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 The notice section contains state agencies' proposed new, amended or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

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

In the matter of the amendment of ARM 2.43.606 pertaining to retirement systems administered by the Public Employees' Retirement Board	)))))	NOTICE OF PROPOSED AMENDMENT NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On June 28, 2002, the Public Employees' Retirement Board proposes to amend ARM 2.43.606 pertaining to the conversion of the optional retirement benefit for retired members of the Public Employees', Judges', Sheriffs', and Game Wardens' and Peace Officers' retirement systems.

2. The Public Employees' Retirement Board will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the Public Employees' Retirement Board no later than 5:00 p.m. on May 15, 2002, to advise us of the nature of the accommodation that you need. Please contact Lucie Willson, Public Employees' Retirement Board, 100 North Park Avenue, Suite 220, P.O. Box 200131, Helena MT 59620-0131; telephone 406-444-7939; TDD 406-444-1421; FAX 406-444-5428; e-mail lwillson@state.mt.us.

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

2.43.606 CONVERSION OF OPTIONAL RETIREMENT ~~UPON DEATH OR DIVORCE FROM THE CONTINGENT ANNUITANT~~ ~~(1) A PERS retiree may convert from an option 2, 3, or 4 to an option 1 retirement if the contingent annuitant has died, or the retiree is divorced from the contingent annuitant and the court did not award any portion of the optional retirement benefit to the ex-spouse (contingent annuitant) as part of the divorce settlement.~~

~~(2)~~(1) A retiree ~~desiring to convert~~ who converts to an option 1 retirement benefit ~~because the contingent annuitant died, may do so at any time following the contingent annuitant's death. The resulting~~ pursuant to 19-3-1501(5)(a)(i), 19-5-701(7)(a)(i), 19-7-1001(7)(a)(i), or 19-8-801(7)(a)(i), MCA (PERS, JRS, SRS, and GWPORS, respectively) will receive a ~~option 1~~ retirement benefit ~~will be~~ in the same dollar amount the retiree was receiving when the contingent annuitant died ~~and will be~~, effective ~~as of the date~~ the first day of the month following the contingent ~~annuitant died~~ annuitant's death.

~~(3)~~(2) A retiree ~~desiring to revert~~ who converts to an option 1 retirement benefit pursuant to 19-3-1501(5)(a)(ii), 19-5-701(7)(a)(ii), 19-7-1001(7)(a)(ii), or 19-8-801(7)(a)(ii), MCA, (PERS, JRS, SRS, and GWPORS, respectively)

after ~~divorce from~~ dissolution of marriage to the contingent annuitant, ~~must notify the division within one year following the date the divorce decree was final. The resulting~~ will receive an option 1 retirement benefit ~~will be~~ the same as the option 1 retirement benefit calculated when the member retired, plus any ~~cost-of-living~~ postretirement adjustments granted after the date of retirement. The change to option 1 will be effective on the first day of the month following the month the ~~division~~ MPERA receives the properly completed application forms.

~~(4)~~(3) A retiree who converts to an option 1 retirement as described in (1) or (2) ~~or (3) above~~ may subsequently designate a new contingent annuitant and elect an option 2, 3, or 4 retirement benefit. The new benefit amount will be calculated by applying the current actuarial reduction factors ~~in use when the member retired~~ to the option 1 benefit as described in (1) or (2) ~~or (3) above~~, but based upon the age of the new contingent annuitant and the retiree on the effective date of the conversion. The subsequent change to an option 2, 3, or 4 retirement and the amount of the retirement benefit will become effective on the earliest date the retiree could have designated the new contingent annuitant. If the new contingent annuitant is the retiree's new spouse, the effective date will be the date the retiree married the new contingent annuitant.

~~(5) All requests filed under this rule must be on current forms provided by the division for this purpose. A to elect an option 2, 3, or 4 retirement benefit and to designate a new contingent annuitant must be made on properly completed forms and must be received by the division no later than one year following the date the retiree could have designated the new contingent annuitant or the date the retiree married the new contingent annuitant.~~

AUTH: 19-2-403, ~~19-3-304~~ 19-5-701, 19-7-1001, 19-8-801, MCA

IMP: ~~19-3-1101(5),~~ 19-3-1501, MCA

REASON: This rule had previously addressed the conversion of optional retirement for retired members of the Public Employees' Retirement System. The proposed amendment to the rule is necessary to provide clarity and to conform to legislation passed in 1999 and 2001 (Ch. 217, L. 2001 and Ch. 562, L. 1999) which allowed retired members of the Judges' Retirement System, Sheriffs' Retirement System and Game Wardens' and Peace Officers' Retirement System the alternative of converting to a single life (Option 1) benefit on the death of a contingent annuitant or dissolution of marriage to a contingent annuitant. Additionally, the legislation statutorily clarified the procedure for all four systems, making some portions of the rule unnecessary.

4. Concerned persons may submit their data, views, or arguments concerning the proposed amendments in writing to

Mike O'Connor, Executive Director, Public Employees' Retirement Board, 100 North Park Avenue, Suite 220, P.O. Box 200131, Helena, Montana 59620-0131; FAX 406-444-5428; e-mail moconnor@state.mt.us no later than May 23, 2002.

5. If persons who are directly affected by the proposed amendments wish to express their data, views, and arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments they have to Lucie Willson, P.O. Box 200131, Helena MT 59620-0131; telephone 406-444-7939; FAX 406-444-5428; e-mail lwillson@state.mt.us. A written request for hearing must be received no later than May 23, 2002.

6. If the agency receives requests for a public hearing on the proposed amendments from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action; from the appropriate administrative rule review committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 4,437 persons based on 2001 payroll reports of active and retired members.

7. The Public Employees' Retirement Board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the 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 public retirement rulemaking actions. Such written request may be mailed or delivered to Lucie Willson, Public Employees' Retirement Board, 100 North Park Avenue, Suite 220, P.O. Box 200131, Helena MT 59620-0131; faxed to the office at 406-444-5428; or e-mailed to lwillson@state.mt.us, or may be made by completing a request form at any rules hearing held by the Public Employees' Retirement Board.

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

/s/ Terry Teichrow, President
Public Employees' Retirement Board

/s/ Kelly Jenkins
Kelly Jenkins, General Counsel and Rule Reviewer

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

Certified to the Secretary of State on April 15, 2001.

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

In the matter of the adoption of new rules relating to a Deferred Retirement Option Plan (DROP) for members of the Municipal Police Officers' Retirement System	))))))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION

TO: All Concerned Persons

1. On May 16, 2002, at 2 p.m., a public hearing will be held in the City-County Building, Room 326, third floor, 316 North Park Avenue, Helena, Montana, to consider the adoption of rules related to establishing a Deferred Retirement Option Plan (DROP) for members of the Municipal Police Officers' Retirement System administered by the Public Employees' Retirement Board.

2. The Public Employees' Retirement Board 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 Public Employees' Retirement Board no later than 5 p.m. on May 10, 2002, to advise us of the nature of the accommodation that you need. Please contact Lucie Willson, Public Employees' Retirement Board, 100 North Park Avenue, Suite 220, P.O. Box 200131, Helena MT 59620-0131; telephone 406-444-7939; TDD number 406-444-1421; FAX 406-444-5428; e-mail lwillson@state.mt.us.

3. The proposed new rules provide as follows:

RULE I DEFINITIONS (1) "DROP" means the deferred retirement option program.

(2) "DROP accrual" means the amount of money that has accrued to a DROP participant and includes the monthly drop accrual plus post retirement adjustments, times the applicable number of months of participation, and interest.

(3) "Monthly DROP accrual" means the amount equal to the monthly benefit that would have been payable to the participant had the participant terminated and retired.

AUTH: 19-2-403, 19-9-1203, MCA
IMP: 19-9-1205, MCA

RULE II DROP APPLICATION PROCESS (1) A member who completes at least 20 years of membership service is eligible to participate in the DROP. Members who wish to participate in the DROP must file a DROP information request with the MPERA.

(2) The information request must include the member's:

(a) full name;

(b) social security number;
(c) mailing address;
(d) date of birth; and
(e) anticipated date to start the DROP period.

(3) The MPERA will calculate estimates of monthly DROP accruals and the DROP benefit. The estimates and a DROP application will be sent to the member.

(4) A member who wishes to participate must complete the DROP application and return it to the MPERA. MPERA must receive the completed application at least two weeks before the first day of the month the member wants the DROP period to be effective; otherwise MPERA will notify the member that the DROP period will be effective the following month. If a birth certificate or other acceptable proof of age is required by the application, it must accompany the application for the application to be complete.

(5) Once the application is received by the MPERA, the election to participate in the DROP is irrevocable.

AUTH: 19-2-403, 19-9-1203, MCA
IMP: 19-9-1203, 19-9-1204, MCA

RULE III DROP PERIOD (1) The DROP period must begin on the first day of a month, must be prospective, and must end on the last day of a month. The DROP period will end as specified on the application, upon termination, or upon the participant's death, whichever occurs first.

(2) If the participant terminates or dies during the DROP period, the DROP period will end on the last day of the last full month of active service.

(3) A participant may not receive a retirement or DROP benefit distribution for the month in which they terminate or die.

AUTH: 19-2-403, 19-9-1203, MCA
IMP: 19-9-1203, 19-9-1204, 19-9-1206, MCA

RULE IV DROP PARTICIPATION LIMITS (1) A DROP participant:

(a) is not eligible for disability retirement;
(b) may not purchase service;
(c) may not receive membership or service credit; and
(d) may not receive a refund.

AUTH: 19-2-403, 19-9-1203, MCA
IMP: 19-9-1203, 19-9-1204, 19-9-1205, MCA

RULE V ESTIMATED MONTHLY DROP ACCRUAL (1) Once a participant files an application to participate in the DROP, the participant may be paid estimated monthly DROP accruals.

(2) The employer shall provide all documents MPERA needs to determine the participant's total service credit and final average compensation. Once the documents are received, the MPERA will finalize the amount of the participant's monthly

DROP accrual. Once the monthly accrual amount is finalized, the board will take appropriate action on the application at the next board meeting.

(3) MPERA will suspend estimated monthly DROP accruals after three months if the employer has not provided the above documents. Monthly DROP accruals will not resume until after the documents are received and the board approves the DROP application. The first monthly DROP accrual following board approval will include any previously suspended accruals and retroactive accruals.

AUTH: 19-2-403, 19-9-1203, MCA
IMP: 19-9-1203, 19-9-1205, MCA

RULE VI INTEREST PAID TO PARTICIPANTS (1) A participant's DROP accrual must include compounded annual interest.

(2) The interest rate will be fixed at the end of each fiscal year and will equal the total rate of return for the trust fund. Interest rates for any part of the current fiscal year will be based on the previous fiscal year's total rate of return.

(3) When the total rate of return for the trust fund is less than zero, participants will receive zero interest.

AUTH: 19-2-403, 19-9-1203, MCA
IMP: 19-9-1206, 19-9-1208, MCA

RULE VII DISTRIBUTION OF DROP BENEFIT (1) The DROP benefit will be distributed upon the participant's termination of employment. The participant may request to receive the DROP benefit in a lump sum, or in a direct rollover to another eligible plan, as allowed by the internal revenue service (IRS).

(2) To make a direct rollover of the DROP benefit, the participant must make arrangements with the other plan and provide any necessary information to the MPERA.

(3) A participant must designate a distribution method within 60 days after termination of employment; otherwise the MPERA will pay the DROP benefit to the participant in a lump sum. Any required federal or state withholding will reduce the amount of the payment.

(4) MPERA will distribute the DROP benefit as soon as administratively feasible once all appropriate documents are received.

(5) Upon a DROP participant's death, the participant's DROP benefit will be paid to the participant's survivors or, if no survivors exist, then to the participant's designated beneficiaries. The DROP benefit will be paid in a lump sum, unless the recipient is the surviving spouse, in which case the surviving spouse may choose to receive the DROP benefit in a lump sum or in direct rollover to another eligible retirement plan, as allowed by the IRS.

AUTH: 19-2-403, 19-9-1203, MCA
IMP: 19-9-1203, 19-9-1206, 19-9-1208, MCA

RULE VIII EMPLOYMENT AFTER THE DROP PERIOD (1) Monthly DROP accruals will stop at the end of the designated DROP period even if the participant continues employment.

(2) The participant's monthly service retirement benefit payments will begin the month following the month in which the participant terminates post-DROP employment.

(3) The participant's DROP benefit will be distributed pursuant to [RULE VII].

AUTH: 19-2-403, 19-9-1203, MCA
IMP: 19-9-1207, MCA

RULE IX GUARANTEED ANNUAL BENEFIT ADJUSTMENT INCREASES FOR DROP PARTICIPANTS (1) This rule applies to participants eligible for the guaranteed annual benefit adjustment (GABA) under 19-9-1009, 19-9-1010, or 19-9-1013, MCA.

(2) A participant will be eligible for subsequent GABA increases after participating in the DROP for at least 12 months. The first GABA increase will begin the following January. The GABA will be applied to the participant's monthly DROP accrual.

(3) Participants who continue employment after the DROP period will not receive GABA increases during the period of post-DROP employment.

(4) After termination of employment, GABA increases will be applied to the participant's retirement benefits, but not to the DROP benefit. The participant will receive GABA increases after receiving monthly DROP accruals or retirement benefits for a combined total of at least 12 months. The GABA increase will begin the following January.

AUTH: 19-2-403, 19-9-1203, MCA
IMP: 19-9-1205, 19-9-1207, 19-9-1208, MCA

RULE X MINIMUM BENEFIT FOR DROP PARTICPANTS (1) This rule applies to participants eligible for the minimum benefit adjustment under 19-9-1007, MCA.

(2) The monthly DROP accrual paid during the DROP period may not be less than the minimum benefit.

(3) Participants who continue employment after the DROP period may not receive minimum benefit increases during the period of post-DROP employment.

(4) The total retirement benefit paid to a participant after termination may not be less than the minimum benefit.

AUTH: 19-2-403, 19-9-1203, MCA
IMP: 19-9-1205, 19-9-1207, 19-9-1208, MCA

REASON: The proposed new rules are necessary to implement a DROP for the Municipal Police Officers Retirement System (MPORS) as provided by Chapter 514, Laws of 2001. The rules

are also necessary to ensure the DROP will be administered in compliance with the Internal Revenue Code. The procedures outlined in these rules ensure compliance with the applicable rules, regulations, and determinations of the Internal Revenue Service. These rules also provide specific information necessary for members of the MPORS for their retirement planning. Those members who plan to participate in the DROP require clarification of the process for and implementation of the DROP, as well as the future financial implications of their decision to participate in the DROP. An in-depth understanding of the program is imperative for the member to know whether it is in their best interest to make this one-time irrevocable election. The reason for each of the rules pertaining to the implementation of the DROP follows:

RULE I. Clear terminology is required to assist members of MPORS to understand the rules and other information pertaining to the DROP. The Montana Public Employee Retirement Administration (MPERA) finds it necessary to identify a distinct term to describe the amount of money paid monthly into the DROP member's individual account. Although the monthly payment is equal to the member's monthly benefit, had the member retired, it cannot be called a "monthly benefit" because the member is not retired. Furthermore, it cannot be called a "DROP benefit" because that term describes the monthly benefit paid a DROP participant once the participant actually retires (see 19-9-1202(2), MCA). The term "monthly DROP accrual" is an accurate description of the money paid monthly to a DROP participant while the participant is still working. It also clearly distinguishes that payment from the retirement benefit paid to a retired MPORS member and the retirement benefit paid to a retired DROP participant. The accumulation of those monthly payments is the "DROP accrual".

RULE II. A codification error in 19-9-1204(1) has caused confusion regarding which MPORS members are eligible to participate in the DROP. This rule is necessary to clarify that a member must have completed at least 20 years membership in the MPORS to participate in the DROP. The remainder of the rule ensures that MPORS members are aware of MPERA's process for applying to participate in the DROP. Otherwise, a MPORS member may not timely apply and may not be able to participate, or may be required to delay participation past their preferred date.

RULE III. MPERA administrative processes necessitate that DROP periods be based on calendar months. Because the DROP accrual is determined monthly, death or termination mid-month makes it impossible to calculate the DROP accrual for that month. Therefore, the month in which the termination or death occurs is not included in the DROP period. Members need to know this information to accurately complete their DROP applications, to understand when their individual DROP periods

will begin and end, and to assist with estate and post-retirement planning.

RULE IV. While not officially retired, the DROP participant is treated as retired for many purposes. MPORS members must understand all implications and limitations of participating in the DROP. Therefore, this rule lists all limitations, including those in statute. Statute specifically provides that a DROP participant is not eligible to receive membership service or service credit (19-9-1204). Similarly, the DROP participant is not eligible to purchase service because their service retirement benefit has already been calculated based on the member's service credit as of the time the member elected to go into the DROP. Finally, an MPORS member must terminate from service prior to receiving a disability benefit (19-9-902, MCA) or a refund (19-2-602, MCA). A DROP participant has not terminated from service. Therefore, a DROP participant is not eligible for a disability benefit or a refund.

RULE V. Accurate calculation of a DROP participant's monthly DROP accrual depends on the receipt of accurate information from the DROP participant's employer. Sometimes an employer is delayed in transmitting accurate data to MPERA. This delay should not unduly postpone commencement of the DROP participant's monthly DROP accrual. Therefore, MPERA will issue estimated monthly DROP accruals for a limited time. If the amount is incorrect, or the monthly DROP accrual is suspended, the missing amounts will be recouped once accurate information has been received.

RULE VI. Statute requires that a DROP participant's DROP benefit, whether paid to the DROP participant or the participant's survivor, include interest based on the MPORS' annual investment earnings from the date the member's DROP period commenced. The system's annual investment earnings are calculated based on the fiscal year. This proposed rule clarifies calculation of the interest rate for partial years. It also addresses how interest is determined when the system's earnings are negative. This information will assist the MPORS member in determining whether the DROP is in the member's best interests.

RULE VII. The DROP plan must comply with the Internal Revenue Code, as well as the applicable rules, regulations, and determinations of the Internal Revenue Service. This rule notifies DROP participants of those federal requirements and clarifies that the distributions permitted by statute must comply with the federal requirements. The rule also ensures that DROP participants know the process and timeframes they must follow when they terminate and their DROP account is distributed. Finally, this rule informs DROP participants of the alternatives available for distribution and payment of

their DROP benefit. This information is key to a successful retirement for those participants.

RULE VIII. Some DROP participants will not want to terminate service at the end of their DROP period. Statute clarifies that the DROP participant will be treated as a new member, and that the contributions to their MPORS retirement account will continue. The statute is silent regarding the effect of continued employment on the member's monthly DROP accrual. The IRS has requirements regarding treatment of the DROP accrual if the participant continues working. This rule is necessary so that DROP participants will know how their DROP accrual will be treated if they continue working after their DROP period ends, and when they will be eligible to receive their DROP accrual.

RULE IX. This rule is necessary to clarify how the guaranteed annual benefit adjustment (GABA) will be applied to a DROP participant's monthly DROP accrual, DROP benefit and service retirement benefit. Monthly DROP accruals are based on the participant's service retirement, and are subject to the GABA during the DROP period, once the 12-month eligibility period is met. DROP participants who chose to continue working after their DROP period are no longer considered retired for any purpose and are not entitled to a post-retirement adjustment until they actually terminate service and retire. Post-retirement, the 12-month eligibility period is determined based on receipt of either the monthly DROP accrual or a retirement benefit. Thus, a retired DROP participant who received a monthly DROP accrual for six months will be eligible for GABA once he has received a service retirement benefit for six months. GABA is applied only to the participant's service retirement benefit(s). The DROP benefit is not subject to any post-retirement adjustment because it is distributed either in a lump sum or as a rollover to another qualified plan.

RULE X. This rule is necessary to clarify the impact of section 19-9-1007, MCA's minimum benefit adjustment on a DROP participant. Monthly DROP accruals are based on the participant's service retirement, and are subject to the minimum benefit adjustment during the DROP period. DROP participants that choose to continue working after the DROP period are no longer considered retired for any purpose, are not receiving a benefit, and are not entitled to the minimum benefit adjustment until they actually terminate service and retire. The DROP benefit is not subject to any post-retirement adjustment because it is distributed either in a lump sum or as a rollover to another qualified plan. The DROP participant's service retirement benefit remains subject to the minimum benefit adjustment.

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

data, views or arguments may also be submitted to Mike O'Connor, Executive Director, Public Employees' Retirement Board, 100 North Park Avenue, Suite 220, P.O. Box 200131, Helena, Montana 59620-0131; FAX 406-444-5428; e-mail moconnor@state.mt.us no later than May 23, 2002.

5. Keith McCallum, Deputy Executive Director, Montana Public Employee Retirement Administration, 100 North Park Avenue, Suite 220, P.O. Box 200131, Helena, Montana, 59620-0131, has been designated to preside over and conduct the hearing.

6. The Public Employees' Retirement Board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the 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 public retirement rulemaking actions. Such written request may be mailed or delivered to Lucie Willson, Public Employees' Retirement Board, 100 North Park Avenue, Suite 220, P.O. Box 200131, Helena MT 59620-0131; faxed to the office at 406-444-5428; e-mailed to lwillson@state.mt.us, or may be made by completing a request form at any rules hearing held by the Public Employees' Retirement Board.

7. The bill sponsor notice requirements of 2-4-302, MCA apply and have been fulfilled.

/s/ Terry Teichrow, President
Public Employees' Retirement Board

/s/ Kelly Jenkins
Kelly Jenkins, General Counsel and Rule Reviewer

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

Certified to the Secretary of State on April 15, 2002.

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

In the matter of the adoption of new rules, and the amendment of ARM 2.43.404, 2.43.425, 2.43.502, 2.43.508, 2.43.509, 2.43.510, 2.43.511, 2.43.512, 2.43.513, 2.43.514, and 2.43.515 pertaining to the implementation of the Defined Contribution Retirement Plan for members of the Public Employees' Retirement System	)	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION AND AMENDMENT

TO: All Concerned Persons

1. On May 17, 2002, at 10 a.m., a public hearing will be held in the City-County Building, Room 326, third floor, 316 North Park Avenue, Helena, Montana, to consider the adoption and amendment of rules related to the implementation of the Defined Contribution Retirement Plan for members of the Public Employees' Retirement System (PERS). The PERS is administered by the Public Employees' Retirement Board.

2. The Public Employees' Retirement Board 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 Public Employees' Retirement Board no later than 5 p.m. on May 10, 2002, to advise us of the nature of the accommodation that you need. Please contact Lucie Willson, Public Employees' Retirement Board, 100 North Park Avenue, Suite 220, P.O. Box 200131, Helena MT 59620-0131; telephone 406-444-7939; TDD number 406-444-1421; FAX 406-444-5428; e-mail lwillson@state.mt.us.

3. The proposed new rules provide as follows:

RULE I ADOPTION OF DEFINED CONTRIBUTION PLAN DOCUMENT AND TRUST AGREEMENT (1) The board hereby adopts and incorporates by reference the state of Montana public employee defined contribution plan document and trust agreement (July 1, 2002 edition), that was approved by the board on April 26, 2001 and September 28, 2001, and approved by the internal revenue service on September 24, 2001.

(2) Copies of the defined contribution plan document, trust agreement and related materials may be obtained from the MPERA, 100 North Park Avenue, Suite 220, P.O. Box 200131, Helena, MT 59620-0131, phone 1-877-275-7372, e-mail mpera@state.mt.us.

AUTH: 19-3-2104, MCA
IMP: 19-3-2102, MCA

REASON: The Montana Public Employees' Retirement Board is required by law to establish a defined contribution plan within the Public Employees' Retirement System. The defined contribution plan must be established as a pension plan for the exclusive benefit of members and their beneficiaries and as a "qualified plan" pursuant to section 401(a) of the Internal Revenue Code. Compliance with the above requires the adoption of a Defined Contribution Plan Document and associated Trust Agreement, which has been approved by the Internal Revenue Service.

RULE II ADOPTION OF INVESTMENT POLICY STATEMENT AND STABLE VALUE FUND INVESTMENT GUIDELINES (1) The board hereby adopts and incorporates by reference the state of Montana 401(a) defined contribution plan investment policy statement approved by the board on February 28, 2002.

(2) The board hereby adopts and incorporates by reference the state of Montana 401(a) plan full discretion guidelines for the stable value investment option approved by the board on February 22, 2001.

(3) Copies of the investment policy statement and full discretion guidelines may be obtained from the MPERA, 100 North Park Avenue, Suite 220, P.O. Box 200131, Helena, MT 59620-0131, phone 1-877-275-7372, e-mail mpera@state.mt.us.

AUTH: 19-3-2104, MCA
IMP: 19-3-2104, 19-3-2122, MCA

REASON: The Montana Public Employees' Retirement Board, as the administrator of the Defined Contribution Retirement Plan (DCRP), is responsible for providing investment alternatives for DCRP participants. Investment policy statements and guidelines provide standards and benchmarks to be followed by the Board when choosing DCRP investment alternatives. DCRP participants must know where these investment policy statements can be found and how they may obtain copies of those statements.

RULE III DEFINED CONTRIBUTION RETIREMENT PLAN INVESTMENT OPTIONS (1) The board will choose, regularly review, and may discontinue, add, or change investment options offered to participants of the defined contribution retirement plan (DCRP). In doing so, the board will consider recommendations of the statutorily established employee investment advisory council and criteria established in the investment policy statement.

(2) A DCRP participant with assets in a discontinued investment option will be given notice and 90 days to move assets from the investment option being discontinued to an offered investment option. Assets remaining in a discontinued investment option at the end of the 90-day period will be automatically transferred to the default investment option.

(3) No notice will be provided if the board replaces or changes the stable value investment option manager. The stable value investment option assets will automatically transfer to the new manager(s).

AUTH: 19-2-403, 19-3-2104, MCA
IMP: 19-3-2104, 19-3-2122, MCA

REASON: The board must, from time to time, review the DCRP investment options and make changes as necessary. The Board is charged with providing notice to DCRP participants when investment options change. A DCRP participant's assets must be invested in the investment options the participant chooses. Therefore, MPERA must notify the participant of the need to redirect their assets, the deadline by which the assets must be moved, and what will happen to the assets if they are not moved. DCRP participants who chose to place assets in the stable value fund have no control over where those assets are invested, other than the stable value fund. Therefore, there is no need to provide notice if and when a stable value fund manager changes.

RULE IV DEFINED CONTRIBUTION RETIREMENT PLAN DEFAULT INVESTMENT FUND (1) The board will identify a default investment fund.

(2) The following assets will be deposited in the default investment fund:

(a) assets initially transferred from the PERS defined benefit retirement plan (DBRP) pursuant to [RULE XV] on behalf of defined contribution retirement plan (DCRP) participants;

(b) assets transferred from a discontinued investment option pursuant to [RULE III(2)]; and

(c) assets received without the DCRP participant having selected investment options.

(3) These assets will remain in the default investment fund until the DCRP participant files valid investment directions and redirects assets from the default investment fund to the selected investment option(s).

AUTH: 19-2-403, 19-3-2104, MCA
IMP: 19-3-2114, 19-3-2115, 19-3-2117, 19-3-2122, MCA

REASON: Statute requires that MPERA establish a default investment fund. If a DCRP participant fails to indicate the investment option(s) where the participant's assets should be invested, MPERA must deposit the participant's assets in the default fund. DCRP participants must be informed of the various different times when their assets may be subject to being directed to the default investment fund. This rule accomplishes that goal.

RULE V ESTABLISHMENT OF LONG-TERM DISABILITY TRUST FUND

(1) The board shall establish a long-term disability trust fund to be used exclusively for the payment of disability benefits to participants of the defined contribution retirement plan (DCRP).

(2) The long-term disability trust fund must be separate and distinct from the defined benefit plan trust fund and the DCRP.

(3) The long-term disability trust fund must be funded by the statutorily determined percentage of the employers' contributions made for employees who are active DCRP participants.

(4) Funds in the long-term disability trust fund will be invested pursuant to Article VIII, section 13, of the Montana Constitution and Title 17, chapter 6, part 2, MCA. No funds will be invested in equities.

AUTH: 19-3-2104, 19-3-2141, MCA
IMP: 19-3-2117, 19-3-2141, MCA

REASON: Statute provides only that the board shall establish a long-term disability plan trust fund for the payment of disability benefits to disabled DCRP participants. Federal law requires that the fund be used exclusively for the purpose for which it is established, and further requires that the disability trust fund be kept separate and distinct from any retirement fund. Because the DCRP's long-term disability trust fund is not a retirement fund, Montana law provides that the funds assets cannot be invested in equities. PERS members must be aware of the significant distinctions between the DBRP disability benefit and the DCRP disability benefit in order to make an informed election between the two plans.

RULE VI ELECTION PERIOD (1) Active PERS members generally have 12 calendar months to complete the retirement plan choice election form provided by the board and file the election form with the MPERA.

(2) Specific categories of PERS members and their election periods are:

(a) A PERS member who is active both on and before July 1, 2002 must file an election by June 30, 2003.

(b) Any PERS member, including seasonal, temporary or part-time employees, who is active both on and before July 1, 2002 and subsequently becomes inactive any time before June 30, 2003, must file an election by June 30, 2003. Members will not have a new election period by virtue of returning to active employment at a later date.

(c) A PERS member newly hired or rehired on or after July 1, 2002 must file an election within 12 calendar months from the initial date of hire or rehire as reported by the reporting agency.

(d) Any PERS member newly hired or rehired on or after July 1, 2002, including seasonal, temporary or part-time employees, who subsequently becomes inactive must file an election within 12 calendar months from the initial date of hire or rehire. Members will not have a new election period by virtue of returning to active employment at a later date.

(e) Any PERS member whose membership has not been properly reported to the MPERA will have 12 calendar months from the date the member is properly reported to file an election. An election to transfer to the PERS defined contribution retirement plan or the Montana university system optional retirement

program will be effective upon confirmation by the MPERA pursuant to [RULE VIII] and will not be retroactive.

(f) Employees of any municipal corporation, county or public agency in the state which becomes a contracting employer with the PERS as provided under 19-3-201, MCA will have 12 calendar months from the date the new contracting employer's resolution is signed and approved by the board to file an election.

AUTH: 19-2-403, 19-3-2104, MCA
IMP: 19-3-2104, 19-3-2111, MCA

REASON: Section 19-3-2104, MCA establishes the 12-month windows during which an active PERS member and an inactive PERS member who returns to active service may elect to participate in either the DCRP or the DBRP. However, many PERS employees will leave employment prior to the end of their 12-month period. There is also the possibility that a PERS member may not be identified as a PERS member until after their 12-month choice window closes. This rule is needed to inform those employees of the time in which they must make their election. Section 19-3-2104, MCA also does not address employees of employers that will decide sometime in the future to become contracting members of the PERS. This rule is needed to ensure that employees of contracting employers are also provided a 12-month window in which to make their election.

RULE VII RETIREMENT PLAN CHOICE ELECTION FORM (1) The board shall provide PERS members a retirement plan choice election form which will require the following information:

(a) full name (first, last, middle initial);
(b) social security number;
(c) date of birth;
(d) complete address;
(e) employing agency or agencies;
(f) the member's signature indicating the elected retirement plan or program; and
(g) the date the member signed the election form.

(2) The PERS member shall complete and file the election form directly with the MPERA within the timeframes defined in [RULE VI]. Election forms given to employers or any other party are not considered to be filed with the MPERA.

(3) The PERS member's election is irrevocable once the election form is filed with the MPERA.

(4) The effective date of the election will be the date the member's election is confirmed by the MPERA pursuant to [RULE VIII].

AUTH: 19-2-403, 19-3-2104, MCA
IMP: 19-3-2111, MCA

REASON: Section 19-3-2111, MCA, requires the Board to develop a written election form for PERS members to use when making their

retirement plan election. Unless PERS members are required to file the written election form with the MPERA, there is a high likelihood many election forms will be lost, perhaps by the employer, and never reach the MPERA. Many appeals could arise. Filing directly with MPERA will significantly reduce the possibility of an election form being lost. Filing should be the responsibility of the employee, not the employer. Finally, participants need to realize that although their election is irrevocable, it does not become effective until MPERA verifies the member is eligible to participate in the retirement plan the member elects.

RULE VIII ELECTION ELIGIBILITY AND CONFIRMATION (1) Upon receipt of a retirement plan choice election form, the MPERA will verify that the member is eligible to make the election.

(2) The member is eligible to make an election if all the following conditions are met:

(a) The member was an active PERS member on or after July 1, 2002;

(b) The member made the election within the timeframes defined in [RULE VI];

(c) The member does not have an incomplete PERS defined benefit retirement plan (DBRP) service purchase contract; and

(d) The member is not subject to a DBRP family law order.

(3) The MPERA will confirm the PERS member's eligibility and election within five working days of receipt of the election form.

(4) The effective date of the election will be the date it is confirmed by the MPERA.

AUTH: 19-2-403, 19-3-2104, MCA
IMP: 19-3-2104, 19-3-2111, 19-3-2112, 19-3-2115, MCA

REASON: This rule notifies PERS members of eligibility requirements for participation in the DCRP. PERS members also need to be aware that an election to join the DCRP or the Montana university system's optional retirement plan is not automatically effective upon the filing of the election form.

RULE IX PURCHASE OF SERVICE NOT PERMITTED BY PARTICIPANT IN DEFINED CONTRIBUTION RETIREMENT PLAN (1) A member of the PERS with an existing service purchase contract entered into pursuant to any MPERA statute or rule who wishes to elect the defined contribution retirement plan (DCRP) or the Montana university system's optional retirement plan (ORP) must terminate or complete the service purchase contract before the election will be confirmed by MPERA.

(2) If a member of the PERS with an existing service purchase contract files an election form electing either the DCRP or the ORP, MPERA will send written notice to the member that the election cannot be confirmed until the service purchase contract is either terminated or completed.

(3) The notice will give the member 30 days to provide MPERA with written notification of the member's intentions.

(4) The member must choose one of the following options:

(a) pay to MPERA in a lump sum the entire amount remaining due under the service purchase contract and have the entire amount of service purchased under the contract transferred to the DCRP; or

(b) pay nothing more to MPERA and have the prorated amount of service purchased under the contract transferred to the DCRP; or

(c) change the member's election to the DBRP.

(5) If a member chooses the option in (4)(a), the member may, pursuant to [MAR Notice No. 2-2-315, RULE I], complete the service purchase contract with a direct trustee-to-trustee transfer of funds from the member's 26 U.S.C. 403(b) or 26 U.S.C. 457 governmental plan.

(6) If a member chooses the option in (4)(a), but then fails to complete the service purchase contract by the end of the member's 12-month election window, MPERA will unilaterally implement (4)(b).

(7) If a member with an existing service purchase contract fails to provide MPERA with written notice of the member's intentions within 30 days, MPERA will unilaterally implement (4)(b). MPERA will take this action at the close of the 30-day timeframe.

(8) A member with an existing service purchase contract who elects the DCRP or the ORP in the last month of the member's 12-month election window may pay to MPERA in a lump sum the entire amount remaining due under the service purchase contract and have the entire amount of service purchased under the contract transferred to the DCRP. The payment must accompany the election form.

(a) If the member does not pay the entire amount due at the time the member files the election form, MPERA will unilaterally implement (4)(b).

(b) The member will not be given time to pay off the existing service purchase contract after the close of the member's 12-month election window.

(9) A PERS member with an existing service purchase contract entered into pursuant to any MPERA statute or rule who does not elect the DCRP or the ORP may not terminate the service purchase contract pursuant to this rule.

AUTH: 19-3-2104, MCA
IMP: 19-3-2115, MCA

REASON: Since a PERS member with an existing service purchase contract cannot elect the DCRP or the ORP, it is essential PERS members fully understand their options for completing or terminating the service purchase contract. The member's decision whether to terminate or complete the existing service purchase contract will affect the amount of contributions transferred to the DCRP or the ORP on the member's behalf. Therefore, MPERA must be made aware of the member's decision as soon as possible. Many members will wait to make their election until the end of their 12-month election window. Subsection (8) informs those

members that their service purchase contract options will be limited. Unless the PERS member terminates membership in the DBRP, the member's existing service purchase contract cannot be completed or terminated in a manner other than that set forth in the service purchase contract.

RULE X FAMILY LAW ORDERS, EXECUTIONS AND INCOME-WITHHOLDING ORDERS AND ELECTIONS (1) A member of the PERS who is subject to a family law order pursuant to 19-2-907, MCA, and wishes to elect the defined contribution retirement plan (DCRP) or the Montana university system's optional retirement program (ORP), must have the family law order amended to comply with the DCRP or ORP and approved by the board no later than the end of the member's 12-month election window.

(2) A member of the PERS who is subject to an execution or income-withholding order pursuant to 19-2-909, MCA, and wishes to elect the DCRP or the ORP, must have the execution or income-withholding order amended to comply with the DCRP or the ORP no later than the end of the member's 12-month election window.

(3) If the order discussed in (1) or (2) is not properly amended and approved by the close of the member's 12-month election window, MPERA will not confirm the member's election. The member will remain a participant of the defined benefit retirement plan.

