MONTANA ADMINISTRATIVE REGISTER

2024 ISSUE NO. 18
SEPTEMBER 20, 2024
PAGES 2173-2340

ISSUE NO. 18

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 The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

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

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PROPOSAL NOTICES

ADOPTION NOTICES

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

In the matter of the amendment of ARM 37.27.902, 37.85.105, and 37.88.101 pertaining to updating Medicaid and non-Medicaid provider rates, fee schedules, and effective dates	))))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On October 11, 2024, at 9:00 a.m., the Department of Public Health and Human Services will hold a public hearing via remote conferencing to consider the proposed amendment 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/89457521709?pwd=oxGGfYaNLm43naKpY8GnS7UTNuHiea.1 meeting ID: 894 5752 1709, and password: 804400; or

(b) Dial by telephone: +1 646 558 8656, meeting ID: 894 5752 1709, and password: 804400. Find your local number: https://mt-gov.zoom.us/u/khXWnFMAK.

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 27, 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:

37.27.902 SUBSTANCE USE DISORDER SERVICES: AUTHORIZATION REQUIREMENTS (1) remains the same.

(2) In addition to the requirements contained in rule, the department has developed and published the Behavioral Health and Developmental Disabilities (BHDD) Division Medicaid Services Provider Manual for Substance Use Disorder and Adult Mental Health, dated ~~January 1, 2024~~ October 1, 2024, which it adopts and incorporates by reference. The purpose of the manual is to implement requirements for utilization management and services. A copy of the manual may be obtained from the department by a request in writing to the Department of Public Health and Human Services, Behavioral Health and Developmental Disabilities

(BHDD) Division, 100 N. Park, Ste. 300, P.O. Box 202905, Helena, MT 59620-2905 or at: https://dphhs.mt.gov/bhdd/BHDDMedicaidServicesProviderManual.

(3) remains the same.

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

37.85.105 EFFECTIVE DATES, CONVERSION FACTORS, POLICY ADJUSTERS, AND COST-TO-CHARGE RATIOS OF MONTANA MEDICAID PROVIDER FEE SCHEDULES (1) through (4) remain the same.

(5) The department adopts and incorporates by reference, the fee schedule for the following programs within the Behavioral Health and Developmental Disabilities Division on the date stated:

(a) The mental health center services for adults fee schedule, as provided in ARM 37.88.907, is effective ~~July 1, 2023 (fee schedule version 2) and July 1, 2024~~ October 1, 2024.

(b) through (6) remain the same.

AUTH: 53-2-201, 53-6-113, MCA
IMP: 53-2-201, 53-6-101, 53-6-125, 53-6-402, MCA

37.88.101 MEDICAID MENTAL HEALTH SERVICES FOR ADULTS, AUTHORIZATION REQUIREMENTS (1) remains the same.

(2) In addition to the requirements contained in rule, the department has developed and published the Behavioral Health and Developmental Disabilities (BHDD) Division Medicaid Services Provider Manual for Substance Use Disorder and Adult Mental Health, dated ~~January 1, 2024~~ October 1, 2024, which it adopts and incorporates by reference. The purpose of the manual is to implement requirements for utilization management and services. A copy of the manual may be obtained from the department by a request in writing to the Department of Public Health and Human Services, Behavioral Health and Developmental Disabilities (BHDD) Division, 100 N. Park, Ste. 300, P.O. Box 202905, Helena, MT 59620-2905 or at: https://dphhs.mt.gov/bhdd/BHDDMedicaidServicesProviderManual.

(3) through (5) remain the same.

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

4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) is proposing to amend ARM 37.27.902, 37.85.105, and 37.88.101, pertaining to updating Medicaid provider rates, fee schedules, and effective dates and updating the BHDD Medicaid Services Provider Manual for Substance Use Disorder and Adult Mental Health. The department administers the Montana Medicaid and non-Medicaid program to provide health care to Montana's qualified low income, elderly, and disabled residents. Medicaid is a public assistance program paid for with state and federal funds

appropriated to pay health care providers for the covered medical services they deliver to Medicaid members.

Pursuant to 53-6-113, MCA, the Montana Legislature has directed the department to use the administrative rulemaking process to establish rates of reimbursement for covered medical services provided to Medicaid members by Medicaid providers. The department proposes these rule amendments to establish Medicaid rates of reimbursement. In establishing the proposed rates, the department considered as primary factors the availability of funds appropriated by the Montana legislature during the 2023 regular legislative session, the actual cost of services, and the availability of services.

Proposed changes to provider rates that are the subject of this rule notice, including rates in fee schedules and rates in provider manuals, can be found at https://medicaidprovider.mt.gov/proposedfs.

The following sections explain proposed amendments to the following specific subsections: ARM 37.85.105 and 37.88.101.

ARM 37.85.105(5)(a)
Behavioral Health and Developmental Disabilities Division Fee Schedules – July 1, 2024
The department is proposing to amend the effective date to October 1, 2024, for the following fee schedules: mental health center services for adults. This is necessary to update provider rates to reflect changes to the BHDD Medicaid Provider Manual. Updates to the mental health fee schedule include the removal of InPACT and amending the allowable units for CMP.

ARM 37.27.902 Substance Use Disorder Services: Authorization Requirements and ARM 37.88.101 Medicaid Mental Health Services for Adults, Authorization Requirements
The department is proposing to amend the effective date to October 1, 2024, for the BHDD Medicaid Services Provider Manual for Substance Use Disorder and Adult Mental Health. This is necessary to ensure that the manual includes new and updated policies and service requirements to address issues identified through stakeholder engagement. This includes the following amendments to the BHDD Medicaid Manual:

- Policy 230 - Integrated Service Delivery
    - Amend policy to include new Policy 465 Community Maintenance Program (CMP) and remove targeted case management as a concurrent service for ASAM 2.1 and ASAM 3.1.
- Policy 445 - Behavioral Health Group Home
    - Amend medical necessity criteria language to be objective to support utilization management and avoid provider confusion.
- Policy 460 - Program of Assertive Community Treatment
    - Amend language to align the policy with SAMHSA's ACT toolkit to ensure fidelity of the model.

    - Add training requirements for core PACT team members to standardize training across providers.
    - Change required staff FTE to include prescriber, team lead, nurse(s), co-occurring clinician(s), employment specialist(s), peer support specialist, and administrative assistant to align with fidelity standards.
    - Add requirement for minimum 10:1 client-to-staff ratio (prescriber and administrative assistant not included in ratios) to align with fidelity standards.
    - Add clarifying language regarding required service components including frequency, service location, and allowance for telehealth to align with fidelity standards.
    - Remove Community Maintenance Program (CMP) from this policy. A new proposed policy for CMP will be added to specifically define medical necessity, provider requirements, service requirements, and utilization management.
    - Remove InPact from the policy due to lack of utilization by providers.
- Policy 455 - Montana Assertive Community Treatment
    - Change title of service to Montana Community Treatment (MCT) from the Assertive Community Treatment Model as this model is not fully aligned with fidelity and should reflect Montana specific requirements.
    - Amend language to better align the policy with SAMHSA's ACT toolkit to ensure standards of the model as modified for Montana to address frontier areas.
    - Change required staff FTE to include prescriber, team lead, nurse(s), co-occurring clinician(s), MCT generalist(s), and administrative assistant to align with Montana specific requirements.
    - Add requirement for minimum 10:1 client to staff ratio (prescriber and administrative assistant not included in ratios) to align with Montana specific requirements.
    - Add clarifying language regarding required service components including frequency, service location, and allowance for telehealth to align with Montana specific requirements.
- Policy 455QM - Montana Assertive Community Treatment Quality Measures
    - Amend language to indicate measures identified by stakeholders.
    - Amend title to reflect new and updated language to include PACT and MCT quality measures.
- Policy 465 Community Maintenance Program (CMP)
    - Add new policy for CMP that will define medical necessity, provider requirements, service requirements, and utilization management. Service can be offered by PACT and MCT teams as a step-down service for clients that no longer need the intensity of PACT or MCT.

- Policy 525 SUD Intensive Outpatient (IOP) Therapy (ASAM 2.1)
    - Amend language to clarify that care coordination is required, but not included in the bundled rate. This is necessary to align with changes in Policy 230 and reflect requirements in the ASAM Criteria.
- Policy 535 SUD Clinically Managed Low-Intensity Residential (ASAM 3.1)
    - Amend language to clarify that care coordination is required, but not included in the bundled rate. This is necessary to align with changes in Policy 230 and reflect requirements in the ASAM Criteria.

The draft manual may be viewed at https://dphhs.mt.gov/bhdd/SubstanceAbuse/ProviderManualsandProgramResources.

Fiscal Impact

The fiscal impact of the proposed rule amendment is identified in the table below. The fiscal impact shown in the table below is a result of changes to the mental health fee schedule which the department is proposing to remove InPACT due to lack of utilization and increase the allowable monthly units for CMP.

The following table displays the number of providers affected by the amended fee schedules, effective dates, conversion factors, and rates for services for SFY 2025.

Provider Type	SFY 2025 Budget Impact (Federal Funds)	SFY 2025 Budget Impact (State Funds)	SFY 2025 Budget Impact (Total Funds)	Active Provider Count
Mental Health Center	$557,498.90	$264,770.86	$822,269.76	6

5. The department intends to apply these rule amendments retroactively to be effective October 1, 2024.

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., October 18, 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 of the above-referenced rules will not significantly and directly impact small businesses.

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

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

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

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

Certified to the Secretary of State September 10, 2024.

BEFORE THE DEPARTMENT OF COMMERCE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 8.94.3729 pertaining to the administration of the Community Development Block Grant (CDBG) Program	)))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On August 9, 2024, the Department of Commerce published MAR Notice No. 8-94-215 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 1939 of the 2024 Montana Administrative Register, Issue Number 15.

2. No comments or testimony were received.

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

/s/ John Semmens
John Semmens
Rule Reviewer

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

Certified to the Secretary of State September 10, 2024.

BEFORE THE DEPARTMENT OF COMMERCE
OF THE STATE OF MONTANA

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

TO: All Concerned Persons

1. On August 9, 2024, the Department of Commerce published MAR Notice No. 8-99-214 pertaining to the public hearing on the proposed adoption of the above-stated rule at page 1941 of the 2024 Montana Administrative Register, Issue Number 15.

2. The department has adopted NEW RULE I (8.99.1601) 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 requested there be a greater focus on value-added agricultural products and processing such as goat milk soap and similar products.

Response 1: The department recognizes the importance of value-added agricultural products and processing. The department encourages applications that "diversify operations through new or enhanced agritourism revenue options," which may include value-added agricultural products or processes.

Comment 2: A commenter requested that the department consider the effect of increased insurance costs as a barrier for producers and allow insurance as an eligible use of program funds.

Response 2: Section V of the Guidelines states "Grantees may not use program funds for the following purposes: any ongoing or monthly general operating expenses such as wages, insurance, equipment, office supplies, postage, or machinery needed for day-to-day operations." The intent of the grant program is to assist projects beyond their operating expenses and "diversify operations through new or enhanced agritourism revenue options."

Comment 3: A commenter requested clarity on rural, eastern and under-visited areas.

Response 3: A map of Montana's urban and over-visited places is available for reference at https://www.arcgis.com/apps/dashboards/1482e71be2a34511ab6577fa7689ffdb.

Comment 4: A commenter asked if school bus rentals to assist with farm field trips is an eligible expense.

Response 4: As established in Section IV of the Guidelines, grantees generally may use program funds to provide agritourism services in Montana. Eligible uses of program funds include "advertising and marketing, agriculture experiences or activities, business planning and development, education and outreach, and safety and accessibility additions or improvements." Travel associated with educational field trips may be considered an eligible expense to assist with agricultural experiences or activities.

Comment 5: A commenter requested the timeline of the agritourism grant cycle, including a submission deadline and projected announcement of awards.

Response 5: The department will provide additional information regarding the agritourism grant cycle at https://commerce.mt.gov/Business/Programs-and-Services/Tourism-Marketing/Tourism-Grant-Program/Agritourism-Grant-Program.

/s/ John Semmens
John Semmens
Rule Reviewer

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

Certified to the Secretary of State September 10, 2024.

BEFORE THE OFFICE OF PUBLIC INSTRUCTION
OF THE STATE OF MONTANA

In the matter of the adoption of NEW RULES I through III and the amendment of ARM 10.7.106A, 10.10.301, 10.10.301B, 10.10.301C, 10.10.301D, 10.16.3818, and 10.20.106 pertaining to school finance	)	NOTICE OF ADOPTION

TO: All Concerned Persons

1. On July 5, 2024, the Superintendent of Public Instruction published MAR Notice No. 10-7-124 pertaining to the public hearing on the proposed adoption and amendment of the above-stated rules at page 1501 of the 2024 Montana Administrative Register, Issue Number 13. On August 9, 2024, the Superintendent of Public Instruction published an amended notice pertaining to the public hearing on the proposed adoption and amendment of the above-stated rules at page 1944 of the 2024 Montana Administrative Register, Issue Number 15.

2. The Superintendent has amended the following rules as proposed: ARM 10.10.301C, 10.10.301D, and 10.20.106.

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

NEW RULE I (ARM 10.16.3821) DEFINITIONS The following definitions apply to this subchapter:

(1) "Appropriate educational opportunity" has the meaning as defined in ~~20-7-435~~ 20-7-436, MCA.

(2) through (6) remain as proposed.

(7) "Serious emotional disturbance (SED)" has the meaning as defined in ARM 37.87.102 ~~means an emotional disturbance that is so severe that an eligible child has been placed in a qualifying facility for treatment, as used in 20-7-436, MCA~~.

(8) remains as proposed.

AUTH: 20-7-419, MCA
IMP: ~~20-7-403,~~ 20-7-419, ~~20-7-435,~~ 20-7-436, MCA

NEW RULE II (ARM 10.16.3822) TUITION RESPONSIBILITY TO QUALIFYING FACILITIES (1) The Office of Public Instruction (OPI) ~~may assume responsibility~~ is responsible for a portion ~~or all~~ of the cost of an eligible child's education when the eligible child is a Montana resident and placed in a qualifying facility, which may or may not be in the eligible child's district of residence.

(2) and (3) remain as proposed.

(4) ~~If~~ For a child ~~child's district of residence has the capability to provide an appropriate education for a child with a disability, but the child has been placed in a district of choice at the discretion of a parent~~ placed in a qualifying facility, the tuition rate paid by the child's district of residence ~~districts for placement of a non-resident student applies and~~ is calculated in accordance with 20-7-435(3)(c) ~~20-5-320 and 20-5-321(1)(a) through (c)~~, MCA.

(5) remains as proposed.

AUTH: 20-7-419, MCA
IMP: 20-7-403, 20-7-419, 20-7-420, 20-7-435, 20-7-436, MCA

NEW RULE III (ARM 10.16.3823) QUALIFYING FACILITY REIMBURSEMENT PAYMENTS (1) To be eligible for a reimbursement payment, a qualifying facility must provide an eligible child with an appropriate educational opportunity in a cost-effective manner and must be under contract with the Office of Public Instruction (OPI). The facility must:

(a) submit educational data for each eligible child in accordance with special education program requirements, submitted on a form prescribed by the OPI;

(b) within 60 days, submit to a requested audit;

(c) maintain accreditation and licensing as required by the OPI and the Department of Public Health and Human Services.~~; and~~

~~(d) maintain valid and documented attendance agreements for all eligible children per 20-5-320, 20-5-321, 20-5-322, and 20-5-324, MCA, on a form prescribed by the OPI.~~

(2) remains as proposed.

~~(3) An eligible child and their placing state agency, parent, or legal guardian may opt out of the education program provided by the facility if the eligible child is enrolled in a qualified remote learning program or correspondence program. If the eligible child has opted out of the facility's in-house educational program, the facility will not be eligible for reimbursement by the OPI for that eligible child.~~

~~(a) Qualifying facilities must have an active attendance agreement in place for each eligible child that indicates the eligible child's election of educational opportunity. If the eligible child has opted out, the attendance agreement must indicate the current enrollment of the eligible child.~~

~~(b) Each eligible child who opts out of the facility in-house educational programs must be given adequate time during the day to complete their educational obligations.~~

(4) through (6) remain as proposed but are renumbered (3) through (5).

~~(7)~~(6) The qualifying facility is responsible to invoice the district of residence by July ~~August~~ 15 of each year. The district of residence is responsible to pay one-half of tuition owed by December 31 and the remaining amount by June 15.

(8) remains as proposed but is renumbered (7).

AUTH: 20-7-419, MCA
IMP: 20-7-403, 20-7-419, 20-7-435, 20-7-436, MCA

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

10.7.106A TRANSPORTATION COSTS ALLOCATED BY OUT-OF-DISTRICT ATTENDANCE AGREEMENTS (1) remains as proposed.

(a) When a student enrolls outside their district of residence, by parent request in accordance with 20-5-320, MCA, the student is not an eligible transportee and transportation is the responsibility of the parent or guardian. A student with a disability is always an eligible transportee under 20-10-101, MCA.

(b) When an out-of-district attendance agreement is ~~approved by the district of residence~~ in place, the district of attendance may discretionarily provide transportation to the student.

(c) Only under an agreement ~~approved by~~ between the district of residence and the district of attendance may a student be an eligible transportee of the district that is providing transportation as defined in 20-5-320 ~~20-10-101~~, MCA.

(2) remains as proposed.

(3) Pursuant to 20-5-323, MCA, a school district transporting a student under an out-of-district attendance agreement may charge for over-schedule costs of transportation if stated in the attendance agreement. Over-schedule costs of transporting an out-of-district ineligible student, as limited by 20-5-323(5), MCA, may be charged to the parents or guardians responsible for placing the child, in accordance with ~~by 20-3-320~~ 20-5-320 or 20-5-321, MCA.

(4) through (8) remain as proposed.

AUTH: 20-5-323, 20-9-201, 20-10-112, MCA
IMP: 20-5-320, 20-5-321, 20-5-323, 20-5-324, 20-10-141, 20-10-142, MCA

10.10.301 CALCULATING TUITION RATES (1) Regular Tuition. The district of residence must pay the district of attendance the rate as set in 20-5-323, MCA ~~lower of the percentage of either school district's adopted general fund budget, not to exceed 35.3%~~. For a kindergarten student enrolled in a half-time program as provided in 20-1-301(2)(a), MCA, and a preschool child with disabilities the rate is one-half the rate for an elementary student.

(2) remains as proposed.

(3) Tuition calculated in (2) may not exceed the lesser of:

(a) $2,500; or

(b) the actual individual costs of providing that student's program minus 120% of the tuition ~~maximum~~ per-ANB amount defined ~~rate established~~ in 20-5-323(7) ~~20-9-306(15)~~, MCA~~, for the first ANB for the year of attendance~~.

(4) remains as proposed.

(5) All Circumstances. The calculations in this rule are the maximum tuition rates that a district may charge for a Montana resident student.

(a) Pursuant to 20-5-320 and 20-5-321, MCA, tuition cannot be waived.

(b) Regular education tuition charged for students under a group attendance arrangement for educational program offerings must be calculated in accordance

with 20-5-320(3), MCA~~, must be the same rate charged for students attending under attendance agreements with other school districts but may not exceed the maximum regular education rate in (1)~~.

(c) Tuition amounts must be prorated for the portion of the year the student is enrolled. The proration is based on the percentage calculated by dividing the number of days the student is enrolled by the number of pupil instruction days scheduled by the district of attendance for the year of attendance.

AUTH: 20-5-323, 20-9-102, 20-9-201, MCA
IMP: 20-5-323, 20-6-702, MCA

10.10.301B OUT-OF-DISTRICT ATTENDANCE AGREEMENTS (1) and (2) remain as proposed.

(3) Discretionary out-of-district agreements must be signed by the student's parent or guardian who initiates the request, ~~an official~~ the board chair or board designee of the district of attendance, and ~~an official~~ the board chair or board designee of the district of residence.

(a) through (12) remain as proposed.

AUTH: 20-5-323, 20-9-102, 20-9-201, MCA
IMP: 20-5-320, 20-5-321, 20-5-322, 20-5-323, 20-5-324, MCA

10.16.3818 SPECIAL EDUCATION TUITION RATES (1) and (2) remain as proposed.

(3) A school official of the district of attendance must use one of the options defined below to determine the maximum amount which may be charged to the resident district for students with disabilities in addition to the general education tuition rate:

(a) remains as proposed.

(b) Option B: The actual unique costs of services provided to the student ages 3 to 21 as per the individualized education program (IEP), less 120% of the tuition ~~maximum~~ per-ANB rate defined ~~established~~ in 20-5-323(7) ~~and 20-9-306(15)~~, MCA, ~~for the year of attendance~~ and less the per-ANB special education block grants received by the district, may be added to the rate in ARM 10.10.301 if the county superintendent determines all of the following factors are present:

(i) through (5) remain as proposed.

AUTH: 20-5-323, 20-9-201, MCA
IMP: 20-5-320, 20-5-321, 20-5-323, 20-5-324, 20-9-306, MCA

5. 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: One commenter suggested that proposed NEW RULE I is not required since the definitions are already set in statute.

RESPONSE #1: The Superintendent appreciates the public comment. In adopting the proposed rules and amendments, the Superintendent has decided to keep definitions in proposed NEW RULE I. While such definitions are not required, the Superintendent believed that they will be helpful to the members of the public that will be reading NEW RULE I.

COMMENT #2: Multiple commenters identified an erroneous citation to the MCA in proposed NEW RULE I.

RESPONSE #2: The Superintendent appreciates the public comments. In adopting the proposed rules and amendments, the Superintendent has corrected the citation to the MCA.

COMMENT #3: One commenter suggested a clarification of the definition of "serious emotional disturbance" in proposed NEW RULE I.

RESPONSE #3: The Superintendent appreciates the public comment. In adopting the proposed rules and amendments, the Superintendent has revised the definition of "serious emotional disturbance" (SED) in a manner which, while different from the commenter's suggestion, clarifies the definition.

COMMENT #4: One commenter identified incorrect citations to the implementing statutes of proposed NEW RULE I.

RESPONSE #4: The Superintendent appreciates the public comment. In adopting the proposed rules and amendments, the Superintendent has eliminated the incorrect citations.

COMMENT #5: Multiple commenters noted that the word "may" in proposed NEW RULE II(1) is confusing in that it could be read to mean that OPI has the authority to assume all or none of the cost of an eligible child's education while the child is in a qualifying facility.

RESPONSE #5: The Superintendent appreciates the public comments. In adopting the proposed rules and amendments, the Superintendent has changed the language in NEW RULE II(1) to clarify.

COMMENT #6: Multiple commenters questioned the reference to a district of residence's capability in proposed NEW RULE II(4).

RESPONSE #6: The Superintendent appreciates the public comments. In adopting the proposed rules and amendments, the Superintendent has changed the language in NEW RULE II(4) to eliminate the reference to a school district's capability.

COMMENT #7: One commenter identified incorrect statutory citations in proposed NEW RULE II(4).

RESPONSE #7: The Superintendent appreciates the public comment. In adopting the proposed rules and amendments, the Superintendent has corrected the incorrect citations throughout NEW RULE II.

COMMENT #8: One commenter asked whether the qualifying facilities are aware of and equipped to handle the reporting requirements of proposed NEW RULE III and expressed concern about imposing school laws on private facilities.

RESPONSE #8: The Superintendent appreciates the public comment. The Superintendent believes that the qualifying facilities are both aware of and equipped to handle all reporting requirements. The Superintendent also notes that the qualifying facilities are licensed by the Department of Public Health and Human Services and under contract with OPI, so any applicable school laws have been knowingly accepted by such facilities.

COMMENT #9: One commenter questioned the statutory requirement for proposed NEW RULE III(1)(d).

RESPONSE #9: The Superintendent appreciates the public comment. In adopting the proposed rules and amendments, the Superintendent has decided to eliminate proposed NEW RULE III(1)(d).

COMMENT #10: Multiple commenters expressed concern about the statutory authority for proposed NEW RULE III(3).

RESPONSE #10: The Superintendent appreciates the public comment. In adopting the proposed rules and amendments, the Superintendent has decided to eliminate proposed NEW RULE III(3) (and the remaining sections have been renumbered accordingly).

COMMENT #11: Multiple commenters asserted that the date in proposed NEW RULE III(7) should be July 15 rather than August 15.

RESPONSE #11: The Superintendent appreciates the public comment. In adopting the proposed rules and amendments, that date has been changed to July 15.

COMMENT #12: One commenter asked whether OPI would consider applying the requirements of proposed NEW RULE III(8) to all school districts.

RESPONSE #12: The Superintendent appreciates the public comment. Currently, the requirements of proposed NEW RULE III(8) only apply to qualifying facilities. Any application of these requirements to all school districts would have to go through a separate rulemaking process or statutory amendment.

COMMENT #13: Multiple commenters suggested adding the statutory reference to the proposed amendment to ARM 10.7.106A.

RESPONSE #13: The Superintendent appreciates the public comments. In adopting the proposed rules and amendments, the Superintendent has added the statutory reference to the amendment.

COMMENT #14: One commenter had general questions arising from the amended ARM 10.7.106A, asking about a school district's recourse when a parent does not pay a bill, the timing of collection of FP-14 forms, and who bears the cost arising from attendance changes due to geographical reasons.

RESPONSE #14: The Superintendent appreciates the public comment. These questions are not addressed by this rule or the amendment thereto, and OPI staff can address such questions if, as, and when they arise in a school district.

COMMENT #15: Multiple commenters questioned the reference to approval in the proposed amendment to ARM 10.7.106A(1)(b) and (c).

RESPONSE #15: The Superintendent appreciates the public comments. In adopting the proposed rules and amendments, the Superintendent has modified the language in that section to eliminate the reference to approval.

COMMENT #16: One commenter suggested that the proposed amendment to ARM 10.7.106A include guidance on transportation costs for students with disabilities.

RESPONSE #16: The Superintendent appreciates the public comment. In adopting the proposed rules and amendments, that guidance has been added to the rule.

COMMENT #17: One commenter identified a mistaken reference in the proposed amendment to ARM 10.7.106A(3) to 20-3-320, MCA, that should be 20-5-320, MCA.

RESPONSE #17: The Superintendent appreciates the public comment. In adopting the proposed rules and amendments, that correction has been made to the rule.

COMMENT #18: One commenter suggested that the proposed amendment to ARM 10.7.106A(3) include a link to the legal definition of over-schedule and on-schedule costs.

RESPONSE #18: The Superintendent appreciates the public comment. Those terms are not currently defined in the Montana statutes.

COMMENT #19: Multiple commenters questioned the language about calculating tuition rates in the proposed amendment to ARM 10.10.301(1).

RESPONSE #19: The Superintendent appreciates the public comment. In adopting the proposed rules and amendments, the Superintendent has changed the language in the amendment to refer to the statute regarding such calculation. The OPI website also provides guidance.

COMMENT #20: One commenter questioned the "same rate" language in the proposed amendment to ARM 10.10.301(5)(b).

RESPONSE #20: The Superintendent appreciates the public comment. In adopting the proposed rules and amendments, the Superintendent has deleted that language.

COMMENT #21: One commenter asked why the percentage rate had changed from 80 to 120 in the proposed amendment to ARM 10.10.301(3)(b).

RESPONSE #21: The Superintendent appreciates the public comment. That change was made in HB 206 from the 2021 legislative session.

COMMENT #22: One commenter suggested that the language in the proposed amendment to ARM 10.10.301(3)(b) be changed to more accurately reflect the HB 206 change to the calculation, which would also apply to the proposed amendment to ARM 10.16.3818(3)(b).

RESPONSE #22: The Superintendent appreciates the public comment. In adopting the proposed rules and amendments, the Superintendent made the suggested changes.

COMMENT #23: One commenter suggested that the term "official" in the proposed amendment to ARM 10.10.301B be changed to "board chair or board designee."

RESPONSE #23: The Superintendent appreciates the public comment. In adopting the proposed rules and amendments, the Superintendent made that change.

COMMENT #24: One commenter suggested that the proposed amendment to ARM 10.10.301B(6) conflicted with the of the proposed amendment to ARM 10.7.106A.

RESPONSE #24: The Superintendent appreciates the public comment. The Superintendent believes that the changes made to amend ARM 10.7.106A have resolved any conflict.

COMMENT #25: One commenter asked whether there is a process or format for the requirements in the proposed amendment to ARM 10.10.301B(7).

RESPONSE #25: The Superintendent appreciates the public comment. That process will not be stated in the amended rule, but it will soon be available along with other guidance provided on the OPI website.

COMMENT #26: One commenter had question about what the proposed amendment to ARM 10.10.301C(4) means for new non-op schools.

RESPONSE #26: The Superintendent appreciates the public comment. The amendment to this rule does not change anything pertaining to non-op schools, and

OPI staff can address questions from new non-op schools if, as, and when they arise.

COMMENT #27: One commenter asked whether there is a report or procedure for the report identified in the proposed amendment to ARM 10.10.301D(3).

RESPONSE #27: The Superintendent appreciates the public comment. The amendment to this rule changes only the date that the report is due, and OPI staff can provide guidance about this report if, as, and when requested.

COMMENT #28: One commenter asked about implications from the proposed amendment to ARM 10.16.3818(5) for schools shifting to a four-day school week.

RESPONSE #28: The Superintendent appreciates the public comment. The amendment to this rule does not change any special education requirements for school districts.

/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 September 10, 2024.

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 17.36.126 pertaining to the adoption of a new version of Department Circular DEQ-8 Montana Standards For Subdivision Storm Water Drainage	))))))	NOTICE OF AMENDMENT (SUBDIVISIONS)

TO: All Concerned Persons

1. On June 7, 2024, the Department of Environmental Quality published MAR Notice No. 17-444 pertaining to the public hearing on the proposed amendment of the above-stated rule and the adoption of the new version of Department Circular DEQ-8 Montana Standards for Subdivision Storm Water Drainage at page 1259 of the 2024 Montana Administrative Register, Issue Number 11.

2. The department has amended ARM 17.36.126 as proposed.

3. Based on the comments received, the department has amended Department Circular DEQ-8. The circular has been changed as follows, new matter underlined, deleted matter interlined:

Circular DEQ-8 3.6 RAINFALL

Rainfall information for a site can be determined from the following sources:

A. Hydrometeorological Design Studies Center's Precipitation Frequency Data Server (NOAA Atlas 2), available online at http://hdsc.nws.noaa.gov/hdsc/pfds/index.html;

B. Chapter 9, Appendix B-2022 of the Montana Department of Transportation Hydraulics Manual (January 2022); or

C. Other sources approved by the reviewing authority.

Circular DEQ-8 5.2 RETENTION FACILITIES

Retention facilities must include ~~considerations for~~ a description of routing 100-year peak flows without damaging adjacent or down-gradient buildings, including the need for an emergency overflow. An emergency overflow should be included and must be provided when required by the reviewing authority. Emergency overflow structures ~~must~~ should be designed with a stabilized transition from the retention facility to down-gradient swales.

Circular DEQ-8 6.2 DESIGN

For detention facilities that have a minimum one-foot separation from the bottom of the facility to the seasonally high groundwater or bedrock layer, the facility must be designed to:

A. Have side slopes that are no steeper than 3 H to 1 V and are stabilized; and

B. Have a maximum depth of four feet; or

C. If the depth is greater than four feet;

1. have signage warning of the potential hazards of the pond (e.g. drowning); and

2. Have fencing designed to prevent public access to the facility~~.~~; and

D. Have erosion protection at the outlet discharge when flow velocity exceeds 10-feet/second.

For detention facilities that have less than a one-foot separation from the bottom of the facility to the seasonally high groundwater or bedrock layer, the facility must be designed to:

A. Have side slopes that are no steeper than 3 H to 1 V and are stabilized;

B. Be designed in accordance with the wet detention basin procedure included in the Montana Post-Construction Storm Water BMP Design Guidance Manual; and

C. Have a maximum depth of four feet; or

D. If the depth is greater than four feet;

1. Have signage warning of the potential hazards of the pond (e.g. drowning); and

2. Have fencing designed to prevent public access to the facility~~.~~; and

E. Have erosion protection at the outlet discharge when flow velocity exceeds 10-feet/second.

Circular DEQ-8 7.2 DESIGN

Infiltration facilities may not be constructed where the bottom of the infiltration facility (at the infiltrative surface) consists of soil textures are sandy clay or finer.

E. Include a pre-treatment facility, designed in accordance with Chapter 8~~, where sediment, trash, debris, or organic materials are likely to impact the operation or maintenance of the infiltration facility~~.

Circular DEQ-8 7.4 TEST PIT REQUIREMENTS

(following 7.4 E)

A deviation from this requirement may be requested to allow alternative methods, such as soil borings, to determine the soil textural class and the presence of limiting layers at least four feet below the infiltration facility base.

Circular DEQ-8 8.2.5 ~~PROPRIETARY SPINNERS/SWIRL CHAMBERS/CENTRIFUGES~~ HYDRODYNAMIC SEPARATORS

~~Proprietary spinners/swirl chambers/centrifuges~~ Hydrodynamic Separators cause storm water to move in a circular motion that enhances the settling of sediments, removes particulates, oils/greases, floatable sands, and debris. These must be installed in accordance with manufacturer specifications.

Circular DEQ-8 APPENDIX A - INFILTRATION TESTING PROCEDURES

One of the following methods must be used to determine the design infiltration rate:

A. Design Infiltration Rate in A.1;

B. Encased Falling Head Test in A.2;

C. A Double-Ring Infiltrometer Test (ASTM D3385); or
D. Test Pit Infiltration Test Method (City of Missoula)
Soil test pits and any infiltration tests must be within 25 feet of the proposed infiltration facility location.

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

COMMENT #1: The commenter stated that the two-inch valley pan described in Section 4.1.D seems too shallow. They asked, by allowing the curbs to flow at a deeper depth, would the curb flow cross the street if needed to get to a storm pond? In the commenter's opinion, a max depth of around four inches would pass more flow from curb to pond while still being safe for vehicular or foot traffic.

RESPONSE #1: As noted in the Statement of Reasonable Necessity, two inches of water depth at cross-pans or valley pans at roadway intersections is considered a reasonable depth, based on research, to not be a significant hazard for foot traffic or vehicles where they could lose traction/contact with the road.

COMMENT #2: The commenter questioned why an infiltration facility would not be a retention facility since, in Section 7.3, it states the minimum storage volume of infiltration facilities must be the difference between the pre- and post-development runoff volume. The commenter further questioned whether the section should state that the facility shall have a minimum volume of the initial storm facility.

RESPONSE #2: These concerns are addressed in the Circular. In Section 5.1, if infiltration is used to reduce the required storage volume in retention facilities, the retention facility is considered to be an infiltration facility, as the design is incorporating infiltration rates within the design volume. An infiltration facility is designed to temporarily store stormwater while it infiltrates over time, whereas a retention facility is designed to store or hold stormwater without discharge. In Section 7.2, it states the infiltration facility capacity must include the required volume of the initial storm water facility.

