency.

The department responds to Messrs. Saur and Kajander, that yes, a licensee must test pre-rolls if the material has aged and if THC has potentially degraded. As to the second question, ARM 42.39.614(8) provides specific examples: ". . . include mixing multiple strains of usable marijuana into a process lot of pre-rolls and all process lots of infused pre-rolls."

COMMENT 18: As an extension of Comment 17, Mr. Bostrom also made several comments relative to public marijuana policy, truth in labeling laws, consumer trust and market growth, and public trust and good manufacturing practices – all of which set high expectations and goals of building Montana's cannabis industry.

RESPONSE 18: The department appreciates Mr. Bostrom's remaining comments. However, they are matters of public policy and are outside the scope of this rulemaking. Accordingly, the department declines to respond.

COMMENT 19: Ms. Johnson commented her opinion that the pesticides in the proposed list are not "compatible with each other" and discussed the increased number of continuing calibration verifications testing labs will need to run and the amount of time each requires, saying that expanded testing equals fewer tests completed in a day.

Ms. Johnson also suggested that the department adopt the Department of Agriculture's pesticide registry for all farming and commerce and that the department should require cultivators to register with that agency.

Ms. Johnson also made several comments that are outside the scope of this rulemaking.

RESPONSE 19: While the department generally agrees with Ms. Johnson regarding expanded pesticides requiring more testing time, substantial delays could equally be the result of not maximizing efficiencies in running QC samples and instruments. The department's Cannabis Laboratory Program has discussed this issue previously with other testing labs, and based on the limited amount of information provided, the issue may be isolated to the commenter.

Regarding Ms. Johnson's suggestion about the Department of Agriculture's pesticide registry, the department notes, as of this rulemaking, there is no authorized pesticide list and usage that applies to marijuana. Further, the requested change likely requires statutory implementation or clarification by the legislature before the department could implement any expanded testing protocols.

As some of Ms. Johnson's comments are outside the scope of this rulemaking, the department declines to respond.

/s/ Todd Olson
Todd Olson
Rule Reviewer

/s/ Brendan Beatty
Brendan Beatty
Director of Revenue

Certified to the Secretary of State August 13, 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.

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. This list includes notices in which those rules adopted during the period February 23 through August 9, 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 list 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 March 31, 2024, this list, and the table of contents of this issue of the Register.

This list 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 2024 Montana Administrative Register.

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- 42-1072 Implementation of House Bills 128, 903, and 948 (2023) - Revising Requirements Applicable to Chemical, Infused Product, and Mechanical Manufacturers of Marijuana, p. 1817, 616
- 42-1073 Packaging and Labeling of Marijuana - Marijuana Wholesaling - Marijuana Advertising, p. 1834, 631
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- 42-1075 Beer and Wine Tax Reporting Changes to Implement HB 124 and SB 20 (2023), p. 237, 759
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- 42-1077 Tax Haven Corporation Water's Edge Filing Requirements to Implement Senate Bill 246 (2023), p. 962, 1470
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- 44-2-275 State Agency Administrative Rulemaking, p. 593, 1471
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EXECUTIVE BRANCH APPOINTEES AND VACANCIES

Section 2-15-108, MCA, passed by the 1991 Legislature, directed that all appointing authorities of all appointive boards, commissions, committees, and councils of state government take positive action to attain gender balance and proportional representation of minority residents to the greatest extent possible.

One directive of 2-15-108, MCA, is that the Secretary of State publish monthly in the ***Montana Administrative Register*** a list of executive branch appointees and upcoming vacancies on those boards and councils.

In this issue, appointments effective in July 2024 appear. Potential vacancies from September 1, 2024 through September 30, 2024, are also listed.

IMPORTANT

Membership on boards and commissions changes constantly. The following lists are current as of August 1, 2024.

For the most up-to-date information of the status of membership, or for more detailed information on the qualifications and requirements to serve on a board, contact the appointing authority.

EXECUTIVE BRANCH APPOINTEES FOR JULY 2024

<u>Appointee</u>	<u>Appointed By</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Board of Massage Therapy			
Ivy Bacon Great Falls	Governor	Davis	7/1/2024 7/1/2027
Qualifications (if required): Public Representative			
Ms. Anna Sites Bozeman	Governor	Holwick	7/23/2024 7/1/2026
Qualifications (if required): Massage Therapist			
Board of Outfitters			
Mr. Ernest Barker Augusta	Governor	Reappointed	7/1/2024 6/30/2028
Qualifications (if required): Hunting and Fishing outfitter with government permitting knowledge			
Board of Regents of Higher Education			
Ms. Raina Mortenson	Governor	New	7/1/2024 7/1/2025
Qualifications (if required): Student Regent			
Committee on Telecommunications Access Services for Persons With Disabilities			
Ms. Dana Kjersem Havre	Governor	Reappointed	7/22/2024 7/1/2027
Qualifications (if required): DPHHS Representative			