AUTH: 19-2-403, 19-3-2104, MCA
IMP: 19-2-907, 19-2-909, 19-3-2111, MCA

REASON: Section 19-3-2111(6), MCA, provides that a PERS member's family law order (FLO), execution, or income-withholding order must be amended prior to the member electing the DCRP. The same limitation must also apply to members electing the ORP. Additionally, the Board must approve any amendments to FLOs. Finally, members need to know the time frame for making the amendments and what happens if the time frame is not met. Otherwise a member subject to a FLO, execution, or income-withholding order may inadvertently waive their opportunity to elect the DCRP or the ORP.

RULE XI ELECTION FOR EMPLOYEES IN OPTIONAL PERS MEMBERSHIP POSITIONS (1) An employee eligible for optional membership under 19-3-412, MCA, who chooses to be a member of the PERS on or after July 1, 2002, will initially be a participant of the PERS defined benefit retirement plan (DBRP). The DBRP participant will have one year from the date he or she elects to be a member of the PERS to file a retirement plan choice election form with the MPERA pursuant to [RULE VI].

(2) An employee who declines optional membership under 19-3-412, MCA, is not a member of the PERS and has no retirement plan choice.

AUTH: 19-2-403, 19-3-2104, MCA
IMP: 19-3-2104, 19-3-2111, MCA

REASON: Employees eligible for optional membership under 19-3-412, MCA, are not active PERS members until they elect to become a PERS member. The 12-month window for the retirement election plan choice must commence when, but cannot commence until, the employee becomes a member of the PERS. This rule is needed so that optional members will know exactly when their 12-month election window starts and ends.

RULE XII MEMBERSHIP IN OTHER TITLE 19 RETIREMENT PLANS

(1) A PERS member who is also a member of another Title 19 retirement system shall make a retirement plan election pursuant to [RULE VI and VII].

(2) PERS members employed full- or part-time by both a PERS-covered employer and another Title 19 retirement system employer will be bound by the statutory membership requirements of the PERS defined benefit retirement plan or defined contribution retirement plan, whichever they elect.

AUTH: 19-2-403, 19-3-2104, MCA
IMP: 19-3-2111, MCA

REASON: Section 19-3-2111, MCA as written pertains only to the traditional employee who has one job, and remains employed by that employer. PERS members may now, or in the future, be employed full or part-time by both a PERS-covered employer and another Title 19 retirement system employer. (e.g. A person may be employed in two positions full- or part-time. One position may be covered by the PERS and the other by the Game Wardens' and Police Officers' Retirement System.) This rule clarifies that those employees, if otherwise-entitled, may simultaneously be a member in either the PERS defined benefit retirement plan or the defined contribution retirement plan and the other Title 19 defined benefit retirement system.

RULE XIII RETIREES NOT ENTITLED TO ELECTION (1) Retired members of the PERS may not elect the PERS defined contribution retirement plan or the Montana university system optional retirement program, but must remain members of the PERS defined benefit retirement plan regardless of reemployment in a PERS-covered position.

(2) Subsection (1) also applies to retired members who later return to active PERS membership.

AUTH: 19-2-403, 19-3-2104, MCA
IMP: 19-3-1106, 19-3-2104, 19-3-2111, MCA

REASON: PERS members who elect the DCRP or the ORP have a certain percentage of their DBRP contributions transferred from the DBRP to their new retirement plan or program. A retired PERS member has begun accepting retirement benefits. Therefore, it would be impossible to equitably determine the amount of contributions to be transferred on behalf of a retired member who elects the DCRP or ORP. Section 19-3-1106, MCA's dollar-for-dollar reduction further complicates the situation. PERS

members who have accepted a DBRP retirement benefit, then returned to active membership, should remain in the DBRP.

RULE XIV MONTANA UNIVERSITY SYSTEM EMPLOYEE ELECTIONS

(1) A Montana university system (MUS) employee who is a PERS member is required to make a retirement plan election pursuant to [RULE VI and VII].

(2) A MUS employee who is a PERS member may be a participant of the MUS optional retirement program (ORP) and either the PERS defined benefit retirement plan (DBRP) or the PERS defined contribution retirement plan (DCRP) only under one of the following conditions:

(a) The PERS member is employed part- or full-time by both the MUS and another PERS covered employer and does not have previous retirement plan election(s) on file with the MPERA. The member may elect the ORP for his or her MUS employment and the DBRP or DCRP for his or her other PERS-covered employment.

(b) The PERS member is employed by the MUS, elected the MUS ORP, and accepted employment with another PERS-covered employer, other than MUS. The member may have terminated employment with the MUS or may have taken a separate (second) job with the other PERS-covered employer. In either case, the member must elect either the DBRP or DCRP as the member's retirement plan for the member's employment with the other PERS-covered employer.

AUTH: 19-2-403, 19-3-2104, MCA
IMP: 19-3-2104, 19-3-2112, MCA

REASON: Section 19-3-2112, MCA as written pertains only to the traditional employee who has one job, and remains employed by that employer. Many MUS members who are members of PERS may, in the future, terminate their MUS employment and become employed by another PERS employer; or even remain in their MUS employment and simultaneously accept a second job with another PERS employer. This rule clarifies that those employees, if otherwise-entitled, may simultaneously be a member in both the MUS ORP and a PERS plan.

RULE XV TRANSFER OF DEFINED BENEFIT RETIREMENT PLAN FUNDS TO THE DEFINED CONTRIBUTION RETIREMENT PLAN (1) A PERS member who is active both on and before July 1, 2002 and elects the PERS defined contribution retirement plan (DCRP) will have the following amounts transferred from the PERS defined benefit retirement plan (DBRP) to the member's individual account in the DCRP:

(a) Pre-July 1, 2002 contribution transfer amounts, which are:

(i) 100% of the employee's contributions to the DBRP, plus 8% compounded annual interest; and

(ii) the statutorily required percentage of the employer's contributions to the DBRP, plus 8% compounded annual interest; and

(b) July 1 and post-July 1, 2002 ongoing contribution amounts, which are:

(i) 100% of the employee's statutorily required contributions, plus 8% compounded annual interest; and

(ii) the employer's statutorily required contributions less the statutorily required plan choice rate, the statutorily required education fund rate and the statutorily required defined contribution retirement plan disability rate, plus 8% compounded annual interest.

(2) A PERS member who is active both on and before July 1, 2002, and elects the Montana university system optional retirement program (MUS ORP) will have the following amounts transferred from the DBRP to the member's individual account in the MUS ORP:

(a) Pre-July 1, 2002 contribution transfer amounts, which are:

(i) 100% of the employee's contributions to the DBRP, plus 8% compounded annual interest; and

(ii) the statutorily defined percentage of the employer's contributions to the DBRP, plus 8% compounded annual interest; and

(b) July 1 and post-July 1, 2002 contribution amounts for employees electing the MUS ORP, which are:

(i) 100% of the employee's statutorily required contributions, plus 8% compounded annual interest; and

(ii) the employer's statutorily required contributions less the statutorily required plan choice rate and the statutorily required education fund rate.

(3) The pre-July 1, 2002 contribution transfer amounts are calculated using the reporting agencies' contribution reports submitted to the MPERA for payrolls through June 2002 only.

(4) The July 1 and post-July 1, 2002 on-going contribution amounts for employees electing the DCRP are calculated beginning with the reporting agencies' July 2002 contribution reports and continue through all subsequent contribution reports until the member's election is filed with and confirmed by the MPERA.

(5) The July 1 and post-July 1, 2002 on-going contribution amounts for employees electing the MUS ORP are calculated beginning with the reporting agencies' July 2002 payroll reports and continue through all subsequent payroll reports until the member's election is filed with and confirmed by the MPERA.

(6) A PERS member newly hired on or after July 1, 2002 who elects the DCRP or the MUS ORP will only have ongoing contribution amounts transferred.

AUTH: 19-2-403, 19-3-2104, 19-3-2112, MCA
IMP: 19-3-2112, 19-3-2114, 19-3-2117, MCA

REASON: An election to transfer to the DCRP or the MUS ORP results in the transfer of a portion of the DBRP account to the member's DCRP or MUS ORP account. Since members have a 12-month election period, there is a need for consistency in determining the amount of DBRP money that should be transferred for each DCRP participant, regardless when the election is made. This

rule clarifies that each transferring member's pre-July 1, contributions transfer amount and each transferring member's July 1 and post-July 1, 2002 contributions amount is determined based on analogous time frames, regardless when the election is made.

The Montana University System reports payroll to the MPERA in a different manner than that used by other employers. Therefore, this rule must also clarify how July 1 and post-July 1, 2002 contribution amounts are to be determined for members who elect the MUS ORP.

RULE XVI TIMING OF TRANSFERS TO THE DEFINED CONTRIBUTION RETIREMENT PLAN (1) Once a member's election to join either the PERS defined contribution retirement plan (DCRP) or the Montana university system optional retirement program (MUS ORP) has been confirmed, the MPERA will transfer pre-July 1, 2002 contribution transfer amounts and July 1 and post-July 1 contribution amounts within the following timeframes:

(a) For elections received and confirmed prior to August 1, 2002:

(i) the pre-July 1, 2002 contribution transfer amount will be transferred to the participant's individual account in the DCRP or the MUS ORP no later than 30 working days after July 1, 2002 (August 13, 2002); and

(ii) the July contribution amount will be transferred to the individual account in the DCRP or the MUS ORP no later than 10 working days after the date the July payroll is due.

(b) For elections received and confirmed after August 1, 2002, the pre-July 1, 2002 contribution transfer amount and the July 1 and post-July 1, 2002 ongoing contribution amount will be transferred to the participant's individual account in the DCRP or the MUS OPR no later than 15 working days after the MPERA confirms the election.

AUTH: 19-2-403, 19-3-2104, MCA
IMP: 19-3-2114, 19-3-2117, MCA

REASON: A PERS member's pre-July 1, 2002 contribution transfer amount is determined based on contribution and payroll reports submitted for pay periods through June 2002. All contribution and payroll reports must be received from employers, and put into MPERA's system, and the entire defined benefit retirement plan system must be balanced and closed before the prior contribution transfer amount can be accurately determined. Reporting agencies submit their payroll and contribution reports at various times, and many are not submitted electronically. The entire process will take approximately one month after fiscal year end, or until approximately August 1, 2002. Approximately 10 additional working days will be required to finalize the transfer of funds. Once fiscal year end responsibilities have been completed, and transfer balances determined, the process time will be reduced significantly. This rule notifies the members of this situation.

RULE XVII CREDITING OF INDIVIDUAL ACCOUNTS (1) MPERA will transfer a defined contribution retirement plan (DCRP) participant's statutorily required employee and employer contributions to the DCRP recordkeeper within two working days after receipt in good order of each reporting agency's contribution report and contributions.

(2) The DCRP recordkeeper will credit individual accounts and transfer contributions to a DCRP participant's selected investment option(s) within two working days after receipt of contributions from the MPERA.

AUTH: 19-2-403, 19-3-2104, MCA
IMP: 19-3-2117, MCA

REASON: Adoption of this rule guarantees a DCRP participant's contributions are transferred to the participant's investment options as quickly as possible. The DCRP Plan Document mandates the two working day timeframe.

RULE XVIII DISABILITY BENEFITS FOR MEMBERS OF THE DEFINED CONTRIBUTION RETIREMENT PLAN (1) Members of the defined contribution retirement plan (DCRP) who are found by the board to be disabled are entitled to a disability benefit pursuant to 19-3-2141, MCA.

(2) The disability benefit awarded a member of the DCRP is calculated based on the member's years of service credit, not years of membership service. The applied factor, either 1/56 or 1/50, is based on membership service.

(3) The disability benefit awarded a member of the DCRP is not a retirement benefit, but a benefit paid from the long-term disability trust fund established pursuant to 19-3-2141, MCA.

(4) The disability benefit awarded a member of the DCRP is not subject to option 2, option 3 or option 4 contained in 19-3-1501, MCA.

(5) A member of the DCRP who is receiving a disability benefit may not, prior to age 60, terminate the member's disability benefit in order to access the member's DCRP individual account.

(6) The disability benefit paid to a member of the DCRP is not subject to distribution pursuant to a family law order or a qualified domestic relations order.

(7) Disability benefits paid from the long-term disability trust fund will be tax-reported to the receiving participant and the IRS on the appropriate IRS form.

AUTH: 19-3-2104, 19-3-2141, MCA
IMP: 19-3-2141, MCA

REASON: Section 19-3-2141 provides that a DCRP participant's disability benefit is based on the participant's years of service. "Years of service" is an ambiguous term. The disability benefit paid to a DCRP participant was intended to be the same as the disability benefit that would have been paid to

the same individual under the DBRP plan. Therefore, the benefit is based on the participant's years of service credit.

PERS members must be made aware of the significant distinctions between the DBRP disability benefit and the DCRP disability benefit in order to make an informed election between the two plans. Specifically, the fact that the disability benefit is not a retirement benefit could affect the treatment of the benefit for tax purposes. It also limits the methods by which the benefit can be paid to the participant or distributed pursuant to a family law order, and the recipient's ability to convert the benefit to a retirement benefit prior to age 60.

RULE XIX DISTRIBUTION TO PARTICIPANT (1) A defined contribution retirement plan (DCRP) participant is entitled to receive the participant's vested accounts upon termination of service in a PERS-covered position, whether for retirement or for other purposes.

(2) The participant shall, within 120 days after the participant terminates service in a PERS-covered position, notify the MPERA of the date upon which the participant wants distribution of the accounts to start.

(a) Distribution must start no later than April 1 of the calendar year following the later of:

(i) the calendar year in which the participant reaches age 70 1/2; or

(ii) the calendar year in which the participant retires from service in a PERS-covered position.

(b) If the participant does not select the date upon which distributions are to start, distributions will start 120 days after termination of service from a PERS-covered position.

(c) Once selected, the participant may change the distribution date provided the date continues to meet the requirements of (2)(a).

(3) The participant shall also, no later than 30 days before the start of the distribution of the accounts, select a payment option.

(a) Payment options include:

(i) a lump sum distribution of the participant's vested accounts, less applicable taxes;

(ii) a direct trustee-to-trustee rollover of the participant's vested accounts to an eligible retirement plan, an individual retirement account, or an annuity;

(iii) a regular rollover of the participant's vested accounts to an eligible retirement plan;

(iv) periodic payments of a fixed amount;

(v) periodic payments based on the participant's life expectancy, determined annually; or

(vi) a life contingent annuity.

(b) No payment option may be selected unless the amounts payable to the participant are expected to be at least equal to the minimum distribution required under section 401(a)(9) of the Internal Revenue Code and satisfy the minimum distribution

incidental benefit requirements of section 401(a)(9)(G) of the Internal Revenue Code.

(c) If the participant does not select a payment option, the vested accounts will be paid in a lump sum, less applicable taxes.

AUTH: 19-2-403, 19-3-2104, MCA
IMP: 19-2-1007, 19-3-2123, 19-3-2124, MCA

REASON: Section 19-3-2124, MCA requires the board to adopt rules providing that the distribution options available to DCRP participants comply with the Internal Revenue Code and section 19-2-1007, MCA. The proposed rule meets these requirements, and is consistent with the DCRP Plan Document. The proposed rule also notifies DCRP participants of the time frames for making distribution decisions, and identifies the default distribution in the event a timely decision is not made.

RULE XX DISTRIBUTION UPON DEATH OF PARTICIPANT (1) If a defined contribution retirement plan participant dies prior to the start of the distribution of the participant's benefits, the participant's beneficiary has the same payment options as the participant would have had.

(a) Those payment options include:

(i) a lump sum distribution of the participant's vested accounts, less applicable taxes;

(ii) a direct trustee-to-trustee rollover of the participant's vested accounts to an eligible retirement plan, an individual retirement account, or an annuity;

(iii) a regular rollover of the participant's vested accounts to an eligible retirement plan;

(iv) periodic payments of a fixed amount;

(v) periodic payments based on the beneficiary's life expectancy, determined annually; or

(vi) a life contingent annuity.

(b) No payment option may be selected unless the amounts payable to the beneficiary are expected to be at least equal to the minimum distribution required under section 401(a)(9) of the Internal Revenue Code and satisfy the minimum distribution incidental benefit requirements of section 401(a)(9)(G) of the Internal Revenue Code.

(c) The beneficiary must select the payment option prior to 60 days after the receipt by the board of the satisfactory proof of the participant's death.

(d) If the beneficiary does not select a payment option, the vested accounts will be paid in a lump sum, less applicable taxes.

(2) Unless the participant's beneficiary is the participant's spouse, the payment of benefits must start within 60 days after receipt by the board of satisfactory proof of the participant's death.

(3) If the beneficiary is the participant's spouse, the spouse may, within 60 days of the participant's death, elect to

defer distribution until a date no later than the date the participant would have attained age 70 1/2.

AUTH: 19-2-403, 19-3-2104, MCA
IMP: 19-2-1007, 19-3-2124, 19-3-2125, MCA

<u>REASON:</u> Section 19-3-2124, MCA requires the board to adopt rules providing that the distribution options available to the beneficiaries of DCRP participants comply with the Internal Revenue Code and section 19-2-1007, MCA. The proposed rule meets these requirements, and is consistent with the DCRP Plan Document. The proposed rule also notifies beneficiaries of DCRP participants of the time frames for making distribution decisions, and identifies the time in which distributions must commence.

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

<u>2.43.404 REQUIRED EMPLOYER REPORTS</u> (1) All reporting ~~officials~~ <u>agencies</u> ~~must~~ <u>shall</u> submit ~~monthly~~ contribution reports <u>no later than five working days after the last regularly occurring payday of each month. Each report must be</u> accompanied by statutorily required employer and employee contributions to the retirement system<u>. Beginning July 1, 2003, reporting agencies shall use the MPERA's online web-based reporting system and shall remit payment via automated clearing house (ACH). If the reporting agency does not have access to the internet, the contribution report may be either hard-copy or electronic, but must be in the format provided by the MPERA, and must be accompanied by the payment</u> ~~by the 15th of the month following the month reported~~.

<u>(2)</u> The ~~monthly~~ report must be in alphabetical order by last name and include for each employee:

<u>(a)</u> social security number~~,~~<u>;</u>

<u>(b)</u> last and first name~~,~~<u>;</u>

<u>(c)</u> salary~~,~~<u>;</u>

<u>(d)</u> regular contributions~~,~~<u>;</u>

<u>(e)</u> additional contributions if any~~,~~<u>;</u> ~~and~~

<u>(f)</u> the actual hours for which the employee received compensation~~,~~<u>; and</u>

<u>(g) each employee who terminated</u> during the month being reported. ~~Agencies may use the form provided by the retirement division or report printed by the employer together with compatible magnetic media.~~

<u>(3) Reporting agencies of the Montana university system (MUS) shall report all employees in PERS covered positions, including those who elect the MUS optional retirement program (ORP). The report must include all information and contributions required in (1) and (2). At the same time, reporting agencies of the MUS shall transmit amounts equal to the statutorily required plan choice rate and the education fund rate for all employees in PERS covered positions who elect the MUS ORP.</u>

~~(2)~~(4) All PERS and sheriffs' retirement system reporting officials must report, on a monthly basis, all retired PERS and sheriffs' retirement system members employed with their agency. This report must include the retiree's social security number, last and first name, salary and hours worked.

~~(3)~~(5) Reporting errors may be corrected on subsequent monthly reports via a letter of explanation that must include all salary and service documentation for the reported error and the affected time period. The MPERA will notify the reporting agency of the necessary action, including contributions and interest due. Corrections reducing an employee's contributions cannot be accepted if the employee has received a refund.

(6) Reporting errors affecting PERS members who elect the PERS defined contribution retirement plan (DCRP) will be corrected as follows:

(a) Corrections increasing a contribution will be credited to the participant's individual account within the timeframe established in [RULE XVI] and will not be retroactive.

(b) Corrections decreasing a contribution will decrease the participant's individual account. The DCRP recordkeeper will recover the incorrect contribution from the participant's individual account and submit a refund to the MPERA. The MPERA will submit the refund to the reporting agency. It is the reporting agency's responsibility to correct payroll records and submit the refund to the DCRP participant.

(c) Neither the board, the MPERA nor the PERS DCRP recordkeeper assume responsibility for investment losses incurred as a result of incorrect reporting by a reporting agency.

AUTH: ~~19-3-304, 19-5-201, 19-6-201, 19-7-201, 19-8-201, 19-9-201, 19-13-202,~~ 19-2-403, 19-3-2104, MCA

IMP: ~~19-3-307,~~ 19-2-506, 19-3-315, 19-3-1106, ~~19-5-201, 19-6-201, 19-7-201, 19-8-201, 19-9-202, 19-13-203,~~ 19-3-2104, 19-7-1101, MCA

REASON: Timely and accurate reporting by employers is essential to the integrity of the retirement systems. MPERA is developing web-based reporting to assist employers in reporting contributions. Web-based procedures need to be clearly outlined so members know what will happen in the event of an error and employers know what is expected of them. The DCRP and the MUS ORP require that employer contributions be distributed to several funds, rather than the entire amount going to one account. Timely and accurate transfer of those contributions will insure that the education fund and the long-term disability trust fund are funded properly, the correct plan choice rate is distributed to the DBRP, and contributions are credited to DCRP participants' investment options as quickly as administratively possible.

2.43.425 INCOMPLETE PAYMENTS (1) The board will refund the additional contributions and interest to a non-vested member who terminates employment before completing a service purchase.

The member will not receive any additional service credit.

(2) If a member dies or retires with a disability before completing a service purchase, the member, or anyone acting on the member's behalf, may complete those payments. The payments must be completed before the board will pay any benefits. The board will prorate the member's service based on payments already made, if no further payments will be made.

(3) A PERS member must either complete or terminate the member's purchase of service pursuant to [RULE IX] before MPERA will confirm the member's election to the defined contribution retirement plan or the Montana university system's optional retirement program.

AUTH: 19-2-403, ~~19-3-304, 19-5-201, 19-6-201, 19-7-201, 19-8-201, 19-9-201, 19-13-202,~~ 19-3-2104, MCA
IMP: 19-2-602, 19-2-704, Title 19, Ch. 3, part 5, 19-3-2115, 19-5-409, Title 19, Ch. 6, part ~~3~~8, Ch. 7, part ~~3~~8, Ch. 8, part 9, Ch. 9, part 4, Ch. 13, part 4, MCA

REASON: A PERS member with an existing service purchase contract cannot elect the DCRP or the ORP. It is essential PERS members know of this limitation and fully understand their options for completing or terminating the service purchase contract.

2.43.502 APPLICATION PROCESS FOR DISABILITY ~~RETIREMENT~~ BENEFITS (1)~~(a)~~ Except as submitted by board members or ~~division~~ the MPERA staff acting in those capacities, a request for the determination of disability benefit rights must be initiated in writing, utilizing appropriate forms, and must be accompanied by all relevant information available to the requesting party. ~~The board or division may require the requesting party provide specific information prior to board determination.~~

(a) The requesting party may provide additional information for consideration until 10 days (20 days for medical information which must be reviewed by a medical doctor) prior to the next scheduled board meeting, or, if different, the board meeting at which the request will be considered.

(b) The board or MPERA may require the requesting party to provide specific information prior to board determination.

~~(b)~~(2) All forms necessary to apply for disability ~~retirement~~ benefits may be obtained from the ~~retirement division and a~~ MPERA.

(3) All forms must be completed and submitted to the MPERA before the board will act on the application for disability benefits. A completed application must include the following forms:

~~(i)~~(a) application for disability retirement~~,~~;

~~(ii)~~(b) job duty questionnaire for disability retirement~~,~~;

~~(iii)~~(c) attending physician's statement~~,~~; and

~~(iv)~~(d) authorization to release information.

~~All forms must be completed and submitted to the division before the board will act on the application for disability retirement.~~

~~(c)~~(4) The employer of the disability benefit applicant ~~for disability retirement~~ must define the essential elements of the member's position and show reasonable accommodation was attempted for the member's disabling condition(s) in compliance with the Americans with Disabilities Act (ADA), statutes and ~~regulations~~ rules.

~~(d)~~(5) "Total inability" for purposes of determining disability means the member is unable to perform the essential elements of the member's job duties even with reasonable accommodation required by the ADA.

~~(e)~~(6) The factors the board will consider in determining total inability and the permanence of a disability will include, but are not limited to~~,~~:

(a) availability and use of sick leave~~,~~;

(b) vocational rehabilitation~~, and~~;

(c) medical treatment; and

(d) whether employment has been terminated.

AUTH: 19-2-403, ~~19-3-304, 19-5-201, 19-6-201, 19-7-201, 19-8-201, 19-9-201, and 19-13-202~~ 19-3-2104, 19-3-2141, MCA

IMP: 19-2-406, 19-3-1002, ~~19-3-1003,~~ 19-3-1005, ~~19-3-1006,~~ 19-5-601, 19-6-601, 19-7-601, 19-8-701, ~~19-9-901,~~ 19-9-902, ~~19-13-801, and~~ 19-13-802, 19-3-2141, MCA

REASON: The "division" no longer exists. The Public Employees' Retirement Board is now administratively attached to the Department of Administration. The Board's employees, who used to be referred to as the Public Employees' Retirement Division, are now the Montana Public Employee Retirement Administration.

The process for applying for disability benefits now applies to participants in the DCRP. The disability benefit to which disabled participants of the DCRP are entitled is not a retirement benefit, but a long-term disability benefit. The term "disability benefit" covers the disability award paid to participants in the DCRP as well as participants in the DBRP.

The remaining proposed amendments merely restructure the rule for clarity purposes.

2.43.508 PERIODIC MEDICAL REVIEW OF DISABILITY ~~RETIREES~~ BENEFIT RECIPIENTS (1) The medical status of each member receiving a disability ~~retirement~~ benefit will be reviewed annually by the board to determine whether the member continues to be disabled, unless ~~the board~~:

(a) the board determines reviews are unnecessary and may be discontinued~~, or~~;

(b) the board determines more frequent reviews are warranted by the nature of the disability~~, or~~;

(c) the board converts the disability retirement benefit of a participant in the defined benefit retirement plan to a service retirement benefit~~.~~; or

(d) a participant in the defined contribution retirement plan receiving a disability benefit reaches 60 years of age.

AUTH: 19-2-403, 19-3-2104, 19-3-2141, MCA
IMP: 19-3-1015, 19-5-612, 19-6-612, 19-7-612, 19-8-712, 19-9-904, 19-13-804, 19-3-2141, MCA

REASON: Medical reviews now apply to participants in the DCRP. The disability benefit to which disabled participants of the DCRP are entitled is not a retirement benefit, but a long-term disability benefit. The term "disability benefit" covers the disability award paid to participants in the DCRP as well as participants in the DBRP.

A DCRP participant is, at age 60, no longer eligible to receive a disability benefit.

2.43.509 PERIODIC MEDICAL REVIEW OF DISABILITY ~~RETIREES~~ BENEFIT RECIPIENTS -- INITIAL NOTICE (1) The ~~division~~ MPERA will send written notification of medical review to a member receiving a disability ~~retirement~~ benefit which is subject to review. The notice will be sent to the member at the most recent address provided and will inform the member ~~of the division's determination~~ of:

(a) the date by which medical information and records must be received~~,~~; and

(b) any specific medical tests or diagnosis required for the review.

(2) The member will be required to have the results of a current medical examination, including any specifically required tests or diagnosis, submitted directly to the ~~division~~ MPERA by the examining medical authority(ies) within 60 calendar days of initial notification. The medical examination ~~shall~~ must be performed by the member's treating physician or other competent medical authority. To be considered current, the date of a medical examination must be no earlier than six months prior to receipt by the ~~division~~ MPERA.

(3) Disabled retirees of the highway patrol officers', sheriffs', game wardens' and peace officers', municipal police officers' and firefighters' unified retirement systems will be reimbursed for travel necessary to obtain the required examinations or tests provided current medical examinations or tests are not otherwise available. Reimbursement for meals and mileage will be at the rates established for state employees in Title 2, chapter 18, MCA. The actual cost of lodging will be reimbursed up to a maximum of $40 per day.

AUTH: 19-2-403, 19-3-2104, 19-3-2141, MCA
IMP: 19-3-1015, 19-5-612, 19-6-612, 19-7-612, 19-8-712, 19-9-904, 19-13-804, 19-3-2141, MCA

REASON: The "division" no longer exists. The Public Employees' Retirement Board is now administratively attached to the Department of Administration. The Board's employees, who used to be referred to as the Public Employees' Retirement Division, are now the Montana Public Employee Retirement Administration.

Medical reviews now apply to participants in the DCRP. The disability benefit to which disabled participants of the DCRP are entitled is not a retirement benefit, but a long-term disability benefit. The term "disability benefit" covers the disability award paid to participants in the DCRP as well as participants in the DBRP.

2.43.510 INITIAL AGENCY REVIEW OF MEDICAL EVIDENCE -- NOTICE OF ADDITIONAL EVIDENCE REQUIRED (1) The board's medical consultant and disability claims examiner will review all medical records previously submitted and those requested for the current period and submit interpretations and recommendations as to the current disability status of the member.

(2) If the ~~division~~ MPERA determines the records submitted by the member's treating physician in response to the initial notice of review are not current or are otherwise inadequate to complete a review, the ~~division~~ MPERA will send written notice to the member of the specific additional examinations or tests necessary for adequate review of the disabling condition. When appropriate, the type of medical authority to conduct the necessary tests or examination will be specified or a particular physician may be appointed to conduct the required examinations or tests.

(3) The member will be allowed 60 days from the date of notification to complete the required examinations or tests and have the results sent directly to the ~~division~~ MPERA by the examining physician.

(4) If the member chooses not to provide additional medical evidence administratively determined as necessary, the previous medical evidence submitted will be presented to the board along with staff recommendations regarding continuing disability of the member.

AUTH: 19-2-403, 19-3-2104, 19-3-2141, MCA
IMP: 19-3-1015, 19-5-612, 19-6-612, 19-7-612, 19-8-712, 19-9-904, 19-13-804, 19-3-2141, MCA

REASON: The "division" no longer exists. The Public Employees' Retirement Board is now administratively attached to the Department of Administration. The Board's employees, who used to be referred to as the Public Employees' Retirement Division, are now the Montana Public Employee Retirement Administration.

2.43.511 FAILURE TO RESPOND -- SECOND NOTICE (1) A member who fails to submit all medical information as required in the notice will be sent a "second notice" by certified mail, return receipt requested. The second notice will inform the member of:

(a) any specific medical tests or diagnosis required by the board for the review~~,~~; and

(b) the date on which disability benefits will be suspended if the member does not provide the medical evidence.

(2) The member may request an extension to accommodate

scheduled appointments. The written request justifying the need for additional time must be received by the ~~division~~ MPERA at least 15 days prior to the end of the time period. Any requests for extensions in excess of 30 days will not be approved.

AUTH: 19-2-403, 19-3-2104, 19-3-2141, MCA
IMP: 19-3-1015, 19-5-612, 19-6-612, 19-7-612, 19-8-712, 19-9-904, 19-13-804, 19-3-2141, MCA

REASON: The "division" no longer exists. The Public Employees' Retirement Board is now administratively attached to the Department of Administration. The Board's employees, who used to be referred to as the Public Employees' Retirement Division, are now the Montana Public Employee Retirement Administration.

2.43.512 SUSPENSION OF DISABILITY BENEFITS -- NOTICE
(1) If the member fails to respond appropriately to the second notice, the ~~division~~ MPERA will notify the member, by certified mail, return receipt requested, that disability benefits have been suspended.

(2) The suspension notice will also inform the member that:

(a) the disability benefit will be cancelled if the previously noticed medical reports and information are not provided to the ~~division~~ MPERA within 30 days from the date of notice;

(b) deductions from benefits for insurance premiums paid to an employer-sponsored health insurance plan, if any, will continue to be paid on the member's behalf until such time as the board cancels the benefits; and

(c) disability benefits will not be restored until such time as the board determines the member has demonstrated continuous disability.

AUTH: 19-2-403, 19-3-2104, 19-3-2141, MCA
IMP: 19-3-1015, 19-5-612, 19-6-612, 19-7-612, 19-8-712, 19-9-904, 19-13-804, 19-3-2141, MCA

REASON: The "division" no longer exists. The Public Employees' Retirement Board is now administratively attached to the Department of Administration. The Board's employees, who used to be referred to as the Public Employees' Retirement Division, are now the Montana Public Employee Retirement Administration.

Due to the nature of DCRP benefit payments, employer-sponsored health insurance benefits are not paid out of a DCRP participants' benefit.

2.43.513 CANCELLATION OF DISABILITY BENEFITS FOR REFUSAL TO COMPLY -- NOTICE (1) Failure to appropriately respond to the notice of suspension will be deemed refusal to submit to a medical review and cause for cancellation of the disability ~~retirement~~ benefit. The member will be notified of the effective date of cancellation of benefits by certified mail,

return receipt requested.

(2) The effective date of cancellation will be the first day of the month following the date of the cancellation notice.

(3) The notice of cancellation will inform the member of appeal rights under the board's rules for contested cases and any rights for service retirement benefits or distribution of the member's DCRP individual account, or for requesting termination of membership from the retirement system.

AUTH: 19-2-403, 19-3-2104, 19-3-2141, MCA
IMP: 19-3-1015, 19-5-612, 19-6-612, 19-7-612, 19-8-712, 19-9-904, 19-13-804, 19-3-2141, MCA

REASON: This rule now applies to DCRP participants. The disability benefit to which disabled participants of the DCRP are entitled is not a retirement benefit, but a long-term disability benefit. The term "disability benefit" covers the disability award paid to participants in the DCRP as well as participants in the DBRP.

DCRP participants are not entitled to a service retirement benefit. Rather, if eligible they receive a distribution of their DCRP account.

2.43.514 CANCELLATION OF DISABILITY BENEFITS DUE TO CHANGE OF MEDICAL STATUS (1) If the board determines the medical information available, including that provided by the member, does not demonstrate continuing disability, the monthly disability ~~retirement~~ benefit will be cancelled.

(2) The effective date of cancellation for members of public employees', judges' and elected officials of the sheriffs' retirement systems will be the first day of the second month following board action (e.g., board action to cancel disability ~~retirement~~ benefits on January 28, would result in cancellation of the March benefit).

(3) Except in the case of a member of the judges' retirement system or an elected official of the public employees' and sheriffs' retirement systems, the member's former employer will be notified of the member's eligibility for reinstatement to service.

AUTH: 19-2-403, 19-3-2104, 19-3-2141, MCA
IMP: 19-3-1015, 19-5-612, 19-6-612, 19-7-612, 19-8-712, 19-9-904, 19-13-804, 19-3-2141, MCA

REASON: Cancellations now apply to DCRP participants. The disability benefit to which disabled participants of the DCRP are entitled is not a retirement benefit, but a long-term disability benefit. The term "disability benefit" covers the disability award paid to participants in the DCRP as well as participants in the DBRP.

2.43.515 APPEAL OF CANCELLATION OF DISABILITY BENEFITS

(1) A member may appeal the cancellation of disability

benefits only by requesting an administrative hearing (contested case) in writing within 30 days after the effective date of the cancellation.

AUTH: 19-2-403, <u>19-3-2104, 19-3-2141,</u> MCA
IMP: 19-3-1015, 19-5-612, 19-6-612, 19-7-612, 19-8-712, 19-9-904, 19-13-804, <u>19-3-2141,</u> MCA

REASON: This rule pertains to disability benefits only.

5. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to Mike O'Connor, Executive Director, Public Employees' Retirement Board, P.O. Box 200131, Helena, Montana 59620-0131; FAX 406-444-5428; e-mail moconnor@state.mt.us no later than May 23, 2002.

6. Lucie Willson, Administrative Officer, Montana Public Employee Retirement Administration, 100 North Park Avenue, Suite 220, P.O. Box 200131, Helena, Montana, 59620-0131, has been designated to preside over and conduct the hearing.

7. The Public Employees' Retirement Board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the 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 public retirement rulemaking actions. Such written request may be mailed or delivered to Lucie Willson, Public Employees' Retirement Board, P.O. Box 200131, Helena MT 59620-0131, faxed to the office at 406-444-5428, or may be made by completing a request form at any rules hearing held by the Public Employees' Retirement Board.

8. The bill sponsor notice requirements of 2-4-302, MCA apply and have been fulfilled.

/s/ Terry Teichrow, President
Public Employees' Retirement Board

/s/ Kelly Jenkins
Kelly Jenkins, General Counsel and Rule Reviewer

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

Certified to the Secretary of State on April 15, 2002.

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

In the matter of the adoption of new rules pertaining to the Deferred Compensation Plan administered by the Public Employees' Retirement Board	)))))	NOTICE OF PROPOSED ADOPTION NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On June 28, 2002, the Public Employees' Retirement Board proposes to adopt new rules pertaining to the Deferred Compensation Plan.

2. The Public Employees' Retirement Board will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the Public Employees' Retirement Board no later than 5:00 p.m. on May 15, 2002, to advise us of the nature of the accommodation that you need. Please contact Lucie Willson, Public Employees' Retirement Board, 100 North Park Avenue, Suite 220, P.O. Box 200131; Helena MT 59620-0131; telephone 406-444-7939; TDD number 406-444-1421; FAX 406-444-5428; e-mail lwillson@state.mt.us.