COMMENT #3: The commenter stated that the input values on the standard plan spreadsheet are confusing because they are labeled "intensity values" when there are two storm depths included. They believe that rewording the labels and providing descriptors of the labels would be helpful.

RESPONSE #3: The department appreciates the comment and has explained what each variable means in the spreadsheet to improve readability.

COMMENT #4: The commenter stated that the encased falling head test procedure outlined in Appendices A.2 and A.3 specifically states that "the test is not appropriate in gravelly soils or in other soils where a good seal with the casing cannot be established." The commenter believes that this will present an issue when

attempting to use infiltration in a free-draining area in that one would not be able to use the prescribed test method and would have to use one of the extremely conservative design rates in A.1. The commenter suggested that DEQ adopt the testing procedure similar to the City of Missoula's prescribed method that is adapted from the Circular-DEQ-4 percolation test method to more adequately allow for testing for infiltration in varied soil conditions

RESPONSE #4: The department appreciates the comment and added additional testing methods that the department finds acceptable for infiltration testing. These additional methods are considered equivalent and do not have the limitations that the encased falling head testing method can have in certain soils as described in the comment.

COMMENT #5: The commenter questioned the requirement in Appendix A.2, which states "A minimum of three encased falling head tests must be conducted within the footprint of each infiltration facility." They do not believe the requirement is feasible in the case of a project where a single drywell sump (a manhole four feet in diameter) is proposed to mitigate all storm runoff on-site. They propose that language be added to account for smaller systems where multiple tests within the facility footprint is not practical.

RESPONSE #5: For infiltration testing of small areas such as drywells, using a soil texture based infiltration rate (see Section A.1, table 3) would be acceptable as opposed to infiltration testing, since soil texture infiltration rates can be used for infiltration facilities less than 5,000 square feet.

COMMENT #6: The commenter questioned the requirement in Section 7.4 Test Pit Requirements that the depth of a test pit must be at least four feet below the infiltrative surface (bottom of proposed facility).

The commenter believes that excavation creates a difficult and potentially "infeasible" excavation, as drywells that are deeper than eight feet can require a test pit 14 feet or deeper. This depth increases the cave-in risk for non-professional excavator operators attempting to meet these requirements. The commenter suggested that language be added to allow methods other than deep excavation to justify the lack of a limiting layer within four feet of the facility bottom. The commenter noted by adding this language, deeper facilities such as drywell sumps, which are common in the Missoula region, would be a viable option.

RESPONSE #6: There are alternatives to drywell sumps, such as retention (Section 5), detention facilities (Section 6), and other infiltration facilities including basins and trenches (Section 7), that exist and should be utilized in areas where the cave-in risk is high.

However, because a drywell sump may be the only option for a site, the circular does allow for alternative methods to determine the soil textural class and limiting layers to be reviewed through the deviation process on a case-by-case basis (Section 1.3).

COMMENT #7: The commenter wanted to confirm per Section 7.4 and Appendix A.2, for every infiltration facility, a test pit and an infiltration test need to be completed within 25 feet.

RESPONSE #7: The department confirms and has specified in the text that test pits must be within 25 feet of all proposed infiltration facilities. Please note that both a test pit and an infiltration test are only required if the proposed infiltration facility (infiltrative area) is larger than 5,000 square feet (Section 7.4 and Appendix A).

COMMENT #8: The commenter suggested deleting the phrase "at the time of concentration" from Section 2.2.2.G and any other place it is referenced. The commenter believes that the "time of concentration" is an assumption built into the rational method and that it is not relevant to all hydrological analysis methods or models.

RESPONSE #8: Removing the reference to the time of concentration may cause confusion in other parts of the circular that use the concept of the time of peak flow. The time of concentration of a stormwater flow is the time it takes stormwater runoff to travel from the most distant point on a site to a specific point of interest (such as a culvert or pond), and represents when the flow is at its peak or highest flowrate. The highest flowrate that could occur is needed to properly size culverts and other conveyance structures (Appendix E, Section E.4).

COMMENT #9: The commenter asked whether the 10-year and 100-year events were also considered in Section 3.3 where it states post-development runoff flowrate shall not exceed the pre-development flowrate for the 2-year storm event.

RESPONSE #9: The 10-year and 100-year storm events are currently considered in terms of not flooding roadways (10-year) or buildings/drainfields (100-year). The department did consider 10-year and 100-year pre-development flowrate limits in addition to the 2-year pre-development flowrate. However, it is inconsistent with how the department views these flows within the circular because the 10-year and 100-year storm events are typically more of a concern for highly urbanized (municipal) areas with high amounts of impervious surface.

COMMENT #10: The commenter suggested revising the initial storm water facility (ISWF) in Section 3.4 to allow for treatment of runoff from the first 0.5 inches of rainfall in cases where infiltration, evapotranspiration, and/or capture for reuse is not achievable or advisable.

RESPONSE #10: The intention of the ISWF has been to capture a portion of the stormwater to reduce the peak volume and to provide an additional benefit of potential sediment treatment. It has also been the experience of the department that there have been very few, if any, cases where infiltration, evapotranspiration, and/or capture for reuse in the ISWF was not achievable or advisable.

COMMENT #11: The commenter would like to know why Section 3.4 precludes landscaping, permeable pavement systems, and dispersion BMPs as the ISWF. They believe that those BMPs can be effective stormwater management methods when properly implemented and maintained.

RESPONSE #11: The intention of the ISWF has been to capture a portion of the stormwater to reduce the peak volume and to provide an additional benefit of potential sediment treatment. These other BMPs are not suitable for accepting stormwater with potentially high loads of sediment or flows resulting from intense, short duration rainfall that are typical of storms Montana experiences. Permeable pavements will clog with high sediment, and landscaping and dispersion BMPs overflow during intense storms and cannot provide flow mitigation.

COMMENT #12: The commenter asked that Chapter 9 Appendix B of the MDT Hydraulics Manual which is referenced in Section 3.6 be included as an appendix in case the MDT Manual is revised in the near future.

RESPONSE #12: The department has added the published date of the manual to the circular's language and will keep a copy of the edition on file for reference to guarantee its availability even if the January 2022 edition is replaced by subsequent editions or documents.

COMMENT #13: The commenter stated that the first equation provided in Section 3.7.3 produces a runoff depth (or volume), not a peak flow. They also stated that Section 3.7.3 should discuss or show how to use the method to calculate a peak flow rate using the TR-55 or SCS Curve Number Method.

RESPONSE #13: The first equation in Section 3.7.3 does produce a volume and not a peak flow. Using the TR-55 or SCS Curve Number method for developing peak flows is based on a number of assumptions or limitations, which can affect design computations. The department does not intend for the circular to be a design manual but to provide guidance as to what is required specifically for Montana. As stated in Section 3.7.3(E), the TR-55 manual (which includes the SCS Curve Number method) should be used for any designs that are proposing to use that method to ensure it is done correctly.

COMMENT #14: The commenter stated that Section 3.7 does not discuss applicable/allowable modeling software and that the department should consider adding a section or discussion on applicable/allowable modeling software and allowable methods within the software applications.

RESPONSE #14: The department's collaboration with stakeholders produced language in the circular that allows for the use of other methods as approved by the reviewing authority. It states the acceptable methods are rational method, modified rational method, and TR-55 or SCS Curve Number Method. Reference within the circular to specific models prevents confusion on whether certain model versions are acceptable over time.

COMMENT #15: The commenter suggests reconsidering the requirement in Section 6.1 that states that the volume of the ISWF must be provided as either retention or infiltration below the elevation of the detention facility outlet. They believe that the requirement would not be the case for an extended detention basin (and some other BMPs), which provide 80% total suspended solids (TSS) removal and are approved for use in Section 3.4.

RESPONSE #15: Section 3.4 allows BMPs designed in accordance with the guidance in the Montana Post-Construction Storm Water BMP Design Manual (BMP Design Manual) to capture the ISWF volume. The BMPs often have design parameters than can be adjusted to meet the requirements of capturing the ISWF volume, such as sizing components that use pools to capture that volume. The BMP design manual notes that certain features for which local standards and preferences may affect the design process (such as outlet structures) and that "guidance and standards from the local jurisdiction should be considered during the design process." This proposed circular intends to be flexible so the designer can determine how to best meet the needs of both the site and the circular.

COMMENT #16: The commenter suggests deleting the words infiltrate, evapotranspire, and/or capture for reuse storm water in Section 6.1 and changing the sentence to read as follows: "Detention facilities should be designed to hold runoff for no more than 72 hours."

RESPONSE #16: The requested language change does not provide any additional clarity, as the minimum volume requirement for an ISWF can be retained if it is not discharged. It also maintains consistency with the design of retention structures in Section 5. Therefore, no change to the text is necessary.

COMMENT #17: The commenter stated that the NOAA Atlas 15 is expected to be published soon, making the NOAA Atlas 2 no longer relevant. They suggested that Section 3.6A be changed to reference the "most current" version of the NOAA Atlas for Montana.

RESPONSE #17: The department cannot reference the NOAA Atlas 15 because it has not been published or reviewed by the department. However, Section 3.6.C. states "Other sources approved by the reviewing authority," which may allow the use of NOAA Atlas 15 upon its publication and review and approval by the reviewing authority.

COMMENT #18: The commenter stated that although Section 3.7.2 indicates that there is an example of the modified rational method discussed in this section in Appendix E, there does not appear to be an example in the appendix. They further stated that an example of the modified rational method would be helpful.

RESPONSE #18: The department appreciates the comment and has provided an example of a detention facility design in Appendix E.

COMMENT #19: The commenter believes that for Section 5.1 the application should be allowed to consider infiltration in a retention facility when considering the routing of a 100-year design storm. In areas where gravel is prevalent, the 100-year 24-hour storm volume often can fully infiltrate into the ground. Therefore, they believe that the section that states "If infiltration is used to reduce the required storage volume, the retention facility is considered an infiltration facility…" should read "If infiltration is used to reduce the required storage volume of the design storm, the retention facility is considered an infiltration facility…"

RESPONSE #19: The department does not agree with the commenter's proposed text change regarding the infiltration facility. Infiltration facilities can be used to infiltrate storm events larger than the difference in volume for the 2-year event, but must address that volume at a minimum. In general, infiltration will not vary greatly between the storm events due to the types of storms that occur in Montana - quick, high-intensity storms as opposed to longer duration storms.

COMMENT #20: The commenter believes, regarding Section 5.2, that there may be some scenarios where a designed emergency overflow is not necessary. For example, if the retention pond is in gravelly soil and the designer can show that the entire 100-year 24-hour storm can infiltrate into the gravel.

The commenter believes that Section 5.2 is confusing as to whether a designed emergency overflow is required or not. They recommend changing to the same language in Section 6.2: "Retention facilities must include a description of routing 100-year peak flows without damaging adjacent or down-gradient buildings. An emergency overflow should be included and must be provided when required by the reviewing authority. Emergency overflow structures should be designed with a stabilized transition from the retention facility to down-gradient swales."

RESPONSE #20: The department appreciates this comment and has added the language providing a description of routing 100-year peak flows from Section 6.2 to specify when an emergency overflow is required.

COMMENT #21: The commenter recommends in Section 6.2 requiring erosion protection at outlet discharge when flow velocity exceeds 10 feet/second, as is required for culverts.

RESPONSE #21: The department appreciates this comment and has added the language to provide erosion control when outlet discharges exceed 10 feet/second to prevent erosion downstream of the culvert.

COMMENT #22: The commenter believes that regarding Section 7.2, infiltration can be an effective stormwater control when a well-draining soil layer is present beneath a poorly draining layer. They stated that it is unclear if the proposed language of "Infiltration facilities may not be constructed where soil textures are sandy clay or finer" would allow infiltration when an infiltration facility is installed through a confining layer to a well-draining layer.

RESPONSE #22: The department appreciates the comment and has modified the language to specify that the bottom of the infiltration facility (at the infiltrative surface) cannot consist of soil textures that are sandy clay or finer to specify that infiltration must be through a courser soil texture to limit the potential for clogging.

COMMENT #23: The commenter stated that Section 7.2 is unclear as to whether pre-treatment is mandatory for all infiltration facilities.

RESPONSE #23: It is the department's intent to require pre-treatment for all infiltration facilities, as stated in Section 8.1. The language for Section 7.2 has been amended to be consistent with Section 8.1 to reiterate its intent.

COMMENT #24: The commenter asked regarding Section 7.4, if the 5,000 square feet test pit requirement trigger is cumulative across the site or for individual infiltration basins (i.e., would a site using four 4,000 square feet infiltration basins be required to dig four test pits, three test pits, or zero test pits).

RESPONSE #24: It is the department's intent that soil testing would be per basin and within 25 feet of the basin. Note that if the individual basin was over 5,000 square feet in size, it would need an infiltration test in addition to the soil test pit.

COMMENT #25: The commenter stated that new language requiring pre-treatment for all infiltration facilities in Section 8.1 contradicts the pre-treatment language in Section 7.2.

RESPONSE #25: The language for requiring the use of pre-treatment facilities for infiltration facilities in Section 8.1 is written as intended. See also the department's Response to Comment #23.

COMMENT #26: The commenter requested that catch basins with a grate be added as an allowed pre-treatment method in Section 8.2. They stated that in the City of Missoula's experience, catch basins with grates effectively remove sediment, debris, trash, and other deleterious materials when an infiltration facility serves a relatively small tributary area (approximately 10,000-square feet of impervious area).

RESPONSE #26: A catch basin with a grate is not an effective pre-treatment facility, as it is not usually regularly cleaned and maintained since sediment buildup is not readily noticeable, as in swales.

COMMENT #27: The commenter asked that "Spinners/Swirl Chambers/Centrifuges" be changed to the more common "Hydrodynamic Separators" nomenclature.

RESPONSE #27: The department appreciates the comment and has amended the text to reflect the suggested more common nomenclature for ease of use and understanding.

/s/ *Nicholas Whitaker*
NICHOLAS WHITAKER
Rule Reviewer

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

Certified to the Secretary of State September 10, 2024.

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 17.56.101,17.56.306, 17.56.1303, 17.56.1304, 17.56.1402, 17.56.1403, 17.56.1404, 17.56.1406, and 17.56.1407 and the repeal of ARM 17.56.1308, 17.56.1309, and 17.56.1409 pertaining to the Montana Underground Storage Tank Installer and Inspector Licensing and Permitting Act	)))))))))))	NOTICE OF AMENDMENT AND REPEAL (UNDERGROUND STORAGE TANKS)

TO: All Concerned Persons

1. On May 24, 2024, the Department of Environmental Quality published MAR Notice No. 17-446 pertaining to the public hearing on the proposed amendment and repeal of the above-stated rules at page 1095 of the 2024 Montana Administrative Register, Issue Number 10.

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

3. No comments or testimony were received.

/s/ *Sarah Christopherson*
Sarah Christopherson
Rule Reviewer

/s/ *Sonja Nowakowski*
Sonja Nowakowski
Director
Department of Environmental Quality

Certified to the Secretary of State September 10, 2024.

BEFORE THE DEPARTMENT OF TRANSPORTATION
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 18.13.402 pertaining to the Aeronautical Grant and Loan Program	))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On August 9, 2024, the Department of Transportation (department) published MAR Notice No. 18-201 pertaining to the proposed amendment of the above-stated rule at page 1966 of the 2024 Montana Administrative Register, Issue Number 15.

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

3. No comments were received.

/s/ Valerie A. Balukas
Valerie A. Balukas
Rule Reviewer

/s/ Christopher Dorrington
Christopher Dorrington
Director
Department of Transportation

Certified to the Secretary of State September 10, 2024.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of ARM 24.30.102, 24.30.1302, and 24.30.1311, the adoption of NEW RULES I and II, and the repeal of ARM 24.30.104, 24.30.2501, 24.30.2503, 24.30.2507, 24.30.2521, 24.30.2541, 24.30.2542, 24.30.2551, 24.30.2553, 24.30.2554, and 24.30.2558 pertaining to industrial and workplace safety	)))))))))))	NOTICE OF AMENDMENT, ADOPTION, AND REPEAL

TO: All Concerned Persons

1. On August 9, 2024, the Department of Labor and Industry (agency) published MAR Notice No. 24-30-408 regarding the public hearing on the proposed changes to the above-stated rules, at page 1968 of the 2024 Montana Administrative Register, Issue No. 15.

2. On September 4, 2024, a public hearing was held on the proposed changes to the above-stated rules via the videoconference and telephonic platform. No comments were received by the deadline.

3. The agency has amended ARM 24.30.102 and 24.30.1311 as proposed.

4. The agency has adopted NEW RULES I (24.30.112) and II (24.30.2575) as proposed.

5. The agency has repealed ARM 24.30.104, 24.30.2501, 24.30.2503, 24.30.2507, 24.30.2521, 24.30.2541, 24.30.2542, 24.30.2551, 24.30.2553, 24.30.2554, and 24.30.2558 as proposed.

6. The agency has amended ARM 24.30.1302 with the following changes, stricken matter interlined, new matter underlined:

24.30.1302 COAL MINING CODE (1) remains as proposed.

(2) The Department of Labor and Industry adopts by reference certain ~~the~~ coal mine safety standards found in the Code of Federal Regulations (CFR), Title 30, revised as of July 1, 2006:

(a) through (3) remain as proposed.

AUTH: 50-73-103, MCA
IMP: 50-73-103, MCA

REASON: It is necessary to make this change to fix a clerical oversight.

/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 September 10, 2024.

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

In the matter of the adoption of NEW RULES I and II, the amendment of ARM 24.138.301, 24.138.402, 24.138.406, 24.138.407, 24.138.419, 24.138.502, 24.138.503, 24.138.511, 24.138.514, 24.138.530, 24.138.906, 24.138.2301, 24.138.2703, 24.138.2707, 24.138.2710, 24.138.2712, 24.138.3003, 24.138.3101, 24.138.3221, 24.138.3223, 24.138.3225, 24.138.3227, and 24.138.3231, and the repeal of ARM 24.138.206, 24.138.208, 24.138.306, 24.138.403, 24.138.414, 24.138.415, 24.318.416, 24.138.417, 24.138.418, 24.138.430, 24.138.504, 24.138.505, 24.138.506, 24.138.508, 24.138.512, 24.138.513, 24.138.525, 24.138.540, 24.138.601, 24.138.603, 24.138.2101, 24.138.2102, 24.138.2103, 24.138.2104, 24.138.2105, 24.138.2106, 24.138.2302, 24.138.2303, 24.138.2701, 24.138.2705, 24.138.2714, 24.138.2716, 24.138.2719, 24.138.3001, 24.138.3002, 24.138.3102, 24.138.3211, 24.138.3213, 24.138.3215, 24.138.3217, 24.138.3219, and 24.138.3229 pertaining to the Board of Dentistry	)	NOTICE OF ADOPTION, AMENDMENT, AND REPEAL

TO: All Concerned Persons

1. On April 26, 2024, the Board of Dentistry (agency) published MAR Notice No. 24-138-83 regarding the public hearing on the proposed changes to the above-stated rules, at page 837 of the 2024 Montana Administrative Register, Issue No. 8.

2. On May 21, 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: One commenter was in general support of the proposed changes except for particular suggested changes provided by the commenter.

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

Comment 2: Numerous commenters opposed the proposed changes.

Response 2: The board appreciates all comments received during the rulemaking process.

Comment 3: One commenter supported retaining the continuing education requirements, the jurisprudence exam, the screening panel rules, and the anesthesia committee.

Response 3: The board appreciates all comments received during the rulemaking process. There are no changes proposed to those requirements in this notice as they exist in current rule although the location and rule numbers have changes as part of the consolidation. Prior to finalizing the language in the proposal notice that was filed, the board had discussed potential changes to those rules; however, ultimately it decided not propose changes to those requirements.

Comment 4: One commenter suggested certified dental assistants be required to complete continuing education.

Response 4: As the board has no authority to license dental assistants, it cannot require continuing education. Dentists or private certification bodies may require continuing education of their employees or continued certification.

Comment 5: Several commenters suggested that the board change "annual" in NEW RULE II(7) to "cyclical" as CE is earned over a three-year period, not annually.

Response 5: The board agrees with the commenter and changes the word accordingly.

Comment 6: Several commenters suggested the board draft a rule regarding the establishment of the adjudication panel.

Response 6: The board cannot add a rule at this stage of the statutory rulemaking process but may consider the suggestion in a future rule package.

Comment 7: One commenter suggested the board keep the requirement to display the license so the public could still verify in the event of a website failure.

Response 7: The board agrees with the commenter and will retain the longstanding requirement of display.

Comment 8: One commenter requested the board adopt the proposed LAP rules as noticed, indicating the board would continue to have state representation in the event of legal challenges.

Response 8: This comment is outside the scope of this proposed rulemaking. LAP practice has been addressed by the board in MAR Notice No. 24-138-84.

Comment 9: Several commenters requested the board insert "supervising" into the "general supervision" definition in ARM 24.138.301(5), to clarify that the supervising licensee is not required to be on the premises and maintains intent and knowledge over the hygienist or auxiliary personnel.

Response 9: The board concurs with the commenter and amends the rule accordingly.

Comment 10: One commenter suggested the board define "licensee" and "supervising licensee" to indicate who may supervise.

Response 10: "Licensee" refers generally to someone who is issued a license to practice in Montana by a board or the department. "Supervising licensee" refers to the dentist who is supervising either a hygienist or an auxiliary or the denturist supervising an intern and can be understood contextually based on the section of rules.

Comment 11: One commenter suggested the board retain the language in ARM 24.138.301 requiring a supervisor to reside in the state of Montana to avoid out-of-state supervision.

Response 11: The board concurs with the commenter and amends the rule accordingly.

Comment 12: Many commenters urged the board not to strike the definition of "prophylaxis," citing the need to define it for members of the public or lay persons.

Response 12: The board agrees with the commenters and is retaining the definition of "prophylaxis."

Comment 13: Many commenters stated that removing the definition of "prophylaxis" would cause confusion and a public safety issue.

Response 13: The board is retaining the definition of "prophylaxis" based on comments received.

Comment 14: Many commenters noted that "Current Dental Technology," the standard code set for dental diagnoses and treatments, is not marketed at or available to the general public.

Response 14: The board had previously discussing using the CDT codes for prophylaxis to define the term. The board notes that CDT codes are available online or for purchase, but the board is retaining the definition of prophylaxis based on comments received.

Comment 15: Several commenters noted that less than half of Montanans have dental insurance, so relying on an insurance code as the source of a definition is not within the purview of the board.

Response 15: The board is retaining the definition of "prophylaxis."

Comment 16: One commenter, citing the board's reason for proposing repeal of the definition of "prophylaxis," stated that the board and legislature should set the definitions and scope of practice and that insurance companies should use that to base billing codes.

Response 16: The board is retaining the definition of "prophylaxis," though it recognizes insurance codes are a standard of practice.

Comment 17: In reference to repealing the definition of "prophylaxis," several commenters noted the board defines other procedures in rule where those terms have specialized meanings.

Response 17: The board agrees and is retaining the definition of "prophylaxis."

Comment 18: Several commenters noted that 37-4-401, MCA, authorizes the board to define "prophylaxis" through rule.

Response 18: The board agrees and is retaining the definition of "prophylaxis."

Comment 19: One commenter pointed out that "prophylaxis" as defined in the dictionary, is a very broad term and could mean anything from brushing and flossing to extraction, and noted that is the reason it is important the board define "prophylaxis."

Response 19: The board agrees and is retaining the definition of "prophylaxis."

Comment 20: Many commenters observed that board staff indicated questions about prophylaxis are frequent and that the board should retain the definition for that reason.

Response 20: The board is retaining the definition of "prophylaxis."

Comment 21: Numerous commenters urged the board to keep the definition of "prophylaxis" as a clear and concise definition.

Response 21: The board agrees and is retaining the definition of "prophylaxis."

Comment 22: Several commenters noted that not having the definition in rule will require the public and licensees to consult an attorney for legal advice, which harms those who cannot afford an attorney.

Response 22: The board is retaining the definition of "prophylaxis."

Comment 23: One commenter suggested removal of the prophylaxis definition was not red tape reduction, but rather an ulterior motive.

Response 23: The board is retaining the definition of "prophylaxis."

Comment 24: Numerous commenters indicated their belief that the board did not act in good faith in going against the advice of board staff in moving to propose to repeal the definition.

Response 24: The board accepted public comment on the rule discussion during the meeting and is not required to follow the advice of staff. Further, the board has followed the statutory rulemaking requirements of accepting public comment on the proposed rules. As a result of the comments received, the board is retaining the definition of "prophylaxis."

Comment 25: One commenter suggested either defining "competent" in ARM 24.138.301(11) or removing the term.

Response 25: The term is defined in the proposed rule as "displaying special skill or knowledge derived from training and experience."

Comment 26: One commenter suggested that instead of "trained healthcare professional," the board use the term "anesthesia monitor" to better reflect the intent of the definition.

Response 26: The board believes the term "trained healthcare professional" as defined is sufficient as it is and is adopting as proposed.

Comment 27: One commenter was opposed to allowing unlicensed assistants to perform sodium bicarbonate air polishing, citing potential damage to enamel and root surface.

Response 27: The board appreciates the commenter's opinion but will include sodium bicarbonate air polishing in the final rule as proposed. Dentists can already delegate rubber cup polishing, which is a different modality to achieve the same purpose as sodium bicarbonate air polishing. Dentists remain responsible for the

conduct of their assistants and confirming that a dental auxiliary is competent to perform the delegated tasks.

Comment 28: One commenter opposed removal of prophylaxis as restricted to dental hygienists, noting that it now appears unlicensed assistants can scale teeth.

Response 28: Section 37-4-408, MCA restricts dentists from delegating prophylaxis to unlicensed assistants, and restating the requirement in rule violates 2-4-305, MCA. Additionally, the board is retaining the definition of "prophylaxis."

Comment 29: Several commenters noted that allowing unlicensed assistants to perform prophylaxis is a risk to public health and safety.

Response 29: The board agrees, and notes that 37-4-408(1), MCA, prevents dentists from delegating prophylaxis to unlicensed assistants. Additionally, the board is retaining the definition of "prophylaxis."

Comment 30: One commenter noted the investment the commenter was putting into becoming a hygienist, suggesting that the proposed change to repeal the definition of "prophylaxis" would negate the investment.

Response 30: See the response to Comment 29.

Comment 31: One commenter noted that preventive healthcare should be provided by educated professionals.

Response 31: See the response to Comment 29.

Comment 32: One commenter noted the schooling hygienists receive to become licensed versus an unlicensed assistant.

Response 32: See the response to Comment 29.

Comment 33: One commenter noted the assessments hygienists perform while providing prophylaxis.

Response 33: See the response to Comment 29.

Comment 34: One commenter noted the commenter will only seek services from a registered hygienist.

Response 34: The board appreciates all comments received during the rulemaking process.

Comment 35: One commenter noted the commenter pays a lot of money for dental services and would not feel comfortable with an unlicensed individual cleaning the commenter's teeth.

Response 35: See the response to Comment 29.

Comment 36: One commenter accused the board of caring more about making money than protecting the public.

Response 36: The board remains committed to its regulatory mission of protecting the public.

Comment 37: One commenter suggested that dentists want to pay someone less money to clean teeth so dentists can make more money off patients.

Response 37: The board notes that statute does not allow dentists to delegate prophylaxis to unlicensed assistants, and so either a dentist or hygienist must perform the prophylaxis. Additionally, the board is retaining the definition of "prophylaxis."

Comment 38: One commenter expressed concern that this proposal to repeal the definition of "prophylaxis" would lead to unlicensed people being able to perform a variety of medical procedures.

Response 38: Except for the addition of sodium bicarbonate air polishing, the board is not otherwise amending the duties unlicensed assistants may perform. Additionally, the board is retaining the definition of "prophylaxis."

Comment 39: One commenter noted assistants are not properly trained to clean teeth.

Response 39: See the responses to Comments 29, 37, and 38.

Comment 40: Several commenters stated that prophylaxis should only be performed by a dentist or a registered dental hygienist.

Response 40: See the response to Comment 29.

Comment 41: One commenter noted that polishing over calculus is not standard of care.

Response 41: The board does not have enough context to address the standard of care comment. The board does note coronal polishing by itself, without an appropriately licensed dentist or licensed dental hygienist inspecting for and removing any supragingival and subgingival calculus and gingival irritants is unprofessional conduct. The board appreciates all comments made during the rulemaking process.

Comment 42: One commenter highlighted the serious health issues that could occur without coordination of care between medical professionals.

Response 42: The board concurs with the commenter.

Comment 43: One commenter stated patients would be at risk for misinformation in thinking they have received complete dental care from untrained persons.

Response 43: A dentist remains responsible for the care provided to the dentist's patients and is responsible for ensuring the services provided comply with the rules and regulations of the board.

Comment 44: One commenter indicated that a cleaning from the commenter's dentist was substandard from the hygienist's service.

Response 44: The board appreciates all comments received during the rulemaking process.

Comment 45: Several commenters have observed multiple assistants attempt prophylaxis and leave calculus on the teeth.

Response 45: The board appreciates all comments made during the rulemaking process.

Comment 46: One commenter suggested the board raise standards, not lower them.

Response 46: The board appreciates all comments received during the rulemaking process.

Comment 47: One commenter believes the scope of hygienists is constantly questioned, noting there was a legislative bill brought in 2023 to allow dental assistants to scale teeth.

Response 47: This comment is outside the scope of the proposed rulemaking.

Comment 48: One commenter requested the board either maintain the requirement that a supervising dentist verify credentials of auxiliaries and hygienists or add the failure to do so to the unprofessional conduct rule.

Response 48: The supervising dentist remains responsible for the conduct of the personnel working under their supervision per ARM 24.138.406(7) and 24.138.2301(1)(f).

Comment 49: Several commenters were opposed to the board repealing ARM 24.138.406(13), requiring proof of current certification of a dental assistant.

Response 49: The board is not repealing the requirement but has moved it to (8) of the same rule.

Comment 50: One commenter suggested the board maintain the requirement that certified dental assistants pass a written radiology exam before being allowed to administer radiographs.

Response 50: The board agrees. The requirements to expose radiographs have not been repealed but have been moved into (2)(a) of the rule.

Comment 51: One commenter suggested the board require dental assistants to be certified and work under the direct supervision of a licensed dentist.

Response 51: The board does not believe that certification and direct supervision are required for every assistant. Dentists should have the flexibility to determine the duties they can delegate within the statutory requirements. The board does not license or certify dental auxiliaries and cannot require certification for every auxiliary. Under 37-4-408, MCA, the board may allow dental auxiliaries who have voluntarily received certification to work under the general supervision of a dentist. The supervising dentist remains responsible for ensuring dental auxiliaries are working within the scope and training of the auxiliary.

Comment 53: Several commenters requested the board remove the word "successful" from ARM 24.138.502, 24.138.503, and 24.138.511 as redundant. Candidates either pass the examination or fail it.

Response 53: The board agrees and amends the rules accordingly.

Comment 54: Several commenters suggested the board insert the date "March 12, 2020" into (2) to mirror the language used in ARM 24.138.502 as the date when simulated patient exams became allowable in Montana.

Response 54: The board agrees and amends the rule accordingly.

Comment 55: One commenter took issue with the board's proposal to require a denturist internship of at least one but not more than two years and recommends removing the "and not more than two years."

Response 55: The board is moving the proposed language from a rule proposed for repeal, and the language already exists in rule. A change to that current requirement is outside the scope of this proposal, but the board may consider the proposal in future rulemaking.

Comment 56: One commenter stated the proposed rules surrounding volunteer licensing and scopes of practice needed to be better clarified.

Response 56: Section 37-4-430, MCA limits the provision of volunteer services to indigent or uninsured patients in underserved or critical need areas. Section 37-4-341, MCA limits the practice of temporary restricted volunteer licenses to university

clinics for the purpose of providing dental care to registered students; correctional facilities for the purpose of providing dental care to inmates; and federally funded community health centers, migrant health care centers, or programs for health services for the homeless established pursuant to the Public Health Service Act, 42 U.S.C. 254b.

Comment 57: One commenter noted there is not a shortage of hygienists, but rather that hygienists are not willing to work for uncompetitive wages that are not keeping pace with inflation and cost of living increases.

Response 57: The board appreciates all comments received during the rulemaking process.

Comment 58: One commenter suggested the board follow Oregon's process of having hygienists and dentists work together.

Response 58: The board appreciates all comments received during the rulemaking process.

Comment 59: Several commenters took issue with the board not seeking further public engagement in considering the repeal of the definition of "prophylaxis."

Response 59: The board has followed the statutory rulemaking requirements of accepting public comment on the proposed rules. As a result of the comments received, the board is retaining the definition of "prophylaxis."

Comment 60: One commenter proposed the board set the wages for dental auxiliaries equivalent to hygienists.

Response 60: The board does not set wages for licensees.

Comment 61: Several commenters opposed the board allowing dentists who had not completed a post-doctoral program to advertise as specialists.

Response 61: The board is requiring general dentists to disclose they are general dentists in advertising.

Comment 62: Several commenters opposed the board's proposed changes in ARM 24.138.3003 as requiring a specialist to indicate the specialty services were being performed by a general dentist and indicated patients would be confused.

Response 62: The board agrees with the commenters and inserts the following language: "(3) A Montana licensed dentist, who does not meet the criteria in ARM 24.138.3101 for advertising as a specialist who is listing or advertising the dentist's services under any specialty practice dental category in ARM 24.138.3101 must clearly disclose within the licensee's individual advertisement that the services are provided by a general dentist."

Comment 63: Several commenters noted the omission of the word "and" in ARM 24.138.3101(1)(e).

Response 63: The board agrees with the commenter and inserts "and" as follows: "orthodontic and dentofacial orthopedics."

4. The agency has adopted NEW RULE I (24.138.550) as proposed.

5. The agency has amended ARM 24.138.402, 24.138.406, 24.138.407, 24.138.419, 24.138.514, 24.138.530, 24.138.906, 24.138.2301, 24.138.2703, 24.138.2707, 24.138.2710, 24.138.2712, 24.138.3221, 24.138.3223, 24.138.3225, 24.138.3227, and 24.138.3231 as proposed.

6. The agency has repealed ARM 24.138.206, 24.138.208, 24.138.306, 24.138.403, 24.138.415, 24.138.416, 24.138.417, 24.138.418, 24.138.430, 24.138.504, 24.138.505, 24.138.506, 24.138.508, 24.138.512, 24.138.513, 24.138.525, 24.138.540, 24.138.601, 24.138.603, 24.138.2101, 24.138.2102, 24.138.2103, 24.138.2104, 24.138.2105, 24.138.2106, 24.138.2302, 24.138.2303, 24.138.2701, 24.138.2705, 24.138.2714, 24.138.2716, 24.138.2719, 24.138.3001, 24.138.3002, 24.138.3102, 24.138.3211, 24.138.3213, 24.138.3215, 24.138.3217, 24.138.3219, and 24.138.3229 as proposed.

