MONTANA ADMINSTRATIVE REGISTER

ISSUE NO. 8

The Montana Administrative Register (MAR), a twice-monthly publication, has three sections. The notice section contains state agencies' proposed new, amended or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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 section indicates that the proposed rule action is adopted and lists any changes made since the proposed stage. The interpretation section contains the attorney general's opinions and state declaratory rulings. Special notices and tables are found at the back 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 Administrative Rules Bureau at (406) 444-2055.

Page Number

TABLE OF CONTENTS

NOTICE SECTION

COMMERCE, Department of, Title 8

8-28-56 (Board of Medical Examiners) Notice of Public Hearing on Proposed Amendment - Examinations. 589-590

8-28-57 (Board of Medical Examiners) Notice of Public Hearing on Proposed Adoption - Occasional Case Exemptions. 591-592

8-57-16 (Board of Real Estate Appraisers) Notice of Public Hearing on Proposed Amendment - Qualifying Education Requirements for General Certification. 593-594

8-119-6 (Travel Promotion and Development Division) Notice of Public Hearing on Proposed Amendment - Tourism Advisory Council. 595-596

EDUCATION, Title 10

10-2-105 (Superintendent of Public Instruction) Notice of Public Hearing on Proposed Amendment - Special Education - Parental Consent. 597-600

Page Number

FISH, WILDLIFE, AND PARKS, Department of, Title 12

12-269 (Fish, Wildlife and Parks Commission) Notice of Public Hearing on Proposed Amendment - Creating No Wake Zones on Hauser Lake near Devil's Elbow Campground, Clark's Bay, and York Bridge Fishing Access Site. 601-603

PUBLIC HEALTH AND HUMAN SERVICES, Department of, Title 37

37-189 Notice of Public Hearing on Proposed Amendment - Medicaid Fees - Reimbursement Requirements for Prosthetic Devices, Durable Medical Equipment (DME) and Medical Supplies. 604-611

37-190 Notice of Public Hearing on Proposed Amendment - Resource Based Relative Value Scale (RBRVS) Reimbursement. 612-616

37-191 Notice of Public Hearing on Proposed Adoption and Amendment - Dental Services - Eyeglasses Reimbursement. 617-621

37-192 Notice of Proposed Amendment - Fair Hearings and Contested Case Proceedings. No Public Hearing Contemplated. 622-625

37-193 Notice of Public Hearing on Proposed Amendment - Medicaid Hospital Reimbursement. 626-641

37-194 Notice of Public Hearing on Proposed Amendment - Nursing Facilities. 642-656

RULE SECTION

ADMINISTRATION, Department of, Title 2

NEW (State Compensation Insurance Fund)
AMD Calculation of Manual Rages - Premium Rates
REP and Premium Modifiers - Ratemaking. 657-658

COMMERCE, Department of, Title 8

AMD (Board of Optometry) Unprofessional Conduct. 659

ENVIRONMENTAL QUALITY, Department of, Title 17

AMD (Petroleum Tank Release Compensation Board) Insurance Coverage - Third-Party Liability - Investigation - Disclosure - Subrogation - Coordination of Benefits. 660-670

Page Number

CORRECTIONS, Department of, Title 20

REP NEW Supervised Release Program - Admission Program Review - Termination From and Certification of Completion of Offenders in the Boot Camp Incarceration Program. 671

AMD NEW Parole and Discharge of Youth. 672

JUSTICE, Department of, Title 23

AMD Grounds for Suspension or Revocation of Peace Officers' Standards and Training Certification. 673

NEW AMD Permitting Proportionate Reductions in Crime Victim Benefits - Payment of Benefits to Crime Victims. 674

PUBLIC HEALTH AND HUMAN SERVICES, Department of, Title 37

AMD Health Care Licensure. 675

AMD Interstate Compact on the Placement of Children. 676

Corrected Notice of Adoption of Temporary Emergency Rules - Medicaid Reimbursement for Inpatient and Outpatient Hospital Services. 677-684

INTERPRETATION SECTION

Before the Department of Commerce, Board of Nursing.

Petition for Declaratory Ruling.

In the Matter of the Petition for Declaratory Ruling on the Issue of Whether the Scope of Practice of Registered Nurses includes Performing Microdermabrasion Procedures in an Independent Setting. 685-688

<u>Page Number</u>

SPECIAL NOTICE AND TABLE SECTION

Functions of Administrative Rule Review Committee.	689-690
How to Use ARM and MAR.	691
Accumulative Table.	692-701
Boards and Councils Appointees.	702-709
Vacancies on Boards and Councils.	710-733

BEFORE THE BOARD OF MEDICAL EXAMINERS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed amendment of ARM 8.28.416 pertaining to examinations	)	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On May 30, 2001, at 9:00 a.m., a public hearing will be held in the Division of Professional and Occupational Licensing small conference room, 4th Floor, Federal Building, 301 South Park Avenue, Helena, Montana to consider the proposed amendment of the above-stated rule.

2. The Department of Commerce will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Medical Examiners no later than 5:00 p.m., on May 15, 2001, to advise us of the nature of the accommodation that you need. Please contact Charlene M. Norris, Board of Medical Examiners, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2360; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2363; e-mail cnorris@state.mt.us.

3. The proposed amendments will read as follows: (new matter underlined, deleted matter interlined)

8.28.416 EXAMINATION (1) ~~The board will administer USMLE Step III to applicants otherwise qualified for licensure in Montana.~~

~~(2) An applicant for USMLE Step III shall pay the examination fee listed in ARM 8.28.420.~~

~~(3)~~ Eligibility requirements for USMLE Step III are:

(a) through (d) will remain the same.

~~(4)~~ (2) USMLE Step III must be taken within seven years of the applicant's first examination under ~~(3)~~(1)(c) above.

(5) will remain the same but be renumbered (3).

~~(6)~~ (4) For exams taken ~~P~~prior to January 1, 2000, the board will accept the following combination of examinations passed with a score of 75 or more for each component exam, in satisfaction of the examination requirement for licensure:

(a) through (e) will remain the same.

~~(7)~~ (5) For exams taken ~~A~~after January 1, 2000, the board will accept only USMLE Steps 1, 2 and 3, passed with a score of 75 or more for each step.

(8) will remain the same but be renumbered (6).

Auth: Sec. 37-3-203, MCA
IMP: Sec. 37-3-306, 37-3-307, 37-3-308, 37-3-311, MCA

REASON: The proposed amendment will modernize the rules to reflect that the Board no longer administers USMLE Step III

and also clarifies the examinations or combination of examinations that the Board will accept prior to and after January 1, 2000. This rule affects applicants who are required to pass examinations.

4. Concerned persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Board of Medical Examiners, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2363, or by e-mail to cnorris@state.mt.us and must be received no later than the close of the hearing on May 30, 2001. If comments are submitted in writing, the Board requests that the person submit 13 copies of their comments.

5. Charlene M. Norris, attorney, has been designated to preside over and conduct this hearing.

6. The Board of Medical Examiners maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this Board. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding all Board of Medical Examiners administrative rulemaking proceedings or other administrative proceedings. Such written request may be mailed or delivered to the Board of Medical Examiners, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, faxed to the office at (406) 841-2363, e-mailed to cnorris@state.mt.us or may be made by completing a request form at any rules hearing held by the agency.

7. The bill sponsor notice requirements of 2-4-302, MCA, do not apply.

BOARD OF MEDICAL EXAMINERS
LAWRENCE R. McEVOY, M.D.,
PRESIDENT

By: /s/ Annie M. Bartos
ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE

By: /s/ Annie M. Bartos
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, April 16, 2001.

BEFORE THE BOARD OF MEDICAL EXAMINERS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed adoption of new rule I pertaining to occasional case exemptions	) NOTICE OF PUBLIC HEARING) ON PROPOSED ADOPTION))

TO: All Concerned Persons

1. On May 30, 2001 at 1:00 p.m., a public hearing will be held in the Professional and Occupational Licensing Division small conference room, 4th Floor, Federal Building, 301 South Park Avenue, Helena, Montana to consider the proposed adoption of the above-stated rule.

2. The Department of Commerce will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Medical Examiners no later than 5:00 p.m., on May 15, 2001 to advise us of the nature of the accommodation that you need. Please contact Charlene M. Norris, Board of Medical Examiners, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2360; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2363; e-mail cnorris@state.mt.us.

3. The proposed new rule provides as follows:

NEW RULE I OCCASIONAL CASE EXEMPTION (1) The board may, in its discretion, grant an exemption to a physician who renders medical services in this state, provided that the physician:

(a) submits a written request to the board, describing the date, place, and the scope of practice and/or the procedure to be performed, at least 15 days prior to such service;

(b) submits proof of medical licensure (active and in good standing) and practice in another state or territory of the United States;

(c) submits the name of a physician licensed in this state who will be in attendance and will assume continuing care for the patient; and

(d) limits the service to an occasional case.

(2) An occasional case is defined as not more than two cases per year.

Auth: Sec. 37-3-203, MCA
IMP: Sec. 37-3-103, MCA

REASON: This proposed new rule will create a procedure whereby out-of-state physicians may apply for an exemption to licensure requirements in the occasional case, as set forth in

37-3-103(1)(b), MCA. This new rule affects out-of-state physicians, not Montana licensees.

4. Concerned persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Board of Medical Examiners, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2363, or by e-mail to cnorris@state.mt.us and must be received no later than the close of the hearing on May 30, 2001. If comments are submitted in writing, the Board requests that the person submit 13 copies of their comments.

5. Charlene M. Norris, attorney, has been designated to preside over and conduct this hearing.

6. The Board of Medical Examiners maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this Board. Persons who wish to have their name added to the list shall make a written request to the board which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding all Board of Medical Examiners administrative rulemaking or other administrative proceedings. Such written request may be mailed or delivered to the Board of Medical Examiners, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, faxed to the office at (406) 841-2363, e-mailed to cnorris@state.mt.us or may be made by completing a request form at any rules hearing held by the agency.

7. The bill sponsor notice requirements of 2-4-302, MCA, do not apply.

BOARD OF MEDICAL EXAMINERS
LAWRENCE R. McEVOY, M.D.
PRESIDENT

By: /s/ Annie M. Bartos
ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE

By: /s/ Annie M. Bartos
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, April 16, 2001.

BEFORE THE BOARD OF REAL ESTATE APPRAISERS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed amendment of ARM 8.57.409 pertaining to qualifying education requirements for general certification	) NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On May 22, 2001, at 10:00 a.m., a public hearing will be held in the Division of Professional and Occupational Licensing conference room #487, 4th Floor, Federal Building, 301 South Park Avenue, Helena, Montana to consider the proposed amendment of the above-stated rule.

2. The Department of Commerce will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Real Estate Appraisers no later than 5:00 p.m., on May 8, 2001, to advise us of the nature of the accommodation that you need. Please contact Lorri Sandrock, Board of Real Estate Appraisers, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2386; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail compolrea@state.mt.us.

3. The proposed amendments will read as follows: (new matter underlined, deleted matter interlined)

8.57.409 QUALIFYING EDUCATION REQUIREMENTS FOR GENERAL CERTIFICATION (1) through (3) will remain the same.

(4) To upgrade from a licensed real estate appraiser ~~or~~ to a certified ~~residential~~ general real estate appraiser, an appraiser may use education obtained for ~~licensing or residential certification~~ licensure as a licensed real estate appraiser with the additional ~~60~~ 90 hours being obtained from non-residential courses.

(5) To upgrade from a certified residential real estate appraiser to a certified general real estate appraiser, an appraiser may use education obtained for licensure as a licensed real estate appraiser or residential certification with the additional 60 hours being obtained from non-residential courses.

Auth: Sec. 37-1-131, 37-54-105, MCA
IMP: Sec. 37-1-131, 37-54-105, 37-54-303, MCA

REASON: The Board is proposing the amendments to this rule to clarify the educational requirement to upgrade from a licensed real estate appraiser to a certified general real estate appraiser. The current rule only addresses the educational

requirement to upgrade from a certified residential real estate appraiser to a certified general real estate appraiser. The additional hours of education that are required to upgrade from a licensed real estate appraiser to a certified general real estate appraiser remains 90 hours.

4. Concerned persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Board of Real Estate Appraisers, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to compolrea@state.mt.us and must be received no later than 5:00 p.m., May 24, 2001. If comments are submitted in writing, the Board requests that the persons submit nine copies of their comments.

5. F. Lon Mitchell, attorney, has been designated to preside over and conduct this hearing.

6. The Board of Real Estate Appraisers maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this Board. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding all Board of Real Estate Appraisers administrative rulemaking proceedings or other administrative proceedings. Such written request may be mailed or delivered to the Board of Real Estate Appraisers, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, faxed to the office at (406) 841-2305, e-mailed to compolrea@state.mt.us or may be made by completing a request form at any rules hearing held by the agency.

7. The bill sponsor notice requirements of 2-4-302, MCA, do not apply.

BOARD OF REAL ESTATE APPRAISERS
TIMOTHY MOORE, CHAIRMAN

By: /s/ Annie M. Bartos
ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE

By: /s/ Annie M. Bartos
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, April 16, 2001.

BEFORE THE TRAVEL PROMOTION AND DEVELOPMENT DIVISION
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed amendment of ARM 8.119.101 pertaining to the Travel Promotion and Development Division	)	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On May 16, 2001, at 9:00 a.m., a public hearing will be held in the upstairs conference room at the Department of Commerce, 1424 Ninth Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rule.

2. The Travel Promotion and Development Division will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Travel Promotion and Development Division no later than 5:00 p.m., on May 11, 2001 to advise us of the nature of the accommodation that you need. Please contact Rachel Zeigler, Travel Promotion and Development Division, 1424 Ninth Avenue, PO Box 200533, Helena, Montana 59620-0533; telephone (406) 444-2654; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 444-1800; e-mail to rzeigler@state.mt.us.

3. The proposed amendment will read as follows: (new matter underlined, deleted matter interlined)

8.119.101 TOURISM ADVISORY COUNCIL (1) will remain the same.

(2) The tourism advisory council hereby incorporates by reference the guide entitled "Regulations and Procedures for Regional/CVB Tourism Organizations, February ~~2000~~ 2001" setting forth the regulations and procedures pertaining to the distribution of ~~accommodation~~ lodging facility use tax revenue. The guide is available for public inspection during normal business hours at the Montana Travel Promotion and Development Division, Department of Commerce, 1424 Ninth Avenue, Helena, MT 59620. Copies of the guide are available on request.

(3) Distribution of funds to regional nonprofit tourism corporations and to nonprofit convention and visitor's bureaus is contingent upon compliance with the "Regulations and Procedures for Regional/CVB Tourism Organizations, February ~~2000~~ 2001."

Auth: Sec. 2-15-1816, MCA
IMP: Sec. 2-15-1816, MCA

REASON: It is reasonably necessary to amend this rule to provide clarification because the "2001 Regulations and

Procedures for the Regional/CVB Tourism Organizations" have been revised.

4. Concerned persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Travel Promotion and Development Division, 1424 Ninth Avenue, PO Box 200533, Helena, Montana, 59620-0533; by facsimile to (406) 444-1800; or e-mail to rzeigler@state.mt.us to be received no later than 5:00 p.m., May 24, 2001.

5. Matthew T. Cohn has been designated to preside over and conduct this hearing.

6. The Travel Promotion and Development Division maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this Division. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding all Travel Promotion and Development Division administrative rulemaking proceedings or other administrative proceedings. Such written request may be mailed or delivered to the Travel Promotion and Development Division, 1424 Ninth Avenue, PO Box 200533, Helena, Montana 59620-0533 or made by phone at (406) 444-2654, or may be made by completing a request form at any rules hearing held by the agency.

7. The notice requirements of 2-4-302, MCA, do not apply.

TRAVEL PROMOTION AND DEVELOPMENT DIVISION

By: /s/ Annie M. Bartos
ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE

By: /s/ Annie M. Bartos
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State April 16, 2001.

BEFORE THE SUPERINTENDENT OF PUBLIC INSTRUCTION
OF THE STATE OF MONTANA

In the matter of the proposed amendment of ARM 10.16.3505, pertaining to special education	)))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On May 22, 2001, at 9:00 a.m. a public hearing will be held in Room 172, first floor, west wing of the State Capitol Building, Helena, Montana, to consider the amendment of ARM 10.16.3505.

2. The Office of Public Instruction will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Office of Public Instruction no later than 5:00 p.m. on May 14, 2001, to advise us of the nature of the accommodation that you need. Please contact Pat Reichert, Office of Public Instruction, P.O. Box 202501, Helena, Montana 59620-2501, telephone: (406)444-3172, FAX: (406)444-2893. A TTD number will be available upon request.

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

10.16.3505 PARENTAL CONSENT (1) remains the same.

~~(3)~~(a) When parental consent for initial evaluation ~~or initial placement~~ is refused, the local educational ~~or public~~ agency shall informally attempt to obtain consent from the parent before requesting an impartial due process hearing under ARM 10.16.3507 through 10.16.3523, to determine if the student may be initially evaluated ~~or initially provided special education and related services~~ without parental consent.

~~(3)(a)~~(b) If the hearing officer upholds the local educational ~~or public~~ agency, the local educational ~~or public~~ agency may initially evaluate ~~or initially provide special education and related services to~~ the student without parental consent subject to the parent's right to bring a civil action.

(2) Written parental consent for initial and annual placement of a student with disabilities in special education and related services shall be obtained by the local educational ~~or public~~ agency prior to the placement ~~except as provided in (3)~~.

(a) and (b) remain the same.

~~(3)(b)~~(c) When parental consent for annual placement has not been obtained and has not been specifically refused ~~or~~

~~revoked~~, the local educational ~~or public~~ agency shall informally attempt to obtain consent from the parent.

(i) If parental consent cannot be obtained within a reasonable time, the local educational ~~or public~~ agency shall send written notice to the parent requesting approval and stating that the student with disabilities shall be provided special education and related services according to the student's individualized education program (IEP) as developed by the local educational agency 15 days from the date of the notice.

(ii) If no response from the parent is obtained, the local educational ~~or public~~ agency shall provide the student special education and related services according to the student's IEP without parental consent subject to the parent's right to an impartial due process hearing under ARM 10.16.3507 through 10.16.3523.

~~(3)(c)~~(d) When parental consent for annual placement is refused ~~or revoked~~, the local educational ~~or public~~ agency shall informally attempt to obtain consent from the parent. If, after exhausting informal attempts, the local educational agency is unable to obtain consent or resolve the disagreement, the local educational agency shall:

(i) remains the same.

(ii) if the local educational agency believes its proposed annual placement is necessary to ensure a free appropriate public education, it ~~may~~ shall file a request for special education due process hearing in accordance with ARM 10.16.3507 through 10.16.3523, or take other action necessary to ensure that a parent's refusal to consent does not result in a failure to provide the student with a free appropriate public education.

~~(3)(d)~~(3) A parent may revoke consent at any time. If a parent revokes consent, that revocation is not retroactive (i.e., it does not negate an action that has occurred after the consent was given and before the consent was revoked). If the parent revokes consent, the parent and the local educational agency have the right to due process procedures under ARM 10.16.3507 through 10.16.3523.

AUTH: 20-7-402, MCA
IMP: 20-7-403, 20-7-414, MCA

4. STATEMENT OF REASONABLE NECESSITY: Amendments to this rule are required by the Office of Special Education Programs (OSEP), United States Department of Education, in order for Montana's Part B eligibility document to comply with the Individuals with Disabilities Education Act (IDEA), Part B regulations. Montana's eligibility for Part B special education funding is contingent on compliance with IDEA, Part B regulations. The OSEP determined that the rule is inconsistent with federal regulations in that it allows a school district to initiate a due process hearing to override a parent's refusal to consent to the initial provision of special education and related services. The OSEP also

indicated in a conference call that the rule is inconsistent with federal regulations in that the rule does not require a local educational agency to ensure that a parent's refusal to consent to annual placement does not result in a failure to provide the student with a free appropriate public education. Amendments to this rule will correct the inconsistencies between the rule and IDEA, Part B regulations.

The OSEP also suggested clarification to the language of the rule pertaining to a parent's right to revoke consent at any time. Language has been added to the rule to clarify that revocation of consent by a parent is not retroactive, which is consistent with language in the federal regulations.

Finally, the Office of Public Instruction is proposing the following changes to clarify the language and organization of the rule: (A) The phrase "local educational or public agency" is being changed to make it consistent throughout the rule; and (B) Several subsections of the rule have been rearranged to allow the rule to flow more logically. In particular, subsection (1) now pertains to evaluations and subsection (2) pertains to placement.

5. Concerned persons may submit their data, views or arguments concerning the proposed amendments in writing to the Office of Public Instruction, P.O. Box 202501, Helena, Montana 59620-2501, or by e-mail to opirules@state.mt.us and must be received no later than 5:00 p.m. on June 5, 2001.

6. Jeffrey A. Weldon, of the Legal Services Unit, Office of Public Instruction, has been designated to preside over and conduct the hearing.

7. The Office of Public Instruction 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 which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding special education or other school related rulemaking actions. Such written request may be mailed or delivered to Legal Services, Office of Public Instruction, 1227 11th Avenue, P.O. Box 202501, Helena, MT 59620-2501, or may be made by completing a request form at any rules hearing held by the Office of Public Instruction.

8. The bill sponsor notice requirements of 2-4-302, MCA do not apply. The requirements of 20-1-501, MCA, have been fulfilled. Copies of these rules have been sent to all tribal governments in Montana.

By: /s/ Linda McCulloch
Linda McCulloch
Superintendent
Office of Public Instruction

/s/ Jeffrey A. Weldon
Jeffrey A. Weldon
Rule Reviewer
Office of Public Instruction

Certified to the Secretary of State April 16, 2001.

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

In the matter of the amendment of ARM 12.11.3205, creating no wake zones on Hauser Lake near Devil's Elbow Campground, Clark's Bay, and York Bridge fishing access site	)	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On May 24, 2001, the Fish, Wildlife and Parks Commission (commission) will hold a public hearing from 7:00 p.m. to 9:00 p.m. at the Department of Fish, Wildlife and Parks commission room, 1420 East Sixth Avenue, Helena, Montana to consider amending ARM 12.11.3205, creating no wake zones on Hauser Lake near Devil's Elbow Campground, Clark's Bay, and York Bridge fishing access site.

2. The commission will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Fish, Wildlife and Parks no later than 5:00 p.m. on May 7, 2001, to advise us of the nature of the accommodation that you need. Please contact Bobbi Clark, Fish, Wildlife and Parks, 930 Custer Avenue West, P.O. Box 200701, Helena, Montana 59620-0701, telephone (406) 444-4720, fax (406) 449-8997.

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

12.11.3205 HAUSER RESERVOIR (1) Hauser Reservoir is located in Lewis and Clark County.

(2) Hauser Reservoir is limited to a controlled no wake speed, as defined in ARM 12.11.101(1), in the following areas:

(a) Lakeside marina within 300 feet of the docks or as buoyed;

(b) Hauser Lake State Park at Black Sandy beach within 300 feet of the docks or as buoyed; ~~and~~

(c) Spokane Creek Bay within 500 feet from the mouth of the bay or as buoyed~~.~~;

(d) Devil's Elbow Campground, from the campground shore to 100 feet into the Missouri River channel or as buoyed;

(e) Clark's Bay from shoreline to 300 feet from shore or as buoyed; and

(f) York Bridge fishing access site within 300 feet of the boat ramp and dock area or as buoyed.

(3) remains the same.

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

4. The commission is proposing the rule amendments at Clark's Bay and Devil's Elbow at the request of the Bureau of Land Management (BLM). In addition, a no wake zone at the York Bridge Fishing Access Site is being proposed in response to safety concerns.

As of this year, improvements will be completed at the BLM Devil's Elbow Campground and Clark's Bay site. Devil's Elbow Campground will now have a dock site, or spit, that extends approximately fifty feet into the river channel. A flood light will be installed on this structure and will be left on at night to provide safety for users on the structure as well as make the structure visible to boaters. With the improvements, increasing public use and boat traffic is expected. Both the commission and the BLM believe that the proposed no wake zones are necessary to protect the safety of recreators using these areas, to protect boats moored at these docks, and to protect the shoreline from damage from wave action.

Historically, York Bridge Fishing Access Site has been an area that is heavily used by motorized watercraft. For the last several years, safety concerns prompted marking the York Bridge Fishing Access Site as a no wake zone, but observance of the no wake speed in this area has been voluntary. With the continued increase in use of motorized watercraft, the commission believes that it is necessary to make this no wake zone enforceable in order to protect the recreators using this area from those users who show disregard for public safety and property by traveling at high speeds in this area despite the suggested no wake zone.

The change in the language to include Hauser Lake State Park is simply a locale clarification, as Black Sandy Beach is contained within the park and is the portion of the site where docks, boat ramps, and developed moorings are located.

5. Concerned persons may present their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to Mike Korn, HARO, P.O. Box 200701, Helena, MT 59620-0701, telephone 449-8864, extension 152, fax (406) 449-8897, E-mail mkorn@state.mt.us, and must be received no later than June 4, 2001.

6. Mike Korn has been designated to preside over and conduct the hearing.

7. The agency 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 which includes the name and mailing address of the person to receive the notice and specifies the subject or subjects about which the person wishes to receive notice. Such written request may be mailed or delivered to Fish, Wildlife and Parks, Legal Unit, P.O. Box 200701, 1420 East

6th Avenue, Helena, MT 59620-0701, faxed to the office at (406) 444-7456, or may be made by completing the request form at any rules hearing held by the department.

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

By: /s/ M. Jeff Hegener
M. JEFF HEGENER
Secretary, Fish, Wildlife and Parks Commission

By: /s/ Rebecca Dockter Engstrom
REBECCA DOCKTER ENGSTROM
Rule Reviewer

Certified to the Secretary of State April 16, 2001

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

In the matter of the amendment of rules 37.86.1802, 37.86.1806, and 37.86.1807 pertaining to medicaid fees and reimbursement requirements for prosthetic devices, durable medical equipment (DME) and medical supplies	)	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Interested Persons

1. On May 22, 2001, at 10:00 a.m., a public hearing will be held in the auditorium of the Department of Public Health and Human Services Building, 111 N. Sanders, Helena, Montana to consider the proposed amendment of the above-stated rules.

The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who need an alternative accessible format of this notice or provide reasonable accommodations at the public hearing site. If you need to request an accommodation, contact the department no later than 5:00 p.m. on May 8, 2001, to advise us of the nature of the accommodation that you need. Please contact Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210; telephone (406)444-5622; FAX (406)444-1970; Email dphhslegal@state.mt.us.

2. The rules as proposed to be amended provide as follows. Matter to be added is underlined. Matter to be deleted is interlined.

37.86.1802 PROSTHETIC DEVICES, DURABLE MEDICAL EQUIPMENT, AND MEDICAL SUPPLIES, GENERAL REQUIREMENTS (1) remains the same.

(2) Reimbursement for prosthetic devices, durable medical equipment and medical supplies shall be limited to items delivered in the most appropriate and cost effective manner. The items must be medically necessary and prescribed in writing prior to delivery by a physician or other licensed practitioner of the healing arts within the scope of his practice as defined by state law.

(a) ~~A copy of the~~ The prescription must ~~be attached to the claim and~~ indicate the diagnosis, the medical necessity, and projected length of need for prosthetic devices, durable medical equipment and medical supplies. The original prescription must be retained in accordance with the requirements of ARM 37.85.414. Prescriptions for medical supplies used on a continuous basis shall be renewed by a physician at least every 12 months and must specify the monthly quantity of the supply.

(i) through (3) remain the same.

(4) The following items are not reimbursable by the program:

(a) ~~medicare covered~~ items determined not to be medically necessary by the medicare program;

(b) through (d) remain the same.

(e) nutrient solutions except when they are for parenteral and enteral nutrition therapy, are the primary source of nutrition for patients, and are medically appropriate; ~~and~~

(f) purchase of air fluidized beds~~.~~; and

(g) any delivery, mailing or shipping fees or other costs of transporting the item to the recipient's location.

(5) remains the same.

AUTH: Sec. 53-2-201 and 53-6-113, MCA
IMP: Sec. 53-6-101, 53-6-113 and 53-6-141, MCA

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

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

(a) through (c) remain the same.

(d) A prior authorization is required for the following:

(i) for any line item of prosthetic device, durable medical equipment, medical supplies and related maintenance, repair and services on which the department's fee is equal to or greater than $1,000; ~~charges exceed $1000.00;~~

~~(ii) rental of air fluidized beds;~~

~~(iii) augmentative communication devices;~~

~~(iv) purchase of hospital beds; and~~

~~(v)~~ (ii) purchase of wheelchairs and wheelchair accessories if the combined charges for the wheelchair and accessories exceed $1,500 or if the provisions of (1)(d)(i) apply;

(A) All prior authorization requests for wheelchairs and wheelchair accessories must include submission to the department of the pertinent manufacturer's price list pages for the requested item; and

(iii) all other items identified as requiring prior authorization in the department's fee schedule referenced in ARM 37.86.1807(2)(d).

~~(A) All wheelchairs and wheelchair accessories with combined charges exceeding $1,500 or with charges for any single item exceeding $1,000 are subject to review by the department for medical necessity and must be prior authorized by the department. All prior authorization requests must include submission to the department of the pertinent manufacturer's price list pages for the requested item.~~

(e) and (f) remain the same.

(2) For items that require prior authorization, the authorization number must be ~~attached to~~ included on the submitted claim.

(3) through (5) remain the same.

~~(6) If the department's fee calculated under ARM 37.86.1807(3) for a requested wheelchair and/or wheelchair accessories would exceed $3,499.99, including both the wheelchair and any accessories, the wheelchair and accessories will be purchased and the reimbursement amount determined through a competitive bid process conducted by the department or the department of administration.~~

~~(a) The department will be entitled to recover from the provider the entire fee paid for a wheelchair and all accessories if:~~

~~(i) the wheelchair or accessory was not purchased through a competitive bid process because the fee was less than $3,500;~~

~~(ii) the department determines on post-payment review that accessories were later added with no documented change in medical condition and that the fees for the additional accessories, together with the amount of the wheelchair and accessories originally purchased, exceed $3,500; and~~

~~(iii) the department did not prior authorize the complete package of wheelchair and accessories either at the time of the original wheelchair purchase or at the time the later accessories were added.~~

~~(7)~~ (6) Medical coverage of diapers is limited to 180 diapers per recipient per month. ~~Medicaid will not reimburse delivery fees in addition to the amount reimbursed for diapers.~~

AUTH: Sec. 53-2-201 and 53-6-113, MCA
IMP: Sec. 53-2-201, 53-6-101, 53-6-111, 53-6-113 and 53-6-141, MCA

37.86.1807 PROSTHETIC DEVICES, DURABLE MEDICAL EQUIPMENT, AND MEDICAL SUPPLIES, FEE SCHEDULE (1) remains the same.

(2) The department's fee schedule, referred to in ARM 37.86.1806(1), for items other than wheelchairs and wheelchair accessories, shall include fees set and maintained according to the following methodology:

(a) through (b)(i) remain the same.