3. The proposed new rules provide as follows:

RULE I ADOPTION OF DEFERRED COMPENSATION PLAN DOCUMENT AND TRUST AGREEMENT (1) The board hereby adopts and incorporates by reference the state of Montana public employee deferred compensation plan document and trust agreement (January 1, 2002 edition), that was approved by the board on February 22, 2001 and September 28, 2001.

(2) Copies of the deferred compensation plan document, trust agreement and related materials may be obtained from the MPERA, 100 North Park Avenue, Suite 220, P.O. Box 200131, Helena, MT 59620-0131, phone 1-877-275-7372, e-mail mpera@state.mt.us.

AUTH: 19-50-102, MCA
IMP: 19-50-102, MCA

REASON: The Deferred Compensation Plan Document has not been amended since it was executed February 1, 1990. At that time, the Deferred Compensation Plan was administered by the Department of Administration. The Board became the administrator in 1999. The Board is now amending the Plan Document to incorporate relevant changes in federal and state law. The Plan Document and Trust Agreement are being adopted by rule in order to better notify plan participants of its existence, and how a copy can be obtained.

RULE II ADOPTION OF INVESTMENT POLICY STATEMENT AND STABLE VALUE FUND INVESTMENT GUIDELINES (1) The board hereby adopts and incorporates by reference the state of Montana 457 plan (deferred compensation) investment policy statement approved by the board on February 28, 2002.

(2) The board hereby adopts and incorporates by reference the state of Montana 457 plan full discretion guidelines for the stable value investment option approved by the board on February 22, 2001.

(3) Copies of the 457 plan investment policy statement and full discretion guidelines may be obtained from the MPERA, 100 North Park Avenue, Suite 220, P. O. Box 200131, Helena, MT 59620-0131, phone 1-877-275-7372, e-mail mpera@state.mt.us.

AUTH: 19-50-102, MCA
IMP: 19-50-102, MCA

REASON: The Montana Public Employees' Retirement Board, as the administrator of the Deferred Compensation Plan (457 Plan), is responsible for providing investment alternatives for 457 Plan participants. Investment policy statements and guidelines provide standards and benchmarks to be followed by the Board when choosing 457 Plan investment alternatives. Plan participants must know where these investment policy statements can be found and how they may obtain copies of those statements.

RULE III DEFERRED COMPENSATION PLAN INVESTMENT OPTIONS

(1) The board will choose, regularly review, and may discontinue, add, or change investment options offered to participants of the deferred compensation plan. In doing so, the board will consider recommendations of the statutorily established employee investment advisory council and criteria established in the plan's investment policy statement.

(2) A deferred compensation plan participant with assets in a discontinued investment option will be given notice and 90 days to move assets from the investment option being discontinued to an offered investment option. Assets remaining in a discontinued investment option at the end of the 90-day period will be automatically transferred to the stable value fund.

(3) No notice will be provided if the board replaces or changes the stable value investment option manager. The stable value investment option assets will automatically transfer to the new manager(s).

AUTH: 19-50-102, MCA
IMP: 19-50-102, MCA

REASON: The board must, from time to time, review the deferred compensation plan investment options and make changes as necessary. A deferred compensation participant's assets must be invested in the investment options the participant chooses. Therefore, MPERA must notify the participant of the need to redirect their assets, the deadline by which the assets must be

moved, and what will happen to the assets if they are not moved. Participants who chose to place assets in the stable value fund have no control over where those assets are invested, other than the stable value fund. Therefore, there is no need to provide notice if and when a stable value fund manager changes.

4. Concerned persons may submit their data, views, or arguments concerning the proposed amendments in writing to Mike O'Connor, Executive Director, Public Employees' Retirement Board, 100 North Park Avenue, Suite 220, P.O. Box 200131, Helena, Montana 59620-0131; FAX 406-444-5428; e-mail moconnor@state.mt.us no later than May 23, 2002.

5. If persons who are directly affected by the proposed amendments wish to express their data, views, and arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments they have to Lucie Willson, Public Employees' Retirement Board, 100 North Park Avenue, Suite 220, P.O. Box 200131, Helena MT 59620-0131; telephone 406-444-7939; FAX 406-444-5428; e-mail lwillson@state.mt.us. A written request for a hearing must be received no later than May 23, 2002.

6. If the agency receives requests for a public hearing on the proposed amendments from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action; from the appropriate administrative rule review committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 735 persons based on 2001 payroll reports of active members.

7. The Public Employees' Retirement Board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the 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 public retirement rulemaking actions. Such written request may be mailed or delivered to Lucie Willson, Public Employees' Retirement Board, 100 North Park Avenue, Suite 220, P.O. Box 200131, Helena MT 59620-0131, faxed to the office at 406-444-5428, or may be made by completing a request form at any rules hearing held by the Public Employees' Retirement Board.

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

/s/ Terry Teichrow, President
Public Employees' Retirement Board

/s/ Kelly Jenkins
Kelly Jenkins, General Counsel and Rule Reviewer

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

Certified to the Secretary of State on April 15, 2001.

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

In the matter of the adoption of a new rule relating to the purchase of service credit through direct trustee-to-trustee transfers	)	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION

TO: All Concerned Persons

1. On May 17, 2002, at 10 a.m., a public hearing will be held in the City-County Building, Room 326, third floor, 316 North Park Avenue, Helena, Montana, to consider the adoption of a rule related to the purchase of service credit through direct trustee-to-trustee transfers of funds from qualified plans.

2. The Public Employees' Retirement Board 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 Public Employees' Retirement Board no later than 5:00 p.m. on May 10, 2002, to advise us of the nature of the accommodation that you need. Please contact Lucie Willson, Public Employees' Retirement Board, 100 North Park Avenue, Suite 220, P.O. Box 200131, Helena MT 59620-0131; telephone 406-444-7939; TDD number 406-444-1421; FAX 406-444-5428; e-mail lwillson@state.mt.us.

3. The proposed new rule provides as follows:

RULE I PURCHASE OF SERVICE THROUGH DIRECT TRUSTEE-TO-TRUSTEE TRANSFER OF FUNDS (1) At any time prior to retirement, a member who is statutorily eligible to do so, may purchase service in the member's current retirement system through a direct trustee-to-trustee transfer of funds from the member's 26 U.S.C. 403(b) or 26 U.S.C. 457 governmental plan.

AUTH: 19-2-403, 19-3-2104, MCA
IMP: 19-2-704, 19-3-2115, MCA

REASON: Recent changes in federal law permit the purchase of service in a defined benefit retirement plan through a direct trustee-to-trustee transfer of funds from the member's 403(b) or 457 governmental plan. This purchase can occur without the member terminating employment or membership in the retirement plan. The state of Montana's 457 Plan Document, adopted pursuant to [MAR Notice No. 2-2-314, RULE I] also permits these purchases.

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

data, views or arguments may also be submitted to Mike O'Connor, Executive Director, Public Employees' Retirement Board, 100 North Park Avenue, Suite 220, P.O. Box 200131, Helena, Montana 59620-0131; FAX 406-444-5428; e-mail moconnor@state.mt.us no later than May 23, 2002.

5. Keith McCallum, Deputy Executive Director, Montana Public Employees' Retirement Board, 100 North Park Avenue, Suite 220, P.O. Box 200131, Helena, Montana, 59620-0131, has been designated to preside over and conduct the hearing.

6. The Public Employees' Retirement Board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the 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 public retirement rulemaking actions. Such written request may be mailed or delivered to Lucie Willson, Public Employees' Retirement Board, 100 North Park Avenue, Suite 220, P.O. Box 200131, Helena MT 59620-0131; faxed to the office at 406-444-5428; e-mailed to lwillson@state.mt.us, or may be made by completing a request form at any rules hearing held by the Public Employees' Retirement Board.

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

/s/ Terry Teichrow, President
Public Employees' Retirement Board

/s/ Kelly Jenkins
Kelly Jenkins, General Counsel and
Rule Reviewer

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

Certified to the Secretary of State on April 15, 2002.

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

In the matter of the adoption) of a new rule creating a) no wake zone on Hebgen Lake)	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION

TO: All Concerned Persons

1. On May 28, 2002, at 7 p.m. a public hearing will be held at the West Yellowstone City Court Room, 220 Yellowstone Avenue, West Yellowstone, Montana, to consider the adoption of new rule I, creating a no wake zone on Hebgen Lake.

2. The Fish, Wildlife and Parks Commission (commission) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alterative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m. on May 10, 2002, to advise us of the nature of the accommodation that you need. Please contact Kari Janikula, Fish, Wildlife and Parks, 1400 South 19th, Bozeman, MT 59718; Telephone (406) 994-4042, fax (406) 994-4090.

3. The proposed new rule provides as follows:

NEW RULE I HEBGEN LAKE (1) Hebgen Lake is located in Gallatin County.
(2) Hebgen Lake is limited to a controlled no wake speed as defined in ARM 12.11.101 in the following areas:
(a) Rainbow Point Bay within 300 feet of the shoreline or as buoyed;
(b) Loneshomehurst Summer Homes and Campground within 300 feet of the shoreline or as buoyed;
(c) Romsett Summer Homes area within 300 feet of the shoreline and moored boats or as buoyed;
(d) Kirkwood Resort Marina and residential area within 200 feet of the shoreline or as buoyed;
(e) Happy Hour Marina within 200 feet of the docks or as buoyed;
(f) Yellowstone Holiday Marina within 200 feet of the docks or as buoyed;
(g) Madison Arm Resort within 300 feet of the docks or as buoyed; and
(h) Lakeshore Summer Homes within 200 feet of shoreline or as buoyed.

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

4. The commission received a petition for rulemaking for a no wake zone at Rainbow Point Bay. The petition is granted and the proposed rule includes a no wake zone for Rainbow Point Bay as well as for other congested areas on

Hebgen Lake. Recreational water use in the bays of Hebgen Lake is increasing. A congestion problem with boaters, personal watercraft users, swimmers, and anglers in the more heavily used bays is occurring. These heavily used areas have private cabins and personal dwellings along with public campgrounds and access areas. Watercraft traveling in and out of the bays at high speeds endanger the safety of the other water recreationists. There are no existing special boating restrictions that govern boat traffic on this lake. The purpose of the proposed rule is to establish no wake zones in the areas where heavy boating traffic is occurring. The commission hopes to prevent accidents and protect public safety by enforcing a no wake speed in these areas.

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 Pat Flowers, Fish, Wildlife and Parks, 1400 South 19th, Bozeman, MT 59718; Telephone (406) 994-4042; fax (406) 994-4090 or email comments to pflowers@montana.edu and must be received no later than June 3, 2002.

6. Rebecca Dockter Engstrom has been designated to preside over and conduct the hearing.

7. The department maintains a list of interested persons who wish to receive notice of rulemaking actions proposed by the department or commission. Persons who wish to have their name added to the list shall make written request 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 Sixth 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:	BY:
<u>/s/ M. Jeff Hagener</u>	<u>/s/ Rebecca Dockter Engstrom</u>
M. Jeff Hagener, Secretary Fish, Wildlife and Parks Commission	Rebecca Dockter Engstrom Rule Reviewer

Certified to the Secretary of State April 15, 2002

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

In the matter of the adoption of New Rules I through XVIII pertaining to investigating complaints of discrimination	) NOTICE OF PUBLIC HEARING) ON PROPOSED ADOPTION))

TO: All Concerned Persons

1. On May 17, 2002, at 1:30 p.m., a public hearing will be held in the fourth floor conference room of the Walt Sullivan Building, 1327 Lockey, Helena, Montana, to consider the proposed adoption of the new rules, related to the investigation of complaints of discrimination.

2. The Department of Labor and Industry will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Department no later than 5:00 p.m., May 10, 2002, to advise us of the nature of the accommodation that you need. Please contact the Montana Human Rights Bureau, Attn: Mark Lanthorn, 1625 11th Avenue, P.O. Box 1728, Helena, MT 59624-1728; telephone (406) 444-2884; TTY (406) 444-0532; fax (406) 444-2798; or e-mail mlanthorn@state.mt.us.

3. The rules proposed to be adopted provide as follows:

NEW RULE I PURPOSE AND SCOPE OF RULES; EFFECT OF PARTIAL INVALIDITY (1) The purpose of the rules in this chapter is to describe the procedures followed by the department of labor and industry (department) in investigating and conciliating complaints of discrimination and enforcing the laws prohibiting discrimination contained in Title 49, chapters 2 and 3, MCA. These rules apply to complaints of discrimination filed on or after July 1, 1997.

(2) The department will construe the provisions of the Act, the Code, and these rules with a view to affect their objects and to promote justice. A principal objective of the Act and Code is to assure that there will be no discrimination in certain areas of the lives of Montana citizens, except under the most limited of circumstances.

(3) In construing the provisions of the Act and Code, the department will refer to federal civil rights case law where it is both useful and appropriate and does not conflict with the purposes and intentions of state law.

(4) If a part of these rules is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of these rules is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid application or applications.

(5) The department may disregard errors of law or

procedure which do not cause prejudice to a party or deny a party a fair hearing or fundamental justice. Parties who assign error for the violation of any rule must demonstrate that a failure to comply with these rules is in fact prejudicial or constitutes prejudice as a matter of law.

(6) Where strict adherence to these rules would cause undue hardship or create a substantial injustice to a party, the department may modify, waive, or excuse their application. The department may not modify, waive, or excuse mandatory acts which are required by statute or due process of law.

(7) Parties who choose not to be represented by counsel and who represent themselves must substantially comply with the provisions of these rules, subject to the provisions of (6). The department may modify the strict application of these rules to an unrepresented party to the extent they are not mandatory to assure fundamental fairness.

AUTH: 49-2-204, MCA
IMP: Title 49, chapter 2, MCA

NEW RULE II DEFINITIONS The following definitions apply throughout this chapter:

(1) "Act" means the Human Rights Act, Title 49, chapter 2, MCA.

(2) "Aggrieved party" means a person who can demonstrate a specific personal and legal interest, as distinguished from a general interest, and who has been specially and injuriously affected by, or is likely to be a victim of a violation of the Act or Code, as defined in 49-2-101, MCA.

(3) "Charging party" means a person who files a discrimination complaint with the department or a federal agency with whom the department has a work-sharing agreement.

(4) "Code" means the Governmental Code of Fair Practices, Title 49, chapter 3, MCA.

(5) "Commission" means the human rights commission, a quasi-judicial board as established by 2-15-1706, MCA.

(6) "Commissioner" means the commissioner of the department of labor and industry.

(7) "Notice of dismissal" means a document which terminates the jurisdiction of the department over a complaint under the Act or Code and which allows a charging party or aggrieved party to file a discrimination action in district court.

(8) "Reasonable cause" means that a preponderance of the evidence supports a finding of unlawful discrimination. A finding of "reasonable cause" is equivalent to "merit" as provided in 49-2-504, MCA.

(9) "Respondent" means any person against whom a complaint is filed.

AUTH: 49-2-204, MCA
IMP: Title 49, chapter 2, MCA

NEW RULE III RECORD KEEPING REQUIREMENTS FOR EMPLOYERS

(1) All employers, labor organizations, employment agencies, and government agencies shall maintain records

pursuant to 49-2-102, MCA, and 42 USCA 2000e-8(c) and (d).

(2) All personnel records made or kept by an employer, including but not necessarily limited to, application forms and other records related to hiring, promotion, demotion, transfer, layoff or termination, rates of pay or other terms of compensation and selection for training or apprenticeship, shall be preserved for two years from the date the record is made or from the date of the personnel action involved, whichever occurs later.

(3) If a discrimination complaint is filed, the respondent shall preserve all personnel records relevant to the complaint until final disposition of the complaint. Personnel records relevant to a complaint include personnel records relating to the charging party and application forms or test papers completed by an unsuccessful applicant and all other candidates for the same position.

(4) Labor organizations shall preserve membership or referral records, including applications for membership or referral, for two years from the date the records are made. If a discrimination complaint is filed, a labor organization shall preserve all records relevant to the complaint until final disposition of the complaint.

AUTH: 49-2-204, MCA
IMP: 49-2-102, MCA

NEW RULE IV APPLICABILITY OF COMMISSION RULES (1) In discharging its responsibilities for investigating and enforcing the laws prohibiting discrimination, the department applies the interpretive rules of the commission contained in ARM Title 24, chapter 9, sub-chapters 6 (Proof of Unlawful Discrimination), 10 (Sex Discrimination in Education), 12 (Maternity Leave), 13 (Insurance and Retirement Plans), and 14 (Guidelines for Employment).

AUTH: 49-2-204, MCA
IMP: 49-2-204, MCA

NEW RULE V CONFIDENTIALITY AND RELEASE OF INFORMATION

(1) The department will release a copy of the charge of discrimination in a manner consistent with Montana law.

(2) The department finds that there is a compelling state interest in the elimination of illegal discrimination in Montana, pursuant to Art. II, sec. 4 of the Montana Constitution (1972). The department also recognizes that the Montana Constitution expressly provides for an individual right of privacy in Art. II, sec. 9. The department finds that in some cases, the interest of a person in viewing documents related to a complaint or an investigation will compete with individual privacy interests.

(3) If a person other than a party subject to the terms of 49-2-504(1)(a), MCA, requests information or materials for which an individual right of privacy might be asserted, or asserts a privacy interest in information or materials in the possession of the department, the department will take the following steps:

(a) The department will review the request for information

or assertion of privacy rights and will attempt to contact the parties and provide them an opportunity to state why their individual privacy interests should outweigh the public's right to know.

(b) If a party objects to the release of the charge of discrimination, the department will promptly notify both parties of the objection. The department will also advise the requesting person that he or she has 10 business days from the receipt of notice of the department's refusal in which to file a written request for review of the department's decision.

(c) The department shall immediately refer a request for review under (3)(b) to the hearings bureau, and the hearings bureau shall promptly provide the parties an opportunity to be heard regarding the internal decision, under hearings bureau procedures.

(4) After a finding of reasonable cause or no reasonable cause or other agency action terminating the investigation of a case, the complaint, information obtained in the investigation of the complaint, and other information in the department file which does not relate to privacy interests protected by law, becomes public information. If a privacy interest is involved, the procedures as outlined in (3) of this rule shall apply.

(5) The department may restrict disclosure of information regarding complaints alleging violations of federal law which are within the jurisdiction of the department because of work-sharing arrangements with federal agencies, pursuant to provisions of federal law.

(6) All settlement and conciliation agreements are public information except to the extent that they relate to privacy interests protected by law. A governmental entity does not have a privacy interest in any settlement or conciliation agreement.

AUTH: 49-2-204, MCA

IMP: 49-2-501, 49-2-504 through 49-2-510, MCA

NEW RULE VI FILING OF COMPLAINTS AND AMENDMENT OF COMPLAINTS (1) A complaint may be filed with the department by or on behalf of any aggrieved party. Complaints shall be filed with the department by mail addressed to the Human Rights Bureau, P.O. Box 1728, Helena, MT 59624-1728; personal delivery to 1625 Eleventh Avenue (USF&G Building, second floor), Helena, MT 59601; or fax to (406) 444-2798.

(2) Pursuant to 49-2-501(4)(a), MCA, and subject to 49-2-501(4)(b), MCA, a complaint must be filed within 180 days after the alleged act of discrimination occurred or was discovered.

(3) A complaint is considered to be filed on the date it is received by the department, either by mail, hand-delivery or facsimile.

(a) In the case of a complaint which is deferred or transmitted to the department by any government agency pursuant to any agreement entered into between the agency and the department, the complaint is deemed filed as of the date it was filed with or received by the agency which deferred or transmitted the complaint.

(4) During the investigation of a complaint, a charging party may file an amended complaint, including a third party complaint, and a respondent may file a third party complaint, pursuant to Rules 14 and 15, M.R.Civ.P. to cure defects or omissions, or to clarify and amplify allegations, to bring the charge up to date in regard to a continuing pattern of occurrences, or to allege additional facts directly relating to or arising out of the subject matter of the original complaint. The charging party may file an amended complaint to swear or affirm that the charge is true. The charging party must submit a verified complaint before the bureau will require a response from the respondent. If the charging party does not submit a verified complaint, the bureau will not proceed further in investigating the complaint. All amendments shall relate back to the original filing date.

(a) The department shall accept an amended complaint or third party complaint filed with the department and over which the department has jurisdiction, unless, in its discretion, the department determines that there is insufficient time remaining in the statutory period mandated by 49-2-504(4), MCA, to investigate the information alleged in the new filing.

(b) If the department determines that an amended complaint or third party complaint cannot be investigated in the time remaining pursuant to 49-2-504(4), MCA, it shall give notice to the charging party of its refusal to accept the filing as an amendment and shall accept the filing as a new complaint unless the department does not have jurisdiction over the filing as a new complaint. The department shall follow 49-2-501(4)(c), MCA, in determining whether it has jurisdiction over the filing as a new complaint. In those cases in which an amendment is filed so closely to the 180 day deadline that it cannot be investigated, the allegations of the amendment will be preserved in the final investigative report even though the allegations cannot be investigated.

(5) When the department has reason to believe that a person is or has been engaging in a discriminatory practice in violation of the Act, the commissioner may file a complaint on behalf of the department pursuant to 49-2-210(1), MCA. A complaint filed by the commissioner may seek relief authorized by law for any and all persons adversely affected by the practice or actions.

AUTH: 49-2-204, MCA
IMP: 49-2-210, 49-2-501 and 49-2-504, MCA

NEW RULE VII FORM OF COMPLAINTS (1) A complaint is a written document filed with the department. An aggrieved party or a person filing on behalf of an aggrieved party may draft and file a complaint. Except as provided in (2), a complaint shall contain, at a minimum, the following information:

(a) full name, address and telephone number, if any, of the person making the complaint (hereinafter referred to as charging party);

(b) full name, address and telephone number, if any, of the person against whom the complaint is made (hereinafter

referred to as respondent);

(c) a clear and concise statement of the facts, including pertinent dates, constituting the alleged unlawful discriminatory practice; and

(d) the verified signature of the charging party.

(2) For the purpose of timely filing, any signed written statement may be deemed a complaint if it sufficiently identifies parties and describes the actions being complained of. Such complaint may be verified by amendment after initial filing. A charging party must submit a verified complaint before the bureau will require a response from the respondent. If the charging party does not submit a verified complaint, the bureau will not proceed further in investigating the complaint. If the charging party does not allege facts sufficient to constitute a claim that unlawful discrimination has occurred, the department will notify the charging party that the department does not have jurisdiction over the complaint, and the case will be dismissed unless the charging party amends the complaint to state a claim of discrimination.

(3) Any person may file a complaint on behalf of any person claiming to be aggrieved if the person is the aggrieved party's guardian, attorney, or duly authorized representative or an advocacy group, labor organization, or other organization acting as an authorized representative. The person making the complaint must provide the department with the name and address of the person on whose behalf the charge is made. During its investigation, the department shall verify the authorization of such complaint by the person(s) on whose behalf the complaint is made. If the person on whose behalf the complaint is filed indicates in writing to the department that he or she does not wish the complaint processed, the department shall dismiss the complaint.

AUTH: 49-2-204, MCA
IMP: 49-2-501, MCA

NEW RULE VIII INTAKE PROCEDURE (1) A person claiming unlawful discrimination may contact the department by mail or telephone to inquire about filing a complaint of discrimination. Any advice or assistance provided to a potential charging party who contacts the department with questions about filing a complaint, or who seeks the assistance of the department in drafting a complaint, shall be offered objectively and impartially pursuant to 49-2-205, MCA.

AUTH: 49-2-204, MCA
IMP: 49-2-205 and 49-2-504, MCA

NEW RULE IX NOTICE OF FILING OF COMPLAINTS (1) Within 10 business days of the filing of a complaint, the department shall serve notice of filing upon the parties by certified mail or personal service. The notice shall:

(a) acknowledge the filing of the complaint and state the date that the complaint was filed;

(b) include a copy of the complaint;

(c) advise the parties of the time limits applicable to

complaint processing;

(d) in cases filed pursuant to 49-2-305, MCA (housing cases), advise the parties of their right to commence a civil action under 49-2-510(4)(a), MCA, in an appropriate district court, not later than two years after an alleged unlawful discriminatory practice under 49-2-305, MCA, occurred or was discovered or within two years of the breach of a conciliation agreement entered into under 49-2-504(1)(a), MCA. The notice shall state that the computation of this two year period excludes any time during which a proceeding is pending under 49-2-510, MCA, with respect to a complaint based on the alleged discriminatory housing practice. The notice shall also state that the time period includes the time during which an action arising from a breach of a conciliation agreement is pending;

(e) in cases filed pursuant to 49-2-303, MCA (employment cases), advise the parties of the respondent's obligation to preserve all personnel records relevant to the complaint until the final disposition of the complaint, pursuant to NEW RULE III;

(f) advise the parties of their right to receive a copy of all other information submitted with the complaint and during the investigation; and

(g) advise the parties that retaliation against any person because the person made a complaint or testified, assisted or participated in an investigation, a conciliation, or an administrative proceeding, is a discriminatory practice that is prohibited under 49-2-301, MCA.

AUTH: 49-2-204, MCA
IMP: 49-2-301, 49-2-303, 49-2-305, 49-2-504 and 49-2-510, MCA

NEW RULE X INVESTIGATION BY THE DEPARTMENT (1) The department's investigation shall be conducted in a fair and impartial manner. The department will normally utilize methods such as written information requests and telephone and personal interviews to obtain information in the course of the investigation, relying on more formal investigative tools such as subpoenas and depositions only after attempts to achieve voluntary cooperation have been unsuccessful.

(2) The department, in investigating a charge of discrimination under the Act, may request the commissioner to exercise any and all of the powers provided for in 49-2-203, MCA.

(3) Subject to the provisions of 49-2-506(3), MCA, the department may exercise its investigative powers in determining if a conciliation agreement is being honored or an order of the department obeyed.

AUTH: 49-2-204, MCA
IMP: 49-2-203, 49-2-504, 49-2-506 and 49-2-509, MCA

NEW RULE XI INVESTIGATIVE SUBPOENAS (1) Pursuant to 49-2-203(3), MCA, a party may request that the commissioner issue subpoenas relating to a matter under investigation in order to further the department's informal investigation. Such requests shall be directed to the Commissioner, Department of

Labor and Industry, P.O. Box 1728, Helena, MT 59624-1728.
AUTH: 49-2-204, MCA
IMP: 49-2-203, MCA

NEW RULE XII EFFECT OF FAILURE TO COOPERATE WITH INVESTIGATION (1) When a charging party or an aggrieved party refuses to comply with a request by the department for information or evidence reasonably necessary for the investigation, conciliation or litigation of the complaint, or fails to advise the department of a change of address causing the department to be unable to locate them, the department shall dismiss the case and issue a notice of dismissal, or shall dismiss so much of the complaint as relates to that charging party or aggrieved party.

(2) If a respondent has been notified of a complaint and the department has requested information in the course of its investigation which the respondent fails to provide within the time specified, the department may take one or more of the following actions to complete its investigative responsibilities:

(a) request the commissioner to issue a subpoena;

(b) draw an adverse inference against respondent as to the evidence sought, if respondent willfully fails to produce information; and

(c) make a finding of merit of the complaint, engage in conciliation and, if unsuccessful, set the case for contested case hearing.

AUTH: 49-2-204, MCA
IMP: 49-2-504, MCA

NEW RULE XIII FINDING OF REASONABLE CAUSE OR NO REASONABLE CAUSE (1) Within 120 days (for cases filed pursuant to 49-2-305, MCA) or 180 days (for all other cases, pursuant to 49-2-504(4), MCA), the department will conclude its investigation by issuing a written finding. The finding will include a brief statement of the reasons for the department's conclusions and will be mailed to all parties.

(a) If the allegations of the complaint are supported by a preponderance of the evidence, the department will issue a finding of reasonable cause and the complaint will be certified for hearing, pursuant to 49-2-505, MCA.

(b) If the allegations of the complaint are not supported by a preponderance of the evidence, or if the department determines that it lacks jurisdiction over the complaint, the department will issue a finding of no reasonable cause. A finding of no reasonable cause will be accompanied by a notice of dismissal in accordance with NEW RULE XVI.

AUTH: 49-2-204, MCA
IMP: 49-2-305, 49-2-504, 49-2-505, 49-2-506 and 49-2-507, MCA

NEW RULE XIV CONCILIATION AND SETTLEMENT (1) At any time during the complaint process, the department may undertake efforts to achieve a voluntary resolution of the case through mediation efforts with the parties. Any resolution of a

complaint agreed to by the parties before the department issues a finding on the merits of the claim is referred to as a settlement agreement. Any resolution agreed to after the department issues a reasonable cause finding is referred to as a conciliation agreement. Any settlement or conciliation agreement reached while the complaint is pending in the administrative process, whether mediated by the department or agreed to by the parties independently, is subject to the provisions of this rule.

(2) If the department issues a reasonable cause finding, it shall attempt to resolve the case through conciliation. During conciliation, the department may require affirmative relief provisions to eliminate the discriminatory practice confirmed in the informal investigation. Such affirmative relief provisions may include any remedy which could be ordered by the department after hearing. If the department determines that conciliation is not possible, the department shall inform the parties in writing that the conciliation period is concluded and set the case for hearing, pursuant to 49-2-505, MCA.

(3) No statement made by any party in the course of a settlement or conciliation offer, or in any oral or written discussion concerning conciliation, will be admissible in any hearing held concerning the complaint. Agreement to a settlement or conciliation of a case does not constitute an admission of violation of any law by the respondent.

(4) A settlement or conciliation agreement reached by the parties must be in writing, signed by the parties, and approved by the department. Upon approval of a settlement or conciliation agreement, the department shall dismiss the case. Dismissal of a case based on a settlement or conciliation agreement shall constitute the end of the administrative process.

(5) A settlement or conciliation agreement may include terms for monitoring compliance with the agreement, not to extend beyond one year from the date of the agreement.

(6) The parties must inform the department of all terms of any settlement or conciliation agreement entered into while the complaint is pending in the administrative process. In addition, the parties must inform the department of all terms of any conciliation agreement entered into after the department or the commission has issued a final order.

(7) The department may refuse to approve a settlement agreement which does not resolve all allegations or remedies for all persons or groups affected by the alleged discrimination. Alternatively, the department may treat a settlement or conciliation agreement which does not resolve all allegations or remedies for all persons or groups affected by the alleged discrimination as a withdrawal in accordance with NEW RULE XV, and may initiate the complaint as a commissioner complaint for further proceedings.

(8) A conciliation agreement may be enforced by the commissioner or by any party in the same manner as a final order of the department by seeking appropriate orders in the district court, pursuant to 49-2-508, MCA.

AUTH: 49-2-204, MCA
IMP: 49-2-504, 49-2-505 and 49-2-508, MCA

NEW RULE XV WITHDRAWAL OF COMPLAINT (1) Any person who has filed a complaint with the department or any person on whose behalf a complaint has been filed may make a request in writing that the complaint be withdrawn. This request may be made at any time during the administrative process. Upon approval by the department, withdrawal of a complaint completes the administrative process.

(2) If the withdrawal is based on a private settlement agreement, a copy of the agreement must accompany the request. Private settlement agreements submitted as the basis for withdrawal are subject to the provisions of NEW RULE XIV until completion of the administrative process.

(3) The department shall dismiss the complaint upon receipt of a written request for withdrawal of a complaint and approval of that request, except for those parts which the commissioner may initiate as a commissioner complaint.
AUTH: 49-2-204, MCA
IMP: 49-2-210 and 49-2-501, MCA

NEW RULE XVI DISMISSAL BY THE DEPARTMENT (1) The department shall conclude the administrative proceedings and issue a notice of dismissal if:

(a) the department determines that it lacks jurisdiction over the allegations of the complaint;

(b) the charging party fails to cooperate in the investigation of the complaint or fails to keep the department advised of changes in address;

(c) the department determines that the allegations of the complaint are not supported by a preponderance of the evidence; or

(d) the department determines that it will not or cannot hold a hearing on the complaint within 12 months of the filing date, pursuant to 49-2-509(3)(d), MCA, and the parties do not permit the department to retain jurisdiction as provided in 49-2-505(2), MCA.

(2) A complaint may be dismissed pursuant to (1)(c) prior to investigation if the charging party has not alleged facts sufficient to state a claim of unlawful discrimination and has not amended the complaint to state such a claim.

(3) At any time after a complaint is filed, the department may issue a notice of dismissal without prejudice if the parties and issues before the department are also before a court of competent jurisdiction and the court's decision will be determinative of the issues before the department. If the court later finds that it does not have jurisdiction over a case in which the notice of dismissal was issued because of the improper issuance of the notice, the charging party may apply to reopen the complaint before the department.
AUTH: 49-2-204, MCA
IMP: 49-2-509, MCA

NEW RULE XVII DISMISSAL BY REQUEST OF A PARTY

(1) Pursuant to 49-2-509, MCA, the department shall issue a notice of dismissal at the request of any party to a case before the department if:

(a) the department has completed its investigation of a complaint filed pursuant to 49-2-305, MCA (housing complaints); or

(b) 12 months have elapsed since the complaint was filed.

(2) The department may deny a party's request under (1) for the issuance of a notice of dismissal if:

(a) the party requesting the issuance of the notice of dismissal has waived the right to request filing in district court either by specific written waiver or by conduct constituting an implied waiver;

(b) the party requesting the issuance of the notice of dismissal has filed the request more than 30 days after service of the notice of a hearing (20 days for complaints filed pursuant to 49-2-305, MCA), scheduled to be held within 90 days of the date of service of the notice of hearing; or

(c) the party requesting the issuance of a notice of dismissal has unsuccessfully attempted through court litigation to prevent the department from investigating the complaint.

AUTH: 49-2-204, MCA
IMP: 49-2-305 and 49-2-509, MCA

NEW RULE XVIII NOTICE OF DISMISSAL AND OBJECTIONS TO DISMISSAL (1) The issuance of a notice of dismissal completes the administrative process with regard to any complaint of discrimination in which a notice of dismissal is issued.

(2) Each notice of dismissal issued by the department shall be issued to all parties by certified mail or personal delivery and shall set forth the following information:

(a) a statement of the reasons for issuance;

(b) a notice that in order to pursue the complaint of discrimination, the charging party must petition the district court in the district in which the alleged violation occurred within 90 days of receipt of the notice. The notice shall conspicuously state that if the charging party fails to file a petition in district court within the 90 day period, the claim shall be barred;

(c) a notice of the court's discretion to award attorney's fees to the prevailing party in a discrimination action in district court;

(d) a statement regarding the effect of the issuance of the notice of dismissal as provided in (1); and

(e) a statement that the requirements for issuance of a notice of dismissal have been satisfied.

(3) If a court finds that it does not have jurisdiction over a case in which the notice of dismissal was issued because of the improper issuance of the notice, the charging party may apply to reopen the complaint before the department.

(4) A party who is dissatisfied with a decision of the department to issue or not issue a notice of dismissal may file written objections with the commission as provided in

ARM 24.9.1714.
AUTH: 49-2-204, MCA
IMP: 49-2-509, MCA

4. The department is proposing these administrative rules to implement the changes that were made to the Montana Human Rights Act (Act), Title 49, chapters 2 and 3, MCA, during the 1997 legislative session. Currently, the department does not have any administrative rules with regard to the filing and informal investigation of discrimination complaints under Montana human rights law. The proposed new rules will provide the public with fair notice regarding the department's procedures for carrying out its responsibilities under the Act.

New Rules I and II

The proposed New Rule I provides the public with notice that the general intent behind the adoption of the rules is to help achieve the department's overall objective to eradicate discrimination in the lives of Montana's citizens. New Rule II provides the basic definitions of terms used and applied throughout the Act and the proposed related rules. Consistent use and understanding of the pertinent terminology will lessen confusion by and among potential charging parties, respondents, and attorneys, and will make the process of filing and investigating discrimination charges under the Act more fluid and less difficult.

New Rule III

New Rule III is proposed to provide employers with notice of the specific documents they are required to maintain pursuant to 49-2-102, MCA. The rules state with specificity the types of records that must be maintained and how long they must be kept. This is a question the department staff is frequently asked by employers throughout the state. It is important for employers to have this information regarding which records to maintain because the Human Rights Bureau uses these documents as evidence during the informal investigation of a discrimination complaint.

New Rule IV

The department proposes this rule to provide all parties to a complaint with notice regarding their burden of proof when bringing or defending a discrimination claim under the Act. It provides the public with information regarding how the Bureau will analyze cases to determine if such cases have merit.

New Rule V

New Rule V is proposed to clarify when information obtained during the filing of the complaint and the subsequent investigation will be released to the public. Human rights claims are often a matter of public interest, either because of

the individuals involved, or the nature of the allegations in the complaint. This rule outlines the method by which the department will balance the public's constitutional right to know with the individual's constitutional right to privacy in making the decision whether to release information requested by the public.

New Rules VI through XIV

The department proposes New Rules VI through XIV to provide the public with information regarding how to file a discrimination complaint and the specific information that must be contained in the complaint. These rules also give the parties important information on the methods and timelines that the department will follow during the informal investigation of claims of discrimination.

New Rule XV

This rule is proposed to inform individuals who no longer wish to pursue their discrimination claims how to withdraw such claims. This rule is important because the Equal Employment Opportunity Commission (EEOC), the federal agency with whom the department has a contract to process employment discrimination claims, has specific guidelines regarding how an individual can withdraw a formal complaint. The department must follow these guidelines when accepting the withdrawal of a complaint when that complaint has been filed with both the state and federal agency.