7. The agency has decided not to repeal 24.138.414.

8. The agency has adopted NEW RULE II (24.138.2110) with the following changes, stricken matter interlined, new matter underlined:

NEW RULE II (24.138.2110) CONTINUING EDUCATION (1) through (6) remain as proposed.

(7) Any CE hours required by disciplinary order do not apply toward hours required ~~annually~~ cyclically.

(8) through (10) remain as proposed.

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

9. The agency has amended ARM 24.138.301, 24.138.502, 24.138.503, 24.138.511, 24.138.3003, and 24.138.3101 with the following changes, stricken matter interlined, new matter underlined:

24.138.301 DEFINITIONS For the purposes of this chapter, the following definitions apply:

(1) through (4) remain as proposed.

(5) "General supervision" means the provision of allowable functions by dental hygienists or auxiliaries provided to a current patient of record, with the intent and knowledge of the licensee licensed and residing in the state of Montana. The

supervising licensee need not be on the premises.

(6) through (9) remain as proposed.

(10) "Prophylaxis" is a preventative and therapeutic dental health treatment process by which gingival irritants, including any existing combination of calculus deposits, plaque, material alba, accretions, and stains are removed supragingivally and/or subgingivally from the natural and restored surfaces of teeth by a method or methods, which may include scaling, root planing, and subgingival curettage, that are most suitable for the patient, by an appropriately licensed dentist or licensed dental hygienist.

(10) and (11) remain as proposed but are renumbered (11) and (12).

AUTH: 37-1-131, 37-4-205, 37-4-340, 37-4-511, 37-29-201, MCA
IMP: 37-1-131, 37-4-101, 37-4-205, 37-4-340, 37-4-408, 37-29-201, MCA

24.138.502 LICENSURE OF DENTISTS (1) and (1)(a) remain as proposed.

(b) ~~successfully~~ passed a board-approved regional clinical practical examination. Examinations shall be valid for the purpose of initial licensure for a period of five years from the date of ~~successful~~ passage of the examination; and

(c) and (2) remain as proposed.

AUTH: 37-1-131, 37-4-205, MCA
IMP: 37-1-131, 37-4-301, 37-4-401, 37-4-402, MCA

24.138.503 LICENSURE OF DENTAL HYGIENISTS (1) and (1)(a) remain as proposed.

(b) ~~successfully~~ passed a board-approved regional clinical practical examination. Examinations shall be valid for the purpose of initial licensure for a period of five years from the date of ~~successful~~ passage of the examination; and

(c) remains as proposed.

(2) The patient-based or, beginning March 12, 2020, a simulated patient-based clinical practical exam must include the following:

(a) through (5) remain as proposed.

AUTH: 37-1-131, 37-4-205, 37-4-402, MCA
IMP: 37-1-131, 37-4-401, 37-4-402, MCA

24.138.511 LICENSURE OF DENTURISTS (1) Denturist license applicants must have:

(a) ~~successfully~~ passed:

(i) through (2) remain as proposed.

AUTH: 37-1-131, 37-29-201, MCA
IMP: 37-1-131, 37-29-201, 37-29-302, 37-29-303, 37-29-306, MCA

24.138.3003 ADVERTISING RESPONSIBILITY (1) and (2) remain as proposed.

(3) A Montana licensed dentist who does not meet the criteria in ARM

24.138.3101 for advertising as a specialist who is listing or advertising the dentist's services under any specialty practice dental category in ARM 24.138.3101 must clearly disclose within the licensee's individual advertisement that the services are provided by a general dentist.

(4) remains as proposed.

AUTH: 37-4-205, MCA
IMP: 37-4-205, MCA

24.138.3101 GENERAL STANDARDS FOR SPECIALTIES (1) through (1)(d) remain as proposed.

(e) orthodontic and dentofacial orthopedics;

(f) through (4) remain as proposed.

AUTH: 37-4-205, MCA
IMP: 37-4-205, 37-4-301, MCA

BOARD OF DENTISTRY
ALLEN CASTEEL, LD, CHAIR

/s/ JENNIFER STALLKAMP
Jennifer Stallkamp
Rule Reviewer

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

Certified to the Secretary of State September 10, 2024.

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

In the matter of the amendment of ARM 24.159.632, 24.159.659, and 24.159.663 pertaining to the Board of Nursing	))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On June 21, 2024, the Board of Nursing (agency) published MAR Notice No. 24-159-96 regarding the public hearing on the proposed changes to the above-stated rules, at page 1429 of the 2024 Montana Administrative Register, Issue No. 12.

2. On July 19, 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: One commenter supported the board's proposal, noting the proposal will allow education programs to more easily find appropriate staff.

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

4. The agency has amended ARM 24.159.632, 24.159.659, and 24.159.663 as proposed.

BOARD OF NURSING
SARAH SPANGLER, RN, PRESIDENT

/s/ JENNIFER STALLKAMP
Jennifer Stallkamp
Rule Reviewer

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

Certified to the Secretary of State September 10, 2024.

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

In the matter of the amendment of ARM 24.174.301, 24.174.401, 24.174.407, 24.174.503, 24.174.526, 24.174.602, 24.174.604, 24.174.701, 24.174.712, 24.174.801, 24.174.802, 24.174.803, 24.174.804, 24.174.805, 24.174.806, 24.174.807, 24.174.814, 24.174.819, 24.174.823, 24.174.830, 24.174.831, 24.174.832, 24.174.833, 24.174.835, 24.174.836, 24.174.840, 24.174.901, 24.174.903, 24.174.1412, 24.174.1501, 24.174.1503, 24.174.1505, 24.174.1506, 24.174.1603, 24.174.1604, 24.174.1605, 24.174.1606, 24.174.1702, 24.174.1706, 24.174.1708, 24.174.1709, 24.174.1711, 24.174.2104, and 24.174.2301, the adoption of NEW RULE I, and the repeal of ARM 24.174.303, 24.174.402, 24.174.504, 24.174.507, 24.174.525, 24.174.527, 24.174.528, 24.174.601, 24.174.603, 24.174.605, 24.174.611. 24.174.612, 24.174.613, 24.174.817, 24.174.818, 24.174.834, 24.174.902, 24.174.1206, 24.174.1502, 24.174.1504, 24.174.1507, 24.174.1508, 24.174.1509, 24.174.1510, 24.174.1601, 24.174.1602, 24.174.1607, 24.174.1608, 24.174.1609, 24.174.1703, 24.174.1704, 24.174.1705, 24.174.1713, and 24.174.1715 pertaining to the Board of Pharmacy	)	NOTICE OF AMENDMENT, ADOPTION, AND REPEAL

TO: All Concerned Persons

1. On July 26, 2024, the Board of Pharmacy (agency) published MAR Notice No. 24-174-81 regarding the public hearing on the proposed changes to the above-stated rules, at page 1659 of the 2024 Montana Administrative Register, Issue No. 14.

2. On August 15, 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: Several commenters support the recognition that preceptors can include both pharmacists and other healthcare professionals as indicated in the changes to ARM 24.174.604.

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

Comment 2: Several commenters were supportive of the amendment to ARM 24.174.830(8), allowing a provider with prescriptive authority or a registered nurse employed by a family planning clinic to dispense medications to treat additional sexually transmitted diseases for the purposes of addressing public health efforts.

Response 2: The board appreciates all comments received during the rulemaking process.

Comment 3: Several commenters were supportive of the proposed amendment to ARM 24.174.836(2)(b), a clarification that a pharmacist dispensing an emergency refill may not dispense a controlled substance listed in Schedule II through Schedule V.

Response 3: The board appreciates all comments received during the rulemaking process.

Comment 4: Several commenters expressed concern regarding the reduction in patient retention record requirements to two years. The requirement for patient record maintenance should align with requirements of other locations of care which is ten years for an adult and longer for a minor child. The commenters were especially concerned about the records of vaccines administered by pharmacists. The commenters request, at minimum, pharmacists maintain records for three years.

Response 4: The board amended patient recordkeeping requirements from three years to two years in ARM 24.174.901 to align with the standard pharmacy prescription recordkeeping of two years as required in ARM 24.174.833. The two-year amendment also aligns with recordkeeping requirements for medical practitioner dispensers registered with the board, pursuant to ARM 24.174.1803. The board clarifies that it is requiring recordkeeping of three years for pharmacies engaged in wholesale distribution activities to align with FDA requirements, as amended in ARM 24.174.833. The board recognizes that other recordkeeping requirements may apply to patient records outside of the board's jurisdiction.

Comment 5: Several commenters recommended the board require pharmacy reporting of vaccine administration to the Montana Immunization Information System (imMTrax), which is administered by the Montana Department of Public Health and Human Services.

Response 5: Amending ARM 24.174.503 to require mandatory reporting to the imMTrax program is outside the scope of this rulemaking and would require a statutory change. Specifically, 37-7-105(4)(f), MCA indicates that a pharmacist who administers an immunization must offer the patient the opportunity to have the immunization information reported to the state immunization information system. The board is aware that pharmacies already voluntarily report vaccine information to the imMTrax program for patients who opt-in to the reporting of their information to the program.

4. The agency has amended ARM 24.174.301, 24.174.401, 24.174.407, 24.174.503, 24.174.526, 24.174.602, 24.174.604, 24.174.701, 24.174.712, 24.174.801, 24.174.802, 24.174.803, 24.174.804, 24.174.805, 24.174.806, 24.174.807, 24.174.814, 24.174.819, 24.174.823, 24.174.830, 24.174.832, 24.174.833, 24.174.835, 24.174.836, 24.174.840, 24.174.901, 24.174.903, 24.174.1412, 24.174.1501, 24.174.1503, 24.174.1505, 24.174.1506, 24.174.1603, 24.174.1604, 24.174.1605, 24.174.1606, 24.174.1702, 24.174.1706, 24.174.1708, 24.174.1709, 24.174.1711, 24.174.2104, and 24.174.2301 as proposed.

5. The agency has adopted NEW RULE I (24.174.2108) as proposed.

6. The agency has repealed ARM 24.174.303, 24.174.402, 24.174.504, 24.174.507, 24.174.525, 24.174.527, 24.174.528, 24.174.601, 24.174.603, 24.174.605, 24.174.611. 24.174.612, 24.174.613, 24.174.817, 24.174.818, 24.174.834, 24.174.902, 24.174.1206, 24.174.1502, 24.174.1504, 24.174.1507, 24.174.1508, 24.174.1509, 24.174.1510, 24.174.1601, 24.174.1602, 24.174.1607, 24.174.1608, 24.174.1609, 24.174.1703, 24.174.1704, 24.174.1705, 24.174.1713, and 24.174.1715 as proposed.

7. The agency has amended ARM 24.174.831 with the following changes, stricken matter interlined, new matter underlined:

24.174.831 PRESCRIPTION REQUIREMENTS (1) through (5)(b) remain as proposed.

(iii) remains as proposed but is renumbered (c).

(6) through (8) remain as proposed.

AUTH: 37-7-201, MCA
IMP: 37-7-201, 37-7-505, MCA

REASON: It is necessary to make this change because the agency inadvertently missed renumbering the subsection (iii) in the original proposal.

BOARD OF PHARMACY, JEFF NIKOLAISEN, CHAIR

/s/ JENNIFER STALLKAMP
Jennifer Stallkamp
Rule Reviewer

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

Certified to the Secretary of State September 10, 2024.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of ARM 24.301.138, 24.301.142, 24.301.146, 24.301.154, 24.301.161, 24.301.172, 24.301.173, 24.301.181, 24.301.201, 24.301.202, 24.301.203, 24.301.206, 24.301.207, 24.301.351, 24.301.401, 24.301.481, 24.301.903, and 24.301.904, the amendment and transfer of ARM 24.301.501, 24.301.511, 24.301.513, 24.301.515, 24.301.523, 24.301.542, 24.301.565, and 24.301.567, the adoption of NEW RULES I through XVIII, and the repeal of ARM 24.301.514, 24.301.516, 24.301.517, 24.301.518, 24.301.519, 24.301.520, 24.301.521, 24.301.522, 24.301.525, 24.301.535, 24.301.536, 24.301.537, 24.301.540, 24.301.543, 24.301.544, 24.301.545, 24.301.546, 24.301.547, 24.301.549, 24.301.550, 24.301.557, 24.301.558, 24.301.559, 24.301.560, 24.301.561, 24.301.562, 24.301.563, 24.301.564, 24.301.566, 24.301.576, and 24.301.577 pertaining to the state building code	)	NOTICE OF AMENDMENT, AMENDMENT AND TRANSFER, ADOPTION, AND REPEAL

TO: All Concerned Persons

1. On July 26, 2024, the Department of Labor and Industry (department) published MAR Notice No. 24-301-409 regarding the public hearing on the proposed changes to the above-stated rules, at page 1708 of the 2024 Montana Administrative Register, Issue No. 14.

2. On August 19, 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 department has thoroughly considered the comments received. A summary of the comments and the department responses are as follows:

COMMENT 1: A commenter supported the department's proposed adoption of the ICC/MBI 1205 and 1200 standards for off-site construction, stating that the standard codes provide greater uniformity for the department's factory-built buildings program. The commenter stated that off-site construction can address many challenges faced

by the construction industry and cited studies showing that "[o]ff-site construction can deliver projects 20 to 50 percent faster than traditional methods, which can provide cost savings of up to 20 percent." Furthermore, the commenter stated that Montana's adoption of the standard codes helps to bring more consistency to the Mountain West region, which benefits manufacturers who deliver modules to multiple states.

RESPONSE 1: The department acknowledges the comment.

COMMENT 2: Commenters spoke in favor of the department's proposed amendment to ARM 24.301.161, adopting and amending the International Energy Conservation Code, in that it deleted Subsection C405.11 Automatic receptacle control and Subsection C405.12 Energy monitoring in their entirety. Commenters stated that in practice, any energy savings from the use of controlled receptacles is often offset by the time and complexity of the installation and the public's common use of multi-outlet strips in non-controlled receptacles.

RESPONSE 2: The department acknowledges the comment.

COMMENT 3: A commenter supported the revisions to the building requirements because the changes are more practical, and the changes eliminate costs that do not improve building safety or function.

RESPONSE 3: The department acknowledges the comment.

COMMENT 4: A commenter supported the proposed amendments to the International Electrical Conservation Code and the National Electrical Code, stating that the codes as written are not as effective or helpful in Montana.

RESPONSE 4: The department acknowledges the comment.

COMMENT 5: A commenter spoke in favor of the proposed amendments, noting that the department's efforts to simplify and clarify regulations related to housing construction and development further the mission and goals of the Governor's Housing Task Force. The commenter noted that the lack of affordable housing significantly inhibits business growth in Montana, both for businesses looking to relocate to Montana and businesses hoping to retain and expand existing operations in the state. The commenters noted that the rules provide an important balance between the protection of public safety through regulations and the speedy and cost-effective development of new homes in Montana.

RESPONSE 5: The department acknowledges the comment.

COMMENT 6: A commenter spoke in favor of the proposed amendments, specifically noting that the department's efforts to clarify the role of building code officials and fire marshals specifically furthers the mission and goals of the Governor's Housing Task Force.

RESPONSE 6: The department acknowledges the comment.

COMMENT 7: A commenter supported the proposed amendment eliminating the last sentence of ARM 24.301.146(16)(c). The proposed amendment eliminates the delegation of building code authority to governmental fire agencies. The commenter asserted that this amendment clarifies the department's exclusive authority over building regulations and will help accelerate future homebuilding in this state.

RESPONSE 7: The department acknowledges the comment.

COMMENT 8: A commenter supports the proposed revisions to ARM 24.301.154(23) stating that the revision will allow jurisdictions to have state support when requiring ice protection on roofs.

RESPONSE 8: The department acknowledges the comment.

COMMENT 9: Commenters opposed the proposed amendment to ARM 24.301.146(16)(c), which states that "[n]otwithstanding any other provisions or references to the contrary within the NFPA standards or fire code as referenced in (5), the authority having jurisdiction over any fire protection system required by the International Building Code shall be the building official." The next sentence proposed for repeal states that "[t]he building official may delegate this authority to governmental fire agencies organized under Title 7, chapter 33, MCA, that are approved by the Department of Justice, Fire Prevention and Investigation Section, to adopt and enforce a fire code in their fire service area." ARM 24.301.146(16)(c). Commenters believe the proposed amendment removing the delegation authority violates 50-60-202, 50-61-102, and 50-61-114, MCA, and ARM 23.12.402.

RESPONSE 9: The department disagrees with the commenters. The current delegation of authority conflicts with 50-60-202, MCA, which gives the Department of Labor and Industry the exclusive authority to adopt and enforce building regulations. Section 50-60-202, MCA, states as follows:

> The department is the only state agency that may promulgate building regulations as defined in 50-60-101, except the department of justice may promulgate regulations relating to use of buildings and installation of equipment. The state fire prevention and investigation section of the department of justice shall review building plans and regulations for conformity with rules promulgated by the department.

Section 50-60-202, MCA, "designates the department of labor and industry as 'the only state agency that may promulgate building regulations[.]'" *City of Helena v. Svee*, 2014 MT 311, ¶ 9, 377 Mont. 158, 162, 339 P.3d 32, 35. Therefore, the department is not permitted to allow a governmental fire agency, or any other outside agency, to adopt or enforce building regulations. Building regulations are defined as "any law, rule, resolution, regulation, ordinance, or code, general or

special. . . relating to the design, construction, reconstruction, alteration, conversion, repair, inspection, or use of buildings and installation of equipment in buildings." 50-60-101(3), MCA; *Svee*, ¶ 9. The department is further mandated to "adopt rules relating to the construction of, the installation of equipment in, and standards for materials to be used in all buildings or classes of buildings, including provisions dealing with safety, accessibility to persons with disabilities, sanitation, and conservation of energy." 50-60-203(1)(a), MCA.

The very statutes creating the State Fire Prevention and Investigation Program under Title 50, chapter 3, MCA, require the Department of Justice to consider the Department of Labor and Industry's building regulations *before* implementing any fire prevention rules. First, the Department of Justice "may adopt rules necessary for safeguarding life and property from the hazards of fire and carrying into effect the fire prevention laws of this state *if the rules do not conflict with building regulations adopted by the department of labor and industry*." 50-3-102(2), MCA (emphasis added). Second, when the Department of Justice promulgates rules, "[i]f rules relate to building and equipment standards covered by the state building code or a county, city, or town building code, *the rules are effective upon approval of the department of labor and industry* and filing with the secretary of state." 50-3-103(2), MCA (emphasis added).

Section 50-60-202, MCA, contains specific and limited delegations of authority to the department of justice, allowing the department of justice to "promulgate regulations relating to use of buildings and installation of equipment." 50-60-202, MCA. This limited delegation allows the Department of Justice to address building code requirements that specifically relate to fire prevention and life safety systems; however, these regulations are still subject to approval by the Department of Labor and Industry under 50-3-103(2), MCA. The remainder of building regulations, as defined by 50-60-101(3), MCA, including building design, construction, reconstruction, alteration, conversion, repair, and inspection, rest exclusively with the Department of Labor and Industry.

Commenters emphasize that the "department of justice *shall review* building plans and regulations for conformity with rules promulgated by the department[,]" under 50-60-202, MCA (emphasis added). While the statute mandates review of building plans by the Department of Justice, the statute does not grant the Department of Justice authority to prevent or authorize construction of a building based on that review. Furthermore, the Department of Justice is reviewing plans for conformity with rules adopted by *the department*, meaning the Department of Justice is reviewing the building plans for conformity with the building code regulations adopted by the Department of Labor and Industry.

Several commenters expressed concern that the department's proposed amendments pose a threat to the Department of Justice's ability to approve local fire jurisdictions and the ability of local fire jurisdictions to enforce a local fire code, as enumerated in 50-61-102 and 50-60-114, MCA, and the implementing regulations including ARM 23.12.402. Nothing in the proposed amendments prevents the

Department of Justice or any local fire jurisdiction from adopting and enforcing a local fire code. As noted above, the Department of Justice can adopt fire safety codes and rules, provided those codes and rules do not conflict with the building regulations adopted by the Department of Labor and Industry under 50-3-102(2), MCA.

The department's proposed amendment clarifies the Department of Labor and Industry's exclusive authority to adopt and enforce building codes in this state. State statute acknowledges the instances where building codes and fire codes collide, and the Department of Justice is statutorily mandated to ensure that their fire prevention and life safety rules do not conflict with the state building code.

COMMENT 10: Commenters asserted that the proposed amendment to ARM 24.301.146(16)(c) threatens the positive working relationships and division of labor between local fire jurisdictions and local building officials. Commenters stated that building code officials alone cannot meet the current demand for building inspections in most jurisdictions, particularly jurisdictions experiencing growth. The commenters expressed concern that the proposed amendments will require all building code jurisdictions to hire more staff and hire staff with expertise in new and different areas.

RESPONSE 10: The department acknowledges the comment. The department has a responsibility to ensure that administrative rules do not conflict with state statute under 2-4-305, MCA. As for staffing concerns, see response to Comment 9.

COMMENT 11: Commenters expressed concern that the proposed amendment to ARM 24.301.146(16)(c) places the entire responsibility for fire prevention and life safety systems on building officials. The commenters assert that most building officials do not have specialized training and expertise in fire prevention and life safety systems.

RESPONSE 11: The department disagrees with the comment. As described in the response to Comment 9, local fire jurisdictions maintain authority to adopt and enforce a local fire code, provided that the fire code does not conflict with the department's building code.

COMMENT 12: A commenter argued that the proposed amendment to ARM 24.301.146(16)(c) means the local fire service will have no authority to enforce the fire code and require code corrections identified after building officials approve a building. A commenter expressed concern that the proposed amendment will lead to the state fire marshal losing authority to certify local fire jurisdictions' authority to enforce the international fire code.

RESPONSE 12: The department disagrees with the comment. As described in the response to Comment 9, local fire jurisdictions maintain authority to adopt and enforce a local fire code, provided that fire code does not conflict with the department's building code. The proposed amendments have no effect on the state

fire marshal's ability to certify local fire jurisdictions and enforce the international fire code.

COMMENT 13: Commenters expressed support for the rules generally; however, the commenters stated that the rules need to include the necessary language for the use of new A2L refrigerants in heating, ventilation, air conditioning, and refrigeration (HVAC-R) applications. The commenters stated that starting on January 1, 2025, most original equipment manufacturers (OEMs) will be required to use A2L refrigerants for most refrigerant applications. The commenters stated that regardless of the passage of HB 433 in 2023, the rules as currently proposed do not explain how an inspector should inspect installations using new A2L refrigerants. The commenters noted that the International Code Council (ICC) has online instructions for updating prior code versions, starting with the 2012 code, to address use of the A2L refrigerants (https://www.iccsafe.org/products-and-services/i-codes/a2l-refrigerants-transition/). The commenters encouraged the department to adopt these important updates to the rules.

RESPONSE 13: The department acknowledges the comment. The department did not propose any amendments regarding refrigerant use in this rules package, and the department will consider this topic for a future rules package.

COMMENT 14: A commenter suggested a change to the department's proposed amendments to ARM 24.301.146(20), which amends Subsection 309.3.1.2, NFPA 13R sprinkler systems, of the 2021 International Building Code (IBC). The commenter recommends that the department instead adopt Subsection 903.3.1.2 of the 2024 IBC. The commenter states that the 2021 IBC will, on average, require more multifamily buildings to use the NFPA 13 system, rather than the less-expensive and more-common NFPA 13R system. The commenter admitted that the NFPA 13 system provides better fire protection; however, the commenter asserts that it costs more to install and maintain.

RESPONSE 14: The department is currently proposing amendments to the 2021 IBC in this rules package, and the department will consider this proposed amendment when the department is drafting amendments to the 2024 IBC.

COMMENT 15: A commenter disagrees with the proposed amendments to ARM 24.301.161(1)(g), which amends Table R402.1.3, of the 2021 International Energy Conservation Code (IECC). The commenter asserts that the proposed amendments remove options for owners and builders to provide energy efficient residential buildings.

RESPONSE 15: The department acknowledges the comment. The department did not intend to restrict options for owners and home builders for providing energy efficient residential buildings. The department acknowledges the conflict and restrictions the proposed amendment creates, and the department withdraws the proposed amendment to Table R402.1.3 of the 2021 IECC in ARM 24.301.161(1)(g)

below. The department will research and address this and other energy efficiency issues more thoroughly in a future rules package.

COMMENT 16: A commenter supported the proposed amendments to ARM 24.301.904(6) adding the section titles; however, the commenter states that the rules should be further amended to comply with Section 208.2.4 of the U.S. Department of Justice ADA standards. The commenter notes that the rules as proposed conflict with the U.S. DOJ ADA Standards.

RESPONSE 16: The department acknowledges the comment. The department did not propose any amendments to the substance of this rule and only proposed updating and adding titles to existing code references. The department will research and consider this issue for a future rules package.

4. The agency has amended ARM 24.301.138, 24.301.142, 24.301.146, 24.301.154, 24.301.172, 24.301.173, 24.301.181, 24.301.201, 24.301.202, 24.301.203, 24.301.206, 24.301.207, 24.301.351, 24.301.401, 24.301.481, 24.301.903, and 24.301.904 as proposed.

5. The agency has amended and transferred ARM 24.301.501 (24.301.1201), 24.301.511 (24.301.1205), 24.301.513 (24.301.1207), 24.301.515 (24.301.1211), 24.301.523 (24.301.1235), 24.301.542 (24.301.1233), 24.301.565 (24.301.1261), and 24.301.567 (24.301.1265) as proposed.

6. The agency has adopted NEW RULES I (24.301.1203), II (24.301.1213), III (24.301.1215), IV (24.301.1217), V (24.301.1221), VI (24.301.1223), VII (24.301.1225), VIII (24.301.1227), IX (24.301.1231), X (24.301.1237), XI (24.301.1241), XII (24.301.1243), XIII (24.301.1245), XIV (24.301.1247), XV (24.301.1249), XVI (24.301.1263), XVII (24.301.1271), and XVIII (24.301.1273) as proposed.

7. The agency has repealed ARM 24.301.514, 24.301.516, 24.301.517, 24.301.518, 24.301.519, 24.301.520, 24.301.521, 24.301.522, 24.301.525, 24.301.535, 24.301.536, 24.301.537, 24.301.540, 24.301.543, 24.301.544, 24.301.545, 24.301.546, 24.301.547, 24.301.549, 24.301.550, 24.301.557, 24.301.558, 24.301.559, 24.301.560, 24.301.561, 24.301.562, 24.301.563, 24.301.564, 24.301.566, 24.301.576, and 24.301.577 as proposed.

8. The agency has amended ARM 24.301.161 with the following changes, stricken matter interlined, new matter underlined:

24.301.161 INCORPORATION BY REFERENCE OF INTERNATIONAL ENERGY CONSERVATION CODE (1) through (1)(f) remain as proposed.

(g) Table R402.1.3, INSULATION AND FENESTRATION REQUIREMENTS BY COMPONENT, is amending requirements for Climate Zone 6 as WOOD FRAMED WALL R-VALUE 'R-21 or ~~R13 + R-5ci~~ R-20 + R-5ci or R-13 + R-10ci or R-15ci.'

(h) through (3) remain as proposed.

AUTH: 50-60-203, 50-60-803, MCA
IMP: 50-60-201, 50-60-203, 50-60-803, MCA

/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 September 10, 2024.

BEFORE THE DEPARTMENT OF LIVESTOCK
OF THE STATE OF MONTANA

In the matter of the adoption of NEW RULE I, the amendment of ARM 32.3.104, 32.3.108, 32.3.131, 32.3.140, 32.3.201, 32.3.207, 32.3.216, 32.3.301, 32.3.403, 32.3.411, 32.3.416, 32.3.606, 32.3.1505, and 32.3.2301, and the repeal of ARM 32.3.132, 32.3.302, 32.3.303, 32.3.304, 32.3.305, 32.3.307, 32.308, 32.3.309, 32.3.310, 32.3.311, 32.3.312, 32.3.313, 32.3.314, 32.3.315, 32.3.402, 32.3.407, 32.3.412, 32.3.418, 32.3.440, 32.3.608, 32.3.1305, 32.3.1507, 32.3.2006, and 32.3.2303, pertaining to animal contagious disease control	)	NOTICE OF ADOPTION, AMENDMENT, AND REPEAL

TO: All Concerned Persons

1. On July 5, 2024, the Department of Livestock published MAR Notice No. 32-24-345 regarding the proposed adoption, amendment, and repeal of the above-stated rules at page 1530 of the 2024 Montana Administrative Register, Issue No. 13. On July 26, 2024, the department published an amended notice pertaining to the adoption, amendment, and repeal of the above-stated rules at page 1749 of the 2024 Montana Administrative Register, Issue Number 14.

2. The department has amended the following rules as proposed: ARM 32.3.104, 32.3.108, 32.3.131, 32.3.140, 32.3.201, 32.3.207, 32.3.216, 32.3.301, 32.3.403, 32.3.411, 32.3.416, 32.3.606, 32.3.1505, and 32.3.2301.

3. The department has repealed the following rules as proposed: ARM 32.3.132, 32.3.302, 32.3.303, 32.3.304, 32.3.305, 32.3.307, 32.3.308, 32.3.309, 32.3.310, 32.3.311, 32.3.312, 32.3.313, 32.3.314, 32.3.315, 32.3.402, 32.3.407, 32.3.412, 32.3.418, 32.3.440, 32.3.608, 32.3.1305, 32.3.1507, 32.3.2006, and 32.3.2303.

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

<u>NEW RULE I (32.3.2401) INDEMNITY FOR ANIMALS DESTROYED DUE TO DISEASE</u> (1) The owner of cattle, domestic bison, sheep, goats, swine, alternative livestock, and poultry destroyed or slaughtered due to disease as

specified in 81-2-201, MCA, under the direction of the department or by order of the board may be paid indemnity for up to 100% of the appraised value of the animal, provided, however, payment for registered animals shall not exceed two times the determined value of commercial or grade animals.

(2) The indemnity shall be paid when the following conditions exist:

(a) At the time of test or condemnation, the animal for which indemnity is claimed did not belong to or was not upon the premises of any person to whom it had been sold for slaughter, shipped for slaughter, or delivered for slaughter;

(b) The animal was purchased or imported into Montana less than 120 days before the date of a test disclosing reactor animals, and the owner is a farmer or rancher buying and selling animals in the ordinary course of their farm and ranch operation. Cattle must have been branded with said owner's brand prior to the date of the test;

(c) If not already tested, the herd of origin of the reactor animal for which indemnity is claimed is made available by the claimant for an official test;

(d) The provisions of this subchapter pertaining to testing, quarantine, movement of animals under quarantine, cleaning and disinfection have been carried out; and

(e) An application claiming indemnity has been submitted.

(3) The amount of indemnity paid by the Department shall be decided by the Board with consideration given to any indemnity payments already paid on the animals, comparable sales receipts provided by the owner, the U.S. Department of Agriculture (USDA) indemnity calculator, USDA Agriculture Marketing Service market reports, and sales data from Montana livestock markets at the time the animal was taken.

(4) If there is a mortgage or lien recorded with the department on ~~cattle~~ animals specified in 81-2-201, MCA, that are slaughtered and indemnified in accordance with the provisions of this subchapter, the warrant paying the indemnity shall be made payable jointly to the owner of the ~~cattle~~ animal and the lien holder or mortgagee.

AUTH: 81-2-102, 81-2-103, 81-2-104, MCA
IMP: 81-2-201, 81-2-209, 81-2-210, MCA

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

COMMENT #1: One commenter recommended changing "cattle" in NEW RULE I(4) to "livestock" to make it more consistent with the species listed in (1).

RESPONSE #1: The department thanks the commenter for the feedback. The department agrees that the term "cattle" in the originally proposed NEW RULE I(4) imposes an unnecessary limitation. However, 81-2-201, MCA, specifically identifies eligible animals and does not use the term "livestock." Use of the term "livestock" in (4) could potentially create ambiguity, in part because "livestock" is defined in ARM 32.3.201(1)(g) and 81-2-702(5), and both definitions include animals that are not eligible for indemnification under 81-2-201, MCA. Accordingly, the adopted rule is

changed from the original proposal by replacing "cattle" with "animals specified in 81-2-201, MCA."

COMMENT #2: One commenter recommended adding a requirement that per capita fees must be paid before an owner can be eligible for indemnification in NEW RULE I.

RESPONSE #2: The department thanks the commenter for the feedback. Requiring an owner to pay per capita fees before they are eligible for indemnification would impose a significant condition to payment that may not have been intended by the Legislature. Additionally, the purpose of the rule is to promote the efficient destruction and slaughter of diseased animals that pose a risk to animal health in the state of Montana, and imposing a requirement that per capita fees must be paid prior to destruction/slaughter may impede or delay that goal.

/s/ Lindsey R. Simon
Lindsey R. Simon
Rule Reviewer

/s/ Michael S. Honeycutt
Michael S. Honeycutt
Executive Officer
Department of Livestock

Certified to the Secretary of State September 10, 2024.

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

In the matter of the amendment of ARM 37.90.402, 37.90.403, 37.90.406, 37.90.408, 37.90.409, 37.90.410, 37.90.412, 37.90.425, 37.90.433, 37.90.434, 37.90.439, and 37.90.449 and the adoption of NEW RULES I and II pertaining to Mental Health Medicaid Funded 1115 and 1915 Waivers	))))))))))	NOTICE OF AMENDMENT AND ADOPTION

TO: All Concerned Persons

1. On May 10, 2024, the Department of Public Health and Human Services published MAR Notice No. 37-1034 pertaining to the public hearing on the proposed amendment and adoption of the above-stated rules at page 1004 of the 2024 Montana Administrative Register, Issue Number 9.

2. The department has amended the following rules as proposed: ARM 37.90.402, 37.90.403, 37.90.406, 37.90.408, 37.90.409, 37.90.425, 37.90.433, 37.90.434, 37.90.439, and 37.90.449.

3. The department has adopted the following rules as proposed: NEW RULES I (37.90.462) and II (37.90.463).

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

37.90.410 HOME AND COMMUNITY-BASED SERVICES FOR ADULTS WITH SEVERE AND DISABLING MENTAL ILLNESS: CONSIDERATION FOR PROGRAM ELIGIBILITY AND ENROLLMENT SELECTION (1) through (5) remain as proposed.

(6) Placement on the SDMI HCBS waiver program wait list is not a guarantee an applicant will receive enrollment into the SDMI HCBS waiver program. Individuals qualified but not enrolled in another waiver program may be placed on the SDMI HCBS waiver program wait list. ~~While on the SDMI HCBS waiver program wait list, the case management team will assist applicants in securing available non-waiver supports or services.~~

(7) The case management teams must review the SDMI HCBS waiver program wait list and update the SDMI HCBS waiver program wait list quarterly to ensure that individuals on the list continue to meet criteria for SDMI HCBS waiver program services. The review consists of verifying each wait list individual's ongoing need for at least two SDMI HCBS waiver program services, and continued LOC and

LOI criteria. In addition, the case management teams will confirm, through the approved documentation process with the Office of Public Assistance (OPA), each individual meets the financial/non-financial Medicaid eligibility criteria prior to enrolling the individual into the SDMI program. ~~everyone's ongoing Medicaid eligibility, ongoing need for at least two SDMI HCBS waiver program services, and continued LOC and LOI criteria.~~

(8) remains as proposed.