(c) Except as provided in ~~(2)(f)~~ (3), for all items for which no fee has been set under the provisions of (2)(b), the department's fee schedule amount shall be 90% of the provider's usual and customary charge.

(i) For purposes of (2)(c) and (3), the amount of the provider's usual and customary charge may not exceed the reasonable charge usually and customarily charged by the provider to all payers. The charge will be considered reasonable if less than or equal to the manufacturer's suggested list price. For items without a manufacturer's suggested list price, the charge will be considered reasonable if the provider's acquisition cost from the manufacturer is at least 50% of the charge amount. For items that are custom fabricated at the place of service, the amount charged will be considered reasonable if it does not exceed the average charge of all medicaid providers by more than 20%. For rental items, the reasonable monthly charge may not exceed a percentage of the reasonable purchase charge, as specified in ARM 37.86.1806(3).

(d) The department's fee schedule effective July 1, ~~2000~~ 2001 setting forth the reimbursement rates for prosthetic devices, durable medical equipment, medical supplies and other medicaid services, which is hereby adopted and incorporated by reference. A copy of the department's fee schedule may be obtained from the Department of Public Health and Human Services, Health Policy and Services Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

(e) remains the same.

(3) The department's fee schedule, referred to in ARM 37.86.1806(1), for all wheelchairs and wheelchair accessories shall be ~~83% of the manufacturer's list price at the date the item is ordered by the provider~~ 80% of the provider's usual and customary charge as defined in (2)(c)(i).

(a) remains the same.

(4) The department shall adjust the fee schedule to implement increases or decreases in reimbursement authorized or directed by enactment of the legislature as follows:

(a) The department shall increase or decrease those fees established as provided in (2)(b)~~, (2)(d)(i) and (2)(e)~~ by the amount or percentage authorized or directed by the legislature. Such increase or decrease shall be effective as provided by the legislature.

(b) remains the same.

AUTH: Sec. 53-2-201 and 53-6-113, MCA
IMP: Sec. 53-2-201, 53-6-101, 53-6-111, 53-6-113 and 53-6-141, MCA

3. The Department of Public Health and Human Services (the Department) administers the Montana Medicaid program, which pays medical expenses for eligible low income individuals. Providers of prosthetic devices, durable medical equipment, and medical supplies who furnish items to Medicaid recipients must comply with certain requirements set forth in ARM 37.86.1802 and 37.86.1806 in order to receive reimbursement from the Montana Medicaid program. The amount of reimbursement they may receive is governed by ARM 37.86.1807, which describes the Department's fee schedule used and other matters relating to reimbursement rates.

The amendment of ARM 37.86.1802 is necessary at this time because the Department proposes to eliminate the competitive bid process currently used to purchase wheelchairs for Medicaid recipients. Subsections (6)(a)(i) through (iii) of ARM 37.86.1802 currently provide that in cases where the Department's fee for a wheelchair with its accessories would exceed $3,499.99, the wheelchair must be purchased and reimbursement for the wheelchair must be determined through a competitive bid process conducted by the Department. It has been the Department's practice to delegate the conduct of the bid process for wheelchairs over this dollar amount to the Department of Administration's State Procurement Bureau.

The Department proposes to eliminate this competitive process by deleting subsections (6) through (6)(a)(iii) which specify when the competitive bid process must be used. The competitive purchasing process will be eliminated because of problems it has created for Medicaid recipients and providers of durable medical equipment (DME). The length of time which the competitive bid process takes extends the time Medicaid recipients must wait to obtain requested wheelchairs. Under the current rule, if the DME supplier with whom a recipient is familiar does not submit the lowest bid, the recipient is forced to deal with an unfamiliar supplier. Some recipients who do not live in the same locale as the supplier awarded the bid may have difficulty in obtaining adjustments or repairs or there may be a delay in obtaining servicing from a non-local supplier.

The elimination of the competitive process requirement will thus benefit Medicaid recipients by allowing them freedom to choose their wheelchair suppliers and greater access to suppliers, as they will not be limited to the supplier who has submitted the lowest bid. Additionally, many DME suppliers will benefit also, because many different suppliers will be able to provide items to Medicaid recipients rather than only the supplier who submitted the lowest bid.

Other options were considered to alleviate problems caused by the current competitive bid process, such as using a sole source supplier, regional bids, adoption of the Medicare fee schedule, and payment of an acquisition cost plus a dispensing fee. After much consideration and consultation with the DME Advisory Work Group, the Department concluded that the proposed plan was the best solution for Medicaid recipients, DME suppliers, and the Department. The Department had at one time contracted with a single supplier of wheelchairs and found that using a sole source negatively affected the quality of services for Medicaid recipients. Due to Montana's large geographical area, delays in the delivery of wheelchairs were experienced. Also, at the time when the Department's contract with the sole source terminated, no suppliers expressed an interest in bidding for a new sole source contract.

The Department also considered using a different competitive bid process where several contracts in each of several specified geographical regions would be awarded. This option was explored in regard to provision of oxygen services and was found not to be feasible due to lack of interest from suppliers in rural areas. The Department anticipated there would similarly be a lack of interest on the part of wheelchair suppliers in rural regions.

The Department also rejected the option of adopting a fee schedule similar to Medicare's because Medicare's fees have proven to be too low to ensure adequate services for Medicare recipients. Adoption of the Medicare fee schedule therefore would be likely to result in a lack of access to wheelchair

services for Medicaid recipients.

The Department also proposes to change its method of reimbursing wheelchair providers to prevent the increase in costs for wheelchair reimbursement which would otherwise result from eliminating the competitive process. Currently ARM 37.86.1807(3) states that the Department's fee for wheelchairs and wheelchair accessories shall be 83% of the manufacturer's list price for the item. The Department proposes to amend ARM 37.86.1807(3) to provide that the fee will be 80% of the provider's usual and customary charge for the item as defined in ARM 37.86.1807(2)(c)(i).

The Department proposes to reduce the fee paid for wheelchairs and accessories from 83% to 80% of the provider's usual and customary charge in order to offset the increase in fees for these items which would otherwise occur as a result of eliminating the competitive bid process. Reduction of the reimbursement rate from 83% to 80% is expected to result in a savings to the program of approximately $15,650 per year. The Department had planned to reduce the rate from 83% to 70%, which would have resulted in a much greater savings to the program. The Department decided to reduce the rate by a smaller amount because a greater reduction was unacceptable to suppliers and therefore was likely to cause a lack of access to wheelchair services to Medicaid recipients.

In ARM 37.86.1802(2) the Department proposes several changes regarding prescription requirements. The rule currently requires that the prescription for DME be attached to the claim form, but this is cumbersome and unnecessary. ARM 37.85.414 already requires all providers to keep prescriptions and other documentation on file and to provide it to the Department upon request. Therefore the requirement of attaching the prescription is being deleted to eliminate unnecessary paperwork. However, it is now necessary to specify that all prescriptions must be in writing; this was previously unstated but implied, as an oral order or prescription could not be attached to the claim form. The rule will also now specify that the original prescription must be kept because in the past some providers have not kept the original and have maintained that the rule does not specifically require the original prescription to be available.

The Department is also adding a provision that a prescription be obtained prior to the delivery of the DME items. This is not a new policy but is now being stated in the rule for the first time for clarity. Finally, the Department proposes to amend ARM 37.86.1802(2) to provide that the quantity of supplies necessary must be specified on the prescription by the prescribing practitioner. This is necessary so that the Department will know the amount of supplies determined to be necessary as ordered by the prescribing practitioner. This change will aid the Department to determine more readily if the quantity of

supplies provided is excessive.

The Department proposes to amend subsection (4) of ARM 37.86.1802 which specifies items not reimbursable by Medicaid. Subsection (4)(a) is being corrected to state that all items billed and determined to be not medically necessary by Medicare are not reimbursable by Medicaid. Subsection (4)(g) is also being added to clarify that the department does not pay any delivery fees or shipping costs for items. This has been the Department's longstanding policy for DME and diapers but was not stated in this part of the rule. Subsection (7) of ARM 37.86.1806, which is now being renumbered as subsection (6), currently states that no delivery fees are reimbursable in addition to the fee paid by the Department for diapers. The prohibition on delivery fees for diapers is being deleted in ARM 37.86.1806(7) because subsection (4)(g) of ARM 37.86.1802 will now state that no delivery or shipping fees are reimbursable for any item covered by these rules, which includes diapers.

The amendment of subsection (2)(d) of ARM 37.86.1806 relating to prior authorization for DME is necessary to specify that prior authorization will be required as set forth in the Department's DME fee schedule, which is adopted and incorporated by reference in ARM 37.86.1807(2)(d). This change will help providers as the information they need about prior authorization will be available in one document, the fee schedule, which they already refer to in billing for DME. Subsection (2)(d)(i) will now state that prior authorization is required if the Department's fee, rather than the amount the provider charges, is more than $1000.00, because the Department's automated reimbursement system flags the amount paid, not the amount charged by the provider, in regard to prior authorization requirements. Other minor organizational and wording changes are also being made to subsection (2)(d) for clarity.

4. These rule amendments will be applied effective July 1, 2001.

5. Interested 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 Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210, no later than 5:00 p.m. on May 24, 2001. Data, views or arguments may also be submitted by facsimile (406)444-1970 or by electronic mail via the Internet to dphhslegal@state.mt.us. The Department also maintains lists of persons interested in receiving notice of administrative rule changes. These lists are compiled according to subjects or programs of interest. For placement on the mailing list, please write the person at the address above.

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

<u>/s/ Dawn Sliva</u>
Rule Reviewer

<u>/s/ Gail Gray</u>
Director, Public Health and
Human Services

Certified to the Secretary of State April 16, 2001.

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

In the matter of the amendment of ARM 37.85.212 pertaining to resource based relative value scale (RBRVS) reimbursement	)))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Interested Persons

1. On May 21, 2001 at 10:00 a.m., a public hearing will be held in the auditorium of the Department of Public Health and Human Services Building, 111 N. Sanders, Helena, Montana to consider the proposed amendment of the above-stated rule.

The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who need an alternative accessible format of this notice or provide reasonable accommodations at the public hearing site. If you need to request an accommodation, contact the department no later than 5:00 p.m. on May 8, 2001, to advise us of the nature of the accommodation that you need. Please contact Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210; telephone (406)444-5622; FAX (406)444-1970; Email dphhslegal@state.mt.us.

2. The rule as proposed to be amended provides as follows. Matter to be added is underlined. Matter to be deleted is interlined.

37.85.212 RESOURCE BASED RELATIVE VALUE SCALE (RBRVS) REIMBURSEMENT FOR SPECIFIED PROVIDER TYPES (1) For purposes of this rule, the following definitions apply:

(a) through (c) remain the same.

(d) "Provider's invoice cost" means the actual dollar amount paid by a medicaid provider for a specific item of durable medical equipment (DME) or supply. It does not include any markup added by the provider.

(d) remains the same in text but is renumbered (e).

~~(e)~~ (f) "Resource based relative value scale (RBRVS)" means the most current version of the medicare resource based relative value scale contained in the physicians' medicare fee schedule adopted by the health care financing administration of the U.S. department of health and human services and published in the Federal Register annually, as amended through ~~November 2, 1999~~ November 1, 2000 which is hereby adopted and incorporated by reference. A copy of the medicare fee schedule may be obtained from the Department of Public Health and Human Services, Health Policy and Services Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951. The RBRVS reflects RVUs for estimates of the actual effort and expense involved in providing different health care services.

(f) remains the same in text but is renumbered (g).

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

(3) Except as set forth in (8), (9), ~~and~~ (10) and (11) the fee for a covered service provided by any of the provider types specified in (2) is determined by multiplying the relative value units determined in accordance with (7) by the conversion factor specified in (4), and then multiplying the product by a factor of one plus or minus the applicable policy adjustor as provided in (5), if any; provided, however, that rates for procedure codes included in the conversion to the RBRVS reimbursement methodology are:

(a) through (d)(ii) remain the same.

(e) for state fiscal year 2002:

(i) those codes paid at 80% of the level of state fiscal year 1997 reimbursement in state fiscal year 2001 shall be frozen at that level;

(ii) those codes restricted to 145% of the medicaid fee of the level of state reimbursement in state fiscal year 1997 which were at the lowest percentage of medicare reimbursement in state fiscal year 2001 shall receive a 2.3% increase in provider fees.

(f) for state fiscal year 2003:

(i) those codes paid at 80% of the level of state fiscal year 1997 reimbursement in state fiscal year 2001 shall be frozen at that level;

(ii) those codes restricted to 145% of the medicaid fee of the level of state reimbursement in state fiscal year 1997 which were at the lowest percentage of medicare reimbursement in state fiscal year 2002 shall receive a 2.3% increase in provider fees.

(4) The conversion factor used to determine the medicaid payment amount for the services covered by this rule for state fiscal year ~~2001~~ 2002 is:

(a) ~~$34.15~~ $33.15 for medical and surgical services, as specified in (2); and

(b) through (7)(b)(iii) remain the same.

(8) Except for physician administered drugs as provided in ARM 37.86.105(3), if neither medicare nor medicaid sets RVUs, then reimbursement is by report.

(a) remains the same.

(b) For state fiscal year ~~2001~~ 2002, the "by-report" rate is ~~55%~~ 53% of the provider's usual and customary charges.

(9) through (10)(c)(ii) remain the same.

(11) For equipment and supplies:

(a) the department pays the lower of the following for durable medical equipment (DME) items with fees:

(i) the provider's invoice cost for the DME; or

(ii) the medicaid fee schedule as provided in ARM 37.86.1807.

(b) the department pays the lower of the following for DME items without fees:

(i) the provider's invoice cost for the DME; or

(ii) the by-report rate provided in (8)(b).

(c) except for the bundled items as provided in (13), the department pays the lower of the following for supply items with fees:

(i) the provider's invoice cost for the supply item; or

(ii) the medicaid fee schedule as provided in ARM 37.86.1807.

(d) except for bundled items as provided in (13), the department pays the lower of the following for supply items without fees:

(i) the provider's invoice cost for the supply item; or

(ii) the by-report rate provided in (8)(b).

~~(11)~~ (12) Subject to the provisions of ~~(11)~~ (12)(a), when billed with a modifier, payment for procedures established under the provisions of (7) is a percentage of the rate established for the procedures.

(a) through (a)(iii) remain the same.

(12) and (13) remain the same in text but are renumbered (13) and (14).

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

3. The Montana Medicaid program pays medical expenses for eligible low income individuals. Certain types of medical services provided to Medicaid recipients are reimbursed in accordance with a methodology based on Medicare's Resource Based Relative Value Scale (RBRVS), as described in ARM 37.85.212. The RBRVS assigns numerical values known as relative value units (RVUs) to various types of procedure codes based on the estimated effort and expense of providing that particular service as compared to other services. The Medicaid payment for each type of service is computed by multiplying the RVUs assigned to the procedure code by a dollar amount known as the conversion factor.

In ARM 37.85.212(1), a definition for the term "provider's invoice cost" is being added as subsection (d). A definition for this term is necessary because the term is used in a new subsection being added to the rule, namely subsection (11). The new subsection (11) describes the methodology for reimbursing durable medical equipment (DME) and supplies under the RBRVS. This does not represent a change in policies regarding reimbursement of DME under RBRVS but merely spells out policies already being applied which were not previously addressed in the RBRVS rule.

The amendment of the current subsection (1)(e) of ARM 37.85.212, now renumbered as subsection (f), is necessary to indicate that the most current version of the RBRVS as contained in the physicians' Medicare fee schedule and published annually in the Federal Register, as amended through November 1, 2000, is the basis for the Medicaid RBRVS reimbursement methodology, rather than the previous version of the RBRVS as amended through November 2, 1999, which is currently cited in the rule.

Some of the proposed amendments to ARM 37.85.212 are necessary to implement changes in funding for provider payments authorized

by the 2001 Montana Legislature in House Bill 2. In ARM 37.85.212(3), subsections (e) and (f) are added to implement provider increases provided by the Legislature. Subsection (e) specifies a rate increase of 2.3% for state fiscal year 2002 for services which were at the lowest percentage of Medicare reimbursement in fiscal year 2001, and subsection (f) specifies a rate increase of 2.3% for state fiscal year 2003 for services which were at the lowest percentage of Medicare reimbursement in fiscal year 2002. Since the Legislature specifically authorized this provider increase, no other options were considered. If the final version of HB 2 changes, this rule may be changed to take into account the legislative appropriated amounts.

In subsection (4) of ARM 37.85.212, the conversion factor is being changed from $34.15 to $33.15. This change is necessary because of changes in the RVUs in the most current version of the RBRVS. Although the conversion factor is being reduced, this will not result in a net decrease in Medicaid fees, because of increases and decreases in the RVUs. No other options were considered because the changes were specifically authorized by the Legislature's funding increases in House Bill No. 2.

The total cost to the Montana Medicaid Program of the rate increases implemented by these changes to ARM 37.85.212 is projected to be $931,138 for Fiscal Year 2002. Of the increased costs, state funds will pay $252,525 and the remaining $678,613 will be paid by federal financial participation. There are more than 6,100 medical providers enrolled in the Montana Medicaid Program who are required to bill for their services using the RBRVS methodology. Many of these providers would potentially be affected by these rate increases. However, all providers using the RBRVS methodology will not see increases in all of their fees for services to Medicaid recipients. Changes in the RBRVS have resulted in increases in the RVUs for some services and decreases in RVUs for other services, so some providers will see increases in their overall reimbursement and others may see a decrease, depending on the mix of codes billed in the services they provide.

ARM 37.85.212(8)(b) currently specifies that services billed "by report" are reimbursed at the rate of 55% of the provider's usual and customary charge for state fiscal year 2001. Subsection (8)(b) now must be amended to provide that in state fiscal year 2002, "by report" services will be reimbursed at 53% of the provider's usual and customary charge. No other options were considered because this reimbursement rate is prescribed by subsection (8)(a) of ARM 37.85.212, which states that the rate for any given state fiscal year is determined by dividing the previous state fiscal year's total Medicaid reimbursement for RBRVS provider covered services by the previous fiscal year's total Medicaid billings.

Finally, throughout the rule, references to state fiscal year 2001 are being updated to refer to state fiscal year 2002, and

sections are being renumbered as necessary where new sections have been inserted.

4. These rule changes will be applied effective July 1, 2001.

5. Interested 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 Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210, no later than 5:00 p.m. on May 24, 2001. Data, views or arguments may also be submitted by facsimile (406)444-1970 or by electronic mail via the Internet to dphhslegal@state.mt.us. The Department also maintains lists of persons interested in receiving notice of administrative rule changes. These lists are compiled according to subjects or programs of interest. For placement on the mailing list, please write the person at the address above.

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

/s/ Dawn Sliva
Rule Reviewer

/s/ Gail Gray
Director, Public Health and Human Services

Certified to the Secretary of State April 16, 2001.

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 37.86.1001 and 37.86.1005 pertaining to dental services and ARM 37.86.2105 pertaining to eyeglasses reimbursement	)	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION AND AMENDMENT

TO: All Interested Persons

1. On May 22, 2001, at 1:30 p.m., a public hearing will be held in the auditorium of the Department of Public Health and Human Services Building, 111 N. Sanders, Helena, Montana to consider the proposed adoption and amendment of the above-stated rules.

The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who need an alternative accessible format of this notice or provide reasonable accommodations at the public hearing site. If you need to request an accommodation, contact the department no later than 5:00 p.m. on May 8, 2001, to advise us of the nature of the accommodation that you need. Please contact Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210; telephone (406)444-5622; FAX (406)444-1970; Email dphhslegal@state.mt.us.

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

<u>RULE I REIMBURSEMENT METHODOLOGY FOR SOURCE BASED RELATIVE VALUE FOR DENTISTS</u> (1) For procedures listed in the relative values for dentists scale, reimbursement rates shall be determined using the following methodology:

(a) The fee for a covered service shall be the amount determined by multiplying the relative value unit specified in the relative values for dentists scale by the conversion factor specified in (1)(b) or (c). The department hereby adopts and incorporates by reference the relative values for dentists scale published for the year 2000. Copies of the relative values for dentists scale are available upon request from the Department of Public Health and Human Services, Health Policy and Services Division, P.O. Box 202951, Helena, MT 59620.

(b) The conversion factor used to determine the medicaid payment amount for services provided to eligible individuals age 18 and above is $20.40.

(c) The conversion factor used to determine the medicaid payment amount for services provided to eligible individuals age 17 and under is $26.52.

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

3. The rules as proposed to be amended provide as follows. Matter to be added is underlined. Matter to be deleted is interlined.

37.86.1001 DENTAL SERVICES, DEFINITIONS For purposes of this subchapter, the following definitions apply:

(1) "Dental service" ~~is~~ means medically necessary treatment of the teeth and associated structures of the oral cavity. Dental service includes the provision of orthodontia and prostheses.

(2) "Relative values for dentists (RVD) scale" means the scale published biennially by Relative Value Studies Inc., 1675 Larimer, Suite 410, Denver, CO 80202, listing the relative value of dental services provided by dentists and denturists.

(3) "Relative value unit (RVU)" means a numerical value assigned in the resource based relative value scale to each procedure code for which a relative value is available. The RVD is a comprehensive relative value system that lists dental procedures used by dentists and denturists as an expression of the relative effort and expense expended by a provider in providing one service as compared to another service.

AUTH: Sec. 53-6-113, MCA
IMP: Sec. 53-6-101 and 53-6-141, MCA

37.86.1005 DENTAL SERVICES, REIMBURSEMENT (1) ~~The~~ For dental services listed in the RVD scale, the department ~~pays~~ shall pay the lowest of the following for dental services covered by the medicaid program:

(a) remains the same.

(b) the amount ~~allowable for the same service under medicare as stated by a medicare explanation of benefits; or~~ determined using the methodology described in [Rule I].

~~(c) the amount specified in the department's fee schedules.~~

(2) For ~~the purpose of specifying fees for reimbursement of covered~~ dental services~~,~~ that are not listed in the RVD scale, the department shall pay the lowest of the following for dental services covered by the medicaid program: ~~the department incorporates by reference the fee schedule, effective July 2000. Copies of the fee schedule are available from the Department of Public Health and Human Services, Health Policy and Services Division, Medicaid Services Bureau, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.~~

(a) the provider's usual and customary charge; and

(b) the amount determined using the by-report method as follows:

(i) for covered dental services provided to persons age 18 and over, 65.2% of the provider's usual and customary charge for the service;

(ii) for covered dental services provided to persons age

17 and under, 80% of the provider's usual and customary charge for the service period.

(3) through (10)(d) remain the same.

AUTH: Sec. 53-2-201 and 53-6-113, MCA
IMP: Sec. 53-6-101, 53-6-113 and 53-6-141, MCA

37.86.2105 EYEGLASSES, REIMBURSEMENT (1) remains the same.

(2) Reimbursement for contact lenses or dispensing fees is as follows:

(a) and (i) remain the same.

(ii) the amount specified for the particular service or item in the department's fee schedule. The department hereby adopts and incorporates by reference the department's fee schedule effective July ~~2000~~ 2001 which sets forth the reimbursement rates for eyeglasses and other medicaid services. A copy of the department's fee schedule may be obtained from the Department of Public Health and Human Services, Health Policy and Services Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

AUTH: Sec. 53-6-113, MCA
IMP: Sec. 53-6-101, 53-6-113 and 53-6-141, MCA

4. The Medicaid program is a public health benefits program provided jointly by the federal government and the State of Montana. The Department proposes to amend the administrative rules governing dental services available through the Medicaid program in order to establish a new reimbursement methodology based upon the relative values for dentists scale. The relative values scale lists the procedures commonly performed by dentists and denturists together with a relative value for those services as determined through a random sampling of practices around the country. The value is determined by comparing the time, skill, risk to the patient, risk to the provider, severity of the problem (i.e., emergent, acute, chronic, prophylactic), and the unique supplies that are not separately billable for each of the dental services studied. Each procedure is then assigned relative value units, akin to a point system, which permits easy comparison of the complexity and effort required for each procedure.

The Department proposes to use the new resource based relative values methodology to determine reimbursement rates because it permits a reimbursement system that takes into account the complexity, time, and risks involved in each individual procedure. The proposed methodology allows the reimbursement to better fit the practice of dentistry, while remaining cost neutral. The more difficult procedures will generally be reimbursed at a higher rate while less difficult procedures will generally be reimbursed at a lesser rate. Payments under the new methodology will be more equitable to providers and will better fit actual practices. As a result of the new

methodology, payments will increase for some procedures and decrease for others. But, the Department expects that the changes in reimbursement will generally balance out making the new method overall budget neutral.

In order to implement the new relative values methodology, it is necessary to amend ARM 37.86.1001 in order to define commonly used terms relating to the relative values scale method. The proposed amendment adds definitions for the terms relative value unit and relative values for dentists scale, so that the Department, the dental services providers, and the public can use a common language to develop an understanding of the methodology.

The Department proposes Rule I for the purpose of explaining the suggested reimbursement methodology. The Department's objective was to design a rational, equitable, easily maintained, budget neutral reimbursement method that takes into account the skill, time, and risks involved in the various procedures offered by providers. The Department received complaints regarding the current reimbursement system and believes the proposed method will be more equitable to both providers and patients.

The amendments to ARM 37.86.1005 are necessary to specify and clarify the reimbursements made for dental services through the Medicaid program and to distinguish between procedures for which a relative value exists and those for which a relative value does not exist. No change is proposed to the reimbursement methodology for procedures not listed in the relative values for dentists scale.

The Department considered other options for addressing reimbursement for dental services. The Department considered a reimbursement rate increase for all procedures, but determined that option would be too costly. The Department considered increasing the reimbursement rate for only certain procedures and allowing the Montana Dental Association to provide input on the procedures that should generate additional income. However, that option was costly and time-consuming. The Department also considered conducting a state-wide survey of usual and customary charges. But, the costs of the survey would swallow up any available resources for payment increases and the time involved was prohibitive. Consequently, the Department chose the relative values scale methodology as the most efficient and equitable option.

The Department expects that the proposed changes to the dental rules will be cost neutral. These changes do not create any additional benefits to participants in the Medicaid program, nor do they eliminate any benefits. The Department estimates that the changes to the reimbursement methodology will impact approximately 410 dental service providers.

The proposed amendment to ARM 37.86.2105 is necessary to delete

the reference to the Department's obsolete fee schedule and to incorporate instead, the updated fee schedule that will be effective July 2001. The amendment is necessary in order to specify new procedure codes that have been added and to list reimbursement rates for those codes. Retaining the current fee schedule is not an option because the current list no longer contains reimbursement rates for all procedure codes that may be billed for eyeglasses or related procedures. This amendment will incorporate the updated, complete fee schedule. The Department expects that approximately 5 Medicaid recipients will be in need of the procedures specified by the new codes each year. Allowing billing under the new codes will increase the benefits available to medicaid recipients at a cost of less than $100 per fiscal year.

5. Interested 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 Kathy Munson, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 202951, Helena, MT 59620-2951, no later than 5:00 p.m. on May 24, 2001. Data, views or arguments may also be submitted by facsimile (406)444-1970 or by electronic mail via the Internet to dphhslegal@state.mt.us. The Department also maintains lists of persons interested in receiving notice of administrative rule changes. These lists are compiled according to subjects or programs of interest. For placement on the mailing list, please write the person at the address above.

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

/s/ Dawn Sliva
Rule Reviewer

/s/ Gail Gray
Director, Public Health and Human Services

Certified to the Secretary of State April 16, 2001.

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

In the matter of the amendment of ARM 37.5.307, 37.5.313 and 37.97.118 pertaining to fair hearings and contested case proceedings	)	NOTICE OF PROPOSED AMENDMENT NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On May 26, 2001, the Department of Public Health and Human Services proposes to amend the above-stated rules.

The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who need an alternative accessible format of this notice. If you need to request an accommodation, contact the department no later than 5:00 p.m. on May 3, 2001, to advise us of the nature of the accommodation that you need. Please contact Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210; telephone (406)444-5622; FAX (406)444-1970; Email dphhslegal@state.mt.us.

2. The rules as proposed to be amended provide as follows. Matter to be added is underlined. Matter to be deleted is interlined.

37.5.307 OPPORTUNITY FOR HEARING (1) through (1)(d) remain the same.

(2) A provider other than a medical assistance provider who is aggrieved by an adverse action of the department shall be granted the right to hearing as provided in this subchapter, except as otherwise provided in other department rules.

(a) ~~A~~ Except as provided in (2)(b), request for a hearing from a provider must be received by the department in writing within 30 days after the date of mailing of notice of the department's adverse action.

(b) A request for a hearing from a day care facility applicant, licensee or registrant must be received by the department in writing within 10 days after the date of mailing of notice of the department's adverse action denying, suspending, cancelling, reducing, modifying or revoking a day care license or registration certificate.

(3) through (4) remain the same.

AUTH: Sec. 2-4-201, 41-3-1142, 52-2-111, 52-2-112, 52-2-403, 52-2-704, 52-3-304, 52-3-804, 53-2-201, 53-2-606, 53-2-803, 53-3-102, 53-4-111, 53-4-212, 53-4-403, 53-4-503, 53-5-304, 53-6-111, 53-6-113, 53-7-102 and 53-20-305, MCA

IMP: Sec. 2-4-201, 41-3-1103, 52-2-726, 53-2-201, 53-2-306, 53-2-606, 53-2-801, 53-4-112, 53-4-404, 53-4-503, 53-4-513,

53-5-304, 53-6-111, 53-6-113 and 53-20-305, MCA

37.5.313 DISMISSAL OF HEARING (1) A hearing may be dismissed when:

(a) the request for a hearing is withdrawn by the claimant or provider or his representative~~;~~:

(i) except as provided in (1)(a)(ii), the request for hearing must be withdrawn in writing;

(ii) a request for hearing contesting an adverse department action under the food stamp program or the families achieving independence in Montana (FAIM) financial assistance program may be withdrawn by oral request of the claimant;

(iii) within 10 days of an oral request under (1)(a)(ii) the hearing officer must provide a written notice to the claimant confirming the withdrawal request and providing the claimant with an opportunity to reinstate the hearing request as provided in (1)(a)(iv);

(iv) a hearing request that was orally withdrawn under (1)(a)(ii) may be reinstated if the claimant notifies the office of fair hearings within 10 days of receiving the confirmation of dismissal under (1)(a)(iii);

(v) if a hearing request is reinstated under (1)(a)(iv), the hearing must be completed within the time frames required by federal law;

(b) through (3) remain the same.

AUTH: Sec. 53-2-201, 53-2-606, 53-4-212, 53-6-113, 53-7-102, MCA
IMP: Sec. 53-2-201, MCA

37.97.118 YOUTH CARE FACILITY, HEARING PROCEDURES

(1) Any person aggrieved by an adverse department action denying or revoking a license for a ~~community home for persons with developmental disabilities~~ YCF may request a hearing as provided in ARM 37.5.304, 37.5.305, 37.5.307, 37.5.310, 37.5.311, 37.5.313, 37.5.316, 37.5.3.318, 37.5.322, 37.5.325, 37.5.328, 37.5.331, 37.5.334 and 37.5.337.