New Rules XVI through XVIII

The department proposes New Rules XVI through XVIII in order to provide parties with notice of the circumstances when the department will either dismiss or refuse to dismiss a complaint filed with the agency. It will also inform the public of the information that must be contained in a notice of dismissal from the agency. The department is proposing these rules because parties to a discrimination complaint frequently inquire when and under what circumstances the Act provides for the department to dismiss a complaint, or when the department may refuse to dismiss a complaint. These rules also inform the public of their right to file an appeal with the Montana Human Rights Commission when they are dissatisfied with a decision of the department.

5. Interested 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:

Kathy Helland
Human Rights Bureau
Department of Labor and Industry
P.O. Box 1728
Helena, Montana 59624-1728

and must be received by no later than 5:00 p.m., May 24, 2002. Comments may also be submitted electronically as noted in the following paragraph.

6. An electronic copy of this Notice of Public Hearing is available through the Department's site on the World Wide Web at http://dli.state.mt.us/calendar.htm, under the Calendar of Events, Administrative Rule Hearings section. Interested persons may make comments on the proposed rules via the comment forum, http://forums.dli.state.mt.us, linked to the Notice of Public Hearing, but those comments must be posted to the comment forum by 5:00 p.m., May 24, 2002. The Department strives to make the electronic copy of this Notice of Public Hearing conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the Department strives to keep its website accessible at all times, concerned persons should be aware that the website may be unavailable during some periods, due to system maintenance or technical problems, and that a person's technical difficulties in accessing or posting to the comment forum does not excuse late submission of comments.

7. The Department maintains a list of interested persons who wish to receive notices of rule-making actions proposed by this agency. Persons who wish to have their name added to the mailing 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 any specific topic or topics over which the Department has rule-making authority. Such written request may be delivered to Mark Cadwallader, 1327 Lockey St., room 412, Helena, Montana, mailed to Mark Cadwallader, P.O. Box 1728, Helena, MT 59624-1728, faxed to the office at (406) 444-1394, e-mailed to mcadwallader@state.mt.us, or made by completing a request form at any rules hearing held by the Department.

8. The bill sponsor notice provisions of 2-4-302, MCA, do not apply as these proposed rules incorporate pre-1999 changes to the Montana Human Rights Act.

9. The Hearings Bureau of the Centralized Services Division of the Department has been designated to preside over and conduct the hearing.

/s/ KEVIN BRAUN	/s/ WENDY J. KEATING
Kevin Braun	Wendy J. Keating, Commissioner
Rule Reviewer	DEPARTMENT OF LABOR & INDUSTRY

Certified to the Secretary of State: April 15, 2002.

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

In the matter of the proposed amendment of ARM 24.16.9001, 24.16.9002, 24.16.9003, 24.16.9004, 24.16.9005, 24.16.9006, and 24.16.9007, the adoption of new rules, and the proposed repeal of ARM 24.16.9008, 24.16.9009 and 24.16.9010, pertaining to prevailing wage matters	) NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION, AMENDMENT AND REPEAL

TO: All Concerned Persons

1. On May 17, 2002, at 10:00 a.m. a public hearing will be held in the 4th floor conference room of the Walt Sullivan Building, 1327 Lockey, Helena, Montana, to consider the proposed amendment of existing rules, the adoption of new rules and the repeal of rules, all related to prevailing wage matters.

2. The Department of Labor and Industry will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Department no later than 5:00 p.m., May 10, 2002, to advise us of the nature of the accommodation that you need. Please contact the Labor Standards Bureau, Attn: Mr. John Andrew, P.O. Box 6518, Helena, MT 59604-6518; telephone (406) 444-4619; TTY (406) 444-0532; fax (406) 444-7071; or e-mail joandrew@state.mt.us.

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

24.16.9001 PURPOSE AND SCOPE (1) These rules are adopted pursuant to 18-2-431, MCA, giving the commissioner rulemaking authority to implement the Montana Prevailing Wage law, commonly known as Montana's "Little Davis-Bacon" Act (18-2-401, et seq., MCA). The purpose of the above referenced statutes and these rules is to protect local labor markets, to maintain the general welfare of Montana workers on public works projects, to eliminate wage cutting as a method of competing for public contracts, to maintain wages and rates paid on public works at a level sufficient to attract highly skilled laborers performing quality workmanship and to prevent the rate of wages from adversely affecting the equal opportunity of Montana contractors to bid on public works.

(2) In 1931, the legislature enacted the Montana "Little Davis-Bacon" Act. The ~~act~~ Act requires a hiring preference for Montana workers in all contracts let for public works, a 50% preference on ~~state or federally funded~~ public works projects, excluding projects involving the expenditure of federal aid

funds or where residency preference laws are specifically prohibited by federal law, and empowers the commissioner to determine the minimum wage rates to be paid to all workers on public work contracts.

~~(3) In 1973, the Montana legislature added the word "services" to what is now 18-2-403(1), MCA. The legislative history of this amendment suggests that the legislature was extending Montana's Little Davis-Bacon Act beyond its original parameters. See Feb. 7, 1973, minutes of the house labor and employment relations committee. As a result of this amendment, the commissioner has issued prevailing wage rates for "services" as defined in ARM 24.16.9008. For example, rates have been published covering janitorial services as well as automobile and snowmobile repair and maintenance.~~

AUTH: 18-2-409, 18-2-431 and 39-3-202, MCA
IMP: 18-2-401, 18-2-402, 18-2-411 and 39-3-201 through 39-3-216, MCA

24.16.9002 DEFINITIONS As used in ~~these rules~~ this subchapter, the following definitions apply, unless the context of the rule clearly indicates otherwise:

(1) "Act" means 18-2-401 through 18-2-432, MCA.

(2) "Adverse decision" means a decision by the department, or a hearing officer that is not favorable to the party who wishes to have the decision reviewed.

~~(2)~~(3) "Apprentice" means a worker employed to learn a skilled trade under a written apprenticeship agreement registered with the department~~.~~ or the U.S. bureau of apprenticeship and training.

~~(3)~~(4) "Bona fide resident of Montana" is defined at 18-2-401, MCA.

~~(4)~~(5) "Commissioner" means the commissioner of labor and industry, as provided by 2-15-1701, MCA.

(6) "Certified payroll records" mean payroll records of an employer which show the rates and hours paid and any deductions therefrom, made by the employer on a public works contract job and which have been verified by or on behalf of the employer as being complete and accurate.

(7) "Complaint" means:

(a) a written complaint alleging non-payment of the standard prevailing wage on a public works contract job;

(b) a written request for an audit of an employer's payroll on a public works contract job; or

(c) a field investigation by the department of an employer's payroll on a public works contract job.

(8) "Day" means a calendar day.

~~(5)~~(9) "Department" means the department of labor and industry, as provided by 2-15-1701, MCA.

(10) "Determination" means a decision by the department which states the amount of wages and penalty (if any) that may be owed for labor performed on a public works contract job.

~~(6)~~(11) "District" means a prevailing wage district as established under 18-2-411, MCA. ~~The commissioner has established ten (10) districts, made up of the following~~

~~counties:~~
~~District 1 - Flathead, Lake, Lincoln, and Sanders;~~
~~District 2 - Mineral, Missoula, and Ravalli;~~
~~District 3 - Beaverhead, Deer Lodge, Granite, Madison, Powell, and Silver Bow;~~
~~District 4 - Blaine, Cascade, Choteau, Glacier, Hill, Liberty, Pondera, Teton, and Toole;~~
~~District 5 - Broadwater, Jefferson, Lewis and Clark, and Meagher;~~
~~District 6 - Gallatin, Park and Sweet Grass;~~
~~District 7 - Fergus, Golden Valley, Judith Basin, Musselshell, Petroleum, and Wheatland;~~
~~District 8 - Big Horn, Carbon, Rosebud, Stillwater, Treasure and Yellowstone;~~
~~District 9 - Daniels, Garfield, McCone, Phillips, Richland, Roosevelt, Sheridan, and Valley;~~
~~District 10 - Carter, Custer, Dawson, Fallon, Prairie, Powder River and Wibaux.~~

(12) "Employ" has the same meaning as provided by 39-3-201, MCA.

(13) "Employee" has the same meaning as provided by 39-3-201, MCA, and includes any laborer, mechanic, skilled, unskilled and semiskilled laborer and apprentices employed by a contractor, subcontractor or employer and engaged in the performance of services directly upon or immediately adjacent to the job site. The term does not include material suppliers or their employees who do not perform services at the job site.

(14) "Employer" has the same meaning as provided by 39-3-201, MCA, and includes contractors and subcontractors.

(15) "Formal hearing" means a contested case, held by a department hearing officer, pursuant to Title 2, chapter 4, part 6, MCA.

(16) "Penalty" means the statutory penalty provided by 18-2-407, MCA, which is assessed by the department against the employer and which is paid to the employee in addition to the wages owed.

~~(7)~~(17) "Public contracting agency" includes:

(a) the state of Montana or any political subdivision thereof;

(b) the Montana university system;

(c) any local government or political subdivision thereof;

(d) school districts, irrigation districts, or other public authorities organized under the laws of the state of Montana; or

(e) any board, council, commission, trustees or other public body acting as or on behalf of a public agency.

~~(8) "Public contractor" means a contractor holding a valid public contractors license issued by the Montana department of commerce as provided for in section 37-71-201, et seq., MCA, or having entered into a contract for the performance of construction, service, repair or maintenance work with the federal government or a public contracting agency.~~

~~(9) "Public works" means construction, repair and maintenance, or services performed for a public contracting~~

~~agency paid for wholly or in part by the funds of any public agency.~~

(18) "Prevailing wage" or "standard prevailing rate of wages" means the standard prevailing rate of wages, as provided by 18-2-401, MCA, and as adopted by the department for work on public works contracts. The standard prevailing rate of wages determined according to these rules is not a prescribed wage rate, but is rather a minimum, at or above which an individual performing labor on a public works project must be compensated.

(19) "Redetermination" means an informal review by the department, based upon new or additional information supplied by a party who has received an adverse determination.

~~(10) "Standard prevailing rate of wages" means the standard prevailing rate of wages ad defined in 18-2-401, MCA. A standard prevailing rate of wages determined according to these rules is not a prescribed wage rate, but is rather, a minimum at or above which an individual performing labor on a public work project must be compensated.~~

(20) "Wages" have the same meaning as provided by 18-2-401, 18-2-412, and 39-3-201, MCA.

AUTH: 18-2-409, 18-2-431 and 39-3-202, MCA

IMP: 18-2-402, 18-2-403, 18-2-422 and 39-3-201 through 39-3-216, MCA

24.16.9003 ESTABLISHING THE STANDARD PREVAILING RATE OF WAGES AND FRINGE BENEFITS (1) When deemed necessary, the commissioner shall establish the standard prevailing rate of wages and fringe benefits for the various occupations in each district. Except as used in (2) and (3), the term "prevailing rate of wages" includes both wages and fringe benefits.

(2) Based on survey data collected by the department for each district, the commissioner will compile wage rate information for a given occupation that reflects wage rates actually paid to workers engaged in public works and in private or commercial projects. Wage rates for each occupation will be set using the following procedure:

(a) If a minimum of 5,000 reported hours exists for the occupation within the district, a weighted average of the wages based on the number of hours reported will be used to calculate the district prevailing wage rate.

(b) If less than 5,000 hours for the occupation is reported, the commissioner will use collective bargaining agreement wage rates in the district for the occupation.

(c) If a collective bargaining agreement does not exist for the occupation, and a minimum of 5,000 hours are reported in the combined contiguous districts, a weighted average wage rate for the district based on hours will be computed using data submitted from all contiguous districts. Districts and their contiguous districts are as follows:

(i) District 1 (Flathead, Lincoln, Sanders, Lake counties): districts 2, 3, 4, and 5.

(ii) District 2 (Missoula, Ravalli, and Mineral counties): districts 1 and 3.

(iii) District 3 (Granite, Powell, Deer Lodge, Silver Bow,

Madison, and Beaverhead counties): districts 1, 2, 5, and 6.

(iv) District 4 (Cascade, Choteau, Toole, Liberty, Glacier, Pondera, Teton, Hill, and Blaine counties): districts 1, 5, 7, and 9.

(v) District 5 (Lewis and Clark, Broadwater, Meagher, and Jefferson counties): districts 1, 3, 4, 6, and 7.

(vi) District 6 (Gallatin, Park, and Sweet Grass counties): districts 3, 5, 7, and 8.

(vii) District 7 (Wheatland, Fergus, Musselshell, Petroleum, Golden Valley, and Judith Basin counties): districts 4, 5, 6, 8, and 9.

(viii) District 8 (Stillwater, Yellowstone, Rosebud, Treasure, Big Horn, and Carbon counties): districts 6, 7, 9, and 10.

(ix) District 9 (Valley, Phillips, Sheridan, Daniels, Garfield, McCone, Richland, and Roosevelt counties): districts 4, 7, 8, and 10.

(x) District 10 (Carter, Wibaux, Dawson, Fallon, Prairie, Custer, and Powder River counties): districts 8 and 9.

(d) If contiguous district data does not sum to a minimum of 5,000 hours, a statewide weighted average wage rate will be calculated for the occupation.

(e) If a minimum of 5,000 hours is not reported for the occupation in the entire state, then other information which the commissioner deems applicable will be used to establish the prevailing wage rate for the occupation. The commissioner shall consider:

(i) the established and special project rates of the previous year;

(ii) wage rates determined by the federal government under the Davis-Bacon Act and the Federal Service Contract Act;

(iii) wage rate information compiled on a regular basis by the department;

(iv) appropriate information from such wage surveys as may be conducted by the department; and

(v) other pertinent information.

(3) Based on survey data collected by the department of labor and industry, for each district, the commissioner will compile fringe benefit information for a given occupation by district that reflects fringe benefits actually paid to workers engaged in public works and in private or commercial projects. Fringe benefit rates for each occupation will be set for health and welfare, pension, vacation, and training using the following procedure:

(a) If a minimum of 5,000 reported hours exists for the occupation within the district, and each fringe benefit reported for a given occupation has at least 50% of the total number of hours submitted for that occupation, a weighted average of the fringe benefits based on the number of hours reported will be used to calculate the district prevailing fringe benefit rates.

(b) If less than 5,000 hours for the occupation is reported, or a given fringe benefit for the occupation does not have at least 50% of the total number of hours submitted for that occupation, the commissioner will use existing collective

bargaining agreements for the district that were effective during the survey period to determine fringe benefit rates for the occupation.

(c) If a collective bargaining agreement does not exist for the occupation, and a minimum of 5,000 hours are reported in the combined contiguous districts, hours will be totaled for contiguous district fringe benefits. Each fringe benefit must be represented by at least 50% of the total number of hours submitted in contiguous districts for that occupation for fringe benefit rates to be set. A weighted average fringe benefit rate for the district based on hours will be computed using data submitted from all contiguous districts. Districts and their contiguous districts are the same as provided by (2)(c) of this rule.

(d) If contiguous district fringe benefit data does not sum to a minimum of 5,000 hours, or does not have 50% of the total number of hours in contiguous districts submitted for that occupation, statewide weighted average fringe benefit rates will be calculated for the occupation.

(e) If a minimum of 5,000 hours is not reported for the occupation in the entire state, then other information which the commissioner deems applicable will be used to establish the prevailing fringe benefit rates for the occupation. The commissioner shall consider:

(i) the established and special project rates of the previous year;

(ii) rates determined by the federal government under the Davis-Bacon Act and the Federal Service Contract Act;

(iii) rate information compiled on a regular basis by the department;

(iv) appropriate information from such surveys as may be conducted by the department; and

(v) other pertinent information.

(4) The commissioner may request clarification, additional information or independent verification of information submitted pursuant to this rule.

(5) The commissioner will annually incorporate the federal Davis-Bacon Act wage rates established for Montana as the state heavy and highway construction rates. Building construction services prevailing wage rates will be updated in even-numbered years, and nonconstruction services will be updated in odd-numbered years.

(6) In the event of an incorrect prevailing wage rate being published, the commissioner will review additional data submitted to determine that the rate is incorrect. If found to be incorrect, the prevailing wage rate will revert to the last published rate that was adopted via the rulemaking and public hearing process. For temporary rates which have not been adopted via the rulemaking and the public hearing process, an amended rate will be calculated based on information collected and submitted.

(7) It is the obligation of any person having possession or knowledge of wage rate information, including collective bargaining agreements that the commissioner should consider, or

it is desired that the commissioner consider, to timely deliver such information to the commissioner.

(8) Wage information may be considered by the commissioner only if such information is delivered at the Office of the Commissioner, Department of Labor and Industry, Walt Sullivan Building, 1327 Lockey, P.O. Box 1728, Helena, Montana 59624-1728, within the time set by the commissioner.

(9) Within each district, the commissioner considers current wage rate information on file and sets the standard prevailing rate of wages for each craft, trade, occupation, or type of workers ~~covered by the provisions of the Act~~. Except as provided in (2), all rates shall be adopted in accordance with ARM 24.16.9007.

AUTH: 18-2-409, 18-2-431 and 39-3-202, MCA
IMP: 18-2-401, 18-2-402, 18-2-403 and 18-2-411, MCA

24.16.9004 DEPARTMENT ASSISTANCE AND NEW JOB CLASSIFICATION RATES (1) Assistance in determining the nature of public works projects and whether heavy, highway or building construction prevailing wage rates apply, can be obtained through the office of the commissioner of labor and industry. Any determination or assistance provided by the commissioner's office is based solely on the facts as presented to the commissioner in the specific request for assistance.

~~(1)~~(2) If the commissioner receives a written request for a rate that does not exist for a particular craft, trade, or occupation ~~that is covered by the provisions of the Act~~, the commissioner may set an interim advisory rate that may be used by the public contracting agency or public contractor until the rate is published in accordance with ARM 24.16.9007. Such rates will not be established more frequently than once every three months.

~~(2)~~(3) At least 30 days prior to advertising for bids or letting a contract for a public works project, a public contracting agency may request that a new job classification and commensurate rate of wages and fringe benefits be established for a particular craft, classification or type of worker needed for a project. The commissioner will establish a standard prevailing rate of wages for any craft, classification or type of worker for which no rate has been previously determined.

~~(3)~~(4) A request for a new project job classification and commensurate rate of wages and benefits does not relieve a contractor from the obligation to classify and pay workers in accordance with annually established standard prevailing wage rates pending the establishment of a new job classification and wage rates.

~~(4)~~(5) A request for a new job classification and rate of wages shall include:

(a) identification of the project by name, number or description and location;

(b) the name and address of the public contracting agency and the successful public contractor if a contract for work on the project has been awarded;

(c) the name, address and signature of the requesting

party, and the name, address and signature of a requesting party's representative;

(d) each proposed job classification and rate of wages requested;

(e) a brief description of the project and the character of the work to be performed;

(f) a detailed description of the job requirements, work to be performed and skills involved in each proposed job classification;

(g) an explanation as to why none of the classifications established for the standard prevailing rate of wages is applicable;

(h) any written items of information or documents the requesting party desires to be considered;

(i) the names and addresses of all parties entitled to notice and a signed and dated certificate showing that a copy of the request was mailed to each.

~~(5)~~(6) A request for a new job classification and rate of wages must establish:

(a) that the project is of such an unusual character that its performance requires unique skills not traditionally performed by any craft classification or type of worker for which there has been established a standard prevailing rate of wages;

(b) that there exists a classification of workers who commonly perform work involving such unique skills at the proposed rate of wages.

AUTH: 18-2-409, 18-2-431 and 39-3-202, MCA
IMP: 18-2-402 and 18-2-422, MCA

24.16.9005 OBLIGATIONS OF PUBLIC CONTRACTING AGENCIES

(1) A public contracting agency must include in the bid specifications and contracts for any public works the following:

(a) An unequivocal agreement by the contractor to give preference to employment of bona fide Montana residents in compliance with 18-2-403(1), MCA. For any ~~state~~ construction project, excluding projects involving the expenditure of federal aid funds or where residency preference laws are specifically prohibited by federal law, ~~except where specifically prohibited by federal law~~ the bid specifications and the contract shall provide that at least 50% of the ~~workers (including workers employed by subcontractors)~~ man hours worked (labor performed) on the project will be performed by bona fide Montana residents in compliance with 18-2-403(1) and 18-2-409, MCA. In the case of a particular contractor such percentage of Montana residents shall be modified to comply with any written directive by the commissioner specifying a different percentage.

(b) An unequivocal agreement by the contractor that a worker (including workers employed by a subcontractor) performing labor on the project will be paid the applicable standard prevailing rate of wages as determined by the commissioner.

(c) A listing of standard prevailing wage rates including fringe benefits determined by the commissioner applicable ~~at the~~

~~project sites~~ to the public works contract ~~and language in the contractor's agreement incorporating the same by reference or otherwise~~.

(d) The contract provisions must clearly show that the contractor and its subcontractors are bound to pay wages at rates determined by the commissioner, and to give required preferences.

(2) If a contract for public works is to be performed in more than one district where a different standard prevailing rate of wages is established for a particular craft, classification or type of worker, the highest rate is the rate to be included in the bid specifications and contract provision.

(3) Whenever a public works project~~, where the public contractor is required to be licensed pursuant to 37-71-201, et seq., MCA,~~ is accepted by a public contracting agency, the agency shall promptly send to the department a notice of acceptance and the completion date of the project. This notice is required only if the public works project is covered by the Act.

(4) If a public contracting agency fails to comply with the requirements of this rule, the obligation to pay the standard prevailing rate of wages will be placed on the public contracting agency and the ~~public~~ contractor may be relieved of such obligation.

AUTH: 18-2-409 and 18-2-431, MCA

IMP: 18-2-403, 18-2-421 and 18-2-422, MCA

24.16.9006 OBLIGATIONS OF ~~PUBLIC~~ EMPLOYERS, CONTRACTORS AND SUBCONTRACTORS (1) All ~~public~~ contractors and subcontractors shall give preference in hiring to bona fide Montana residents in the performance of public works contracts ~~for public works~~.

(a) In the performance of a public works contract for a ~~state~~ construction project, a ~~public~~ contractor, subcontractor or employer shall ensure that at least 50% of all ~~workers performing labor~~ man hours worked (labor performed) ~~under the contract for public works~~ on the project is performed by ~~are~~ bona fide Montana residents.

(b) For cause as provided in 18-2-409, MCA, a contractor, subcontractor or employer may in writing request that the commissioner modify percentage residency requirements on a particular ~~state~~ project. In requesting the variance, the contractor, subcontractor or employer must document in writing any and all measures taken in assessing the availability of bona fide Montana employees including, but not limited to, contacting local job service offices, newspaper advertising, and contacting local union halls, temporary or personnel agencies. The commissioner may modify or waive residency requirements under the provision of the statute and shall by written directive notify the contracting agency of any such modification or waiver.

(2) All ~~public~~ contractors, ~~and its~~ subcontractors and employers shall classify each ~~worker~~ employee who performs labor on a public works project according to the applicable standard

prevailing rate of wages for such craft, classification or type of ~~worker~~ employee established by the commissioner, and shall pay each such ~~worker~~ employee a rate of wages not less than the standard prevailing rate.

~~(3) A public contractor or subcontractor shall require its subcontractors to comply with the law for contractor's bonds for wages and benefits prescribed by 39-3-701, et seq., MCA unless excepted under 39-3-704, MCA. A contractor is jointly and separately responsible for its subcontractor's failure to comply with classification and wage payment provisions of state law and department rules, including penalties assessed thereon.~~

~~(4) Public contractors and subcontractors shall keep clear and legible records for each employee who performs labor on a public works project showing:~~

~~(a) the place where the employee was contacted for hiring;~~

~~(b) whether or not the employee is a bona fide Montana resident;~~

~~(c) the craft, classification or type of work performed by the employee in conformity with the applicable standard prevailing rate of wages;~~

~~(d) the date, the time worked, on an hourly basis, and the identification of the project for each day the employee performed work on a public works project;~~

~~(e) the hourly rate of wages, including fringe benefits for health, welfare, pension contributions, travel allowance and other terms by which the employee was compensated for such work.~~

~~(5) Public contractors and subcontractors must properly classify workers in accordance with the craft or trade to be performed. For example, an electrician or plumber may not be classified as a laborer in order to pay a lower prevailing rate of wages.~~

AUTH: 18-2-409 and 18-2-431, MCA
IMP: 18-2-403, MCA

24.16.9007 ADOPTION OF STANDARD PREVAILING RATE OF WAGES

(1) The commissioner's determination of minimum wage rates, including fringe benefits for health and welfare, pension contributions and travel allowance, by craft, classification or type of worker, and by character of project, are adopted in accordance with the Montana Administrative Procedure Act and rules implementing ~~the Act~~ such act.

(a) A notice of proposed adoption of the commissioner's determination is published in the Montana Administrative Register 30 to 45 days prior to adoption according to regular publication dates scheduled in ARM 1.2.419.

(b) Adopted wage rates are effective until superseded and replaced by a subsequent adoption.

(c) The wage rates applicable to a particular public works project are those in effect at the time the bid specifications are advertised.

(d) The wage rates proposed and the wage rates adopted are incorporated by reference in respective notices published in the Montana Administrative Register.

~~(e) The current building construction services rates are~~

~~contained in the 2000 version of "The State of Montana Prevailing Wage Rates - Building Construction Services" publication.~~

~~(f) The current non-construction services rates are contained in the 1997 version of "The State of Montana Prevailing Wage Rates - Service Occupations" publication.~~

~~(g) The current heavy and highway construction services rates are contained in the 2000 version of "The State of Montana Prevailing Wage Rates - Heavy and Highway Construction Services" publication.~~

(2) The commissioner maintains a mailing list of interested persons and agencies. A copy of any notice, proposed rate of wages, adopted rates, wages or other information are distributed to each addressee. All others may obtain a copy or be included on the mailing list upon request to the ~~Labor Standards Bureau, Employment Relations Division~~ Office of Research and Analysis, Workforce Services Division, Department of Labor and Industry, ~~P.O. Box 1728~~ 840 Helena Avenue, Helena, MT ~~59624~~ 59601. Copies of adopted wage rates are available at reproduction cost for a period of five years following their effective date.

(3) The standard prevailing rates of wages are hereby adopted and incorporated by reference. Copies of the rates are available upon request from the ~~Labor Standards Bureau, Employment Relations Division~~ Office of Research and Analysis, Workforce Services Division, Department of Labor and Industry, ~~1805 Prospect Avenue, P.O. Box 1728~~ 840 Helena Avenue, Helena, MT ~~59624~~ 59601, (406) 444-~~5600~~ 2430.

AUTH: 18-2-409, 18-2-431 and 39-3-202, MCA
IMP: 18-2-401, 18-2-402, 18-2-403 and 18-2-412, MCA

4. The Department proposes to adopt new rules as follows:

NEW RULE I OBLIGATIONS OF PARTIES REGARDING THE PAYMENT OF PREVAILING WAGES (1) Montana law requires payment of the standard prevailing rate of wages on public works contracts. Public contracting agencies, contractors, and subcontractors and employers each have a role in complying with the prevailing wage laws.

(2) Assistance in determining the nature of public works projects and whether heavy, highway or building construction prevailing wage rates apply, can be obtained through the office of the commissioner of labor and industry. Any determination or assistance provided by the commissioner's office is based solely on the facts as presented to the commissioner in the specific request for assistance.

(3) Pursuant to 18-2-422, MCA, a public contracting agency is obligated to include in its bid specifications and public works contracts a provision that the contractors, subcontractors and employers must pay the standard prevailing rate of wages in the performance of the public works contract, and specify what those rates are. As provided in 18-2-403, MCA, the failure of the public contracting agency to include such provisions subjects the public contracting agency to liability for any

underpaid wages owed by any contractor, subcontractor or employer for the performance of the public works contract.

(4) Pursuant to 18-2-403, MCA, if the public contracting agency includes the required provisions regarding payment of the standard prevailing rate of wages, the contractor, subcontractor or employer that signs the contract with the public contracting agency is obligated to ensure that the appropriate standard prevailing rate of wages is paid to each employee performing construction services in performance of the public works contract, and is liable for any underpaid wages or fringe benefits.

(5) As provided in 18-2-406, MCA, each contractor, subcontractor or employer must post the wage scale to be paid for work done in performance of the public works contract in a prominent and accessible site on the project or work area from the first day of work and continued for the duration of the project. Failure to pay at least the standard prevailing rate of wages subjects each contractor, subcontractor or employer to penalties and fees as provided by law.

(6) In order to ensure compliance with Montana's prevailing wage laws, public contracting agencies, contractors, subcontractors and employers may enter into contractual agreements that specify that each contractor, subcontractor or employer working on the public works contract has an obligation to ensure that any person, firm or entity performing any portion of the public works contract for which the contractor, subcontractor or employer is responsible, is paid the applicable standard prevailing rate of wages. The terms of the contract may include a provision for the indemnification of a party that is required to pay underpaid wages on behalf of any other person, firm or entity that failed to properly pay the required prevailing wage.

(7) The failure of a contractor, subcontractor or employer to comply with the provisions of 18-2-412, MCA, regarding the acceptable alternative methods of paying the standard prevailing rate of wages, may subject that party to penalties as provided by law and damages or obligations as specified by contract.

AUTH: 18-2-431, MCA
IMP: 18-2-403, 18-2-406, 18-2-407, 18-2-412 and 18-2-422, MCA

NEW RULE II PREVAILING WAGE DISTRICTS ESTABLISHED

(1) Pursuant to 18-2-411, MCA, the commissioner has established 10 districts for the purpose of setting the standard prevailing rate of wages for construction services (other than heavy construction or highway construction) and non-construction services. Heavy construction and highway construction rates are set on a state-wide basis, as provided by 18-2-411, MCA.

(2) The districts are composed of the following counties:

(a) District 1: Flathead, Lake, Lincoln, and Sanders;

(b) District 2: Mineral, Missoula, and Ravalli;

(c) District 3: Beaverhead, Deer Lodge, Granite, Madison, Powell, and Silver Bow;

(d) District 4: Blaine, Cascade, Choteau, Glacier, Hill, Liberty, Pondera, Teton, and Toole;

(e) District 5: Broadwater, Jefferson, Lewis and Clark, and Meagher;

(f) District 6: Gallatin, Park, and Sweet Grass;

(g) District 7: Fergus, Golden Valley, Judith Basin, Musselshell, Petroleum, and Wheatland;

(h) District 8: Big Horn, Carbon, Rosebud, Stillwater, Treasure, and Yellowstone;

(i) District 9: Daniels, Garfield, McCone, Phillips, Richland, Roosevelt, Sheridan, and Valley;

(j) District 10: Carter, Custer, Dawson, Fallon, Prairie, Powder River, and Wibaux.

AUTH: 18-2-431, MCA
IMP: 18-2-411, MCA

NEW RULE III PUBLIC WORKS CONTRACTS FOR CONSTRUCTION SERVICES SUBJECT TO PREVAILING RATES (1) Public works contracts for construction services where the total contract price is more than $25,000 are subject to standard prevailing wage requirements, and include building construction, heavy construction, and highway construction.

(2) Building construction projects generally are the constructions of sheltered enclosures with walk-in access for housing persons, machinery, equipment, or supplies. It includes all construction of such structures, incidental installation of utilities and equipment, both above and below grade level, as well as incidental grading, utilities and paving.

(a) Examples of building construction include, but are not limited to, alterations and additions to buildings, apartment buildings (5 stories and above), arenas (closed), auditoriums, automobile parking garages, banks and financial buildings, barracks, churches, city halls, civic centers, commercial buildings, court houses, detention facilities, dormitories, farm buildings, fire stations, hospitals, hotels, industrial buildings, institutional buildings, libraries, mausoleums, motels, museums, nursing and convalescent facilities, office buildings, out-patient clinics, passenger and freight terminal buildings, police stations, post offices, power plants, prefabricated buildings, remodeling buildings, renovating buildings, repairing buildings, restaurants, schools, service stations, shopping centers, stores, subway stations, theaters, warehouses, water and sewage treatment plants (buildings only), etc.

(b) Projects involving the construction, alteration, or repair of single family individual dwelling units, houses, or apartment buildings of not more than four stories in height and consisting of not more than eight living units, are not subject to the prevailing wage rates.

(3) Highway construction projects include, but are not limited to, the construction, alteration, or repair of roads, streets, highways, runways, taxiways, alleys, trails, paths, and parking areas, bridges constructed or repaired in conjunction with highway work, and other similar projects not incidental to building construction or heavy construction.

(a) Highway construction projects include, but are not

limited to, alleys, base courses, bituminous treatments, bridle paths, concrete pavement, curbs, excavation and embankment (for road construction), fencing (highway), grade crossing elimination (overpasses or underpasses), guard rails on highways, highway signs, highway bridges (overpasses, underpasses, grade separation), medians, parking lots, parkways, resurfacing streets and highways, roadbeds, roadways, runways, shoulders, stabilizing courses, storm sewers incidental to road construction, street paving, surface courses, taxiways, and trails.

(4) Heavy construction projects include, but are not limited to, those projects that are not properly classified as either "building construction", or "highway construction."

(a) Heavy construction projects include, but are not limited to, antenna towers, bridges (major bridges designed for commercial navigation), breakwaters, caissons (other than building or highway), canals, channels, channel cut-offs, chemical complexes or facilities (other than buildings), cofferdams, coke ovens, dams, demolition (not incidental to construction), dikes, docks, drainage projects, dredging projects, electrification projects (outdoor), fish hatcheries, flood control projects, industrial incinerators (other than building), irrigation projects, jetties, kilns, land drainage (not incidental to other construction), land leveling (not incidental to other construction), land reclamation, levees, locks and waterways, oil refineries (other than buildings), pipe lines, ponds, pumping stations (prefabricated drop-in units-not buildings), railroad construction, reservoirs, revetments, sewage collection and disposal lines, sewers (sanitary, storm, etc.), shoreline maintenance, ski tows, storage tanks, swimming pools (outdoor), subways (other than buildings), tipples, tunnels, unsheltered piers and wharves, viaducts (other than highway), water mains, waterway construction, water supply lines (not incidental to building), water and sewage treatment plants (other than buildings) and wells.

AUTH: 18-2-431, MCA
IMP: 18-2-401, 18-2-402 and 18-2-403, MCA

NEW RULE IV COMMERCIAL SUPPLIER DEFINED (1) As used in this chapter, the term "commercial supplier" means a person, firm or entity that regularly furnishes goods and supplies to the public or to a particular sector or industry. The term includes both retail and wholesale operations, but does not include a person, firm or entity that limits its sales or production output from any single source or place of operation for use solely in the performance of public works contracts.

(2) As used in this rule, the term "goods and supplies" means tangible items, materials or commodities that are produced or manufactured for use or incorporation in construction projects. The term includes both items that are produced or manufactured to a standard size, grade or dimension, as well as items that are specially manufactured or produced on a "to order" or "made to measure" basis.

AUTH: 18-2-431, MCA

IMP: 18-2-401, MCA

NEW RULE V COMMERCIAL SUPPLIERS NOT SUBJECT TO PREVAILING WAGE LAWS (1) A commercial supplier of goods and supplies is not subject to Montana's prevailing wage laws unless that supplier acts as a construction contractor, subcontractor or employer on the public works contract by performing on-site labor.

(2) Employees of a commercial supplier who are engaged in the performance of services directly upon the job site must be paid the applicable prevailing wage rate for the classification of work performed.

(3) For the purposes of this rule, the term "construction work" means labor that is performed after the commercial supplier delivers the goods or supplies. The fact that a commercial supplier charges for delivery (based on distance from the commercial supplier's location to the job site) does not transform the delivery into "construction work".

(a) As an example, the dumping of gravel from a belly-dump trailer, even if the dumping is done in a long row, is considered to be part of the delivery of the gravel. However, if the driver of the delivery vehicle performs "shovel work" after the load is dumped, that "shovel work" is considered to be "construction work".

(b) As another example, ready-mixed concrete is delivered by a commercial supplier from the mixer truck to a particular location on the job site. The mixer truck operator is delivering the concrete when the operator directs the flow of concrete down the delivery chute that is attached to the mixer truck, even if that flow is directed into a form that has been assembled by others in place. Further movement or manipulation of the concrete, after it leaves the end of the delivery chute, such as distributing the concrete evenly in the form with a shovel or screeding the concrete, constitutes "construction work".

(c) As another example, a commercial supplier delivers road oil to a public works contract site in a tank truck. The transfer of the road oil from the tank truck to a storage tank or into a road oiler truck is considered to be delivery within the meaning of this rule. However, if the supplier's tank truck also sprays the road oil directly on the road surface, that spraying operation is considered to be "construction work" for which the prevailing rate of wages must be paid.

(d) As another example, a commercial supplier of cabinets is not engaging in "construction work" by delivering the cabinets to a particular location or locations in a building that is being constructed pursuant to a public works contract. However, any installation work done to attach the cabinets to the building, or work performed after the cabinets are attached to the building, constitutes "construction work" within the meaning of this rule.