EXECUTIVE BRANCH APPOINTEES FOR JULY 2024

<u>Appointee</u>	<u>Appointed By</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Committee on Telecommunications Access Services for Persons With Disabilities Cont.			
Ms. Michelle Owens Missoula	Governor	Reappointed	7/22/2024 7/11/2027
Qualifications (if required): Independent Service Provider			
Ms. Tina Shorten Helena	Governor	Reappointed	7/22/2024 7/11/2027
Qualifications (if required): PSC Representative			
Montana Criminal Justice Oversight Council			
Ms. Shantelle Gaynor Missoula	Governor	Bell	7/23/2024 7/11/2025
Qualifications (if required): Crime Victim Representative			
Mr. Henry Seaton Missoula	Governor	Kickingwoman	7/23/2024 7/11/2025
Qualifications (if required): Civil Rights Advocate			
Montana Heritage Preservation and Development Commission			
Mr. Ron Buck Shelby	Governor	Ross	7/23/2024 5/1/2025
Qualifications (if required): Experience in historic preservation			

EXECUTIVE BRANCH APPOINTEES FOR JULY 2024

<u>Appointee</u>	<u>Appointed By</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Montana Heritage Preservation and Development Commission Cont.			
Mr. Christopher Budeski Bozeman	Governor	Maechling	7/23/2024 5/1/2025
Qualifications (if required): Experience in community planning			
Ms. Susan Hardman Hamilton	Governor	Reappointed	7/23/2024 5/1/2027
Qualifications (if required): Experience managing tourist facilities			
Dr. Timothy Lehman Billings	Governor	Reappointed	7/23/2024 5/1/2026
Qualifications (if required): Montana Historian			
Ms. Beverly Marshall Bozeman	Governor	Court	7/23/2024 5/1/2025
Qualifications (if required): Public Member			
Ms. Sabre Moore Ekalaka	Governor	Ewelt	7/23/2024 5/1/2026
Qualifications (if required): Member of Tourism Advisory Council			
Ms. Patricia Spencer Clancy	Governor	Reappointed	7/23/2024 5/1/2027
Qualifications (if required): Broad experience in business			

EXECUTIVE BRANCH APPOINTEES FOR JULY 2024

<u>Appointee</u>	<u>Appointed By</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Montana Historical Society Board of Trustees			
Mr. Tim Fox Clancy Qualifications (if required): Public Member	Governor	Reappointed	7/1/2024 7/1/2029
Mr. William Jones Harlowton Qualifications (if required): Public Member	Governor	Reappointed	7/1/2024 7/1/2029
Ms. Candi Zion Winifred Qualifications (if required): Public Member	Governor	Reappointed	7/1/2024 7/1/2029
Montana Pulse Crop Committee			
Brian Aklestad Vida Qualifications (if required): Member at Large	Governor	Reappointed	7/1/2024 7/1/2025
Chad Forest Richland Qualifications (if required): Eastern District Representative	Governor	Bogar	7/1/2024 7/1/2027

EXECUTIVE BRANCH APPOINTEES FOR JULY 2024

<u>Appointee</u>	<u>Appointed By</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Montana Pulse Crop Committee Cont.			
Mr. Todd Hansen Gildford	Governor	Reappointed	7/1/2024 7/1/2027
Qualifications (if required): Member at Large			
Public Safety Officer Standards and Training Council (POST)			
Mr. Brian Casey Boulder	Governor	Smith	7/23/2024 1/5/2025
Qualifications (if required): Law Enforcement Representative			
State Electrical Board			
Mr. Clay Ledbetter Missoula	Governor	Reappointed	7/1/2024 7/1/2028
Qualifications (if required): Master Licensed Electrician			
State Workforce Innovation Board (SWIB)			
Bo Bruinsma Billings	Governor	Reappointed	7/1/2024 7/1/2027
Qualifications (if required): Workforce Representative			
Mr. Paddy Fleming Bozeman	Governor	Reappointed	7/1/2024 7/1/2027
Qualifications (if required): Workforce Representative			

EXECUTIVE BRANCH APPOINTEES FOR JULY 2024

<u>Appointee</u>	<u>Appointed By</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
State Workforce Innovation Board (SWIB) Cont.			
Mr. Adam Gilbertson Laurel Qualifications (if required): Business Representative	Governor	Reappointed	7/1/2024 7/1/2027
Mr. Paul Hopfauf Glendive Qualifications (if required): Business Representative	Governor	Reappointed	7/1/2024 7/1/2027
Ms. Heather O'Hara Helena Qualifications (if required): Business Representative	Governor	Reappointed	7/1/2024 7/1/2026
Mr. Quinton Queer Butte Qualifications (if required): Workforce Representative	Governor	New	7/1/2024 7/1/2026
Ms. Sara Schreiner Laurel Qualifications (if required): Business Representative	Governor	Palin	7/1/2024 7/1/2026
Mr. David Smith Helena Qualifications (if required): Business Representative	Governor	Reappointed	7/1/2024 7/1/2026