AUTH: Sec. 41-3-503, 41-3-1103, 41-3-1142 and 53-4-111, MCA
IMP: Sec. 41-3-503, 41-3-1103, 41-3-1142, 53-2-201 and 53-4-113, MCA

3. The proposed amendments are necessary to conform the Department's hearing rules to Federal food stamp regulations and to correct errors and omissions that occurred in the last hearing rules revision.

37.5.307

The proposed amendment to ARM 37.5.307 would conform the time allowed for a day care facility applicant, licensee or registrant to request an administrative fair hearing on an action by the Department to deny, suspend, cancel, reduce,

modify or revoke a day care license or registration certificate to the requirements of 52-2-726, MCA. Due to a clerical mistake, the amendment and transfer of this rule at 2000 Montana Administrative Register, page 1653, effective June 30, 2000 omitted the 10 day time limit for hearing requests in day care licensing and registration cases. The remaining language could have caused applicants, licensees or registrants for day care licenses or registration certificates affected by adverse Department actions to believe that they had 30 days to request a hearing. Therefore, the Department is proposing a new subsection (2)(b) which contains a specific provision for persons subject to the 10 day limitation in 52-2-726, MCA. The proposed amendment should help to avoid confusion about the time allowed for requesting a hearing in day care licensing and registration contested cases.

37.5.313

The Department is proposing an amendment to ARM 37.5.313 to allow claimants affected by an adverse Department action under the food stamp program to orally withdraw a request for hearing. This is a convenience to claimants mandated by Federal food stamp regulations published at 65 Fed. Reg. 70134 (November 21, 2000). Compliance with Federal regulations is a requirement for participation in the food stamp program. The alternative to the proposed amendment would be to do nothing and risk loss of Federal funds to the Montana Food Stamp program.

37.97.118

The Department proposes an amendment to ARM 37.97.118 to correct a clerical mistake that occurred when the rule was amended and transferred at 2000 MAR page 1653, effective June 30, 2000. The term "community home for persons with developmental disabilities" was inserted by mistake. The proper term would have been "youth care facility" (YCF). Therefore, the proposed amendment substitutes the term "YCF" for "community home for persons with developmental disabilities".

4. Interested persons may submit their data, views or arguments concerning the proposed action in writing to Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210, no later than 5:00 p.m. on May 24, 2001. Data, views or arguments may also be submitted by facsimile (406)444-1970 or by electronic mail via the Internet to dphhslegal@state.mt.us. The Department also maintains lists of persons interested in receiving notice of administrative rule changes. These lists are compiled according to subjects or programs of interest. For placement on the mailing list, please write the person at the address above.

5. If a person who is directly affected by the proposed action wishes to express data, views and arguments orally or in writing at a public hearing, that person must make a written

request for a public hearing and submit such request, along with any written comments to Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210, no later than 5:00 p.m. on May 24, 2001.

6. If the Department of Public Health and Human Services receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of those who are directly affected by the proposed action, from the Administrative Rule Review Committee of the legislature, from a governmental agency or subdivision, or from an association having no less than 25 members who are directly affected, a hearing will be held at a later date and a notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be more than 25 people based on those eligible to request a hearing.

/s/ Dawn Sliva	/s/ Gail Gray
Rule Reviewer	Director, Public Health and Human Services

Certified to the Secretary of State April 16, 2001.

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

In the matter of the amendment of ARM 37.86.2605, 37.86.2801, 37.86.2901, 37.86.2905, 37.86.2910, 37.86.3002, 37.86.3005, 37.86.3009, 37.86.3011, 37.86.3016, 37.86.3018 and 37.86.3020 pertaining to Medicaid hospital reimbursement	)	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Interested Persons

1. On May 18, 2001, at 10:00 a.m., a public hearing will be held in the auditorium of the Department of Public Health and Human Services Building, 111 N. Sanders, Helena, Montana to consider the proposed amendment of the above-stated rules.

The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who need an alternative accessible format of this notice or provide reasonable accommodations at the public hearing site. If you need to request an accommodation, contact the Department no later than 5:00 p.m. on May 8, 2001, to advise us of the nature of the accommodation that you need. Please contact Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210; telephone (406)444-5622; FAX (406)444-1970; Email dphhslegal@state.mt.us.

2. The rules as proposed to be amended provide as follows. Matter to be added is underlined. Matter to be deleted is interlined.

<u>37.86.2605 AMBULANCE SERVICES, REIMBURSEMENT</u> (1) through (3) remain the same.

(4) Air transport ambulance services to the nearest appropriate facility for neonates (age 0 to 28 days) identified as meeting any one of the diagnosis related group (DRG) codes 385~~-390~~ <u>through 389</u> and for pregnant women identified as meeting any one of the DRG codes 370, 372, 375 or 383 may be billed by an outpatient hospital service provider and reimbursed by medicaid as outpatient hospital services, according to the provisions of ARM 37.86.2801, 37.86.3001, 37.86.3002 and 37.86.3005.

AUTH: Sec. 53-2-201 and <u>53-6-113</u>, MCA
IMP: Sec. <u>53-6-101</u>, 53-6-113 and 53-6-141, MCA

<u>37.86.2801 ALL HOSPITAL REIMBURSEMENT, GENERAL</u>
(1) and (a) remain the same.
(i) Medicaid reimbursement shall not be made unless the

provider has obtained authorization from the department or its designated review organization prior to providing any of the following services:

(A) and (B) remain the same.

(C) all inpatient and outpatient hospital services provided in hospitals located more than 100 miles outside the borders of the state of Montana;

(a)(i)(D) through (g) remain the same.

(2) Allowable costs will be determined in accordance with generally accepted accounting principles as defined by the American institute of certified public accountants. Such definition of allowable costs is further defined in accordance with the Medicare Provider Reimbursement Manual, HCFA Pub. 15 (referred to as "Pub. 15"), subject to the exceptions and limitations provided in the department's administrative rules. The department hereby adopts and incorporates herein by reference Pub. 15, which is a manual published by the United States department of health and human services, health care financing administration, which provides guidelines and policies to implement medicare regulations which set forth principles for determining the reasonable cost of provider services furnished under the Health Insurance for Aged Act of 1965, as amended. A copy of Pub. 15 may be obtained through the Department of Public Health and Human Services, Health Policy and Services Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

(a) Hospitals located in the state of Montana providing inpatient ~~Inpatient~~ and outpatient hospital services reimbursement under the retrospective cost-based methodology for a hospital that is identified by the department as a distinct part rehabilitation unit~~,~~ or an isolated hospital ~~or an out-of-state hospital located more than 100 miles outside the state of Montana is~~ are subject to the provisions regarding cost reimbursement and coverage limits and rate of increase ceilings specified in 42 CFR 413.30 through 413.40 (1992), except as otherwise provided in these rules. The department hereby adopts and incorporates herein by reference 42 CFR 413.30 through 413.40 (1992). A copy of 42 CFR 413.30 through 413.40 (1992) may be obtained through the Department of Public Health and Human Services, Health Policy and Services Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

(b) through (3) remain the same.

(4) All hospitals reimbursed under ARM 37.86.2905 or 37.86.3005 must file the cost report with the Montana medicare intermediary and the department on or before the last day of the fifth calendar month following the close of the period covered by the report. For fiscal periods ending on a day other than the last day of the month, cost reports are due 150 days after the last day of the cost reporting period. Extensions of the due date for filing a cost report may be granted by the intermediary only when a provider's operations are significantly adversely affected due to extraordinary circumstances over which the provider has no control, such as flood or fire. In the event a provider does not file a cost report within the time limit or files an incomplete cost report, the provider's total

reimbursement will be withheld. All amounts so withheld will be payable to the provider upon submission of a complete and accurate cost report.

(5) For inpatient hospital services provided on or after July 1, 1993, facilities reimbursed on a retrospective cost basis must submit a cost report in accordance with the applicable subsection below to determine a base year for purposes of applying rate of increase ceilings and settling costs.

(a) For facilities located outside the state of Montana and more than 100 miles from the Montana border, the base year is the facility's cost report for the first cost reporting period ending during or after calendar year 1991 that both covers 12 months and includes Montana medicaid inpatient hospital costs. Exceptions will be granted only as permitted by the applicable provisions of 42 CFR 413.30 or 413.40 (1992).

(i) Effective March 1, 2001, all out-of-state inpatient and outpatient services for facilities defined in (5)(a) are paid at 61% of billed charges for medically necessary services.

(b) through (8) remain the same.

AUTH: Sec. 2-4-201, 53-2-201 and 53-6-113, MCA
IMP: Sec. 2-4-201, 53-2-201, 53-6-101, 53-6-111, 53-6-113 and 53-6-141, MCA

37.86.2901 INPATIENT HOSPITAL SERVICES, DEFINITIONS (1) and (2) remain the same.

(3) "Critical access hospital" means a limited-service rural hospital licensed by the Montana department of public health and human services.

(3) through (5) remain the same in text but are renumbered (4) through (6).

~~(6)~~ (7) "Hospital policy adjustor" means a payment to a Montana hospital paid under the DRG payment system. Data sources for the department to determine who meets policy adjustor criteria include but are not limited to information from the Montana hospital association database; Montana medicaid paid claims database; department's database for vital statistics; and licensing bureau. Evaluations will be made annually to determine which hospital will qualify for the policy adjustor. All of the following criteria must be met for a hospital to qualify:

(a) and (b) remain the same.

(c) delivered less than 200 babies (all payers) for state fiscal year ~~1999~~ 2000 (July 1, ~~1998~~ 1999 through June 30, ~~1999~~ 2000); and

(d) of the total babies delivered in state fiscal year ~~1999~~ 2000, 53% covered were either medicaid primary or medicaid secondary.

(7) through (10) remain the same in text but are renumbered (8) through (11).

~~(11)~~ (12) "Low income utilization rate" for determining whether a hospital is deemed a disproportionate share hospital, is the percentage rate computed as follows:

(a) ((A + B)/C) + (D/E) where:

(i) "A" is the total revenue paid to the hospital ~~medicaid payments to the hospital~~ for patient services under the medicaid state plan regardless of whether the services were furnished on a fee-for-service basis or through a managed care program in the hospital's fiscal year;

(ii) and (iii) remain the same.

(iv) "D" is the total hospital charges for inpatient hospital services attributable to charity care in the hospital's fiscal year, less any amount received for payment of these charges attributable to inpatient services. This amount shall not include contractual allowances and discounts (other than for indigent patients not eligible for public assistance); and

(v) remains the same.

(b) The above amounts used in the formula must be from the hospital's most recent fiscal year for which initial cost reports are available for all hospital providers ~~costs have been settled with the department~~.

~~(12)~~ (13) "Medicaid inpatient utilization rate" for determining whether a hospital is deemed a disproportionate share hospital means the hospital's percentage rate computed by dividing the total number of medicaid inpatient days in the hospital's fiscal year by the total number of the hospital's inpatient days in that same period. The period used will be the most recent calendar year for which final cost reports are available for all hospital providers.

(a) The term inpatient day in (13) includes each day in which an individual, including a newborn, is an inpatient in the hospital, whether or not the individual is in a specialized ward or whether or not the individual remains in the hospital for lack of suitable placement elsewhere.

(b) The period used for determining the medicaid inpatient utilization rate will be the most recent calendar year for which final inpatient days and initial cost reports are available for all hospital providers.

~~(13) "Medical assistance facility" or "critical access hospital" means a limited-service rural hospital or a facility commonly referred to as a medical assistance facility/critical access hospital licensed by the Montana department of public health and human services.~~

(14) through (18) remain the same.

AUTH: Sec. 53-6-113, MCA
IMP: Sec. 53-2-201, 53-6-101, 53-6-111, 53-6-113 and 53-6-141, MCA

37.86.2905 INPATIENT HOSPITAL SERVICES, REIMBURSEMENT

(1) For inpatient hospital services, the Montana medicaid program will reimburse providers as follows:

(a) For inpatient hospital services provided within the state of Montana, providers will be reimbursed under the diagnosis related groups (DRG) prospective payment system described in (2) except as otherwise specified in these rules. Medicare certified rehabilitation units, isolated hospitals and

~~medical assistance facilities/~~critical access hospitals will be reimbursed their actual allowable costs determined on a retrospective basis, with allowable costs determined according to ARM 37.86.2801(2). Except as otherwise specified in these rules, facilities reimbursed under the DRG prospective payment system will be reimbursed, in addition to the prospective DRG rate, for the following:

(i) through (iv) remain the same.

(v) catastrophic case payments as provided in ~~(8)~~ (7);

(vi) and (vii) remain the same.

(b) remains the same.

(c) Inpatient hospital services provided in hospitals located more than 100 miles outside the borders of the state of Montana will be reimbursed 61% of billed charges for medically necessary services. ~~their actual allowable cost determined on a retrospective basis, with allowable costs determined according to ARM 37.86.2801(2). The department may waive retrospective cost settlement for such facilities which have received interim payments totaling less than $100,000 for inpatient and outpatient hospital services provided to Montana medicaid recipients in the cost reporting period, unless the provider requests in writing retrospective cost settlement. Where the department waives retrospective cost settlement, the provider's interim payments for the cost report period shall be the provider's final payment for such period.~~

~~(i) Hospitals located more than 100 miles outside the borders of Montana will be reimbursed on an interim basis during each facility's fiscal year. The interim rate will be a percentage of usual and customary charges. The percentage shall be the provider's cost to charge ratio determined by the department under medicare reimbursement principles, based upon the provider's most recent medicare cost report. If a provider fails or refuses to submit the financial information, including the medicare cost report necessary to determine the cost to charge ratio, the provider's interim rate will be 60% of its usual and customary charges.~~

~~(ii) Hospitals located more than 100 miles outside the borders of Montana must notify the department within 60 days of any change in usual and customary charges that will have a significant impact on the facility cost to charge ratio. A significant impact is a change in the facility cost to charge ratio of 2% or more. The department will adjust reimbursement rates to account for adjusted charges which have a significant impact on the facility cost to charge ratio. The department may adjust interim reimbursement rates to account for such increased or decreased charges.~~

(i) Medicaid reimbursement shall not be made to hospitals located more than 100 miles outside the borders of Montana unless the provider has obtained authorization from the department or its designated review organization prior to providing services. All planned services provided in an emergent situation must be authorized within 48 hours.

(2) The department's DRG prospective payment rate for inpatient hospital services is based on the classification of

inpatient hospital discharges to diagnosis related groups (DRGs). The procedure for determining the DRG prospective payment rate is as follows:

(a) ~~For recipients admitted on or after July 1, 2000,~~ Prior to October 1st of each year, the department will assign~~s~~ a DRG to each medicaid discharge in accordance with the current medicare grouper program version ~~17.0~~, as developed by 3M health information systems. The assignment of each DRG is based on:

(i) through (b) remain the same.

(c) The department computes a Montana average base price per case. This average base price per case is ~~$2337.00~~ $2125 ~~including~~ excluding capital expenses, effective for services provided on or after July 1, ~~2000~~ 2001.

(d) The relative weight for the assigned DRG is multiplied by the average base price per case to compute the DRG prospective payment rate for that discharge except~~:~~

~~(i) for those DRGs determined by the department to be "unstable", the prospective payment is subject to a stop-loss payment for all DRG hospitals except the large referral hospitals. For "unstable" DRGs, if the provider charges are less than 75% of the computed prospective payment or more than 4 times the computed prospective payment, the claim will be paid at the statewide cost to charge ratio as defined in (13); and~~

~~(ii)~~ where there is no weight assigned to a DRG, referred to as "exempt", the DRG will be paid at the statewide cost to charge ratio as defined in (13).

(3) For those Montana hospitals designated by the department as of April 1, 1993 as having neonatal intensive care units, reimbursement for neonatal DRG's 385 through ~~390~~ 389 shall be actual allowable cost determined on a retrospective basis, with allowable costs determined according to ARM 37.86.2801(2). Such facilities shall be reimbursed on an interim basis during each facility's fiscal year. The interim rate shall be a percentage of usual and customary charges, and the percentage shall be the facility-specific cost to charge ratio, determined by the department in accordance with medicare reimbursement principles. Such hospitals shall not receive any cost outlier payment or other add-on payment with respect to such discharges or services.

~~(4) The department shall reimburse inpatient DRG hospital providers for capital-related costs under a prospective payment methodology. The actual cost per case shall be computed using submitted cost reports for state fiscal year 1998. The prospective payment for capital-related costs for dates of service on or after July 1, 2000 is $262.00. The prospective capital payment amount shall be added to the base DRG amount as proposed in (2)(c).~~

(4) The department will reimburse inpatient hospital service providers located in the state of Montana for capital-related costs that are allowable under medicare cost reimbursement principles as set forth at 42 CFR 412.113(a), as amended through October 1, 1986. The department hereby adopts and incorporates by reference 42 CFR 412.113, subsections (a) and (b), as amended through October 1, 1986, which set forth

medicare cost reimbursement principles. Copies of the cited regulation may be obtained from the Department of Public Health and Human Services, Health Policy and Services Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

(a) Prior to settlement based on audited costs, the department will make interim payments for each facility's capital-related costs as follows:

(i) The department will identify the facility's total allowable medicaid inpatient capital-related costs from the facility's most recent audited or desk reviewed cost report. These costs will be used as a base amount for interim payments. The base amount may be revised if the provider can demonstrate an increase in capital-related costs as a result of an approved certificate of need that is not reflected in the base amount.

(ii) All out-of-state hospitals that are reimbursed under the DRG prospective payment system will be paid the statewide average capital cost per case as an interim capital-related cost payment. The statewide average capital cost per case is $229. Such rate shall be the final capital-related cost with respect to which the department waives retrospective cost settlement in accordance with these rules.

(iii) The department will make interim capital payments with each inpatient hospital claim paid.

(5) through (a)(ii) remain the same.

(6) In addition to the DRG payment, providers reimbursed under the DRG prospective payment system may receive payment as provided in this subsection for cost outliers for DRGs other than neonatal DRGs 385 through ~~390~~ 389 provided by neonatal intensive care units described in (3).

(a) through (b)(iii) remain the same.

(7) In addition to the DRG payment, providers reimbursed under the DRG prospective payment system may request payment for catastrophic cases out of the catastrophic case funds available for the rate year for patients admitted on or after July 1 of the rate year.

(a) To receive payment for catastrophic cases, the charges for the medically necessary days and services of the inpatient hospital stay, as determined by the department, must exceed ~~$125,000~~ $144,000.

(b) through (11)(b)(iii) remain the same.

(12) The medicaid statewide average cost to charge ratio ~~including~~ excluding prospective capital expenses is ~~61%~~ 56%.

(13) The Montana medicaid DRG relative weight values, average length of stay (ALOS), outlier thresholds and stop loss thresholds are contained in the DRG table of weights and thresholds (~~June 2000~~ April 2001 edition). The DRG table of weights and thresholds is published by the department of public health and human services. The department hereby adopts and incorporates by reference the DRG table of weights and thresholds (~~June 2000~~ April 2001 edition). Copies may be obtained from the Department of Public Health and Human Services, Health Policy and Services Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

(14) through (17) remain the same.

(18) ~~For the period of June 1, 2000 through June 30, 2001,~~ S~~s~~ubject to the availability of state, county and federal funding, restrictions imposed by federal law and approval of the state plan by the United States department of health and human services, health care financing administration (HCFA), a county owned, county operated or partially county funded rural hospital is eligible for the qualified rate adjustment payment once each fiscal year as provided in ARM 37.86.2910.

AUTH: Sec. 53-2-201 and 53-6-113, MCA
IMP: Sec. 53-2-201, 53-6-101, 53-6-111, 53-6-113 and 53-6-141, MCA

37.86.2910 INPATIENT HOSPITAL SERVICES, QUALIFIED RATE ADJUSTMENT PAYMENT, ELIGIBILITY AND COMPUTATION (1) ~~For the period of June 1, 2000 through June 30, 2001~~ T~~t~~he department will pay a qualified rate adjustment payment to an eligible rural hospital in Montana under the prospective payment system for inpatient services when:

(a) through (3)(b) remain the same.

(4) The department will pay the qualified rate adjustment only to inpatient hospitals that choose reimbursement on a prospective basis ~~for the period June 1, 2000 through June 30, 2001~~ and such payments shall not be subject to the cost settlement process.

(a) remains the same.

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

37.86.3002 OUTPATIENT HOSPITAL SERVICES, SCOPE AND REQUIREMENTS (1) through (2)(c) remain the same.

(3) Outpatient hospital services are services that would also be covered by medicaid if provided in a non-hospital setting and are limited to the following diagnostic and therapeutic services furnished by hospitals to outpatients:

(a) through (b)(iii) remain the same.

(c) air transport ambulance services for neonates (age 0 to 28 days, DRGs 385~~-390~~ through 389) and women with high risk pregnancies (DRGs 370, 372, 375 or 383), as provided in ARM 37.86.2605;

(d) through (4) remain the same.

AUTH: Sec. 53-2-201 and 53-6-113, MCA
IMP: Sec. 53-2-201, 53-6-101, 53-6-111, 53-6-113 and 53-6-141, MCA

37.86.3005 OUTPATIENT HOSPITAL SERVICES, REIMBURSEMENT

(1) remains the same.

(2) Out-of-state facilities more than 100 miles from the nearest Montana border will be paid at 61% of billed charges for medically necessary services.

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

(a) All facilities will be reimbursed for services subject

to ~~(2)~~ <u>(3)</u> on an interim basis during the facility's fiscal year. The interim rate will be a percentage of usual and customary charges (billed charges). The percentage shall be the provider's cost to charge ratio determined by the facility's medicare intermediary or by the department under medicare reimbursement principles, based upon the provider's most recent medicare cost report. If a provider fails or refuses to submit the financial information, including the medicare cost report, necessary to determine the cost to charge ratio, the provider's interim rate will be ~~60%~~ <u>50%</u> of its usual and customary charges (billed charges).

~~(3)~~ <u>(4)</u> The medicaid outpatient hospital statewide average cost to charge ratio equals ~~.67~~ <u>.56</u>.

AUTH: Sec. 53-2-201 and <u>53-6-113</u>, MCA
IMP: Sec. 53-2-201, <u>53-6-101</u>, 53-6-111, 53-6-113 and 53-6-141, MCA

<u>37.86.3009 OUTPATIENT HOSPITAL SERVICES, PROSPECTIVE PAYMENT METHODOLOGY, EMERGENCY ROOM AND CLINICAL SERVICES</u>

(1) Emergency room and clinic services provided by hospitals that are not isolated hospitals or ~~medical assistance facilities~~ <u>critical access hospitals</u> as defined in ARM 37.86.2902(17) and (18) will be reimbursed on a fee basis for each visit as follows:

(a) and (a)(i) remain the same.

(A) Critical care procedures are those procedures designated by the department as such and identified in the department's emergency room critical care procedures list. The department hereby adopts and incorporates by reference the outpatient hospital emergency room critical care procedures list (January ~~1996~~ <u>2001</u>). A copy of the emergency room critical care procedures list may be obtained from the Department of Public Health and Human Services, Health Policy and Services Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

(ii) Emergency visits are emergency room visits for which the ICD-9-CM diagnosis code chiefly responsible for the services provided is a diagnosis designated as an emergency diagnosis in the medicaid passport program emergency diagnosis list. For purposes of this rule, the department hereby adopts and incorporates by reference the passport emergency diagnosis list (January ~~1997~~ <u>2001</u>). The passport program emergency diagnosis list is available upon request from the Department of Public Health and Human Services, Health Policy and Services Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

(iii) through (c)(ii) remain the same.

(d) For hospital emergency room and clinic visits ~~determined by the department to be unstable, the fee will be a stop-loss payment. If~~ <u>where</u> the provider's net usual and customary (billed charges) emergency room or clinic charges are more than ~~400%~~ <u>500%</u> or less than 75% of the fee specified in (1)(b), the visit <u>will be considered</u> ~~is~~ unstable and the net charges will be paid at the statewide cost to charge ratio specified in ARM 37.86.3005~~(3)~~<u>(4)</u>. For purposes of the stop-

loss provision, the provider's net emergency room or clinic charges are defined as total usual and customary claim charges (billed charges) less charges for laboratory, imaging, other diagnostic and any noncovered services.

(e) remains the same.

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

37.86.3011 OUTPATIENT HOSPITAL SERVICES, PROSPECTIVE PAYMENT METHODOLOGY, NON-EMERGENT EMERGENCY ROOM SERVICES

(1) ~~Non-emergent~~ Eemergency room services provided to a passport recipient, when the passport provider has not authorized the services, will be reimbursed a prospective fee for evaluations and stabilization of $20.60 per emergency room visit plus ancillary reimbursement for laboratory, imaging and other diagnostic services. The fee is a bundled payment per visit for all outpatient services provided to the patient including, but not limited to, nursing, pharmacy, supplies and equipment and other outpatient hospital services. Physician services are separately billable according to the applicable rules governing billing for physician services.

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

37.86.3016 OUTPATIENT HOSPITAL SERVICES, PROSPECTIVE PAYMENT METHODOLOGY, IMAGING SERVICES (1) Imaging services will be reimbursed on a fee basis. For each imaging service or procedure, the fee will be the lesser of the provider's usual and customary charges (billed charges) or ~~160%~~ 100% of the ~~technical component of the medicare resource-based relative value scale (RBRVS) or, if there is no technical component under RBRVS for the procedure, the fee will be 100% of the global amount of the medicare RBRVS~~ medicare ambulatory payment classification (APC) rate. The imaging services reimbursed under this subsection are the individual imaging services listed in the 70000 series of the Current Procedural Terminology, Fourth Edition (CPT-4). For imaging services where no medicare fee has been assigned, the fee is 62% of usual and customary charges (billed charges) for a hospital designated as a sole community hospital as defined in ARM 37.86.2901 or 60% of usual and customary charges (billed charges) for a hospital that is not designated as a sole community hospital as defined in ARM 37.86.2901.

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

37.86.3018 OUTPATIENT HOSPITAL SERVICES, PROSPECTIVE PAYMENT METHODOLOGY, OTHER DIAGNOSTIC SERVICES (1) Other diagnostic services will be reimbursed on a fee basis. For each diagnostic service or procedure, the fee will be the lesser of the provider's usual and customary charges (billed charges) or

~~160%~~ 100% of the ~~technical component of the medicare resource-based relative value scale (RBRVS) or, if there is no technical component under RBRVS for the procedure, the fee will be 100% of the global amount of the medicare RBRVS~~ medicare APC rate. The individual diagnostic services reimbursed under this subsection are those listed in the Current Procedural Terminology, Fourth Edition (CPT-4) ~~in Addendum I, of the Medicare Hospital Manual, (HCFA Pub. 10)~~.

(a) Other diagnostic services contained in the CPT-4 manual ~~that are not listed in Addendum I~~ without a medicare APC rate will be reimbursed under the retrospective cost basis as specified in ARM 37.86.3005~~(2)~~(3).

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

37.86.3020 OUTPATIENT HOSPITAL SERVICES, PROSPECTIVE PAYMENT METHODOLOGY, AMBULATORY SURGERY SERVICES

(1) Ambulatory surgery services provided by hospitals that are not isolated hospitals or ~~medical assistance facilities~~ critical access hospitals as defined in ARM 37.86.2902(17) and (18) will be reimbursed on a fee basis. A separate fee will be paid within each day procedure group depending on whether or not the hospital is a sole community hospital as defined in ARM 37.86.2901. Payment for ambulatory surgery services is a fee for each visit determined as follows:

(a) through (c)(ii) remain the same.

(d) For hospital ambulatory surgery services, day procedure groups ~~determined by the department to be unstable will be reimbursed a stop-loss payment. If~~ where the provider's net usual and customary charges (billed charges) are more than ~~400%~~ 500% or less than 75% of the fee specified in (1)(b), the day procedure group is considered unstable and the net charges will be paid at the statewide cost to charge ratio specified in ARM 37.86.3005~~(3)~~(4). For purposes of the stop-loss provision, the provider's net ambulatory surgery charges are defined as total usual and customary claim charges (billed charges) less charges for any noncovered services.

(e) If the department's outpatient hospital ambulatory surgery fee schedule described in (1)(b) does not assign a fee for a particular DPG, the DPG will be reimbursed at the statewide average outpatient cost to charge ratio specified in ARM 37.86.3005~~(3)~~(4).

(f) Ambulatory surgery services for which the primary ICD-9-CM procedure code is not included in the day procedure grouper described in (1)(a) will be reimbursed under the retrospective cost basis as specified in ARM 37.86.3005~~(2)~~(3).

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

3. The proposed changes to the inpatient and outpatient hospital Medicaid reimbursement rules are necessary to make permanent the changes adopted in the temporary emergency rule

amendments effective March 1, 2001 pursuant to the notice published on March 8, 2001, on page 403 of the 2001 Montana Administrative Register, issue number 5. The proposed amendments would implement a provider rate increase that will increase the diagnosis related group (DRG) base. The proposed amendments also adjust DRG weights and thresholds to bring the overall Montana Medicaid budget for hospitals into alignment with appropriations. A proposed language change related to disproportionate share hospitals (DSH) is a result of changes in Federal law. A proposal to replace the term "medical assistance facility" reflects the Department's authority to license critical access hospitals.

Medicaid hospital rate increase

The 2001 Montana legislature enacted a provider rate increase for inpatient and outpatient hospitals. The Department arrived at this proposal after consulting with a representative of the hospital providers' association. The Department proposes a provider rate increase applied to the DRG base, increasing it to $2,125.

The Department considered and rejected the option of not implementing the provider rate increase. The Department finds that hospitals provide vital services to Montana Medicaid patients in their communities. A provider rate increase is necessary to assure that hospitals remain part of the Montana Medicaid provider network.

Measures to limit costs

Due to the Montana Medicaid hospital reimbursement budget deficits experienced in state fiscal year (SFY) 2001, the Department reviewed paid claims data extensively since January 2001 to identify changes that would limit costs while minimally affecting the availability of high quality health care services to Montana Medicaid recipients. The Department rejected the option of making no changes to components of the hospital reimbursement rules. If the Department takes no action to limit costs, Montana Medicaid expenditures for inpatient and outpatient hospital services would exceed appropriations. A delay in addressing cost saving measures would require deeper cuts to realize the same savings as the proposed changes. Deeper cuts would result in marginal providers withdrawing their participation from the Montana Medicaid hospital program. Medicaid recipients in the geographical areas served by those providers would consequently suffer reduced availability of hospital services. Therefore, the Department is proposing amendments to limit costs.