AUTH: 18-2-431, MCA
IMP: 18-2-401, MCA

NEW RULE VI CLASSIFYING EMPLOYEES FOR CONSTRUCTION SERVICES (1) All employers on public works contracts for construction services (including contractors and subcontractors) shall classify each employee who performs labor on a public works contract project according to the applicable standard prevailing rate of wages for such craft, classification or type of employee established by the commissioner, and shall pay each employee a rate of wages not less than the standard prevailing rate. In instances where an employee performs duties and tasks associated with other crafts for 30 minutes or less per day, the employee would still receive the appropriate rate of wages established for the employee's primary craft classification.
AUTH: 18-2-431, MCA
IMP: 18-2-401, 18-2-402 and 18-2-403, MCA

NEW RULE VII PROJECTS OF A MIXED NATURE (1) Prevailing wage projects will use either the heavy, highway, or building construction prevailing wage rates. In certain cases, multiple wage schedules should be included in the bid document.

(2) A guideline referred to as the "20% test" can generally be followed to determine when the heavy, highway, or building construction prevailing wage rates should be used for construction contracts.

(a) This guideline is applied when, for example, a project is principally a contract for heavy or highway construction, but building construction is a "significant component" of the project (where the budget for building construction exceeds 20% of the total anticipated construction contract amount). The project engineer should then include both the heavy or highway construction rates and building construction rates in the bid document.

(b) The same "20% test" concept would apply to a project which is principally a contract for building construction, but also includes more than 20% of the contract price for non-building construction activity. In such cases, the contract should include both the building construction rates and heavy or highway construction prevailing wage rates in the bid document.

(c) In a project of a mixed nature where the 20% guideline applies, a contractor may pay the higher of the rates (on a craft-by-craft basis) for all work performed under the contract. However, in a project of a mixed nature, the contractor is not required to pay at a rate higher than is applicable for the craft for the type of work being performed.

(3) Only one schedule of rates (either building construction, heavy construction or highway construction) is issued if a particular type of construction activity is merely "incidental" in comparison to the overall character of the entire project. For the purpose of this rule, "incidental" means that the work in question either constitutes less than 20% of the total contract price, or the work in question costs less than $1,000,000.
AUTH: 18-2-431, MCA
IMP: 18-2-401, 18-2-402 and 18-2-403, MCA

NEW RULE VIII DIVIDING PROJECTS PROHIBITED (1) Public contracting agencies shall not divide a public works project into more than one contract for the purpose of avoiding compliance.

(2) When making a determination of whether the public agency divided a contract to avoid compliance, the commissioner shall consider the facts and circumstances in any given situation including, but not limited to, the following matters:

(a) the physical separation of project structures;

(b) whether a single public works project includes several types of improvements or structures;

(c) the anticipated outcome of the particular improvements or structures the agency plans to fund;

(d) whether the structures or improvements are similar to one another and combine to form a single, logical entity having one overall purpose or function;

(e) whether the work on the project is performed in one time period or in several phases as components of a larger entity;

(f) whether a contractor, subcontractor or employer and their employees are the same or substantially the same throughout the particular project;

(g) the manner in which the public contracting agency and the contractors, subcontractors or employers administer and implement the project; and

(h) other relevant matters as may arise in any particular case.

(3) When the commissioner determines that a public contracting agency has divided a public works project to avoid compliance, the commissioner shall issue an order compelling compliance. The order shall be written and shall offer the public contracting agency the opportunity to contest the order.

AUTH: 18-2-431, MCA
IMP: 18-2-401, 18-2-402 and 18-2-403, MCA

NEW RULE IX CLASSIFYING EMPLOYEES FOR NON-CONSTRUCTION SERVICES (1) All employers on public works contracts for non-construction services (including contractors and subcontractors) shall classify each employee who performs labor on a public works contract project according to the applicable standard prevailing rate of wages for such craft, classification or type of employee established by the commissioner, and shall pay each such employee a rate of wages not less than the standard prevailing rate.

(2) The prohibition against dividing projects so as to avoid payment of the prevailing wages, as provided in [NEW RULE VIII], is also applicable to public works contracts involving non-construction services.

AUTH: 18-2-431, MCA
IMP: 18-2-401, 18-2-402 and 18-2-403, MCA

NEW RULE X "SITE OF WORK" FOR NON-CONSTRUCTION SERVICES

(1) Unlike construction services, which by their very nature are performed at a specific site of work, many non-

construction services can be performed at the place of business of the public contracting agency or at the place of the contractor. The fact that non-construction services are rendered at locations away from the place of business of the governmental entity does not change the requirement that the prevailing wage must be paid under the contract.

(2) As an example, school hot lunches under a food service contract could be prepared at the kitchen of a school where the food is being served, or the food could be prepared at the caterer's own kitchen and transported to the school. Regardless of where the food is being prepared, however, the employees must be paid the prevailing wage.

AUTH: 18-2-431, MCA
IMP: 18-2-401, 18-2-402 and 18-2-403, MCA

NEW RULE XI REQUIRED RECORDS (1) All contractors, subcontractors or employers performing work on public works contracts shall make and maintain for a period of three years from the completion of work upon such public works projects, records necessary to determine whether the prevailing rate of wage and overtime has been or is being paid to employees upon public works projects.

(2) In addition to the certification required by [NEW RULE XIII], records necessary to determine whether the prevailing wage rate and overtime wages have been or are being paid must include, but are not limited to, records of:

(a) the name, address, and social security number of each employee;

(b) the work classification or craft of each employee;

(c) the rate or rates of monetary wages and fringe benefits paid to each employee, including:

(i) the amount of payment (if any) for travel expenses;

(ii) the amount of payment (if any) for per diem expenses;

(iii) the amount of payment (if any) for other reimbursed expenses; and

(iv) the fair market value of any other benefits provided to the employee by the employer, such as allowing personal use of a company vehicle by the employee and the value of meals and lodging directly furnished by the employer;

(d) the rate or rates of fringe benefits payments made in lieu of those required to be provided to each employee;

(e) total daily and weekly compensation paid to each employee;

(f) the daily and weekly hours worked by each employee, specified by actual calendar date; and if the employee worked in more than one craft or classification for which different rates were payable, the records shall show the number of hours in each day worked at the different crafts or classifications;

(g) apprenticeship and training agreements and standards;

(h) any deduction, rebates or refunds taken from each employee's total compensation and actual wages paid; and

(i) any payroll and other records pertaining to the employment of employees on a public works project.

(3) When apprentices are employed on a public works

project, the records must clearly distinguish them from other employees. The records must also clearly identify the date each apprentice started working on the public works project and must include verification of apprenticeship registration.

(4) When a contractor, subcontractor or employer employs an employee on public works projects and non-public works projects during the same work week and the employee is paid a rate of pay which is less than the prevailing wage rate when working on a non-public works project, the employer must separately record the hours worked on the public works contract projects and those hours worked elsewhere.

AUTH: 18-2-431, MCA
IMP: 18-2-422 and 18-2-423, MCA

NEW RULE XII RECORDS AVAILABILITY (1) Every employer (including a contractor or subcontractor) performing work on a public works project shall make available to the department records necessary to determine if the prevailing wage rate has been or is being paid to employees on the public works project. Such records shall be made available for inspection and transcription within 24 hours of an on-site inspection, within five days of a mail-in request or at such later time as may be specified by the department.

AUTH: 18-2-431, MCA
IMP: 18-2-422 and 18-2-423, MCA

NEW RULE XIII PAYROLL CERTIFICATION (1) When a prevailing wage complaint has been filed with the department or when the department has otherwise received evidence indicating that a violation has occurred, or when the department undertakes an audit, the department shall send a letter requesting copies of the contractor, subcontractor or employer's payroll records. The records requested will include those enumerated in [NEW RULE XI], and shall be forwarded to the department within five days. Included with the records must be a statement with respect to the wages paid each employee. This statement shall be executed by the contractor, subcontractor, employer or by an authorized officer or employee of the contractor, subcontractor or employer who supervises the payment of wages, and shall certify the payroll records, or copies thereof, are true and accurate and reflect all payments and deductions made for employees employed on the public works project for each week.

AUTH: 18-2-431, MCA
IMP: 18-2-422 and 18-2-423, MCA

NEW RULE XIV FULL PAYMENT REQUIRED (1) Each contractor, subcontractor or employer shall pay each employee not less than the prevailing wage rate required unconditionally, without subsequent rebate, and except as provided in (2), without deductions for:

(a) meals;
(b) lodging;
(c) transportation; or
(d) use of small tools.

(2) A contractor, subcontractor or employer may make deductions if such deductions are in a form prescribed by the commissioner and consistent with federal WH-347 payroll form available at www.dol.gov and are either:

(a) required by law;

(b) required or allowed by a collective bargaining agreement between a bona fide labor organization and the contractor, subcontractor or employer; or

(c) expressed in a written or oral agreement carried out in practice or in fact and mutually understood between an employee and an employer and undertaken at the beginning of employment. Such an agreement must concern the fair market value of other benefits provided to the employee by the employer such as meals and lodging directly furnished by the employer, employee use of company vehicles, or other similar items not regularly or customarily provided.

AUTH: 18-2-431, MCA
IMP: 18-2-401, 18-2-402, 18-2-403, 18-2-406, 18-2-412 and 18-2-423, MCA

NEW RULE XV WAGE AVERAGING PROHIBITED (1) A contractor, subcontractor or employer may not reduce an employee's regular rate of pay for work on projects not subject to the prevailing wage rate laws when the reduction in pay has the effect of the employee not receiving the prevailing rate of wage for work performed on the public works project.

(2) As used in this rule, "regular rate" has the same meaning as that defined in ARM 24.16.2512.

(3) When making a determination of whether a contractor, subcontractor or employer has reduced an employee's regular rate in violation of (1) of this rule, the department shall consider:

(a) the timing of the wage rate reduction;

(b) whether the wage rate reduction was made pursuant to an established plan;

(c) whether the wage rate reduction is applied equally to all employees in similar job classifications;

(d) whether the wage rate reductions are applied to employees employed on public works projects, but not to employees employed only on projects not subject to the prevailing wage rate laws; and

(e) other considerations as the facts and circumstances of a particular matter may reveal.

AUTH: 18-2-431, MCA
IMP: 18-2-412, MCA

NEW RULE XVI PAYMENT OF FRINGE BENEFITS (1) All contractors, subcontractors and employers that are required to pay employees the prevailing rate of wages must pay no less than the hourly rate of pay and fringe benefits as determined by the commissioner.

(2) Apprentices must be paid the percentage of the basic hourly rate required, based on the total time in the craft, and/or fringe benefits specified in the employers' registered apprenticeship standards. If the apprentice performs labor

which is subject to a higher wage rate either by contract or by law than that specified in the apprenticeship standards, the higher wage rate shall be paid by the contractor, subcontractor or employer. If the standards are silent on the payment of fringes, the apprentice is to receive the full amount of the fringe benefits stipulated on the wage decision.

(3) The provisions of this rule are met when the amount of the fringe benefit or benefits is paid to the employee, in cash, or irrevocable contributions are made to a trustee or a third party administering a fringe benefit or benefits program.

(4) When a contractor, subcontractor or employer pays an hourly rate of pay which exceeds that determined by the commissioner, the amount by which the rate is exceeded may be credited toward payment of the amount of fringe benefits determined by the commissioner for the trade or occupation.

(5) When a contractor, subcontractor or employer pays a rate for any one fringe benefit which exceeds that which is determined for the fringe benefit, the amount by which the rate is exceeded may be credited toward payment of the amount to be paid for all fringe benefits as determined by the commissioner for the trade or occupation.

(6) When a contractor, subcontractor or employer pays an amount for fringe benefits which exceeds the amount of fringe benefits established by the commissioner, the excess amount may be credited towards the hourly rate of pay. In order for the credit to apply, the contractor, subcontractor or employer must have the amount paid for fringe benefits separately identified as required by [NEW RULE XI(2)].

(7) Contributions to fringe benefit plans must be made not less than quarterly.

AUTH: 18-2-431, MCA
IMP: 18-2-412, MCA

<u>NEW RULE XVII OVERTIME WAGES COMPUTATIONS</u> (1) Where an employee performs work in one or more classifications which provide for one or more hourly rates of pay, the employee must be paid, in addition to the straight time hourly earnings for all hours worked, a sum determined by multiplying one half the weighted average of the hourly rates by the number of hours worked in excess of 40 per week.

(2) Fringe benefits must be paid for all hours worked, including the overtime hours. When determining the hourly wage rate for overtime purposes, the amount paid for fringe benefits shall be excluded from the computations when determining the overtime rate. For example, an employee who earns $15 per hour plus $3 per hour in fringe benefits and works 42 hours in a week is entitled to $600 ($15/hr x 40 hours) + $45 ($22.50/hr x 2 hours) + $126 ($3/hr x 42 hours) ' $771 for that week.

AUTH: 18-2-431 and 39-3-403, MCA
IMP: 18-2-412 and 39-3-405, MCA

<u>NEW RULE XVIII APPRENTICES</u> (1) Apprentices are those persons employed and individually registered in bona fide apprenticeship programs registered with or recognized by the

department's bureau of apprenticeship and training or the U.S. bureau of apprenticeship and training.

(2) An employer is limited in the number of apprentices permitted on the job site for any class or type of employee based on the allowable ratio of apprentices to journeymen specified in the approved program. This requirement applies to the work site unless otherwise stated.

(3) An apprentice must register 30 days prior to the date the apprentice starts work on the project. An apprenticeship ratio is determined on a daily basis for each work week, based on the number of journeymen employed on site. Any employee who is not registered or otherwise employed as stated in this rule, shall be paid not less than the applicable wage rate on the wage determination for the class or type or work actually performed. If an employer exceeds or has exceeded the allowable ratio of apprentices to journey-level workers, the apprentice(s) who has the earliest starting date on the public works project is the apprentice who may be paid the percentage of pay specified in the apprenticeship agreement. If the records kept by the employer do not identify which apprentice started on which date, in the event the ratio is exceeded on any given day, all of the employer's apprentices working on the public works project must be paid the prevailing wage for that work week. In the event the Montana apprenticeship and training registration agency or the U.S. bureau of apprenticeship and training withdraws approval of an apprenticeship program, or deems the program to be out of compliance, the contractor, subcontractor or employer shall no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the class or type of work performed until determined in compliance or an acceptable program is approved.

AUTH: 18-2-431 and 39-6-101, MCA
IMP: 18-2-412 and 39-6-106, MCA

NEW RULE XIX FILING COMPLAINTS (1) Complaints may be filed whenever an employee allegedly has not received the prevailing wages and/or fringe benefits due. These wages can be, but are not limited to, health and welfare, pension, vacation, overtime, or regular wages.

(2) A complaint may be filed by:

(a) the employee;

(b) the estate of an employee;

(c) an authorized representative of the commissioner, on behalf of an employee or group of employees;

(d) an authorized representative of an employee, such as a union business agent; or

(e) other persons or entities who can demonstrate that they have a direct pecuniary interest in seeing that wages are properly paid on public works contracts. Such other persons or entities include, but are not limited to, competitors of the employer that unsuccessfully bid on the public works contract.

(3) A complaint must be reduced to writing on the form furnished by the commissioner or in a format acceptable to the commissioner and signed by the complaining party.

(4) Wage complaint forms can be obtained from the Labor Standards Bureau, Employment Relations Division, Department of Labor and Industry, 1805 Prospect Avenue, P.O. Box 6518, Helena, Montana 59624-6518. The telephone number is 406-444-5600.

(a) When requested by mail or telephone, the wage complaint form is mailed to the claimant by the department with a letter of instruction. The claim complaint must be filled out in detail, signed by the claimant and notarized. The form then must be returned to the labor standards bureau.

(5) Field investigations may be commenced by the commissioner without a complaint having been filed.

AUTH: 18-2-431 and 39-3-202, MCA
IMP: 18-2-403, 18-2-407, 18-2-423, 39-3-201, 39-3-207, 39-3-209, 39-3-210 and 39-3-211, MCA

<u>NEW RULE XX JURISDICTIONAL REVIEW</u> (1) Upon receipt by the department of a complaint, the complaint is reviewed to decide jurisdictional coverage.

(a) If it appears the work is subject to federal prevailing wage laws, the complainant is advised to contact the U.S. department of labor.

(b) If it appears that state prevailing wage laws apply and not more than three years have elapsed since the alleged occurrence of improper payment, the process is continued.

(2) Information is obtained to decide if the job is exempt from prevailing wage requirements. If the job is exempt, the complainant is notified and the file is closed. If the job is not exempt, the complaint process is continued.

AUTH: 18-2-431 and 39-3-202, MCA
IMP: 18-2-403, 18-2-407, 18-2-423, 39-3-201, 39-3-209, 39-3-210 and 39-3-211, MCA

<u>NEW RULE XXI REQUESTING PARTY'S FAILURE TO PROVIDE INFORMATION</u> (1) If the party requesting the investigation fails to provide information requested by the department within time frames specified by the department, the department may dismiss the complaint.

AUTH: 18-2-431 and 39-3-202, MCA
IMP: 18-2-403, 18-2-407, 18-2-423, 39-3-201, 39-3-209, 39-3-210 and 39-3-211, MCA

<u>NEW RULE XXII EMPLOYER RESPONSE TO COMPLAINT</u> (1) A complaint is commenced when a letter is mailed to the employer, contractor or subcontractor by the department notifying the employer, contractor or subcontractor of the complaint and requesting certified payroll records.

(2) A copy of the letter is sent to all parties involved in the complaint:

(a) the employee(s), if a wage complaint was filed;

(b) the prime contractor, if the complaint was filed against a subcontractor;

(c) the contracting agencies and their agent, if identified; and

(d) the architect(s) or engineer(s) who prepared the bid

specifications for the contracting agency.

(3) An employer must file a written response to the complaint. The response must be on either the form provided by the department or presented in a similar format.

(4) To be timely, the employer's written response must be postmarked or delivered to the department by the date specified by the department. Upon timely request and for good cause shown, the department may allow additional time for response.

(5) Failure of the employer to timely respond to the complaint will result in the entry of a determination adverse to the employer.

AUTH: 18-2-423, 18-2-431 and 39-3-202, MCA
IMP: 18-2-403, 18-2-407, 18-2-423, 18-2-424, 39-3-201, 39-3-209, 39-3-210 and 39-3-211, MCA

NEW RULE XXIII DEPARTMENT REVIEW OF EMPLOYER RECORDS

(1) If the employer complies and submits the requested records, they are examined to determine if a violation has occurred. The records are reviewed in accordance with [NEW RULE XI].

(2) In addition, the records are reviewed to determine if the employer has a fringe benefit fund, plan, or program and whether the fund, plan, or program meets the requirements of the Employee Retirement Income Security Act of 1974 or that such fund, plan, or program is approved by the U.S. department of labor.

(3) In addition, the records are reviewed to determine whether the employer has contributed with the trust fund or private insurance company the benefits being claimed.

(4) If an inspection of the records reveals no violation, a letter is sent to the employer advising that the records are in order, no violations have been found and the file is closed. A copy of the letter is sent to all parties involved.

(5) If an inspection of the information submitted by the employer reveals a violation, the investigation is continued.

AUTH: 18-2-431 and 39-3-202, MCA
IMP: 18-2-403, 18-2-407, 18-2-423, 18-2-424 and 39-3-201 through 39-3-216, MCA

NEW RULE XXIV DETERMINATION (1) Following the expiration of the period for an employer to respond to a complaint, the department will make a written determination of the wages and penalty owed, if any.

(2) A copy of the written determination will be mailed to each party involved with the complaint and attorneys of record at their last known address.

(3) A party who receives an adverse decision may request either a redetermination or a formal hearing. The request must be in writing and specify whether a redetermination or a hearing is requested.

AUTH: 18-2-431 and 39-3-202, MCA
IMP: 18-2-403, 18-2-407, 18-2-423 and 39-3-201 through 39-3-216, MCA

NEW RULE XXV CRITERIA TO DETERMINE PENALTY AND COST IMPOSITION (1) The commissioner shall consider the following mitigating and aggravating circumstances when determining the amount of any civil penalty to be assessed against a contractor, subcontractor, or employer found in violation of the terms of the public works contract and shall cite the circumstances the commissioner finds to be applicable:

(a) the actions of the contractor, subcontractor or employer in response to previous violations, if any, of statutes and rules;

(b) prior violations, if any, of statutes and rules;

(c) the opportunity and degree of difficulty to comply;

(d) the magnitude and seriousness of the violation, including instances of aggravated or willful violation, or gross negligence; or

(e) whether the contractor, subcontractor or employer knew or should have known of the violation.

(2) It shall be the responsibility of the contractor, subcontractor or employer to provide the commissioner with evidence of any mitigating circumstances set out in (1) of this rule.

(3) In arriving at the actual amount of the penalty and costs, the commissioner shall consider the amount of the underpayment of wages, if any, in violation of any statute or rule.

(4) Notwithstanding any other section of this rule, the commissioner shall consider all mitigating circumstances presented by the contractor, subcontractor or employer for the purpose of reducing the amount of the civil penalty to be assessed.

AUTH: 18-2-431 and 39-3-202, MCA
IMP: 18-2-403, 18-2-407, 18-2-423, 18-2-432 and 39-3-207, MCA

NEW RULE XXVI REQUEST FOR REDETERMINATION (1) A party who has received an adverse decision may request a redetermination.

(2) The request for a redetermination must be made within 15 days of the date the determination is mailed. The request for a redetermination must be in writing and must include new or additional information relevant to the issue(s) in dispute which the department is to consider.

(3) After receiving a timely request for a redetermination which includes new or additional information, the department will issue a written redetermination and mail a copy to the parties.

(4) The department will only issue one redetermination for each party who has received an adverse decision.

(5) If a request for a redetermination is not timely received, a default order will be issued. Any question as to whether the request is timely will be resolved upon judicial review.

AUTH: 18-2-431 and 39-3-202, MCA
IMP: 18-2-403, 18-2-407 and 18-2-423, MCA

NEW RULE XXVII DEFAULT ORDERS AND DISMISSALS (1) A default order will be issued if the employer, contractor, subcontractor and/or the contracting agency fails to timely file a written response to the determination.

(2) The default order will specify the amount owed by the employer, contractor, subcontractor or the contracting agency to the employee as wages and/or penalties.

(3) A dismissal will be issued if there is a finding of no merit to the complaint.

(4) Appeals of default orders and dismissals must be made in writing within 15 days of the date the default order or dismissal was mailed to the requesting party.

(5) Any question as to whether the appeal is timely will be resolved upon judicial review.

AUTH: 18-2-431 and 39-3-202, MCA
IMP: 18-2-403, 18-2-407, 18-2-423, 39-3-212 and 39-3-216, MCA

NEW RULE XXVIII MANDATORY, NONBINDING MEDIATION (1) If a formal hearing is requested, the parties are required to fully present their cases at a mediation, prior to the formal hearing.

(2) Such mediation shall be completed within 20 days of the request for formal hearing.

(3) The mediation process is mandatory, informal, held in private without a verbatim record and is confidential in nature. All communications and evidence from the mediation are confidential.

(4) The mediator, appointed by the department, will issue a report following the mediation process recommending a solution to the dispute. The mediator's report is without judicial or administrative authority and is not binding on the parties.

(5) Nothing in this rule precludes the parties from agreeing to pursue additional voluntary nonbinding mediation in an effort to resolve the dispute.

AUTH: 18-2-431 and 39-3-202, MCA
IMP: 39-3-216, MCA

NEW RULE XXIX REQUEST FOR FORMAL HEARING (1) A party who has received an adverse decision from a compliance specialist may request a formal hearing. The request for a formal hearing must be made within 15 days of the date either the determination or the redetermination is mailed to the party.

(2) A request must be in writing, mailed as specified in the adverse decision, and include the following:

(a) the name and address of the requesting party;

(b) the name and address of the opposing party; and

(c) a statement that the party desires a hearing.

(3) Upon receiving a timely, written request for a formal hearing, the department will commence contested case proceedings. Any question as to whether the request is timely will be resolved upon judicial review.

AUTH: 18-2-431 and 39-3-202, MCA
IMP: 18-2-403, 18-2-407, 18-2-423 and 39-3-216, MCA

NEW RULE XXX APPEAL OF FORMAL HEARING (1) A party who

has received an adverse decision may request an appeal. Appeal of a formal hearing order is made to district court.

(2) The time period in which to make an appeal is within 30 days of the date the decision of the hearing officer is mailed. The appeal must specifically identify the hearing officer's alleged error.

AUTH: 18-2-431 and 39-3-202, MCA
IMP: 18-2-403, 18-2-407, 18-2-423 and 39-3-216, MCA

NEW RULE XXXI REQUEST FOR RELIEF IF MAIL IS NOT RECEIVED

(1) A party alleging that it did not receive timely notice by mail of the complaint, determination or hearing process provided by these rules has the burden of proving that the party should be granted relief. The party seeking relief must present clear and convincing evidence to rebut the statutory presumption that a letter duly directed and mailed was received in the regular course of the mail, as provided in 26-1-602, MCA.

(2) All questions regarding alleged non-receipt of mail, or whether a request for a redetermination, a formal hearing, or an appeal was timely made must be resolved upon judicial review.

(3) Once a judgment is issued by a district court concerning a decision, any request for relief must be directed to the district court by a party (not the department on behalf of a party) pursuant to the Rules of Civil Procedure and be in the form required by the district court.

AUTH: 18-2-431 and 39-3-202, MCA
IMP: 18-2-403, 18-2-407 and 18-2-423, MCA

NEW RULE XXXII COMPUTATION OF TIME PERIODS (1) In computing any period of time prescribed or allowed by these rules or any applicable statute, the day of the act, event, or default after which the designated time period begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not one of the aforementioned days. A half holiday is not a holiday, but is considered as a regular day.

(2) For the purpose of these rules, an item sent to the department is timely if it is either postmarked or received by the department by not later than the last day of the time period.

(3) An item which does not have a postmark is considered received as of the date it is date-stamped by the department.

AUTH: 18-2-431 and 39-3-202, MCA
IMP: 18-2-403, 18-2-407 and 18-2-423, MCA

NEW RULE XXXIII FACSIMILE FILINGS (1) Any document required or allowed to be filed with the department may be filed by means of a telephonic facsimile communication device (fax).

(2) Filings with the department by facsimile are subject to the following conditions:

(a) a filing must conform with all applicable rules, except that only one copy of a document need be filed by facsimile even when multiple copies otherwise would be required;

(b) if a document is received after 5:00 p.m. mountain time, the date of filing of that document, for purposes of these rules, will be the date of the next regular work day; and

(c) the original document and any copies must be received by the department within five days of the facsimile transmittal or the filing will not be recognized as timely.

(3) The failure, malfunction, or unavailability of facsimile equipment does not excuse a party from the requirements of timely filing.

AUTH: 18-2-431 and 39-3-202, MCA

IMP: 18-2-403, 18-2-407 and 18-2-423, MCA

NEW RULE XXXIV CONTRACT INELIGIBILITY/DEBARMENT

(1) After notice and an opportunity to be heard, the commissioner, acting by and through the department, may determine that a contractor, subcontractor or employer is debarred or ineligible to receive public works contracts for a period of up to three years. A contractor, subcontractor or employer, regardless of entity form, will be determined to be ineligible if the employer aggravatedly, willfully, or with gross negligence violates the provisions of Title 18, chapter 2, MCA, including but not limited to, actions such as:

(a) failing or refusing to pay the prevailing rate of wages to employees employed on public works projects;

(b) failing to respond to inquiries from the department to supply necessary payroll information and generally failing to cooperate in the investigation of the prevailing wage investigation; or

(c) submitting falsified payroll information to the department.

(2) Before placing a contractor, subcontractor or employer on the ineligible debarment list, the commissioner shall serve a notice of intended action upon the contractor, subcontractor or employer in the same manner as service of a summons or by certified mail, return receipt requested. The notice will include:

(a) a reference to 18-2-432, MCA;

(b) a short and concise statement of the matter(s) constituting a violation of Title 18, chapter 2, MCA;

(c) a statement of the party's right to request a contested case hearing and to be represented by counsel at such hearing, provided that any such request must be received by the commissioner in writing within 20 days of service of the notice;

(d) a statement that the party's name will be published on a list of persons ineligible to receive public works contracts or subcontracts, unless the party requests a contested case hearing; and

(e) a statement that failure to make written request to the commissioner for a contested case hearing within the time specified constitutes a waiver of the right to a hearing.

(3) If a contractor, subcontractor or employer makes a timely request for a contested case hearing, a hearing will be held in accordance with the Montana Administrative Procedure Act.

(4) Upon the failure of the contractor, subcontractor or employer to request a contested case hearing within the time specified, the commissioner or the commissioner's designee shall enter an order supporting the ineligibility action.

(5) Debarment applies both to a firm and individuals. In the case of a firm, it may be applied against any or all businesses in which a firm has involvement (i.e., joint ventures), or over which it has ownership or control (i.e., subsidiaries). In the case of an individual, debarment may be applied to and enforced against any and all businesses in which the individual has any level of interest, ownership or control.

(6) If debarred by the federal government or any Montana government agency, a person may not bid on or otherwise participate in any public works project or contract in any capacity (prime contractor, subcontractor, supplier, etc.), including as a separate contractor, until after the completion of the entire debarment period, whether or not the department debars the individual. Debarment proceedings may continue even if the person ceases doing business during the proceedings.

(7) If an individual is debarred by any agency of the federal government for any period, the department may debar the individual for a period up to that set by the federal government without need for further debarment proceedings. The only evidence required in a debarment hearing in a case based on an existing debarment will be a certified copy of an order, agency letter, or other final action declaring the debarment in the other jurisdiction. Presence of a certified order does not preclude the individual from presenting evidence to dispute the proposed debarment or its length. If the individual is debarred by a branch or agency other than of the Montana or federal governments (i.e., another state, a county, etc.), or if the department may wish a debarment period exceeding that set by the other Montana agency or federal government, the department must hold debarment proceedings before increasing the debarment period.

(8) As used in this rule and [NEW RULE XXXIII], the following definitions apply:

(a) "Aggravatedly" means circumstances that, in conjunction with an act or omission in violation of Title 18, chapter 2, MCA, serve to increase the magnitude, enormity or reprehensibleness of the offense, violation, injury or damage.

(b) "Debarment" is an action taken or decision made by an agency, other than temporary determinations of nonresponsibility or suspension, that excludes a person from bidding on or participating in public works projects and contracts.

(c) "Substantial financial interest" means:

(i) an ownership interest, whether directly or indirectly, of at least 20% of the entity; or

(ii) control over the entity, whether directly or indirectly applied, that is greater than any other single person or entity with an ownership interest.

(d) "Willfully" means that the act is done or omitted with a purpose or willingness to commit the act or make the omission. It does not require any intent to violate the law or to gain an

advantage. The term has the same meaning as provided by 1-1-204, MCA.

(e) "Gross negligence" means an action involving negligence in excess of ordinary negligence.

AUTH: 18-2-431, MCA
IMP: 18-2-432, MCA

NEW RULE XXXV LIST OF INELIGIBLES (1) The department will publish a list of persons and entities that are ineligible to work on public works projects. The list will specify the dates of ineligibility. The list is public information and is available upon request from the department. The department will update the list as needed.

(2) The list will contain the name of ineligible employers and the names of any firms, corporations, partnerships or associations in which the employer or its owner(s) have a substantial financial interest. Those names will remain on the list for a period of three years from the date such names were first published on the list. The three year period of ineligibility will begin when the decision of the commissioner regarding ineligibility becomes final and no further appeals can be taken.

(3) An employer who desires to be removed from the list before the expiration of three years must show good cause for such removal. Such persons may petition the commissioner at any time during the period of ineligibility. The decision whether good cause exists to remove the employer from the list before the three year period expires rests in the sound discretion of the commissioner. In reviewing such petitions to determine if good cause exists, the commissioner shall consider the following matters:

(a) the history of the petitioner in taking all necessary measures to prevent or correct violations of statutes or rules;

(b) prior violations, if any, of statutes or rules;

(c) magnitude and seriousness of the violation; and

(d) other matters which indicate to the commissioner that the petitioner is not likely to violate these rules in the future.

AUTH: 18-2-431, MCA
IMP: 18-2-432, MCA

5. The Department proposes to repeal the following rules:

24.16.9008 SERVICES--DEFINITION--EXCLUSIONS--EXAMPLES found at page 24-1239, Administrative Rules of Montana.

AUTH: 18-9-901, 18-2-431, MCA
IMP: 18-2-401, 18-2-402, 18-2-403, 18-2-411 and 18-2-422, MCA

24.16.9009 $25,000 LIMIT--ENFORCEMENT found at pages 24-1239 and 24-1240, Administrative Rules of Montana.

AUTH: 18-9-409, 18-2-431, MCA
IMP: 18-2-401, 18-2-403, 18-2-409 and 18-2-422, MCA

24.16.9010 PROCEDURES FOR ENFORCING THE ACT found at page

24-1240, Administrative Rules of Montana.
AUTH: 2-4-201, 18-2-431, MCA
IMP: 18-2-407, 18-2-409, 39-3-211 and 39-3-216, MCA

6. The Department of Labor and Industry is proposing the adoption of new rules and amendment of existing rules that define and explain terms used in relation to public works contracts for which standard prevailing wages are supposed to be paid. These rules also establish procedures for administering prevailing wage complaints for unpaid or underpaid wages on public works contracts, and for calculating statutory penalties.

Some terms and language are proposed to be stricken or amended throughout the existing rules in order to provide for clearer understanding and to avoid duplication of terms used in the rules. Such changes will not result in substantive alterations to the rules themselves. In the interest of avoiding duplication and redundancy of identical statements of reasonable necessity, the department has combined, where feasible, the statements for amendments to existing rules with statements for related proposed new rules. This is done where the reasons for the changes and adoptions, and the necessity to make changes or new adoptions, are the same.

ARM 24.16.9001

This rule as currently written is incorrect and must be amended as the 50% employment preference for bona fide Montana residents does not apply to federally funded projects or where specifically prohibited by federal law. The amendments to this rule are necessary to clarify and define terms used throughout Title 18, chapter 2, part 4, MCA, so as to eliminate the confusion in the meaning and usage of these terms in the prevailing wage process for contracting and public agencies, labor unions, contractors, subcontractors, employers and employees.

ARM 24.16.9002 and New Rules XIX through XXXIII

The proposed amendments to definitions in ARM 24.16.9002 are necessary to better define terms commonly used in the industry and to clarify and explain the process used to enforce provisions of Title 18, chapter 2, part 4, MCA.

New Rules XIX through XXXIII are proposed to make the prevailing wage enforcement process consistent with the wage claims process used in 39-3-101 through 39-3-216, MCA, and to clarify that the penalty in 18-2-407, MCA, does apply to violations of Title 18, chapter 2, part 4, MCA. The amendments are necessary in order to inform and explain the rights and responsibilities of the contracting agencies, contractors, subcontractors, employers and employees regarding the enforcement of Title 18, chapter 2, part 4, MCA.

ARM 24.16.9004 and New Rules III, VI, and VII

The amendments to ARM 24.16.9004 are necessary to conform our definitions with federal definitions, to clarify the nature of construction projects, and to provide assistance in consistent application of prevailing wage rates for construction contracts. Similarly, New Rules III, VI, and VII are proposed to eliminate or reduce confusion in the industry as to which rates should be applied to which type of construction and to provide assistance in determining this under Title 18, chapter 2, part 4, MCA. These changes and new rules are being proposed at the behest of the long range planning committee of the 2001 Montana Legislature.

ARM 24.16.9005 and 24.16.9006

The amendments to ARM 24.16.9005 and 24.16.9006 are proposed in order to clarify that the 50% employment preference for bona fide Montana residents applies to the total man hours on the individual project, as opposed to the percentage of workers employed by each contractor on the specific project, and to provide the process by which a variance can be requested for the 50 percentile. Clarification is also provided that the standard prevailing wage rates as determined by the commissioner include any fringe benefits. These amendments are necessary as the department has determined there is substantial confusion in the industry as to the application of the 50% employment preference, and regarding the inclusion of fringe benefits in the wage rates.

Subsection (3) of ARM 24.16.9005 is being amended to eliminate language associated with a previously repealed statute, 37-71-201, et seq., MCA.

Subsection (3) of ARM 24.16.9006 is eliminated because the contractor bond law, 39-3-701, et seq., MCA, was repealed in the 1995 Montana Legislature. Subsections (4) and (5) are being eliminated because the record keeping and classification requirements are now addressed in New Rules IX, XI, and XII.

ARM 24.16.9007

The elimination of (1)(e), (1)(f), and (1)(g) is proposed because the subsections are unnecessary and redundant as the validity of adopted wage rates is adequately addressed under (1)(b) of this rule. Subsections (2) and (3) are being amended to provide the correct name and address of the bureau responsible for adoption and maintenance of the standard prevailing wage rates.

New Rule I

New Rule I is proposed to provide assistance in consistent application of prevailing wage rates throughout the industry for

construction contracts, and also to reduce confusion in the industry as to which rates should be applied to which type of construction. Adoption of this rule is necessary to clarify the roles of contracting agencies, contractors, subcontractors and employers in complying with Title 18, chapter 2, part 4, MCA.

New Rule II

New Rule II is proposed to delineate Montana's prevailing wage districts and to restate the composition of these districts. The districts' composition was previously included under the definition section of ARM 24.16.9002, but is now being deleted from that section.