(a) the applicant's whereabouts are unknown, and the case management team has attempted to contact the applicant a minimum of once ~~twice~~ per quarter for two consecutive quarters and no response has been received from the applicant;

(b) the case management team determines that the service providers necessary to deliver at least two SDMI HCBS waiver program services requested by the applicant are unavailable. Unavailable means when there is no provider who has said the provider has the staff and resources to serve the applicant in the applicant's current or requested area and who would accept the applicant if the applicant was enrolled in the SDMI program. Unavailable is established on the date of the quarterly review. The SDMI HCBS waiver program meals service does not count towards the two services;

(c) through (10)(c) remain as proposed.

(d) the enrolled member no longer requires the level of care of a nursing facility as determined by the ~~QOI~~ QIO under contract with the department;

(e) through (11) remain as proposed.

AUTH: 53-2-201, 53-6-402, MCA
IMP: 53-6-402, MCA

37.90.412 HOME AND COMMUNITY-BASED SERVICES FOR ADULTS WITH SEVERE AND DISABLING MENTAL ILLNESS: PERSON-CENTERED RECOVERY PLAN (1) through (3)(b) remain as proposed.

(c) initiate the strength assessment upon the enrolled member's enrollment into the SDMI HCBS waiver program to determine the enrolled member's strengths, needs, preferences, goals, and desired outcomes, along with his/her health status and risk factors~~. The strength assessment must be initiated within 30 days of enrollment into the care management system~~;

(d) through (10) remain as proposed.

AUTH: 53-2-201, 53-6-402, MCA
IMP: 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: In reference to ARM 37.90.410(6), a commenter asked, "What will the requirement of AWARE be in assisting applicants in securing non-waiver supports or services?"

RESPONSE #1: With this comment, the department recognizes the need for further clarification in (6). Therefore, the department has revised ARM 37.90.410(6) by removing the last sentence of the subsection to remove the case management team's obligation to assist in finding non-waiver services to applicants on the wait list. While on the SDMI HCBS waiver program wait list, applicants who are Medicaid members may receive Medicaid non-waiver targeted case management (TCM) to assist with referral and linkage to available non-waiver supports and services. However, the SDMI HCBS waiver case management team is not responsible to link the applicant to the services.

COMMENT #2: In reference to ARM 37.90.410(6), a commenter asked, "Can the department please clarify when a member is considered eligible and enrolled in waiver case management services?"

RESPONSE #2: As defined in proposed ARM 37.90.403(5), "'Enrolled member' means an individual enrolled in the SDMI program and authorized to receive services under the SDMI program." Individuals on the SDMI wait list are not enrolled members of the program and may not receive SDMI waiver services.

COMMENT #3: In reference to ARM 37.90.410(6), a commenter asked, "How will AWARE be reimbursed for providing case management to individuals not deemed eligible for the waiver?"

RESPONSE #3: As noted in response #1, the department has clarified the case management team's responsibilities by deleting the last sentence in ARM 37.90.410(6). With that change, the rule no longer obligates the SDMI HCBS waiver case management team to assist in finding non-waiver services to wait list applicants. Wait list members who are Medicaid members may receive non-waiver supports or services.

COMMENT #4: In reference to ARM 37.90.410(6), a commenter asked, "Has the department considered transitioning waiver case management to a state plan targeted case management model?"

RESPONSE #4: Targeted case management is a service available for a Medicaid member on the SDMI wait list. The SDMI case management service is available for those enrolled in the SDMI waiver program. The department does not see a need to transition SDMI case management to a state plan targeted case management model.

COMMENT #5: In reference to ARM 37.90.410(7), a commenter asked, "What are the expectations of MPQH to provide updated information to AWARE?"

RESPONSE #5: In general, the SDMI level of care (LOC) is valid for 90 days and the level of impairment is valid for one year. If during the quarterly review, the SDMI HCBS waiver case management team (CMT) suspects that the member's level of care has changed, the SDMI HCBS waiver CMT will submit a request to Mountain

Pacific to complete a new LOC. This process aligns with the SDMI HCBS approved waiver and is reflected in SDMI HCBS Policy 110.

COMMENT #6: A commenter asked, "How will AWARE access Medicaid information for individuals on the wait list when they are not yet enrolled in waiver services? What steps is AWARE expected to take if Medicaid ineligibility for a wait list individual is verified?"

RESPONSE #6: The department has reviewed the comment and potential limitations for the SDMI contracted case management teams to access Medicaid eligibility status for individuals on the SDMI wait list. The department has revised ARM 37.90.410(7) to explain the process to be used to determine a wait list individual's Medicaid eligibility status.

COMMENT #7: In reference to ARM 37.90.410(8), a commenter stated: "SDMI Waiver Policy 110 requires that the CMT is to make contact once per quarter. Contacting twice per quarter will double the work that the referral coordinator currently does which is not a billable service. Can the department please clarify if this direction is congruent with SDMI HCBS Policy 110? (How often do case managers need to contact any individual on the wait list?) Can the department please clarify if this direction is congruent with SDMI Waiver Policy 110?"

RESPONSE #7: The department acknowledges the comment and has revised ARM 37.90.410(8) to provide for once per quarter contact with wait listed individuals. This change more closely aligns with the SDMI case management team contract and SDMI HCBS Policy 110.

COMMENT #8: In reference to ARM 37.90.410(1)(e)(i), a commenter asked, "Can the department provide more justification for denying meals as the second service?"

RESPONSE #8: This rulemaking is necessary to align the department's administrative rules with the SDMI HCBS base waiver which has been approved by the U.S. Centers for Medicare & Medicaid Services (CMS). The waiver, as approved by CMS, requires a documented need for at least two SDMI HCBS waiver services, but stipulates the meals service does not count towards the two services.

COMMENT #9: A commenter asked, "Will the department clarify what is meant by meal services not being a second service applicants and waiver members can choose if eligible for the SDMI waiver?"

RESPONSE #9: This rulemaking is necessary to align the department's administrative rules with the SDMI HCBS base waiver which requires documented need for at least two SDMI HCBS waiver services, but stipulates the meals service does not count towards the two services.

COMMENT 10: A commenter asked in relation to ARM 37.90.410(8)(b), "Can the department clarify 'unavailable' for what period of time or by location?"

RESPONSE #10: The department acknowledges the comment and has revised ARM 37.90.410(8)(b) to include language explaining what constitutes "unavailable" services. The new language states that unavailable means no provider has said the provider has the staff and resources to provide the services to the applicant in the applicant's current or requested residential area and who would accept the applicant if the applicant was enrolled in the SDMI program.

COMMENT #11: A commenter stated, "The refusal to spend down is clear. Where a person encounters barriers to spend down or spend down in the expected timeframe, members should be determined on a case-by-case basis. Would the department remove 'or cannot' from the rule?"

RESPONSE #11: The language as proposed and adopted by this notice is necessary to require spend down in order to be Medicaid eligible. If an individual does not spend down, the person is not eligible for Medicaid. Medicaid eligibility is a requirement for the SDMI waiver program, as outlined in the waiver application filed with CMS.

COMMENT #12: A commenter asked in relation to ARM 37.90.410(8)(g), "This has been completed with Medicaid redetermination which has led to hundreds of members losing Medicaid due to no fault of their own. Will the department create a process for individuals who are eligible for the waiver be reviewed in a timely manner as to not deny services to members? How will the department notify AWARE when a member becomes ineligible for Medicaid?"

RESPONSE #12: The Office of Public Assistance (OPA) manages the Medicaid redetermination process and notification to members regarding the redetermination process. AWARE has access to the Medicaid portal to verify an individual's Medicaid eligibility each month.

COMMENT #13: In relation to ARM 37.90.410(9), a commenter stated, "The department's efforts to streamline the process and reduce wait list times is welcomed. Currently, it can take anywhere from one to six months for OPA to approve an MA55. Some members are seeking residential services which may take longer than six months to identify and secure a provider due to the provider shortage in the state. How will AWARE request approval to extend an individual's time on the wait list? What will the timeframe be for the department to approve or deny a request for extension? What criteria will be used to determine the approval or denial of a request for extension?"

RESPONSE #13: Requests to exceed the six consecutive months will be submitted by the SDMI contracted case management team to designated SDMI program staff. The SDMI contracted case management team will receive a response within ten business days. The criteria for an extension will be determined by the program for applicants whose waiver eligibility is pending a determination from the OPA.

COMMENT #14: A commenter asked in relation to ARM 37.90.410(10)(b), "Would the department consider modeling the rule for waiver members similar to the 0208 Waiver that provides a temporary suspension of services for extenuating circumstances such as a hospitalization and provide a 90-day window prior to discharge to re-engage the member? Could the department clarify how service termination is to occur and if that process requires the provider to refer and ensure health and safety needs are met?"

RESPONSE #14: While receiving services in a hospital, an individual has no need for and is not eligible to participate in waiver services. If the member is discharged from the waiver, the individual may pursue state plan services while on the SDMI wait list. The OPA has expedited waiver eligibility processing for those discharging from the Montana State Hospital to the SDMI program. Service termination is outlined in ARM 37.90.420 and SDMI HCBS Policy 145. Although ARM 37.90.420 indicates the department provides notice, SDMI HCBS 145 specifies the case management team provides notice. The department will be updating the policy to align with rule.

COMMENT #15: In relation to ARM 37.90.412(3), the commenter asked, "Would the department revise the timeline for the completion of the psychosocial strengths assessment and the PCRP to 30 days from the enrollment date? Would the department clarify all timeline expectations to include initiation, completion, and submission to the department for review? How will the department address the contradictions in rule, policy, and contract?"

RESPONSE #15: The department acknowledges the comment and has revised ARM 37.90.412(3) to clarify the timeline expectations.

COMMENT #16: In relation to ARM 37.90.412(8), a commenter asked, "What is the timeline for the CPO to approve and notify AWARE of the approval?"

RESPONSE #16: If the initial PCRP is found to meet program criteria, the department must approve the PCRP within 30 days of enrollment into the care management system. If the annual PCRP or changes to the PCRP meet program criteria, the department must approve within 30 days of submission of the review/change to the department.

COMMENT #17: A commenter asked in relation to ARM 37.90.425(3)(b), "AWARE asks for the department to change 'for every' to 'at least' to support current staffing needs."

RESPONSE #17: This rulemaking is necessary to align the department's administrative rules with the SDMI HCBS base waiver and the case management contract. The requirement for "every" is supported in the waiver application and the case management contract. Case management team requirements are found in Appendix D: Participant-Centered Planning and Service Delivery D-1: Service Plan Development.

COMMENT #18: In relation to ARM 37.90.425(4), a commenter asked, "AWARE has limited ability to request and access to monthly utilization reports as that would require all SDMI Waiver providers submit monthly reports to the document created 'in-house.' AWARE is uncertain as to why the organization would be required to provide this information as BHDD can complete reports on the entire system of care, due to the over-arching authority of DPHHS. Does the current data management system allow for the collection of and reporting of this information? Would the department please clarify the intent, direction, and process for meeting this rule?"

RESPONSE #18: The reporting requirements for SDMI's case management team entity is outlined in the case management contract, the CMS-approved SDMI HCBS waiver application and support the program's requirement to ensure quality measures are met. In addition, the case management team's submission of monthly utilization reports will provide the program staff with the data necessary to evaluate historical and estimated expenditures against current expenditures to identify utilization patterns which may be associated with budget under/overutilization.

COMMENT #19: A commenter asked, "NCILS also has questions regarding the SDMI wait list because NCILS assumes that many of the services offered in regards to behavioral health intervention and crisis services come with specialized training and if an individual is not currently receiving waivers or resources or is on the waiting list what is meant by similar services in the community that would help individual and support system to live in the community."

RESPONSE #19: Individuals on the wait list with Medicaid eligibility may have continued access to state plan services including targeted case management (TCM) which may be available to refer applicants to non-waiver supports or services.

COMMENT #20: A commenter shared, "NCILS is very excited to support and applauds the person-centered recovery planning process. Having a member or prospective applicant at the center of their medical and social community building will allow them to utilize supports to stay in Montana communities."

RESPONSE #20: The department appreciates the comment.

COMMENT #21: A commenter asked, "Given the fact that members may need to readjust medication or have extended facility stays at times for different issues, what will be the role of the SDMI HCBS waiver team as the legally responsible person or individual in facilitating both crisis intervention options in community and if a member or prospective applicant needs community services following a hospitalization for crisis stabilization?"

RESPONSE #21: Neither the SDMI program staff nor the SDMI case management team may assume the role of legally responsible person or individual for an SDMI applicant or member due to conflict of interest standards. Non-waiver individuals may pursue Montana's targeted case management services and other state plan

services to assist with community services following hospitalization for crisis stabilization.

6. Upon review of comments, the department intends to avoid retroactive implementation of certain portions of the rule changes. The new rules and the amended rules in this notice are effective the day after publication.

/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 September 10, 2024

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

In the matter of the adoption of NEW RULES I through XIV pertaining to licensure of abortion clinics	)))	NOTICE OF ADOPTION

TO: All Concerned Persons

1. On July 26, 2024, the Department of Public Health and Human Services (department) published MAR Notice No. 37-1052 pertaining to the public hearing on the proposed adoption of the above-stated rules at page 1767 of the 2024 Montana Administrative Register, Issue Number 14.

2. The department has adopted the following rules as proposed: NEW RULE III (37.106.3103), NEW RULE V (37.106.3105), NEW RULE VI (37.106.3106), NEW RULE VIII (37.106.3108), NEW RULE IX (37.106.3109), NEW RULE X (37.106.3110), NEW RULE XI (37.106.3111), NEW RULE XIII (37.106.3113), and NEW RULE XIV (37.106.3114).

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

NEW RULE I (37.106.3101) PURPOSE (1) through (5) remain as proposed.

(a) Unless otherwise provided in these rules, general requirements and provisions and requirements pertaining to the abortion services provided by the abortion clinic may not be waived.

AUTH: 50-20-901, 50-20-903, MCA
IMP: 50-20-901, 50-20-902, 50-20-903, 50-20-904, MCA

NEW RULE II (37.106.3102) MINIMUM STANDARDS FOR ABORTION CLINICS: LICENSING (1) remains as proposed.

(a) The following are not abortion clinics and are not required to be licensed as such:

(i) a hospital as defined in 50-5-101, MCA;

(ii) a critical access hospital as defined in 50-5-101, MCA;

(iii) a rural emergency hospital as defined in 50-5-101, MCA;

(iv) an outpatient center for surgical services as defined in 50-5-101, MCA; and

(v) a facility that provides, prescribes, administers, or dispenses an abortion-inducing drug to fewer than five patients each year.

(2) through (6) remain as proposed.

AUTH: 50-20-903, MCA

IMP: 50-5-101, 50-20-902, 50-20-903, 50-20-904, MCA

NEW RULE IV (37.106.3104) MINIMUM STANDARDS FOR ABORTION CLINICS: POLICIES AND PROCEDURES (1) through (4)(j) remain as proposed.

(k) types of anesthesia to be used by the abortion clinic, the conduct of anesthesia assessments, and the criteria to be used in conducting anesthesia assessments, in accordance with [NEW RULE XI(1)(b) through (d), (3), and (4)]; and

(l) infection controls, in accordance with [NEW RULE XII(2) and (3)].; and

(m) if the clinic is licensed to perform abortions after the point when an unborn child may survive the procedure, measures to be taken to ensure that an infant that is born alive during an abortion procedure receives appropriate care, including lifesaving measures, consistent with and in compliance with the requirements of federal and state law.

AUTH: 50-20-903, MCA
IMP: 50-20-804, 50-20-903, MCA

NEW RULE VII (37.106.3107) MINIMUM STANDARDS FOR ABORTION CLINICS: PATIENT FILES (1) remains as proposed.

(a) patient identification including the patient's full name, sex, address, date of birth, and next of kin (for minor patients) or emergency contact (for adult patients);

(b) through (3) remain as proposed.

AUTH: 50-20-903, MCA
IMP: 50-20-903, MCA

NEW RULE XII (37.106.3112) MINIMUM STANDARDS FOR ABORTION CLINICS: INFECTION PREVENTION AND CONTROL (1) through (3) remain as proposed.

(4) A system must exist for the proper identification, management, handling, transport, storage, and disposal of biohazardous materials, and medical wastes, and human fetal remains, whether solid, liquid, or gas.

AUTH: 50-20-903, MCA
IMP: 50-20-903, MCA

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

Comment #1: Two verbal and two written comments were received expressing support for the proposed regulations regarding continuing care of patient.

Response #1: The department thanks the commenters for the comments. The department appreciates the support for these proposed regulations.

Comment #2: One verbal and one written comment were received expressing support for the requirement to document the gestational age at the time of the abortion.

Response #2: The department thanks the commenters for their comments. The department appreciates their support for these proposed regulations.

Comment #3: An individual attending the hearing expressed the opinion that women receiving surgical abortions would find peace of mind that a facility has met basic standards for providing services.

Response #3: The department thanks the commenter for the comment. The department appreciates the commenter's support for these proposed regulations.

Comment #4: A verbal comment during the hearing was received expressing that it does not make sense that a beauty shop would be inspected and licensed but not a facility that provides abortion services. A similar written comment was received, indicating that a massage spa must be inspected and licensed so a clinic providing abortions should be, too.

Response #4: The department thanks the commenter for the input, and appreciates the commenter's support for these proposed regulations.

Comment #5: Two verbal and five written comments were received in support of the facility requirements for cleanliness, sterilization, safety and in good condition.

Response #5: The department appreciates the support for these proposed regulations, and thanks the commenters for their comments.

Comment #6: A verbal comment and a written statement were received expressing support for the proposed regulations surrounding operational standards, file retention, protection of patients, and staff policies.

Response #6: The department thanks the commenters for the comment, and appreciates their support for these proposed regulations.

Comment #7: Three people voiced their support at the hearing for the regulations surrounding staff training. One written comment was received supporting the proposed regulations requiring staff training.

Response #7: The department appreciates the commenters' support for these proposed regulations.

Comment #8: A verbal comment and two written comments were received in support of the proposed regulations regarding emergency procedures.

Response #8: The department thanks the commenters for the comments. The department appreciates their support for these proposed regulations.

Comment #9: Five verbal comments and three written comments were received expressing the opinion that the proposed regulations are basic, common sense, standard guidelines for medical facilities and/or outpatient surgical service facilities.

Response #9: The department thanks the commenters for their input. The department appreciates the commenters support for these proposed regulations.

Comment #10: A commenter at the hearing expressed the opinion that women may assume that abortion facilities are already inspected and regulated, and expressed support that now these facilities will.

Response #10: The department thanks the commenter for the comment, and appreciates the commenter's support for these proposed regulations.

Comment #11: Two verbal comments were received, expressing the opinion that these proposed regulations would help protect victims of abuse.

Response #11: The department thanks the commenters for their comments. The department appreciates their support for these proposed regulations.

Comment #12: A verbal comment and one written comment were received expressing the support of the proposed regulation requiring a physician's oversight of the facility.

Response #12: The department thanks the commenters for their comments, and appreciates their support for these proposed regulations.

Comment #13: Three written comments and one verbal comment during the hearing were received expressing the opinion that the proposed regulations do not infringe on women's rights or access to abortion.

Response #13: The department thanks the commenters for their comments. The department appreciates the support for these proposed regulations, and agrees that the regulations do not infringe on any woman's rights or access to abortion.

Comment #14: A written comment was received supporting the proposed requirements but stating that waivers should be granted to allow facilities opportunities to meet needs of communities.

Response #14: The department thanks the commenter for the comment. The department appreciates the support for these proposed regulations. Proposed NEW RULES I and III (ARM 37.106.3101 and 37.106.3103) include authorization for the department to waive certain requirements, depending on the scope of, and any gestational limits on, the abortions to be performed or provided by the applicant or

licensed abortion clinic. The department will work with an abortion clinic, as necessary and appropriate, to determine whether there are regulatory requirements that may be waived, given the abortion clinic's scope of services.

Comment #15: Three written comments were received expressing opinions that the proposed regulations are standards that promote women's health and safety.

Response #15: The department thanks the commenters for their comments. The department appreciates their support for these proposed regulations.

Comment #16: Two written comments were received expressing the opinion that there is no such thing as a risk-free procedure, so basic standards are required.

Response #16: The department thanks the commenters for the comments. The department agrees and appreciates the commenters' support for these proposed regulations.

Comment #17: Nine written comments were received expressing support for the proposed regulations, indicating that basic or uniform standards should be applied to all facilities that conduct a surgery, including abortion clinics.

Response #17: The department thanks the commenters for their comments. The department appreciates their support for these proposed regulations.

Comment #18: A written comment was received expressing support for the proposed regulations and expressing the opinion that an abortion physician should have admitting privileges to a hospital.

Response #18: The department thanks the commenter for the input. The department appreciates the support for these proposed regulations. While the department does not require, through these licensure requirements, that abortion providers have hospital admitting privileges, the department does require in NEW RULE IX (ARM 37.106.3109) that an abortion clinic have a written transfer agreement with a hospital, critical access hospital, or rural emergency hospital.

Comment #19: Three written comments were received in support for the proposed regulations, commenting that women deserve full disclosure and informed consent information.

Response #19: The department thanks the commenters for their comments. The department appreciates their support for these proposed regulations.

Comment #20: One written comment was received in support of the proposed regulations, expressing that complications and consequences from abortions impact the state's fiscal budget when forced to fund through Medicaid.

Response #20: The department thanks the commenter for the comment. The department appreciates the support for these proposed regulations, and acknowledges that it has received and paid Medicaid claims for emergency room visits where the diagnosis code was complications of abortion; Montana Medicaid may have paid other claims for services needed to address the consequences of abortion that were not so coded.

Comment #21: A written comment was received in support of the proposed regulations, indicating that while there are those who report that abortions are safe, there are no legal standards for these medical practices in abortion clinics.

Response #21: The department thanks the commenter for the comment. The department appreciates the support for these proposed regulations.

Comment #22: One written comment was received in support of the proposed regulations but requested that rural emergency hospitals be included in the exclusion portion of the definition.

Response #22: The department appreciates the commenter's support for these proposed regulations. Since the department adopted the statutory definition of "abortion clinic" in NEW RULE I (ARM 37.106.3101), the department interprets the request as a request for additional clarity as to the types of entities that are required to be licensed as an abortion clinic in NEW RULE II(1) (ARM 37.106.3102(1)). The department agrees that it would be appropriate to specify, in the regulations, the entities that are not required to be licensed as abortion clinics because they are excluded from the definition of the term. Under the Montana Code Annotated (MCA), a "rural emergency hospital" is defined as "a facility defined in 42 U.S.C. 1395x(kkk)(2) that is designated by the department as a rural emergency hospital in accordance with 50-5-234." 50-5-101(50), MCA. The U.S. Code, in turn, indicates that a "rural emergency hospital" is a "facility that as of December 27, 2020—(A) was a critical access hospital; or (B) was a subsection (d) hospital (as defined in section 1395ww(d)(1)(B) of this title) with not more than 50 beds located in a county (or equivalent unit of local government) in a rural area (as defined in section 1395ww(d)(2)(D) of this title), or was a subsection (d) hospital (as so defined) with not more than 50 beds that was treated as being located in a rural area pursuant to section 1395ww(d)(8)(E) of this title," 42 U.S.C. § 1395x(kkk)(3) (cross-referenced in § 1395x(kkk)(2)), that meet certain additional requirements. *See* 42 U.S.C. § 1395x(kkk). Given that federal definition of rural emergency hospital and the fact that the definition of "hospital" in 50-5-101(25), MCA, does not expressly exclude rural emergency hospitals, the department believes that rural emergency hospitals are excluded from the definition of "abortion clinic" because that definition excludes hospitals and critical access hospitals.[1] The department's identification of the entities not required to register as abortion clinics aligns with this analysis.

[1] The department notes that its legislative proposal that would exclude "rural emergency hospitals" from the definition of "hospital" also contains a proposal to

Comment #23: A written comment was received in support of the proposed regulations, but suggested a modification to the waiver permissions by indicating which proposed regulations may be waived and for what types of facilities. The commenter suggests that proposed NEW RULES II, III(1) and (6), IV, V, and VI, VII, VIII(1), (3), and (4), XI, XII, XIII, and XIV be nonwaivable for any licensed abortion clinic. The commenter further suggested that proposed NEW RULES III (3) and (5), IX, and X be nonwaivable for any licensed abortion clinic that provides surgical abortions.

Response #23: The department thanks the commenter for the comment, and appreciates the support for these proposed regulations. The department seriously considered the commenter's recommendations, but found that implementing the recommendations was more complicated than the commenter suggested. For example, NEW RULE IV (ARM 37.106.3104) contains a requirement for policies and procedures on anesthesia, which arguably should be waivable if the abortion clinic does not perform or provide surgical abortion – but the commenter included the rule on the list of rules that should not be waivable for any licensed abortion clinic. However, the department agrees that it should provide additional guidance on the type of requirements that the department will not waive. The department, thus, amends the rule to provide that general provisions and provisions and requirements that pertain to the abortion services provided by the abortion clinic will not be waived. Thus, for example, the department will not consider requests to waive the requirement for policies and procedures on staff training or the licensure requirement itself because each is a general requirement that pertains to all abortion services. If, however, the abortion clinic does not provide surgical abortion, it will consider waiver of the requirement for policies and procedures on anesthesia or for maintaining pre- and post- operative notes in the patient's file. The department will follow the requirements in NEW RULE I (ARM 37.106.3101) when evaluating any request from an applicant or abortion clinic to waive any licensure requirement set forth in these rules.

Comment #24: A written comment was received in support of the proposed regulations with the suggestion that the department add in the differentiation of "medical waste" and "human fetal remains" as there are disposal differences.

Response #24: The department appreciates the support for these proposed regulations, and thanks the commenter for the comment. The department partially agrees with the commenter's suggestion. The department amends proposed NEW RULE XII(4) (ARM 37.106.3112(4)) to state, "A system must exist for the proper identification, management, handling, transport, storage, and disposal of biohazardous materials, medical wastes, and human fetal remains, whether solid, liquid, or gas." In this regard, the department notes that 75-10-1005(4)(c), MCA, provides that "[f]etal remains or recognizable body parts other than teeth must be

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amend the definition of "abortion clinic" to exclude rural emergency hospitals, to maintain the current exclusion.

disposed of by incineration or interment," and thus identifies the proper mechanism for disposal of human fetal remains.

Comment #25: One written comment was received in support of the proposed regulations with the request that the department include a requirement for facilities to have a policy on born-alive abortions and that the baby must receive lifesaving measures.

Response #25: The department thanks the commenter for the comment. The department appreciates the support for these proposed regulations. The department agrees with the suggestion and amends proposed NEW RULE IV(4) (ARM 37.106.3104(4)) to require a policy on infants born-alive during or after an abortion procedure, which must include procedures to provide lifesaving measures in the event of a born-alive abortion. As the commenter points out, this is consistent with the requirements of 50-20-804, MCA.

Comment #26: One written comment was received in support of the proposed regulations indicating that inspection and oversight may reveal deficient practices that endanger patients, and that it is better to have it identified before it escalates.

Response #26: The department appreciates the commenter's support for these proposed regulations, and agrees that, as with all licensed health care facilities, licensure inspections and oversight may identify, and permit correction of, deficiencies before they lead to patient harm.

Comment #27: A written comment was received in support of the proposed regulations, specifically the requirement to screen for coercion, sex trafficking, and abuse.

Response #27: The department thanks the commenter for the comment and appreciates the support for these proposed regulations, especially with respect to coercion, sex trafficking, and abuse, given the data cited by the commenter.

Comment #28: Four verbal comments and one written comment were received in opposition to the licensing of abortion clinics. Commenters expressed that abortion clinics are already subject to government oversight and regulation in Montana.

Response #28: The department appreciates the comments, but believes that the commenters' premise is mistaken: Since abortion clinics are currently not subject to licensure, unlike most health care facilities, they have largely been unregulated and not subject to government oversight. In exercise of the state's police powers, the 2023 Montana Legislature determined that abortion clinics should be licensed and regulated, similar to other health care facilities, and passed H.B. 937 requiring the licensure of abortion clinics. Section 50-20-903, MCA requires the department to license and regulate abortion clinics.

Comment #29: Five verbal comments and 13 written comments were received in opposition to the licensing of abortion clinics, with the opinion that the regulations are presented as a targeted attack on abortion clinics. Many of the commenters expressed the attack was a political attack.

Response #29: The 2023 Montana legislative session passed H.B. 937, requiring the department to license and regulate abortion clinics. As indicated in the statement of reasonable necessity, the department developed the licensure requirements for abortion clinics based on the licensure requirements imposed on health care facilities in general and those imposed on outpatient centers for surgical services; the licensure requirements for outpatient centers for primary care were also considered. In light of the fact that most health care facilities are licensed and regulated and that the abortion clinic licensure requirements are based on existing licensure requirements, the department rejects the commenters' contentions that the abortion clinic licensure regulations are a targeted or political attack on abortion clinics.

Comment #30: Four verbal and three written comments were received in opposition to the proposed regulations, expressing that the proposed regulations are TRAP laws.

Response #30: The department appreciates the comment; however, for the reasons set forth in the response to Comment #29, the department rejects the commenters' contention that the abortion clinic licensure regulations are targeted restrictions on abortion providers.

Comment #31: Three verbal and six written comments were received in opposition to the proposed regulations, expressing that the proposed regulations have nothing to do with patient safety, medical standards, or health care.

Response #31: The department respectfully disagrees. There are real risks associated with both surgical abortion and medical/medication abortions, as the submission of at least one commenter substantiates. The abortion clinic licensure requirements are intended to address those risks and to help ensure the health, safety, and wellbeing of the patients served by these clinics. In this regard, the requirements are based on, and are similar to, the licensure requirements imposed on other Montana health care facilities, including outpatient centers for surgical services and outpatient centers for primary care. Furthermore, licensure inspections can detect issues and problems, before they adversely affect patient health and safety, and corrective action can be taken to address those issues and problems, as a commenter substantiates.

Comment #32: Seven verbal comments and eleven written comments were received in opposition to the licensure of abortion clinics and the proposed regulations, expressing that licensing and the proposed regulations would limit or ban access to abortions and force facilities to be shut down.

Response #32: The department disagrees. The department notes that the commenters do not explain how the licensure requirements would have the identified impacts, making it impossible for the department to respond. The department, however, believes that the licensure requirements will help ensure the safety, health, and wellbeing of abortion clinic patients. The department does not believe that the licensure requirements would limit (or ban) access to abortions or force facilities to be shut down. But, just as with other health care facilities, if an abortion clinic fails to comply with the licensure requirements, designed to help ensure the health, safety, and wellbeing of its patients, and fails to take corrective action when requested by the department, it should be subject to the same types of licensure action (denial, reduction to provisional, suspension, or revocation) as any other health care facility for the same type of violation.

Comment #33: One verbal comment and four written comments were received in opposition to the licensing of abortion clinics, indicating that licensing these facilities would deny compassionate, life-saving care to the women of Montana.

Response #33: The department disagrees with the commenters and notes that they do not provide an explanation of how a requirement for abortion clinic licensure would have the impact they identified. The department believes that the abortion clinic licensure regulations – which include, among other things, safety, quality assurance, and infection prevention and control requirements – mean that women who seek care at an abortion clinic can be sure of receiving safe care.

Comment #34: One verbal and five written comments were received in opposition to the proposed regulations indicating that the proposed regulations are not required of other providers and clinics and single out abortion clinics.

Response #34: All types of health care entities that the MCA defines as "health care facilities" (50-5-101, MCA) are subject to licensure and regulation by the department. The 2023 Montana Legislature passed, and Governor Gianforte signed, H.B. 937, requiring the licensure of abortion clinics and adding abortion clinics to the definition of a health care facility. The abortion clinic licensure regulations are based on, and are similar to, the licensure requirements imposed on other types of health care facilities. As such, abortion clinics are not singled out.

Comment #35: Two verbal and two written comments were received in opposition to the proposed regulations expressing the opinion that the licensing of abortion clinics and proposed regulations directly conflict with the mission of the Department of Public Health and Human Services.

Response #35: The department disagrees. The department's mission statement is "Serving Montanans in their communities to improve health, safety, well-being, and empower independence." One of the ways in which the department achieves this mission is to license and regulate health care facilities, now including abortion clinics, to ensure that Montanans receive safe, quality care.

Comment #36: Four verbal and fourteen written comments were received in opposition to the licensure of abortion clinics and the proposed regulations, requesting that the department reject the rules and licensure of abortion clinics.

Response #36: The department is required by H.B. 937 (codified at 50-20-901 through 50-20-904, MCA), passed by the legislature and signed by Governor Gianforte, to license and regulate abortion clinics. As a result, the department rejects the commenters' request that it reject issuance of the rules. There can be real risks associated with both surgical abortions and medical/medication abortions, as the submission of at least one commenter substantiates. The abortion clinic licensure requirements are intended to address those risks and help ensure the health, safety, and wellbeing of the patients served by these clinics. In this regard, the requirements are based on, and are similar to, the licensure requirements imposed on other Montana health care facilities, including outpatient centers for surgical services and outpatient centers for primary care. Furthermore, licensure inspections can detect issues and problems, before they adversely affect patient health and safety, and corrective action can be taken to address those issues and problems, as a commenter substantiates.

Comment #37: Five verbal and six written comments were received in opposition to the licensure of abortion clinics. Commenters expressed that abortion is safe and medically necessary and does not require government oversight.

Response #37: The 2023 Montana Legislature passed, and Governor Gianforte signed, H.B. 937 requiring the department to license and regulate abortion clinics. The legislature, thus, decided that abortion clinics should have state oversight, to help ensure the health, safety, and wellbeing of Montanans who seek their services. Contrary to the commenters' suggestion, there can be real risks associated with both surgical abortions and medical/medication abortions, as the submission of at least one commenter substantiates. The abortion clinic licensure requirements are intended to address those risks and help ensure the health, safety, and wellbeing of the patients served by these clinics. Governmental oversight of abortion clinics is, thus, warranted. Contrary to the commenters' suggestion, the fact that abortion may sometimes be medically necessary strengthens the need for, and the justification of, government oversight. And the requirements are based on and are similar to the licensure requirements imposed on other Montana health care facilities, including outpatient centers for surgical centers and outpatient centers for primary care.

Comment #38: Two verbal comments were received in opposition to the proposed regulations, indicating that providers have extensive training and knowledge.

Response #38: The department thanks the commenters for their comments, but notes that their comments prove too much: Many medical providers have extensive training and knowledge, but the department still licenses and regulates the facilities that employ such providers. Just as the department licenses and regulates other health care facilities, despite the training and knowledge of the individual providers

they employ, the department will license and regulate abortion clinics, pursuant to H.B. 937, codified at 50-20-901 through 50-20-904, MCA.