The Department proposes adjustment of the DRG weights to reflect a case mix of 1.000. Furthermore, the Department is proposing that the Montana Medicaid system would no longer provide for "unstable" inpatient hospital DRGs and DRG 390 would be

converted to a regular DRG from a neonatal intensive care unit (NICU) special case, thus conforming to a more prospective payment system. The cost outlier thresholds and the catastrophic threshold are being amended for inflation. The proposal updates the data used in determining which hospitals qualify for the hospital policy adjustor. The threshold for outpatient claims to be considered "unstable" for purposes of eligibility for stop/loss payments would be changed to billed charges greater than 500% of the day procedure group (DPG). The outpatient hospital reimbursement methodology for imaging and other diagnostic services would be changed to equal 100% of the Medicare ambulatory payment classification (APC) rate. The proposal would also discontinue separate reimbursement for observation bed services.

37.86.2801

The proposed amendments to ARM 37.86.2801 would include changes necessary to make permanent the temporary emergency rule that requires outpatient hospital services provided in hospitals located more than 100 miles outside the borders of the state of Montana to be subject to prior authorization by the Department's designated review organization. Emergent services must be authorized within 48 hours of the services provided. For these same providers, the rate of reimbursement for inpatient and outpatient services would continue to be 61% of billed charges.

In addition, the Department proposes requiring hospitals to send in the electronic cost report (ECR) file when the hospitals send the ECR files to the Medicare fiscal intermediary.

37.86.2901

The Department proposes that the data used for determining which hospital qualifies for the hospital policy adjustor be amended to SFY 2000. In this rule and throughout this notice, the Department is proposing that the term "medical assistance facility" be replaced with the terminology used in Federal law and regulations, "critical access hospital". The amendments to this rule would also update language pertaining to disproportionate share hospitals (DSH) to conform to Federal regulations.

37.86.2905

For hospitals in the state of Montana paid under the DRG prospective payment system, the proposed amendment would adopt as a permanent rule the temporary emergency rule reimbursing capital related expenses as a facility specific add-on expense. For out-of-state hospitals, capital-related expenses are paid at the statewide average of $229. The cost to charge ratio would, therefore, be adjusted to reflect the policy change in capital related expenses. The cost to charge ratio would continue to be 56%. The proposed amendment also reflects the Department's

policy to update the DRG grouper every October to coincide with Medicare policy. The proposed rule updates the DRG table of weights and thresholds to the April 2001 edition. The proposed amendment of this rule includes elimination of stop-loss payments to inpatient hospitals for "unstable" DRGs and changes DRG 390 from an NICU special case to a regular DRG. DRG 390 has an average length of stay of 2.1 days, similar to the normal newborn DRG. ARM 37.86.2605 regulating ambulance services is amended accordingly.

The cost outlier thresholds were adjusted in the emergency rules and would be adjusted again effective July 1, 2001. The DRG weights have been decreased to reflect a case mix of 1.000.

The threshold of eligibility for additional reimbursement in catastrophic cases was not adjusted in the temporary emergency rule and has not been adjusted for inflation in eight years. Therefore, the Department proposes an adjustment to account for inflation. Based on the data in the MMIS paid claim, the percentage of the proposed inflation increase is 7.18% brought forward for two adjustments.

The qualified rate adjustment (QRA) has been so successful the Department proposes that it be extended indefinitely. This rule and ARM 37.86.2910 would be amended accordingly.

37.86.3002

The proposed amendment to this rule would eliminate air transport ambulance services for DRG 390. This amendment would make ARM 37.86.3002 consistent with the amendment in ARM 37.86.2905 changing DRG 390 from an NICU special case to a regular DRG.

37.86.3005

The proposed amendments to this rule would make permanent the changes adopted in the temporary emergency rules. Outpatient hospital services for hospitals located more than 100 miles from the nearest Montana border would be reimbursed at 61%. The Medicaid outpatient hospital statewide average cost to charge ratio would remain .56 as adopted in the temporary emergency rules. Similarly, the interim rate for providers who fail or refuse to submit financial information needed to calculate cost to charge ratio would remain at 50% of billed charges.

37.86.3009

Consistent with these rules, the term "medical assistance facilities" in ARM 37.86.3009 would be changed to "critical access hospitals". The threshold would be amended to billed charges greater than 500% of the DPG for stop/loss pricing of unstable outpatient procedure groups. The outpatient pricing methodology has not been updated to account for inflation since

its inception in 1995. The amendment includes changes in the reimbursement methodology for imaging and other diagnostics so they would be paid at 100% of the Medicare APC rate. The amendment includes proposed reimbursement changes for observation bed services to align with Medicare's reimbursement policy changes on observation bed services. The amendment proposes discontinuation of separate reimbursement for observation bed services. The services would be included in the reimbursement as a part of the bundled visits in the DPG.

37.86.3011

The proposed amendment clarifies that emergency room services for evaluation and stabilization will be reimbursed at $20.60 per visit.

37.86.3016

The Department proposes to amend the reimbursement methodology for outpatient imaging services so they would be paid at 100% of the Medicare APC rate.

37.86.3018

The Department proposes amendment of the reimbursement methodology for outpatient diagnostic services so they would be paid at 100% of the Medicare APC rate. The changes include a technical amendment, deleting reference to HCFA Pub. 10. The Department would rely solely on the Current Procedure Terminology, Fourth Edition (CPT-4).

37.86.3020

Proposed amendments to ARM 37.86.3020 would substitute the term "critical access hospitals" for "medical assistance facilities". The Department proposes that the threshold be increased to billed charges greater than 500% of the DPG as a condition of eligibility for stop/loss pricing of unstable outpatient procedure groups.

Fiscal impact and persons affected

The anticipated fiscal impact of the proposed rules including the $1.046 million provider rate increase and QRA payments totaling $1 million offset against savings of approximately $4.446 million result in a net savings of $2.4 million per annum.

The number of Medicaid recipients who are eligible for inpatient and outpatient hospital benefits and might be affected by this rule is estimated to be 68,000. There are 363 hospitals that might be affected by the proposed rules.

4. Interested 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 Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210, no later than 5:00 p.m. on May 24, 2001. Data, views or arguments may also be submitted by facsimile (406)444-1970 or by electronic mail via the Internet to dphhslegal@state.mt.us. The Department also maintains lists of persons interested in receiving notice of administrative rule changes. These lists are compiled according to subjects or programs of interest. For placement on the mailing list, please write the person at the address above.

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

/s/ Dawn Sliva
Rule Reviewer

/s/ Gail Gray
Director, Public Health and Human Services

Certified to the Secretary of State April 16, 2001.

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

In the matter of the amendment of ARM 37.40.302, 37.40.306, 37.40.307, 37.40.308, 37.40.311, 37.40.320, 37.40.321, 37.40.323, 37.40.325, 37.40.326, 37.40.330, 37.40.360 and 37.40.361 pertaining to nursing facilities	)	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Interested Persons

1. On May 18, 2001, at 1:30 p.m., a public hearing will be held in the auditorium of the Department of Public Health and Human Services Building, 111 N. Sanders, Helena, Montana to consider the proposed amendment of the above-stated rules.

The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who need an alternative accessible format of this notice or provide reasonable accommodations at the public hearing site. If you need to request an accommodation, contact the department no later than 5:00 p.m. on May 8, 2001, to advise us of the nature of the accommodation that you need. Please contact Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210; telephone (406)444-5622; FAX (406)444-1970; Email dphhslegal@state.mt.us.

2. The rules as proposed to be amended provide as follows. Matter to be added is underlined. Matter to be deleted is interlined.

37.40.302 DEFINITIONS Unless the context requires otherwise in this subchapter, the following definitions apply:

(1) through (8) remain the same.

(9) "Licensed to non-licensed ratio" means the ratio computed when the sum of all hourly registered and licensed practical nurse wages, paid or accrued by all providers, divided by the total number of registered and licensed practical nurse hours, is divided by the sum of all hourly nurse aide wages, paid or accrued by all providers divided by the total number of nurse aide hours.

(a) The licensed to non-licensed ratio will be computed using information from the most recent cost report on file as of April 1 immediately prior to the rate year, or if the hourly component of such information is not available from the cost report, from the staffing reports filed pursuant to ARM ~~46.12.1232~~ 37.40.315 for the period corresponding to the cost report period from which wage information is used to set the

ratio. If the necessary information for a particular facility is not available from a cost report and/or staffing report, the wages, benefits and hours from that facility will not be used to set the ratio.

(10) through (14) remain the same.

(15) "Nursing facility services" means nursing facility services provided in accordance with 42 CFR, part 483, subpart B, or intermediate care facility services for the mentally retarded provided in accordance with 42 CFR, part 483, subpart I. The department hereby adopts and incorporates herein by reference 42 CFR, part 483, subparts B and I, which define the participation requirements for nursing facility and intermediate care facility for the mentally retarded (ICF/MR) providers, copies of which may be obtained from the Department of Public Health and Human Services, Senior and Long Term Care Division, 111 N. Sanders, P.O. Box 4210, Helena, MT 59604-4210. The term "nursing facility services" includes the term "long term care facility services". Nursing facility services include, but are not limited to, a medically necessary room, dietary services including dietary supplements used for tube feeding or oral feeding such as high nitrogen diet, nursing services, minor medical and surgical supplies, and the use of equipment and facilities. Payment for the services listed in this subsection is included in the per diem rate determined by the department under ARM 37.40.307 or 37.40.336 and no additional reimbursement is provided for such services. Nursing facility services include but are not limited to the following or any similar items:

(a) through (d) remain the same.

(e) items routinely provided to residents including but not limited to:

(i) through (xxi)(F) remain the same.

(G) skin care and hygiene items, including but not limited to bath soap, ~~moisturing~~ moisturizing lotion, and disinfecting soaps or specialized cleansing agents when indicated to treat special skin problems or to fight infection; and

(xxi)(H) through (23) remain the same.

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

37.40.306 PROVIDER PARTICIPATION AND TERMINATION REQUIREMENTS (1) Nursing facility service providers, as a condition of participation in the Montana medicaid program must meet the following requirements:

(a) through (h) remain the same.

(i) comply with ARM 37.40.101, 37.40.105, 37.40.106, 37.40.110, 37.40.120, and 37.40.201 through 37.40.207 ~~and 46.12.1101~~, regarding screening for nursing facility services;

(j) through (4) remain the same.

AUTH: Sec. 53-6-108, 53-6-111, 53-6-113 and 53-6-189, MCA
IMP: Sec. 53-2-201, 53-6-101, 53-6-106, 53-6-107, 53-6-111, 53-6-113 and 53-6-168, MCA

37.40.307 NURSING FACILITY REIMBURSEMENT (1) For nursing facility services, other than ICF/MR services, provided by nursing facilities located within the state of Montana, the Montana medicaid program will pay a provider, for each medicaid patient day, a per diem rate determined in accordance with this rule, minus the amount of the medicaid recipient's patient contribution. The per diem rate shall be subject to the maximum level, if any, specified in (3) through (3)(c). Except as provided in (4) and 5, the per diem rate is the sum of the following components:

(a) through (4)(c) remain the same.

(5) Effective July 1, 2001, nursing facilities will be reimbursed using a price-base reimbursement methodology. The rate for each facility will be determined using the operating component defined in (5)(a) and the direct resident care component defined in (5)(b):

(a) The operating component is the same per diem for each nursing facility. It is set at 80% of the statewide price for nursing facility services.

(b) The direct resident care component of each facility's rate is 20% of the overall statewide price for nursing facility services. It is adjusted for the acuity of the medicaid residents served in each facility. The acuity adjustment increases or decreases the direct resident care component in proportion to the relationship between each facility's medicaid average case mix index and the statewide average medicaid case mix index.

(i) The medicaid average case mix index for each facility to be used in rate setting will be the simple average of each facility's four medicaid case mix indices calculated for the periods of February 1 of the current year and November 1, August 1 and May 1 of the year immediately preceding the current year. The statewide average medicaid case mix indices will be the simple average of each facility's 4 quarter average medicaid case mix index to be used in rate setting.

(c) The rate setting methodology effective July 1, 2001, will hold nursing facilities harmless. To the extent that a provider's rate could decrease using the price-based reimbursement methodology described in this rule, each facility will receive the greater of their price-based rate or their rate in effect on June 30, 2001 increased by 2%. This hold harmless methodology, which provides for a minimum 2% rate increase each state fiscal year, will be in effect for state fiscal years 2002 and 2003. For state fiscal year 2004 and in following years each facility will be reimbursed according to the price-based nursing facility reimbursement system.

(d) The statewide price for nursing facility services will be determined each year though a public process. Factors that could be considered in the establishment of this price include the cost of providing nursing facility services, medicaid recipients access to nursing facility services, the quality of nursing facility care as well as budgetary constraints.

(e) Provisions of (3) pertaining to private pay limits do

not apply to rate years beginning on or after July 1, 2001.

(f) The total payment rate available for the period July 1, 2001 through June 30, 2002 will be the rate as computed in (5), plus any additional amount computed in ARM 37.40.311.

~~(5)~~ (6) For providers who, as of July 1 of the rate year, have not filed with the department a cost report covering a period of at least 6 months participation in the medicaid program in a newly constructed facility shall have a rate set at the statewide median ~~rate~~ price as computed on July 1, ~~2000~~ 2001 for this transition year. Following a change in provider as defined in ARM 37.40.325, the per diem rate for the new provider shall be set at the previous provider's rate, as if no change in provider had occurred~~, during this transition rate year~~.

(6) remains the same in text but is renumbered (7).

~~(7)~~ (8) In addition to the per diem rate provided under ~~(1)~~ (5) or the reimbursement allowed to an ICF/MR provider under ~~(5)~~ (7), the Montana medicaid program will pay providers located within the state of Montana for separately billable items, in accordance with ARM 37.40.330.

(8) through (12) remain the same in text but are renumbered (9) through (13).

~~(13)~~ (14) Providers must bill for all services and supplies in accordance with the provisions of ARM 37.85.406. The department's fiscal agent will pay a provider on a monthly basis the amount determined under these rules upon receipt of an appropriate billing which reports the number of patient days of nursing facility services provided to authorized medicaid recipients during the billing period.

(a) Authorized medicaid recipients are those residents determined eligible for medicaid and authorized for nursing facility services as a result of the screening process described in ARM 37.40.101, 37.40.105, 37.40.106, 37.40.110, 37.40.120, and 37.40.201, et seq. ~~and 46.12.1101.~~

(14) remains the same in text but is renumbered (15).

AUTH: Sec. 53-6-113, MCA
IMP: Sec. 53-6-101, 53-6-111 and 53-6-113, MCA

37.40.308 RATE EFFECTIVE DATES (1) A provider's per diem rate effective for the rate period July 1, 2001 through June 30, 2002 shall be determined in accordance with ARM 37.40.307.

~~(1)~~ (2) Except as specifically provided in these rules, per diem rates and interim rates are set no more than once a year, effective July 1, and remain in effect at least through June 30 of the following year.

(a) Nothing in this subchapter shall be construed to require that the department apply any inflation adjustment, recalculate the median operating costs or the statewide median average wage, or otherwise adjust or recalculate per diem rates or interim rates on July 1 of a rate year, unless the department adopts further rules or rule amendments providing specifically for a rate methodology for the rate year.

(i) A provider's per diem rate effective for the rate period July 1, 2000 through June 30, 2001 shall be determined in

accordance with ARM 37.40.307.

(b) and (c) remain the same.

(2) through (d)(iv) remain the same in text but are renumbered (3) through (d)(iv).

AUTH: Sec. 53-2-201 and 53-6-113, MCA
IMP: Sec. 53-6-101 and 53-6-113, MCA

37.40.311 RATE ADJUSTMENT FOR COUNTY FUNDED RURAL NURSING FACILITIES ~~(1) For state fiscal year 2001, and subject to the availability of sufficient state, county and federal funding, the department will provide a mechanism for additional per diem payments to county funded rural nursing facilities when the computed payment rate as calculated in ARM 37.40.307 is less than the statewide median medicaid rate in effect for rate year 2001.~~

~~(a) A nursing facility is eligible to participate in this payment rate adjustment if it receives county funds and has a per diem medicaid rate computed as specified in ARM 37.40.307 which is less than the statewide median.~~

~~(b) The department will calculate the amount of per diem rate increase that will be allowed for each county funded provider as specified in ARM 37.40.307 so that the total per day reimbursement is computed at the statewide median medicaid rate for rate year 2001.~~

~~(c) In order to qualify for this per diem rate adjustment effective July 1 of the rate year the rural, county based provider must execute and enter into a written agreement with the department and agree to abide by the terms of the written agreement. Rural county facilities that do not enter into a written agreement with the department, or do not abide by the terms of the agreement will have their medicaid payment rate computed under the provisions outlined in ARM 37.40.307 and will not be entitled to a per diem adjustment in their computed payment rate up to the statewide median payment rate effective July 1, 2000.~~

~~(d) Any amounts that have been paid at the median rate when payment should be limited to the computed payment rate, as provided in ARM 37.40.307, will be retroactively recovered by the department.~~

(1) For state fiscal year 2002, and subject to the availability of sufficient county, state and federal funding, the department will provide a mechanism for a one time, lump sum payment to non-state governmental owned or operated facilities for medicaid services. These payments will be for the purpose of maintaining access and viability for a class of "at risk" county affiliated facilities who are predominately rural and are the only nursing facility in their community or county or who provide a significant share of nursing facility services in their community or county.

(a) A nursing facility is eligible to participate in this lump sum payment distribution if it is a non-state governmental owned or operated facility.

(b) The department will calculate the amount of lump sum

distribution that will be allowed for each county affiliated provider so that the total per day amount does not exceed the computed medicare upper payment limit for these providers. Distribution of these lump sum payments will be based on the medicaid utilization at each participating facility for the period July 1, 2001 through June 30, 2002.

(c) In order to qualify for this lump sum adjustment effective July 1, 2001, each non-state governmental owned or operated facility must enter into a written agreement to transfer local county funds to be used as matching funds by the department. This transfer option is voluntary, but those facilities that agree to participate must abide by the terms of the written agreement.

(2) Effective for the period commencing on or after July 1, 2001, and subject to the availability of sufficient county, state and federal funding, the department will provide for a one time, lump sum distribution of funding to nursing facilities not participating in the funding for "at risk" facilities for the provision of medicaid services.

(a) The department will calculate the maximum amount of the lump sum payments that will be allowed for each participating non-state governmental owned or operated facility, as well as the additional payments for other nursing facilities not participating in the funding for "at risk" facilities for the provision of medicaid services, based on the availability of funding and in accordance with state and federal laws, as well as applicable medicare upper payment limit thresholds. This payment will be computed as a per day add-on based upon the funding available. Distribution will be in the form of lump sum payments and will be based on the medicaid utilization at each participating facility for the period July 1, 2001 through June 30, 2002.

AUTH: Sec. 53-6-113, MCA
IMP: Sec. 53-6-101, 53-6-111 and 53-6-113, MCA

37.40.320 MINIMUM DATA SET SUBMISSION, TREATMENT OF DELAYS IN SUBMISSION, INCOMPLETE ASSESSMENTS, AND CASE MIX INDEX CALCULATION (1) through (3) remain the same.

(4) Assessments not containing sufficient in-range data to perform a resource utilization group-III (RUG-III) algorithm will not be included in the case mix calculation during the transition period. ~~be assigned to the non-classifiable category of BC1. Non-classifiable assessments may be replaced following the HCFA policy for correction of a prior assessment. This replacement assessment shall be completed and transmitted to the HCFA database maintained by the department prior to the first Friday of the third month of each quarter to be included in the rate calculation. A default case mix index of the lowest index in the state will be assigned to all non-classifiable, BC1, assessments.~~

~~(5) All current assessments in the database older than 110 days will be assigned the non-classifiable category of BC1 and given a default case mix index of the lowest index in the state.~~

(5) All current assessments in the database older than six months will be excluded from the case mix index calculation.

(6) For purposes of calculating ~~shadow~~ rates, the department will use the RUG-III, 34 category, index maximizer model, version 5.12. The department may update the classification methodology to reflect advances in resident assessment or classification subject to federal requirements.

(7) For purposes of calculating ~~shadow~~ rates, case mix weights will be developed for each of the 34 RUG-III groupings. The department will compute a Montana specific medicaid case mix utilizing average nursing times from the ~~1991,~~ 1995 and the 1997 HCFA case mix time study. The average minutes per day per resident will be adjusted by Montana specific salary ratios determined by utilizing the licensed to non-licensed ratio spreadsheet information.

(8) For purposes of calculating ~~shadow~~ rates, the department shall assign each resident a RUG-III group calculated on the most current non-delinquent assessment available on the first day of the second month of each quarter as amended during the correction period. The RUG-III group will be translated to the appropriate case mix index or weight. From the individual case mix weights for the applicable quarter, the department shall determine a simple facility average case mix index, carried to four decimal places, based on all resident case mix indices. For each quarter, the department shall calculate a medicaid average case mix index, carried to four decimal places, based on all residents for whom medicaid is reported as the per diem payor source any time during the 30 days prior to their current assessment.

(9) Facilities will be required to comply with the data submission requirements specified in this rule and ARM 37.40.321 during the rate year beginning July 1, 1999 for the development of a case mix reimbursement system. The department will utilize medicaid case mix data in the computation of ~~quarterly shadow~~ rates for the period July 1, ~~1999~~ 2001 through June 30, ~~2000~~ 2002. ~~The department will compute shadow rates in order to determine what each nursing facility's rate would be established at if it was computed utilizing a facility wide case mix, a medicaid case mix index, or any other case mix methodology, as determined appropriate by the department. The shadow rates will be established for comparative purposes only. Facilities will be able to analyze this rate information during this time period in order to become more educated in its use as a reimbursement component for the transition to a case mix reimbursement methodology on July 1, 2000 or subsequent rule years.~~

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

37.40.321 CORRECTION OF ERRONEOUS OR MISSING DATA

(1) The department will prepare and distribute resident listings to facilities ~~on~~ by the fifteenth day of the third ~~first Friday of the second~~ month of each quarter (cut off date). The listings will identify current assessments for residents in

the nursing facility on the first day of the second month of each quarter as reflected in the database maintained by the department. The listings will identify resident social security numbers, names, assessment reference date, the calculated RUG-III category and the payor source ~~as reflected on the most recent full assessment as of the cut off date~~. ~~Resident listings will be reviewed for completeness and accuracy.~~ Resident listings shall be signed and returned to the department by the fifteenth day ~~first Friday~~ of the first ~~third~~ month of the following calendar quarter. Facilities who do not return this corrected resident listing by the due date will use the database information on file in their case mix calculation.

(2) If data reported on the resident listings is in error or if there is missing data, facilities will have until the fifteenth day ~~first Friday~~ of the first ~~third~~ month of each calendar quarter to correct data submissions.

(a) through (c) remain the same.

(3) The department may also use medicaid paid claim data to determine the medicaid residents in each facility when determining the medicaid average case mix index for each facility.

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

37.40.323 CALCULATED PROPERTY COST COMPONENT (1) and (a) remain the same.

(2) As used in this rule, the following definitions apply:

(a) and (a)(i) remain the same.

(b) "Property costs" means allowable patient-related costs for building depreciation, equipment depreciation, capital-related interest, building lease, and equipment leases, subject to the provisions of ARM ~~37.40.331~~ 37.40.345. Property costs do not include insurance or tax costs.

(c) through (5) remain the same.

AUTH: Sec. 53-2-201 and 53-6-113, MCA
IMP: Sec. 53-6-101 and 53-6-113, MCA

37.40.325 CHANGE IN PROVIDER DEFINED (1) through (5) remain the same.

(6) Any change in provider, corporate or other business ownership structure or operation of the facility that results in a change in federal tax identification number will require a provider to seek a new medicaid provider enrollment.

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

37.40.326 INTERIM PER DIEM RATES FOR NEWLY CONSTRUCTED FACILITIES AND NEW PROVIDERS (1) This rule specifies the methodology the department will use to determine the interim per diem rate for in-state providers, other than ICF/MR providers, which as of July 1 of the rate year have not filed with the

department a cost report covering a period of at least 6 months participation in the medicaid program in a newly constructed facility or following a change in provider as defined in ARM 37.40.325.

(a) Effective July 1, 2001, the rate paid to new providers that acquire or otherwise assume the operations of an existing nursing facility, that was participating in the medicaid program prior to the transaction, will be paid the price-based reimbursement rate in effect for the prior owner/operator of the facility before the transaction as if no change in provider had occurred. These rates will be adjusted at the start of each state fiscal year in accordance with other provisions of this rule.

(b) Effective July 1, 2001, the rate paid to newly constructed facilities or to facilities participating in the medicaid program for the first time will be the statewide average nursing facility rate under the price-based reimbursement system. The direct care component of the rate will not be adjusted for acuity, until such time as there are 3 or more quarters of medicaid CMI information available at the start of a state fiscal year. Once the CMI information is available the price-based rate will include the acuity adjustment as provided for in other subsections of this rule.

(a) remains the same in text but is renumbered (c).

(2) through (3)(b) remain the same.

AUTH: Sec. 53-6-113, MCA
IMP: Sec. 53-6-101 and 53-6-113, MCA

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

(2) The department may, in its discretion, pay as a separately billable item, a per diem nursing services increment for services provided to a ventilator dependent resident if the department determines that extraordinary staffing by the facility is medically necessary based upon the resident's needs.

(a) and (b) remain the same.

(c) The increment amount shall be determined by the department as follows. The department shall subtract the facility's current ~~patient assessment score~~ average medicaid case mix index (CMI) used for rate setting determined in accordance with ARM 37.40.320 from the ~~average itemized hours of licensed and non-licensed nursing hours per day~~ CMI computed for the ventilator dependent resident, determined based upon the current minimum data set (MDS) information for the resident in order to determine the difference in case mix for this resident from the average case mix for all medicaid residents in the facility. ~~facility's time records of nursing services for the 5-day period submitted in accordance with (2)(b), to determine the extraordinary nursing hours for the resident.~~ The increment shall be determined by the department by multiplying ~~the number of extraordinary nursing hours per day by an hourly nursing rate~~ the provider's direct resident care component by the ratio of the resident's CMI to the facility's average medicaid CMI to

compute the adjusted rate ~~determined by the department~~ for the resident. ~~The department shall determine the hourly nursing rate for the resident based upon the facility's inflated base period composite nursing wage rate determined for the rate year according to ARM 37.40.314(2)(b) and the mix of licensed and non-licensed nursing staff used to provide the extraordinary nursing hours for the resident.~~ The department will determine the increment for each resident monthly after review of case mix information and five consecutive day nursing time documentation review.

(3) through (10) remain the same.

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

37.40.360 LIEN AND ESTATE RECOVERY FUNDS FOR ONE-TIME EXPENDITURES (1) A one-time appropriation by the ~~1999~~ 2001 Montana legislature allowed the department to allocate funds from its lien and estate recovery program to the medicaid nursing home program. By the terms of the appropriation, the funds must be used for one-time expenditures to improve the quality of life for residents and/or staff in nursing facilities. ~~nursing home staff training, bonuses for direct care staff or one-time benefits for staff.~~

(2) The department will allocate to each certified nursing facility located within the state of Montana its pro rata share of the total appropriated funds, computed as provided in (3), which submits a qualifying request which is approved by the department. The funds are subject to availability and are a one-time appropriation to the nursing home program to be used only for one-time expenditures to improve the quality of life for residents and/or staff in nursing facilities. ~~staff training, bonuses for direct care staff or for other one-time benefits for staff.~~

(3) remains the same.

(4) To receive funds under this rule, a nursing care facility shall submit, and have approved, a request form to the department, which specifies how the facility will use these funds for one-time expenditures to improve the quality of life for residents or staff in nursing facilities or both. ~~for staff training, bonuses for direct care staff or for other one-time benefits for staff.~~ The department will review each request and approve qualifying requests prior to making payment. If the cost of a proposal approved by the department exceeds the amount of funds payable to that facility, the department shall not be obligated to and will not reimburse the facility any more than its pro rata share of the available funding.

(5) and (6) remain the same.

(7) The funds distributed under this rule are for one-time expenditures; and facilities will be required to offset these expenditures with the revenue received only under this rule on their annual cost report to the department. ~~These expenses shall not be considered base period costs for the participating facilities.~~

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

37.40.361 ADDITIONAL PAYMENTS FOR DIRECT CARE WAGE AND BENEFITS INCREASES (1) Effective for the period July 1, 2001 and thereafter, nursing facilities must report to the department entry level and average hourly wage and benefit rates paid for direct care workers. The reported data shall be used by the department for the purpose of comparing rates of pay for comparable services. There will be no separate per day add-on computed for direct care wages after June 30, 2001.

~~(1)~~ (2) A one-time appropriation by the 1999 Montana legislature authorized the department to distribute to facilities an additional amount for wage and benefits increases for direct care workers in nursing homes for fiscal years 2000 and 2001.

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

~~(3)~~ (4) The department will determine a per day add-on payment, commencing July 1, 1999 and at the beginning of ~~each~~ state fiscal year ~~thereafter~~ 2001, as a pro rata share of appropriated funds allocated for increases in direct care wages and benefits.

(4) remains the same in text but is renumbered (5).

~~(5)~~ (6) A facility that does not submit a qualifying request for use of the funds distributed under this rule which includes all of the information that is requested by the department, within the time established by the department, or a facility that does not wish to participate in this additional funding amount shall not be entitled to their share of the funds. The department shall make retroactive adjustment to the payment rate established on July 1, 1999 and in ~~each~~ state fiscal year ~~thereafter~~ 2001, which will reduce the medicaid per day payment amount by the amount of funds that have been designated for the direct care wage add-on for any non-participating or non-qualifying facility. Any amounts paid by the department up to that time for the direct care wage add-on shall be recovered by the department.

(6) remains the same in text but is renumbered (7).

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

3. The proposed amendments are necessary to implement a Medicaid rate increase for nursing facilities effective July 1, 2001. At the same time, the Department proposes to implement a new rate methodology based on price and resident acuity.

The Department has worked with a nursing facility reimbursement group made up of representatives of the provider network during the last year to develop many of the changes that will be proposed to these rules. The work group agreed on the components that need to be addressed in a price based system of reimbursement to be effective on July 1, 2001 during their November 29, 2000 work group meeting.

The Department will provide copies of the proposed rates to all nursing facilities in advance of the rule hearing, for verification purposes and in order to facilitate comments. These rates will distribute the funding available, in order to meet the Department's goal of transitioning to a price based system and will incorporate legislatively appropriated funding levels. Interested persons may obtain a copy of the proposed rates by contacting Kelly Williams, Department of Public Health and Human Services, Senior and Long Term Care Division, 111 N. Sanders, P.O. Box 4210, Helena, MT 59604-4210, telephone (406)444-4147.

These rule changes outline the methodology for moving to a full price based system of reimbursement which will narrow the range of rates being paid to nursing facility providers and stabilize the levels of reimbursement paid across all facilities. A price based system will better recognize the increasing levels of acuity of residents being admitted to the nursing facility setting and serve to lessen the volatility of the rate setting process, which historically has resulted in dramatic fluctuations in rates upward and downward in years where updated cost information was recognized in the system of reimbursement. The system of reimbursement will be decoupled from the costs being directly incurred by each nursing facility and the Department will move toward a system of reimbursement that is based on an established price for nursing facility services. The reimbursement system will reimburse providers based upon their rates relative to the recognized price for nursing facility services and will serve to narrow the range of rates being paid for nursing facility services under medicaid and stabilize the system of reimbursement for providers.