New Rules IV and V

Proposed New Rules IV and V define and clarify what a commercial supplier is under Title 18, chapter 2, part 4, MCA, in order to allow consistent application of the term as used in the industry. This clarification is necessary to alleviate confusion in the industry as to what is meant by these terms.

New Rule VIII

New Rule VIII is proposed to restate and further clarify the criteria and process used by the department to determine whether a contract has been divided to avoid compliance with the requirements of the Act. This rule provides a procedure for a contracting agency to dispute the department's determination that a contract was improperly divided. The proposed rule is necessary to address ongoing questions in the industry of this nature as there has never before been written guidance as to the department's procedure in determining improper contract division or a proper appeal procedure.

New Rules IX and X

New Rules IX and X are proposed to clarify that non-construction services are subject to the Act and to distinguish between construction services and non-construction services as identified in Title 18, chapter 2, part 4, MCA. This is necessary to rectify the confusion present in the industry regarding this distinction. The site of work definition is proposed in order to adapt to changes made in the 1997 Montana Legislature regarding construction services.

New Rules XI, XII and XIII

New Rules XI, XII, and XIII include information moved from ARM 24.16.9006(2), (4), and (5), and further clarify and identify the record retention requirements by contractors, subcontractors and employers. This clarification is necessary because the record retention period was not previously defined and will now ensure that the contractors, subcontractors and employers are

aware of the time and certification requirements and will therefore be in compliance with the department's audit and complaint procedures.

New Rules XIV through XVII

These new rules clarify the methods of calculation and payment of standard prevailing wages as identified in Title 18, chapter 2, part 4, MCA. This is necessary to adequately address numerous questions and concerns in the industry as to what are considered wages, deductions and fringe benefits under the prevailing wage laws.

New Rule XVIII

New Rule XVIII will clarify the procedure for application of prevailing wage rates to apprentices on public works contracts. This clarification is necessary because the department needs to establish what constitutes an apprentice and the applicable ratio of apprentices on any public works contract. This clarification will likely result in increased uniformity in the classification and correct payment of prevailing wages to apprentice employees.

New Rules XXXIV and XXXV

New Rules XXXIV and XXXV establish departmental procedure for debarment proceedings and for identifying those contractors, subcontractors and employers who are ineligible for bidding on public works contracts. This is necessary in order to comply with requirements of Title 18, chapter 2, part 4, MCA, and have a process similar to the debarment procedures of the U.S. Department of Labor and the Montana Department of Transportation. This rule also provides a method of notifying the contractors, subcontractors and employers of their ineligibility, and the department's maintenance of a listing of such ineligible contractors, subcontractors and employers.

ARM 24.16.9008, 24.16.9009, and 24.16.9010

It is reasonably necessary to repeal ARM 24.16.9008, 24.16.9009, and 24.16.9010 because the substance of these rules has been incorporated into proposed New Rules IX and XIX.

7. 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:

John Andrew
Labor Standards Bureau
Employment Relations Division
Department of Labor and Industry
P.O. Box 6518
Helena, Montana 59604-6518

and must be received by no later than 5:00 p.m., May 24, 2002.

Comments may also be submitted electronically as noted in the following paragraph.

8. An electronic copy of this Notice of Public Hearing is available through the Department's site on the World Wide Web at http://dli.state.mt.us/calendar.htm, under the Calendar of Events, Administrative Rule Hearings section. Interested persons may make comments on the proposed rules via the comment forum, http://forums.dli.state.mt.us, linked to the Notice of Public Hearing, but those comments must be posted to the comment forum by 5:00 p.m., May 24, 2002. The Department strives to make the electronic copy of this Notice of Public Hearing conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the Department strives to keep its website accessible at all times, concerned persons should be aware that the website may be unavailable during some periods, due to system maintenance or technical problems, and that a person's technical difficulties in accessing or posting to the comment forum does not excuse late submission of comments.

9. The Department maintains a list of interested persons who wish to receive notices of rule-making actions proposed by this agency. Persons who wish to have their name added to the mailing 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 any specific topic or topics over which the Department has rule-making authority. Such written request may be delivered to Mark Cadwallader, 1327 Lockey St., room 412, Helena, Montana, mailed to Mark Cadwallader, P.O. Box 1728, Helena, MT 59624-1728, faxed to the office at (406) 444-1394, e-mailed to mcadwallader@state.mt.us, or made by completing a request form at any rules hearing held by the Department.

10. The bill sponsor notice provisions of 2-4-302, MCA, do not apply.

11. The Hearings Bureau of the Centralized Services Division of the Department has been designated to preside over and conduct the hearing.

/s/ KEVIN BRAUN	/s/ WENDY J. KEATING
Kevin Braun	Wendy J. Keating, Commissioner
Rule Reviewer	DEPARTMENT OF LABOR & INDUSTRY

Certified to the Secretary of State: April 15, 2002.

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

In the matter of the amendment of ARM 37.78.102, 37.78.206, 37.78.207, 37.78.208, 37.78.420, 37.78.425, 37.78.506, 37.78.807, 37.78.825, 37.78.826 and 37.82.101 pertaining to families achieving independence in Montana (FAIM) and temporary assistance for needy families (TANF)	)	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Interested Persons

1. On May 17, 2002, 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 10, 2002, 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.

37.78.102 TEMPORARY ASSISTANCE FOR NEEDY FAMILIES (TANF): FEDERAL REGULATIONS ADOPTED BY REFERENCE (1) remains the same.

(2) The Montana TANF cash assistance manual in effect July 1, 2002 and manual updates effective July 1, 2002 are hereby adopted and incorporated by this reference. A copy of the Montana TANF cash assistance manual and manual updates are available for public viewing at each local office of public assistance, and at the Department of Public Health and Human Services, Human and Community Services Division, 1400 Broadway, P.O. Box 202952, Helena, MT 59620-2952. The proposed manual updates are also available on the department's website at www.dphhs.state.mt.us.

AUTH: Sec. 53-4-212, MCA
IMP: Sec. 53-4-211 and 53-4-601, MCA

37.78.206 ~~FAIM FINANCIAL ASSISTANCE~~ TANF: GENERAL ELIGIBILITY REQUIREMENTS (1) Except as provided in (2)(e), an application for TANF cash assistance must be made on behalf of a minor child.

~~(1)~~ (2) Subject to the restrictions set forth in ARM 37.78.220 and in ~~(2)~~ (3) of this rule, ~~FAIM financial assistance (FFA)~~ TANF cash assistance may be granted to the following classes of persons if they meet all other eligibility requirements ~~for FFA~~:

(a) through (c) remain the same.

(d) ~~persons under the age of 18 or under the age of 19 years and attending high school or an equivalent program full-time~~ minor children as defined in ARM 37.78.103 who live in the home of a minor child and who are the child's siblings by blood, marriage, or adoption, including half brothers and half sisters and stepsiblings;

(e) remains the same.

~~(2)~~ (3) The following are not eligible for ~~FFA~~ TANF cash assistance:

(a) remains the same.

(b) all members of the specified caretaker relative's filing unit when a specified caretaker relative ~~who~~ fails or refuses without good cause to comply with the requirements of ARM 37.78.215 regarding the assignment of child and medical support rights and cooperation in establishing paternity and obtaining child and medical support;

~~(c) a specified caretaker relative who refuses without good cause to comply with the requirements of ARM 37.78.215 regarding the assignment of child and medical support rights and cooperation in establishing paternity and obtaining child and medical support and all members of the specified caretaker relative's filing unit;~~

(d) remains the same but is renumbered (c).

~~(e)~~ (d) teenage parents who are not living with their parent or parents, legal guardian, or other adult relative who would qualify to be a guardian of a minor child under Title 72, chapter 5, MCA, unless the teenage parent has been authorized to live in an alternative setting by the ~~county's~~ local office of public assistance living arrangement review committee because:

(i) through (ii)(E) remain the same.

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

~~(g)~~ (f) persons who have intentionally misrepresented their place of residence~~,~~ in order to obtain TANF, medicaid, or food stamps in 2 or more states simultaneously are ineligible for a period of 10 years~~, in accordance with the disqualification provisions of ARM 37.78.505~~;

~~(h)~~ (g) an individual who ~~committed and~~ was convicted after August 22, 1996, of any offense which is classified as a felony in the jurisdiction where the offense occurred and which has as an element the possession, use, or distribution of a controlled substance as defined in section 102(6) of the federal Controlled Substance Act, 21 USC 802(6); ~~or~~

~~(i)~~ (h) members of a family which includes an adult who has

received assistance for 60 months or more, as prescribed in ARM 37.78.201~~.~~ ;

(i) all members of the assistance unit which includes a specified caretaker relative who fails or refuses to comply with third party liability;

(j) all members of the assistance unit which includes a specified caretaker relative or minor child who fails or refuses to comply without good cause with eligibility requirements including providing information and verification needed to determine eligibility;

(i) refusal may occur verbally, in writing, or by not responding in any manner~~.~~ ; or

(k) all members of the assistance unit which includes a specified caretaker relative or minor child who fails or refuses without good cause to negotiate and sign a family investment agreement.

(4) An application for non-financial assistance must be made on behalf of a child under the age of 18.

(5) Subject to the restrictions set forth in (6), non-financial assistance may be granted to the following classes of persons if they meet all other eligibility requirements for non-financial assistance:

(a) children under the age of 18 for whom application is made;

(b) specified caretaker relatives, as defined in ARM 37.78.103, of children described in (5)(a);

(c) stepparents of children under the age of 18 who live with the child for whom application is made and with the child's natural or adoptive parent;

(d) siblings, by blood, marriage, or adoption, who are under the age of 18, half brothers and half sisters and stepsiblings of a child, in (5)(a).

(6) The following are not eligible for non-financial assistance:

(a) all members of the assistance unit which includes a specified caretaker relative or minor child who fails or refuses to comply, without good cause, with eligibility requirements including providing information and verification needed to determine eligibility;

(i) refusal may occur verbally, in writing, or by not responding in any manner.

AUTH: Sec. 53-2-201 and 53-4-212, MCA
IMP: Sec. 53-2-201, 53-4-211 and 53-4-231, MCA

37.78.207 ~~FAIM FINANCIAL ASSISTANCE~~ TANF: LIVING WITH A SPECIFIED RELATIVE (1) To be eligible for ~~FAIM financial~~ TANF cash assistance a child for whom application is made must be living with an adult related to the child by blood, marriage, or adoption who is within the fifth degree of kinship to the child as set forth in ARM 37.78.103. The child and adult relative must live together in a place of residence maintained as their home.

(a) through (3) remain the same.

(4) If the specified caretaker relative is temporarily absent from the home to complete a specific short-term training or employment, the child is still considered to be living with a specified caretaker relative even if the absence exceeds 90 days, provided the parent or specified caretaker relative continues to be otherwise eligible.

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

(6) To be eligible for non-financial assistance a child for whom application is made must be living with an adult related to the child by blood, marriage, or adoption who is within the fifth degree of kinship to the child as set forth in ARM 37.78.103.

AUTH: Sec. 53-4-212, MCA
IMP: Sec. 53-2-201, 53-4-211 and 53-4-601, MCA

37.78.208 ~~FAIM FINANCIAL ASSISTANCE~~ TANF: INCLUSION IN ASSISTANCE UNIT (1) Except as provided in (5), the child for whom application is made must be included in the assistance unit. The child's income and resources will be counted in determining eligibility and benefit amount and the child's needs will be included in the grant.

(2) Except as provided in (5), any minor child, as defined at ARM 37.78.103, who is related to the child described in (1) within the second degree of kinship or is a step relative within the same degree of kinship and who lives with the child and meets all other non-financial requirements for eligibility, including citizenship, must be included in the assistance unit. The minor child's income and resources will be counted in determining eligibility and benefit amount and the minor child's needs will be included in the grant.

~~(1)~~ (3) Except as provided in ~~(4)~~ (5), the parent or parents of a minor child described in (1) or (2) who live with the child and meet all other non-financial requirements for eligibility, including citizenship, must be included in the assistance unit, regardless of whether the parents are married to each other. The parent's or parents' income and resources will be counted in determining eligibility and benefit amount and the parent's or parents' needs will be included in the grant.

~~(2)~~ (4) Except as provided in ~~(4)~~ (5), the stepparent of a minor child described in (1) or (2) who lives with the child and the child's natural or adoptive parent must be included in the assistance unit if the stepparent meets all other non-financial requirements for eligibility including citizenship. The stepparent's income and resources will be counted in determining eligibility and benefit amount and the stepparent's needs will be included in the grant.

(a) remains the same.

~~(3) Except as provided in (4), all persons under the age of 18 years or who are under the age of 19 years and are attending high school or an equivalent program full-time who live in the home must be included in the assistance unit, including half brothers and sisters and step siblings of the~~

~~child applying for or receiving assistance if they meet all other nonfinancial requirements for eligibility, including citizenship. Their income and resources will be counted in determining eligibility and benefit amount and their needs will be included in the grant.~~

~~(4)~~ (5) The needs, income and resources of persons receiving supplemental security income (SSI) payments under Title XVI of the Federal Social Security Act shall not be included in determining the need and amount of the assistance payment of ~~FAIM financial~~ TANF cash assistance for the period for which SSI benefits are received. The needs, income and resources of persons with respect to whom federal, state or local foster care payments are made shall not be included in determining need and amount of the assistance payment.

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

(7) For purposes of TANF non-financial assistance, all persons who are included in the filing unit are included in the assistance unit.

AUTH: Sec. 53-2-201 and 53-4-212, MCA
IMP: Sec. 53-2-201, 53-2-613, 53-4-211 and 53-4-601, MCA

37.78.420 ~~FAIM FINANCIAL ASSISTANCE~~ TANF: ASSISTANCE STANDARDS; TABLES; METHODS OF COMPUTING AMOUNT OF MONTHLY BENEFIT PAYMENT (1) Income standards as set forth in this rule are used to determine whether need exists with respect to income for any person who applies for or receives ~~FAIM financial~~ TANF cash assistance ~~but not food stamp benefits~~ and to determine the benefit amount the assistance unit will receive if eligible. Three sets of assistance standards are used which are as follows:

(a) The gross monthly income (GMI) standard sets the level of gross monthly income for each size assistance unit which cannot be exceeded if the assistance unit is to be eligible for ~~FAIM financial~~ TANF cash assistance.

(b) The net monthly income (NMI) standard~~, also known as the need standard sets the level of net monthly income for each size assistance unit which cannot be exceeded if the assistance unit is to be eligible. It represents the minimum dollar amount required for basic needs such as food, clothing, shelter, personal care items, and household supplies for a household of the assistance unit's size~~ is used to determine the GMI standard.

(c) The benefit standard sets the level of net countable income which cannot be exceeded if the assistance unit is to be eligible for assistance. It is also used to determine the amount of the monthly cash payment in the ~~pathways and community services~~ TANF cash assistance program~~s~~ and is based on the size of the assistance unit. This amount is prorated for the month of application if eligibility is for less than a full month. ~~If this amount is less than $10, no payment check will be issued.~~

(2) The income standards vary depending on the number of persons in the assistance unit ~~and whether the assistance unit has a shelter obligation~~.

~~(a) An assistance unit is considered to have a shelter obligation if a member of the filing unit is obligated to meet any portion of the expenses for the assistance unit's place of residence, such as rent, a house payment, mortgage payment, real property taxes or homeowner's insurance, mobile home lot rent or utilities such as heating fuel, water or lights. An assistance unit receiving a government rent or housing subsidy is considered to have a shelter obligation even if the assistance unit's share of the rent or housing payment is zero.~~

~~(3) The income standards used to determine an assistance unit's eligibility and amount of cash assistance are determined as follows:~~

~~(a) The standards designated "with shelter obligation" are used if the assistance unit has a shelter obligation as defined in (2)(a).~~

~~(b) The standards designated "without shelter obligation" are used if the assistance unit does not have a shelter obligation as defined in (2)(a).~~

~~(4)~~ (3) The assistance unit's ~~gross monthly income~~ GMI as defined in ARM 37.78.103 is compared to the applicable GMI standard, and after specified disregards, to the ~~NMI~~ benefit standard. If the assistance unit's ~~gross monthly income~~ GMI exceeds the GMI standard or their ~~net~~ countable monthly income as defined in ARM 37.78.103 exceeds the ~~NMI standard or the~~ benefit standard, the assistance unit is ineligible for assistance. Monthly income is compared to the full standard even if the eligibility is being determined for only part of the month.

(a) Eligibility for assistance and the amount of the monthly benefit payment which a ~~pathways or CSP~~ TANF cash assistance unit will receive is determined prospectively, that is, based on the department's best estimate of income and other circumstances which will exist in the benefit month.

(b) remains the same.

~~(5)~~ (4) The GMI standards, NMI standards and benefits standards ~~used to determine eligibility and amount of cash assistance~~ are as follows:

(a) remains the same.

~~GROSS MONTHLY INCOME STANDARDS TO BE USED WHEN ADULTS ARE INCLUDED IN THE ASSISTANCE UNIT~~

~~Number of Persons in Household~~	~~With Shelter Obligation Per Month~~	~~Without Shelter Obligation Per Month~~
~~1~~	~~$ 664~~	~~$ 242~~
~~2~~	~~895~~	~~390~~
~~3~~	~~1,125~~	~~540~~
~~4~~	~~1,356~~	~~688~~
~~5~~	~~1,587~~	~~823~~
~~6~~	~~1,817~~	~~949~~
~~7~~	~~2,048~~	~~1,079~~

~~8~~	~~2,279~~	~~1,227~~
~~9~~	~~2,509~~	~~1,378~~
~~10~~	~~2,740~~	~~1,556~~
~~11~~	~~2,971~~	~~1,735~~
~~12~~	~~3,201~~	~~1,918~~
~~13~~	~~3,432~~	~~2,100~~
~~14~~	~~3,663~~	~~2,281~~
~~15~~	~~3,894~~	~~2,465~~
~~16~~	~~4,124~~	~~2,644~~

GROSS MONTHLY INCOME STANDARDS (GMI)

Number of Persons in Household	Gross Monthly Income (GMI)
1	$ 705
2	949
3	1,195
4	1,439
5	1,685
6	1,930
7	2,174
8	2,420
9	2,664
10	2,910
11	3,154
12	3,400
13	3,645
14	3,889
15	4,135
16	4,379
17	4,625
18	4,869
19	5,113
20	5,359

(b) Net monthly income standards are ~~compared with the assistance unit's net monthly income as defined in ARM 37.78.103~~ used to compute gross monthly income standards.

~~NET MONTHLY INCOME STANDARDS~~
~~ARE INCLUDED IN THE ASSISTANCE UNIT~~

~~Number of Persons in Household~~	~~With Shelter Obligation Per Month~~	~~Without Shelter Obligation Per Month~~
~~1~~	~~$ 359~~	~~$131~~
~~2~~	~~484~~	~~211~~
~~3~~	~~608~~	~~292~~
~~4~~	~~733~~	~~372~~
~~5~~	~~858~~	~~445~~
~~6~~	~~982~~	~~513~~
~~7~~	~~1,107~~	~~583~~
~~8~~	~~1,232~~	~~663~~
~~9~~	~~1,356~~	~~745~~
~~10~~	~~1,481~~	~~841~~
~~11~~	~~1,606~~	~~938~~
~~12~~	~~1,730~~	~~1,037~~
~~13~~	~~1,855~~	~~1,135~~
~~14~~	~~1,980~~	~~1,233~~
~~15~~	~~2,105~~	~~1,332~~
~~16~~	~~2,229~~	~~1,429~~

NET MONTHLY INCOME STANDARDS (NMI)

1	$ 381
2	513
3	646
4	778
5	911
6	1,043
7	1,175
8	1,308
9	1,440
10	1,573
11	1,705
12	1,838
13	1,970
14	2,102
15	2,235
16	2,367
17	2,500
18	2,632
19	2,764
20	2,897

(c) Benefit income standards are compared with the assistance unit's ~~net~~ countable income as defined in ARM 37.78.103.

~~BENEFITS STANDARDS~~

~~NUMBER OF PERSONS IN HOUSEHOLD~~	~~WITH SHELTER OBLIGATION PER MONTH~~	~~WITHOUT SHELTER OBLIGATION PER MONTH~~
~~1~~	~~$ 282~~	~~$ 103~~
~~2~~	~~380~~	~~166~~
~~3~~	~~477~~	~~229~~
~~4~~	~~575~~	~~292~~
~~5~~	~~674~~	~~349~~
~~6~~	~~771~~	~~403~~
~~7~~	~~869~~	~~458~~
~~8~~	~~967~~	~~520~~
~~9~~	~~1,064~~	~~585~~
~~10~~	~~1,163~~	~~660~~
~~11~~	~~1,261~~	~~736~~
~~12~~	~~1,358~~	~~814~~
~~13~~	~~1.456~~	~~891~~
~~14~~	~~1,554~~	~~968~~
~~15~~	~~1,652~~	~~1,046~~
~~16~~	~~1,750~~	~~1,122~~

BENEFITS STANDARDS

1	$ 299
2	403
3	507
4	611
5	715
6	819
7	922
8	1,027
9	1,130
10	1,235
11	1,338
12	1,443
13	1,546
14	1,650

15	1,754
16	1,858
17	1,963
18	2,066
19	2,170
20	2,274

(5) The GMI limit for post employment services (PES) and post employment training and education (PETE) is 150% of federal poverty level and it varies depending on the number of people in the assistance unit. The GMI limit sets the level of GMI for each size assistance unit which cannot be exceeded if the assistance unit is to be eligible for PES payments or PETE payments.

(6) The adult's gross monthly earned income as defined in ARM 37.78.103 is compared to the applicable GMI limit. If the assistance unit's GMI exceeds the GMI limit, the assistance unit is ineligible for assistance. Monthly income is compared to the full limit even if the eligibility is being determined for only part of the month.

(a) Eligibility for PES payments and PETE payments is determined prospectively based on the department's best estimate of income and other circumstances which will exist in the application month.

(b) When comparing income to the income limits, income anticipated to be received in the benefit month is used.

AUTH: Sec. 53-4-212, MCA
IMP: Sec. 53-4-211, 53-4-241 and 53-4-601, MCA

37.78.425 ~~FAIM FINANCIAL ASSISTANCE: ONE TIME EMPLOYMENT-RELATED PAYMENT~~ TANF: NON-FINANCIAL ASSISTANCE PAYMENT (1) A ~~one time employment-related~~ PES payment may be provided to ~~participants in the job supplement and pathways program. One time means that the payment may be received once in the participant's life time while participating in the pathways program and once while participating in the job supplement program~~ assist a family with emergency needs related to maintaining employment of training needs necessary to advance in employment provided the family meets all financial and non-financial eligibility requirements set forth in ARM 37.78.206(4) through (6), 37.78.207(6), and 37.78.420(5) and (6). Issuance of a PES payment is dependent on available funding in the family's county of residence. The payment may be made at the department's discretion for a variety of employment related expenses, including:

(a) transportation, including vehicle repairs, ~~down payment on a vehicle provided the individual will have sufficient funds to make the monthly payments in the future,~~ tires, insurance, driver's license fee, gas, etc.;

(b) through (c) remain the same.

(d) union dues, special fees, licenses or certificates; or

~~(e) up-front costs for employment such as agency fees, testing fees or child care for the first 2 months of employment;~~

~~(f) up-front fees of self-employment such as business license, deposits for phone and/or utility hookups, post office box rental, etc.; or~~

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

(2) A ~~one time employment related payment will be provided only if~~ PES payment may not be used to pay for:

(a) any medical service or item; or

(b) fines of any type, including traffic or criminal.

(3) A PES payment will be provided only if:

(a) all other resources~~, including but not limited to private and commercial loans,~~ have been exhausted including but not limited to the family's personal resources;

(b) the department may require verification of expenses for which the payment is requested ~~have been verified~~; and

(c) ~~at least two written~~ one cost estimates ~~have been submitted~~ for major expenses~~; and~~

~~(d) the pathways participant is losing eligibility due to increased earnings from employment and requests the payment within 10 calendar days after the last day of the last month of eligibility~~.

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

~~(5)~~ (6) The maximum amount of the payment will be ~~up to three times the benefit standard for an assistance unit of that size. Families who receive such a payment will be ineligible to receive future cash benefits in the pathways or community services programs for a period of time equal to twice the number of months which is obtained when the amount of the payment received is divided by the maximum monthly benefit standard for an assistance unit of that size~~ the amount necessary to alleviate the emergency, up to but not in excess of $1,000 per family per year.

~~(a) The period of ineligibility following the payment will not count toward the time limits described in ARM 37.78.201.~~

~~(b) The period of ineligibility begins:~~

~~(i) for job supplement program participants, the calendar month following the month of issuance of the payment;~~

~~(ii) for pathways participants, the month following the month in which the last cash assistance payment is received.~~

(7) A PETE payment may be provided to assist a family with necessary expenses, while the parent is attending a training or education program necessary to advance in employment and is directly intended to promote improved wages. Issuance of a PETE payment is dependent on available funding in the family's county of residence. A PETE payment is $494 per month per household, without regard to the number of parents approved for PETE. The payment may be made at the department's discretion.

(8) To be eligible a household must meet all financial and non-financial eligibility requirements as stated in ARM 37.78.206(4) through (6), 37.78.207(6) and 37.78.420(5) and (6). The parent applying for PETE must also meet the following eligibility criteria:

(a) must be working an average of 10 hours per week in paid employment;

(b) must have worked at least 30 hours per week for 10 or more of the 16 weeks preceding application for a PETE or enrollment in the current semester/quarter or training program;

(c) must not currently receive TANF cash assistance for themselves or any member of the filing unit;

(d) must have received TANF cash assistance sometime in the 2 years prior to application for PETE; and

(e) must pass a local community screening by submitting the following documentation:

(i) level of training or education being sought may not extend beyond a bachelor's level;

(ii) proof of acceptance to or enrollment in a training program or educational institution;

(iii) a written plan detailing career advancement goal and training/course/class schedule to ensure program completion by June 30, 2003 and if the program extends beyond June 30, 2003, the plan must include an explanation of how the parent will complete the program once PETE assistance ends; and

(iv) proof of current paid employment.

(9) Once a parent is approved for PETE the parent will continue to be eligible as long as the parent has an eligible minor child in the home and the parent varifies monthly that:

(a) the parent is following the PETE career advancement plan; and

(b) the parent continues to work an average of 10 hours per week.

(10) A work support payment may be provided to a TANF cash assistance household to assist with employment related needs, the month following the month of case closure. Issuance of a work support payment is dependent on available funding. A work support payment is equal to the TANF cash assistance benefit standard for a household of three as defined in ARM 37.78.420.

(11) An assistance unit is eligible to receive a work support payment when:

(a) the assistance unit is losing TANF cash assistance eligibility due to new or increased earnings from employment and the new or increased earned income was reported within 10 calendar days of the participant's knowledge of the change; and

(b) the assistance unit has not received a work support payment in the prior 12 months.

AUTH: Sec. 53-4-212, MCA
IMP: Sec. 53-4-211, 53-4-601 and 53-4-603, MCA

37.78.506 TANF: TANF CASH ASSISTANCE; SANCTIONS (1) If any member of the assistance unit fails or refuses without good cause as defined in ARM 37.78.508 to comply with ~~a requirement of the individual's family investment agreement,~~ an employment related or training activity as defined in (8) by means of the reduction of the monthly TANF cash assistance payment by an amount equal to one person's share of the payment for ~~a period of time as specified in (2) and (3)~~ 1 month. This rule does not

apply to households who are receiving TANF extended benefits as defined in ARM 37.78.202.

~~(2) The duration of the penalty period is as follows:~~

~~(a) for the first sanction, a minimum of 1 month;~~

~~(b) for the second sanction, a minimum of 3 months;~~

~~(c) for the third sanction, a minimum of 6 months; and~~

~~(d) for the fourth and any subsequent sanctions, a minimum of 12 months.~~

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

(5) If the TANF cash assistance case closes because the sanctioned individual did not end the sanction by negotiating a new family investment agreement (FIA) during the penalty period, the household must serve a 1 month ineligibility period as long as the sanctioned individual is a required filing unit member.

(6) through (8) remain the same.

(9) If a sanctioned individual requests a hearing to challenge the sanction and receives continued benefits pending the hearing, the sanction will not be imposed until a final decision is obtained. ~~If a final decision upholding the sanction is obtained and it is possible to impose the sanction following the decision, the sanction will then be imposed in the usual manner in a later month or months.~~ If a final decision upholding the sanction is obtained ~~and it is not possible to impose the sanction following the decision~~, the assistance received during the penalty period and the ineligibility period pending the fair hearing will be considered an overpayment.

AUTH: Sec. 53-4-212, MCA
IMP: Sec. 53-4-211, 53-4-601 and 53-4-608, MCA

37.78.807 ~~FAIM~~ TANF CASH ASSISTANCE EMPLOYMENT AND TRAINING ACTIVITIES (1) Participants in ~~FAIM employment and training activities~~ TANF cash assistance, regardless of whether they are members of a single-parent or two-parent family, may, in accordance with their FIA, ~~and~~ subject to availability in their community and as long as Montana has a waiver for work participation activities recognized by the federal agency, participate in the following activities:

(a) through (d) remain the same.

(e) post-secondary training or education ~~in the pathways or community services program~~ if ~~post-secondary training or education is an acceptable pathways or CSP activity in the community where the participant resides and the criteria of the community operating plan for that community are met, subject to the provisions of (4)~~ approved in accordance with ARM 37.78.825.

(f) through (i) remain the same.

(2) The ~~FAIM coordinator~~ eligibility case manager may refer ~~pathways or community services~~ TANF cash assistnace program participants to one single WoRC activity for the duration of a class or training if there is space in that specific class or training. Participants entering WoRC in this manner will be enrolled for the duration of the class or training only.

~~(3) Post-secondary education or training is not an acceptable activity for an individual who terminates employment or reduces hours of employment to pursue that education or training unless:~~

~~(a) the individual had good cause as defined in ARM 37.78.508 for terminating employment or reducing hours of employment; or~~

~~(b) it is determined in accordance with provisions of the community operating plan in the community where the individual resides that it is reasonable for the individual to terminate employment or reduce hours of employment in order to pursue post-secondary education or training.~~

AUTH: Sec. 53-4-212, MCA
IMP: Sec. 53-2-201, 53-4-211, 53-4-601 and 53-4-613, MCA

37.78.825 ~~FAIM~~ TANF EMPLOYMENT AND TRAINING: POST-SECONDARY PARTICIPATION CRITERIA (1) ~~Subject to the limits set forth in ARM 37.78.807, post-secondary~~ Post-secondary education may be an allowable activity for ~~FAIM~~ employment and training if ~~it is an approved part of the community operating plan for the county in which the participant resides and if~~:

(a) the participant has anything less than a ~~4-year~~ bachelors degree or needs to update an existing degree or meet certification requirements;

(b) ~~child care funds are available;~~

~~(c)~~ the training provides skills which the department has determined will lead to gainful employment in the area where the participant lives or in an area of the United States to which the participant is willing to move;

(d) remains the same but is renumbered (c).

~~(e)~~ (d) the participant's course work will lead to a degree or certificate in the approved program; ~~and~~

~~(f)~~ (e) the program is consistent with the participant's employability plan which has been approved by the participant's case manager;

(f) the individual is maintaining an average of 10 hours per week of paid employment or educational related WoRC, e.g., student teaching, internship, etc.; and

(g) provided Montana has a vaiver for work participation activities recognized by the federal agency.

(2) Post-secondary education or training is not an acceptable activity for an individual who terminates employment or reduces hours of employment to pursue that education or training unless the individual had good cause as defined in ARM 37.78.508 for terminating employment or reducing hours of employment.

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

(6) Once an individual is approved in one county, the approval is transferable to any other county, as long as the individual is pursing the same course of study outlined in the original application.

AUTH: Sec. 53-4-212, MCA
IMP: Sec. 53-2-201, 53-4-211, 53-4-601 and 53-4-613, MCA

37.78.826 ~~FAIM~~ TANF CASH ASSISTANCE EMPLOYMENT AND TRAINING: REQUIREMENTS FOR SATISFACTORY PROGRESS IN EDUCATIONAL, WORK AND TRAINING ACTIVITIES (1) Satisfactory progress in educational activities and post-secondary education in ~~FAIM~~ employment and training must be made in accordance with the requirements of the ~~community operating plan for the county in which the participant resides~~ institution the participant is attending.

AUTH: Sec. 53-4-212, MCA
IMP: Sec. 53-2-201, 53-4-211, 53-4-601 and 53-4-613, MCA

37.82.101 MEDICAL ASSISTANCE, PURPOSE AND INCORPORATION OF POLICY MANUALS (1) remains the same.

(2) The department hereby adopts and incorporates by this reference the state policy manuals governing the administration of the medicaid program that are in effect July 1, 2002. The manuals hereby adopted are the Family Medicaid Manual and the SSI Medicaid Manual and manual updates effective July 1, 2002. The Family Medicaid Manual, the SSI Medicaid Manual and the proposed manual updates are available for public viewing at each local office of public assistance or at the Department of Public Health and Human Services, Human and Community Services Division, 1400 Broadway, P.O. Box 202952, Helena, MT 59620-2952. The proposed manual updates are also available on the department's website at "www.dphhs.state.mt.us".

AUTH: Sec. 53-2-201 and 53-6-113, MCA
IMP: Sec. 53-6-101, 53-6-131 and 53-6-141, MCA

3. The Temporary Assistance for Needy Families (TANF) cash assistance program and the Medicaid program provide cash assistance and medical care respectively to eligible low-income Montanans. The programs are jointly funded by the State and Federal governments and are administered by the State in accordance with federal and State laws and regulations.

The proposed amendments to ARM 37.78.102 and 37.82.101 are necessary in order to adopt and incorporate into the Administrative Rules of Montana the policies used by the Department in administering the programs. These proposed amendments incorporate the Department's policy manuals and proposed manual changes effective July 1, 2002 and permit all interested parties as well as the public to comment on the Department's policies and to offer suggested changes. Manuals and draft manual material are available for review in each local Office of Public Assistance. Following is a brief overview of the information contained in each manual section for the Family Medicaid Manual, the SSI Medicaid Manual, and the TANF Cash Assistance Manual and an explanation for adoption and incorporation of each individual manual section.

Family Medicaid Manual

The first section of the manual contains the Acronyms and Glossary section. It defines the terms and acronyms commonly used in the Family Medicaid (FMA) policy manual. It is necessary to adopt and incorporate this section in order to create a common language and to foster a better understanding of the administration of the program and the remaining manual provisions. For any terms that are not defined, the common usage, as defined in an English language dictionary, is used.

The second section of the Family Medicaid Manual, Section 000, lists the Table of Standards. This section outlines the resource and income guidelines for all FMA programs. FMA programs include most Medicaid programs for families, minor children, and pregnant women. It is necessary to adopt and incorporate this section so that the resource and income guidelines governing eligibility can be accessed in a readily-available and efficient manner. The resource and income limits, themselves, are determined by federal law, often as an expression of federal poverty level. The Table of Standards converts the percentages to dollar amounts for various household sizes and is much easier to use and more efficient than constantly performing the various calculations required to make an eligibility determination. In addition, it is necessary to adopt and incorporate these Tables in order to create a broader general understanding of the limits of eligibility.

The third section of the Family Medicaid Manual, Section 100, is entitled "Application Processing". This section provides guidance for Eligibility Case Managers when processing FMA applications and informs the public as to what can be expected when an application is submitted. Individual chapters detail policies regarding confidentiality, civil rights, general complaints, applicant rights and responsibilities, application processing timelines, retroactive Medicaid processing, presumptive eligibility, what information must be verified and/or documented, and general eligibility determination information regarding processing. It is necessary to adopt and incorporate this section in order to create consistency Statewide in the processing of FMA applications and to create an understanding of the issues involved.

The fourth section of the Family Medicaid Manual, Section 200, is entitled "Coverage Groups". This section describes the specific policies for each of the various FMA coverage groups. Each chapter addresses a different program and provides detailed policy information regarding eligibility, non-financial eligibility criteria, and filing and assistance unit requirements. These programs include the following coverage groups: Poverty Child, Poverty Six, Poverty Pregnant Woman, Extended Medicaid, Family Medicaid, Ribicoff Child, Automatic Newborn, Qualified Pregnant Woman, Continuous Pregnant Woman,

Extended Coverage after pregnancy, and Breast and Cervical Cancer treatment. The programs vary in their requirements and eligibility criteria. It is necessary to adopt and incorporate this section of the manual in order to foster consistent application of the policies governing the various coverage groups and programs on a Statewide basis.

The fifth section of the Family Medicaid Manual, Section 300, is entitled "Nonfinancial Requirements". It identifies and details FMA policy regarding all non-financial eligibility criteria that applicants must meet in order to qualify for FMA coverage. All FMA applicants/recipients must furnish a social security number, be a Montana resident, be either a U.S. Citizen, National, or meet Qualified Alien status as defined by federal law, cooperate with Third Party Liability requirements, and cooperate with Program Compliance reviews. Some coverage groups are also required to cooperate with child support enforcement efforts. There are also age limits for specific coverage groups. It is necessary to adopt and incorporate this section of the manual in order to foster consistent application of the policies governing non-financial eligibility criteria and to create a better public understanding of the non-financial eligibility criteria of the various FMA coverage groups.