Comment #39: Five verbal comments and three written comments were received in opposition to the licensing of abortion clinics, indicating that doing so would infringe on an individual's right to privacy in their health care.

Response #39: The licensure of abortion clinics does not infringe on the right to privacy. The department takes seriously its obligation under state and federal law to protect the privacy and confidentiality of individually identifiable health information. It regulates other types of health care facilities and otherwise has access to a significant amount of sensitive identifiable health information and protects such information, as it will the information obtained as a result of its obligation to license and regulate abortion clinics. With respect to the Montana Constitution's right to privacy under which the Montana Supreme Court recognized a state constitutional right to pre-viability abortion, the department denies that these abortion clinic licensure requirements would infringe on such right.

Comment #40: Five verbal and seven written comments were received in opposition to the proposed regulations, expressing that the physical plant requirements of hallways and patient rooms were unnecessary.

Response #40: The proposed regulations on patient room and clinic hallway dimensions are based on the 2018 Guidelines for Design and Construction of Outpatient Facilities for outpatient surgery. The department included in the proposed regulations the allowance for waivers from these dimensional requirements for existing abortion clinics, as it is the department's understanding that existing facilities may not meet these requirements and that alteration to the facilities may not be feasible. These requirements would be enforced if a new facility were to be built.

Comment #41: One verbal and six written comments were received in opposition to the proposed regulations, expressing the opinion that the licensure of abortion clinics and the regulations go against the Montana Constitution.

Response #41: The department believes that the abortion clinic licensure requirements are consistent with the Montana Constitution. It understands that the constitutionality of the regulations will be litigated in a lawsuit pending in district court in Lewis and Clark County. The department intends for these regulatory requirements to be severable.

Comment #42: One verbal comment was received in opposition to the licensure of abortion clinics, indicating that unnecessary rules create barriers for patients with lower socioeconomic status, those of color, and those who live in rural areas.

Response #42: The department notes that the commenter failed to explain how abortion clinic licensure would have the identified impact, which limits the

department's ability to respond. The department disagrees with the commenter's implication that the abortion clinic licensure rules are unnecessary. Abortion clinics are currently unregulated. The 2023 Montana Legislature decided that abortion clinics should be licensed. It passed, and Governor Gianforte signed, H.B. 937 that requires the department to license and regulate abortion clinics. The licensure requirements are based on, and similar to, the licensure requirements applicable to other types of health care facilities, and should not create undue burden on abortion clinics. Consequently, the department does not believe that the rules create barriers to accessing needed care by the populations identified in the comment.

Comments #43: A verbal comment was received in opposition to the licensure and proposed regulations for abortion clinics indicating that research published by the National Institutes of Health studies have shown that regulations and restrictions lead to long waits, increased travel times, and unsafe or self-induced abortions.

Response #43: The department thanks the commenter for the comment, but notes that the commenter did not provide sufficient specificity with respect to the referenced research or studies to enable the department to identify and review the studies in order to be able to respond. In any event, the department does not believe that licensure requirements will lead to the referenced issues.

Comment #44: One verbal comment and five written comments were received in opposition to the proposed regulations surrounding the proposed charting and assessment requirements. The commenters indicated that these requirements would deny Montanans abortion services via telehealth, which would significantly impact rural areas.

Response #44: The department thanks the commenters for the comments, but disagrees with the commenter's conclusion that the regulations would necessarily deny Montanans abortion services through telehealth. There is no requirement in the proposed regulations, for example, that any physical examination, tests, or laboratory requirements be conducted by the abortion clinic. The department believes that such items could be conducted outside the abortion clinic, with the results sent to the abortion clinic in order to meet any regulatory requirements. As a result, and in light of the department's willingness to work with the facilities, the department does not agree with the comment that the effects of licensing abortion clinics, and the proposed regulations, would significantly impact rural communities.

Comment #45: One verbal and three written comments were received in opposition to the proposed regulation that requires a transfer agreement. The commenters indicate that no other facility has this requirement, and other health care facilities can send patients to emergency rooms without a transfer agreement.

Response #45: The department thanks the commenters for the comments, but believes they are mistaken. ARM 37.106.506(1)(d)(i), Minimum Standards for Outpatient Centers for Surgical Services, requires such outpatient centers to have a transfer agreement with a hospital for situations where it is determined that care is

required for more than 24 hours, or if the patient requires care that is beyond the capabilities of the surgery center.[2] There are similar transfer agreement requirements for outpatient centers for primary care birth centers. *See* ARM 37.106.1012(1)(c) and (d). The department requires this of abortion clinics so that their patients who experience a medical emergency can efficiently and promptly be transferred to a hospital, critical access hospital, or rural emergency hospital to receive necessary emergency services.

Comment #46: One verbal comment and two written comments were received in opposition to the proposed regulation of requiring a physician's oversight of the facility. The commenters express the opinion that this puts limitations on advanced practitioners from practicing their full scope.

Response #46: The department thanks the commenters for the comment, but disagrees. The department does not intend to put limits on, and nothing in the requirement that the medical director of an abortion clinic be a physician limits, the scope of practice of advanced practitioners, or prevents such individuals from practicing to the full scope of their professional licenses. The proposed regulations do not prohibit or limit their ability to work at an abortion clinic, or to provide abortion services. The proposed regulations require that a physician serve as the medical director of the facility, providing overarching oversight of the facility. The department notes that this requirement is not unique to abortion clinics. The licensure requirements for outpatient centers for surgical services and for outpatient centers for primary care require that a physician serve as the medical director of the center. *See* ARM 37.106.503(1), 37.106.1006(2), and 37.106.1008(3).

Comment #47: Three written comments were received in opposition to the proposed regulations indicating that the proposed regulations do not apply to facilities who provide miscarriage services in which the treatment is identical to that of abortions.

Response #47: The department thanks the commenters for their input, but respectfully disagrees with their conclusions. Most health care facilities, including those which provide miscarriage services, are already subject to licensure and regulation by the department. Given that the licensure requirements for abortion clinics are based on, and similar to, existing licensure requirements, such facilities are likely subject to requirements similar to the abortion clinic licensure requirements. The department acknowledges that there are some different or additional requirements on abortion clinics, in area(s) where there are qualitative differences between abortion clinics and facilities which provide, among other things, miscarriage services. For example, the legislature recognized in H.B. 937, and comments support, that women can be coerced into abortion and that victims of sex trafficking are also at risk of abortion. The department believes that this is also the

[2] Alternatively, an outpatient center physician who is present for all surgeries has to have admitting privileges at the receiving hospital or the receiving hospital has to have a coordinated transfer policy which includes the respective roles and responsibilities of the outpatient center upon arrival at the receiving hospital.

case for victims of rape and incest, which is borne out by comments submitted in this rulemaking. As a result, the abortion clinic licensure requirements contain specific requirements around this issue in NEW RULES IV and VII (ARM 37.106.3104 and 37.106.3107).

Comment #48: Three written comments were received in opposition to the licensure of abortion clinics, indicating that the unnecessary burdensome regulations and cost of licensure on providers would force the facilities out of business.

Response #48: The department thanks the commenters for their participation in the comment process, but notes that they provide no specific explanation of how the licensure and regulation of abortion clinics is unnecessary, burdensome, or how it would force the clinics out of business, which makes it difficult for the department to respond. The 2023 Montana Legislature passed, and Governor Gianforte signed, H.B. 937, requiring the department to license and regulate abortion clinics. For the reasons set forth elsewhere in this adoption notice, the department believes that the licensure requirements are necessary and impose the appropriate level of licensure requirements on abortion clinics.

Comment #49: Four written comments were received in opposition to the licensure of abortion clinics and the proposed regulations, indicating that no other form of health care in Montana is required to follow these unnecessary licensure requirements.

Response #49: The department thanks the commenters for their comments, but disagrees. Montana health care facilities are licensed and regulated by the department. Given that the abortion clinic licensure requirements are largely based on licensure requirements applicable to other health care facilities, it would be incorrect to say that other health care facilities are not subject to the same or similar licensure requirements. The department acknowledges that there are some licensure requirements that are unique to abortion clinics, but they are necessary in light of the services they provide. Please also see the response to Comment #47. Finally, the department denies that the licensure requirements are unnecessary for the reasons set forth throughout the proposal notice and this adoption notice, including the responses to Comments # 31 and # 36.

Comment #50: One written comment was received in opposition to the licensure of abortion clinics, indicating that licensing abortion clinics will make it harder for a rape survivor to get abortion treatment.

Response #50: The department notes that the commenter provided no specific explanation as to how licensing abortion clinic would have the stated impact, making it difficult for the department to respond. However, with the required staff training on identifying and assisting women and girls who are the victims/survivors of rape, as well as the requirement to document in the patient files the provision of hotline numbers and of the assistance provided to such women and girls, the department

believes that the licensure requirements may actually improve abortion clinics' treatment of rape survivors.

Comment #51: One written comment was received in opposition to the licensure of abortion clinics, requesting that the department not alter the rules or create any barriers to access for this legal and lifesaving health care.

Response #51: The department notes that the commenter provides no explanation as to how the licensure of abortion clinics would create the asserted barriers to care, which makes it difficult for the department to respond. The department does not believe that abortion clinic licensure would have the asserted impact on access to care. Rather, the licensure requirements would help protect the health, safety, and wellbeing of the patients who seek care from abortion clinics.

Comment #52: One written comment was received in opposition to the proposed regulations indicating that the proposed regulations are an anti-choice attempt at making rules so difficult that facilities are forced to close.

Response #52: Please see the responses to Comments #29 and #30.

Comment #53: A written comment was received in opposition to the licensure of abortion clinics, expressing the opinion that government needs to get out of health care.

Response #53: The department understands the sentiments behind the comment. However, health care is the subject of significant regulation at both the federal and state levels. And while this is the case, and the department licenses and regulates other health care facilities, it is entirely appropriate for the department to license and regulate abortion clinics – as the department was directed to do in H.B. 937. It is especially appropriate when the abortion clinic licensure requirements are based on, and similar to, the licensure requirements for other health care facilities.

Comment #54: One written comment was received in opposition to the proposed regulations. This commenter expressed that abortion clinics are outpatient facilities, and the commenter does not understand why they are not required to just follow outpatient facility requirements.

Response #54: The department thanks the commenter for the comment. H.B. 937, codified at 50-20-901 through 50-20-904, MCA, requires the department to license these facilities separately as abortion clinics. The department notes, however, that proposed regulations took into consideration, and are based on, licensure requirements applicable to outpatient centers for surgical services and outpatient centers for primary care. The department also considered the regulatory requirements generally applicable to health care facilities, as well as research into the regulatory requirements in other states.

Comment #55: Two written comments were received in opposition to the licensure of abortion clinics and the proposed regulations, indicating that the requirements will add additional burden to women's health and the underserved populations.

Response #55: The department thanks the commenters for their participation in the rulemaking process, but notes that the comments do not explain how the licensure requirements will have the asserted effect. This makes it difficult for the department to respond. However, the department believes that the licensure requirements would help protect the health, safety, and wellbeing of the patients – including women and underserved populations – who may seek care from abortion clinics.

Comment #56: A written comment was received in opposition to the licensure of abortion clinics, expressing the opinion that licensure will force facilities to close, and when there is closure of abortion clinics there is no place for women to go. The commenter expresses health care does not get better when there are fewer options.

Response #56: The department rejects the commenter's conclusion that licensure will force abortion clinics to close and the asserted result, for which the commenter provided no specific explanation, making it difficult for the department to respond.

Comment #57: One comment was received in opposition to the licensure of abortion clinics indicating that having facilities classified as an "abortion clinic" will garner social stigma, drive away patients, and cause hate-based public responses such as picketing and riots.

Response #57: The department appreciates the commenter's concern, but points out that Montana facilities that perform abortions or provide abortion services are already classified as abortion clinics, as any internet search on "Montana abortion clinics" demonstrates. The statutory requirement – implemented by these regulations – that such facilities be licensed as abortion clinics does not newly classify them as abortion clinics and, thus, does not create or increase any risk that may be associated with such classification.

Comment #58: One written comment was received in opposition of the proposed regulations indicating that rural emergency hospitals should be included in the exclusion of the definition of an abortion clinic.

Response 58: The department thanks the commenter for the input. Please see the response to Comment #22.

Comment #59: One written comment was received in opposition to the proposed regulations, indicating that the current regulations are already enough, and the facilities should be left alone.

Response #59: The department thanks the commenter for the comment, but points out that, unlike most types of health care facilities which are subject to departmental licensure and regulatory requirements, abortion clinics have been largely

unregulated. The 2023 Montana Legislature passed H.B. 937, requiring the department to license and regulate abortion clinics. The department has chosen to adopt licensure requirements that are based on the existing licensure requirements applicable to outpatient centers for surgical services, outpatient centers for primary care, and health care facilities generally.

Comment #60: One written comment was received in opposition to the licensure of abortion clinics, expressing the opinion that there is no need for governmental control or regulations of women's bodies.

Response #60: The department disagrees that the licensure and regulation of abortion clinics amount to government control or regulation of women's bodies – a contention for which the commenter provided no support.

Comment #61: One written comment was received in opposition to the licensure of abortion clinics, expressing that licensing the facilities does not protect a woman's right to choose.

Response #61: The department believes that the abortion clinic licensure regulations – which include, among other things, safety, quality assurance, and infection prevention and control requirements – mean that women can safely exercise their right to an abortion.

Comment #62: One written comment was received in opposition to the proposed regulations, expressing that practitioners are approved by the medical board, so the facilities do not need more regulations.

Response #62: The department thanks the commenter for the comment, but disagrees. There is a difference between the licensure of medical practitioners and the licensure of health care facilities. The 2023 Montana Legislature passed H.B. 937, requiring the department to license and regulate abortion clinics. The medical board licenses individual medical practitioners, which does not meet the intent of the licensure of the abortion clinics. The comment also ignores the fact that many health care facilities that are licensed and regulated by the department employ medical practitioners who are approved (or licensed) by the medical board – but there is no suggestion that such regulations are unnecessary.

Comment #63: Three written comments were received in opposition to the proposed regulations, expressing that if the regulations were really health care-focused, they would pertain to all clinics, not just abortion clinics.

Response #63: The department rejects the commenters' suggestion that the abortion clinic licensure regulations are not really health care-focused. As explained in detail in the statement of reasonable necessity, the proposed requirements are based upon – and sometimes taken, verbatim (or virtually verbatim) from – licensure requirements for outpatient centers for surgical services and/or general requirements for health care facilities; some are also based on requirements for outpatient centers

for primary care. That the entities providing abortion services are referred to as "clinics," instead of "facilities" or "outpatient centers," does not mean that they should not be held to similar licensure standards. Please see also the responses to Comments #29 and #30.

Comment #64: A written comment was received in opposition to the proposed regulations, expressing the opinion that they would increase administration costs, allow for citations, and force expensive burdens on providers and patients.

Response #64: The department acknowledges that the licensure requirements may impose certain burdens on abortion clinics. Those burdens, however, are similar to the burdens imposed on other types of health care facilities by the applicable licensure requirements and are neither undue nor unnecessary. And the 2023 Montana Legislature decided, in passing H.B. 937, that abortion clinics should be licensed and regulated by the department just as other health care facilities are.

Comment #65: Two comments were received in opposition to the proposed regulations. The commenters point out that "anesthesia" and "patient rooms" are not defined which would result in facilities having to play a guessing game of how to be compliant.

Response #65: The department disagrees and rejects the commenters' implication. It is not necessary for the department to define every term used in its regulations, especially when the terms, such as "anesthesia" are medical terms that have well accepted medical meanings. The department also believes that a "patient room" is clearly understood to be a room in which a patient is assessed or treated.

Comment #66: Two comments were received in opposition to the proposed regulations, indicating that while the regulations indicate the ability for a waiver, they do not explain what a provider would have to demonstrate to be eligible for a waiver.

Response #66: The department disagrees that the proposed regulations do not explain what an abortion provider would have to demonstrate to obtain a waiver. The department indicated in the proposed rules that it may waive certain regulatory requirements based on the scope of abortion services and any gestational limits identified in the abortion clinic's licensure application. The department's intent is to allow the department to work one-on-one with abortion clinics to determine what requirements can be waived based on the proposed scope of abortion services and gestational limits. The issuance and identification of any waivers in the license would occur after review of the application, in discussion with the provider, and be individualized. The most obvious example is that, with respect to an abortion clinic whose application indicated that it would not be providing surgical abortions, but only medication abortions (such as through the use of mifepristone and misoprostol), the department – after review of the application and discussion with the applicant – may waive regulatory requirements associated exclusively with surgical abortion in the issued license.

Comment #67: One comment was received in opposition to the licensure of abortion clinics and the proposed regulations, expressing that addition of regulations is not proven to improve patient outcomes.

Response #67: The department disagrees: Just as with other health care facility licensure regimes, abortion clinic licensure requirements ensure that a licensed abortion clinic meets certain minimum standards that help ensure the health, safety, and welfare of the patients served by these clinics. That understanding informed the Montana Legislature's decision to pass, and Governor Gianforte's decision to sign, H.B. 937. That legislative enactment requires the department to license and regulate abortion clinics.

Comment #68: One comment was received in opposition to the licensure of abortion clinics and the proposed regulations, indicating that requiring all abortion clinics to have standards of those that do surgical abortions, or of outpatient centers for surgical services, is a misunderstanding of what abortion clinics do.

Response #68: The comment displays a misunderstanding of the proposed regulations. While the department's approach in the proposed regulations assumed that an abortion clinic would provide the full range of legally permissible abortions, the department recognized that some abortion clinics may choose to provide a narrower range of abortion services – and proposed that the department may waive certain regulatory requirements based on the scope of abortion services and any gestational limits identified in the abortion clinic's license application. The intent is to allow the department to work one-on-one with abortion clinics to determine what requirements can be waived based on the proposed scope of abortion services and any gestational limits.

Comment #69: One written comment was received in opposition to the licensure of abortion clinics and the proposed regulations, indicating that the licensure and regulations will put essential health care out of reach.

Response #69: The department disagrees that the licensure of abortion clinics and the proposed regulations would put essential health care out of reach. The department's approach to abortion clinic licensure and regulation aligns with its approach to licensure and regulation of all health care facilities. The regulations are necessary to implement H.B. 937, enacted in 2023, that requires the department to license and regulate abortion clinics.

Comment #70: One written comment was received in opposition to the licensure of abortion clinics, expressing the opinion that by doing so, it will cause harm to those of color, indigenous people, those that live in rural areas, LGBTQ+ individuals, and the disabled.

Response #70: The department disagrees that the licensure of abortion clinics would cause harm to the populations identified by the commenter, for which the commenter provided no evidence or explanation. The department believes that

these regulations are necessary to ensure the health, safety, and welfare of the patients served by abortion clinics. They are necessary to implement H.B. 937, enacted in 2023, that requires the department to license and regulate abortion clinics.

Comment #71: One written comment was received in opposition to the proposed regulation involving Rh testing, indicating this is not needed for early abortions as the percentage is very low that the Rh factor causes complications or risks in early abortions.

Response #71: The department thanks the commenter for the comment, but does not agree. Rh testing is typically done at a first prenatal visit to scan for a potential risk of Rh incompatibility, so that the appropriate treatment can be provided. Rh incompatibility occurs when a woman with Rh-negative blood is pregnant with a fetus with Rh-positive blood. In such circumstances, mixing of the mother's and fetus's blood can result in the development of Rh antibodies in the mother. These antibodies can cross the placenta and attack the fetus's red blood cells, causing hemolysis; importantly, this can cause problems in later pregnancies in which the fetus is Rh-positive. The test identifies whether there is a potential for a risk if the blood is mixed during a delivery or an abortion, and therefore, for the safety of future pregnancies. This test report would be important to have on record if complications were indicated during an abortion.

Comment #72: A written comment was received in opposition to the proposed regulations, expressing that telemedicine will be eradicated with the proposed regulations, which will deny access to rural communities.

Response #72: The department thanks the commenter for the comment, but disagrees with the commenter's conclusion that the regulations would eradicate telemedicine. There is no requirement in the proposed regulations, for example, that any physical examination, tests, or laboratory requirements be conducted by the abortion clinic. The department believes that such requirements could be met outside the abortion clinic, with the results sent to the abortion clinic in order to meet any regulatory requirements. As a result, and in light of the department's willingness to work with the facilities, the department does not agree with the comment that the effects of licensing and regulating abortion clinics would infringe on health care access for rural communities.

Comment #73: A written comment was received pertaining to NEW RULE II. The commenter indicates that the justification for the requirements in NEW RULE II(2)(f)(ii), which state, "whether the owner or any clinic staff has been convicted of a felony offense," is not included in the statement of reasonable necessity. The commenter asks why the department is adopting statutory language into rule language here and in other areas of the proposed regulations.

Response #73: The department appreciates the comment. The department reiterated certain statutory requirements in the proposed regulation regarding the

requirements for the license application, so that all the applicable requirements are in one location. The department disagrees that the justification for the NEW RULE II(2)(f)(ii) (ARM 37.106.3102(2)(f)(ii)) requirements is not in the statement of reasonable necessity: The reasonable necessity is that the statute requires the application to include such disclosure, and the statement of reasonable necessity states that "[p]roposed NEW RULE II(2) largely follows the requirements of 50-20-902(2), MCA."

Comment #74: A written comment was received regarding NEW RULE IV(2). The commenter indicates the proposed regulation requires biennial review of the policy and procedure manual, but the statement of reasonable necessity indicates annual review.

Response #74: The department thanks the commenter for bringing the discrepancy to its attention. The proposed regulation contains the correct requirement.

Comment #75: A written comment was received regarding NEW RULE IV(3)(d)(iii). The commenter suggests this be removed as there is no justification as to the reason to have a wait time between signing the consent and the abortion initiation.

Response #75: The department thanks the commenter for the comment, but declines to make the change suggested by the comment. This allowance of time between consent and initiating the abortion allows for staff to screen for coercion, sex trafficking, rape, or incest, and allows time for women who may be feeling coerced to change their mind or confirm their desire to proceed with the treatment. The department does not require a specific duration, but expects abortion clinics to provide sufficient time for the referenced screening.

Comment #76: A written comment was received regarding NEW RULE VII(1)(a). The commenter does not believe next of kin should be required for individuals of adult age.

Response #76: The department thanks the commenter for the comment. The department does not agree with the suggestion to modify the proposed NEW RULE VII(1)(a) (ARM 37.106.3107(1)(a)) to include only minors. With any procedure, there are identified, and unidentified, risks. In the event that a complication or life-threatening situation arises, it is imperative that the abortion clinic is able to contact someone close to the patient. However, in light of the comment, the department will modify the provision, with respect to adult patients, to a requirement for an emergency contact.

Comment #77: A written comment was received regarding NEW RULE XI(1)(a) through (c). The commenter asks how the department intends to enforce the regulations and suggests the department remove them or describe the expectations.

Response #77: The department thanks the commenter for the comment. The department has not yet developed survey tools and interpretive guides for the

inspection and surveying of abortion clinics. The department will address the criteria to meet the requirements of the rules at that time. The department notes, however, that NEW RULE XI (ARM 37.106.3111), and the provisions referenced by the commenter, are identical to requirements for a quality improvement/quality assurance program for outpatient centers for surgical services in ARM 37.106.508(2)(c), which contains three additional requirements not in NEW RULE XI. The department intends for its approach on NEW RULE XI (ARM 37.106.3111) to be consistent with its approach to the identical requirements applicable to such outpatient centers.

Comment #78: A written comment was received regarding NEW RULE VI. The commenter asks how employees' personal identifying information is protected by the department, and what clinic employee information is subject to Montana's sunshine law. The commenter adds that the department should be required to contact the employee prior to requesting to look at the employee's information.

Response #78: The department thanks the commenter for the comment. Case law on Montana's public records act recognizes the need to balance transparency and the right to know against issues of personal privacy. When the department inspects employee files, it would be looking to determine whether the requirements set forth in proposed NEW RULE VI (ARM 37.106.3106) are met. Consistent with current practice, if deficiencies are found in relation to staff files, identities are withheld from the public report, with staff being identified as "Staff #1," "Staff #2," etc. The department reviews staff files at all licensed health care facilities, and does not notify the employee prior to the review of the employee file. Accordingly, the department declines to include a requirement that an employee be contacted before department staff review the employee's file.

Comment #79: A written comment was received with the opinion that the proposed requirements for employee records for abortion clinic staff are more specific than for other medical facilities' employee records. The commenter recommends making employee record requirements the same for all medical facilities.

Response #79: The department thanks the commenter for the comment, but does not agree with the suggestion. The department licenses health care facilities that offer a wide range of services, and that have a wide range of positions and professionals that work in the facilities. Requirements surrounding staffing requirements, and the requirements of staff files, are specific to the type of facility and the services provided. In this case, the requirements for abortion clinic employee files are largely the same as the requirements that generally apply to health care facilities. *Compare* NEW RULE VI (ARM 37.106.3106) *with* ARM 37.106.315. The department adds documentation of annual training, to facilitate audit of employee training; documentation of annual training in employee files is also a common practice. Background checks are also a common requirement and best practice in the health care field; the results of such checks are usually maintained in the employee's files.

Comment #80: A written comment was received with the opinion that the proposed requirement for patient files should meet the requirement standards in ARM 37.106.402(4).

Response #80: The department disagrees. ARM 37.106.402(4) permits hospital medical records to be abridged to a set of core medical records beginning ten years after the patient's death or discharge (or, for minors, ten years after the date the patient attains the age of majority or dies, if earlier); the provision identifies the minimum information that such abridged core medical records should contain. Even if the department agreed that the standard for hospital medical records should apply to abortion clinics, it would not be appropriate to apply the standard in ARM 37.106.402(4) to records concerning current patients.

Comment #81: A written comment was received, expressing the opinion that the department is proposing too prescriptive and onerous rules on abortion clinics. The commenter agrees to the protection of patients and ensuring they receive safe, effective treatment, but expresses the opinion that the proposed requirements are not needed to meet that goal and are excessive.

Response #81: The department disagrees that the licensure requirements are too prescriptive and onerous, or that they are not needed for the protection of patients and ensuring safe effective treatment or are excessive. They meet the specific licensure requirements of 50-20-902 and 50-20-903, MCA, and are based on the existing licensure requirements for outpatient centers for surgical services, outpatient centers for primary care, and/or for health care facilities, generally. And, as previously noted, the department may waive certain regulatory requirements based on the scope of abortion services and any gestational limits identified in the abortion clinic's application and subsequent license. Thus, the department believes that the licensure requirements represent an appropriate level of regulatory requirements to impose on abortion clinics.

Comment #82: A written comment was received expressing the opinion that the fiscal impact analysis was too narrow in only looking at the annual licensing fee. The commenter expresses that the department did not take into consideration the requirement to have certain room sizes, implementation of the infection control plan, development of safety and disaster plans. Additionally, the requirement to have a physician as a medical director will require additional costs on the facilities. The commenter requests the fiscal analysis be redone with attention to the costs associated with getting into compliance with proposed regulations.

Response #82: The department believes that the commenter may have misunderstood the purpose of the fiscal impact statement. In contrast to an economic impact statement (*see* 2-4-405, MCA), a fiscal impact statement examines the impact of the rulemaking on the state budget: i.e., payments made by and/or received by the department. The analysis of the fiscal impact does take into consideration all of the proposed regulations. Under 2-4-405, MCA, the department is required to prepare an economic impact statement upon written request of the

Children, Family, Health and Human Services Interim Committee based on a majority vote; no such request has been made by that committee. Accordingly, the department does not agree that the fiscal impact should be reevaluated or revised.

Comment #83: A written comment was received with the opinion that when considering the effects of the proposed rules, it is anticipated that the impact costs will be higher, which should trigger the rule package to be republished for public comment.

Response #83: Please see the response to Comment #82.

Comment #84: A written comment was received regarding the first paragraph of the statement of reasonable necessity. The commenter notes that the statement of reasonable necessity indicates that the abortion clinic rules are based on outpatient centers for surgical services, but if 70% of abortions are done using medication, which is not a surgical procedure, what is the rationale for basing the entire chapter off the outpatient center for surgical services. The commenter asks if facilities that do not provide surgical abortions would be exempt from NEW RULE IX(2).

Response #84: The department appreciates the opportunity provided by the comment to reiterate what it said in the statement of reasonable necessity concerning the basis for the abortion clinic licensure requirements and how the department intends to implement them. When writing the proposed regulations, the department referenced rule requirements for outpatient centers for surgical services, as well as for outpatient centers for primary care and health care facilities generally, and researched requirements for similar clinics around the country. As the department noted in the statement of reasonable necessity for NEW RULE I, "the department proposes licensure and regulatory requirements for abortion clinics based on outpatient centers for surgical services (also known as ambulatory surgical centers) – and based on the assumption that an abortion clinic would provide the full range of legally permissible abortions. The department recognize that some abortion clinics may choose to provide a narrower range of abortion services. Consequently, the department proposes that it may waive certain regulatory requirements based on the scope of abortion services and any gestational limits identified in the abortion clinic's application." The department anticipates that if an abortion clinic does not perform or provide surgical abortions and does not have an operating room, the department would waive licensure requirements in NEW RULE IX(2) (ARM 37.106.3109(2)), applicable to surgical abortions, which require operating rooms.

Comment #85: A written comment was received regarding the statement of reasonable necessity for NEW RULE I, expressing the opinion that the exclusion of hospitals from the definition of an abortion clinic is contradictory with the intent of "ensure the health, safety, and welfare of the patients."

Response #85: In the statement of reasonable necessity for NEW RULE I, the department noted the exclusion of hospitals from the definition of abortion clinic

because the definition of "abortion clinic" contained in H.B. 937, and codified at 50-20-901(1), MCA, excluded hospitals from the definition of an abortion clinic. Furthermore, the department rejects the idea that the exclusion is contrary to the department's purpose to "ensure the health, safety, and welfare of the patients": Hospitals are already subject to an array of licensure requirements that are designed to ensure the health, safety, and welfare of hospital patients. *See* ARM 37.106.401 (incorporating by reference Medicare conditions of participation). In light of those requirements, it would be redundant to impose abortion clinic licensure requirements on hospitals.

Comment #86: A written comment was received expressing that NEW RULE VIII is unclear. The commenter indicates it is unclear if the sterilization is in reference to equipment, or full sterilization of the room like an operating room.

Response #86: The department does not believe that NEW RULE VIII(4) (ARM 37.106.3108(4)), to which the comment relates, is unclear. That rule speaks of "ensuring the operating room materials are sterile," of "sterile materials," "processes for cleaning and sterilization of supplies and equipment," and "safe processing of items undergoing high level disinfection and sterilization." Moreover, the provision is taken virtually verbatim from existing ARM 37.106.515(8), applicable to outpatient centers for surgical services, and the department intends to interpret and implement it consistent with its interpretation and implementation of that rule provision.

Comment #87: A written comment was received regarding NEW RULE VII, expressing the opinion that it does not meet best practice standards to require clinics to document inapplicable information.

Response #87: The department thanks the commenter for the comment. As the department noted in the statement of reasonable necessity and elsewhere in this adoption notice, the licensure requirements are based on the assumption that an abortion clinic would provide the full range of legally permissible abortions, and that the department may waive requirements that are not applicable to the type of abortions provided by any particular abortion clinic. As such, the department clarifies, again, that it is not its intent to require abortion clinics to document information that would not be applicable with respect to the scope of abortion services provided by the abortion clinic.

5. The department intends these licensure requirements to be effective upon adoption. Subject to the stipulation in *Planned Parenthood et al. v. State of Montana et al.*, Cause No. ADV 2023-592 (1st Jud. Dist.) and any subsequent order of the court, current facilities performing abortions will be afforded 30 days to submit an application for licensure as an abortion clinic, and the department will act on such applications within 60 days of receipt.

/s/ Gregory Henderson
Gregory Henderson
Rule Reviewer

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

Certified to the Secretary of State September 10, 2024

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

In the matter of the amendment of ARM 37.40.307, 37.40.315, 37.85.104, 37.85.105, 37.85.106, 37.85.212, 37.86.1006, 37.86.2002, 37.86.2102, 37.86.2105, and 37.86.3607 pertaining to updating Medicaid and non-Medicaid provider rates, fee schedules, and effective dates	)	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On May 24, 2024, the Department of Public Health and Human Services published MAR Notice No. 37-1067 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 1132 of the 2024 Montana Administrative Register, Issue Number 10. In addition, on June 21, 2024, the department published an amended notice pertaining to the proposed amendment of the above-stated rules at page 1442 of the 2024 Montana Administrative Register, Issue Number 12.

2. The department has amended the following rules as proposed: ARM 37.40.307, 37.40.315, 37.85.104, 37.85.105, 37.85.106, 37.85.212, 37.86.1006, 37.86.2002, 37.86.2102, 37.86.2105, and 37.86.3607.

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 department received a comment stating the department failed to comply with the legislative appropriations and applicable law. They cited a statute in Title 37, MCA, and assert optometrists should be reimbursed equal to the amount paid to medical doctors and doctors of osteopathy, whose reimbursement the Montana legislature has directed to be paid pursuant to 53-6-125, MCA.

RESPONSE #1: As the commenters are aware, this assertion is the subject of a lawsuit filed in state district court and will be resolved through that process.

COMMENT #2: The department received a comment in support of the removal of limitation on crowns under ARM 37.86.1006(5)(e) and with adding D4346 as a covered service.

RESPONSE #2: The department appreciates the comments and support.

COMMENT #3: The department received a comment regarding the proposed Dental and Denturist Program Manual. The commenter noted that a section of the manual regarding crowns does not align with the intent to ensuring adult members have access to porcelain/ceramic crowns. The commenter recommended removing from the manual this sentence: "Generally, crowns on posterior teeth are limited to pre-fabricated resin and/or pre-fabricated stainless steel, except when necessary for partial denture abutments. Indicate in the Remarks section of the claim form which teeth are abutment teeth."

RESPONSE #3: The department agrees with the commenter, and the sentence will be removed from the Dental and Denturist Program Manual.

COMMENT #4: A commenter opposes the proposed changes related to reimbursement rates for physicians and anesthesia services. The commenter noted that a specific statute pertains to physician services reimbursement and cited "53-6-155." The commenter stated the department proposal does not provide for an increase and instead proposes a reimbursement rate change based on a percentage decrease. The commenter said the department should not be using a negative percentage as a factor to determine the physician conversion factor. The commenter said if the methodology produces a negative percentage, there should be no rate adjustment.

RESPONSE #4: The commenter referred to 53-6-155, MCA; however, 53-6-125, MCA, is the statute that provides guidance on the physician conversion factor. For the year ending 6/30/2023, the consumer price index for medical care was negative 0.8 percent. The statute is silent with respect to how a negative consumer price index for medical care should be addressed. In the absence of such direction, the department will follow its consistent methodology for calculating the physician conversion factor. The department has consistently followed the statute by multiplying the existing physician conversion factor by the consumer price index for medical care from the previous year, and will do so for the fiscal year beginning July 1, 2024.