If the Department does not make changes to move toward a price based approach the Department will be faced with the following issues. Statewide occupancy rates are currently at 80% in Montana nursing facilities. At the same time, the care needs of the typical nursing facility resident are increasing. These residents are being admitted at an older age with medically fragile and complex care needs that can no longer be met in home or community settings. As these trends towards lower occupancy and increased acuity continue, it becomes more important than ever that nursing facility providers receive rate increases that reflect the increased cost of doing business. If medicaid rates do not stabilize, small rural providers of nursing facility services will find it more difficult to keep their doors open with decreasing occupancy levels and the inability to predict the level of funding that may be available in order to determine the best way to provide nursing facility services in their communities. Increased costs due to lower occupancy levels and unpredictability of the system of reimbursement are likely to be passed on to the privately paying individuals.

Costs have been increasing faster than the rate of inflation and faster than the funding increases that have been provided by the

legislature. The legislature has recognized the need for these changes and has provided a 4.5% provider rate increase in fiscal year 2002, as well as the approval for the use of local county matching funds as a source of additional revenue for "at-risk" nursing facility providers in order to maintain access to, and the quality of, nursing facility services. The Department has been working with the industry over the last year to incorporate these changes into the system of reimbursement and believes that this approach to reimbursing nursing facility providers for their services over the next several years is the most prudent approach to pursue.

Price-Based System:

For rate year 2002 (July 1, 2001 - June 30, 2002) the nursing facility per diem rate will be computed as follows:

(1) The Medicaid per diem rates will include two components. The operating component (includes both operating and capital combined) which is the same for all nursing facilities and represents 80% of the overall price. The nursing component that will be adjusted for individual nursing facility acuity and is 20% of the overall price.

(2) In order to transition to a price-based system, proportionally larger rate increases will be provided to nursing facilities that have rates below the acuity adjusted price until they reach the acuity adjusted price. All nursing facilities will receive at least a 2% minimum rate increase during this first year of the transition to a price-based system. Medicaid per diem rates will be established annually each July. No nursing facility will receive a rate decrease in the transition period.

(3) The minimum data set (MDS) case mix assessment data will be used to compute resident acuity. Each nursing facility's case mix index will be calculated quarterly based upon a set point in time, using the most recent annual or quarterly MDS information. Non-classifiable MDS assessment will be excluded from the computation of case mix indexes during the transition period. Medicaid case mix for annual rate setting will be based on the most recent four quarter average of Medicaid CMIs for each nursing facility.

Elimination of Private Pay Rate Limit:

The Department will eliminate the private pay rate limit requirement as part of the transition to a price-based system of reimbursement. The private pay limit currently in place in the nursing home program requires that Medicaid will pay no more to a provider than their private pay rate when the facility established private pay rate is less than the rate computed under the Medicaid reimbursement. In order to allow for the movement of some facilities' rates to the price, this limit must

be removed.

Rural "At Risk" Providers One Time Payments:

Provide a mechanism for rural "at-risk" county nursing facilities, to receive additional reimbursement up to the Medicare upper limit. For rate year 2002, and subject to the availability of sufficient county, state and federal funding, the Department will provide a mechanism for a one time, lump-sum payment to "at risk non-state governmental owned or operated facilities" for Medicaid services. These payments will be to maintain access for consumers and viability for a class of "at-risk" county affiliated facilities who are predominately rural and are the only nursing facility in their community or county or who provide a significant share of the nursing facility services there. In order to qualify for this lump sum adjustment, each non-state governmental owned or operated facility must enter into a written agreement to transfer local county funds to be used as matching funds by the department. This transfer option is voluntary, but those facilities that agree to participate must abide by the terms of the agreement. Distribution of these lump sum payments will be based on the Medicaid utilization at each participating facility.

Other Nursing Facility One Time Payments:

For the period commencing on or after July 1, 2001, and subject to the availability of sufficient county, state and federal funding, the Department will provide for a one time, lump sum distribution of funding to other nursing facilities not determined to be "at risk" for the provision of Medicaid services. These facilities are faced with declining census and the need for increased staffing in order to maintain viability and assure that quality nursing facility services are available to Medicaid eligible residents. Distribution of these lump sum payments will be based on the Medicaid utilization at each participating facility.

Miscellaneous Technical Corrections

The proposed amendments also make minor technical corrections to clarify internal references and references to other rules.

Estimated Financial/Budget Impacts:

The estimated financial impact of the proposed provider rate increase is approximately $4.6 million in state and federal funds for fiscal year 2002.

The estimated total funding impact of the one time payments to "at risk" non state governmental providers and other nursing facilities not participating in the "at risk" funding program is estimated to be approximately $13,795,929 in state and federal funds for fiscal year 2002.

4. Interested 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 Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210, no later than 5:00 p.m. on May 24, 2001. Data, views or arguments may also be submitted by facsimile (406)444-1970 or by electronic mail via the Internet to dphhslegal@state.mt.us. The Department also maintains lists of persons interested in receiving notice of administrative rule changes. These lists are compiled according to subjects or programs of interest. For placement on the mailing list, please write the person at the address above.

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

/s/ Dawn Sliva
Rule Reviewer

/s/ Gail Gray
Director, Public Health and Human Services

Certified to the Secretary of State April 16, 2001.

BEFORE THE STATE COMPENSATION INSURANCE FUND
OF THE STATE OF MONTANA

In the matter of the adoption of New Rule I (ARM 2.55.319) pertaining to the calculation of manual rates, amendment of ARM 2.55.320, 2.55.323, 2.55.324, 2.55.327A, 2.55.401, 2.55.407, pertaining to premium rates and premium modifiers, and repeal of 2.55.321 and 2.55.322 pertaining to ratemaking	)	NOTICE OF ADOPTION, AMENDMENT AND REPEAL

TO: All Concerned Persons

1. On January 11, 2001 the State Compensation Insurance Fund published notice of the proposed adoption of New Rule I (ARM 2.55.319) pertaining to the calculation of manual rates; New Rule II pertaining to variable pricing and the proposed amendment of ARM 2.55.320, 2.55.323, 2.55.324, 2.55.327A, 2.55.401, 2.55.407 pertaining to premium rates and premium modifiers; and the proposed repeal of ARM 2.55.321 and 2.55.322 pertaining to ratemaking at page 1 of the 2001 Montana Administrative Register, issue number 1. A public hearing was held on January 31, 2001 to consider the proposed adoption, amendment and repeal of rules.

2. The Montana State Fund Board of Directors adopted new Rule I (ARM 2.55.319) exactly as proposed, did not adopt new Rule II, amended ARM 2.55.320, 2.55.323, 2.55.324, 2.55.401, 2.55.407 exactly as proposed, and repealed ARM 2.55.321 and 2.55.322 as proposed.

3. The following agency comment was received and appears with the agency's response.

COMMENT 1: The State Fund received an internal agency comment concerning the amendment of ARM 2.55.327A, which pertains to the Construction Industry Premium Credit Program. The commenter recommended adding Code 5402 to the list of class codes that are eligible for the construction premium credit program. The reason for this recommendation is that the work under this code fits the statutory definition of "construction industry", which is eligible for the construction credit.

RESPONSE 1: The agency agrees with the comment and will amend ARM 2.55.327A to include Code 5402.

4. Based on the comment received, the agency has further amended ARM 2.55.327A, with the following change, new matter underlined:

2.55.327A CONSTRUCTION INDUSTRY PREMIUM CREDIT PROGRAM
(1) remains the same.
(2) remains the same as proposed.
(3) The following class codes are the construction codes eligible for the construction industry premium credit program:

3365	5057	5190	5403	5478	5537	6003	6233	7538
3719	5059	5213	5437	5479	5538	6005	6251	7601
3724	5069	5215	5443	5480	5551	6017	6252	7605
3726	5102	5221	5445	5491	5610	6018	6306	7855
5020	5146	5222	5462	5506	5645	6045	6319	8227
5022	5160	5223	5472	5507	5651	6204	6325	9521
5037	5183	5348	5473	5508	5703	6217	6365	9534
5040	5188	5402	5474	5511	5705	6229	6400	9552

(4) through (6) remain the same as proposed.

5. The repeals of ARM 2.55.321 and 2.55.322 are effective June 30, 2001.

/s/ Nancy Butler
Nancy Butler, General Counsel
Rule Reviewer

/s/ Jim Broulette
Jim Broulette
Chairman of the Board

/s/ Dal Smilie
Dal Smilie, Chief Legal Counsel
Rule Reviewer

Certified to the Secretary of State April 16, 2001.

BEFORE THE BOARD OF OPTOMETRY
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment of ARM 8.36.412 pertaining to unprofessional conduct) NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On December 7, 2000 the Board of Optometry published a notice of proposed amendment of ARM 8.36.412 at page 3292, 2000 Montana Administrative Register, issue number 23. The hearing was held January 8, 2001.

2. The Board has amended ARM 8.36.412 exactly as proposed.

3. No comments or testimony were received.

BOARD OF OPTOMETRY
CHARLIENE STAFFANSON, PRESIDENT

By: /s/ Annie M. Bartos
ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE

By: /s/ Annie M. Bartos
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, April 16, 2001.

BEFORE THE PETROLEUM TANK RELEASE COMPENSATION BOARD
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 17.58.332 concerning insurance coverage, third-party liability, investigation, disclosure, subrogation, coordination of benefits	)	NOTICE OF AMENDMENT (Petroleum Tank Release Compensation Board)

TO: All Concerned Persons

1. On February 22, 2001 the Petroleum Tank Release Compensation Board published notice of the proposed amendment of ARM 17.58.332 at page 330 of the 2001 Montana Administrative Register, Issue No. 4.

2. The Board has amended ARM 17.58.332 as proposed with the following changes from the original proposal. Matter to be added is underlined. Matter to be deleted is interlined.

17.58.332 INSURANCE COVERAGE; THIRD-PARTY LIABILITY; INVESTIGATION; DISCLOSURE; SUBROGATION; COORDINATION OF BENEFITS

(1) ~~An owner or operator who applies for eligibility~~ Prior to receiving payment for any claim for reimbursement, an owner or operator who is determined to be eligible under 75-11-308, MCA shall thoroughly investigate the existence of any policy of insurance or other similar instrument which may indicate insurance coverage for some or all of the eligible costs arising from a release. At a minimum, this investigation must include:

(a) remains the same.

(b) the insurance records of the owner~~'s~~ or operator~~'s~~ in the possession of the insurance agents or brokers; and

(c) remains the same.

(2) An owner or operator who has been determined to be eligible under 75-11-308, MCA shall investigate and provide the board with the identity of and basis for liability of any third party who through its acts or omissions is known or suspected by the owner or operator to be liable ~~may be liable to the owner or operator~~ for the eligible costs arising from a release.

(3) remains the same.

(4) Owners or operators seeking reimbursement for eligible costs shall disclose to the board, on a form provided by the board, ~~60 days from submission of an application for eligibility,~~ when the first claim for reimbursement is submitted the results of the owner's or operator's investigations undertaken pursuant to (1) and (2). Together with the form, the owner or operator must provide copies of any policy of insurance, or any other evidence that may indicate insurance coverage for some or all of the eligible costs. Such evidence of insurance includes but is not limited to, cancelled checks from or to insurance companies, letters to and from insurance companies or declaration sheets indicating extent of coverage.

Narrative information from previous owners or operators concerning possible coverage shall be submitted in writing along with the form. The disclosure must contain current information as of the date of the release as well as all available historic insurance information from the date of the facility's first use of petroleum storage tanks. Where applicable, this disclosure must also contain the identity of any third party who may be liable for the eligible costs sought to be reimbursed together with an explanation of the basis of liability and any supporting documentation indicating insurance coverage that third parties may have.

(5) remains the same.

(6) The board's obligation to reimburse eligible owners or operators does not include ~~amounts~~ eligible costs owners or operators recover pursuant to contractual or tort-based obligations of insurers or other third parties. For the purposes of providing reimbursement or obtaining subrogation, the board is not an insurer.

(7) remains the same.

AUTH: 75-11-301, 75-11-313, 75-11-318, MCA
IMP: 75-11-309, 75-11-313, MCA

3. The Board received the following comments (Board responses follow each comment):

COMMENT # 1: The Petroleum Marketers Association (Association) provided 12 comments, each of which will be addressed here. The first comment is that the Association opposes the use of investigations by owners or operators as a precondition to eligibility and that eligibility should be based upon criteria concerning operation and management of a tank.

RESPONSE: The proposed amendments do not make eligibility conditional upon the conduct of an investigation. The requirements for eligibility are contained in 75-11-308, MCA. To remove any ambiguity, the Board has added language to subsections (1), (2) and (4), in which it is clear that the investigations and report need not be undertaken or made until the first claim for reimbursement is submitted.

COMMENT # 2: The Association questions who will determine whether an investigation has been thorough.

RESPONSE: The rule amendments are self-reporting requirements dependent upon the good faith efforts of owners or operators in conducting an investigation. Owners or operators must simply demonstrate that they made some effort commensurate with their resources, experience and ability in conducting the investigation. The Board does not expect its staff to have to check up on the thoroughness of an investigation. This rule is necessary because in the past, some owners or operators have ignored the existing requirement to submit insurance information to the Board. In some cases, even where owners or operators have

made claims against insurance policies, they have not reported this to the Board. The investigation involves good faith inquiry into the items listed in the rule in subsection (4).

COMMENT # 3: The Association opposes language which requires owners or operators to investigate records of insurance agents and brokers because it believes this is a violation of privacy rights and is beyond the owner's or operator's capability.

RESPONSE: The rule does not require owners or operators to exceed or violate any privacy rights. The rule simply requires owners or operators to investigate records of their insurance purchases, e.g. insurance policies in the possession of insurance agents or brokers. The language in (1)(b) of the amendment has been changed to clarify this.

COMMENT # 4: The Association opposes language which requires owners or operators to investigate records of previous owners or operators because this may be a violation of privacy rights.

RESPONSE: The rule does not require present owners or operators to probe beyond that which may be available by permission of a previous owner or operator. The rule specifies that records must be obtained "where available." The rule contemplates that owners or operators will at least ask previous owners or operators about the whereabouts of policies or other information concerning insurance coverage.

COMMENT # 5: The Association stated that it opposes Sections (2), (3), (4), and (7). The Association stated that it did not oppose Sections (5) and (6).

RESPONSE: It is difficult to respond to this comment without a stated basis for opposition. Some of these subsections of the rule are addressed below.

COMMENT # 6: The Association stated that the language in the present rule is sufficient to accomplish the purpose of obtaining information from owners or operators concerning insurance coverage.

RESPONSE: As stated above, past experience has shown that very few owners or operators have submitted information about insurance coverage when they have submitted their applications for eligibility. The new rule language clarifies what is requested and formalizes the requirement of investigation and reporting on insurance coverage.

COMMENT # 7: The Association suggests language in which owners and operators will provide the Board with information regarding past ownership of a site or relevant insurance information to the best of their abilities.

RESPONSE: The rule contemplates that owners or operators will make a good faith effort to conduct an investigation and submit information which is the same as conducting the inquiry to the best of their abilities.

COMMENT # 8: The Association proposes language in which the owner or operator would provide the Board with the identity of a "known" third party who through its acts or omissions may be liable to the owner or operator for eligible costs.

RESPONSE: This point is well-taken and the Board has changed the language in subsection (2) to include third-parties "known or suspected by the owner or operator to be liable..."

COMMENT # 9: The Association proposes that the Board ask personnel to contact owners or operators that have made extensive claims to the Board. The Association states that the Board may need to adopt a policy of what, when and how much will be distributed to the owner if costs are indeed recovered. The Association suggests using an informal approach to obtaining the information, rather than adopting rules of an "enforcement nature."

RESPONSE: It is beyond the scope of this rulemaking to address the Board's approach to use of personnel to pursue information concerning insurance claims or distribution of costs on settled awards. The Board believes the most efficient way to obtain insurance information is from the persons who have the best access to the information, the owners or operators. The rule amendments are intended to preserve the Board's right of subrogation against third parties and insurance carriers. The rules are not drafted with penalties or enforcement actions contemplated. As stated above, the rules rely on the good-faith efforts of owners or operators.

COMMENT # 10: The Association states that the Board has authority through legal counsel to obtain information from the owner or operator.

RESPONSE: This comment presupposes that there is ongoing litigation, a contested case or a rulemaking proceeding attendant to which the Board would have the authority to force owners or operators to provide information. The purpose of the rule is to obtain information regarding insurance coverage or liability of third parties prior to potential litigation.

COMMENT # 11: The Association states that it is not necessary to investigate sites for which there have been low-value claims.

RESPONSE: The rule amendments accomplish the purpose of preserving for the Board its right to subrogation for cases in which latent claims of significance arise which may not be revealed early on. The rule amendments help to preserve evidence and documents which may be needed later on.

COMMENT # 12: The Association expresses concern that the proposed rule amendments as published were different than the original draft of the rule and that the Board did not approve the language in the original notice of amendments.

RESPONSE: The Board members reviewed and approved the language in the original notice of amendments on February 8, 2001 in a duly noticed Board telephone conference call.

COMMENT # 13: Mr. Frederick F. Sherwood of Helena, Montana, on behalf of an owner or operator, submitted three comments, each of which will be addressed herein. His first comment includes two statements, one of which is correct and the other merits an explanation. The first statement is that he understands that there is not an intention in the rule amendments to deprive owners or operators of the ability to recover damages against third parties to the extent that the Board has not reimbursed these costs. The second statement is that an award or settlement from a third party would first be used to compensate the owner or operator for his "deductible" before reimbursed costs are repaid to the board.

RESPONSE: The first statement is correct. As to the second statement, the Board will be pursuing its subrogation rights to the extent of recovery for amounts which it has paid by way of reimbursement. Each owner or operator is free to pursue all available claims against third parties, including for recovery of the "deductible," the cost of corrective action not reimbursed by the Board. The Board, in exercising its subrogation rights, is not extinguishing claims of owners or operators against third parties. It is contemplated that the owner or operator and the Board would coordinate if necessary on settled awards that do not specify priority of items being reimbursed.

COMMENT # 14: Mr. Sherwood commented that the Board may want to institute a process whereby owners or operators are encouraged to discover and make claims against third parties. Collection of claims for the benefit of subrogated parties is expensive and may involve troublesome litigation.

RESPONSE: The Board has determined to enhance its ability to seek subrogation claims through the rule amendments at little expense or trouble to the owner or operator.

COMMENT # 15: Mr. Sherwood comments that there are some statutes that limit subrogation if an injured person cannot be made whole and that the Board ought to consider this approach as well.

RESPONSE: In the case of the Petroleum Tank Release Compensation Fund, the injured party analogy doesn't apply because there is no injured party who is by statute or contract directed to be made whole. It is the Board seeking to be made whole as an injured party on behalf of the citizens of Montana. Contrary to

the analogy, there is no conflict between the monies recovered by the Board and the claims which the owner or operator may pursue separately.

COMMENT # 16: Mr. Sherwood commented that to encourage more recoveries against third parties, the Board's subrogated amount could be subject to a proportional share of any attorney fees or costs incurred in obtaining the recovery against the third party.

RESPONSE: See the Response to Comment # 14.

COMMENT # 17: Ms. Jacqueline T. Lenmark of Helena, Montana, on behalf of the American Insurance Association (AIA), submitted four comments, each of which is addressed here. Ms. Lenmark commented generally that it is her understanding that it is not the Board's purpose to obtain information outside applicable rules of discovery or to interfere in contractual relationships. In reference to subsection (1)(b), Ms. Lenmark requests clarification that the records to be investigated are only those that relate to the owner or operator and not all records of the insurance agent or broker.

RESPONSE: See the Response to Comment # 3 above.

COMMENT # 18: Ms. Lenmark requests clarification that the investigation and access of records of previous owners or operators must be with the consent of the previous owner or operator through applicable rules of civil or administrative procedure.

RESPONSE: See the Response to Comment # 4 above. If the previous owner or operator and the present owner or operator are in litigation, then a present owner or operator who has already received information about insurance coverage through the litigation can produce it to the Board.

COMMENT # 19: Ms. Lenmark commented that the subrogation claim should be clarified to be limited to the coverage limits of the owner's or operator's applicable policies.

RESPONSE: The Board's right to seek subrogation is limited to third parties' liability. An insurer's contractual liability is by definition limited to the policy limits. Nothing in the rule amendments would extend that contractual liability beyond that arising under the policy; therefore, the suggested language supplied by Ms. Lenmark is unnecessary.

COMMENT # 20: Ms. Lenmark suggested that general language be placed in the rule amendments that states that the consent of the insured party is necessary before there is disclosure of insurance records, coverages, or other information in the possession of the insurance carrier or insurance agent or broker. She adds that disclosure could occur under the

applicable rules of administrative and civil procedure and applicable federal and state law.

RESPONSE: The consent of insured parties who are seeking and providing information about the insurance product they purchased is implied in the process of reimbursement by the Board and in the Board's pursuit of subrogated claims. Therefore, the suggested language is not necessary.

COMMENT # 21: Ms. Carey Ann Shannon, on behalf of Cascade County, submitted four comments. Each comment is addressed here. The first comment of Ms. Shannon is that the extent of the investigation into the identity of and basis for liability of any third party who may be liable to the owner or operator for eligible costs is not adequately defined in scope.

RESPONSE: See the Response to Comment # 8 above. The reporting requirement is limited to known or suspected third parties upon good faith inquiry of the owner or operator. Often the owner or operator is in the best position to know what the source of a release is.

COMMENT # 22: Ms. Shannon comments similarly to Comment # 1 that it is improper to impose an investigatory requirement as a part of eligibility.

RESPONSE: See the Response to Comment # 1. Again, the rule amendments are intended to be voluntary reporting requirements to aid in the Board's pursuit of its subrogation claims and generally in the administration of the Petroleum Release Compensation Fund.

COMMENT # 23: Ms. Shannon comments that the requirement in the proposed rule amendments of disclosure of "all historic insurance information" is burdensome and should not be made a condition of eligibility.

RESPONSE: See the Responses to Comments # 1 and # 22.

COMMENT # 24: Similar to Comment # 13 of Mr. Sherwood, Ms. Shannon comments that subsection (5) appears to require a subrogation claim against the insurance carrier or liable third party regardless of whether the owner or operator has otherwise first been made whole by the insurance policy or by a liable third party. She states that if subrogation is required before the owner or operator has been made whole, "then a site may not be investigated and restored due to the diversion of limited dollars."

RESPONSE: See Response to Comment # 13. The Board has no subrogation right as to the portion not reimbursable by the Board, i.e., the "deductible." Owners or operators are free to pursue claims under policies or against third parties for recovery of the "deductible" while the subrogation claim is

being pursued by the Board. The rule amendments do not extinguish any right of an owner or operator to be made whole.

COMMENT # 25: Mr. Dave Adams of Sacramento, California, representing State Farm Insurance Companies, provided two comments, each of which is addressed here. The first comment is that Section (1)(b) is too broad in allowing access to records of insurers to the owner or operator.

RESPONSE: See the Responses to Comments # 3 and # 20 above. The Board does not intend that owners or operators would have any greater access than is allowed them as policyholders. To remove any misunderstanding, the Board has added language to (1)(b) which makes clear that it is only the insurance records of the owners or operators in the possession of the insurance agents or brokers that owners or operators are required to investigate.

COMMENT # 26: Mr. Adams questions whether subsection (3) means that owners or operators must force production of records from insurers using Board authority. Mr. Adams suggests that it might be best to have the owner or operator point out to the Board where such records might be found and to leave it up to the Board to pursue the records.

RESPONSE: By the wording of subsection (3), the access to the records of others is dependent on the cooperation between owners and operators and others from whom the information is sought. The rule amendment envisions access "where possible." In some cases, it may be more convenient to have the owner or operator indicate where records may be found and for the Board to exercise its lawful independent authority to gain access to records.

COMMENT # 27: Mr. Dennis Franks of Bozeman, Montana, on behalf of RAM Environmental, submitted seven comments, each of which will be addressed here. The first comment of Mr. Franks is that he doesn't see a need for another lengthy form seeking insurance information, when the owner or operator already fills out a form, Form 1R, which contains insurance information.

RESPONSE: See the Response to Comment # 6. The current form that is used is often left blank and has been ineffective in gathering important insurance information for the purpose of coordination of benefits and recovery by the Board of improperly reimbursed claims.

COMMENT # 28: Mr. Franks states that he understands "the need to prevent 'double dipping' by owners against the Fund." He goes on to comment that if an owner or operator has been paying premiums to cover the $17,500 deductible, receipt of recovery of the $17,500 from an insurance company would not constitute double recovery.

RESPONSE: The Board agrees with this comment. The Board is only seeking to recover that for which it has provided reimbursement to owners and operators. The Board does not reimburse owners or operators for the deductible and, therefore, has no right to pursue a subrogation claim for this amount.

COMMENT # 29: Mr. Franks objects to the rule amendments on the basis that the new process may be cumbersome and that the process is a "strong armed approach" to having small business persons conduct "exhaustive research" into insurance coverage of their own and others.

RESPONSE: See the Responses to Comments # 2 and # 9. The rule amendments attempt to improve a process that has been in place to obtain information about insurance coverage. There are no onerous extra steps imposed by the rule amendments except that they make clear that investigation about coverage must be provided prior to the reimbursement of claims by the Board. As the above comments make clear, the rule amendments are based upon good faith efforts of the owners or operators to inquire into the availability of coverage. This does not constitute "exhaustive research." Owners and operators are in the best position to inquire about insurance and coverage. Since there is no extra requirement imposed upon insurance companies, there is no added cumbersome burden for them.

COMMENT # 30: Mr. Franks comments that previous owners may be difficult to track down and that they will "almost certainly" refuse to participate in any evaluation of their insurance. This is apparently because, according to Mr. Franks, it may be difficult to determine when a release occurred and who has responsibility for the release. He implies that past owners or operators may not want to take responsibility for a release.

RESPONSE: The Board does not contemplate that previous owners or operators will be uncooperative unless there may be litigation between the parties. The process under the Petroleum Tank Release Compensation Fund is not intended to find liability among owners and then to assess clean-up responsibility. Owners or operators conduct clean-ups, incur corrective action costs, and then apply to the Fund for recovery of the incurred costs. The applicant to the Fund must be a present owner or operator under 75-11-302, MCA. The Board recognizes that the amount of information which will be conveyed by a previous owner or operator upon request of a present owner or operator will be a function of the degree of cooperation between the previous owner or operator and the present owner or operator. The language in (1)(c) states that the investigation includes the records of prior owners or operators, "where available." The rule amendment contemplates that the owner or operator will at least inquire of the previous owner or operator the existence of insurance coverage and/or the availability of business records that might contain evidence of insurance coverage.

COMMENT # 31: Mr. Franks comments that the rule amendments will cause the Board staff to grow significantly and the eligibility process will ultimately be delayed.

RESPONSE: The Board does not contemplate adding any extra staff. The rule amendments are intended to obtain reporting through the owners or operators specifically so that there is no need for an increase in Board staff. The language changes to subsections (1), (2) and (4) clarify that a determination of eligibility will not be impacted.

COMMENT # 32: Mr. Franks questions whether, with the significant delays, the owners or operators will be allowed to delay remedial investigation at their site until eligibility is fully evaluated and whether owners or operators will be in violation for all investigation delays caused by the additional review process. Mr. Franks asks additionally whether the delays will cause the owner to lose funding according to House Bill 462.

RESPONSE: See the Response to Comment # 1. There are no delays contemplated associated with a determination of eligibility.

COMMENT # 33: Mr. Franks questions whether a cost analysis has been completed for the implementation of the rule amendments.

RESPONSE: The Board considers that whatever time is necessary for staff review is outweighed by the benefits associated with recovery through pursuit of subrogation claims.

COMMENT # 34: Two comments were provided by Mr. Roger McGlenn, Executive Director of the Independent Insurance Association of Montana. The first comment was along the lines of the comments submitted by Ms. Lenmark, see Comments # 17 and 20, specifically that the rule amendments involve an infringement upon the rights of privacy, confidentiality or discovery defenses of insurance companies, and that the rule amendments involve a "fishing expedition."

RESPONSE: See Responses to Comments # 17 and 20. As stated above, the Board inserted rule language changes into (1)(b) that clarify that owners and operators will ask insurance agents or brokers only about records of the owners or operators in the possession of the insurance agents or brokers. The provision of information under the rule amendments is voluntary. There is no "fishing expedition" when there is consent and a basis to receive the information.

COMMENT # 35: The owner or operator "may not have an insurable interest" or the "insurable interest" may be transferred by the rule amendments.

RESPONSE: If a policy has been sold to an owner or operator, there is an interest of the owner or operator that has been insured. The rule amendments do not substantively change any

contractual rights under a policy. The purpose of the rule amendments is to obtain recovery through subrogation where owners or operators have purchased a policy.

PETROLEUM TANK RELEASE COMPENSATION BOARD

BY: /s/ TIM HORNBACHER
TIM HORNBACHER, CHAIR

/s/ KATHERINE ORR
KATHERINE ORR
Rule Reviewer

Certified to the Secretary of State April 16, 2001.

BEFORE THE DEPARTMENT OF CORRECTIONS
OF THE STATE OF MONTANA

In the matter of the repeal of ARM 20.7.101 through 20.7.106 and 20.7.108, and adoption of New Rules I through IV relating to the supervised release program and the admission, program review, termination from, and certification of completion of offenders in the boot camp incarceration program	)	NOTICE OF REPEAL AND ADOPTION

TO: All Concerned Persons

1. On December 21, 2000, the Department of Corrections published notice of the proposed repeal and adoption of the above-stated rules pertaining to the supervised release program and the admission, program review, termination from, and certification of completion of offenders in the boot camp incarceration program at page 3498, 2000 Montana Administrative Register, issue number 24.

2. The department has repealed ARM 20.7.101 through 20.7.106 and 20.7.108 exactly as proposed.

3. The department has adopted the new rules I (20.7.110), II (20.7.111), III (20.7.112), and IV (20.7.113) exactly as proposed.

4. No comments or testimony were received.

DEPARTMENT OF CORRECTIONS

/s/ Bill Slaughter
Bill Slaughter, Director

/s/ Colleen A. White
Colleen A. White, Rule Reviewer

Certified to the Secretary of State April 16, 2001

BEFORE THE DEPARTMENT OF CORRECTIONS
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 20.9.701, and adoption of new rule I pertaining to the parole and discharge of youth	))))	NOTICE OF AMENDMENT AND ADOPTION

TO: All Concerned Persons

1. On November 22, 2000, the Department of Corrections published notice of the proposed amendment and adoption of the above-stated rules pertaining to the parole and discharge of youth at page 3196, 2000 Montana Administrative Register, issue number 22.