The sixth section of the Family Medicaid Manual, Section 400, is entitled "Resources". It provides detailed policies regarding how and when specific types of resources are considered or accounted for when making an eligibility determination. It also lists how certain resources must be coded in The Economic Assistance Management System (TEAMS) computer program to ensure that the value of certain resources are correctly counted or excluded. It is necessary to adopt and incorporate this section of the manual in order to foster consistent application of the policies governing resources and to ensure proper coding statewide. In addition, interested persons and the public are able to review and comment on the policies, hopefully creating a better understanding of how various resources are determined, counted, and coded during the application process.

The seventh section of the Family Medicaid Manual, Section 500, is entitled "Income". This section provides detailed policies outlining how specific income types must be considered when making an FMA eligibility determination. Also included are instructions on how to code various types of income in the TEAMS system to ensure accurate eligibility determinations. It is necessary to adopt and incorporate this section of the manual so that various types of income are treated and coded consistently statewide when FMA applications are processed.

The eighth section of the Family Medicaid Manual, Section 600, is entitled "Eligibility and Benefit Determination". While the entire manual seeks to guide the eligibility determination, this section of the manual specifically describes how and when income is budgeted, disregarded, and deemed. This section provides

information on four accepted budgeting methods, namely annualizing, factoring, averaging, and anticipating. It also describes when each method should be used. It is necessary to adopt and incorporate this section of the manual in order to ensure consistent application of the various budgeting methods and to ensure that income is disregarded and deemed consistently as required by federal law.

The ninth section of the Family Medicaid Manual, Section 700, is entitled "Medically Needy". This section outlines which FMA programs can be available for medically needy coverage and explains that adult caretaker relatives cannot receive Medicaid coverage under any medically needy FMA program. This section also explains how eligible individuals can meet their monthly incurment, specifically through the cash payment option, payment of medical expenses, or a combination of both. This section also lists which medical expenses are allowable to meet the incurment and includes procedural information explaining how medically needy applications/cases should be processed. It is necessary to adopt and incorporate this section in order to foster a better general understanding of the medically needy Medicaid program and to create consistent application of the policies governing that coverage on a statewide basis.

The tenth section of the Family Medicaid Manual, Section 800, is entitled "Medicaid Services". This section explains the differences between full and basic Medicaid coverage and describes who is eligible for each. This section also includes information on the Essential for Employment program which allows basic Medicaid recipients to receive Medicaid services that are excluded under basic coverage if the services are necessary for the individual's employment. This section also provides information with respect to other available Medicaid services, such as Early, Periodic, Screening, Diagnostic and Treatment and transportation services available to Medicaid recipients. It is necessary to adopt and incorporate this section in order to ensure that the same set of Medicaid services are available to similarly situated eligibles across the State and that Medicaid services are governed by one consistent set of policies.

The eleventh section of the Family Medicaid Manual, Section 900, is entitled "Child Support". It explains which FMA programs are subject to cooperation with the Child Support Enforcement Division. This section also includes information regarding good cause determinations and reviews, assignment of rights, failure/refusal to cooperate, continuation of child support services, and lists the regional child support offices and liaisons in Montana. It is necessary to adopt and incorporate this section in order to create a better public understanding of the necessity to cooperate with child support enforcement efforts and to ensure consistent application of policies governing that cooperative effort statewide.

The twelfth section of the Family Medicaid Manual, Section 1000,

is entitled "Foster Care Medicaid". This section provides information regarding non-IV-E foster care application processing. IV-E foster care application processing is contained in a separate manual and is not at issue here. This section includes information regarding who is a foster child for purposes of Medicaid, general application processing policies, eligibility redetermination processing, and a list of therapeutic foster care and group homes. It is necessary to adopt and incorporate this section in order to create a better understanding of Medicaid programs as they relate to non-IV-E foster care. In addition, the adoption and incorporation of this section will foster consistent application of these policies statewide.

The thirteenth section of the Family Medicaid Manual, Section 1100, is entitled "Subsidized Adoption". This section provides brief policy information regarding processing Medicaid applications in the circumstance of subsidized adoption. These applications are unique as they are processed by the Public Assistance Bureau in Helena, Montana, rather than in the local Offices of Public Assistance. It is necessary to adopt and incorporate this section because it contains specific instructions regarding the processing of subsidized adoption applications that originated outside the State of Montana and these instructions must apply statewide in order to prevent confusion and processing problems related to subsidized adoption situations.

The fourteenth section of the Family Medicaid Manual, Section 1200, is entitled "Residential Medical Facilities". It establishes policy regarding Medicaid eligibility for individuals in specific residential settings. The section includes information regarding who may and may not be eligible and the process for determining eligibility. It is necessary to adopt and incorporate this section of the manual in order to ensure consistent application of the policies statewide.

The fifteenth section of the Family Medicaid Manual, Section 1300, is entitled "HIPAA". This section provides information regarding the Health Insurance Portability and Accountability Act of 1996. Specifically, it lists the procedures necessary to issue a certificate of creditable coverage for those individuals who lose Medicaid coverage and subsequently gain other health insurance. The certificate allows those individuals to receive the new health coverage without serving any preexisting condition waiting periods and is required by federal law. It is necessary to adopt and incorporate this section in order foster a better understanding of HIPAA and to create consistent procedures for administering the certificates required by HIPAA on a statewide basis.

The sixteenth section of the Family Medicaid Manual, Section 1500, is entitled "Case Management". It provides necessary information for case managers to process cases on an on-going

basis. It includes policies regarding when participants must report changes and what changes must be reported, when it is necessary to redetermine eligibility, and what information must be reviewed and/or verified. The rules on what is considered a complete notice and when the notice must be provided are also interpreted and explained. The process for fair hearings and continued benefits including administrative reviews, fair hearing procedures, Board of Public Assistance appeals, and judicial review are outlined. Also included in the section are policies regarding case notes and program compliance reviews, when good cause will be granted for non-compliance, guidelines for retention/purging of files, and case transfers. It is necessary to adopt and incorporate this section in order to ensure consistent case management statewide and to ensure that case managers are fully informed regarding the policies governing good cause and fair hearing procedures.

The seventeenth section of the Family Medicaid Manual, Section 1600, is entitled "Forms". It contains a list of forms currently used to process and maintain Medicaid and other public assistance cases. It is necessary to adopt and incorporate this section so that current forms are used consistently statewide and confusion regarding the appropriate form is minimized.

The last section of the Family Medicaid Manual, Section 1700, is entitled "Directories". It contains contact information for various organizations across the State that are involved in public assistance or that might be useful to the Medicaid case managers. It is prudent to adopt and incorporate this section in order to compile and keep the information together with the other manual sections and to create a convenient and readily-accessible resource for case managers so that Medicaid cases can be managed effectively and efficiently.

SSI Medicaid Manual

The first section of the SSI Medicaid Manual (SMA) is the "Glossary". It defines the terms commonly used in the SSI Medicaid Manual. Also included are explanations of the acronyms used throughout the manual. It is necessary to adopt and incorporate this section in order to create a common language and to foster a better understanding of the administration of the program and the remaining manual provisions. For any terms that are not defined, the common usage, as defined in an English language dictionary, is used.

The second section of the SSI Medicaid Manual, Section 000, is entitled "Table of Standards". This section outlines the resource and income guidelines, including medically needy guidelines, for all SMA programs. In addition, a life expectancy table is included for use in valuing life estates. It is necessary to adopt and incorporate this section so that the resource and income guidelines governing eligibility can be accessed in a readily-available and efficient manner. The

resource and income limits, themselves, are generally determined by federal law. In addition, it is necessary to adopt and incorporate these Tables in order to create a broader general understanding of the limits of eligibility of SSI Medicaid programs.

The third section of the SSI Medicaid Manual, Section 100, is entitled "Application Processing". This section provides guidance for Eligibility Case Managers when processing SMA applications and informs the public as to what can be expected when an application is submitted. Individual chapters detail policies regarding confidentiality, civil rights, general complaints, applicant rights and responsibilities, application processing timelines, retroactive Medicaid processing, presumptive eligibility, what information must be verified and/or documented, and general eligibility determination information regarding processing. It is necessary to adopt and incorporate this section in order to create consistency statewide in the processing of SMA applications and to create an understanding of the issues involved.

The fourth section of the SSI Medicaid Manual, Section 200, is entitled "Coverage Groups". This section describes the specific policies for most of the various SMA programs. Each chapter addresses a different program and provides detailed policy information regarding eligibility, non-financial eligibility criteria, and other eligibility requirements. These programs include the following SSI coverage groups: SSI cash recipients, presumptive disability for SSI cash applicants, Pickle eligibility, disabled widow(er)s, early widow(er)s, disabled children who lost SSI benefits because of more restrictive Social Security disability criteria, Social Security increase of July 1972, disabled adult children (DAC), disabled widow(er)s who lost SSI benefits because of more liberal Social Security disability criteria, and Qualified Disabled Working Individuals. The programs vary in their requirements and eligibility criteria. It is necessary to adopt and incorporate this section of the manual in order to foster consistent application of the policies governing the various coverage programs on a statewide basis.

The fifth section of the SSI Medicaid Manual, Section 300, is entitled "Nonfinancial Requirements". It identifies and details SMA policy regarding all non-financial eligibility criteria that applicants must meet in order to qualify for SMA coverage. All SMA applicants/recipients must furnish a social security number, be a Montana resident, be either a U.S. Citizen, National, or meet Qualified Alien status as defined by federal law, apply for all other benefits for which they might qualify, cooperate with Third Party Liability requirements, and cooperate with Program Compliance reviews. In addition, SMA recipients may be subject to managed care. It is necessary to adopt and incorporate this section of the manual in order to foster consistent application of the policies governing non-financial eligibility criteria and

to create a better public understanding of the non-financial eligibility criteria of the various SMA programs.

The sixth section of the SSI Medicaid Manual, Section 400, is entitled "Resources". It provides detailed policies regarding how and when specific types of resources are considered or accounted for when making an eligibility determination. It also lists how certain resources must be coded in The Economic Assistance Management System (TEAMS) computer program in ensure that the value of certain resources are correctly counted or excluded. It is necessary to adopt and incorporate this section of the manual in order to foster consistent application of the policies governing resources and to ensure proper coding statewide. In addition, interested persons and the public are able to review and comment on the policies, hopefully creating a better understanding of how various resources are determined, counted, and coded during the application process.

The seventh section of the SSI Medicaid Manual, Section 500, is entitled "Income". This section provides detailed policies outlining how specific income types must be considered when making an SMA eligibility determination. Also included are instructions on how to code various types of income in the TEAMS system to ensure accurate eligibility determinations. It is necessary to adopt and incorporate this section of the manual so that various types of income are treated and coded consistently statewide when SMA applications are processed.

The eighth section of the SSI Medicaid Manual, Section 600, is entitled "Eligibility and Benefit Determination". While the entire manual seeks to guide the eligibility determination, this section of the manual specifically describes how income is budgeted when determining SMA eligibility. Categorically needy coverage is also explained. In addition, this section provides information on four accepted budgeting methods, namely annualizing, factoring, averaging, and anticipating. It also describes when each method should be used. The policies regarding financial responsibility of relatives and deeming procedures from financially responsible relatives and alien sponsors to SMA applicants are detailed. Also included are policies regarding allowable income disregards and deductions and under what circumstances each may be allowed. It is necessary to adopt and incorporate this section of the manual in order to ensure consistent application of the various budgeting methods and to ensure that income is disregarded and deemed consistently as required by federal law.

The ninth section of the SSI Medicaid Manual, Section 700, is entitled "Medically Needy". This section outlines which SMA programs can be available for medically needy coverage. This section also explains how eligible individuals can meet their monthly incurment, specifically through the cash payment option, payment of medical expenses, or a combination of both. This section also lists which medical expenses are allowable to meet

the incurment and includes procedural information explaining how medically needy applications/cases should be processed. It is necessary to adopt and incorporate this section in order to foster a better general understanding of the medically needy program and to create consistent application of the policies governing that coverage on a statewide basis.

The tenth section of the SSI Medicaid Manual, Section 800, is entitled "Medicare Beneficiaries". This section defines the Medicare Savings Programs, Qualifying Individuals (QI-1) and Qualifying Individuals (QI-2). The benefits and financial eligibility criteria for each coverage group are explained. It is necessary to adopt and incorporate this section in order to ensure consistent statewide application of the policies governing these Medicare-related programs.

The eleventh section of the SSI Medicaid Manual, Section 900, is entitled "Residential Medical Institutions". It provides definitions of institutions covered by the SMA programs and lists those which are specifically excluded. Pre-admission screening requirements are provided. Spousal impoverishment allowances and regulations for couples are detailed. This section also includes the budgeting process for eligibility determination as well as post-eligibility treatment of income for both institutionalized individuals and spouses. The process for accounting for long term care insurance, and special rules for those institutionalized prior to October 1, 1989 are also outlined. It is necessary to adopt and incorporate this section in order to create a better public understanding of the policies governing Medicaid when a residential medical institution is involved and to ensure consistent application of those policies.

The twelfth section of the SSI Medicaid Manual, Section 1000, is entitled "Home & Community Based (Waiver) Services". This section lists the policies governing home and community based services programs, including the waiver of otherwise required deeming from responsible relatives, special handling of medical expenses for the medically needy SMA waiver recipient, and includes an outline of additional medical services covered by waiver SMA. It is necessary to adopt and incorporate this section in order to create a better understanding of the policies governing home and community based programs and to foster consistent application of these policies statewide.

The thirteenth section of the SSI Medicaid Manual, Section 1100, is entitled "Medicaid Services". This section provides brief policy information regarding Medicaid transportation reimbursement. It is necessary to adopt and incorporate this section in order to create a better public understanding of transportation reimbursement and to ensure consistent application of the policies governing transportation reimbursement on a statewide basis.

The fourteenth section of the SSI Medicaid Manual, Section 1400,

is entitled "Estates Recovery". It describes the lien and estates recovery policies of the SMA programs, briefly defines estates, recoverable expenses, and which assets of an individual are subject to recovery. This section also describes the individuals affected by estate recovery requirements and the situations under which exemptions from lien and estates recovery regulations may be available. It is necessary to adopt and incorporate this section of the manual in order to ensure consistent application of the policies statewide.

The fifteenth section of the SSI Medicaid Manual, Section 1500, is entitled "Case Management". It provides necessary information for case managers to process cases on an on-going basis. It includes policies regarding when participants must report changes and what changes must be reported, when it is necessary to redetermine eligibility, and what information must be reviewed and/or verified. The rules on what is considered a complete notice and when the notice must be provided are also interpreted and explained. The process for fair hearings and continued benefits, including administrative reviews, fair hearing procedures, Board of Public Assistance appeals, and judicial review are outlined. Also included in the section are policies regarding case notes and program compliance reviews, when good cause will be granted for non-compliance, guidelines for retention/purging of files, and case transfers. The procedures for compliance with the Health Insurance Portability and Accountability Act (HIPAA) of 1996 are outlined as well, including policies regarding the continuation of eligibility after a disability determination termination and denial. It is necessary to adopt and incorporate this section in order to ensure consistent case management statewide and to ensure that case managers are fully informed regarding the policies governing SMA cases.

The sixteenth section of the SSI Medicaid Manual, Section 1700, is entitled "Directories". It contains contact information for various organizations across the State that are involved in public assistance or that might be useful to the Medicaid case managers. It is prudent to adopt and incorporate this section in order to compile and keep the information together with the other manual sections and to create a convenient and readily accessible resource for case managers so that Medicaid cases can be managed effectively and efficiently.

TANF Cash Assistance Manual

The first section of the TANF Cash Assistance Manual contains the Glossary section. It defines the terms and acronyms commonly used in the remaining sections of the policy manual. It is necessary to adopt and incorporate this section in order to create a common language and to foster a better understanding of the administration of the cash assistance program and the remaining manual provisions. For any terms that are not defined, the common usage, as defined in an English language

dictionary, is used.

The second section of the TANF Cash Assistance Manual, Section 000, lists the Table of Standards. This section outlines the income guidelines for the TANF cash assistance program. It is necessary to adopt and incorporate this section so that the income guidelines governing eligibility can be accessed in a readily-available and efficient manner. The income limits, themselves, are determined by the Montana legislature, and are often an expression of federal poverty level. The Table of Standards converts the percentages of federal poverty level to dollar amounts for various household sizes and is much easier to use and more efficient than constantly performing the various calculations required to make an eligibility determination. In addition, it is necessary to adopt and incorporate these Tables in order to create a broader general understanding of the limits of eligibility.

The third section of the TANF Cash Assistance Manual, Section 100, is entitled "Application Processing". This section provides guidance for Eligibility Case Managers when processing TANF cash assistance applications and informs the public as to what can be expected when an application is submitted. Individual chapters detail policies regarding confidentiality, civil rights, general complaints, applicant rights and responsibilities, application processing timelines, Tribal TANF plans, voter registration, failure/refusal to comply, protective payees and federal reports/data collection. It is necessary to adopt and incorporate this section in order to create consistency statewide in the processing of TANF cash assistance applications and to create an understanding of the issues involved as well as to ensure statewide data collection so that timely reports can be provided to the federal government as required by federal law.

The fourth section of the TANF Cash Assistance Manual, Section 200, is entitled "Household Composition". This section provides specific information on who must/may be included in a filing unit or an assistance unit, how to process a TANF cash assistance case when two different households have joint custody of the child(ren), and the policies for adding new members (or removing them) from a household. It is necessary to adopt and incorporate this section of the manual in order to foster consistent application of the policies governing household composition on a statewide basis.

The fifth section of the TANF Cash Assistance Manual, Section 300, is entitled "Nonfinancial Requirements". It identifies and details TANF cash assistance policies regarding all non-financial eligibility criteria that applicants must meet in order to qualify for cash assistance. All TANF cash assistance applicants/recipients must: be either a U.S. Citizen, National, or meet Qualified Alien status as defined by federal law; be a Montana resident; furnish a social security number; have a minor

child in the home; the minor child must be living with a specified caretaker relative; cooperate with Third Party Liability requirements; and, cooperate with Program Compliance reviews. Most TANF cash assistance households must also cooperate with child support enforcement efforts and must assign rights to child support. It is necessary to adopt and incorporate this section of the manual in order to foster consistent application of the policies governing non-financial eligibility criteria and to create a better public understanding of the non-financial eligibility criteria of the TANF cash assistance program.

The sixth section of the TANF Cash Assistance Manual, Section 400, is entitled "Resources". It provides detailed policies regarding how and when specific types of resources are considered or accounted for when making an eligibility determination. It also lists how certain resources must be coded in The Economic Assistance Management System (TEAMS) computer program in ensure that the value of certain resources are correctly counted or excluded. It is necessary to adopt and incorporate this section of the manual in order to foster consistent application of the policies governing resources and to ensure proper coding statewide. In addition, interested persons and the public are able to review and comment on the policies, hopefully creating a better understanding of how various resources are determined, counted, and coded during the application process.

The seventh section of the TANF Cash Assistance Manual, Section 500, is entitled "Income". This section provides detailed policies outlining how specific income types must be considered when making an eligibility determination for cash assistance. Also included are instructions on how to code various types of income in the TEAMS system to ensure accurate eligibility determinations. It is necessary to adopt and incorporate this section of the manual so that various types of income are treated and coded consistently statewide when cash assistance applications are processed.

The eighth section of the TANF Cash Assistance Manual, Section 600, is entitled "Eligibility and Benefit Determination". While the entire manual seeks to guide the eligibility determination, this section of the manual specifically describes how and when income is budgeted, disregarded, and deemed and describes the grant calculation process. This section provides information on four accepted budgeting methods, namely annualizing, factoring, averaging, and anticipating. It also describes when each method should be used. It is necessary to adopt and incorporate this section of the manual in order to ensure consistent application of the various budgeting methods and to ensure that income is counted, disregarded, and deemed consistently statewide.

The ninth section of the TANF Cash Assistance, Section 700, is entitled "Eligibility and Benefits" and it describes other

requirements and benefits relating to the cash assistance program. This section includes policies regarding the requirement to enter into and comply with a Family Investment Agreement (FIA), verification and reconciliation of participation hours, FIA component codes, how to code a disqualified or sanction individual in TEAMS, the sanction policy when an individual is not complying with a FIA, the review process before a sanction is imposed, the right of a participant to claim good cause for not completing FIA activities, and the supportive service policies. It is necessary to adopt and incorporate this section in order to foster a better general understanding of the additional requirements of the cash assistance program and to create consistent application of the policies on a statewide basis.

The tenth section of the TANF Cash Assistance Manual, Section 800, is entitled "Time Limited Assistance". This section explains the time limits associated with TANF, the eligibility process to determine if an individual can receive benefits beyond the federally imposed time limit of 60 months, and the policies on when an individual is exempt from the time limit or when they are excluded. It is necessary to adopt and incorporate this section in order to ensure that the time limits and policies are understood by caseworkers, advocates, and potential applicants and to ensure that they are applied consistently across the State.

The eleventh section of the TANF Cash Assistance Manual, Section 900, is entitled "Child Care Assistance". It explains that child care assistance is available to eligible individuals who need child care assistance in order to comply with FIA activities. This section also refers case managers to the Child Care Policy Manual for specific child care policies. It is necessary to adopt and incorporate this section in order to create a better public understanding of the availability of child care assistance and to ensure consistent application of policies governing child care assistance statewide.

The twelfth section of the TANF Cash Assistance Manual, Section 1000, is entitled "Other Programs". This section details eligibility requirements for the Refugee Cash Assistance and Refugee Medical Assistance programs. It is necessary to adopt and incorporate this section in order to create a better understanding of these Refugee programs and to foster consistent application of the policies governing these programs statewide.

The thirteenth section of the TANF Cash Assistance Manual, Section 1100, is entitled "Emergency Assistance". This section outlines the policies for emergency assistance, both soft services authorized by the Child and Family Services Division or the Montana Children's Trust Fund or hard services as authorized by the Eligibility Case Manager. It is necessary to adopt and incorporate this section in order to ensure consistent application of the policies governing emergency assistance on a

statewide basis.

The fourteenth section of the TANF Cash Assistance Manual, Section 1200, is entitled "Benefit Issuance". It explains the three different options that a family can choose from to receive their TANF cash assistance payment, by check, direct deposit, or electronic benefit transfer. This section also details the process used to replace a lost or stolen TANF cash assistance check. It is necessary to adopt and incorporate this section of the manual in order to ensure consistent application of the policies statewide.

The fifteenth section of the TANF Cash Assistance Manual, Section 1500, is entitled "Case Management". This section provides information necessary for eligibility case managers to process cases on an on-going basis. This section includes policy regarding when participants must report changes and what changes must be reported, when it is necessary to redetermine eligibility, and what information must be reviewed and/or verified. The rules governing complete notices and when notice must be sent are interpreted and explained. This section also includes information regarding overpayments and underpayments and intentional program violations/fraud. This section also describes the fair hearing process, issuing continued benefits pending a fair hearing decision, administrative reviews, fair hearing procedures, Board of Public Assistance Appeals, and judicial review. The policies on entering case notes and program compliance reviews are described. This section also includes policies regarding good cause, record retention/purging, case file organization, and case transfers. It is necessary to adopt and incorporate this section in order to foster a better understanding of case management responsibilities and to create consistent application of these policies on a statewide basis.

The sixteenth section of the TANF Cash Assistance Manual, Section 1600, is entitled "Forms". It contains a list of forms currently used to process and maintain cash assistance cases. The list is not all inclusive and is subject to change. It is necessary to adopt and incorporate this section so that current forms are used consistently statewide and confusion regarding the appropriate form is minimized.

The last section of the TANF Cash Assistance Manual, Section 1700, is entitled "Directories". It contains contact information for various organizations across the State that are involved in public assistance or that might be useful to the cash assistance case managers. It is prudent to adopt and incorporate this section in order to compile and keep the information together with the other manual sections and to create a convenient and readily-accessible resource for case managers so that cash assistance cases can be managed effectively and efficiently.

The proposed manual changes are clarifications of policies previously set forth in the manuals. They address the same general areas of administration as listed above. The proposed manual changes are available for public viewing at the same locations where the policy manuals can be viewed. The policies or pages in the manuals to be replaced are clearly marked on the proposed manual replacement materials.

The Department considered the option of adopting each policy in each manual individually, rather than incorporating the manuals as a whole. However, the time and expense involved in the former approach rendered it prohibitive. The incorporation and adoption of the manuals, including the proposed changes to the manuals, will not increase, decrease, or change the nature of any fees, costs, or benefits.

There are approximately 5,900 cases (approximately 16,473 individuals) presently receiving TANF cash assistance, all of which are impacted by the Department's administrative policies. There are approximately 65,000 individuals receiving medical care through the Medicaid program, all of which are impacted by the Department's administrative policies. However, since these amendments simply incorporate the Department's present policies, the Department does not expect these amendments to have any significant impact on families in Montana.

The proposed amendments to ARM 37.78.206 are necessary in order to delete obsolete provisions of the rule and to clarify that an application for TANF cash assistance (formerly known as Families Achieving Independence in Montana (FAIM)) must be made on behalf of a minor child. Formerly, the Families Achieving Independence in Montana (FAIM) program had three components: the pathways program, job supplement program (JSP), and community services program (CSP). These programs ended on June 30, 2001. Since pathways, JSP and CSP are no longer offered and references to these programs were removed from Title 53 of the Montana Code Annotated by the 57th Legislature, it is necessary to delete the obsolete references to those programs in the rules in order to prevent confusion. The Personal Responsibility and Work Opportunity and Reconciliation Act of 1996 (PRWORA) requires that cash assistance be provided only to households containing a minor child. See 42 USC 608. The proposed amendment to ARM 37.78.206 is also necessary to clarify the rule relating to the minor child requirement so that it comports with federal governing law.

The proposed amendments to ARM 37.78.206(3)(b) are necessary to clarify that when a caretaker relative fails or refuses to comply with the requirement to assign child support rights or to cooperate with child support enforcement in establishing paternity and obtaining child support, the entire household is not eligible for TANF cash assistance. This change brings the rules into compliance with federal regulations as stated in 45 CFR 264.30(c)(2). The other option considered was to reduce the

household grant by a minimum of 25%. The Department did not choose this option because it did not conform with the State's sanction policy, nor with the goals of that policy.

The addition of ARM 37.78.206(3)(j) is necessary to ensure that individuals understand their obligation to negotiate and comply with a Family Investment Agreement. Because the agreement is an eligibility requirement, if an individual who is required to negotiate and comply with a FIA fails or refuses to negotiate a FIA the household is not eligible for benefits. In order to avoid confusion and to ensure the public has notice, the Department decided to amend the rule to clarify the policy. While the Department could have left the rule as it was, the amendment is proposed in order to clarify the rule and ensure that individuals understand the FIA is an eligibility requirement.

The addition of ARM 37.78.206 (4) through (6) is necessary to establish general eligibility requirements for non-financial assistance. Non-financial assistance was established in Senate Bill 77 (codified, in part, in 53-4-201, MCA) by the 57th Legislature. The eligibility requirements are similar, but not identical, to the general eligibility requirements for the TANF cash assistance program. The differences are intended to simplify the eligibility process for non-financial assistance so basic eligibility screening can be completed by community partners. The Department could have chosen to make the rules for TANF cash assistance and TANF non-financial assistance identical but did not choose this option because of the complicated eligibility rules for TANF cash assistance.

There are approximately 16,473 individuals participating in the TANF cash assistance program and at least 5,000 participating in the non-financial assistance programs, all of whom are impacted by these rules. The Department does not anticipate any increase or decrease in the costs of the program as a result of the proposed amendments to ARM 37.78.206. Furthermore, benefits, fees, and costs assessed against participants will not be increased, decreased or changed because of these amendments.

The proposed amendment to ARM 37.78.207 is necessary in order to delete obsolete provisions of the rule. The rule governed the FAIM financial assistance program, components of which were pathways, job supplement program and community services program. As previously mentioned, these programs ended June 30, 2001. Since these programs are no longer offered, and references to these programs were removed from Title 53 of Montana Code Annotated, it is necessary to delete the references to these programs from the rule in order to avoid confusion.

The proposed amendment to ARM 37.78.207(4) is necessary to outline an exception to the 90-day temporary absence policy for adults who are out of the home to attend a specific short-term training or for employment. This amendment reflects the

Department's position that a family is still intact when a caretaker relative is absent from the home for these purposes. In addition, both short-term training and employment are directly linked to the purposes of TANF as provided in federal law. This amendment is necessary simply to clarify the rule.

The proposed amendment to ARM 37.78.207(6) is necessary to incorporate the requirement that a child must live with a specified caretaker relative in order for the household to be eligible for non-financial assistance. The requirement for non-financial assistance is similar, but not identical, to the similar requirement in the TANF cash assistance program. The differences are intended to simplify the eligibility process for non-financial assistance so basic eligibility screening can be completed by community partners. The Department could have chosen to make the rules for TANF cash assistance and non-financial assistance identical, but did not choose this option because of the complicated eligibility rules for cash assistance.

There are approximately 16,473 individuals participating in the TANF cash assistance program and at least 5,000 participating in the non-financial assistance programs, all of whom are impacted by these rules. The Department does not anticipate any increase or decrease in the costs of the program as a result of the proposed amendments to ARM 37.78.207. Furthermore, benefits, fees, and costs assessed against participants will not be increased, decreased or changed because of these amendments.

The proposed amendments to ARM 37.78.208(1) through (4) are necessary to clarify that an application for TANF cash assistance must be made on behalf of a minor child, and the minor child for whom application is made must be included in the assistance unit along with any minor child who lives in the home and is within the second degree of kinship to the minor child. Inclusion of the requirement in the rule is intended to foster consistency among the policies and to avoid confusion.

The proposed amendment to ARM 37.78.208(5) is necessary in order to delete obsolete provisions of the rule. The rule governed the FAIM financial assistance program, the components of which were pathways, JSP and CSP. Again, these programs ended June 30, 2001. Thus, for the same reasons that these terms were removed from previously discussed rules, it is necessary to delete them from ARM 37.78.208(5) as well.

The proposed amendment to ARM 37.78.208(7) is necessary to clarify that a caretaker relative who is requesting assistance for more than one child must include all children in one assistance unit. This requirement is necessary to ensure accurate data is reported to the federal government in the TANF data file that is transmitted quarterly.

The proposed addition of subsections (8) through (11) to ARM

37.78.208 is necessary in order to clearly set forth the policy regarding members of assistance units for non-financial assistance. The non-financial assistance unit must include a child under the age of 18 for whom assistance is being requested. The non-financial assistance unit must also include children who are under the age of 18 who are related to the child for whom assistance is being requested within the second degree of kinship as well as the parents or stepparents of the child for whom assistance is being requested. The income and resources of the parents and/or stepparents will be considered when determining eligibility. The requirement for non-financial assistance is similar, but not identical, to the assistance unit rule for TANF cash assistance. The differences are intended to simplify the eligibility process for non-financial assistance so basic eligibility screening can be completed by community partners. The Department could have chosen to make the rules for TANF cash assistance and TANF non-financial assistance identical but did not choose this option because of the complicated eligibility rules for TANF cash assistance.

There are approximately 16,473 individuals participating in the TANF cash assistance program and at least 5,000 individuals participating in non-financial assistance, all of whom are impacted by these rules. The Department does not anticipate any increase or decrease in the costs of the program as a result of the proposed amendments to ARM 37.78.208. Furthermore, benefits, fees, and costs assessed against the participants will not increase, decrease, or change because of these proposed amendments.

The proposed amendment to ARM 37.78.420 is necessary in order to delete obsolete provisions of the rule. The rule governed the FAIM financial assistance program, whose components were pathways, JSP, and CSP. As previously mentioned, those programs ended on June 30, 2001. Consequently, the proposed amendment is necessary to delete obsolete references to those programs for the same reasons specified above.

The proposed amendment to ARM 37.78.420 is also necessary in order to delete references to a "with shelter" and "without shelter" standard. All households have shelter needs so the without shelter standard is being eliminated. The Department could have maintained a "without shelter" standard but chose not to out of a recognition that all households have shelter needs.

In addition, the proposed amendment to ARM 37.78.420 is necessary to eliminate the Net Monthly Income (NMI) test. This test only applied in the Pathways and Community Services programs, which ended on June 30, 2001. The Department could have maintained the language in the rule regarding the NMI test, but chose not to since the NMI test is now obsolete. Removing the obsolete language eliminates confusion.

The proposed amendment to ARM 37.78.420 is also necessary to

update the Gross Monthly Income (GMI) table, Net Monthly Income table, and the Benefit Standard table. The benefit standard for TANF cash assistance is set at 40.5% of the federal poverty level which is updated in the spring of each year. The standards are adjusted on July 1 each year to coincide with the beginning of a new State fiscal year and to take into account the changes made by the federal adjustments to the poverty level.

The proposed addition of subsections (5) and (6) to ARM 37.78.420 is necessary to establish income guidelines for non-financial assistance. To be eligible for non-financial assistance, the household's gross countable income cannot exceed 150% of the federal poverty level. The difference between the income guidelines for TANF cash assistance and non-financial assistance are intended to simplify the eligibility process for non-financial assistance so basic eligibility screening can be completed by community partners. The Department could have chosen to make the income guidelines for TANF cash assistance and non-financial assistance identical but did not choose this option because of the complicated eligibility rules for TANF cash assistance.

There are approximately 16,473 individuals participating in the TANF cash assistance program and at least 5,000 individuals participating in non-financial assistance, all of whom are impacted by these rules. The estimated annual fiscal impact of the changes in the TANF cash assistance standards is $927,450. The estimated fiscal impact of non-financial assistance is $8,646,000 for the 2003 biennium. These costs were part of a one-time appropriation made by the 2001 legislature to utilize available TANF surplus funds.

The proposed amendment to ARM 37.78.425 is necessary in order to delete obsolete provisions of the rule. The rule governed the FAIM financial assistance program, the components of which were pathways, JSP, and CSP. As previously stated, these programs ended June 30, 2001. The one-time employment related payment was an element of the pathways and JSP program. Since pathways, JSP and CSP are no longer offered, and because references to those programs were deleted from Title 53, MCA, by the 2001 legislature, it is necessary to delete the references to those programs and their benefits from the rule in order to prevent confusion.

The additions to ARM 37.78.425 are necessary to detail the rules and benefits of three non-financial assistance program components. These components are the post-employment service payment, the post-employment training and education payment, and the work support payment. All three components are intended to assist working families in Montana who meet the eligibility requirements. The availability of assistance is dependent upon available funding. Each component ends when funding is exhausted. The Department established the non-financial assistance program components with direction from the 2001

legislature to focus efforts on assisting working families and to bring to fruition the goal of the Temporary Assistance for Needy Families grant to help families become self-supporting.

There are approximately 45 individuals currently participating in the non-financial assistance program components described above, all of whom are impacted by these rules. The estimated fiscal impact of the post-employment service payment, post-employment training and education payment, and work support payment is $1,785,300 for the 2003 biennium. These proposed amendments do provide additional benefits to eligible non-financial assistance recipients, but do not increase, decrease, or change the costs imposed on recipients.

The proposed amendments to ARM 37.78.506 are necessary to establish a new sanction policy for individuals who fail or refuse, without good cause, to comply with the requirements of their Family Investment Agreement (FIA). The policy provides that if an individual is sanctioned, the grant will be reduced by an amount equal to one person's share for one month. If the sanctioned individual does not end the sanction during the one month penalty period by negotiating a new FIA, the case is closed and the household must serve a one-month ineligibility period as long as the sanctioned individual is a required filing unit member. The time clock ticks during the one month penalty period, but does not tick during the one-month ineligibility period. The Department was not required to make changes to this rule, but chose to because sanctioned individuals were using up to twelve months of their time-limited benefits under sanction, a circumstance that does nothing to promote the goal of helping the family become self-supporting. The Department also received significant public input encouraging the Department to modify its sanction policy.

The proposed amendments to ARM 37.78.506 were also necessary in order to state that if an individual files a fair hearing request and obtains continued benefits pending the hearing decision, should the decision be in favor of the Department the sanction will no longer be imposed following receipt of the decision. Rather, an overpayment will be established for the amount of assistance received during the one-month penalty period and the one-month eligibility period. Again, the Department was not required to change its sanction policy, but chose to in order to make the best possible use of time-limited benefits for the purpose of assisting families to become self-supporting.

There are approximately 5,900 cases presenting receiving TANF cash assistance benefits, all of whom may be impacted by these amendments. Of those, approximately 218 individuals are under sanction during any given month. The Department does not anticipate any increase or decrease in the costs of the program as a result of the proposed amendments to ARM 37.78.506. The expected fiscal impact of the new sanction policy is

approximately $138,500 per year, with the expectation that families will choose to negotiate a new FIA during the penalty period. The Department does not anticipate that these amendments will change the nature of the participants that are sanctioned.