EXECUTIVE BRANCH APPOINTEES FOR JULY 2024

<u>Appointee</u>	<u>Appointed By</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
State Workforce Innovation Board (SWIB) Cont.			
Mr. James Wonnacott Butte	Governor	Reappointed	7/1/2024 7/1/2026
Qualifications (if required): Workforce Representative			
Mr. Jason Yager Belgrade	Governor	Bentley	7/1/2024 7/1/2027
Qualifications (if required): Business Representative			
Teachers' Retirement System Board (TRS)			
Mr. Daniel Trost Helena	Governor	Reappointed	7/1/2024 7/1/2029
Qualifications (if required): Public Member			
Western Montana Conservation Commission (WMCC)			
Mr. Duane Braaten Kalispell	Governor	New	7/1/2024 7/1/2028
Qualifications (if required): Public Member			
Mr. Lech Naumovich Whitefish	Governor	New	7/1/2024 7/1/2028
Qualifications (if required): Public Member			

EXECUTIVE BRANCH VACANCIES – SEPTEMBER 1, 2024 THROUGH SEPTEMBER 30, 2024

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
Alternative Health Care Board Mr. Jeffrey Green, Belgrade Qualifications (if required): Naturopath	Governor	9/1/2024
Board of Medical Examiners Dr. J . Bruce Robertson, Bozeman Qualifications (if required): Doctor of Medicine	Governor	9/1/2024
Board of Psychologists Dr. Christine Fiore, Missoula Qualifications (if required): Licensed Psychologist	Governor	9/1/2024
Dr. James P. Murphey, Bozeman Qualifications (if required): Licensed Psychologist	Governor	9/1/2024
Building Codes Council Mr. Dick Swingley, Helena Qualifications (if required): None stated	Governor	9/30/2024
Mr. Rusty Cash, Bigfork Qualifications (if required): None stated	Governor	9/30/2024
Mr. Josh Steed, Helena Qualifications (if required): None stated	Governor	9/30/2024

EXECUTIVE BRANCH VACANCIES – SEPTEMBER 1, 2024 THROUGH SEPTEMBER 30, 2024

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
Building Codes Council Cont. Mr. Joe Nistler, Helena Qualifications (if required): None stated	Governor	9/30/2024
Burial Preservation Board Mr. Conrad Fisher, Billings Qualifications (if required): Northern Cheyenne Tribe Representative	Governor	9/1/2024
Mr. Michael Black Wolf, Hays Qualifications (if required): Ft Belknap Indian Community Representative	Governor	9/1/2024
Mr. Andrew LeBrun, Red Lodge Qualifications (if required): Montana Coroners' Association Representative	Governor	9/1/2024
Mr. Duane Reid, Elmo Qualifications (if required): Little Shell Tribe Representative	Governor	9/1/2024
State Rehabilitation Council Mr. Brian Tocher, Butte Qualifications (if required): Advocacy community representative	Governor	9/30/2024
Ms. Jean Schroeder, Vaughn Qualifications (if required): Parent organization representative	Governor	9/30/2024
Mr. John Gorton, Helena Qualifications (if required): Office of Public Instruction Representative	Governor	9/30/2024

EXECUTIVE BRANCH VACANCIES – SEPTEMBER 1, 2024 THROUGH SEPTEMBER 30, 2024

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
State Rehabilitation Council Cont.		
Mr. Carlos Ramalho, Billings Qualifications (if required): Statewide Independent Living Council Representative	Governor	9/30/2024
Ms. Celina Cline, Havre Qualifications (if required): Vocational Rehabilitation Counselor	Governor	9/30/2024
Ms. Lacey Keller, McAllister Qualifications (if required): Disability Advocate	Governor	9/30/2024
Ms. Marcy Roberts, Kalispell Qualifications (if required): Business and Labor Representative	Governor	9/30/2024
Mr. Michael Manhardt, Missoula Qualifications (if required): Statewide Independent Living Council Representative	Governor	9/30/2024
Upper Clark Fork Basin River Remediation and Restoration Advisory Council		
Mr. Elton Ringsak, Butte Qualifications (if required): Citizen voting member	Governor	9/1/2024
Ms. Maggie Schmidt, Deer Lodge Qualifications (if required): Citizen voting member	Governor	9/1/2024
Ms. Kristine Beal, Missoula Qualifications (if required): Citizen voting member	Governor	9/1/2024

EXECUTIVE BRANCH VACANCIES – SEPTEMBER 1, 2024 THROUGH SEPTEMBER 30, 2024

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
Upper Clark Fork Basin River Remediation and Restoration Advisory Council Cont. Billie Kulaski, Philipsburg Qualifications (if required): Citizen voting member	Governor	9/1/2024
Mr. Steve Hill, Anaconda Qualifications (if required): Citizen voting member	Governor	9/1/2024
Ms. Margery Christiansen, Fairmont Qualifications (if required): Citizen voting member	Governor	9/1/2024
Mr. Mike Paffhausen, Butte Qualifications (if required): Citizen voting member	Governor	9/1/2024
Mr. Matt Dorrington, Helena Qualifications (if required): DEQ Director	Governor	9/1/2024
Mr. Bill Schenk, Helena Qualifications (if required): FWP Director designee	Governor	9/1/2024
Ms. Anna Packenham Stevenson, Helena Qualifications (if required): DNRC Director designee	Governor	9/1/2024

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