2. The department has amended ARM 20.9.701, and adopted new rule I (20.9.707) exactly as proposed.

3. No comments or testimony were received.

DEPARTMENT OF CORRECTIONS

/s/ Bill Slaughter
Bill Slaughter, Director

/s/ Colleen A. White
Colleen A. White, Rule Reviewer

Certified to the Secretary of State April 16, 2001

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 23.14.802 regarding grounds for suspension or revocation of peace officers' standards and training certification	)	NOTICE OF AMENDMENT

To: All Concerned Persons

1. On February 22, 2001, the Department of Justice published notice of the amendment of ARM 23.14.802 regarding grounds for suspension or revocation of peace officers' standards and training certification at page 334 of the 2001 Montana Administrative Register, Issue Number 4.

2. No public hearing was requested and no comments were received.

3. The Department has amended ARM 23.14.802 as proposed.

MONTANA DEPARTMENT OF JUSTICE

By: /s/ MIKE McGRATH
MIKE McGRATH, Attorney General
Department of Justice

/s/ ALI SHEPPARD
ALI SHEPPARD, Rule Reviewer

Certified to the Secretary of State April 13, 2001.

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the adoption of a new rule permitting proportionate reductions in crime victim benefits and the amendment of ARM 23.15.103, 23.15.201, 23.15.202, 23.15.302, 23.15.306 and 23.15.307 affecting payment of benefits to crime victims	)	NOTICE OF ADOPTION AND AMENDMENT

To: All Concerned Persons

1. On February 8, 2001, the Department of Justice published notice of the proposed adoption of new RULE I (ARM 23.15.105) permitting proportionate reductions in crime victim benefits and amendment of ARM 23.15.103, 23.15.201, 23.15.202, 23.15.302, 23.15.306 and 23.15.307 affecting payment of benefits to crime victims at page 295 of the 2001 Montana Administrative Register, Issue Number 3.

2. On March 9, 2001, a public hearing was held in the auditorium of the Scott Hart Building, 303 North Roberts, Helena, Montana. No comments were received at the hearing or submitted separately in writing or by e-mail.

3. The Department has adopted new RULE I (ARM 23.15.105) exactly as proposed.

4. The Department has amended ARM 23.15.103, 23.15.201, 23.15.202, 23.15.302, 23.15.306 and 23.15.307 as proposed.

MONTANA DEPARTMENT OF JUSTICE

By: /s/ MIKE McGRATH
MIKE McGRATH, Attorney General
Department of Justice

/s/ ALI SHEPPARD
ALI SHEPPARD, Rule Reviewer

Certified to the Secretary of State April 13, 2001.

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

In the matter of the amendment of ARM 16.32.302 pertaining to health care licensure	))))	NOTICE OF AMENDMENT

TO: All Interested Persons

1. On January 25, 2001, the Department of Public Health and Human Services published notice of the proposed amendment of the above-stated rule at page 163 of the 2001 Montana Administrative Register, issue number 2.

2. The Department has amended ARM 16.32.302 as proposed.

3. No comments or testimony were received.

/s/ Dawn Sliva
Rule Reviewer

/s/ Gail Gray
Director, Public Health and Human Services

Certified to the Secretary of State April 16, 2001.

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

In the matter of the amendment of ARM 37.50.901 pertaining to interstate compact on the placement of children	)	NOTICE OF AMENDMENT

TO: All Interested Persons

1. On February 22, 2001, the Department of Public Health and Human Services published notice of the proposed amendment of the above-stated rule at page 337 of the 2001 Montana Administrative Register, issue number 4.

2. The Department has amended ARM 37.50.901 as proposed.

3. No comments or testimony were received.

/s/ Dawn Sliva
Rule Reviewer

/s/ Gail Gray
Director, Public Health and Human Services

Certified to the Secretary of State April 16, 2001.

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

In the matter of the adoption of the temporary emergency amendment of ARM 37.86.2801, 37.86.2905 and 37.86.3005 pertaining to medicaid reimbursement for inpatient and outpatient hospital services	)	CORRECTED NOTICE OF ADOPTION OF TEMPORARY EMERGENCY RULES

TO: All Interested Persons

1. The Department of Public Health and Human Services is adopting the following corrected temporary emergency rules to correct clerical mistakes which appeared in the Notice of Adoption of Temporary Emergency Rules dated February 26, 2001 and published at page 403 of 2001 Montana Administrative Register, issue number 5, March 8, 2001. This rule is necessary to prevent imminent harm to the public health, safety and welfare of medicaid recipients who have need of inpatient and outpatient hospital services. Imminent and substantial budget deficits in the Montana Medicaid Hospital Services program for state fiscal year 2001 require the Department to make substantial, immediate adjustments to contain medicaid reimbursement expenditures within appropriations. The emergency rules adjust reimbursement policies to reduce expenditures for services provided at hospital facilities in the state of Montana and within 100 miles of the borders of Montana, remove the capital reimbursement component from the average base price per case, adjust the statewide cost to charge ratio to 56%, conform the DRG grouper to the medicare grouper, and adjust the thresholds so that 7% of the prospective payments will be paid for charges over the cost outlier threshold. In addition, in order to be reimbursed by Montana Medicaid, all out-of-state outpatient hospital services provided to Montana Medicaid patients by facilities located more than 100 miles outside the borders of Montana will require prior authorization. These facilities will also be paid at 61% of billed charges for services that have been deemed medically necessary. The emergency reimbursement reductions were arrived at after informally notifying hospitals and their provider association and accepting comments from them. Without the emergency rules, the Department would be required to reduce rates or limit utilization of other medicaid programs to accommodate the budget deficits caused by hospital services.

Rate reductions would cause marginally profitable providers to withdraw from medicaid participation. This would reduce access to medicaid services in the geographic area served by such providers. Limited access would mean that uninsured low-income Montana medicaid recipients in rural areas would likely delay or

go without treatment for some less serious physical injuries, diseases and disorders. Without timely, adequate and appropriate treatment an imminent risk of harm to the health and safety of these individuals, their families and communities would exist. Regular rulemaking procedures would require at least 90 days. If cost saving measures were delayed pending regular rulemaking, cuts would have to be greater to realize the same savings total.

Utilization limits would also have an adverse effect on public health. The Department's utilization limits were adopted to meet minimum health industry standards. Reduction of limits would mean that medicaid recipients would be limited to benefits below the level considered by experts to be minimally necessary for good health.

The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who need an alternative accessible format of this notice. If you request an accommodation, contact the Department no later than 5:00 p.m. on April 19, 2001, to advise us of the nature of the accommodation that you need. Please contact Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210; telephone (406)444-5622; FAX (406)444-1970; Email dphhslegal@state.mt.us.

2. The text of the temporary emergency amendment of rules is as follows. Matter to be added is underlined. Matter to be deleted is interlined.

<u>37.86.2801 ALL HOSPITAL REIMBURSEMENT, GENERAL</u>

(1) Reimbursement for inpatient hospital services is set forth in ARM 37.86.2905. Reimbursement for outpatient hospital services is set forth in ARM 37.86.3005. The reimbursement period will be the provider's fiscal year. Cost of hospital services will be determined for inpatient and outpatient care separately. Administratively necessary days are not a benefit of the Montana medicaid program.

(a) remains the same.

(i) Medicaid reimbursement shall not be made unless the provider has obtained authorization from the department or its designated review organization prior to providing any of the following services:

(a)(i)(A) and (a)(i)(B) remain the same.

(C) all inpatient <u>and outpatient</u> hospital services provided in hospitals located more than 100 miles outside the borders of the state of Montana;

(a)(i)(D) through (g) remain the same.

(2) Allowable costs will be determined in accordance with generally accepted accounting principles as defined by the American institute of certified public accountants. Such definition of allowable costs is further defined in accordance with the Medicare Provider Reimbursement Manual, HCFA Pub. 15 (referred to as "Pub. 15"), subject to the exceptions and

limitations provided in the department's administrative rules. The department hereby adopts and incorporates herein by reference Pub. 15, which is a manual published by the United States department of health and human services, health care financing administration, which provides guidelines and policies to implement medicare regulations which set forth principles for determining the reasonable cost of provider services furnished under the Health Insurance for Aged Act of 1965, as amended. A copy of Pub. 15 may be obtained through the Department of Public Health and Human Services, Health Policy and Services Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

(a) Hospitals located in the state of Montana providing ~~I~~inpatient and outpatient hospital services reimbursement under the retrospective cost-based methodology for a hospital that is identified by the department as a distinct part rehabilitation unit~~,~~ or an isolated hospital ~~or an out-of-state hospital located more than 100 miles outside the state of Montana is~~ are subject to the provisions regarding cost reimbursement and coverage limits and rate of increase ceilings specified in 42 CFR 413.30 through 413.40 (1992), except as otherwise provided in these rules. The department hereby adopts and incorporates herein by reference 42 CFR 413.30 through 413.40 (1992). A copy of 42 CFR 413.30 through 413.40 (1992) may be obtained through the Department of Public Health and Human Services, Health Policy and Services Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

(b) through (4) remain the same.

(5) For inpatient hospital services provided on or after July 1, 1993, facilities reimbursed on a retrospective cost basis must submit a cost report in accordance with the applicable subsection below to determine a base year for purposes of applying rate of increase ceilings and settling costs.

(a) remains the same.

(i) Effective March 1, 2001 all out-of-state inpatient and outpatient services for facilities defined in (5)(a) are paid at 61% of billed charges for medically necessary services.

(b) through (8) remain the same.

AUTH: Sec. 2-4-201, 53-2-201 and 53-6-113, MCA
IMP: Sec. 2-4-201, 53-2-201, 53-6-101, 53-6-111, 53-6-113 and 53-6-141, MCA

37.86.2905 INPATIENT HOSPITAL SERVICES, REIMBURSEMENT

(1) For inpatient hospital services, the Montana medicaid program will reimburse providers as follows:

(a) through (b) remain the same.

(c) Inpatient hospital services provided in hospitals located more than 100 miles outside the borders of the state of Montana will be reimbursed 61% of billed charges for medically necessary services for dates of service beginning March 1, 2001. ~~their actual allowable cost determined on a retrospective basis, with allowable costs determined according to ARM 37.86.2801(2). The department may waive retrospective cost settlement for such~~

~~facilities which have received interim payments totaling less than $100,000 for inpatient and outpatient hospital services provided to Montana medicaid recipients in the cost reporting period, unless the provider requests in writing retrospective cost settlement. Where the department waives retrospective cost settlement, the provider's interim payments for the cost report period shall be the provider's final payment for such period.~~

~~(i) Hospitals located more than 100 miles outside the borders of Montana will be reimbursed on an interim basis during each facility's fiscal year. The interim rate will be a percentage of usual and customary charges. The percentage shall be the provider's cost to charge ratio determined by the department under medicare reimbursement principles, based upon the provider's most recent medicare cost report. If a provider fails or refuses to submit the financial information, including the medicare cost report necessary to determine the cost to charge ratio, the provider's interim rate will be 60% of its usual and customary charges.~~

~~(ii) Hospitals located more than 100 miles outside the borders of Montana must notify the department within 60 days of any change in usual and customary charges that will have a significant impact on the facility cost to charge ratio. A significant impact is a change in the facility cost to charge ratio of 2% or more. The department will adjust reimbursement rates to account for adjusted charges which have a significant impact on the facility cost to charge ratio. The department may adjust interim reimbursement rates to account for such increased or decreased charges.~~

(i) Medicaid reimbursement shall not be made to hospitals located more than 100 miles outside the borders of Montana unless the provider has obtained authorization from the department or its designated review organization prior to providing services. All planned services require prior authorization. Services provided in an emergent situation must be authorized within 48 hours.

(2) The department's DRG prospective payment rate for inpatient hospital services is based on the classification of inpatient hospital discharges to diagnosis related groups (DRGs). The procedure for determining the DRG prospective payment rate is as follows:

(a) ~~For recipients admitted on or after July 1, 2000,~~ Prior to October 1st of each year, the department will assign~~s~~ a DRG to each medicaid discharge in accordance with the current medicare grouper program version ~~17.0~~, as developed by 3M health information systems. The assignment of each DRG is based on:

(a)(i) through (b) remain the same.

(c) The department computes a Montana average base price per case. This average base price per case is ~~$2337.00 including~~ $2075.00 excluding capital expenses, effective for services provided on or after ~~July 1, 2000~~ March 1, 2001.

(d) The relative weight for the assigned DRG is multiplied by the average base price per case to compute the DRG prospective payment rate for that discharge except:

(d)(i) remains the same.

(ii) where there is no weight assigned to a DRG, the DRG will be paid at the statewide cost to charge ratio as defined in ~~(13)~~ (12).

(3) remains the same.

~~(4) The department shall reimburse inpatient DRG hospital providers for capital-related costs under a prospective payment methodology. The actual cost per case shall be computed using submitted cost reports for state fiscal year 1998. The prospective payment for capital-related costs for dates of service on or after July 1, 2000 is $262.00. The prospective capital payment amount shall be added to the base DRG amount as proposed in (2)(c).~~

(4) The department will reimburse inpatient hospital service providers located in the state of Montana for capital-related costs that are allowable under medicare cost reimbursement principles as set forth at 42 CFR 412.113(a), as amended through October 1, 1986. The department hereby adopts and incorporates by reference 42 CFR 412.113, subsections (a) and (b), as amended through October 1, 1986, which sets forth medicare cost reimbursement principles. Copies of the cited regulation may be obtained from the Department of Public Health and Human Services, Health Policy and Services Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

(a) Prior to settlement based on audited costs, the department will make interim payments for each facility's capital-related costs as follows:

(i) The department will identify the facility's total allowable medicaid inpatient capital-related costs from the facility's most recent audited or desk reviewed cost report. These costs will be used as a base amount for interim payments. The base amount may be revised if the provider can demonstrate an increase in capital-related costs as a result of an approved certificate of need that is not reflected in the base amount.

(ii) All out-of-state hospitals that are reimbursed under the DRG prospective payment system will be paid the statewide average capital cost per case as an interim capital-related cost payment. The statewide average capital cost per case is $229.00. Such rate shall be the final capital-related cost with respect to which the department waives retrospective cost settlement in accordance with these rules.

(iii) The department will make interim capital payments with each inpatient hospital claim paid.

(5) through (11)(b)(iii) remain the same.

(12) The medicaid statewide average cost to charge ratio ~~including~~ excluding prospective capital expenses is ~~61%~~ 56% for dates of service on or after March 1, 2001.

(13) The Montana medicaid DRG relative weight values, average length of stay (ALOS), outlier thresholds and stop loss thresholds are contained in the DRG table of weights and thresholds (~~June 2000~~ March 2001 edition). The DRG table of weights and thresholds is published by the department of public health and human services. The department hereby adopts and incorporates by reference the DRG table of weights and thresholds (~~June 2000~~ March 2001 edition). Copies may be

obtained from the Department of Public Health and Human Services, Health Policy and Services Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

(14) through (18) remain the same.

AUTH: Sec. 53-2-201 and 53-6-113, MCA
IMP: Sec. 53-2-201, 53-6-101, 53-6-111, 53-6-113 and 53-6-141, MCA

37.86.3005 OUTPATIENT HOSPITAL SERVICES, REIMBURSEMENT

(1) remains the same.

(2) Out-of-state facilities more than 100 miles from the nearest Montana border will be paid at 61% of billed charges for medically necessary services.

~~(2)~~ (3) Except for the services reimbursed as provided in ARM 37.86.3007 through 37.86.3022, all facilities will be reimbursed on a retrospective basis. Allowable costs will be determined in accordance with ARM 37.85.2801(2) and subject to the limitations specified in ARM 37.85.2801(2)(a), (b) and (c). The department may waive retrospective cost settlement for such facilities which have received interim payments totaling less than $100,000 for inpatient and outpatient hospital services provided to Montana medicaid recipients in the cost reporting period, unless the provider requests in writing retrospective cost settlement. Where the department waives retrospective cost settlement, the provider's interim payments for the cost report period shall be the provider's final payment for the period.

(a) All facilities will be reimbursed for services subject to ~~(2)~~ (3) on an interim basis during the facility's fiscal year. The interim rate will be a percentage of usual and customary charges (billed charges). The percentage shall be the provider's cost to charge ratio determined by the facility's medicare intermediary or by the department under medicare reimbursement principles, based upon the provider's most recent medicare cost report. If a provider fails or refuses to submit the financial information, including the medicare cost report, necessary to determine the cost to charge ratio, the provider's interim rate will be ~~60%~~ 50% of its usual and customary charges (billed charges).

~~(3)~~ (4) The medicaid outpatient hospital statewide average cost to charge ratio equals ~~.67~~ 56%.

AUTH: Sec. 53-2-201 and 53-6-113, MCA
IMP: Sec. 53-2-201, 53-6-101, 53-6-111, 53-6-113 and 53-6-141, MCA

3. The foregoing corrected temporary emergency rules are necessary to correct clerical mistakes which appeared in the Notice of Adoption of Temporary Emergency Rules dated February 26, 2001. That notice utilized out-of-date language which did not incorporate changes to ARM 37.86.2801 and 37.86.3005 made pursuant to MAR Notice No. 37-174. MAR Notice No. 37-174 was proposed for adoption in the 2000 Montana Administrative Register on October 26, 2000 on page 2889, issue number 20, the

adoption notice was published in the 2001 Montana Administrative Register on January 11, 2001, on page 27 of issue number 1, a corrected notice of amendment was published in the 2001 Montana Administrative Register on March 8, 2001 on page 417 of issue number 5. An additional corrected notice of amendment will be published in the 2001 Montana Administrative Register on April 5, 2001 on page 564, issue number 7. In order to avoid confusion and to cure any technical deficiencies which might have called into question the effectiveness of the February 26, 2001 temporary emergency rules, the department is adopting these corrected temporary emergency rules. The corrected temporary emergency rules are in substitution of and not intended to make any substantive changes to the temporary emergency rules adopted February 26, 2001. Since these corrected temporary emergency rules are intended to correct clerical mistakes they will have no adverse effect on the services or benefits provided. The corrected temporary emergency amendment will require all hospitals located more than 100 miles outside the borders of the State of Montana (out-of-state hospitals) to obtain prior authorization from the Department's designated review organization for planned outpatient hospital services. Out-of-state hospitals must obtain authorization for emergency services provided to recipients within 48 hours of providing the services to recipients of Montana Medicaid. For out-of-state hospitals, the rate of reimbursement for inpatient and outpatient services will be set at 61%.

For hospitals located in the State of Montana paid under the DRG prospective payment system, the temporary emergency adjustment changes reimbursement for capital related expenses from a prospective payment to a facility specific add-on payment. The cost to charge ratio is therefore adjusted to 56% to reflect the change in the method of reimbursing capital related expenses and the average base price per case is accordingly $2,075. The Department has adopted and incorporated by reference the DRG table of weights and thresholds, March 2001 edition. The weights have not been amended but the cost thresholds have been adjusted so that 7% of the prospective payments will be paid for charges over the cost outlier threshold.

Border hospitals, those outside the state but within 100 miles of the nearest Montana border, will be paid the statewide average capital cost per case as an interim capital-related cost payment. The statewide average capital cost per case adopted in these temporary emergency rules is $229.00. This shall be the final capital-related cost with respect to which the Department waives retrospective cost settlement in accordance with these rules.

The corrected temporary emergency amendment to ARM 37.86.2905 reflects the Department's policy to update the DRG grouper every October to coincide with Medicare's policy.

The Department believes the savings of $1.4 million over the

last 4 months of FY 2001 resulting from these corrected temporary emergency rules will allow the Department to avoid an immediate rate reduction or reduction of other medicaid services. Hospital services are mandatory medicaid services and 363 hospitals will be adversely affected by these rules. However, any other cost savings would have had to come from medicaid services. The Department rejected the alternative of reducing rates or reducing other medicaid services due to the adverse impact upon the health of 68,000 individuals eligible for Montana Medicaid benefits.

4. The corrected notice of adoption will be effective for hospital services covered by Medicaid on or after March 1, 2001.

5. A standard rulemaking procedure will be undertaken by the Department prior to the expiration of the corrected temporary emergency rule changes.

6. Interested persons may submit their data, views or arguments during the standard rulemaking process. The Department also maintains lists of persons interested in receiving notice of administrative rule changes. These lists are compiled according to subjects or programs of interest. For placement on the mailing list, please write to Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210, submitted by facsimile (406) 444-1970 or by electronic mail via the Internet to dphhslegal@state.mt.us.

/s/ Dawn Sliva
Rule Reviewer

/s/ Gail Gray
Director, Public Health and Human Services

Certified to the Secretary of State March 29, 2001.

BEFORE THE BOARD OF NURSING
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the petition for declaratory ruling on the issue of whether the scope of practice of registered nurses includes performing microdermabrasion procedures in an independent setting	)))))))	NOTICE OF PETITION FOR DECLARATORY RULING

TO: All Concerned Persons

1. On May 16, 2001 at 3:00 p.m., in the fourth floor conference room of the Professional and Occupational Licensing Division, Federal Building, 301 South Park Avenue, Helena, Montana, the Board of Nursing will consider a petition for declaratory ruling on whether the scope of practice of registered nurses includes performing microdermabrasion procedures in an independent setting.

2. This petition for declaratory ruling is submitted at the request of Anita Masters, RN, 2204 1st Avenue South, Great Falls, MT 59401.

3. Petitioner alleges that it is within the scope of practice of registered nurses to perform microdermabrasion procedures in an independent setting.

4. The rules upon which the declaratory ruling is requested are ARM 8.32.415, 8.32.1401, 8.32.1403, 8.32.1404, and 8.32.1407. The scope of practice of a nurse is set forth therein and provides as follows:

8.32.415 DEFINITIONS As used in Title 37, chapter 8, MCA, the following definitions apply:

(1) "Nursing procedures" means those nursing actions selected and performed in the delivery of safe and effective patient/client care.

...

8.32.1401 DEFINITIONS As used in this sub-chapter, the following definitions apply:...

(4) "Nursing process" - the traditional systematic method nurses use when they provide nursing care, including assessment, nursing analysis, planning, nursing intervention and evaluation....

(6) "Prescribing" - specifying nursing intervention(s) intended to implement the defined strategy of care. This includes the nursing behaviors that nurses shall perform when delivering nursing care, though not necessarily sequentially or all in each given situation: assessment, nursing analysis, planning, nursing intervention and evaluation.

(7) "Standard" - an authoritative statement by which the board can judge the quality of nursing education or practice.

(8) "Strategy of care" - the goal-oriented plan developed to assist individuals or groups to achieve optimum health potential. This includes initiating and maintaining comfort measures, promoting and supporting human functions and responses, establishing an environment conducive to well being, providing health counseling and teaching, and collaborating on certain aspects of the medical regimen, including but not limited to the administration of medications and treatments.

8.32.1403 STANDARDS RELATED TO THE REGISTERED NURSE'S RESPONSIBILITY TO APPLY THE NURSING PROCESS The registered nurse shall:

(1) conduct and document nursing assessments of the health status of individuals and groups by:

(a) collecting objective and subjective data from observations, examinations, interviews and written records in an accurate and timely manner. The data includes, but is not limited to:...

(ix) consideration of client's health goals;...

(3) develop the strategy of care based upon data gathered in the assessment and conclusions drawn in the nursing analysis. This includes:

(a) identifying priorities in the strategy of care;

(b) collaboration with the client to set realistic and measurable goals to implement the strategy of care;

(c) prescribing nursing intervention(s) based on the nursing analysis;

(d) identifying measures to maintain comfort, to support human functions and positive responses, to maintain an environment conducive to teaching to include appropriate usage of health care facilities.

(4) implement the strategy of care by:

(a) initiating nursing interventions through;

(i) giving direct care;

(ii) assisting with care;

(iii) assigning and delegating care;

(iv) collaboration and/or referral when appropriate.

(b) providing an environment conducive to safety and health;...

(5) evaluate the responses of individuals or groups to nursing interventions. Evaluation shall involve the client, family, significant others and health team members....

(b) Evaluation data shall be used as a basis for reassessing client health status, modifying nursing analysis, revising strategies of care and prescribing changes in nursing interventions....

8.32.1404 STANDARDS RELATED TO THE REGISTERED NURSE'S RESPONSIBILITIES AS A MEMBER OF THE NURSING PROFESSION

(1) The registered nurse shall:

(a) have knowledge of the statutes and regulations governing nursing and function within the legal boundaries of nursing practice;

(b) accept responsibility for individual nursing actions and competence and base practice on validated data;
(c) obtain instruction and supervision as necessary when implementing nursing techniques or practices;
(d) function as a member of the health team;...

8.32.1707 NURSING FUNCTIONS (1) The following nursing functions require nursing knowledge, judgment, and skill and may not be delegated:
(a) the initial nursing assessment or intervention;
(b) development of the nursing diagnosis;
(c) the establishment of the nursing care goal;
(d) development of the nursing care plan;
(e) evaluation of the patient's progress, or lack of progress toward goal achievement;
(f) any nursing intervention that requires nursing knowledge, judgment, and skill.

5. The petitioner requests that the Board of Nursing declare that registered nurses may perform microdermabrasion procedures in independent settings.
6. Lon Mitchell, attorney, has been designated to preside over and conduct this hearing.
7. The Board of Nursing identified the following as interested persons:

Gilbert F. Mueller
14541 N. Alamo Canyon Drive
Tucson, AZ 85737

Todd Plath
Regional Mgr. CBR
805 Midway Road
Minasha, WI 54952

Mary Burton, ARC, RN
Montana Mgr. Donor Services
3009 7th Ave. So.
Great Falls, MT 59405

Anita Masters, RN
2204 1st Ave. South
Great Falls, MT 59401

Joyce DeCunzo
Bureau Chief, DPHHS
P.O. Box 4210
Helena, MT 59604

Jeannie Worsech
Board of Cosmetologists
P.O. Box 200513
Helena, MT 59620

Tim Andersen
Missoula CBR Center Mgr.
3290 Jack Drive
Missoula, MT 59801

Riley Johnson
491 S. Park Avenue
Helena, MT 59601

Terry Bilbrey, RN
ARC Apheresis Supervisor
580 Stargazer Way
Florence, MT 59833

Ellie Hardy
Cogswell Building, Rm. C314
Helena, MT 59620

Charlene Norris
Ex. Director, Medical Ex.
P.O. Box 200513
Helena, MT 59620

Barbara Seabury, BSN, RN
521 S. Wilson Ave.
Bozeman, MT 59715

Kyle Anne Hoyer
2800 Tenth Avenue North
Billings, MT 59101

John Sullivan
40 W. Lawrence
Helena, MT 59601

Susan Luprell
Adj. Asst. Professor
3501 Antelope Lane
Great Falls, MT 59401

8. Other interested 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 the Board of Nursing, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, e-mail compolnur@state.mt.us to be received no later than 5:00 p.m. May 24, 2001.

9. The Department of Commerce will make reasonable accommodations for persons with disabilities who wish to participate in the public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Department no later than 5:00 p.m. on May 7, 2001, to advise us of the nature of the accommodation that you need. Please contact Jill Caldwell, Board of Nursing, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2342; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2343, e-mail compolnur@state.mt.us.

BOARD OF NURSING
RITA HARDING, RN, MN,
CHAIRPERSON

By: /s/ Annie M. Bartos
ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE

By: /s/ Annie M. Bartos
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, April 16, 2001.

NOTICE OF FUNCTION OF ADMINISTRATIVE RULE REVIEW COMMITTEE

Interim Committees and the Environmental Quality Council

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

Business and Labor Interim Committee:

- Department of Agriculture;
- Department of Commerce;
- Department of Labor and Industry;
- Department of Livestock;
- Department of Public Service Regulation; and
- Office of the State Auditor and Insurance Commissioner.

Education Interim Committee:

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

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

- Department of Public Health and Human Services.

Law, Justice, and Indian Affairs Interim Committee:

- Department of Corrections; and
- Department of Justice.

Revenue and Taxation Interim Committee:

- Department of Revenue; and

- Department of Transportation.

State Administration, Public Retirement Systems, and Veterans' Affairs Interim Committee:

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

Environmental Quality Council:

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

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 PO Box 201706, Helena, MT 59620-1706.

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

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

Montana Administrative Register (MAR) is a soft back, bound publication, issued twice-monthly, containing notices of rules proposed by agencies, notices of rules adopted by agencies, and interpretations of statutes and rules by the attorney general (Attorney General's Opinions) and agencies (Declaratory Rulings) issued since publication of the preceding register.

Use of the Administrative Rules of Montana (ARM):

Known Subject	1.	Consult ARM topical index. Update the rule by checking the accumulative Matter table and the table of contents in the last Montana Administrative Register issued.
Statute Number and Department	2.	Go to cross reference table at end of each title which lists MCA section numbers and corresponding ARM rule numbers.

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies which have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through December 31, 2000. This table includes those rules adopted during the period January 1, 2001 through March 31, 2001 and any proposed rule action that was pending during the past 6-month period. (A notice of adoption must be published within 6 months of the published notice of the proposed rule.) This table does not, however, include the contents of this issue of the Montana Administrative Register (MAR).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through December 31, 2000, this table and the table of contents of this issue of the MAR.

This table indicates the department name, title number, rule numbers in ascending order, catchphrase or the subject matter of the rule and the page number at which the action is published in the 2000 and 2001 Montana Administrative Registers.