COMMENT #5: A commenter asked the department to clarify how the department reached the number for the consumer price index for medical services. The commenter cited a publication of the U.S. Department of Labor and asserted that the unadjusted 12-month rate for medical care ending in May 2024 shows an increase of 3.1 percent. The commenter asked the department to increase reimbursement rates by a minimum amount of 0.5 percent based on the medical care CPI increase in 2023.

RESPONSE #5: The department utilized the following publication for the conversion factor calculation for the consumer price index for medical care services: https://www.bls.gov/news.release/archives/cpi_07122023.htm. On this page, Table A's last column (labeled "Unadjusted 12 mos. ended June 2023") shows the consumer price index for medical care services as: negative 0.8 percent.

4. These rule amendments are retroactively effective to July 1, 2023, January 1, 2024, May 1, 2024, or July 1, 2024, as indicated in the original proposal notice for Notice No. 37-1067, published on May 24 in Issue 10 of the Montana Administrative Register.

/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 September 10, 2024

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

In the matter of the adoption of NEW RULE I pertaining to allocation and expenditure of HB 872 funds for capital projects	))))	NOTICE OF ADOPTION

TO: All Concerned Persons

1. On July 26, 2024, the Department of Public Health and Human Services published MAR Notice No. 37-1076 pertaining to the public hearing on the proposed adoption of the above-stated rule at page 1789 of the 2024 Montana Administrative Register, Issue Number 14.

2. The department has adopted NEW RULE I (37.2.1201) as proposed.

3. No comments or testimony were received.

4. The department intends to apply the rule adoption retroactively to July 1, 2024.

/s/ Paula M. Stannard
Paula M. Stannard
Rule Reviewer

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

Certified to the Secretary of State September 10, 2024.

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

In the matter of the amendment of ARM 37.40.1402 and 37.40.1435 pertaining to HCBS adult residential care services	))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On July 26, 2024, the Department of Public Health and Human Services published MAR Notice No. 37-1078 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 1793 of the 2024 Montana Administrative Register, Issue Number 14.

2. The department has amended ARM 37.40.1402 as proposed.

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

37.40.1435 HOME AND COMMUNITY-BASED SERVICES FOR ELDERLY AND PHYSICALLY DISABLED PERSONS: ADULT RESIDENTIAL CARE, REQUIREMENTS (1) through (3)(a)(iv) remain as proposed.

(v) all staff providing direct services to members receiving level 2 services must receive eight hours of mandatory training annually that is specific to the needs and diagnosis of the member receiving support. Trainings must be documented, and training records must be available for inspection by the department upon request; and

~~(v) the facility must make available or directly provide a minimum of eight hours of training to staff who interact with members that is specific to the condition(s) of the member(s) for which level 2 services are being requested or are authorized; and~~

(vi) all staff providing direct services to members receiving level 2 services must also receive eight hours of mandatory training annually ~~To support assisted living facility staff who interact with members who exhibit adverse behaviors, the facility must also make available or directly provide to these staff members a minimum of 16 hours of in-service training, annually~~, in the areas of traumatic brain injury, spectrum disorders, substance abuse, dementia/Alzheimer's, and other conditions which may be associated with behavioral issues. Trainings must be documented, and training records must be available for inspection by the department upon request.

(b) through (14) remain as proposed.

AUTH: 53-2-201, 53-6-113, 53-6-402, MCA
IMP: 53-6-402, MCA

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

COMMENT #1: A commenter recommended that level 2 services be made available in Category D assisted living facilities because there is currently no rate in the Big Sky Waiver fee schedule for services provided in Category D assisted living facilities.

RESPONSE #1: The department appreciates the suggestion that level 2 services be made available in Category D assisted living facilities. There are currently no licensed Category D assisted living facilities in Montana. The department does not believe that level 2 services would provide an appropriate rate for Category D assisted living facilities.

COMMENT #2: A commenter recommended revising ARM 37.40.1435(3) to remove language requiring disruptive behaviors to occur four or more times per week. Alternatively, the commenter recommended the rule be clarified to provide that disruptive behaviors remaining under control because of additional efforts/services by a facility do not have to continue to occur four times per week to qualify for level 2 services. The commenter believes the rule language proposed by the department appears to punish facilities who are able, through additional efforts, to control the behaviors and improve the quality of life for the resident.

RESPONSE #2: The department appreciates the commenter's concerns. The department refers the commenter to ARM 37.40.1435(3)(b), which provides: "Level 2 services may be approved on a temporary or long-term basis depending on the individual members circumstances and/or actual outcomes." The department's intent is for members to be provided continued support through level 2 services as long as they remain necessary. The department recognizes that some members will require long-term level 2 services. The department is also developing written guidance to provide facilities more detailed information regarding the process for requesting continuing level 2 services. The written guidance policies will be made publicly available on the department's website once finalized.

COMMENT #3: Multiple commenters recommended that ARM 37.40.1435 be amended to more clearly define the prior authorization process and the time frame in which prior authorization requests will be determined to ensure delays are minimal. One of these commenters also questioned how the appeal process will work in the event the department denies a provider's prior-authorization request for level 2 services.

RESPONSE #3: The department notes these stated concerns regarding timely authorization of level 2 services. The department recognizes the urgency of authorizing level 2 services to ensure members are being appropriately supported. Written guidance is being developed to ensure timely processing of level 2 prior

authorizations and will be made publicly available on the department's website once finalized. Additionally, timelines for approval or denial of prior authorizations will also be clearly defined in the contractual agreement with the Quality Improvement Organization to ensure timely processing of prior authorization requests. The appeal process for denial of a request for level 2 services would be subject to the department's rules governing fair hearings and contested case proceedings under ARM Title 37, chapter 5.

COMMENT #4: A commenter expressed concern that the proposed language in ARM 37.40.1435(3)(a)(ii) would not allow an assisted living facility to accept a member from a home or other provider with assurance that the level 2 rate will apply. The commenter recommended that the rule be revised to allow the department to consider the individual's history of behaviors at home or in another placement/facility (including the state hospital).

RESPONSE #4: The department notes the commenter's stated concerns regarding the acceptance of individuals into an assisted living facility without assurance of receiving the level 2 rate. The department believes the rule language as proposed is necessary for the assisted living facility to assess the member in the new facility setting to determine if the change in environment results in elimination or reduction of the occurrence of disruptive behaviors. The initial 30-day period under ARM 37.40.1435(3)(a)(ii) also provides the facility with necessary time to develop a plan to meet the member's needs. This assessment, along with any historical information, will serve as supporting documentation when requesting level 2 services.

COMMENT #5: A commenter recommended that ARM 37.40.1435(3)(a)(iv) be revised to allow the department to consider the individual's history of behaviors at home or in another placement/facility (including the state hospital) and any interventions used. The commenter indicated the department's proposed rule language would not allow an assisted living facility to accept a member from a home or another provider with assurance that the level 2 rate will apply.

RESPONSE #5: ARM 37.40.1435(3)(a)(iii) and (iv) list the supporting documentation which is used as part of the prior authorization process for level 2 services. The facility's assessment of the member in the new facility setting, as well as a history of previous behaviors, will provide support for the request of level 2 services and aid in the development of a support plan for the member. Please also see the response to comment #4.

COMMENT #6: A commenter recommended that ARM 37.40.1435(3)(a)(v) be revised to clarify the meaning of "make available." The commenter indicated a facility can make available training, but staff might not take advantage of the training. The commenter indicated if the intent is for staff to have eight hours of training (regardless of whether directly provided by the facility) this should be made clear in the rule.

RESPONSE #6: The department appreciates the commenter's suggestion and has revised the rule to clarify the intent is for all staff providing direct services to member(s) receiving level 2 supports to complete eight hours of training annually specific to the needs and diagnosis of the member(s).

COMMENT #7: A commenter expressed concern regarding the appropriateness of the training required under ARM 37.40.1435, how the trainings are provided, the type of trainings available, timing of the trainings, and who would be required to receive training. The commenter also expressed their support of the importance of staff training.

RESPONSE #7: The department thanks the commenter for their support of staff training and appreciates the commenter's feedback. The department has revised ARM 37.40.1435(3)(a)(vi) to clarify the intent is for the training requirement to apply to all staff providing direct services to members receiving level 2 services. The department has also revised the rule to require eight hours instead of 16 hours of training annually in general areas that will improve the ability of staff to work with and support members receiving level 2 services. The rule provides facilities with flexibility to identify which general trainings related to conditions associated with behavioral issues will be most appropriate for staff supporting members receiving level 2 services. Additionally, the rule allows for the format of the training to be at the discretion of the facility.

COMMENT #8: A commenter expressed the need for facilities to adhere to the federal HCBS settings requirements and the Americans With Disabilities Act (ADA).

RESPONSE #8: The department appreciates and agrees with the commenter's remarks. The requirement to comply with federal HCBS settings regulations and the ADA are addressed in other Big Sky Waiver administrative rules and Montana's approved waiver application.

COMMENT #9: A commenter pointed out that many behaviors are associated with disabilities and disabled members should not be subjected to punitive actions because of those behaviors. The commenter indicated that the focus of the level 2 services should be to only address disruptive behaviors that may cause health and safety risk to the member, staff, or other residents.

RESPONSE #9: The department agrees that members with disability-related behaviors should not be subjected to punitive actions because of those behaviors. Level 2 services are intended to positively support members exhibiting disruptive behaviors so that they can receive appropriate services and maintain placement in an assisted living environment. Members must consent to level 2 services and may choose to discontinue level 2 services at any time.

COMMENT #10: A commenter expressed support of the level 2 services to aid assisted living facilities in supporting members with behavioral issues.

RESPONSE #10: The department thanks the commenter for their support.

COMMENT #11: A commenter expressed concern regarding the specialized training requirements under ARM 37.40.1435.

RESPONSE #11: Please see the response to comment # 7.

/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 September 10, 2024

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

In the matter of the amendment of ARM 37.85.207 and 37.86.1201 pertaining to Licensed Direct-Entry Midwife	))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On July 26, 2024, the Department of Public Health and Human Services published MAR Notice No. 37-1079 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 1799 of the 2024 Montana Administrative Register, Issue Number 14.

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

3. No comments or testimony were received.

4. These rule amendments are to be applied retroactively to July 1, 2023.

/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 September 10, 2024.

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

In the matter of the amendment of ARM 37.36.604 pertaining to MTAP Financial Eligibility Criteria	)))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On July 26, 2024, the Department of Public Health and Human Services published MAR Notice No. 37-1080 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 1803 of the 2024 Montana Administrative Register, Issue Number 14.

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

3. No comments or testimony were received.

4. The department intends to apply the rule amendment retroactively to January 12, 2023.

/s/ Heidi Sanders
Heidi Sanders
Rule Reviewer

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

Certified to the Secretary of State September 10, 2024.

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

In the matter of the amendment of ARM 37.87.2203 pertaining to children's mental health room and board updates	))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On July 26, 2024, the Department of Public Health and Human Services published MAR Notice No. 37-1082 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 1806 of the 2024 Montana Administrative Register, Issue Number 14.

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

3. No comments or testimony were received.

4. This rule amendment is to be applied retroactively to March 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 September 10, 2024.

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

In the matter of the amendment of ARM 37.79.304 pertaining to Healthy Montana Kids Benefits	)))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On July 26, 2024, the Department of Public Health and Human Services published MAR Notice No. 37-1083 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 1810 of the 2024 Montana Administrative Register, Issue Number 14.

2. The department has amended ARM 37.79.304 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 expressed support and appreciation for this rulemaking. Additionally, the commenter requested the department ensure the recently added benefit of extended coverage to postpartum women is included in the plan being adopted.

RESPONSE #1: The department appreciates the commenter's support. The extended coverage to postpartum women does include individuals enrolled in the Healthy Montana Kids program and was adopted July 1, 2023, through updates to ARM 37.79.201, as published in MAR Notice No. 37-1057.

/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 September 10, 2024

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

In the matter of the amendment of ARM 37.8.116 pertaining to Fees for Certification, File Searches, and Other Vital Records Services	))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On July 26, 2024, the Department of Public Health and Human Services published MAR Notice No. 37-1084 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 1813 of the 2024 Montana Administrative Register, Issue Number 14.

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

3. No comments or testimony were received.

/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 September 10, 2024.

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

In the matter of the amendment of ARM 37.36.101, 37.36.402, and 37.36.604 pertaining to the Montana Telecommunications Access Program	))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On July 26, 2024, the Department of Public Health and Human Services published MAR Notice No. 37-1085 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 1817 of the 2024 Montana Administrative Register, Issue Number 14.

2. The department has amended ARM 37.36.101 and 37.36.402 as proposed.

3. The department is not amending ARM 37.36.604 as proposed, because proposed changes are being adopted in Notice No. 37-1080 in this issue of the Register.

4. No comments or testimony were received.

/s/ Heidi Sanders
Heidi Sanders
Rule Reviewer

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

Certified to the Secretary of State September 10, 2024.

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

In the matter of the adoption of NEW RULE I and the amendment of ARM 37.82.701 and 37.86.1701 pertaining to Plan First provider billing	))))	NOTICE OF ADOPTION AND AMENDMENT

TO: All Concerned Persons

1. On July 26, 2024, the Department of Public Health and Human Services published MAR Notice No. pertaining to the public hearing on the proposed adoption and amendment of the above-stated rules at page 1821 of the 2024 Montana Administrative Register, Issue Number 14.

2. The department has adopted NEW RULE I (37.86.1707) as proposed.

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

4. No comments or testimony were received.

/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 September 10, 2024.

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

In the matter of the amendment of ARM 37.34.912 pertaining to Medicaid HCBS Provider requirements	))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On July 26, 2024, the Department of Public Health and Human Services published MAR Notice No. 37-1090 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 1826 of the 2024 Montana Administrative Register, Issue Number 14.

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

3. No comments or testimony were received.

4. This 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 September 10, 2024.

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

In the matter of the amendment of ARM 37.106.301, 37.106.310, and 37.106.330 pertaining to Health Care Facility Standards	))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On July 26, 2024, the Department of Public Health and Human Services published MAR Notice No. 37-1094 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 1830 of the 2024 Montana Administrative Register, Issue Number 14.

2. The department has amended the following rules as proposed: ARM 37.106.301, 37.106.310, and 37.106.330.

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 written comment was received in support of the proposed amendments. The commenter suggests two modifications to the proposed amendments. The first suggestion is to include direction on how patients are to be informed of any specific interventions or services that are not offered and be referred to a practitioner or facility that will provide the services that the practitioner or facility does not provide. The second suggestion is to clarify what "need to know" means in ARM 37.106.330(2)(e). The commenter expresses the opinion that it would be important for others providing direct care and those who do scheduling be informed of the individuals opting to not participate in a procedure or service.

RESPONSE #1: The department appreciates the commenter's support for the proposed amendments, but does not agree with the proposed modifications. The department's purpose and responsibility in amending the licensure rules based on H.B. 303 is to ensure that health care facilities have in place policies for allowing medical practitioners within a health care facility the opportunity to opt out of providing services based on conscience. The first suggestion is beyond the scope of this rulemaking, but the department notes that, consistent with the confidentiality policies required in ARM 37.106.330(2)(e), health care facilities are free to adopt policies and procedures on how patients are informed on the availability of services. The department believes that such confidentiality/need to know requirement should be implemented in the same way as health care facilities use and protect other confidential information in an employee's personnel file.

COMMENT #2: One verbal comment was received in opposition to the proposed amendments. The commenter expresses the opinion that the proposed amendments are unnecessary as there are already federal regulations in place regarding safeguarding the rights of conscience. The commenter indicates that the proposed amendments add red tape to state government. The commenter indicates these requirements are dangerous for people in rural areas and will create unnecessary burdens.

RESPONSE #2: The department acknowledges that there are federal regulations on conscience that implement federal statutes on the protection of conscience rights. However, the authority to enforce those federal protections is limited to the federal government. The Montana Legislature chose to pass, and Governor Gianforte to sign, H.B. 303, to protect the conscience rights of Montana health care institutions and medical practitioners. Consistent with its statutory authority to license and regulate health care facilities, the department adopts these rules to enable it to implement and enforce the protections in H.B. 303. The department rejects the idea that the requirements are dangerous for people in rural areas or that they create unnecessary burdens.

COMMENT #3: One verbal comment was received in opposition to the proposed amendments, expressing that the proposed amendments reflect an extreme religious or conscience clause which will allow health care providers to discriminate against their patients without consequence. The commenter expresses the opinion that these proposed amendments clearly ignore public health.

RESPONSE #3: The department appreciates the concern behind the comment, but rejects the idea that the rules or H.B. 303, which they implement, reflects an extreme religious or conscience clause, and notes that there are similar protections for health care providers in federal law. *See, e.g.,* Church Amendments, 42, U.S.C. § 300a-7 (enacted in the 1970s); the Coats-Snowe Amendment, 42 U.S.C. § 238n; (enacted in 1996); the Weldon Amendment *in* Further Consolidated Appropriations Act, 2024, Pub. L. 118-47, Division D, § 506(d) (enacted annually as part of the federal Labor HHS appropriations act). The department also rejects the idea that the rules ignore public health, a claim for which the commenter provided no specific support or explanation.

COMMENT #4: One verbal comment was received in opposition to the proposed amendments, expressing the opinion that the rights of any health care provider to exert their conscience must be balanced with the right of the patient and their ability to receive care without delay or harm. The commenter expresses that the amendments allow for the denial of care without liability and without protection of the patient.

RESPONSE #4: The department appreciates the concern behind the comment; however, the department notes that, in H.B. 303, the Montana Legislature chose to require health care institutions/facilities to respect the conscience rights of the medical practitioners, while also noting that such requirements may not be construed

to affect the obligation of health care institutions (i.e., hospitals) to provide emergency medical treatment as set forth in 42 U.S.C. § 1395dd (EMTALA). For discussion of EMTALA with respect to H.B. 303 conscience rights, see response to Comment #11.

COMMENT #5: A verbal comment was received in opposition to the proposed amendments, indicating that the proposed amendments require health care facilities to develop policies and procedures consistent with the statute, but does not require the development of polices to ensure quality of care. The commenter also indicates that the proposed amendments do not include the provision in Montana Code Annotated that states, "nothing in this section may be construed to relieve a healthcare institution of the requirement to provide emergency medical treatment to all patients."

RESPONSE #5: The department thanks the commenter for the comment, but notes that measures relating to quality of care are beyond the scope of this rulemaking, which is to adopt measures, within the department's authority, to implement H.B. 303. The department notes, however, that various health care facilities, including hospitals, critical access hospitals, rural emergency hospitals, outpatient centers for surgical services, and outpatient centers for primary care are subject to federal and/or state requirements involving quality of care and quality assurance measures, and that the licensure rules for abortion clinics, finalized elsewhere in this edition of the Montana Administrative Register, include quality assurance program requirements. The same is true for the emergency medical stabilization and treatment requirements in 42 U.S.C. § 1395dd.

COMMENT #6: A written comment was received regarding the proposed amendments to ARM 37.106.310, indicating that the commenter does not approve of the department's proposal to use the term "health care facility" instead of the term used in H.B. 303, "health care institution," and recommends using the term in the statute.

RESPONSE #6: The department declines to make the recommended change. As the department noted in the statement of reasonable necessity, the department does not have regulatory authority over all of the types of medical institutions included in H.B. 303's definition of "health care institution," but that the types of medical institutions identified in that definition with respect to which the department does have authority to license and regulate align with the statutory (and regulatory) definition of "health care facility." Accordingly, the department maintains the use of that term in these rules. The department, moreover, is concerned that the use of the term "health care institution" would introduce confusion over the scope of the department's regulatory authority with respect to medical institutions.

COMMENT #7: A written comment was received in opposition to the proposed amendments to ARM 37.106.310 [sic], expressing a concern that members of a health care team will not want to complete portions of their job description based on their conscious [sic] and this could cause additional challenges in finding team

members to complete the needed/required work, especially in critical access hospitals that have limited number of staff already.

RESPONSE #7: The department assumes that the commenter had meant to refer to the proposed amendment of ARM 37.106.330; ARM 37.106.310, which the commenter references, establishes that *the department* will not discriminate against health care facilities for the exercise of their conscience rights. On the substance of the comment, the department notes that H.B. 303 requires health care institutions, including health care facilities, to respect the conscience rights of the medical practitioners associated with their facilities. The requirements in these rules are merely mechanisms to ensure compliance with H.B. 303. Accordingly, the department declines to make any changes to the rules in response to this comment.

COMMENT #8: A written comment was received in opposition to the proposed amendments to ARM 37.106.330, arguing that many hospitals already have policies and procedures in place that meet the intent of H.B. 303, that the requirements in the amendment go beyond what is required in H.B. 303, and that health care institutions are required by state and federal laws to meet staff training requirements, suggesting that the training requirement is an undue burden on a highly regulated industry.

RESPONSE #8: The department disagrees. The department decided to establish the requirement for such policies and procedures and compliance with such policies and procedures as a licensure requirement, so that there is a departmental enforcement mechanism if a health care facility fails to comply with the H.B. 303 conscience protections. If the commenter is correct that many hospitals/health care providers already have policies and procedures in place to meet the intent of H.B. 303, then these regulatory requirements should not impose an undue burden on them because most come straight from H.B. 303. And given that there are pre-existing staff training requirements, adding another module, on conscience protections and how to exercise them should not impose an undue burden on health care facilities/institutions. The reports the department received concerning how some Montana health care facilities handled requests for religious exemption from the U.S. Centers for Medicare & Medicaid Services COVID-19 vaccine mandate suggest that there may be a need for such an enforcement mechanism as well as an all-staff training requirement so that medical practitioners know their conscience rights and facility management know the facility's legal obligations with respect to medical practitioners' conscience claims. Finally, the requirement to maintain the confidentiality of information concerning the exercise of conscience, to be disclosed only as needed, is consistent with the confidentiality required of much personnel information.

COMMENT #9: A written comment, from a commenter that opposed H.B. 303, expressed that if the department determines that the amendments to ARM 37.106.330 are necessary, it should require that a team member wanting to exercise conscience as a basis for not participating in a health care service must make the request in writing and the request be signed by the practitioner objecting. The

commenter indicates this is expressed in H.B. 303, and should be included in the minimum requirements if the department moves forward with keeping the amendments to ARM 37.106.330.

RESPONSE #9: The department declines to make the suggested revision. Section 50-4-1103(2), MCA states in part, "A health care institution may require the exercise of conscience as a basis for not participating in a health care service to be made in writing and signed by the medical practitioner objecting." The law indicates a health care institution "may" require a written and signed conscience claim, leaving it up to the discretion of such organizations. Consistent with H.B. 303, the department intends to continue to leave this decision up to the health care facility.

COMMENT #10: A written comment on the proposed amendments to ARM 37.106.330(3) requested a definition of "abortion," suggesting that the requirement only apply to elective abortion.

RESPONSE #10: The department thanks the commenter for the input, but declines to make the suggested revision. The provision implements 50-20-111(2) and 50-4-1103(4), MCA, which cross-references 50-20-111, MCA. For purposes of 50-20-111, MCA, the Montana Code Annotated provides a definition of "abortion" in 50-20-104, MCA. Given the context, the department believes that this definition is equally applicable to 50-4-1103(4), MCA. As a result, the department cannot agree that the intent of the statute was to limit these H.B. 303 protections to the elective abortion context.

COMMENT #11: A written comment inquired as to how these regulations would impact a facility's ability to meet the Emergency Medical Treatment and Labor Act (EMTALA).

RESPONSE #11: While the commenter raised the question in the context of a comment on abortion (*see* Comment #10), there is no suggestion in the comment as to how the conscience protections of H.B. 303, implemented and furthered by these rules, would conflict with a hospital's requirements to provide care and meet its EMTALA obligations. With respect to hospitals participating in the federal Medicare program, EMTALA imposes certain obligations with respect to patients experiencing an "emergency medical condition." In the abortion context, the department notes that the EMTALA definition of "emergency medical condition" includes conditions that "could reasonably be expected to result in (i) placing the health of the individual (or, with respect to a pregnant woman, the health of the woman or her unborn child) in serious jeopardy," *see* 42 U.S.C. § 1395dd(e)(1)(A)(i), indicating that EMTALA is designed to protect both pregnant women and their unborn children. Furthermore, there are several federal statutes that provide significant conscience protections for health care providers, especially with respect to abortion. These include the Church Amendments, 42 U.S.C. § 300a-7, the Coats-Snowe Amendment, 42 U.S.C. § 238n; and the Weldon Amendment to the annual Labor HHS appropriations act, *see, e.g.,* Further Consolidated Appropriations Act, 2024, Pub. L. 118-47, Division D, § 506(d). While the federal government issued guidance on EMTALA and abortion, it

conceded, before the U.S. Supreme Court, that federal conscience protections, for both hospitals and individual health care providers, apply in the EMTALA context (and that EMTALA does not override either set of conscience protections). *See Moyle v. United States*, 603 U.S. __, 144 S. Ct. 2015, 2021. (Barrett, concurring) (citation to transcript of oral argument). Whether EMTALA ever requires abortion appears to remain an open question. *See id.,* 144 S. Ct. at 2021 n.1 (federal government concession that EMTALA requires abortion only in an emergency acute medical situation where the woman's health is in jeopardy if she does not receive an abortion then and there); *Moyle*, 603 U.S. __, 144 S. Ct. 2015, 2027 (Alito, joined by Thomas and Gorsuch, dissenting) ("This case presents an important and unsettled question of federal statutory law: whether [EMTALA] sometimes demands that hospitals perform abortions and thereby preemts Idaho's recently adopted Defense of Life Act . . . "); *Texas v. Becerra*, 89 F.4th 529 (5th Cir. 2024) (affirming district court injunction of enforcement of CMS guidance that EMTALA requires physicians to provide abortion when necessary stabilizing treatment for emergency medical condition and preempts contrary state law). Accordingly, the department does not believe that the requirements of H.B. 303 and the department's implementing regulations would implicate hospitals' EMTALA obligations.

COMMENT #12: A written comment was received in opposition to the proposed amendments, expressing concern that there is no requirement in rule to inform patients attempting to receive health care services why care is being denied to them.

RESPONSE #12: Please see the response to Comment #1.

/s/ Gregory Henderson
Gregory Henderson
Rule Reviewer

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

Certified to the Secretary of State September 10, 2024

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

In the matter of the adoption of NEW RULES I through V and the amendment of ARM 37.106.138 pertaining to financial assistance and community benefit provided by certain types of hospitals and related certificate of need requirements	)))))))	NOTICE OF ADOPTION AND AMENDMENT

TO: All Concerned Persons

1. On May 24, 2024, the Department of Public Health and Human Services published MAR Notice No. 37-1096 pertaining to the public hearing on the proposed adoption of the above-stated rules at page 1160 of the 2024 Montana Administrative Register, Issue Number 10.

2. The department has amended ARM 37.106.138 as proposed.

3. The department has adopted the following rules as proposed: NEW RULE III (37.106.203), NEW RULE IV (37.106.204), and NEW RULE V (37.106.205).

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

NEW RULE I (37.106.201) PURPOSE OF COMMUNITY BENEFITS AND FINANCIAL ASSISTANCE RULES (1) through (3) remain as proposed.

(4) Financial assistance and other community benefits are reported at cost, not charges, in reports and other documents submitted under this subchapter.

AUTH: 50-5-106, 50-5-121, MCA
IMP: 50-5-106, 50-5-121, MCA

NEW RULE II (37.106.202) DEFINITIONS For the purposes of this subchapter, the following definitions apply:

(1) remains as proposed.

(2) "Community benefit plan" means the detailed outline of specific initiatives, activities, actions, and/or steps planned to be taken by a nonprofit hospital, critical access hospital, or rural emergency hospital to improve the health of the community(ies) it serves. This plan may include community benefit information contained in the facility's community health needs assessment implementation plan.

(3) "Community benefit policy" is the written policy (i.e., set of principles, guidelines, or rules) that directs how decisions of the nonprofit hospital, critical access

hospital, or rural emergency hospital on specific actions to improve the health of the community it serves will be made or carried out.

(2) and (3) remain as proposed, but are renumbered (4) and (5).

AUTH: 50-5-106, 50-5-121, MCA
IMP: 50-5-106, 50-5-121, MCA

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

COMMENT #1: A commenter stated that patients feel trapped by medical debt as many receive medical bills they cannot afford and are forced to pay the bill with a credit card. Those patients who made the effort to challenge bills experienced negative impacts. As a result, some patients delay medical care because they want to avoid further debt. The proposed rules will provide important new protection for patients incurring medical expenses, but they could go further. A financial assistance policy that is readily available to the public is an essential step toward reducing medical debt for patients who cannot pay. Section 50-5-121, MCA, allows the department to adopt rules to implement the act and establish standards for nonprofit health care facilities to provide community benefit and financial assistance consistent with federal standards. The department could, and should, go beyond federal protections to provide greater access and protections to Montanans who need and apply for medical financial assistance. The commenter asked the department to consider the following suggestions based on the Model Medical Debt Protection Act as part of its rulemaking:

- Add additional requirements for financial assistance policies.
- Mandate screening for all patients and automatically enroll those patients found eligible.
- Set income levels where financial assistance must be provided.
- Establish patient eligibility requirements.
- Prohibit junk fees or interest.
- Require increased access/easy access to financial assistance policies and ways to apply for financial assistance.

RESPONSE #1: The department thanks the commenter for their comments. As noted in the proposal notice, the department plans to adopt standards for community benefit and financial assistance based on the data that it will collect, validate, and analyze. In this process, the department will consider the commenter's recommendations, although the department notes that the purpose of the Model Medical Debt Protection Act, from which the commenter drew its recommendations, is different from the purpose of H.B. 45. In addition, the department notes that most of Montana is made up of health professional shortage areas (HPSAs), and many critical access hospitals and rural emergency hospitals operate on very thin margins in remote, rural, and/or frontier areas. The department needs to keep these facts in mind when establishing the standards and requirements for community benefit and

financial assistance, so that the standards and requirements do not negatively impact the ability of critical access hospitals and rural emergency hospitals to continue to operate.

COMMENT #2: Another commenter contended that the department failed to satisfy the statutory requirements established in House Bill 45, and failed to meet the recommendations of the audit findings in the September 2020 legislative performance audit. The commenter also offered specific criticisms of a number of provisions of the proposed rules. The commenter contended that NEW RULE I(3) has no mention that community benefits must have a measurable impact on population health as recommended in the 2020 audit, and proposed requiring this in the purpose section of the rules. The commenter also contended that financial assistance and other community benefits should be reported at charge, rather than cost, as proposed in NEW RULE I(4), because a hospital could claim to provide financial assistance while still charging (and seeking to collect) from a patient more than the cost of service.

The commenter further contended that NEW RULE II(1) would make it easy for hospitals to count financial assistance as community benefits, double dipping [sic] the service for both requirements, and proposed that the department should set standards that delineate where financial assistance can and cannot be counted as a community benefit. With respect to NEW RULE II(2), the commenter contended that the proposed language does not prohibit hospitals from categorizing unpaid charges sent to collections as financial assistance, and recommended a provision that charges that have been sent to collections cannot qualify as financial assistance. The commenter also contended that NEW RULE III(2) and (3) are not how rules are to be structured because they just restate the statute. The commenter also contended that the "in writing" for a community benefits policy was confused with the community benefits plan requirement and recommended that "community benefit plan" should be replaced with "community benefit policy" in NEW RULE III(2)(a). The commenter noted that NEW RULE III(4) fails the statutory requirement imposed by H.B. 45 of adopting rules by July 1, 2024. The commenter further contended that NEW RULE III(5) effectively grants a waiver of all financial assistance or community benefits requirements (including reporting requirements) for years with operating losses, suggesting that this will always be the case, indicated that this may conflict with federal laws and regulations, and urged that NEW RULE III(5) be eliminated. On NEW RULE IV, the commenter again complained that the reporting requirements restate H.B. 45's language and do not mention community health needs assessment (CHNAs). The commenter argues that IRS reporting lacks detail on what constitutes community benefits or any measurable benefits to communities, contending that the new rule will not provide relevant information reporting on actual benefits provided and their impacts, and that the department should start over. Finally, on NEW RULE V, the commenter contends that NEW RULE V(1) and (4) violate the statutory language of H.B. 45, noting that if the standards are not established, the penalties cannot be either; the commenter also argues that NEW RULE V(3) benefits the "big guys" and hurts the "small guys," incentivizes hospitals not to comply, and only serves as a source of minor revenue for the department. The proposed solution is to

eliminate the proposed penalties and instead set escalating penalties based on size and resources of hospitals in tiered categories like taxes. Alternately, since these requirements are a component of nonprofit tax benefits, the department should establish penalties to revoke the property tax benefits past a certain size of those who fail to comply.

RESPONSE #2: The department thanks the commenter for their continued interest in H.B. 45 and the provision of community benefits and financial assistance by nonprofit hospitals, critical access hospitals, and rural emergency hospitals. The commenter is correct that findings from a 2020 audit caused the department to seek legislative adoption of draft legislation introduced as H.B. 45. There are, however, significant differences between H.B. 45 as introduced and H.B. 45 as enacted, which the commenter may not have considered. To name a few, as enacted, H.B. 45 (unlike H.B. 45 as introduced):

- Limited the reports that the department could require any health care facility, including nonprofits, to provide. The department further notes that S.B. 307, codified at 35-2-129, MCA, arguably further limits the information that the department can require such nonprofits to provide.
- Specified the limited documents and information that the nonprofit hospitals, critical access hospitals, and rural emergency hospitals could be required to submit in connection with community benefit and financial assistance requirements.
- Required that the definitions of, and standards for, community benefit and financial assistance be consistent with federal standards, whenever possible.
- Required that the financial assistance and community benefit requirements be specific to the hospital and the area(s) it serves.

While the 2020 audit findings provided the impetus for the department to seek legislative authority to address the issues identified in the audit, now that H.B. 45 has been enacted, it is the department's job to implement H.B. 45. Audit recommendations (such as that community benefits must have a measurable impact on population health) are relevant and will be considered in developing the community benefit and financial assistance standards to the extent that they are consistent with the regulatory authority provided to the department through H.B. 45.[1]

With respect to several proposed rules (NEW RULES III and V), the comment complained that the department has not yet established the required standards for community benefit and financial assistance, despite a July 1, 2024 deadline, and voiced concern that the department does not intend to do so.[2] The department

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[1] The recommendation on NEW RULE I(3) that the proposed purpose include the requirement that community benefits have a measurable impact on population health could artificially elevate one type of community benefits over other types of community benefits.