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

GENERAL PROVISIONS, Title 1

1.2.419 Scheduled Dates for the Montana Administrative Register, p. 2959, 3419

ADMINISTRATION, Department of, Title 2

2.5.502 State Procurement, p. 2092, 2962
2.21.1301 and other rules - Nondiscrimination - Equal Opportunity - Sexual Harassment Prevention Policy - Equal Employment Opportunity Policy, p. 2732, 3515

(State Fund)
2.55.320 and other rules - Calculation of Manual Rates - Variable Pricing - Premium Rates and Premium Modifiers - Ratemaking, p. 1, 657

AGRICULTURE, Department of, Title 4

4.3.202 and other rules - Loan Qualifications, p. 2774, 3332
4.12.219 and other rules - Commercial Feed, p. 2762, 3333
4.12.1427 Shipping Point Inspection Fees, p. 3434, 341
4.12.1507 and other rule - Mint Definitions - Conditions Governing Importation of Mint and Mint Rootstock, p. 3286, 165
4.12.3001 and other rules - Seeds, p. 2740, 3334

STATE AUDITOR, Title 6

I	Canadian Broker-Dealer Registration, p. 2777, 3336
I-IX	Viatical Settlement Agreements, p. 2095, 3155
6.6.507	and other rules - Minimum Benefit Standards, p. 3055, 3518
6.6.1901	and other rules - Comprehensive Health Care, p. 14, 343
6.6.4001	Valuation of Securities, p. 3059, 3519

(Classification Review Committee)

6.6.8301	Updating References to the NCCI Basic Manual for Workers Compensation and Employers Liability Insurance 1996 ed. - Adoption of New and Amended Classifications, p. 132

COMMERCE, Department of, Title 8

(Board of Athletics)

8.8.2902	and other rules - Female Contestants - Downs - Fouls - Handwraps - Officials, p. 505

(Board of Barbers)

8.10.414	and other rules - General Requirements - Posting Requirements - Toilet Facilities - Inspections, p. 208

(Chemical Dependency Counselors Certification Program)

8.11.106	and other rules - Education - Verification of Supervised Counseling Experience - Application Procedures - Written Examinations - Counselors Certified in Other States - Renewals - Continuing Education, p. 2344, 2963

(Board of Clinical Laboratory Science Practitioners)

I	Temporary Practice Permits, p. 2130, 166

(Board of Cosmetologists)

8.14.401	and other rules - General Requirements - Inspections - School Layouts - Curriculum - Construction of Utensils and Equipment - Cleaning and Sanitizing Tools and Equipment - Storage and Handling of Salon Preparations - Disposal of Waste - Premises - Definitions, p. 3467
8.14.402	and other rules - General Practice of Cosmetology - Schools - Instructors Applications - Examinations - Electrology Schools - Electrolysis - Sanitary Standards for Electrology Salons - Sanitary Rules for Beauty Salons and Cosmetology Schools - Aiding and Abetting Unlicensed Practice - Renewals - Booth Rental License Applications - Walls and Ceilings - Doors and Windows - Ventilation, p. 3437, 536

(State Electrical Board)

	Notice of Extension of Comment Period - In the Matter of the Petition for Declaratory Ruling on the

Clarification of Low Voltage Electrical Communication or Signal Equipment - Whether Parking Lot or Street Lighting are Covered by Electrical Code - Which Electrical Code is Applicable, p. 2780

(Board of Hearing Aid Dispensers)

8.20.402 and other rules - Fees - Record Retention - Minimum Testing and Recording Procedures - Transactional Document Requirements - Form and Content, p. 3485

8.20.407 and other rules - Records - Unprofessional Conduct - Minimum Testing and Recording Procedures - Definitions - Transactional Documents, p. 777, 2514

(Board of Medical Examiners)

I Occasional Case Exemptions, p. 591

I-XI Purpose and Authority - Definitions - License Requirement - Application for a Telemedicine Certificate - Fees - Failure to Submit Fees - Issuance of Telemedicine Certificate - Certificate Renewal Application - Effect of Denial of Application for Telemedicine Certificate - Effect of Telemedicine Certificate - Sanctions, p. 1826, 2967

8.28.402 and other rules - Definitions - Medical Student's Permitted Activities - Intern's Scope of Practice - Resident's Scope of Practice - Approved Residency, p. 3062, 3520

8.28.416 Examinations, p. 589

8.28.1508 Temporary Approval, p. 1385, 2965

8.28.1705 and other rules - Ankle Surgery Certification - Fees - Failure to Submit Fees, p. 211

(Board of Nursing)

Notice of Extension of Comment Period - In the Matter of the Petition for Declaratory Ruling on the Issue of Whether the Scope of the Nurse Practice Act Allows All Levels of Nursing to Conduct Un-waived CLIA Tests, p. 2782

8.32.304 and other rules - Advanced Practice Nursing - Program Director - Nurses' Assistance Program, p. 2132, 167

8.32.308 and other rules - Temporary Permits - General Requirements for Licensure - Re-examination - Licensure for Foreign Nurses - Temporary Practice Permits - Renewals - Conduct of Nurses, p. 988, 2681

8.32.405 and other rules - Licensure by Endorsement - Temporary Practice Permits - Renewals - Standards Related to Registered Nurse's Responsibilities - Prescriptive Authority Committee - Initial Application Requirements for Prescriptive Authority - Limitations on Prescribing Controlled Substances - Quality Assurance of Advanced Practice Nursing - Renewal of Prescriptive Authority, p. 1539, 2683

(Board of Optometry)

8.36.412 Unprofessional Conduct, p. 3292, 659

(Board of Outfitters)
8.39.514 and other rules - Licensure - Guide or Professional Guide License - Licensure -- Fees for Outfitter, Operations Plan, Net Client Hunting Use (N.C.H.U.), and Guide or Professional Guide, p. 3295
8.39.514 Emergency Amendment - Licensure - Guide or Professional Guide License, p. 2516

(Board of Pharmacy)
8.40.406 and other rules - Labeling for Prescriptions - Unprofessional Conduct - Definitions - Preceptor Requirements - Conditions of Registration, p. 136

(Board of Physical Therapy Examiners)
8.42.402 and other rules - Examinations - Licensure of Out-of-State Applicants - Foreign-trained Physical Therapist Applicants - Continuing Education, p. 3488, 344

(Board of Professional Engineers and Land Surveyors)
8.48.802 and other rules - License Seal - Safety and Welfare of the Public - Performance of Services in Areas of Competence - Conflicts of Interest - Avoidance of Improper Solicitation of Professional Employment - Direct Supervision - Definition of Responsible Charge - Introduction - Issuance of Public Statements, p. 2784, 553

(Board of Private Security Patrol Officers and Investigators)
8.50.437 Fee Schedule, p. 2351, 3162

(Board of Public Accountants)
8.54.415 and other rules - Licensure of Out-of-State Applicants - Reactivation of Inactive and Revoked Status - Commissions and Contingent Fees - Definitions, p. 1718, 3164

(Board of Radiologic Technologists)
8.56.402 and other rules - Applications - Fee Schedule - Permit Application Types - Practice Limitations - Permit Examinations - Permit Fees, p. 510

(Board of Real Estate Appraisers)
8.57.403 and other rules - Examinations - Experience - Qualifying Education Requirements - Continuing Education - Fees - Adoption of USPAP by Reference - Ad Valorem Tax Appraisal Experience - Qualifying Experience - Inactive License Certification - Reactivation of License - Regulatory Reviews - Appraisal Review, p. 2560, 3521
8.57.409 Qualifying Education Requirements for General Certification, p. 593

(Board of Realty Regulation)
8.58.301 and other rules - Definitions - Continuing Education - Continuing Education Course Approval - Grounds for

License Discipline - Grounds for Discipline of Property Management Licensees - Internet Advertising, p. 319
8.58.411 Fee Schedule - Renewal - Property Management Fees, p. 2354, 3166
8.58.705 and other rule - Pre-licensure Course Requirements - Continuing Property Management Education, p. 327

(Board of Respiratory Care Practitioners)
8.59.402 and other rule - Definitions - Fees, p. 141

(Board of Social Work Examiners and Professional Counselors)
8.61.401 and other rule - Definitions - Licensure Requirements, p. 2791, 558

(Building Codes Division)
8.70.101 and other rules - Incorporation by Reference of Uniform Building Code - Funding of Code Enforcement Program - Certification of Code Enforcement Programs - Incorporation by Reference of Uniform Plumbing Code, p. 2358, 3168

(Local Government Assistance Division)
I Administration of the 2001 Federal Community Development Block Grant Program, p. 3493, 392
8.94.3806 Submission and Review of Applications Under the 2000-2001 Treasure State Endowment Program (TSEP), p. 516

(Board of Investments)
8.97.910 INTERCAP Program, p. 2142, 2969

(Economic Development Division)
I-XIII Montana Board of Research and Commercialization Technology, p. 1138, 2970

(Board of Housing)
I Confidentiality and Disclosure of Information in Possession of the Board of Housing, p. 144

(Travel Promotion and Development Division)
8.119.101 Tourism Advisory Council, p. 595

(Montana Lottery)
8.127.407 and other rule - Retailer Commission - Sales Staff Incentive Plan, p. 2363, 3199

EDUCATION, Title 10

(Office of Public Instruction)
10.16.3346 and other rule - Special Education - Aversive Treatment Procedures - Discovery Methods, p. 148, 396
10.16.3505 Special Education - Parental Consent, p. 597

(Board of Public Education)
I-CXXXVI Content and Performance Standards for Social Studies, Arts, Library Media, and Workplace Competencies, p. 1148, 2685, 3338
10.54.2501 and other rules - Content and Performance Standards for Career and Vocational/Technical Education - Program Area Standards - Curriculum and Assessment - Standards Review Schedule, p. 214
10.55.2001 and other rules - Standards of School Accreditation, p. 2145, 3340
10.59.103 Contents of the Contract Between the Board of Public Education and the Montana School for the Deaf and Blind Foundation, p. 2568, 3361

FISH, WILDLIFE, AND PARKS, Department of, Title 12

12.3.203 and other rules - License Agents, p. 2570, 3200, 17
12.6.1602 and other rules - Definition of Department - Clarification of Game Bird Permits - Field Trial Permits - Purchase and Sale of Game Birds, p. 3092, 3298, 345
(Fish, Wildlife, and Parks Commission)
I Limiting the Number of Class B-1 Nonresident Upland Game Bird Licenses that May be Sold Each Hunting Season, p. 151
I-V Western Fishing District - Limiting Watercraft to No Wake Speed for Lakes 35 Acres or Less - Instituting a No Wake Zone Contiguous to the Shoreline on Lakes Greater than 35 Acres, p. 1728, 2975
12.3.117 and other rules - Special Permits - Special License Drawings - Establishing a License Preference System, p. 1552, 2519
12.6.801 and other rules - Water Safety, p. 3068, 18
12.11.501 and other rules - Creating a No Wake Zone at Hell Creek Marina on Fort Peck Reservoir - Updating the Index Rule - List of Water Bodies, p. 432
12.11.3205 Creating No Wake Zones on Hauser Lake near Devil's Elbow Campgrounds, Clark's Bay, and York Bridge Fishing Access Site, p. 601

ENVIRONMENTAL QUALITY, Department of, Title 17

17.36.101 and other rules - Subdivisions - Standards for On-site Subsurface Sewage Systems in New Subdivisions, p. 1832, 3371
17.50.801 and other rules - Solid Waste - Licensing - Waste Disposal - Recordkeeping - Inspection for Businesses Pumping Wastes from Septic Tank Systems, Privies, Car Wash Sumps and Grease Traps, and Other Similar Wastes, p. 3299
17.54.101 and other rules - Hazardous Waste - Identification and Management of Hazardous Wastes, p. 2795, 169

(Board of Environmental Review)
I and other rules - Air Quality - Use of Credible Evidence in Assessing Air Quality Compliance, p. 250, 1289, 3195, 3363
17.4.501 and other rules - Major Facility Siting - Regulation of Energy Generation or Conversion - Facilities - Linear Facilities, p. 243
17.8.101 and other rules - Air Quality - Odors that Create a Public Nuisance, p. 291
17.8.102 and other rules - Air Quality - Incorporation by Reference of Current Federal Statutes and Regulations into Air Quality Rules, p. 518
17.8.102 and other rule - Air Quality - Air Quality Incorporation by Reference, p. 1298, 2696
17.8.323 Air Quality - Sulfur Oxide Emissions from Primary Copper Smelters, p. 3327, 560
17.8.504 Air Quality - Air Quality Fees, p. 1927, 2697
17.20.804 and other rules - Major Facility Siting - Major Facility Siting Act, p. 2367, 2984
17.38.101 and other rules - Public Water Supply - Water Quality - Siting Criteria for Public Sewage Systems, p. 1859, 3398
17.38.202 and other rules - Public Water and Sewage System Requirements - Public Water Supplies, p. 1879, 3400
17.38.606 Public Water Supply - Administrative Penalties, p. 1281, 2698

(Petroleum Tank Release Compensation Board)
17.58.332 Insurance Coverage - Third-Party Liability - Investigation - Disclosure - Subrogation - Coordination of Benefits, p. 330, 660

TRANSPORTATION, Department of, Title 18

(Transportation Commission and Department of Transportation)
18.3.101 and other rules - Debarment of Contractors Due to Violations of Department Requirements - Determination of Contractor Responsibility, p. 2860, 3330, 3496

CORRECTIONS, Department of, Title 20

20.7.101 and other rules - Supervised Release Program - Admission, Program Review, Termination From, and Certification of Completion of Offenders in the Boot Camp Incarceration Program, p. 3498, 671
20.9.701 and other rule - Parole and Discharge of Youth, p. 3196, 672

JUSTICE, Department of, Title 23

I-V and other rules - Use of a Full Legal Name on a Driver's License - Change of Name on a Driver Record - Collection of an Applicant's Social Security Number - Proof of Residence, p. 1559, 2524

23.14.802 Grounds for Suspension or Revocation of Peace Officers' Standards and Training Certification, p. 334, 673
23.15.103 and other rules - Permitting Proportionate Reductions in Crime Victim Benefits - Affecting Payment of Benefits to Crime Victims, p. 295, 674

LABOR AND INDUSTRY, Department of, Title 24

24.11.101 and other rules - Unemployment Insurance Matters, p. 1934, 2454, 3523
24.11.441 and other rules - Unemployment Insurance Matters, p. 2456, 3539
24.11.466 and other rules - Unemployment Insurance Benefit Overpayments, p. 3541
24.16.9007 Prevailing Wage Rates - Non-construction Services, p. 523
24.16.9007 Prevailing Wage Rates - Fringe Benefits for Ironworkers and Ironworker Forepersons Only, p. 3095, 444
24.21.411 and other rules - Apprenticeship Standards, p. 3098
24.29.205 and other rules - Workers' Compensation Matters, p. 1733, 2701

(Workers' Compensation Judge)
24.5.317 Procedural Rule - Medical Records, p. 153A, 397

(Board of Personnel Appeals)
24.26.630 and other rules - Board of Personnel Appeals Matters, p. 154, 446

LIVESTOCK, Department of, Title 32

32.2.201 and other rules - Rules Relating to the Montana Environmental Policy Act, p. 2578, 3409
32.2.401 and other rule - Fees Charged to Record, Transfer, or Rerecord New or Existing Brands or to Provide Certified Copies of Recorded Brands - Fees Charged by the Montana Department of Livestock Veterinary Diagnostic Laboratory, p. 2869, 3411
32.5.101 and other rules - Laboratory Services, p. 2883, 3412
32.6.712 Food Safety and Inspection Service (Meat and Poultry), p. 160, 448, 561
32.8.101 and other rules - Fluid Milk - Grade A Milk Products - Milk Freshness Dating, p. 2372, 2985

(Board of Milk Control)
32.24.301 and other rules - Pricing of Producer Milk - Utilization of Surplus Milk - Procedures to Purchase and Market Surplus Milk - Definitions, p. 2878, 3413

NATURAL RESOURCES AND CONSERVATION, Department of, Title 36

I-XII Control of Timber Slash and Debris, p. 928, 2526
36.21.415 and other rule - Fees - Tests for Yield and Drawdown, p. 3504, 562

(Board of Oil and Gas Conservation)
36.22.302 and other rules - Definitions - Adoption of Forms - Drilling Permits Pending Special Field Rules - Reports from Transporters, Refiners and Gasoline or Extraction Plants - Approval for Pulling Casing and Re-entering Wells - Restoration of Surface - Plugging and Restoration Bond - Application Contents and Requirements - Financial Responsibility - Notice of Application - Exempt Aquifers - Injection Fee - Well Classification - Area of Review - Certification of Enhanced Recovery Projects - Application - Contents and Requirements, p. 2379, 3542

(Board of Land Commissioners and Department of Natural Resources and Conservation)
36.25.102 and other rule - Rental Rates for Cabin Site Leases on State Trust Lands and Associated Improvements, p. 3104, 22

PUBLIC HEALTH AND HUMAN SERVICES, Department of, Title 37

I and other rules - Communicable Disease Control, p. 1972, 2528, 2986
I-XII Quality Assurance for Managed Care Plans, p. 381
16.10.201 and other rules - Food Regulations, p. 2206, 3201
16.10.1301 and other rules - Swimming Pools, Spas and Swimming Areas, p. 2178, 3232
16.24.101 and other rules - Transfer from the Department of Health and Environmental Sciences - Children's Special Health Services Program - Infant Screening Tests and Eye Treatment Program - Block Grant Funds Program - Documentation and Studies of Abortions - Family Planning Program Deficiencies, p. 398
16.24.901 and other rules - State Plans for Maternal and Child Health (MCH) - Lab Services - Montana Health Care Authority, p. 379
16.32.302 Health Care Licensure, p. 163, 675
37.5.307 and other rules - Fair Hearings and Contested Case Proceedings, p. 622
37.34.1801 and other rule - Accreditation Standards for Provider Programs of Community-Based Developmental Disabilities Services, p. 1483, 3171
37.40.302 and other rules - Nursing Facilities, p. 642
37.40.905 and other rules - Medicaid Cross-over Pricing, p. 526
37.49.413 and other rule - IV-E Foster Care Eligibility, p. 2600, 3545
37.50.901 Interstate Compact on the Placement of Children, p. 337, 676
37.70.401 and other rules - Low Income Energy Assistance Program (LIEAP) - Low Income Weatherization Assistance Program (LIWAP), p. 2188, 2707
37.70.601 Low Income Energy Assistance Program (LIEAP), p. 3118, 401
37.80.201 and other rules - Child Care Subsidy Programs, p. 1798, 2454

37.85.212 Resource Based Relative Value Scale (RBRVS) Reimbursement, p. 612
37.86.105 and other rules - Mental Health Services, p. 2889, 27, 417, 564
37.86.1001 and other rules - Dental Services - Eyeglasses Reimbursement, p. 617
37.86.1105 Reimbursement to State Institutions for Outpatient Drugs, p. 2388, 3176
37.86.1802 and other rules - Medicaid Fees and Reimbursement Requirements for Prosthetic Devices, Durable Medical Equipment (DME) and Medical Supplies, p. 604
37.86.2207 and other rules - Mental Health Services, p. 436
37.86.2605 Medicaid Hospital Reimbursement, p. 626
37.86.2801 and other rules - Emergency Amendment - Medicaid Reimbursement for Inpatient and Outpatient Hospital Services, p. 403, 677
37.89.114 Emergency Amendment - Mental Health Services Plan, Covered Services, p. 413
46.11.101 and other rules - Transfer from the Department of Social and Rehabilitation Services - Food and Nutrition Services, p. 3555
46.18.101 and other rules - Transfer from the Department of Social and Rehabilitation Services - Families Achieving Independence in Montana (FAIM), p. 3414
46.18.122 Families Achieving Independence in Montana (FAIM) Financial Assistance Standards, p. 3109, 183
46.20.106 Emergency Amendment - Mental Health Services Plan Eligibility, p. 2529
46.20.106 Mental Health Services Plan Eligibility, p. 2510, 3418
46.20.106 Mental Health Services Plan Eligibility, p. 2202, 3177
46.30.501 and other rules - Conduct of Contested Hearings in Child Support Establishment and Enforcement Cases, p. 2471, 3547
46.30.507 and other rules - Transfer from the Department of Social and Rehabilitation Services - Child Support Enforcement, p. 3551

PUBLIC SERVICE REGULATION, Department of, Title 38

I-III Flexible Pricing for Regulated Telecommunications Service, p. 2000, 48
38.5.1108 Refunds of Utility Customer Deposits, p. 2953, 45
38.5.2202 Pipeline Safety, p. 2956, 47

REVENUE, Department of, Title 42

42.2.302 and other rules - Public Participation - General Application of Tax Payments, p. 2603, 3557
42.4.101 and other rules - Tax Incentives - Credits for Alternative Energy Systems, p. 3151, 3560
42.11.201 and other rules - Liquor Licensing, p. 2614, 449
42.11.301 and other rules - Liquor Distribution, p. 3507, 348
42.12.101 and other rules - Liquor Licenses, p. 789, 1762, 2708

42.14.101 and other rule - Lodging Facility Use Taxes, p. 2640, 3561
42.18.106 and other rules - Appraisal of Agricultural and Forest Land - Commercial - Industrial - Residential Property, p. 2642, 3562
42.18.124 Clarification of Valuation Periods for Class 4 Property, p. 301, 463
42.21.113 and other rules - Property Taxes, p. 3131, 3563
42.22.1311 and other rules - Centrally Assessed Property, p. 3121, 3565
42.25.1101 and other rules - Natural Resource Taxes, p. 2390, 2988
42.31.102 and other rules - Tobacco and Contractor's License Taxes, p. 2657, 3569

SECRETARY OF STATE, Title 44

1.2.419 Scheduled Dates for the Montana Administrative Register, p. 2959, 3419

BOARD 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 appointees and upcoming or current vacancies on those boards and councils.

In this issue, appointments effective in March 2001, appear. Vacancies scheduled to appear from May 1, 2001, through July 31, 2001, are listed, as are current vacancies due to resignations or other reasons. Individuals interested in serving on a board should refer to the bill that created the board for details about the number of members to be appointed and necessary qualifications.

Each month, the previous month's appointees are printed, and current and upcoming vacancies for the next three months are published.

IMPORTANT

Membership on boards and commissions changes constantly. The following lists are current as of April 12, 2001.

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.

BOARD AND COUNCIL APPOINTEES FROM MARCH, 2001

Appointee	Appointed by	Succeeds	Appointment/End Date
Alternative Livestock Advisory Council (Fish, Wildlife, and Parks)			
Mr. Jeremy Kinross-Wright	Governor	reappointed	3/12/2001
Big Timber			1/1/2003
Qualifications (if required): representative of the Board of Livestock			
Mr. John Lane	Governor	Meyer	3/12/2001
Cascade			1/1/2003
Qualifications (if required): representative of the Fish, Wildlife, and Parks Commission			
Board of Athletics (Commerce)			
Mr. Gary Langley	Governor	not listed	3/27/2001
Helena			4/25/2004
Qualifications (if required): public member			
Board of Crime Control (Justice)			
Ms. Elaine Allestad	Governor	not listed	3/12/2001
Big Timber			1/1/2005
Qualifications (if required): county commissioner			
Mr. Robert Brooks	Governor	Bjertness	3/12/2001
Butte			1/1/2005
Qualifications (if required): public member			
Sheriff Clifford Brophy	Governor	Slaughter	3/12/2001
Columbus			1/1/2005
Qualifications (if required): sheriff			
Mr. John Flynn	Governor	not listed	3/12/2001
Townsend			1/1/2005
Qualifications (if required): county attorney			

BOARD AND COUNCIL APPOINTEES FROM MARCH, 2001

Appointee	Appointed by	Succeeds	Appointment/End Date
Board of Crime Control (Justice) cont.			
Chief Justice Karla M. Gray	Governor	not listed	3/12/2001
Helena			1/1/2005
Qualifications (if required): Chief Justice			
Chief Robert Jones	Governor	not listed	3/12/2001
Great Falls			1/1/2005
Qualifications (if required): representative of police chiefs			
Ms. Kathy Lockyer	Governor	Stuker	3/12/2001
Helena			1/1/2005
Qualifications (if required): educator			
Judge Dorothy B. McCarter	Governor	not listed	3/12/2001
Helena			1/1/2005
Qualifications (if required): judge			
Attorney General Mike McGrath	Governor	Mazurek	3/12/2001
Helena			1/1/2005
Qualifications (if required): Attorney General			
Director Bill Slaughter	Governor	Day	3/12/2001
Helena			1/1/2005
Qualifications (if required): Director of the Department of Corrections			
Ms. Janet Stevens	Governor	not listed	3/12/2001
Missoula			1/1/2005
Qualifications (if required): public member			
Board of Dentistry (Commerce)			
Ms. Jean Hagan	Governor	Stish	3/29/2001
Big Fork			3/29/2006
Qualifications (if required): public member who is a senior citizen			

BOARD AND COUNCIL APPOINTEES FROM MARCH, 2001

Appointee	Appointed by	Succeeds	Appointment/End Date
Board of Dentistry (Commerce) cont.			
Dr. James Johnson	Governor	Hansen	3/29/2001
Billings			3/29/2006
Qualifications (if required): dentist			
Board of Livestock (Livestock)			
Mr. Lee Cornwell	Governor	reappointed	3/2/2001
Glasgow			3/1/2007
Qualifications (if required): cattle producer			
Mr. John C. Paugh	Governor	reappointed	3/2/2001
Bozeman			3/1/2007
Qualifications (if required): sheep producer			
Board of Oil and Gas Conservation (Natural Resources and Conservation)			
Mr. David Ballard	Governor	reappointed	3/15/2001
Billings			1/1/2005
Qualifications (if required): representative of the oil and gas industry			
Mr. Jerry Kennedy	Governor	Galuska	3/15/2001
Shelby			1/1/2005
Qualifications (if required): representative of the oil and gas industry			
Mr. Allen C. Kolstad	Governor	reappointed	3/15/2001
Chester			1/1/2005
Qualifications (if required): landowner with mineral rights			
Mr. Gary Willis	Governor	Lund	3/15/2001
Helena			1/1/2005
Qualifications (if required): public member			

BOARD AND COUNCIL APPOINTEES FROM MARCH, 2001

Appointee	Appointed by	Succeeds	Appointment/End Date
Board of Optometry (Commerce)			
Dr. Cynthia Johnson Bozeman	Governor	not listed	3/30/2001 4/3/2005
Qualifications (if required): optometrist			
Board of Public Education (Board of Public Education)			
Mr. John Fuller Whitefish	Governor	Silverthorne	3/14/2001 2/2/2008
Qualifications (if required): Republican representing District 1			
Ms. Joyce A. Silverthorne Dixon	Governor	Brown	3/14/2001 2/1/2004
Qualifications (if required): Democrat representing District 1			
Human Rights Commission (Labor and Industry)			
Mr. Gary Hindoien Clancy	Governor	Etchart	3/22/2001 1/1/2005
Qualifications (if required): public member			
Ms. Arleah Shechtman Kalispell	Governor	Lopp	3/22/2001 1/1/2005
Qualifications (if required): public member			
Ms. Evelyn Stevenson Pablo	Governor	reappointed	3/22/2001 1/1/2005
Qualifications (if required): public member and an attorney			
Missouri River Basin Advisory Council (Natural Resources and Conservation)			
Ms. Diane Brandt Glasgow	Governor	not listed	3/20/2001 3/20/2003
Qualifications (if required): public member			

BOARD AND COUNCIL APPOINTEES FROM MARCH, 2001

Appointee	Appointed by	Succeeds	Appointment/End Date
Missouri River Basin Advisory Council (Natural Resources and Conservation) cont.			
Director Bud Clinch Helena	Governor	not listed	3/20/2001 3/20/2003
Qualifications (if required): Director of the Department of Natural Resources and Conservation			
Mr. John Foster Lewistown	Governor	not listed	3/20/2001 3/20/2003
Qualifications (if required): public member			
Mr. Tom Huntley Sidney	Governor	not listed	3/20/2001 3/20/2003
Qualifications (if required): public member			
Mr. Buzz Mattelin Brockton	Governor	not listed	3/20/2001 3/20/2003
Qualifications (if required): public member			
Mr. Ron Miller Glasgow	Governor	not listed	3/20/2001 3/20/2003
Qualifications (if required): public member			
Mr. Steve Page Glasgow	Governor	not listed	3/20/2001 3/20/2003
Qualifications (if required): public member			
Mr. Don Pfau Lewistown	Governor	not listed	3/20/2001 3/20/2003
Qualifications (if required): public member			
Mr. Jim Rector Glasgow	Governor	not listed	3/20/2001 3/20/2003
Qualifications (if required): public member			

BOARD AND COUNCIL APPOINTEES FROM MARCH, 2001

Appointee	Appointed by	Succeeds	Appointment/End Date
Missouri River Basin Advisory Council (Natural Resources and Conservation) cont.			
Mr. Boone A. Whitmer Wolf Point	Governor	not listed	3/20/2001 3/20/2003
Qualifications (if required): public member			
Montana Committee for the Humanities			
Ms. Julie Cajune Ronan	Governor	Doggett	3/13/2001 1/2/2005
Qualifications (if required): public member			
Mr. James Driscoll Butte	Governor	Poore	3/13/2001 1/2/2005
Qualifications (if required): public member			
Mr. Stuart Knapp Bozeman	Governor	Bevis	3/13/2001 1/2/2005
Qualifications (if required): public member			
Rep. Arla Jeanne Murray Miles City	Governor	reappointed	3/13/2001 1/2/2005
Qualifications (if required): public member			
Montana Health Facility Authority (Commerce)			
Ms. Joyce Asay Forsyth	Governor	reappointed	3/16/2001 1/1/2005
Qualifications (if required): public member			
Ms. Gayle Carpenter Helena	Governor	reappointed	3/16/2001 1/1/2005
Qualifications (if required): public member			

BOARD AND COUNCIL APPOINTEES FROM MARCH, 2001

Appointee	Appointed by	Succeeds	Appointment/End Date
Montana Health Facility Authority (Commerce) cont.			
Ms. Kelley Evans	Governor	Little	3/16/2001
Red Lodge			1/1/2005
Qualifications (if required): public member			
Mr. Lee Jockers	Governor	Varone	3/16/2001
Billings			1/1/2005
Qualifications (if required): public member			
Peace Officer's Standards and Training Council (Justice)			
Ms. Anne Kindness	Governor	Latham	3/29/2001
Billings			2/14/2002
Qualifications (if required): representative of the 9-1-1 service			
Transportation Commission (Transportation)			
Mr. Meredith Reiter	Governor	Forseth	3/19/2001
Billings			1/1/2005
Qualifications (if required): representative of District 5 and a Republican			

VACANCIES ON BOARDS AND COUNCILS -- May 1, 2001 through July 31, 2001

Board/current position holder	Appointed by	Term end
Advisory Council on Community Service (Governor)		
Ms. Kelly Raths, Lewistown	Governor	7/1/2001
Qualifications (if required): youth representative		
Aging Advisory Council (Public Health and Human Services)		
Ms. Fern Prather, Big Timber	Governor	7/18/2001
Qualifications (if required): public member		
Ms. Jeannette Stevenson, Hobson	Governor	7/18/2001
Qualifications (if required): public member		
Mr. Irvin Hutchison, Chester	Governor	7/18/2001
Qualifications (if required): public member		
Mr. Bud Clinch, Libby	Governor	7/18/2001
Qualifications (if required): public member		
Agricultural Heritage Commission (Agriculture)		
Mr. Charles M. Jarecki, Polson	House Speaker	7/21/2001
Qualifications (if required): appointed by the Speaker of the House		
Mr. Paul Gatzemeier, Billings	Senate President	7/21/2001
Qualifications (if required): appointed by the President of the Senate		
Agriculture Development Council (Agriculture)		
Mr. Larry Barber, Coffee Creek	Governor	7/1/2001
Qualifications (if required): actively engaged in agriculture		
Mr. P.L. "Joe" Boyd, Billings	Governor	7/1/2001
Qualifications (if required): actively engaged in agriculture		
Director W. Ralph Peck, Helena	Governor	7/1/2001
Qualifications (if required): Director of the Department of Agriculture		