[2] In this regard, the comment argued that the department "has the authority to collect any information the agency needed to collect from the hospitals to develop these standards." But the cited statutory provision does not appear to be an

would have preferred to be able to adopt such standards in 2024. However, it currently lacks the data necessary for it to do so – especially since H.B. 45, as enacted, requires the financial assistance and community benefits standards and requirements to be specific to the hospital and the area(s) it serves. The delay in developing the standards will enable the department to obtain the data needed to individualize the standards/requirements in accordance with the statute. Similarly, the comments on several proposed provisions (NEW RULE III(2) and (3) and NEW RULE IV) complained that the department restates H.B. 45, suggesting that this is improper. The department believes that this is a mistaken idea: Given the manner in which H.B. 45 was drafted and the subtle differences in the requirements imposed on nonprofit hospitals, as compared to nonprofit critical access hospitals and rural emergency hospitals, the department believes that it is necessary to clearly set forth in implementing regulations the applicable requirements related to community benefit and financial assistance for nonprofit hospitals, critical access hospitals, and rural emergency hospitals. The Montana Administrative Procedure Act bars only the unnecessary repeating of statutory language. *See* 2-4-305(2), MCA.

The department disagrees with the recommendation on NEW RULE I(4) that financial assistance and other community benefits be reported at charge, rather than cost: Hospital chargemasters tend to establish rates (charges) for hospital services that are higher than the cost to the hospital for providing the service. Thus, reporting financial assistance at charge, rather than cost, would tend to inflate the value of financial assistance for reporting purposes. The department's proposed requirement to report financial assistance at cost would also preclude the scenario (posited in the comment on the definition of "financial assistance," in NEW RULE II(2)) that a hospital could consider unpaid charges sent to collections as financial assistance.

The comment appears to complain about the inclusion of "financial assistance" in the definition of "community benefit," suggesting that this would permit double dipping/double counting of amounts provided in financial assistance. As indicated in the proposed rule's statement of reasonable necessity, the proposed definition of "community benefit" is based on the Internal Revenue Service's (IRS) definition, in which financial assistance is a subset of community benefit. Nevertheless, when the department establishes the standards for community benefit and financial assistance, it will consider whether any measures would need to be adopted to prevent the comment's hypothetical situation.

The commenter appears to misunderstand NEW RULE III(2)(a); it would require a nonprofit hospital, critical access hospitals, and/or rural emergency hospital to have

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authorization to collect information – which, in any event would be limited to "information and statistical reports . . .necessary . . .for health planning and resource development activities" – but, rather, a requirement to make publicly available the information and data collected. *See* 50-5-106(6), MCA ("Information and statistical reports from health care facilities that are considered necessary by the department for health planning and resource development activities must be made available to the public and the health planning agencies within the State.").

a written community benefits plan, a written community benefits policy, and a written financial assistance policy, consistent with the statute. The recommendation to replace "community benefits plan" with "community benefits policy" is, thus, unnecessary. The rule recognizes that both a community benefit plan and a community benefit policy should prove to be important tools for decision-making and goal-setting for nonprofit hospitals, critical access hospitals, and rural emergency hospitals, on these issues. A plan is a detailed outline of specific actions and steps that need to be taken to achieve a particular goal or objective. A policy is a set of guidelines or rules that dictate how certain decisions should be made or how certain actions should be carried out within an organization. While plans focus on the how of achieving a goal, policies focus on the rules and procedures that govern decision-making and behavior. Both plans and policies are essential for effective organizational management and ensuring that goals are achieved in a consistent and efficient manner.

The comments on NEW RULE III(5) also demonstrate a misunderstanding of the rule text, as well as of the interests that the department must balance. First, the provision recognizes the fact that most of Montana consists of HPSAs and that many critical access hospitals and rural emergency hospital operate on very thin margins in remote, rural, and/or frontier areas; imposing specific community benefit or financial assistance requirements on such nonprofits in a year in which they experience operating losses could jeopardize their ability to continue to operate. Second, the provision would not affect such hospitals' obligation to comply with federal I.R.S. tax-exempt requirements. Finally, contrary to the comment, they would still have to comply with the reporting requirements - and if it appears to the department that a nonprofit certain hospital(s) is abusing the compliance waiver, the department would take appropriate steps to address the issue.

The comment criticized NEW RULE IV, on reporting requirements, for merely restating reporting requirements from H.B. 45 and not requiring nonprofit hospitals, critical access hospitals, and rural emergency hospitals to report other information (e.g., community health needs assessments and other nonspecified information). However, H.B. 45 limited the information relating to community benefit and financial assistance that such nonprofits are required to submit to the department to certain information specified in the statute (50-5-106(3), MCA) – and, in fact, removed certain departmental authority to require health care facilities to make reports as required by the department (*see* H.B. 45, section 1, amending 50-5-106(1)). H.B. 45 does require such a nonprofit to submit, to the department, the workpapers supporting its IRS Form 990 Schedule H, which may enable the department to better understand the information presented on the Schedule H. And, of course, in developing the standards and requirements, the department anticipates that it will use all the relevant information that it has or can obtain.

Finally, the commenter may have misread NEW RULE V on penalties. The only instance in which the penalties for noncompliance will be the same, regardless of size, is with respect to the reporting requirements. This is sensible because the documents required to be submitted to the department, as the comment noted in

another section, for the most part already exist.[3] With respect to noncompliance by nonprofit hospitals with the community benefit and financial assistance standards, the department proposed that the penalties be determined at the same time that the standards are established – so that the penalties for noncompliance will be consistent with and align with the standards themselves. In contrast, if a nonprofit critical access hospital or rural emergency hospital fails to comply with its community benefits and financial assistance policies, the department will provide technical assistance and may require corrective action. The department lacks the statutory authority to temporarily revoke the property tax benefits of nonprofit hospitals that fail to comply, contrary to the commenter's suggestion.

COMMENT #3: On NEW RULE I, several commenters agreed generally with reporting financial assistance at cost, but sought clarification, stating that generally accepted accounting principles (GAAP) require that gross charges related to financial assistance are not reported as revenue on the financial statements, and that gross revenue related to financial assistance is used to reduce the total revenue reported; in Form 990 reporting, financial assistance is reported at cost. In asking for clarification as to where financial assistance should be reported at cost, one commenter noted that in hospitals' annual reports to the department, financial assistance is reported consistent with GAAP, which does not record it at cost. However, on IRS Form 990 Schedule H, financial assistance is reported at cost.

RESPONSE #3: The department appreciates the commenters' support for reporting financial assistance at cost. The department will provide further guidance and clarification on the requirement as it develops the standards for financial assistance, but notes that the requirement in NEW RULE I was not aimed at the annual report, which is required under different administrative rules, but was focused on the Form 990 Schedule H and related reporting; in this adoption notice, the department modifies NEW RULE I(4) to make that clear. By requesting that financial assistance be reported at cost, the department recognizes and emphasizes the IRS Form 990 Schedule H reporting requirements.

COMMENT #4: A commenter requested that the department add, in NEW RULE I, a statement that the rules are consistent with IRS requirements and guidance on financial assistance and community benefit.

RESPONSE #4: The department thanks the commenter for their comment, but declines to add the requested statement to NEW RULE I. H.B. 45 requires only that the department (1) "define financial assistance and community benefit consistent with federal standards, *wherever possible,*" and (2) "establish the standards for community benefit and financial assistance applicable to hospitals operating as nonprofit health care facilities consistent with federal standards, *wherever possible.*" 50-5-121(4)(a) and (b), MCA (emphasis added). While the department intends to

[3] If the department finds that nonprofit hospitals, in contrast to nonprofit critical access hospitals or rural emergency hospitals, are not submitting the required reports and documents, the department will consider changing the penalty structure.

adopt definitions and standards consistent with the federal IRS standards and definitions whenever possible, the department recognizes that it may not always be possible to do so and, thus, cannot put the requested statement into these rules.

COMMENT #5: One commenter recommended that the department define "community benefit" to include the IRS's reportable categories, ensuring consistency with IRS requirements.

RESPONSE #5: The department thanks the commenter for their recommendation, but declines to do so at this time since insufficient information was provided to enable the department to make an informed decision on the commenter's recommendation. The department will continue to consider the issue.

COMMENT #6: One commenter requested that the rules use the term "community health improvement plan" or "community health implementation strategy" instead of "community benefit plan" that was used in H.B. 45, stating the IRS 990 rules do not reference a "community benefit plan." Another commenter, acknowledging that the proposed rules used that term to comply with the language in H.B. 45, requested that the department provide a definition of the term and include references to "community health improvement plan" and "community health implementation strategy." Yet another commenter requested that the department provide a definition of "community benefits policy," or expand on the requirement for a written "community benefits policy," noting that, since it is a new concept for nonprofit hospitals, it would be helpful to understand the department's expectations on the content of such policy.

RESPONSE #6: The department declines to accept the comment to use terms not in H.B. 45. Consistent with the statute, the department will continue to use the term "community benefit plan" in the rules. In response to the comments, however, the department adopts a definition of "community benefit plan," to provide clarity on its expectations for community benefit plans.[4] The department similarly adopts a definition of "community benefit policy." As the department develops standards for community benefits, it will consider further refinements to the definitions or requirements with respect to "community benefit plan" and/or "community benefit policy."

COMMENT #7: On NEW RULE III, one commenter noted the department's thoughtfulness in gathering information before setting standards and indicated that the department's acknowledgment of each hospital's gains and losses and individual community factors in setting standards is appreciated. The commenter requested that the department consider looking at averages over a longer period to allow hospitals to adjust to changes in their environment/trends. The commenter noted that hospitals are not always able to control the factors that lead to the amount of

[4] As the department noted in the proposal notice, it understands that a community health improvement plan or implementation strategy would likely meet the requirement for a community benefit plan.

community benefit, especially financial assistance, offered in any given period and will often not know until the end of the period their final net revenue, financial assistance, or overall community benefit. Another commenter made a similar comment.

RESPONSE #7: The department thanks the commenter for their recognition of the thoughtfulness of the department's approach. As proposed, based on stakeholder input, the department is planning to use a three-year average to set the initial standards and to adjust such standards in future years with a rolling three-year average. It, thus, believes that its approach to setting and updating community benefit and financial assistance standards is consistent with the comments.

COMMENT #8: On NEW RULE III(2)(b), one commenter suggested changing "written community benefit policy and financial assistance policy" to "financial assistance and emergency medical care policies."

RESPONSE #8: The department appreciates the suggestion, but declines to make the suggested wording change, to ensure consistency with the statute.

COMMENT #9: With respect to NEW RULE IV's requirement to submit Form 990 with Schedule H and "associated worksheets," several commenters noted that nonprofit hospitals compile worksheets to calculate various reportable community benefits, but since the IRS does not require any particular form or format, such worksheets will vary from hospital to hospital. As a result, several commenters recommended that the department develop a standardized worksheet, report, or form for hospitals to complete and submit with their reports, to ensure consistency across all hospitals. One commenter requested the department adjust the wording to reference "supporting workpapers."

RESPONSE #9: Consistent with H.B. 45, the department proposed to require submission of the Schedule H "associated worksheets," which it views as the same as "supporting workpapers." The department is aware that the IRS does not require a particular format for the worksheets used to calculate the information provided in Schedule H and does not require submission of such worksheets to it. The department understands that there is no uniformity to the worksheets, but since the worksheets show how hospitals report community benefit and financial assistance, they should enable the department to understand and unpack each hospital's Schedule H reported community benefit and financial assistance. As it reviews and analyzes the data to establish the community benefit and financial assistance standards, the department will consider whether it needs more standardized data, whether it can develop a standardized worksheet to collect the data, and whether, in light of the additional burden it may impose on hospitals, it should. The department does not believe that it is necessary to change the term to "supporting workpapers."

COMMENT #10: One commenter argued that the language in NEW RULE IV(3) contradicts the proposed definition of "community benefit," and suggested that the conflict could be avoided if that definition includes the IRS reportable categories.

RESPONSE #10: Since the commenter failed to explain the asserted contradiction, the department is unable to assess the comment and make an informed decision on the recommendation. However, as noted in the response to Comment #5, it continues to consider including the IRS reportable categories in the definition of "community benefit."

COMMENT #11: One commenter suggested that the department may lack understanding of the accounting, financial reporting, and GAAP standards applicable to nonprofit hospitals and offered its assistance to the department.

RESPONSE #11: The department acknowledges the comment, and notes that it is always willing to hear from stakeholders.

COMMENT #12: One commenter noted its long tradition of care and dedication to the communities it serves, stating that community benefit is integral to its mission. It recognized that there are several approaches to managing the program and respectfully requested the department consider opportunities to limit administrative burden on the state and hospitals. It noted that community benefit investments are highly regulated at the state and federal level; community health needs assessments (CHNAs) and community health improvement plans (CHIPs) are required as well as multiple other requirements by the IRS. It argued that Montana's hospitals also provide an important safety net that should not be overlooked, and comply with EMTALA.

RESPONSE #12: The department appreciates the comments. The department's intent in these rules implementing H.B. 45 is not to add unnecessary administrative burden for nonprofit hospitals, critical access hospitals, and rural emergency hospitals, but to implement the statute with as little administrative burden as possible.

/s/ Paula M. Stannard
Paula M. Stannard
Rule Reviewer

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

Certified to the Secretary of State September 10, 2024.

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

In the matter of the amendment of ARM 38.2.101 pertaining to the model procedural rules	)))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On July 26, 2024, the Department of Public Service Regulation published MAR Notice No. 38-2-259 pertaining to the proposed amendment of the above-stated rule at page 1836 of the 2024 Montana Administrative Register, Issue Number 14.

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 September 10, 2024.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the adoption of NEW RULES I through III and the amendment of ARM 42.11.402, 42.12.101, 42.12.106, 42.12.109, 42.12.110, 42.12.111, 42.12.118, 42.12.128, 42.12.131, 42.12.132, 42.12.143, 42.12.145, 42.12.146, 42.12.147, 42.12.148, 42.12.149, 42.12.150, 42.12.151, 42.12.152, 42.12.204, 42.12.205, 42.12.208, 42.12.209, 42.12.307, 42.12.323, 42.12.324, 42.12.501, 42.12.502, 42.12.503, 42.12.504, 42.13.106, 42.13.107, 42.13.109, 42.13.111, 42.13.112, 42.13.201, 42.13.211, 42.13.405, 42.13.601, 42.13.802, 42.13.804, 42.13.901, 42.13.1002, 42.13.1003, 42.13.1102, 42.13.1103, 42.13.1104, 42.13.1105, 42.13.1202 pertaining to the implementation of alcoholic beverage legislation enacted by the 68th Montana Legislature	)	NOTICE OF ADOPTION AND AMENDMENT

TO: All Concerned Persons

1. On April 26, 2024, the Department of Revenue published MAR Notice No. 42-1076 pertaining to the public hearing on the proposed adoption and amendment of the above-stated rules at page 875 of the 2024 Montana Administrative Register, Issue Number 8.

2. On June 4, 2024, a public hearing was held to consider the proposed adoption and amendment. The following persons were present and provided testimony: John Iverson, Montana Tavern Association (MTA); Michael Lawlor, attorney, Lawlor & Co., PLLC; and Jessica DeMarois, attorney, JDMT Law. The following persons were present but provided no oral testimony: Shauna Helfert, Gaming Industry Association of Montana (GIA); Debra Pitassy, Montana Beer and Wine Distributor's Association (MBWDA); and Jessie Luther, Taylor Luther Group, PLLC, representing the Hospitality and Development Association of Montana (HDAM).

3. The following persons provided written comments to the rulemaking: Ms. Helfert, GIA; Mr. Iverson, MTA; Mr. Lawlor, Lawlor & Co., PLLC; Ms. Pitassy, MBWDA; Cory Lawrence, President of HDAM; Matt Leow, President, Montana

Brewer's Association (MBA); and Jennifer Hensley, representing the Montana Distiller's Guild (Guild).

4. On June 17, 2024, public comments and concerns with the proposed rulemaking were also brought before the Economic Affairs Interim Committee (EAIC) at its scheduled meeting. EAIC voted to object to the entire rulemaking pursuant to 2-4-305(9), MCA. EAIC provided formal notice of the objection to the department by its written correspondence of June 18, 2024.

5. EAIC met on August 29, 2024, and withdrew its objection to this rulemaking.

6. The department has amended ARM 42.11.402, 42.12.109, 42.12.118, 42.12.128, 42.12.131, 42.12.132, 42.12.145, 42.12.146, 42.12.147, 42.12.148, 42.12.151, 42.12.204, 42.12.205, 42.12.208, 42.12.209, 42.12.307, 42.12.323, 42.12.324, 42.12.501, 42.12.502, 42.12.503, 42.12.504, 42.13.107, 42.13.109, 42.13.111, 42.13.112, 42.13.201, 42.13.405, 42.13.802, 42.13.804, 42.13.901, 42.13.1002, 42.13.1003, 42.13.1102, 42.13.1103, 42.13.1104, 42.13.1105, and 42.13.1202 as proposed.

7. The department has adopted NEW RULE I (42.12.153), NEW RULE II (42.13.1107), and NEW RULE III (42.12.154), and amended ARM 42.12.101, 42.12.106, 42.12.110, 42.12.111, 42.12.143, 42.12.149, 42.12.150, 42.12.152, 42.13.106, 42.13.211, and 42.13.601 as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

NEW RULE I (42.12.153) ADDITIONAL RETAIL SERVICE BUILDINGS OR STRUCTURES (1) In addition to the main licensed premises, ~~A~~ a golf course beer and wine licensee or an all-beverages licensee operating a license at a golf course may use an additional building or structure, one per nine holes of the golf course that is designed to serve golfers alcoholic beverages during the course of play.

(2) In addition to the main licensed premises, ~~An~~ an all-beverages licensee or resort all-beverages licensee may sell alcoholic beverages for consumption on the premises in one or more of the following:

(a) through (5) remain as proposed.

(6) The department will notify the licensee, in writing, within ten business days of the completed investigation of its approval or denial of the additional retail service building or structure.

(7) and (8) remain as proposed.

AUTH: 16-1-303, MCA
IMP: 16-3-302, MCA

NEW RULE II (42.13.1107) COLOCATED LICENSE – CONDITIONS FOR OPERATING (1) In addition to the conditions for operating the license types provided in ARM 42.13.405, 42.13.601, 42.13.802, 42.13.1102, 42.13.1103, and 42.13.1104, a colocated licensee shall:

(a) provide and serve through its retail license, alcoholic beverages that were produced by other manufacturers that are not affiliated or financially interested, either directly or indirectly, in the operation of the manufacturing business at the colocated premises. This includes sufficient on-hand inventory to meet the demand of the public;

(b) remains as proposed.

(c) ~~only~~ deliver alcoholic beverages ~~to retail licenses, including other retail licenses owned by the licensee,~~ pursuant to the limitations set forth in 16-3-213, 16-3-214 ~~and~~, 16-3-411, 16-4-312, and 16-4-401(9)(e), MCA.

(2) remains as proposed.

AUTH: 16-1-303, MCA
IMP: 16-4-401, MCA

NEW RULE III (42.12.154) GUEST RANCHES (1) An all-beverages licensee, an on-premises consumption beer and wine licensee, or an applicant for an all-beverages license or an on-premises consumption beer and wine license operating its license at a guest ranch, as described in 16-3-302(5), MCA, shall submit the following to the department~~, at its sole expense, and in addition to the requirements of ARM 42.12.101~~:

(a) a plat-style map that accurately describes the guest ranch property including all indoor and outdoor portions of the premises; the permanent building where alcoholic beverages will be served; ~~all other temporary, mobile, or partial structures;~~ and indicators of the property's boundaries;

(b) through (4) remain as proposed.

AUTH: 16-1-303, MCA
IMP: 16-4-401, MCA

42.12.101 APPLICATION FOR LICENSE (1) and (2) remain as proposed.

(3) In addition to the license application, as applicable, the applicant shall submit:

(a) through (d) remain as proposed.

(e) the premises floor plan, which for all license types includes accurate dimensions of the premises, the licensee or applicant's name, alcoholic beverage license number, physical address, and submission date, plus:

(i) and (ii) remain as proposed.

(iii) for a winery, brewery, or distillery license, identifies all manufacturing areas, ~~bonded areas,~~ storage areas, and as applicable: sample room, drink preparation areas, patios/decks, doors, hallways, stairways, perimeter barriers, drive-through windows, and permanent floor-to-ceiling walls required between the premises and another licensed alcoholic beverage business, except as otherwise provided in 16-3-311(8) and (9), MCA; or

(iv) through (3)(i) remain as proposed.

(j) for any entity applicant:

(i) remains as proposed.

(ii) stock certificates or other unit ownership certificates that evidence underlying ownership of the entity, as applicable;

(iii) through (5) remain as proposed.

(6) The department shall determine whether a complete application has been submitted. If a complete application has been submitted, the department shall arrange an investigation of the application and, if applicable, publish the notice of application for a license required by 16-4-207, MCA. ~~If the department determines a complete application has not been submitted and processing cannot proceed, the department shall return the incomplete application to the applicant.~~

(7) through (10) remain as proposed.

AUTH: 16-1-303, MCA
IMP: 16-4-105, 16-4-201, 16-4-204, 16-4-207, 16-4-210, 16-4-401, 16-4-402, 16-4-414, 16-4-417, 16-4-420, 16-4-501, 16-4-502, MCA

42.12.106 DEFINITIONS The following definitions apply to this chapter:

(1) through (41) remain as proposed.

(42) "Ski hill," for the purpose of administering 16-3-302(4), MCA, means the site and permanent structures that have been developed for alpine or Nordic skiing ~~and other snow sports~~.

(43) "Special event," as it relates to special permits and catered events, means a short, infrequent, out-of-the-ordinary occurrence such as a picnic, fair, festival, reception, seasonal event, or sporting event for which there is an outcome, conclusion, or result.

(44) through (48) remain as proposed.

AUTH: 16-1-303, MCA
IMP: 16-1-106, 16-1-302, MCA

42.12.110 SERVICE OF NOTICES (1) and (2) remain as proposed.

(3) The licensee, registrant, or applicant must respond to the department in writing within ~~20~~ 23 days of service of the notice of proposed adverse action. Failure to respond will result in the enforcement of the administrative action proposed in the notice.

AUTH: 16-1-303, MCA
IMP: 2-4-601, 16-4-107, 16-4-406, 16-4-407, 16-4-1008, MCA

42.12.111 APPLICATION FEES AND PROCESSING FEES FOR OTHER REQUESTS (1) remains as proposed.

(2) The fees to be charged for processing requests associated with an existing license are as follows:

(a) through (f) remain as proposed.

(g) Increasing current ownership interest from less than ~~10~~ 15 percent to ~~10~~ 15 percent or more…….....$200

(h) through (5) remain as proposed.

AUTH: 16-1-303, 16-4-105, 16-4-201, 16-4-204, 16-4-420, MCA
IMP: 16-1-302, 16-1-303, 16-3-302, 16-4-105, 16-4-201, 16-4-204, 16-4-303, 16-4-313, 16-4-414, 16-4-420, MCA

42.12.143 RESTRICTION ON INTEREST IN OTHER LICENSES

(1) remains as proposed.

(2) A Montana all-beverages licensee may not:

(a) and (b) remain as proposed.

(c) individually or through the person's immediate family, receive financing from or have any affiliation to:

(i) an alcoholic beverage manufacturer or importer of alcoholic beverages, except as provided in 16-4-401(8)(e) and (9), MCA; or

(ii) remains as proposed.

(3) All other Montana retail on-premises consumption alcoholic beverages licensees may not:

(a) remains as proposed.

(b) individually or through the person's immediate family, receive financing from or have any affiliation to:

(i) an alcoholic beverage manufacturer or importer of alcoholic beverages, except as provided in 16-4-401(8)(e) and (9), MCA; or

(ii) through (7) remain as proposed.

AUTH: 16-1-303, MCA
IMP: 16-4-201, 16-4-205, 16-4-401, MCA

42.12.149 WINERY, BREWERY, AND DISTILLERY - PREMISES SUITABILITY REQUIREMENTS (1) through (6) remain as proposed.

(7) A distillery premises may only include one sample room, regardless of the number of manufacturing buildings the licensee operates.

(8) and (9) remain as proposed.

AUTH: 16-1-303, MCA
IMP: 16-3-311, 16-3-411, 16-4-102, 16-4-312, 16-4-402, MCA

42.12.150 ALCOHOLIC BEVERAGE INDUSTRY TRADE SHOWS

(1) For the purpose of this rule, an alcoholic beverage industry trade show means an event sponsored by the department, another state agency of Montana, or a nonprofit association representing an alcoholic beverage ~~industry association~~ group where alcoholic beverage manufacturers showcase their products to industry trade show attendees.

(2) through (8) remain as proposed.

(9) An alcoholic beverage trade show held at a licensed premises or at a location described in (5)(b) must serve only the types of alcoholic beverages authorized under the retail license and catering endorsement, where applicable.

(a) through (c) remain as proposed.

~~(d) The allowable sample serving size per product, per person shall not exceed two ounces for liquor products, 12 ounces for beer products, and five ounces for wine products~~.

(e) remains as proposed but is renumbered (d).

(10) For an alcoholic beverage industry trade show not held at a licensed premises or at a location described in (5)(b), the allowable sample serving size per product, per person shall not exceed two ounces for liquor products, 12 ounces for beer products, and five ounces for wine products.

(10) through (12) remain as proposed but are renumbered (11) through (13).

AUTH: 16-1-303, 16-1-307, MCA
IMP: 16-1-307, 16-3-107, 16-4-201, 16-4-204, 16-4-311, MCA

42.12.152 NONCONTIGUOUS ALCOHOLIC BEVERAGE STORAGE AREAS; RESORT ALTERNATE RETAIL ALCOHOLIC BEVERAGE STORAGE FACILITIES (1) and (2) remain as proposed.

(3) Except as provided in 16-3-311(7), MCA, a noncontiguous alcoholic beverage storage area or resort alternate alcoholic beverage storage facility ~~must~~ may ~~only~~ be used for the storage of alcoholic beverages and must have adequate physical safeguards to prevent access by individuals other than the licensee or their employees. A noncontiguous alcoholic beverage storage area or resort alternate alcoholic beverage storage facility may also be used for the storage of items related to the alcoholic beverage business including supplies, equipment, and vehicles.

(4) through (9) remain as proposed.

AUTH: 16-1-303, MCA
IMP: 16-3-301, 16-3-311, 16-4-213, MCA

42.13.106 ALTERATION OF PREMISES (1) through (5) remain as proposed.

(6) ~~Upon completion of the alterations, the~~ The licensee is responsible for ensuring the department receives notification of building, health, and fire code approval for the premises~~, if any such permits were required~~ unless the licensee attests that no building permit was required.

(7) The department will arrange for an inspection of the premises upon either completion of the alterations or upon receipt of the building, health, and fire code approvals or licensee attestation ~~as~~ described in (6).

(8) and (9) remain as proposed.

AUTH: 16-1-303, MCA
IMP: 16-3-302, 16-3-311, 16-4-402, MCA

42.13.211 PERMISSIBLE ADVERTISING (1) remains as proposed.

~~(2) In addition to the requirements of (1), a licensee must not advertise in a manner that would be inconsistent with, or contrary to, the type of license under which the business is operated. Examples of such advertising include an on-premises retailer advertising as a brewery, a brewery advertising an on-premises~~

~~retailer, a licensee who advertises availability of alcoholic beverages that it is not authorized to possess or sell under its license or Montana law; or a concessionaire who advertises the sale and service of alcoholic beverages without attribution to the licensee.~~

(3) and (4) remain as proposed but are renumbered (2) and (3).

AUTH: 16-1-303, MCA
IMP: 16-3-103, 16-3-244, MCA

42.13.601 BREWERY - CONDITIONS FOR OPERATING (1) through (3) remain as proposed.

(4) In addition to all other requirements, a small brewery with an annual nationwide production of not less than 200 gallons or more than 60,000 barrels that operates a sample room shall:

(a) through (i) remain as proposed.

(j) for each brewery participating in a distinct beer collaboration provided in 16-3-213(4), MCA, notify the department at least ~~seven~~ three business days prior to the collaboration and file all required reports with the department subsequent to the collaboration for tax collection purposes. For the purposes of administering 16-3-213(4), MCA, a "distinct collaboration beer" means a single beer manufactured through a single collaboration by two or more brewers. For example, if two brewers collaborate in March to make "Beer 123," that product constitutes one distinct collaboration beer. If the same two brewers collaborate to make the same beer at a later date in the year, that is considered a second distinct beer collaboration counting towards the collaborating brewers' statutory limit.

(5) remains as proposed.

AUTH: 16-1-303, MCA
IMP: 16-3-211, 16-3-213, 16-3-214, 16-3-242, 16-3-301, 16-3-304, 16-3-305, 16-3-312, MCA

8. 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: Mr. Lawlor commented that NEW RULE I(2) should be clarified that adding a building or buildings to the licensed premises for the primary lodging quarters, swimming pool area, or ski area are in addition to the main bar building. It should also be clarified that more than one additional building is possible. For example, a licensee could have a bar building licensed, a swimming pool building licensed, and a lodging building licensed, all under the same all-beverages license.

RESPONSE 1: The department agrees with Mr. Lawlor that more than one additional service building or structure is possible. Based on the comments, the department has amended NEW RULE I(2) to provide additional clarity.

COMMENT 2: HDAM requests clarity that the list of allowable service areas in NEW RULE I(2)(a) through (d) allows a licensee meeting the requirements to sell alcoholic beverages for consumption in one or all of the areas described in (a) through (d) - especially a resort - could have a golf course with comfort stations and a hotel, and a swimming area, for example.

Ms. DeMarois similarly comments that NEW RULE I(2)(c) needs additional clarity to define what is allowed. Ms. DeMarois believes edits to the language are necessary to clarify that these concepts can go together, particularly with golf courses, because (1) seems to say you can have one additional building per nine holes but below in (2)(d) a licensee may have its main premises in your clubhouse or ancillary building. The department needs to clarify that those opportunities are not exclusive.

RESPONSE 2: In response to HDAM, the department refers to Response 1 and the amendments made upon adoption to NEW RULE I(2).

Similarly, the department agrees with Ms. DeMarois' comments and has amended NEW RULE I(1) upon adoption.

COMMENT 3: HDAM requests more clarity as to what NEW RULE I(4)(h) seeks and believes (4)(h) is too broad and could include anything. HDAM notes the language is repeated throughout the proposed rules (NEW RULE III(1)(d), 42.12.101(3)(k), etc.) and requests narrowing the provision in all instances where it has been added.

Mr. Lawlor concurs with HDAM 's comments about NEW RULE I(4)(h) and that department should not require anything beyond what the statute requires.

RESPONSE 3: Section 16-1-303, MCA, authorizes the department to make rules necessary to administer the Alcoholic Beverage Code (Code), including prescription of terms and conditions for licenses issued and granted under the Code. Section 16-4-207(1), MCA, also provides that the department may make requests for additional information necessary to complete an application and an application is considered complete when the applicant furnishes the application information requested by the department.

While ARM 42.12.106 defines "complete application," neither the definition or statute encapsulate the often-complex business transactions the department processes, which involve multiple business entities, purchase transactions, loans or sources of funding information, leases, management and concession agreements, and ancillary endorsement documents. Accordingly, the requirements in NEW RULE I(4)(h), NEW RULE III(1)(d), ARM 42.12.101(3)(k) - as well as in ARM 42.12.106 (definitions) and ARM 42.12.152 (noncontiguous storage areas) - are crafted for the greatest number of transactions possible and are administered under the rationale that any document and information requests are reasonably necessary for the department (and/or the Department of Justice) to complete an application investigation under 16-4-402, MCA, and prepare for final license approval or a final decision without increasing the possibility of department denial due to an incomplete application or licensee-initiated request.

Based on this reasoning, the department declines to narrow or modify these requirements.

COMMENT 4: Mr. Lawlor commented that NEW RULE I(4)(g) is unnecessary and inappropriate to include. He states that local building, health, and fire code officials all have their own role to play, and the department should not dictate what those other officials do.

Ms. DeMarois concurs with Mr. Lawlor and repeats the sentiment with respect to ARM 42.13.106 and building, health, and fire code compliance.

RESPONSE 4: The department does not dictate requirements to local building, health, and fire code officials. It has also been a longstanding policy, in excess of 20 years, that the department provides license application information with local officials to ensure that the department is approving an applicant who is likely to operate the establishment in compliance with all applicable laws of the state and local governments. See 16-4-401(2)(a)(i), MCA (emphasis added).

Administrative rule requirements such as those found in NEW RULE I(4)(g) are no different from suitability of premises requirements in other rules, which were promulgated under the department's authority under 16-1-303, MCA. The department declines to make any further revision.

COMMENT 5: Ms. DeMarois comments on NEW RULE I(6) that there is no timeframe for department approval and that one should be included since applicants are held to deadlines, such as ten days to respond or 20 days to respond.

The MTA commented that there are not enough department deadlines or accountability in the processing of an applicant's business in alcoholic beverages licensing and firm deadlines for the department are necessary.

RESPONSE 5: The department understands the requests for the inclusion of department deadlines in NEW RULE I. However, it is unrealistic to confine the entire process to a stated number of days given all of the conditions that must be satisfied prior to the approval of these requests. Notwithstanding, the department has amended NEW RULE I(6) to include a department response time from its receipt of the completed investigation, which is similar to ARM 42.12.132(5) for approval of location managers.

COMMENT 6: Mr. Lawlor commented that all of NEW RULE II(1) should be deleted, that (1)(a) is not a part of statute, and the department is attempting to enforce a TTB requirement. It is the same with (1)(b); and the department should not enforce something that is not in Montana law.

Mr. Lawlor believes that NEW RULE II(1)(c) is incorrect under 16-3-214(6), MCA, and the self-distribution limit does not apply to colocated licenses. Further, by definition, a licensee cannot "deliver" to themselves at a colocated premises because the manufacturer and the retailer are one and the same, and the premises is the same for both licenses. Further still, 16-4-401(9)(e), MCA, provides that "colocated licenses may transfer beer manufactured, liquor distilled, or wine produced by the licensee between the colocated manufacturing license and the retail

license without it being considered distributed or delivered as provided in this code."

RESPONSE 6: As the department stated in Response 3, 16-1-303, MCA, authorizes the department to make rules necessary to administer the Alcoholic Beverage Code, including prescription of terms and conditions for licenses issued and granted under the Code. And every license type in ARM Title 42, chapter 12 has reasonably necessary premises suitability/conditions for operating requirements. Mr. Lawlor's comments regarding NEW RULE II(1) are incorrect in that colocated licenses do not create an exception or some sort of loophole under the law for premises suitability or operating conditions.

Regarding (1)(a), Mr. Lawlor is incorrect. The department directs him to 16-4-401(9)(d)(iii), MCA, which mirrors the first sentence of NEW RULE II(1)(a). As for the requirement of sufficient on hand inventory to meet the demands of the public, this is necessary to meet 16-4-401(9)(d)(iii), MCA, criteria that colocated licensees provide and serve other manufacturer's products. Since each establishment's demand is different, the rule text provided grants the greatest amount of latitude for each licensee within the law.