VACANCIES ON BOARDS AND COUNCILS -- May 1, 2001 through July 31, 2001

Board/current position holder	Appointed by	Term end
Board of Barbers (Commerce)		
Mr. Max DeMars, Big Timber	Governor	7/1/2001
Qualifications (if required): practicing barber		
Board of Cosmetology (Commerce)		
Ms. Karen Underwood, Billings	Governor	7/1/2001
Qualifications (if required): cosmetologist		
Ms. Verna Dupuis, Bozeman	Governor	7/1/2001
Qualifications (if required): affiliated with school of cosmetology		
Ms. Pam Lemieux, Helena	Governor	7/1/2001
Qualifications (if required): cosmetologist		
Ms. Darlene Battaiola, Butte	Governor	7/1/2001
Qualifications (if required): affiliated with school of cosmetology		
Ms. Mary Lou Nelson, Plentywood	Governor	7/1/2001
Qualifications (if required): public member		
Board of Hearing Aid Dispensers (Commerce)		
Mr. David King, Billings	Governor	7/1/2001
Qualifications (if required): licensed hearing aid dispenser with national certification		
Board of Landscape Architects (Commerce)		
Ms. Shelly Engler, Bozeman	Governor	7/1/2001
Qualifications (if required): licensed landscape architect		
Ms. Janet Thomas, Hobson	Governor	7/1/2001
Qualifications (if required): public member		

VACANCIES ON BOARDS AND COUNCILS -- May 1, 2001 through July 31, 2001

Board/current position holder	Appointed by	Term end
Board of Nursing (Commerce)		
Ms. Kim Powell, Missoula	Governor	7/1/2001
Qualifications (if required): registered professional nurse		
Board of Nursing Home Administrators (Commerce)		
Ms. Donna Kay Jennings, Missoula	Governor	5/28/2001
Qualifications (if required): representative who cares for aged patients		
Board of Pharmacy (Commerce)		
Mr. John Poush, Billings	Governor	7/1/2001
Qualifications (if required): pharmacist		
Board of Physical Therapy Examiners (Commerce)		
Ms. Linda Stordahl, Butte	Governor	7/1/2001
Qualifications (if required): licensed physical therapist		
Board of Plumbers (Commerce)		
Mr. Vernon E. (Gene) Mahn, Lincoln	Governor	5/4/2001
Qualifications (if required): public member		
Board of Professional Engineers and Land Surveyors (Commerce)		
Mr. David M. Hummel, Billings	Governor	7/1/2001
Qualifications (if required): professional engineer		
Mr. Daniel M. McCauley, Helena	Governor	7/1/2001
Qualifications (if required): professional engineer		
Board of Public Accountants (Commerce)		
Mr. Robert Wolfe, Conrad	Governor	7/1/2001
Qualifications (if required): licensed public accountant		

VACANCIES ON BOARDS AND COUNCILS -- May 1, 2001 through July 31, 2001

Board/current position holder	Appointed by	Term end
Board of Radiologic Technologists (Commerce)		
Dr. Daniel Alzheimer, Helena	Governor	7/1/2001
Qualifications (if required): physician who employs a radiologic technologist		
Ms. Debbie Hepp, Great Falls	Governor	7/1/2001
Qualifications (if required): licensed radiologic technologist		
Board of Real Estate Appraisers (Commerce)		
Mr. Tim Moore, Helena	Governor	5/1/2001
Qualifications (if required): real estate appraiser		
Ms. Jennifer Seitz, Billings	Governor	5/1/2001
Qualifications (if required): public member		
Board of Realty Regulation (Commerce)		
Ms. Vicky Hammond, Missoula	Governor	5/9/2001
Qualifications (if required): real estate broker and a Democrat		
Board of Regents of Higher Education (Education)		
Ms. Jessica Kobos, Missoula	Governor	7/1/2001
Qualifications (if required): student representative		
Board of Research and Commercialization Technology (Commerce)		
Mr. Chuck Merja, Sun River	Governor	7/1/2001
Qualifications (if required): public member		
Mr. William Crain, Great Falls	Minority Leader	7/1/2001
Qualifications (if required): none specified		
Mr. Dennis Toussaint, Stevensville	House Speaker	7/1/2001
Qualifications (if required): none specified		

VACANCIES ON BOARDS AND COUNCILS -- May 1, 2001 through July 31, 2001

Board/current position holder	Appointed by	Term end
Board of Respiratory Care Practitioners (Commerce)		
Dr. Gregory Paulauskis, Great Falls	Governor	7/1/2001
Qualifications (if required): respiratory care practitioner		
Board of Sanitarians (Commerce)		
Ms. Janet Bauer, Great Falls	Governor	7/1/2001
Qualifications (if required): registered sanitarian		
Board of Veterans' Affairs (Military Affairs)		
Mr. Thaddeus Mayer, Missoula	Governor	5/18/2001
Qualifications (if required): veteran		
Board of Veterinary Medicine (Commerce)		
Dr. Kenneth Brown, Billings	Governor	7/31/2001
Qualifications (if required): veterinarian		
Board of Water Well Contractors (Natural Resources and Conservation)		
Mr. Pat Byrne, Great Falls	Governor	7/1/2001
Qualifications (if required): water well contractor		
Chief Water Judge (Justice)		
Mr. C. Bruce Loble, Bozeman	Supreme Court	6/30/2001
Qualifications (if required): none specified		
Community Services Advisory Council (Governor)		
Mr. Bob Simoneau, Helena	Governor	7/1/2001
Qualifications (if required): representative of the Department of Labor		
Ms. Patricia J. Gunderson, Belgrade	Governor	7/1/2001
Qualifications (if required): representative of labor unions		
Rep. Billie Krenzler, Billings	Governor	7/1/2001
Qualifications (if required): representative of local government		

VACANCIES ON BOARDS AND COUNCILS -- May 1, 2001 through July 31, 2001

Board/current position holder	Appointed by	Term end
Community Services Advisory Council (Governor) cont.		
Mr. Bill Cain, Butte	Governor	7/1/2001
Qualifications (if required): representative of business		
Ms. Kathie Bailey, Lewistown	Governor	7/1/2001
Qualifications (if required): representative of local government		
Family Education Savings Program Oversight Committee (Commissioner of Higher Education)		
Dr. Peter Blouke, Helena	Governor	7/1/2001
Qualifications (if required): Director of the Department of Commerce		
Auditor Mark O'Keefe, Helena	Governor	7/1/2001
Qualifications (if required): Commissioner of Insurance		
Governor's Local Coal Impact Review Council (Commerce)		
Mr. Alan Evans, Roundup	Governor	6/30/2001
Qualifications (if required): member of the Coal Board		
Sen. Mack Cole, Hysham	Governor	6/30/2001
Qualifications (if required): state senator from a coal impact area		
Rep. Lila V. Taylor, Busby	Governor	6/30/2001
Qualifications (if required): state representative from a coal impact area		
Mr. Robert W. Cope, Colstrip	Governor	6/30/2001
Qualifications (if required): representative of the coal industry		
Mr. Tony Ritter, Decker	Governor	6/30/2001
Qualifications (if required): representative of the coal industry		
Mr. John Pretty On Top, Hardin	Governor	6/30/2001
Qualifications (if required): county commissioner from a coal impact area		

VACANCIES ON BOARDS AND COUNCILS -- May 1, 2001 through July 31, 2001

Board/current position holder	Appointed by	Term end
Governor's Local Coal Impact Review Council (Commerce) cont.		
Ms. Joan Stahl, Forsyth	Governor	6/30/2001
Qualifications (if required): county commissioner from a coal impact area		
Mr. Larry Vandersloot, Hardin	Governor	6/30/2001
Qualifications (if required): representative of a city within a coal impact area		
Mayor John Williams, Colstrip	Governor	6/30/2001
Qualifications (if required): representative of a city within a coal impact area		
Mr. Rusty Rokita, Hardin	Governor	6/30/2001
Qualifications (if required): public member		
Governor's Upper Yellowstone River Task Force (Fish, Wildlife, and Parks)		
Mr. Tom Lane, Livingston	Governor	6/28/2001
Qualifications (if required): representing ranchers who live by the river		
Mr. John Bailey, Livingston	Governor	6/28/2001
Qualifications (if required): representing local business		
Mr. Joel Marshik, Helena	Governor	6/28/2001
Qualifications (if required): representing the Department of Transportation		
Mr. Bob Wiltshire, Livingston	Governor	6/28/2001
Qualifications (if required): representing the angling community		
Mr. Mike Atwood, Livingston	Governor	6/28/2001
Qualifications (if required): representing local business		
Ms. Michelle Goodwine, Livingston	Governor	6/28/2001
Qualifications (if required): representing local business		

VACANCIES ON BOARDS AND COUNCILS -- May 1, 2001 through July 31, 2001

Board/current position holder	Appointed by	Term end
Governor's Upper Yellowstone River Task Force (Fish, Wildlife, and Parks) cont.		
Mr. Jerry O'Haire, Livingston	Governor	6/28/2001
Qualifications (if required): representing ranchers who live by the river		
Mr. Roy Aserlind, Livingston	Governor	6/28/2001
Qualifications (if required): representing property owners		
Mr. Rod Siring, Livingston	Governor	6/28/2001
Qualifications (if required): representing property owners		
Mr. Brant Oswald, Livingston	Governor	6/28/2001
Qualifications (if required): representing conservation groups		
Ms. Ellen Woodbury, Livingston	Governor	6/28/2001
Qualifications (if required): representing Park County		
Mr. Doug McDonald, Helena	Governor	6/28/2001
Qualifications (if required): representing the Corps of Engineers		
Mr. Laurence Siroky, Helena	Governor	6/28/2001
Qualifications (if required): representing the Department of Natural Resources and Conservation		
Mr. Stuart Lehman, Helena	Governor	6/28/2001
Qualifications (if required): representing the Department of Environmental Quality		
Mr. Joel Tohtz, Helena	Governor	6/28/2001
Qualifications (if required): representing the Department of Fish, Wildlife, and Parks		
Mr. Jim Woodhull, Livingston	Governor	6/28/2001
Qualifications (if required): representing the City of Livingston		

VACANCIES ON BOARDS AND COUNCILS -- May 1, 2001 through July 31, 2001

Board/current position holder	Appointed by	Term end
Governor's Upper Yellowstone River Task Force (Fish, Wildlife, and Parks) cont.		
Mr. David Haug, Livingston	Governor	6/28/2001
Qualifications (if required): representing the Park Conservation District		
Health Care Advisory Council (Public Health and Human Services)		
Ms. Tanya M. Ask, Missoula	Governor	6/30/2001
Qualifications (if required): representing Region 5		
Ms. Laurie Ekanger, Helena	Governor	6/30/2001
Qualifications (if required): representing the executive branch		
Dr. Lawrence R. Palazzo, Glasgow	Governor	6/30/2001
Qualifications (if required): representing Region 1		
Ms. Kristianne Wilson, Billings	Governor	6/30/2001
Qualifications (if required): representing Region 3		
Ms. Lynn O'Malley, Great Falls	Governor	6/30/2001
Qualifications (if required): representing Region 2		
Ms. Nancy Taylor, Townsend	Governor	6/30/2001
Qualifications (if required): representing Region 4		
Independent Living Advisory Council (Public Health and Human Services)		
Mr. Tom Tripp, Butte	Director	6/1/2001
Qualifications (if required): none specified		
Information Technology Advisory Council (Administration)		
Ms. Lois A. Menzies, Helena	Director	7/1/2001
Qualifications (if required): Administration		
Mr. Bob Person, Helena	Director	7/1/2001
Qualifications (if required): Legislative Branch		

VACANCIES ON BOARDS AND COUNCILS -- May 1, 2001 through July 31, 2001

Board/current position holder	Appointed by	Term end
Information Technology Advisory Council (Administration) cont.		
Mr. William Salisbury, Helena	Director	7/1/2001
Qualifications (if required): Transportation		
Mr. Jim Reno, Billings	Director	7/1/2001
Qualifications (if required): local government		
Mr. Mike Billings, Helena	Director	7/1/2001
Qualifications (if required): Public Health and Human Services		
Mr. Scott Buswell, Helena	Director	7/1/2001
Qualifications (if required): Public Education		
Mr. Mark A. Simonich, Helena	Director	7/1/2001
Qualifications (if required): Tier 2		
Mr. Patrick A. Chenovick, Helena	Director	7/1/2001
Qualifications (if required): Judicial Branch		
Mr. George Harris, Helena	Director	7/1/2001
Qualifications (if required): Tier 2		
Ms. Sharon McCabe, Helena	Director	7/1/2001
Qualifications (if required): Tier 1		
Ms. Mary Bryson, Helena	Director	7/1/2001
Qualifications (if required): Tier 3		
Mr. Larry Fasbender, Helena	Director	7/1/2001
Qualifications (if required): Tier 3		
Ms. Joyce Scott, Helena	Director	7/1/2001
Qualifications (if required): University System		

VACANCIES ON BOARDS AND COUNCILS -- May 1, 2001 through July 31, 2001

Board/current position holder	Appointed by	Term end
Information Technology Advisory Council (Administration) cont.		
Ms. Angela Fultz-Nordstrom, Helena	Director	7/1/2001
Qualifications (if required): Tier 1		
Interagency Coordinating Council for State Prevention Program (Public Health and Human Services)		
Ms. DeAnn Thomas, Kalispell	Governor	7/1/2001
Qualifications (if required): experiences with prevention programs and services		
Mr. William Snell, Billings	Governor	7/1/2001
Qualifications (if required): experiences with prevention programs and services		
Interim Court Funding and Structure Committee (Administration)		
Judge Kenneth R. Neill, Belt	Governor	6/30/2001
Qualifications (if required): representing the Montana Judges Association		
Mr. Mike Hutchin, Polson	Governor	6/30/2001
Qualifications (if required): representing counties		
Mr. Jim Nugent, Missoula	Governor	6/30/2001
Qualifications (if required): representing cities and towns		
Judge Kevin A. Hart, Anaconda	Governor	6/30/2001
Qualifications (if required): representing the Montana Magistrates		
Ms. Lori Maloney, Butte	Governor	6/30/2001
Qualifications (if required): representing Clerks of Court		
Interim Local Government Funding and Structure Committee (Administration)		
Ms. Sue M. Olson, Roundup	Governor	6/30/2001
Qualifications (if required): representing counties		

VACANCIES ON BOARDS AND COUNCILS -- May 1, 2001 through July 31, 2001

Board/current position holder	Appointed by	Term end
Interim Local Government Funding and Structure Committee (Administration) cont.		
Ms. Mary Bryson, Helena	Governor	6/30/2001
Qualifications (if required): representing the state executive branch of government		
Mr. John Lawton, Great Falls	Governor	6/30/2001
Qualifications (if required): representing cities and towns		
Mr. Harold Blattie, Columbus	Governor	6/30/2001
Qualifications (if required): representing counties		
Ms. Susan M. Nicosia, Columbia Falls	Governor	6/30/2001
Qualifications (if required): representing cities and towns		
Ms. Patricia Cook, Polson	Governor	6/30/2001
Qualifications (if required): representing county treasurers		
Judicial Standards Commission (Justice)		
Mr. Victor F. Valgenti, Missoula	Supreme Court	6/30/2001
Qualifications (if required): none specified		
Judge John Warner, Havre	Supreme Court	6/30/2001
Qualifications (if required): none specified		
Ms. Barbara Evans, Missoula	Governor	7/1/2001
Qualifications (if required): public member		
Montana Consensus Council's Board of Directors (Governor)		
Sen. Greg Jergeson, Chinook	Governor	6/30/2001
Qualifications (if required): public member		
Governor Marc Racicot, Helena	Governor	6/30/2001
Qualifications (if required): ex-officio member		

VACANCIES ON BOARDS AND COUNCILS -- May 1, 2001 through July 31, 2001

Board/current position holder	Appointed by	Term end
Montana Consensus Council's Board of Directors (Governor) cont.		
Mr. Michael E. Zimmerman, Butte	Governor	6/30/2001
Qualifications (if required): public member		
Mr. Donald Snow, Missoula	Governor	6/30/2001
Qualifications (if required): public member		
Ms. Monica Switzer, Richey	Governor	6/30/2001
Qualifications (if required): public member		
Sen. Bob Keenan, Bigfork	Governor	6/30/2001
Qualifications (if required): public member		
Ms. Elaine Forrest, Wolf Point	Governor	6/30/2001
Qualifications (if required): public member and a Native American		
Ms. Anne Hedges, Helena	Governor	6/30/2001
Qualifications (if required): public member		
Ms. Jane Jelinski, Helena	Governor	6/30/2001
Qualifications (if required): public member		
Mr. Alan Rollo, Great Falls	Governor	6/30/2001
Qualifications (if required): public member		
Mr. Mat Millenbach, Billings	Governor	6/30/2001
Qualifications (if required): public member		
Mr. Cary Hegreberg, Townsend	Governor	6/30/2001
Qualifications (if required): public member		

VACANCIES ON BOARDS AND COUNCILS -- May 1, 2001 through July 31, 2001

Board/current position holder	Appointed by	Term end
Montana Heritage Preservation and Development Commission (Historical Society)		
Mr. John Lawton, Great Falls	Governor	5/23/2001
Qualifications (if required): experienced in community planning		
Ms. Rosana Skelton, Helena	Governor	5/23/2001
Qualifications (if required): businessperson		
Montana Historical Society Board of Trustees (Montana Historical Society)		
Ms. Jean Birch, Great Falls	Governor	7/1/2001
Qualifications (if required): public member		
Mr. Larry McRae, Missoula	Governor	7/1/2001
Qualifications (if required): public member		
Mr. Robert Morgan, Clancy	Governor	7/1/2001
Qualifications (if required): public member		
Montana Library Services Advisory Council (State Library)		
Mr. Bill Cochran, Billings	Governor	6/10/2001
Qualifications (if required): representing the Montana Library Association		
Rep. Linda McCulloch, Missoula	Governor	6/10/2001
Qualifications (if required): representing the Montana legislature		
Mr. Wes Plann, Terry	Governor	6/10/2001
Qualifications (if required): representing eastern Montana users		
Ms. Gloria Wahl, Lewistown	Governor	6/10/2001
Qualifications (if required): representing central Montana users		
Ms. Lois Fitzpatrick, Helena	Governor	6/10/2001
Qualifications (if required): representing academic libraries		

VACANCIES ON BOARDS AND COUNCILS -- May 1, 2001 through July 31, 2001

Board/current position holder	Appointed by	Term end
Montana Library Services Advisory Council (State Library) cont.		
Ms. Peggy Bloom, Missoula	Governor	6/10/2001
Qualifications (if required): representing western Montana users		
Ms. Lynn Donvan, Sidney	Governor	6/10/2001
Qualifications (if required): representing school libraries		
Ms. Cheryl Heser, Forsyth	Governor	6/10/2001
Qualifications (if required): representing public libraries		
Ms. Myrle Tompkins, Helena	Governor	6/10/2001
Qualifications (if required): representing those who are unable to use traditional library		
Montana Mint Committee (Agriculture)		
Mr. Darrel Sperry, Corvallis	Governor	7/1/2001
Qualifications (if required): mint grower		
Montana State Veterans Cemetery Advisory Council (Military Affairs)		
Mr. John "Jack" McGlynn, Butte	Director	5/1/2001
Qualifications (if required): United Veterans Committee		
Mr. Mickey Nelson, Helena	Director	5/1/2001
Qualifications (if required): Lewis and Clark County Coroner		
Ms. Alma Dickey, Helena	Director	5/1/2001
Qualifications (if required): Disabled American Veterans Auxiliary		
Ms. Alma Dickey, Helena	Director	5/1/2001
Qualifications (if required): Prisoners of War		
Ms. Irma Paul, Helena	Director	5/1/2001
Qualifications (if required): Veterans of Foreign Wars Auxiliary		

VACANCIES ON BOARDS AND COUNCILS -- May 1, 2001 through July 31, 2001

Board/current position holder	Appointed by	Term end
Montana State Veterans Cemetery Advisory Council (Military Affairs) cont.		
Ms. Rose Marie Storey, Helena	Director	5/1/2001
Qualifications (if required): American Legion Auxiliary		
Mr. Herb Ballou, Helena	Director	5/1/2001
Qualifications (if required): Military Order of the Purple Heart		
Mr. George Paul, Helena	Director	5/1/2001
Qualifications (if required): Military Order of the Cooties		
Mr. Jim Heffernan, Helena	Director	5/1/2001
Qualifications (if required): Marine Corp League		
Mr. Ruddy Reilly, Helena	Director	5/1/2001
Qualifications (if required): 40 & 8		
Mr. Ray Read, Helena	Director	5/1/2001
Qualifications (if required): Vietnam Veterans of America		
Mr. M. Herbert Goodwin, Helena	Director	5/1/2001
Qualifications (if required): First Special Service Force		
Mr. Robert C. McKenna, Helena	Director	5/1/2001
Qualifications (if required): consulting engineer		
Mr. Al Kirkeby, Helena	Director	5/1/2001
Qualifications (if required): Veterans of Foreign Wars		
Mr. Hugh "Tony" Cummings, Helena	Director	5/1/2001
Qualifications (if required): American Legion		
Major Steve Martinka, Helena	Director	5/1/2001
Qualifications (if required): Department of Military Affairs		

VACANCIES ON BOARDS AND COUNCILS -- May 1, 2001 through July 31, 2001

Board/current position holder	Appointed by	Term end
Montana State Veterans Cemetery Advisory Council (Military Affairs) cont.		
Mr. George Poston, Helena	Director	5/1/2001
Qualifications (if required): Disabled American Veterans		
Motorcycle Safety Advisory Committee (Office of Public Instruction)		
Mr. Ken Radovich, Great Falls	Governor	6/30/2001
Qualifications (if required): certified motorcycle instructor		
Ms. Michele Hand, Missoula	Governor	7/1/2001
Qualifications (if required): representative of a motorcycle riding group		
Noxious Weed Authority Advisory Council (Agriculture)		
Rep. Bob Gilbert, Sidney	Director	7/30/2001
Qualifications (if required): Montana Weed Control Association		
Rep. Robert Thoft, Stevensville	Director	7/30/2001
Qualifications (if required): biological research and control		
Mr. Jim Squires, Glendive	Director	7/30/2001
Qualifications (if required): agriculture crop production		
Ms. Linda Ellison, Bozeman	Director	7/30/2001
Qualifications (if required): sportsman/wildlife group		
Mr. Charles M. Jarecki, Polson	Director	7/30/2001
Qualifications (if required): at-large member		
Director W. Ralph Peck, Helena	Director	7/30/2001
Qualifications (if required): Director		
Mr. Bob Ullom, Billings	Director	7/30/2001
Qualifications (if required): herbicide dealer and applicator		

VACANCIES ON BOARDS AND COUNCILS -- May 1, 2001 through July 31, 2001

Board/current position holder	Appointed by	Term end
Noxious Weed Authority Advisory Council (Agriculture) cont.		
Ms. Nancy Thuesen, Reserve	Director	7/30/2001
Qualifications (if required): consumer group		
Mr. Stephen Roth, Big Sandy	Director	7/30/2001
Qualifications (if required): livestock production		
Mr. W. Jack Erickson, Silver Bow	Director	7/30/2001
Qualifications (if required): western county representative		
Mr. Jerry Weber, Joliet	Director	7/30/2001
Qualifications (if required): eastern county representative		
Petroleum Tank Release Compensation Board (Environmental Quality)		
Mr. Gary Basso, Billings	Governor	6/30/2001
Qualifications (if required): representative of the insurance industry		
Mr. Dallas Herron, Kalispell	Governor	6/30/2001
Qualifications (if required): representative of the independent petroleum marketers		
Mr. Burl French, Kalispell	Governor	6/30/2001
Qualifications (if required): representative of the petroleum services industry		
State Banking Board (Commerce)		
Ms. Jamie Doggett, White Sulphur Springs	Governor	7/1/2001
Qualifications (if required): public member		
Mr. Ted Goodwin, Billings	Governor	7/1/2001
Qualifications (if required): national bank officer		
State Electrical Board (Commerce)		
Mr. Tony Martel, Bozeman	Governor	7/1/2001
Qualifications (if required): public member		

VACANCIES ON BOARDS AND COUNCILS -- May 1, 2001 through July 31, 2001

Board/current position holder	Appointed by	Term end
State Library Commission (Education)		
Ms. Mary Doggett, White Sulphur Springs	Governor	5/22/2001
Qualifications (if required): public member		
State-Tribal Economic Development Commission (Governor)		
Dr. Peter Blouke, Helena	Governor	6/30/2001
Qualifications (if required): representing the Department of Commerce		
Mr. Wyman McDonald, Helena	Governor	6/30/2001
Qualifications (if required): representing the Office of Indian Affairs		
Ms. Melissa G. Buckles, Wolf Point	Governor	6/30/2001
Qualifications (if required): representing the Fort Peck Assiniboine and Sioux Tribe		
Mr. Jonathan Windy Boy, Box Elder	Governor	6/30/2001
Qualifications (if required): representing the Chippewa Cree Tribe		
Ms. Emorie Davis Bird, East Glacier Park	Governor	6/30/2001
Qualifications (if required): representing the Blackfeet Tribe		
Ms. Jami Hamel, Pablo	Governor	6/30/2001
Qualifications (if required): representing the Confederated Salish and Kootenai Tribes		
Mr. Joe Little Coyote, Sr., Lame Deer	Governor	6/30/2001
Qualifications (if required): representing the Northern Cheyenne Tribe		
Ms. Yvonne Iron, Crow Agency	Governor	6/30/2001
Qualifications (if required): representative of the Crow Tribe		
Mr. Lloyd Irvine, Pablo	Governor	6/30/2001
Qualifications (if required): representative of the Confederated Salish and Kootenai Tribe		

VACANCIES ON BOARDS AND COUNCILS -- May 1, 2001 through July 31, 2001

Board/current position holder	Appointed by	Term end
State-Tribal Economic Development Commission (Governor) cont.		
Mr. Ben Speak Thunder, Harlem	Governor	6/30/2001
Qualifications (if required): representing the Fort Belknap Gros Ventre and Assiniboine Tribe		
SummitNet Executive Council (Administration)		
Mr. Jim Currie, Helena	Governor	7/1/2001
Qualifications (if required): representing a state agency		
Ms. Lois A. Menzies, Helena	Governor	7/1/2001
Qualifications (if required): Director of the Department of Administration		
Mr. Scott Buswell, Helena	Governor	7/1/2001
Qualifications (if required): representative of the Office of Public Instruction		
Commissioner Janet Kelly, Miles City	Governor	7/1/2001
Qualifications (if required): local government representative		
Mr. Richard A. Crofts, Helena	Governor	7/1/2001
Qualifications (if required): Commissioner of Higher Education		
Ms. Mary Bryson, Helena	Governor	7/1/2001
Qualifications (if required): state agency representative		
Ms. Karen Strege, Helena	Governor	7/1/2001
Qualifications (if required): state agency representative		
Teachers' Retirement Board (Administration)		
Ms. Virginia Egli, Glendive	Governor	7/1/2001
Qualifications (if required): retired teacher		
Mr. James Turcotte, Helena	Governor	7/1/2001
Qualifications (if required): public member		

VACANCIES ON BOARDS AND COUNCILS -- May 1, 2001 through July 31, 2001

Board/current position holder	Appointed by	Term end
Teachers' Retirement Board (Administration) cont.		
Ms. Jima Severson, Havre	Governor	7/1/2001
Qualifications (if required): classroom teacher active in the retirement system		
Telecommunications Access Services for Persons with Disabilities (Public Health and Human Services)		
Mr. Ben Havdahl, Helena	Governor	7/1/2001
Qualifications (if required): hard of hearing		
Mr. Ron Bibler, Great Falls	Governor	7/1/2001
Qualifications (if required): disabled		
Ms. Chris Huth, Helena	Governor	7/1/2001
Qualifications (if required): non-disabled businessperson		
Tourism Advisory Council (Commerce)		
Ms. Maureen Averill, Bigfork	Governor	7/1/2001
Qualifications (if required): representing Glacier Country		
Ms. Lisa Perry, Shepherd	Governor	7/1/2001
Qualifications (if required): representing Custer Country		
Ms. Betsy Baumgart, Helena	Governor	7/1/2001
Qualifications (if required): representing Gold West Country		
Ms. Debbie Donovan, Larslan	Governor	7/1/2001
Qualifications (if required): representing Missouri River Country		
Ms. Kathy Brown, Helena	Governor	7/1/2001
Qualifications (if required): representing Custer Country		

VACANCIES ON BOARDS AND COUNCILS -- May 1, 2001 through July 31, 2001

Board/current position holder	Appointed by	Term end
Western Interstate Commission on Higher Education (Education)		
Mr. Richard A. Crofts, Helena	Governor	6/19/2001
Qualifications (if required): educator engaged in the field of higher education		
Youth Justice Advisory Council (Justice)		
Mr. Craig Anderson, Glendive	Governor	6/14/2001
Qualifications (if required): representative of probation services		
Ms. Gail Gray, Helena	Governor	6/14/2001
Qualifications (if required): representative of educational services		
Attorney General Mike McGrath, Helena	Governor	6/14/2001
Qualifications (if required): county attorney		
Mr. Rick Day, Helena	Governor	6/14/2001
Qualifications (if required): Director of the Department of Corrections		
Ms. Sally K. Stansberry, Missoula	Governor	6/14/2001
Qualifications (if required): representative of a nonprofit organization dealing with delinquency prevention and incarceration alternatives		
Judge Gary Acevedo, Pablo	Governor	6/14/2001
Qualifications (if required): representative of Native Americans and the judiciary		
Ms. Jani McCall, Billings	Governor	6/14/2001
Qualifications (if required): representative of mental health services		
Ms. Peggy Beltrone, Great Falls	Governor	6/14/2001
Qualifications (if required): representative of local government		
Ms. Donna Maddux, Kalispell	Governor	6/14/2001
Qualifications (if required): representative of the education community		

VACANCIES ON BOARDS AND COUNCILS -- May 1, 2001 through July 31, 2001

Board/current position holder	Appointed by	Term end
Youth Justice Advisory Council (Justice) cont.		
Mr. Chuck Hunter, Helena	Governor	6/14/2001
Qualifications (if required): representative of a public agency dealing with delinquency prevention		
Rep. Jeff Mangan, Great Falls	Governor	6/14/2001
Qualifications (if required): legislator		
Ms. Valerie Rasch, Billings	Governor	6/14/2001
Qualifications (if required): representative of a public agency dealing with detention services		
Mr. Steven Nelson, Bozeman	Governor	6/14/2001
Qualifications (if required): representative of a nonprofit organization dealing with delinquency prevention and treatment		
Mr. Ron Whitmoyer, East Helena	Governor	6/14/2001
Qualifications (if required): school principal		
Ms. Misti Robertson, Billings	Governor	6/14/2001
Qualifications (if required): law enforcement officer		
Mr. Michael Larson, Billings	Governor	6/14/2001
Qualifications (if required): youth recreation representative		
Ms. Nicole Tollefson, Bonner	Governor	6/14/2001
Qualifications (if required): youth representative		
Mr. Duane Piapot, Box Elder	Governor	6/14/2001
Qualifications (if required): youth representative		
Ms. Katie Yother, Miles City	Governor	6/14/2001
Qualifications (if required): youth representative		

VACANCIES ON BOARDS AND COUNCILS -- May 1, 2001 through July 31, 2001

Board/current position holder	Appointed by	Term end
Youth Justice Advisory Council (Justice) cont.		
Mr. Brock Albin, Bozeman	Governor	6/14/2001
Qualifications (if required): representative of a non-fulltime government position		