In NEW RULE II(1)(b), Mr. Lawlor argues a generalized statement in rule of applicability of federal law as improper. The department contends the rule section does not enforce any federal alcohol law, generally, or that of the TTB, specifically. Because the department has adopted certain federal regulations (see ARM 42.13.221), and manufacturers must also comply with federal regulations, there is nothing inappropriate with the operational restriction. In fact, 16-1-201(2), MCA, permits the department to adopt rules as long they are not inconsistent with the Code or with the statutes of the United States of America or its regulations.

As to Mr. Lawlor's comments regarding the applicability of 16-3-214(6), MCA, in NEW RULE II(1)(c) and what is provided in 16-4-401(9)(e), MCA, the department agrees that a colocated licensee can transfer/deliver any amount within the colocated premises. However, delivery to other retailers or the public is limited to the restrictions in the respective manufacturer statutes at 16-3-213, 16-3-214, 16-3-411, 16-4-312, and 16-4-401(9)(e), MCA.

The department agrees the subsection can be clarified and has amended NEW RULE II(1)(c) upon adoption based on the comments and a review of the statutory authority.

COMMENT 7: Ms. DeMarois commented that NEW RULE II(1)(a) which requires licensees to stock alcohol other than its own was not in HB 305 and that the department may not, or should not, dictate business decisions that licensees make or how they are using the retail license that they purchased or acquired.

Converse to Ms. DeMarois, the Guild supports the requirement for colocated retail license holders to carry product from other manufacturers and understands its necessity to avoid any tied house relationship between manufacturer and retailer. The Guild requests an edit to the provision to ensure the department does not arbitrarily decide to determine that the inverse is not available.

RESPONSE 7: The department responds that regardless of what may have been in any iteration of HB 305, 16-4-401(9)(d)(iii), MCA, was included in the final

enactment of the legislation and Ms. DeMarois' disagreement with NEW RULE II(1)(a) is misplaced for the same reasons as Mr. Lawlor, as stated in Response 6.

The department responds to the Guild that 16-4-401(9)(d)(iii), MCA, and NEW RULE II(1)(a) are both clear and the Guild's request for an edit to the rule or some statement of "inverse applicability" is inconsistent with statutory and administrative rule construction - not to insert what has been omitted or to omit what has been inserted. See 1-2-101, MCA. Accordingly, the department declines the request.

Should the Legislature add exceptions or additional provisions to the statute, or should necessity dictate the modification of this straightforward requirement, the department will pursue any necessary rulemaking.

COMMENT 8: HDAM notes a typographical error in NEW RULE II(1)(a) that requests the department add "ic" to the word "alcohol" as the correct modifier for beverages.

RESPONSE 8: The department appreciates the comment and has corrected the typographic error upon adoption.

COMMENT 9: The MBA comments that NEW RULE II(1)(c) is unclear what "only" means. It could mean that breweries with colocated licensees may only deliver to retail licenses (and no one else), or it could mean that deliveries to retail licensees must comply with applicable laws. The MBA requests the department clarify that this change does not impose new limitations beyond the law and requests the department strike the word "only."

RESPONSE 9: The department directs the MBA to the fourth and fifth paragraphs of Response 6, and the revisions to NEW RULE II(1)(c) which the department believes are responsive to the comments and resolve the MBA's concerns.

COMMENT 10: Regarding NEW RULE III, Mr. Lawlor commented that the phrase, "at its sole expense" should be deleted from (1) because it is not part of the statute, and could result in the department requiring unnecessary and burdensome information such as source of funds documentation for submitting an alteration request. Further, the reference to " . . . the requirements of ARM 42.12.101" should only apply in a guest ranch designation request submitted as part of a license application; the materials described in ARM 42.12.101 would not be needed when an existing licensee is requesting guest ranch status via an alteration request.

In NEW RULE III(1)(a), the "temporary, mobile, or partial structures" should not be required to be noted on the plat map. By definition, "temporary" or "mobile" structures will not always be in the same place, so they cannot accurately be shown on a map.

Mr. Lawlor also commented that NEW RULE III(1)(d) should not be included. The department should not require anything beyond what the statute requires.

RESPONSE 10: Upon further review and based on the comments, the department has removed the text at the end of NEW RULE III(1) because

"applicable licensure requirements" which include ARM 42.12.101 requirements are stated in (2) and are sufficient.

The department also agrees with Mr. Lawlor's rationale regarding temporary, mobile, or partial structures and has removed that phrase from NEW RULE III(1)(a).

Regarding Mr. Lawlor's comments on NEW RULE III(1)(d), the department directs him to Response 3 as its response here and declines any further amendments other than described in this response.

COMMENT 11: Mr. Lawlor commented on ARM 42.12.101(3)(e)(iii) that bonded areas should not be included and the department should refrain from doing TTB's job.

Ms. DeMarois agrees with Mr. Lawlor and that bonded areas apply to distilleries and wineries, but they do not apply to breweries. Breweries have tax paid storage and non-tax paid or tax-determined storage and use of bonded areas confuses the rule and has caused delays in colocated license application approvals.

RESPONSE 11: The department directs Mr. Lawlor to the third paragraph of Response 6 as its response here to his TTB comments. Notwithstanding, and based on the comments, the department has amended ARM 42.12.101(3)(e)(iii) upon adoption to remove bonded areas from the floorplan requirements and will rely on identification of the remaining floorplan characteristics in (3)(e).

COMMENT 12: Mr. Lawlor comments that ARM 42.12.101(3)(j)(ii) through (iv) should be reworded and (ii) should include "as applicable" as in (iv) because not all entity types have certificates or a ledger to indicate ownership, and not all have operating, partnership agreements, bylaws, etc. For example, a single-member LLC would likely have none of those things.

Ms. DeMarois agrees with Mr. Lawlor's comments.

RESPONSE 12: While the department agrees that there is differing documentation applicable to each entity type, the department and/or the Department of Justice must still determine that the applicant entity and its underlying owners are qualified for licensure (see Response 3 for additional detail).

In the event that a single-member LLC is the applicant and does not have a written operating agreement, as Mr. Lawlor posits, then the department would accept – as it has done in the past – signed resolutions of the member that management of the entity defaults to the provisions of 35-8-307, MCA, and the Montana Limited Liability Company Act.

The department declines to amend the rule except for the revision to (3)(e)(ii) to add "as applicable."

COMMENT 13: Similar to Comment 3, the Guild comments its belief that the language used in ARM 42.12.101(3)(k) is too broad and the statement of reasonable necessity provided is not enough justification.

RESPONSE 13: The department refers the Guild to Response 3 as its response to this comment.

COMMENT 14: Mr. Lawlor commented that ARM 42.12.101(6) is not a permissible approach under 16-4-207, MCA, because the department does not have statutory authority to return an application it believes is incomplete. The department can ask an applicant to withdraw an application (as is done now). But if the applicant chooses not to withdraw the application, then the department must deny (not return) the application, so as to give the applicant its MAPA rights under the contested case provisions.

Ms. DeMarois generally concurred with Mr. Lawlor that the language is subjective about when is an application deemed complete and that applicants have had the opportunity to supplement or complete that application. It does not seem fair or appropriate to reject an application if there is additional material needed.

RESPONSE 14: The department responds that Mr. Lawlor's and Ms. DeMarois' characterization(s) of the process summary in (6) and the department's authority to return an application are an incomplete description of department procedure and authority (see Response 3, generally). The department also directs Mr. Lawlor and Ms. DeMarois to the statement of reasonable necessity for the inclusion of (6) (that pro se applicants have requested a summary explanation such as what the department provided). Furthermore, the department directs Ms. DeMarois to the definition of "complete application" which contemplates the supplementation of an application.

Section 16-4-402, MCA, and ARM 42.12.101 provide more detail about department and applicant interplay, complete applications, and completion deadlines, none of which substantially conflicts with ARM 42.12.101(6). While the department disagrees with Mr. Lawlor's contention that the department does not have statutory authority to return an application it believes is incomplete, the department has stricken the last sentence of (6), upon adoption, for improved clarity as it continues to evaluate its processes.

COMMENT 15: Mr. Lawlor commented that the new wording in ARM 42.12.106(12) about "information and documentation requested by the department" is too broad. The department should not require anything beyond what the statute requires.

RESPONSE 15: The department directs Mr. Lawlor to Response 3 as its response to this comment.

COMMENT 16: The MTA commented that the definition in ARM 42.12.106(42) needs Nordic skiing to be better defined and that "other snow sports" is too broad and outside of what the legislature had contemplated.

The GIA agrees with the MTA's comments.

Ms. DeMarois commented an appreciation for the inclusion of Nordic skiing in the definition which she notes is logical. Ms. DeMarois expressed some concern about the inclusion of other snow sports or other snow activities in the definition.

RESPONSE 16: The department's proposed definition of "ski hill" was based

on a federal definition that is used with ski hill operators leasing federal land and includes alpine and Nordic skiing.

The department disagrees with the MTA and the GIA that Nordic skiing requires any further definition, given the lack of need to define alpine skiing. Alpine and Nordic skiing are common terms for the operators of ski hills and the public that engage in those activities. The department also appreciates Ms. DeMarois' concurrence with the inclusion of Nordic skiing.

Based on the MTA and the GIA's comments, the department has revised the definition upon adoption to remove "and other snow sports" but declines any further amendment to the definition.

COMMENT 17: HDAM commented that "seasonal event" should be kept as an example of a special event in ARM 42.12.106(43). Seasonal event could encompass many things other than picnics, fairs, festivals, or receptions, such as a farmer's market or an art in the park. This example offers more flexibility in the type of event that could qualify as a seasonal event.

Mr. Lawlor commented similarly to HDAM and requested an explanation of the proposed removal of seasonal event from the list of examples in the definition. Mr. Lawlor also questioned whether the change would affect seasonal [sic] events. Is this change intended to narrow or broaden the definition? Would this change have any effect on something like a Christmas party or a harvest carnival or other similar seasonal events?

The Guild commented its opinion that the justification for removal is insufficient. It prefers to keep more options included in rule rather than fewer.

RESPONSE 17: The department directs Mr. Lawlor and the Guild to the fifth paragraph of the department's reasonable necessity statement for the amendment where the department noted - based on its experience - that the example did not provide measurable guidance or clarification for licensees or the department. And the department notes that any special event could be construed as a seasonal event based on when the event is proposed - like a "Christmas in July" special event. The department was - and remains - satisfied that the examples of picnic, fair, festival, reception, or sporting contest provide the necessary level of clarity for examples of a special event without inclusion of non-exhaustive examples.

Regarding Mr. Lawlor's question about the change affecting the special event examples he mentions, the department responds "no." The removal of the example was not intended to either narrow or broaden the rule for all of the reasons stated in the department's reasonable necessity statement and the first paragraph of this response.

Notwithstanding the foregoing, and based on the comments received, the department has reinstated seasonal event as an example in the list of special events.

COMMENT 18: As an extension of Comment 17, Mr. Lawlor also requests the department place a number on how many events is infrequent and out of the ordinary.

RESPONSE 18: The department declines to place an arbitrary number on special events because the department's analysis of "infrequent and out of the ordinary" are fact-based analyses in that special events apply to both special permits and catered events, and what may be acceptable for a catered event may not be for a special permit.

COMMENT 19: The MTA and the GIA commented that ARM 42.12.111(2)(g) errantly omits legislative changes to 16-4-401, MCA, which increased ownership interest threshold percentages from ten percent to 15 percent.

RESPONSE 19: The department has amended the percentages in (2)(g), upon adoption, to reflect 16-4-401, MCA, as amended in 2023.

COMMENT 20: The Guild states that it has strong differences of opinion in the department's interpretation of the changes to 16-4-401, MCA, and disagrees that text in ARM 42.12.143(2)(c)(i) and (3)(b)(i) should be eliminated. The Guild believes elimination of this option in the rule enacts new law.

The MBA commented similarly with an analysis and a request. The MBA believes the rule is inconsistent with 16-4-401, MCA, which allows for a spouse to own a license, and the department has incorrectly determined that the spouse option for licensure is no longer necessary. Unless the department can assure the MBA that the reference to "except as provided in 16-4-401, MCA," provides adequate confirmation that spouses of manufacturers are still allowed to own a retail license, we request that the original language "except that a licensee's spouse may possess an ownership interest in one or more manufacturer licenses" be restored.

RESPONSE 20: The department responds to the Guild that the amended rule does not enact new law, as that task is reserved to the Legislature, and administrative rules are authorized and implemented by statute.

The department responds to the MBA that the amended rule does not conflict with the 16-4-401(8)(e), MCA, allowance for ownership by spouses. In fact, removal of the text from within the rule increases deference to the statute while not unnecessarily repeating statute. See 2-4-305(2), MCA.

However, the department agrees that ARM 42.12.143(2)(c)(i) and (3)(b)(i) could benefit from more specific deference to statute and has amended the rule subsections based on the comments.

COMMENT 21: Mr. Lawlor commented his belief that ARM 42.12.143(7) is confusing and would make more sense to just say a "licensee" rather than "a person with an ownership interest in a license," because when it is a colocated license the same person owns both.

The Guild commented that while they agree with all the allowances, as in previous sections to (7), the allowances do not negate the inverse. That is, there is no prohibition on a person with an ownership interest in a distillery from owning a brewery; on a person having an ownership interest in more than one distillery. As such, there is no prohibition on a person having an ownership interest in a distillery, a colocated all-beverage license, and an ownership interest in a different

manufacturing license (brewery, distillery, or winery) at a different location if the colocated retail and manufacturing licenses have complete overlap in ownership. The Guild requests the department confirm that simply because this allowance exists does not disallow other business that has been previously allowed.

RESPONSE 21: The department responds to Mr. Lawlor that the terminology/phrasing used in the rule is the same as what is in 16-4-401(9), MCA, and the department declines to revise it based on Mr. Lawlor's rationale.

The department responds to the Guild that HB 305 created colocated licenses in 16-4-401(9), MCA, to allow a limited exception of cross-tier (i.e., manufacturer/retailer) ownership in a license when the licensee has 100 percent of the same ownership between the manufacturing license and the retail license. This exception comports with the "safe harbor" exceptions in federal law (see e.g., 27 CFR 6.25 and 6.27). The Guild's examples do not comply with the statutory exception in 16-4-401(9), MCA, and do not comport with the longstanding policy that an applicant for a manufacturing license may not possess an ownership interest in any establishment licensed for retail sales (see 16-4-401(8)(g), MCA). The department also believes the Guild's requests exceed the plain language of 16-4-401, MCA, and the department's rulemaking authority.

COMMENT 22: The MBA commented its support to the amendment of ARM 42.12.149(4) which implements HB 43 by eliminating the requirement for refrigeration in a warehouse.

RESPONSE 22: The department appreciates the comments in support.

COMMENT 23: The MBA commented on ARM 42.12.149(7) that the reasonable necessity statement is meant to implement HB 579. However, HB 579 applied specifically to distilleries, while this proposed change affects all manufacturers' sample rooms. The MBA's concern is that the proposed rule goes beyond the intent and scope of HB 579.

RESPONSE 23: The department appreciates the MBA's comments and agrees as to the scope of HB 579 applying to distilleries. Based on the comments, the department has amended ARM 42.12.149(7) to clarify its applicability to distilleries only.

COMMENT 24: HDAM commented on ARM 42.12.150(1) that it believes the insertion of "association" after alcoholic beverage industry is duplicative and unnecessary since the beginning of that phrase already notes that an entity could be "a nonprofit association." HDAM comments that alcoholic beverage manufacturers in (1) should include an "s."

RESPONSE 24: Based on the comments provided, the department has corrected the association reference but notes that the alcoholic beverage manufacturers reference is correct as proposed.

COMMENT 25: The MTA commented on ARM 42.12.150(9) that (a) it should not apply to licensees; (b) that manufacturers/brewers have 16 oz. canned beverages – what about them?; (c) any limitations should be for non-licensees and events not at a licensed premises; and (d) it does not serve a productive purpose considering that the licensees are already allowed to generally sell alcohol to people.

The GIA concurred in the MTA's comments.

The Guild similarly commented that the amount of restrictions seems arbitrary and not based in any law. Additionally, the "per product, per person" language seems unenforceable. The Guild proposes eliminating this item from the proposed rules altogether.

RESPONSE 25: Upon further review, the department agrees with the MTA and GIA that regulating samples should be directed at industry trade shows that are not conducted in locations provided in ARM 42.12.150(5)(b), as licensees are accountable under the law for the sale of alcohol to people. Based on these comments, the department has removed (9)(d) from the rule and inserted the provision as new (10), upon adoption, to isolate the requirement to non-licensees.

As far as commenters' criticisms of the sample serving size, and to respond to the Guild's contention that the requirements are not based in law or are enforceable, the department directs commenters to 16-1-307(2)(b), MCA, which allows the department to establish quantities for samples at industry trade shows.

The sample serving amounts the department ultimately chose reflect longstanding industry serving sizes based on equivalency of alcohol content for liquor, beer, and wine, and do not reflect the number of samples that industry trade show attendees may obtain from each vendor or how it is that the vendor provides the sample (i.e., bottle, can, cup).

The department declines to respond to other comments that are outside the scope of the rulemaking and declines any further amendment to the rule, except as described above.

COMMENT 26: The MTA commented on ARM 42.12.152(3) that licensees are interested in using noncontiguous alcoholic beverage storage areas in the practice of catering and they are going to have related equipment and supplies that are not just alcoholic beverages. Further, the size of the facilities could be substantial. The word "only" in the section goes too far; everything should be alcohol adjacent, including trailers and vans.

The GIA similarly commented that the restriction on other nonalcoholic items in a noncontiguous alcoholic beverage storage area should be removed. This requirement is not included in the new law and the department does not have the authority to add additional requirements. It is reasonable to allow the licensee to store other items such as nonalcoholic beverages, mixes, glasses, paperwork, backup computers, delivery vehicles, catering items, etc. - items the licensees would normally have on its main licensed premises.

RESPONSE 26: The department agrees that a noncontiguous alcoholic beverage storage area or resort alternate alcoholic beverage storage facility may be used for a licensee's storage of supplies and equipment that are related to the sale

and service of alcoholic beverages. The department also agrees that the size of a noncontiguous alcoholic beverage storage area or resort alternate alcoholic beverage storage facility may vary depending on the licensee's operations, and could include catering delivery vehicles. The department's primary concern is that no alcoholic beverages are sold or consumed at any time at a noncontiguous alcoholic beverage storage area or resort alternate alcoholic beverage storage facility and that they are restricted to the licensee and its employees.

Based on the comments received, the department has amended ARM 42.12.152(3) to allow storage of equipment, supplies, and vehicles.

COMMENT 27: Mr. Lawlor and the MTA commented their respective opinions which generally object to ARM 42.12.209(6) which requires the current owner of a license to be current on the filing or payment of Montana state taxes or liquor fees, fines, or penalties. They question the appropriateness and offer that a purchaser, as applicant under a transfer application, has no control over a seller's tax status.

RESPONSE 27: The department respectfully responds that the comments are outside the scope of the rulemaking. Notwithstanding, the requirements have been in the administrative rules for 20 years based on the department's interpretation that all applicants meet - and licensees continue to meet – all requirements applicable to licensure, including tax compliance.

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 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 tax compliance for sellers of licenses.

COMMENT 28: Ms. DeMarois comments on ARM 42.13.106(6) and (7) that changes to 16-3-311, MCA, were intended to make life easier for licensees. She faults the department for reaching out to building health and fire officials, asking them if a licensee needs building permits. Ms. DeMarois contends there is confusion amongst the local agencies and the department about what exactly is needed and it is troubling to ask an applicant to provide proof or verification that they did not need a building permit.

Mr. Lawlor concurs with Ms. DeMarois and repeats his general objection that the department is involved at all in building code compliance regardless of whether the business has an alcohol license.

RESPONSE 28: The department agrees that the rule's clarity and alignment with 16-3-311, MCA, can be improved. Based on the comments received and the department's additional review of statute, the department has revised ARM 42.13.106(6) and (7) upon adoption.

COMMENT 29: The department received several comments of general

objection to the proposed amendments to ARM 42.13.211.

Mr. Lawlor, the MTA, and the MBA commented that the amendments do not seem to take into account colocated (i.e., stacked) licenses and that there is a broader range of names that a colocated licensee may call themselves, or advertise, and not be misleading to the public. The MBA requested an amendment upon adoption similar to ARM 42.12.145, that this restriction does not apply to "advertisements excepted in 16-3-244, MCA."

Ms. DeMarois concurred with the previous commenters and also that requirements for a licensee to post its license in the business is so that people can see what kind of license it is, who owns the license, and what is available under the license. Ms. DeMarois also commented frustration that the department has been inconsistent in the approval of names for licensed businesses citing some names are allowed, some are not, and that previously approved names have been subsequently disapproved.

The Guild commented its belief that the department is dictating language of business names where no need exists, questions the rationale for the rule changes, and questions who the department is attempting to protect with the rule amendments. The Guild views the amendments as burdensome requirements upon businesses without a compelling public interest.

The MBWDA questions whether there are examples of how this might apply to wholesalers/distributors. Specifically, if a wholesaler/distributor advertises via social media or other means, an event happening at a retail account, would this be seen as a violation?

HDAM notes that ARM 42.13.211(2) should have the word "as" inserted after ". . . a brewery advertising as . . . ."

RESPONSE 29: The proposed amendments to ARM 42.13.211 were not directed at colocated licensees or their premises, and the department stands by its statement of reasonable necessity for the changes. However, the department understands how proposed (2) could be construed as a pitfall for industry and raises questions such as the MBWDA offers. Accordingly, the department has struck proposed (2) from the adopted version of the rule and has renumbered the remaining sections.

In response to comments about advertising and signage requirements for colocated licensed establishments, there is no license requirement regarding signage in either ARM 42.13.211 or NEW RULE II. What does exist in administrative rule can be found in the suitability of premises rules, such as in ARM 42.12.145. Those conditions reflect longstanding premises requirements promulgated under 16-1-303, MCA, as necessary terms and conditions for licenses issued and granted under the Code. The department contends that premises suitability, whether colocated or not, is a fact-based analysis that is routinely determined during an inspection of the premises and whether " . . . the type of business is readily determinable due to indoor and outdoor signage and the premises' general layout and atmosphere." ARM 42.12.145(2)(j).

Because the existing suitability rules in ARM Title 42, chapter 12 sufficiently address issues of signage, the department declines to amend this rule any further than as described above.

COMMENT 30: The MBA commented on ARM 42.13.601 that the change from 100 barrels to 200 gallons in (4) is a good one that simply reflects HB 97 changes, and it also agrees with the definition for "distinct collaboration beer." The proposed definition is consistent with the intent of SB 312 to limit the number of collaboration beers a guest brewery may serve in their sample room to six annually.

However, the MBA does not think the requirement of a seven-day notice prior to the collaboration is necessary. SB 312 addresses breweries that participate in a collaboration to serve the produced beer in their own sample room and not whether breweries may participate in a collaboration. Thus, the proposed activity referred to in the reasonable necessity statement should be understood to refer to retail activity rather than manufacturing. Since beer typically takes four to six weeks from the brew day to having a product ready to serve, there should be sufficient time for the department to properly notify any impacted groups before any of the beer produced in the collaboration is ready to be packaged, delivered, and served to the public.

The MBA requests that the department strike "at least seven business days" from the proposed rule.

RESPONSE 30: The department appreciates the constructive comments from the MBA and understands the request for modification. Based on the comments, the department has modified "seven business days" in ARM 42.13.601(4)(j) to "three business days."

COMMENT 31: The department received comments objecting to the amendment to ARM 42.12.110(2) to remove the three-day mailing time from mailing a notice. Commenters believe that licensees should be afforded additional mailing time in the service of, and response to, notices as provided in (3).

RESPONSE 31: The department understands the commenters' concerns, and the department did not intend to propose a decrease in the amount of time to respond to a department action. The department adopted ARM 42.12.110 in 2005 with a three-day service completion time because it reflected Montana Rules of Civil Procedure 6(e)(2005) for responding to legal documents (e.g., notices). This was in addition to the 20-day response deadline in (3) which reflected longstanding department practice. Because calculating service completion dates was still somewhat confusing to licensees, the department began some time ago to reference 23 days as a response requirement in its notices even though Rule 6(e) was removed from the Montana Rules of Civil Procedure in 2011. The lack of a proposed amendment to ARM 42.12.110(3) to aggregate response times to reflect department process was an unintentional oversight.

Based on the comments and the need for consistency between the rule and department's acknowledgement portion of its notices, the department has amended ARM 42.12.110(3) to add three days to the 20-day response deadline.

/s/ Todd Olson
Todd Olson
Rule Reviewer

/s/ Brendan Beatty
Brendan Beatty
Director of Revenue

Certified to the Secretary of State September 10, 2024.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 42.17.101, 42.17.103, 42.17.105, 42.17.111, 42.17.113, 42.17.120, 42.17.122, 42.17.133, 42.17.203, 42.17.218, 42.17.304 through 42.17.306, 42.17.308, 42.17.313, and 42.17.601 through 42.17.604 and the repeal of ARM 42.17.131, 42.17.223, 42.17.310, 42.17.311, 42.17.315, and 42.17.317 pertaining to withholding and estimated income tax payments and the department's implementation of Senate Bill 399 (2021), Senate Bill 121 (2023), and House Bill 447 (2023)	)	NOTICE OF AMENDMENT AND REPEAL

TO: All Concerned Persons

1. On July 26, 2024, the Department of Revenue published MAR Notice No. 42-1081 pertaining to the public hearing on the proposed amendment and repeal of the above-stated rules at page 1839 of the 2024 Montana Administrative Register, Issue Number 14.

2. On August 19, 2024, the department held a public hearing to consider the proposed amendment and repeal. No interested persons appeared at the hearing. No oral or written comments were received.

3. The department has amended and repealed the above-described rules as proposed.

/s/ Todd Olson
Todd Olson
Rule Reviewer

/s/ Brendan Beatty
Brendan Beatty
Director of Revenue

Certified to the Secretary of State September 10, 2024.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 42.2.402 pertaining to the simplification of processing tax clearance certificates	))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On July 26, 2024, the Department of Revenue published MAR Notice No. 42-1082 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 1861 of the 2024 Montana Administrative Register, Issue Number 14.

2. On August 19, 2024, the department held a public hearing to consider the proposed amendment. No interested persons appeared at the hearing. No oral or written comments were received.

3. The department has amended the above-described rule as proposed.

/s/ Todd Olson
Todd Olson
Rule Reviewer

/s/ Brendan Beatty
Brendan Beatty
Director of Revenue

Certified to the Secretary of State September 10, 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 March 22 through September 6, 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.

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

ADMINISTRATION, Department of, Title 2

2-5-643 Intent to Award - Public Notice - Competitive Sealed Bids - Competitive Sealed Proposals - Sole Source Procurement - Exigency Procurements - Alternative Procurement Methods - Requisitions From the Agencies to the Division - Enforcing the Contract - Contract Renewal - Completion Notification for Contracts With Performance Security - Bid, Proposal, and Contract Performance Security, p. 770, 1450

2-12-646 Local Government Public Meeting Recordings, p. 781, 1574

2-59-642 Definitions - Out-of-State State-Chartered Bank or National Bank Seeking to Exercise Fiduciary Powers in Montana - Out-of-State Nonbank Trust Companies Seeking to Exercise Fiduciary Powers in Montana - Fiduciary Foreign Trust Companies, p. 490, 1058

(Public Employees' Retirement Board)

2-43-647 Defined Contribution Retirement Plan Investment Policy Statement and the Montana Fixed Fund Investment Policy Statement - 457(b) Deferred Compensation Plan Investment Policy Statement and the Montana Fixed Fund Investment Policy Statement, p. 784, 1576

2-43-648 Basic Period of Service - Receipt of Service Credit on or After Termination of Employment - Calculation of Highest Average Compensation or Final Average Compensation, p. 787, 1577

2-43-649 Distribution to Participant – Distribution Upon Death of Participant, p. 1498, 2051

AGRICULTURE, Department of, Title 4

4-24-284 Montana Pesticides Act, p. 1903

STATE AUDITOR, Office of, Title 6

6-285 Network Adequacy for Managed Care, p. 155, 713
6-286 Quality Assurance for Managed Care Plans, p. 162, 714
6-287 Required Disclosure Provisions in Medicare Supplements, p. 496, 1188
6-288 Pharmacy Benefit Manager Maximum Allowable Cost Appeals, p. 791, 1866
6-289 Registration Exemption for Investment Advisors to Private Funds – Examinations, p. 1405, 1999
6-291 Petition to Rulemaking – Model Procedural Rules, p. 2114

COMMERCE, Department of, Title 8

8-94-211 Submission and Review of Applications for Funding Under the Montana Coal Endowment Program (MCEP), p. 358, 964
8-94-215 Administration of the Community Development Block Grant (CDBG) Program, p. 1939
8-99-210 Administration of the Regional Assistance Program, p. 169, 716
8-99-213 Administration of the Tourism Development and Enhancement Revolving Loan Fund, p. 1257, 1871
8-99-214 Administration of the Agritourism Grants Program, p. 1941
8-101-212 Submission and Review of Applications for Funding Under the Coal Board, p. 499, 1059

EDUCATION, Title 10

(Board of Public Education)
10-53-139 English Language Proficiency Content Standards, p. 172, 720
10-53-140 World Language Content Standards, p. 1946
10-54-292 Early Literacy Targeted Intervention Programs, p. 1656, 721
10-56-286 Assessment Standards, p. 662, 2000
10-57-289 Educator Licensure Standards, p. 175, 1189
10-63-270 Early Childhood Education Standards, p. 185, 722

(Montana Arts Council)
10-111-2401 Model Rules – Grant Eligibility and Conditions, p. 1963

(Montana Historical Society)
10-121-2401 Collection Acquisition and Select Collection Loans, p. 1088, 1872

(Montana State Library)

24-7-419 Unemployment Insurance Appeals Board, p. 1519, 2060
24-17-413 Prevailing Wage Rate Adoption, p. 394, 966
24-22-411 Work-Based Learning Grants, p. 209, 610
24-29-412 Workers' Compensation, p. 398, 1066
24-29-417 Workers' Compensation, p. 991, 1456
24-30-408 Industrial and Workplace Safety, p. 1968
24-33-415 Construction Contractors, p. 507, 1072
24-33-416 Home Inspector Program, p. 672, 1192
24-35-420 Independent Contractors, p. 1521, 2061
24-35-421 Independent Contractor Exemption Certificate, p. 1528, 2063
24-40-414 Unemployment Insurance, p. 511, 1457
24-301-409 State Building Code, p. 1708
24-301-418 Underground Facilities, p. 1431, 2013

(Board of Barbers and Cosmetologists)
24-121-18 Board of Barbers and Cosmetologists, p. 1292, 2007

(Board of Chiropractors)
24-126-39 Board of Chiropractors, p. 680, 1461

(Board of Dentistry)
24-138-83 Board of Dentistry, p. 837
24-138-84 Dental Hygiene Limited Access Permit, p. 1782, 1463

(State Electrical Board)
24-141-39 State Electrical Board, p. 579, 1194

(Board of Funeral Service)
24-147-41 Board of Funeral Service, p. 697, 2012

(Board of Nursing)
24-159-96 Board of Nursing, p. 1428

(Board of Outfitters)
24-171-43 Board of Outfitters, p. 1642, 2149

(Board of Pharmacy)
24-174-81 Board of Pharmacy, p. 1659

(Board of Physical Therapy Examiners)
24-177-37 Board of Physical Therapy Examiners, p. 1335, 1882

(Board of Realty Regulation)
24-210-49 Fee Abatement – Administrative Suspension – Property Management – Timeshare Registration, p. 1701, 2153

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 August 2024 appear. Potential vacancies from October 1, 2024 through October 31, 2024, are also listed.

IMPORTANT

Membership on boards and commissions changes constantly. The following lists are current as of September 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 AUGUST 2024

Appointee	Appointed By	Succeeds	Appointment/End Date
Board of Funeral Service			
Mr. Christopher Holt	Governor	Moore	8/21/2024
Helena			7/1/2028
Qualifications (if required): Licensed Mortician			
Ms. LiElla Kelly	Governor	McGrath	8/21/2024
Helena			7/1/2027
Qualifications (if required): Public Member			
Board of Massage Therapy			
Ms. Chell Little	Governor	Sites	8/21/2024
Polson			7/1/2026
Qualifications (if required): Massage Therapist			
Board of Nursing Home Administrators			
Mr. Frank Thompson	Governor	Klotz	8/5/2024
Glasgow			6/30/2027
Qualifications (if required): Nursing Home Administrator			
Board of Veterinary Medicine			
Mr. Joshua Donald	Governor	Nelson	8/21/2024
Melville			7/1/2026
Qualifications (if required): Public Member			

EXECUTIVE BRANCH APPOINTEES FOR AUGUST 2024

Appointee	Appointed By	Succeeds	Appointment/End Date
Board of Veterinary Medicine Cont.			
Mr. Garrett Ryerson	Governor	McCann	8/21/2024
Manhattan			7/1/2027
Qualifications (if required): Licensed Veterinarian			
Commission on Community Service			
Ms. Kelly Ackerman	Governor	Reappointed	8/5/2024
Helena			7/1/2027
Qualifications (if required): Agency Representative			
Ms. Morgan Hubbard	Governor	Reappointed	8/5/2024
Forsyth			7/1/2027
Qualifications (if required): Youth Representative			
Mr. Peter Pace	Governor	New	8/5/2024
Great Falls			7/1/2027
Qualifications (if required): Youth Training and Workforce Development Representative			
Mr. Thomas Risberg	Governor	Reappointed	8/5/2024
Great Falls			7/1/2027
Qualifications (if required): Community Based Organization Representative			

EXECUTIVE BRANCH APPOINTEES FOR AUGUST 2024

Appointee	Appointed By	Succeeds	Appointment/End Date
Commission on Community Service Cont.			
Mr. James Swan	Governor	Reappointed	8/5/2024
Box Elder			7/1/2027
Qualifications (if required): Tribal Government Representative			
Board of Livestock			
Frederick Moore	Governor	Baucus	8/26/2024
Miles City			3/1/2029
Qualifications (if required): Cattle Producer			

EXECUTIVE BRANCH VACANCIES – OCTOBER 1, 2024 THROUGH OCTOBER 31, 2024

Board/Current Position Holder	Appointed By	Term End
State Historic Preservation Review Board		
Ms. Marcella Walter, Helena	Governor	10/1/2024
Qualifications (if required): History professional		
Dr. Delia Hagen, Missoula	Governor	10/1/2024
Qualifications (if required): History professional		
Mr. Jeffery Shelden, Lewistown	Governor	10/1/2024
Qualifications (if required): History professional		
Water and Wastewater Operators' Advisory Council		
Mr. Andrew S. Loudermilk, Kalispell	Governor	10/1/2024
Qualifications (if required): Water Treatment Plant Operator holding valid certificate		

MONTANA ADMINISTRATIVE REGISTER

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SEPTEMBER 20, 2024
PAGES 2173-2340

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