The proposed amendment to ARM 37.78.807 is necessary in order to delete obsolete provisions of the rule. The rule governed the FAIM financial assistance program, the components of which were pathways, JSP, and CSP. Again, these programs ended as of June 30, 2001. It is necessary to remove these obsolete references from ARM 37.78.807 for the same reasons justifying deletion in the amendments set forth above. In addition, the rules governing participation in post-secondary education activities are covered in ARM 37.78.825. Because there is no need to repeat them in ARM 37.78.807, the proposed amendment deletes the repetitive policies and refers readers to the appropriate ARM. This amendment was not required, but the Department opted to include it in order to eliminate duplication. There are approximately 16,437 individuals presently receiving TANF cash assistance benefits, all of whom are impacted by these rules. Of those, approximately 4,753 individuals have a FIA during any given month. The Department does not anticipate any increase or decrease in the costs of the program as a result of the proposed amendments to ARM 37.78.807. Furthermore, benefits, fees, and costs of participants will not change as a result of this amendment.

The proposed amendments to ARM 37.78.825 and 37.78.826 are necessary to reflect changes in the post-secondary education policy. These changes were made at the recommendation of the Statewide Public Assistance Advisory Council and the Montana legislature's Health and Human Services appropriation subcommittee. The changes include allowing post-secondary education as a FIA activity for any individual who passes a screening and maintains an average of 10 hours per week of employment. The screening is conducted by the local Community Advisory Council but must conform to statewide guidelines. The available funding for child care assistance is not a factor that determines if an individual can use post-secondary education as a FIA activity. ARM 37.78.825 was also amended to incorporate rules from ARM 37.78.807 relating to post-secondary education. The proposed addition to ARM 37.78.825(5) is necessary to allow the transfer of a post-secondary education screening from one office to another as long as the individual remains in the original course of study. This eliminates duplication of efforts by participants and screening staff. The changes to ARM 37.78.825 and 37.78.826 were not required, but the Department agreed with the recommendation of the Statewide Public Assistance Advisory Council and the Montana Legislature subcommittee and has proposed these amendments in order to implement their suggestions. There are approximately 16,473 individuals presently receiving TANF cash assistance benefits, all of whom may be impacted by these rules. Of those,

approximately 308 individuals have a post-secondary education FIA activity during any given month. The Department does not anticipate any increase or decrease in the costs of the program as a result of the proposed amendments to ARM 37.78.825 and 37.78.826. Furthermore, benefits, fees, and costs assessed against participants will not change as a result of these proposed amendments.

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 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 23, 2002. 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.

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

Certified to the Secretary of State April 15, 2002.

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

In the matter of the amendment of ARM 37.86.1004 and 37.86.1006 pertaining to reimbursement methodology for source based relative value on dental services	)	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Interested Persons

1. On May 21, 2002, 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 10, 2002, 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>37.86.1004 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~~ <u>2002</u>. 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<u>-2951</u>.

(b) and (c) remain the same.

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

<u>37.86.1006 DENTAL SERVICES, COVERED PROCEDURES</u> (1) For purposes of specifying coverage of dental services through the medicaid program, the department incorporates by reference the

dental and denturist services provider manual ~~(2000 edition)~~ effective July ~~2000~~ 2002 ~~and the denturist services provider manual (2000 edition) effective July 2000~~. The dental and denturist services provider ~~manuals~~ manual, provided to providers of those services, informs the providers of the requirements applicable to the delivery of services. Copies of the manual~~s~~ 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.

(2) and (3) remain the same.

~~(4) Coverage of denture services are subject to the following requirements and limitations:~~

~~(a) a denturist may provide initial immediate full prosthesis and initial immediate partial prosthesis only when prescribed by a dentist; and~~

~~(b) requests for full prosthesis must show the approximate date of the most recent extractions, and/or the age and type of the present prosthesis.~~

~~(5) Replacement of lost dentures is a covered service subject to the following requirements and limitations:~~

~~(a) the dentist or denturist must indicate "lost dentures" on the request for prior authorization for replacement;~~

~~(b) full dentures which are over 10 years old may be replaced when the treating dentist documents the need for replacement;~~

~~(c) partial dentures which are over 5 years old may be replaced with full dentures;~~

~~(d) dentures which are between 5 and 10 years old may be replaced when the treating dentist documents the need for replacement, but reimbursement is at the rate for duplicating (or jumping) the dentures;~~

~~(e) the limits on coverage of denture replacement may be exceeded when the designated review organization determines that the existing dentures are causing the recipient serious physical health problems; and~~

~~(f) replacement of a lost denture is limited to one replacement per recipient per lifetime.~~

(6) through (12) remain the same but are renumbered (4) through (10).

(11) Covered services for adults age 21 and over include:

(a) diagnostic;

(b) preventative;

(c) basic restorative services including stainless steel crowns; and

(d) extractions.

(12) Tooth colored crowns, bridges and dentures (full, immediate and partial) are not covered benefits of the medicaid program for individuals age 21 and over.

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

3. Medicaid is jointly funded by the State and Federal

government and provides covered health care benefits to eligible low income Montanans.

The proposed amendment to ARM 37.86.1004 is necessary to update the Relative Value for Dentists and to adopt and incorporate the values published in 2002. Updated RVD values are effective July 1, 2002 and will be reflected in the dental fee schedule effective July 1, 2002. The updated RVU values are expected to increase the costs of the Medicaid Program by $1,380. In addition, the proposed amendment to ARM 37.86.1006 is necessary to update the referenced dental and denturist provider manual and to adopt and incorporate the latest version effective July 2002. These changes will affect the 410 dental providers that are currently enrolled in the Montana Medicaid program. These changes are also expected to impact approximately 50,000 adult Medicaid recipients in any given year.

The additional proposed amendments to ARM 37.86.1006 are necessary due to budget constraints of the Department of Public Health and Human Services. Due to a budgetary shortfall, it is necessary to limit the covered dental services for Medicaid recipients age 21 and over effective July 1, 2002. The new coverage will be limited to include diagnostic, basic restorative services and extractions. These reductions will help the Department keep costs within the budget appropriated by the 2001 Legislature. These amendments are expected to reduce costs to the Medicaid program in the amount of $451,182 in state general fund. These changes will affect the 410 dental providers that are currently enrolled in the Montana Medicaid program. These changes are also expected to impact approximately 50,000 adult Medicaid recipients in any given year.

The Department could have eliminated the entire dental coverage package for Medicaid recipients. However, the Department felt it was more cost effective to limit dental coverage rather than eliminate it. Eliminating the dental program may result in costs shifted to the emergency room setting in which case emergency room costs would offset any savings to the dental program. By continuing to allow access to the dentist, most of the dental emergencies can be alleviated in a more cost effective environment.

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 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 28, 2002. 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.

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

Certified to the Secretary of State April 15, 2002.

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 and 37.86.205 pertaining to resource based relative value scale (RBRVS)	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Interested Persons

1. On May 17, 2002, 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 10, 2002, 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.

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

(a) through (e) remain the same.

(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, now known as centers for medicare and medicaid services, of the U.S. department of health and human services and published in the Federal Register annually, as amended through November 1, ~~2000~~ 2001 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.

(g) through (3)(f)(ii) remain the same.

(4) The conversion factor used to determine the medicaid payment amount for the services covered by this rule for state fiscal year ~~2002~~ 2003 is:

(a) $~~34.15~~ 34.00 for medical and surgical services, as specified in (2); and

(b) through (7) remain the same.

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

(a) remains the same.

(b) For state fiscal year ~~2002~~ 2003, the "by-report" rate is ~~55%~~ 54% of the provider's usual and customary charges.

(9) For clinical laboratory services for which there is an established fee:

(a) and (i) remain the same.

(ii) ~~the medicare fee schedule established at 60% of the prevailing charge~~ 60% of the medicare fee schedule for physician offices and independent labs and hospitals functioning as independent labs~~.~~ ; or

(iii) the established medicaid fee.

(b) for clinical laboratory services for which there is no established fee, the department pays the lower of the following for procedure codes without fees:

(i) the provider's usual and customary charges for the service; ~~or~~

(ii) the rate established using the by report ~~rate~~ methodology; or

(A) for purposes of this subsection, the by report methodology means averaging 50 paid claims for the same code that have been submitted within a 12 month span and then multiplying the average by the amount specified in (8)(b).

(iii) the historical comparative value of the procedure as indicated by the reimbursement amount paid by medicaid and other third party payors for the same procedure within the last 12 months.

(10) through (14) 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

37.86.205 MID-LEVEL PRACTITIONER SERVICES, REQUIREMENTS AND REIMBURSEMENT (1) through (5) remain the same.

(6) Reimbursement for immunizations, family planning services, ~~services billed under HCPCS "J" codes~~ administration of injectables, radiology, laboratory and pathology, cardiography and echocardiography services and for early and periodic screening, diagnostic and treatment services is the lower of:

(a) and (b) remain the same.

(7) ~~Mid-level~~ A mid-level practitioner~~s must bill using the health care financing administration's common procedure coding system (HCPCS)~~ shall submit all claims for services personally provided by the mid-level practitioner, using the mid-level practitioner's own medicaid provider number and any appropriate modifiers, unless another provider is authorized to bill for services provided by the mid-level practitioner by

administrative rule or state law.

(8) Reimbursement for drugs which are billed under HCPCS "J" and "Q" codes is the lower of:

(a) remains the same.

(b) ~~the Montana estimated acquisition cost or maximum allowable cost~~ 100% of reimbursement for physicians in accordance with ARM 37.86.105.

(9) through (g) remain the same.

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

3. The Montana Medicaid program is jointly funded by the State of Montana and the federal governments. Its purpose is to provide covered health care services to eligible low income Montanans. The Medicaid program is administered by the state, through the Department of Public Health and Human Services, in accordance with State and federal governing law.

The proposed amendments to ARM 37.85.212 are necessary to update the rule, to adopt and incorporate the current medicare fee schedule, to amend reimbursement rates for certain codes, and to set forth updated conversion factors. ARM 37.85.212(1)(f) refers to the Health Care Financing Administration. That federal agency has changed its name to the Centers for Medicare and Medicaid Services (CMS). Consequently, the rule has been updated to acknowledge the federal agency's new name. The proposed amendment to this subsection is also necessary to adopt and incorporate the latest version (2001) of the Medicare fee schedule. As fees for some codes have increased and others have decreased, the Department does not anticipate any significant change in the costs of the program. The proposed amendments to ARM 37.85.212(4)(a) and (8)(b) are necessary to update the conversion factor for medical and surgical services and to establish the updated "by report" rate to be paid in state fiscal year 2003. The updated conversion factor and "by report" rate were designed to be budget neutral. Consequently, the Department does not anticipate that these amendments will result in significant changes in the cost of the program. The proposed amendment to ARM 37.85.212(9)(b) is necessary to incorporate additional language permitting the Department to pay for clinical laboratory services at the lower of: usual and customary, or the "by report" rate, or the amount historically paid for the service by Medicaid and other third party payors.

The proposed amendments to ARM 37.86.205 are necessary to clarify the rule governing mid-level practitioners. The amendments to ARM 37.86.205(6) and (8) are necessary to clarify reimbursement for services associated with administering injectables, particularly those billed using HCPCS "J" and "Q" codes, as compared to reimbursement for the drugs themselves. Reimbursement for the drugs themselves are addressed in subsection (8) while the service associated with administration is addressed in subsection (6). The proposed amendment to

subsection (8) is also necessary to clarify that mid-level practitioners are paid for drugs billed under HCPCS codes "J" and "Q" using the same reimbursement scheme as physicians. However, to avoid confusion as to which subsection applies to the service and which to the drug itself, the Department proposes these amendments.

The proposed amendment to ARM 37.85.205(7) is necessary to clarify billing procedures for mid-level practitioners. Previously, the rule indicated that mid-level practitioners must bill using HCPCS. However, mid-levels must also bill for their own services, using their own unique medicaid provider number, unless another practitioner is allowed to bill for the mid-level practitioner's services under the authority of state law or administrative rule. While the Department could have retained the old language in this subsection, requiring mid-levels to bill using their own provider number will permit more accurate data and reporting. Consequently, the Department proposes to amend the subsection.

These proposed amendments are not expected to have any significant impact on the cost of the Medicaid program. There are approximately 11,600 providers enrolled in the Medicaid program, all of which may be impacted by these amendments. There are approximately 768 mid-level practitioners enrolled in the Medicaid program, all of which may be impacted by these amendments.

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 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 23, 2002. 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.

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

Certified to the Secretary of State April 15, 2002.

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

In the matter of the amendment of ARM 37.86.805, 37.86.1807, 37.86.2105 and 37.86.2207 pertaining to medicaid reimbursement for primary care services	)	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Interested Persons

1. On May 17, 2002, at 11:00 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 10, 2002, 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.

37.86.805 HEARING AID SERVICES, REIMBURSEMENT (1) The department will pay the lower of the following for covered hearing aid services and items:

(a) remains the same.

(b) 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 1, 2000~~ dated January 1, 2002 which sets forth the reimbursement rates for hearing aid services 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.

(2) 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

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

(2) Prosthetic devices, durable medical equipment and

medical supplies shall be reimbursed in accordance with the department's fee schedule dated January 1, 2002, 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 Services Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

~~(2)~~ (3) 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) At least annually, the department will review billings for items, other than those items for which a specific fee has been set under the provisions of ~~(2)(b)~~ (3)(b), to determine the total number of times each such item has been billed by all providers in the aggregate within the previous 12-month period.

(b) Upon review of the aggregate number of billings as provided in ~~(2)(a)~~ (3)(a), the department will establish a fee for each item which has been billed at least 50 times by all providers in the aggregate during the previous 12-month period. The department shall set each such fee at 90% of the average charge billed by all providers in the aggregate for such item during such previous 12-month period. For purposes of determining the number of billings and the average charge, the department will consider only those billings that comply with ARM 37.86.1806(1)(b).

(i) Once the department has established a fee as provided in ~~(2)(b)~~ (3)(b), such fee will not be adjusted except as provided in ~~(4)~~ (5).

(c) Except as provided in ~~(3)~~ (4), for all items for which no fee has been set under the provisions of ~~(2)(b)~~ (3)(b), the department's fee schedule amount shall be 90% of the provider's usual and customary charge.

(i) For purposes of ~~(2)(c)~~ (3)(c) and ~~(3)~~ (4), 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, 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.~~

~~(c)~~ (d) For new procedure codes where a medicare fee is available, the department's fee schedule amount shall be the medicare allowable charge, until the department sets a fee based upon 50 billings for the procedure code as provided in ~~(2)(c)~~ (3)(c).

~~(3)~~ (4) The department's fee schedule, referred to in ARM 37.86.1806(1), for all wheelchairs and wheelchair accessories shall be 80% of the provider's usual and customary charge as defined in ~~(2)(c)(i)~~ (3)(c)(i).

(a) Items having no manufacturer's list price, such as items customized by the provider, will be reimbursed in accordance with ~~(2)(c)~~ (3)(c).

~~(4)~~ (5) 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)~~ (3)(b) by the amount or percentage authorized or directed by the legislature. Such increase or decrease shall be effective as provided by the legislature.

(b) The department shall not apply any legislative increase or decrease to those items described in ~~(2)(c)~~ (3)(c) or ~~(3)~~ (4), unless specifically directed by legislative enactment to do so.

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

37.86.2105 EYEGLASSES, REIMBURSEMENT (1) remains the same.

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

(a) and (a)(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 2001~~ dated January 1, 2002 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

37.86.2207 EARLY AND PERIODIC SCREENING, DIAGNOSTIC AND TREATMENT SERVICES (EPSDT), REIMBURSEMENT (1) through (1)(b) remain the same.

(2) Reimbursement for outpatient chemical dependency treatment, nutrition, and private duty nursing services is specified in the department's EPSDT fee schedule. The department

hereby adopts and incorporates herein by reference the department's EPSDT fee schedule ~~effective April 27, 2001~~ dated January 1, 2002. A copy of the fee schedule may be obtained 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.

(3) Reimbursement for the therapeutic portion of therapeutic youth group home treatment services is the lesser of:

(a) the amount specified in the department's medicaid mental health fee schedule. The department hereby adopts and incorporates herein by reference the department's medicaid mental health fee schedule dated ~~March 2001~~ January 28, 2002. A copy of the fee schedule may be obtained from the Department of Public Health and Human Services, Addictive and Mental Disorders Division, 555 Fuller, P.O. Box 202905, Helena, MT 59620-2905; or

(b) through (10) remain the same.

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

3. The Department of Public Health and Human Services is proposing these amendments be applied retroactively to January 1, 2002.

4. ARM 37.86.805, 37.86.1807, 37.86.2105 and 37.86.2207

The Montana Medicaid Program provides medical assistance to eligible low income individuals by paying enrolled medical providers for services furnished to such individuals. Title 37, chapter 86, of the Administrative Rules of Montana specifies the rates of reimbursement for various Medicaid primary care services.

ARM 37.86.805 and 37.86.2105 govern reimbursement for hearing aid services and eyeglasses respectively. ARM 37.86.1807 governs reimbursement for prosthetic devices, durable medical (DME) equipment and medical supplies. ARM 37.86.805(1) provides that the Department will pay the provider's usual and customary charge or the amount specified in the Department's fee schedule, whichever is lower, for hearing aid services. Similarly, ARM 37.86.2105(2) provides that the Department will pay the provider's usual and customary charge, or the amount specified in the Department's fee schedule, whichever is lower, for contact lenses or eyeglass dispensing fees. ARM 37.86.1807 provides for reimbursement for prosthetic devices, durable medical equipment and medical supplies in accordance with the Department's fee schedule.

The Department's fee schedules specify fees for various services and items identified by procedure codes. The procedure codes are taken from the Health Care Financing Administration Common Procedure Coding System (HCPCS). HCPCS in turn contains codes

used in the American Medical Association's Current Procedural Terminology, fourth edition (CPT-4). The lists of procedure codes in CPT-4 and HCPCS Level II are updated each year as of January 1 to add and delete codes. This is necessary because as medical technology and practice changes, new codes must be added to describe new procedures and codes which describe obsolete procedures must be deleted.

The Department customarily revises its fee schedules twice each year. Revisions are made in January in order to specify fees for new procedure codes added to CPT-4 and HCPCS Level II and to eliminate fees for procedure codes which have been deleted from CPT-4 and HCPCS Level II, since CPT-4 and HCPCS Level II are revised effective January 1. The January revision of the fee schedules generally does not change rates for existing procedure codes. Fee schedules are revised again in July to adjust payment rates for all codes.

The amendment of ARM 37.86.805(1), 37.86.1807(2)(d) and 37.86.2105(2) is now necessary to provide that the Department's fee schedule dated January 1, 2002 rather than the previous fee schedules adopted in the current rules will be used. Additionally, subsection (2)(d) of ARM 37.86.1807 is being moved to a different part of the rule because it belongs in the area which addresses methodologies for setting fees for items other than wheelchairs and wheelchair accessories. The movement of this subsection does not indicate any change in policy.

ARM 37.86.2207 governs reimbursement for Early and Periodic Screening, Diagnostic and Treatment (EPSDT) services for persons under the age of 21 years. Subsection (2) of ARM 37.86.2207 is being amended to provide that reimbursement will be made in accordance with the fee schedule dated January 1, 2002. Unlike the revisions in the fee schedules for hearing aid services, DME, and eyeglasses, which do not reflect changes in reimbursement rates for existing procedure codes, there is one change in the new fee schedule for EPSDT services which reflects an actual change in a payment rate for an existing code. The change is in regard to reimbursement for private duty nursing services.

Up to this time, the rate paid to nurses providing services to Medicaid participants covered under EPSDT has been lower than the rate paid for LPNs serving patients in the Home and Community Based Waiver (the Waiver) Program. The EPSDT rate has been $15.76 per hour, compared to the Waiver rate of $20.62 per hour for the same service. Since there is a shortage of nurses in some areas, and LPNs who work for home health care agencies have a choice of which patient they will provide services to, this disparity in rates of reimbursement between the two programs gave LPNs an incentive to provide services to Waiver patients instead of EPSDT patients. Thus the Department was concerned that leaving the rates unchanged might limit EPSDT patients' access to skilled nursing care.

Therefore, to prevent EPSDT patients from going without needed nursing care, the Department decided to increase the EPSDT rate for private duty nursing services to $20.62 per hour, so that the rate would be the same as the rate in the Waiver Program. If EPSDT participants continue to use nursing services at approximately the same rate as in Fiscal Year 2001, the cost of increasing the EPSDT rate is projected to be $151,000. It is estimated that 49 providers of nursing services will benefit from this rate increase.

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 23, 2002. 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.

Dawn Sliva
Rule Reviewer

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

Certified to the Secretary of State April 15, 2002.

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

In the matter of the amendment of ARM 37.86.1101 and 37.86.1105 pertaining to medicaid outpatient drug reimbursement	)	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Interested Persons

1. On May 16, 2002, at 1:30 p.m., a public hearing will be held in Room 107 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 10, 2002, 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.

37.86.1101 OUTPATIENT DRUGS, DEFINITIONS (1) "Estimated acquisition cost (EAC)" means the cost of drugs for which no maximum allowable cost (MAC) price has been determined. The EAC is the department's best estimate of what price providers are generally paying in the state for a drug in the package size providers buy most frequently. The EAC for a drug is:

(a) the direct price (DP) charged by manufacturers to retailers;

(b) if there is no available DP for a drug or the department determines that the DP is not available to providers in the state, the EAC is the average wholesale price (AWP) less ~~10%~~ 15%; or

(c) 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 and 53-6-113, MCA

37.86.1105 OUTPATIENT DRUGS, REIMBURSEMENT (1) remains the same.

(2) The dispensing fee for filling prescriptions shall be determined for each pharmacy provider annually.

(a) remains the same.

(b) The dispensing fees assigned shall range between a minimum of $2.00 and a maximum of ~~$4.20~~ $4.35.

(c) and (d) remain the same.

(3) In-state pharmacy providers that are new to the Montana medicaid program will be assigned an interim $3.50 dispensing fee until a dispensing fee questionnaire, as provided in (2) above, can be completed for 6 months of operation. At that time, a new dispensing fee will be assigned which will be the lower of the dispensing fee calculated in accordance with (2) for the pharmacy or the ~~$4.20~~ $4.35 dispensing fee. Failure to comply with the 6 months dispensing fee questionnaire requirement will result in assignment of a dispensing fee of $2.00.

(4) through (5)(b) 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

3. The Montana Medicaid Program pays medical expenses for eligible low income and medically needy individuals. Medical providers enrolled in the Montana Medicaid Program are reimbursed for services provided to Medicaid recipients as set forth in the rules governing the Medicaid Program.

ARM 37.86.1101 through 37.86.1105 address issues relating to outpatient drugs, that is, drugs furnished outside of a hospital. ARM 37.86.1101 defines terms used in the outpatient drug rules, and ARM 37.86.1105 regulates reimbursement for outpatient drugs.

The amendment of ARM 37.86.1101 and 37.86.1105 is now necessary to implement changes in the amount the Department will pay for outpatient drugs in certain circumstances. ARM 37.86.1105 provides that the Department pays for drugs on the basis of either the estimated acquisition cost (EAC) or the maximum allowable cost (MAC) of the drug plus a dispensing fee, or the provider's usual and customary charge for the drug, whichever is lowest.

Subsection (1)(b) of ARM 37.86.1101 currently states that the EAC is the direct price charged by manufacturers to retailers but further provides that when there is no direct cost for a drug, the EAC will be the average wholesale price less 10%. The Department proposes to amend subsection (1)(b) of ARM 37.86.1101 to state that in the latter case the EAC of a drug will be the average wholesale price reduced by 15% rather than 10%. ARM 37.86.1105(2)(b) currently provides that the dispensing fee which comprises part of the reimbursement for outpatient drugs shall be a minimum of $2.00 and a maximum of $4.20. The Department proposes to amend subsection (2)(b) to increase the maximum dispensing fee from $4.20 to $4.35. Subsection (3) of this rule also refers to the $4.20 maximum dispensing fee so it is also being amended to reflect the increase to $4.35.

These changes are being implemented for budgetary reasons. Prescription drugs are among the most costly Medicaid services and expenditures for drugs continue to rise. Costs to the pharmacy program increased 17% last year, which results in a projected budget of $78 million for state fiscal year 2002. If costs continue to increase at that rate, the pharmacy budget is expected to be over $94 million in state fiscal year 2003 and over $136 million by the end of the next biennium, state fiscal year 2005. One of the ways the Department may be able to control costs would be to develop reimbursement methodologies that were more in line with actual drug costs.

The Estimated Acquisition Cost (EAC) for Montana is calculated by using the Average Wholesale Price (AWP) for a drug less a percentage discount (AWP less 10%). The AWP is the price assigned to the drug by its manufacturer and is compiled for Montana Medicaid by First DataBank.

The current EAC (AWP less 10%) methodology has been in place since 1988. Since that time, the Office of Inspector General (OIG) has conducted two studies to determine the actual acquisition cost of brand name and generic drugs. In 1997, the OIG issued a report that showed average discounts of 18.30% below AWP and 42.45% below AWP, respectively. Again in 2000, the OIG conducted another study which showed that nationally, pharmacy actual acquisition cost was an average of 21.84% below AWP. As a result of these studies, the OIG recommended that the Centers for Medicare and Medicaid Services (CMS) require the States to bring pharmacy reimbursement for brand name drugs more in line with the actual acquisition cost which they identified as being 21.84% below AWP.

Additionally, the OIG studied actual acquisition cost in Montana and found that the overall estimate of the discount below AWP on invoice prices was 19.71% for brand name drugs and 65.37% for generic drugs. Again, the OIG recommended that the State Agency consider the results of this review as a factor in determining any future changes to pharmacy reimbursement for Medicaid drugs.

It is important to note that while the OIG claims the discount below AWP is 19.71% and 65.37%, the Department does not wish to reduce reimbursement to those exact levels. The Department believes that the study failed to account for the cost of professional services and the cost of dispensing which includes supplies and staff. Therefore, the Department bases its recommendations in part on the OIG study as well as analysis of the implications to the overall pharmacy budget.

Because Medicaid programs in nearly all states are experiencing escalating costs, the Department has also analyzed reimbursement formulas among the other states. Many states are heeding the recommendations of the OIG study and are changing their reimbursement rates, including: Arkansas, Colorado, Connecticut, Florida, Idaho, Illinois, Maryland, Mississippi, Nebraska, North

Carolina, Oklahoma, Oregon, Texas, Virginia, Washington, West Virginia, and Wyoming.

The Department feels that in order to make the reduction to providers most palatable, the dispensing fee should increase to bring it in line with the average dispensing fee among other states in the country. Currently, the average dispensing fee is $4.35 (based on a survey conducted by Indiana Medicaid in September, 2001). In states surrounding Montana, the dispensing fee ranges from $3.80 in Oregon to $5.00 in Wyoming. Idaho's dispensing fee is $4.94; Washington's dispensing fee is $5.02; North Dakota's dispensing fee is $4.60 and South Dakota's dispensing fee is $4.75.

The alternative is to not implement this change to the reimbursement methodology. The Department is employing as many strategies as are realistic for cost containment, including prior authorization, mandatory generic substitution, and drug utilization review. However, because drug expenditures continue to rise, the alternative to changing the reimbursement methodology is to continue to make across the board cuts (as was employed January 1, 2002 through June 30, 2002). Across the board cuts prove to be more punitive to pharmacy providers because in some cases, the cuts result in pharmacies being reimbursed below their actual cost when providers bill using their acquisition cost as their usual and customary charge. By taking into account the actual acquisition cost, as is demonstrated in the OIG reports, the Department can more accurately reimburse providers for their services.

This decrease in reimbursement and increase in dispensing fees will result in approximately savings of $2.6 million (based on FY 2001). However, the Department can expect the savings to change as the figures are projected forward. The change to the percentage below AWP would affect all Medicaid pharmacy providers (nearly 450 pharmacy providers).

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 23, 2002. 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.

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

Certified to the Secretary of State April 15, 2002.

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

In the matter of the amendment of ARM 37.40.301, 37.40.302, 37.40.307, 37.40.308, 37.40.311, 37.40.315, 37.40.320, 37.40.322, 37.40.326, 37.40.346 and 37.40.361 and the repeal of ARM 37.40.313, 37.40.314, 37.40.323 and 37.40.324 pertaining to nursing facilities	)	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT AND REPEAL

TO: All Interested Persons

1. On May 17, 2002, at 3:00 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 and repeal 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 10, 2002, 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.

37.40.301 SCOPE, APPLICABILITY AND PURPOSE (1) and (2) remain the same.

(3) ~~Unless otherwise provided in these rules, this subchapter applies to rate years beginning on or after July 1, 1991.~~ Reimbursement and other substantive nursing facility requirements ~~for earlier periods~~ are subject to the laws, regulations, rules and policies then in effect. Procedural and other non-substantive provisions of these rules are effective upon adoption.

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

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

~~(1) "Abstracts" mean patient assessment abstracts submitted by providers to the department in accordance with the rules in effect for state fiscal year 1999.~~

(2) through (6) remain the same but are renumbered (1) through (5).

~~(7) "Extensive remodeling" means a renovation or refurbishing of all or part of a provider's physical facility, in accordance with certificate of need requirements, when the project's total cost depreciable under generally acceptable accounting principles exceeds, in a 12 month period, $2,400 times the number of total licensed nursing facility beds in the facility. "Extensive remodeling" does not include the construction of additional new beds, but may include construction of additional square feet or conversion of existing hospital beds to nursing facility beds if the cost requirements of this definition are met.~~

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

~~(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 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 (18) remain the same but are renumbered (7) through (15).

~~(19)~~ (16) "Rate year" means a 12-month period beginning July 1. For example, rate year ~~1995~~ 2003 means a period corresponding to the state fiscal year July 1, ~~1994~~ 2002 through June 30, ~~1995~~ 2003.

(20) through (22) remain the same, but are renumbered (17) through (19).

~~(23) "Total allowable remodeling costs" means those remodeling costs which are supported by adequate documentation. These costs include, but are not limited to, all costs of construction. These costs do not include costs of moveable equipment, supplies, furniture, appliances or other similar items.~~

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

37.40.307 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) an operating cost component, individually determined for each provider in accordance with ARM 37.40.313;~~

~~(b) a direct nursing personnel cost component, individually determined for each provider in accordance with ARM 37.40.314; and~~

~~(c) a calculated property cost component, individually determined for each provider in accordance with ARM 37.40.323.~~

~~(2) For purposes of (1), medicaid patient days include bed hold days to the extent allowable under ARM 37.40.338.~~

~~(3) A provider's per diem rate for rate year 1992 shall neither exceed the provider's average per diem rate, including the OBRA increment, in effect for rate year 1991 plus $8.00 per diem, nor be less than the provider's average per diem rate, including the OBRA increment, in effect for rate year 1991 plus 5.5% of such 1991 rate.~~

~~(a) A provider's per diem rate for rate year 1993 shall not exceed the provider's average per diem rate, including the OBRA increment, in effect for rate year 1992 plus $9.00 per diem.~~

~~(b) A provider's per diem rate for rate years beginning on or after July 1, 1993 shall not be subject to any minimum or maximum amount of increase from the provider's previous rate or previous average rate.~~

~~(c) A provider's per diem rate effective July 1 of the rate year and throughout the rate year shall not exceed the provider's average per diem private pay rate for a semi-private bed, plus the average cost, if any, of items separately billed to private pay residents, in effect on July 1 of the rate year as specified by the provider in the department's survey of private pay rates conducted annually between April 1 and July 1 prior to the rate year. Providers who do not respond to the department's survey by July 1 of the rate year, will be subject to withholding of their medicaid reimbursement in accordance with ARM 37.40.346. The rate specified by the provider in this survey will be referred to as the reported rate.~~

~~(i) Upon request, providers must provide the department or its agents with records and information regarding the private pay rates charged to residents. If the department determines after desk review or audit that the provider has decreased the reported private pay rate or that the provider has in fact customarily charged private paying residents less than the reported rate, the department will decrease the provider's medicaid per diem rate, retroactive to July 1 of the rate year, to the amount of the decreased or actual private pay rate customarily charged to private paying residents during the rate year. The department will decrease the medicaid rate only if~~

~~the decreased amount of the average private pay rate and separately billed items is lower than the computed medicaid rate. Any overpayment will be collected as provided in ARM 37.40.347.~~

~~(ii) The medicaid per diem rate will not be increased as a result of increases in private pay rates from the private pay rate in effect on July 1 of the rate year as specified in the department's survey described in (c).~~

~~(4) A provider's per diem rate effective for the rate period July 1, 2000 through June 30, 2001 shall be determined in accordance with this rule.~~

~~(a) For each nursing facility provider, the rate as computed and in effect on June 30, 2000 shall be increased by $.50 per day effective July 1, 2000.~~

~~(b) Any nursing facility provider whose computed payment rate inclusive of the $.50 per day amount provided for in (a), is less than the computed statewide median rate inclusive of the $.50 per day amount, will be entitled to receive additional reimbursement to bring the computed medicaid per diem payment rate closer to the statewide median rate. This additional reimbursement will be computed as follows:~~

~~(i) The total dollar difference between the facility's computed rate per day and the statewide median rate per day will be computed by subtracting the facility rate from the statewide median rate.~~

~~(ii) The per day rate difference for each facility, computed in (4)(b)(i) will be multiplied by each facility's projected medicaid days for fiscal year 2001, based upon the previous fiscal years utilization experience, to determine the full amount of funding required to reimburse each facility up to the statewide median level.~~

~~(iii) The percentage of the funding that will be paid to each facility will be determined by dividing the total medicaid funding allocated for this purpose, by the total dollars that would be required to bring all facilities up to the statewide median level of reimbursement as computed in (4)(b)(ii).~~

~~(iv) The percentage that is computed above will be applied to the difference in each facility's per diem rate when compared to the statewide median rate to determine each facility's per day proportional share of the appropriated funding allocated for this purpose.~~

~~(c) The total payment rate available for the period July 1, 2000 through June 30, 2001 will be the rate as computed in (4)(a), plus any additional amount computed in (4)(b) plus the direct care wage and benefits increase as provided in ARM 37.40.361 plus any additional amount computed in ARM 37.40.311 for qualified county funded rural nursing facilities.~~

~~(5)~~ (2) Effective July 1, 2001, and in subsequent rate years, 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)~~ (2)(a) and the direct resident care component defined in ~~(5)~~ (2)(b):

(a) through (d) remain the same.

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

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

(f) remains the same but is renumbered (e).

(6) through (15) remain the same but are renumbered (3) through (12).

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 and in subsequent rate years, shall be determined in accordance with ARM 37.40.307.

(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,~~ medicaid case mix index or the statewide price, 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) After the department has determined the median operating costs under ARM 37.40.313 and the statewide median average wage under ARM 37.40.314 for a rate year and has established provider rates based upon those determinations, the median operating costs and the statewide median average wage will not be revised or redetermined, except as provided in (1)(c), regardless of changes in provider costs resulting from base period cost report adjustments or other causes.~~

~~(c) The median operating costs under ARM 37.40.313 and the statewide median average wage under ARM 37.40.314 used to establish rates for a rate year will be redetermined only as required to set new rates for all providers for a subsequent rate year based upon adoption of further rules or amendments to these rules providing specifically for a rate methodology for a new or a subsequent rate year.~~

(3) A provider's rate established July 1 of the rate year shall remain in effect throughout the rate year and throughout subsequent rate years, regardless of any other provision in this subchapter, until ~~the earlier of:~~

~~(a)~~ the effective date of a new rate established in accordance with a new rule or amendment to these rules, adopted after the establishment of the current rate, which specifically provides a rate methodology for the new or subsequent rate year~~;~~.

~~(b) the effective date of a change in the provider's operating cost component:~~

~~(i) as specified in the department's notice of final~~

~~settlement of a cost report based upon a desk review or audit which results in adjustment of the base period operating costs used by the department to calculate the provider's operating cost component; or~~

~~(ii) as provided in ARM 37.40.326;~~

~~(c) the effective date of a change in the provider's direct nursing personnel cost component:~~

~~(i) as specified in the department's notice of final settlement of a cost report based upon a final desk review or audit which results in adjustment of the base period direct nursing personnel costs used by the department to calculate the provider's direct nursing personnel cost component; or~~

~~(ii) as provided in ARM 37.40.326; or~~

~~(d) the effective date of a change in the provider's property cost component:~~

~~(i) upon certification of newly constructed beds as provided in ARM 37.40.323(4);~~

~~(ii) upon completion of an extensive remodeling (as defined in ARM 37.40.302) as provided in ARM 37.40.323(5);~~

~~(iii) as specified in the department's notice of final settlement of a cost report based upon a final desk review or audit which results in adjustment of the base period property costs used by the department to calculate the provider's property cost component; or~~

~~(iv) as provided in ARM 37.40.326.~~

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 ~~2002~~ 2003, 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) remains the same.

(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~~ 2002 through June 30, ~~2002~~ 2003.

(c) In order to qualify for this lump sum adjustment effective July 1, ~~2001~~ 2002, 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~~ 2002, 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~~ 2002 through June 30, ~~2002~~ 2003.

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

37.40.315 ~~PATIENT ASSESSMENT,~~ STAFFING AND REPORTING REQUIREMENTS ~~(1) For purposes of determining rate year 2000 rates, the provider's average patient assessment score will be the patient assessment score that was established for fiscal year 1999 rate setting proposes in accordance with the rules in effect during that period.~~

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

AUTH: Sec. 53-6-113, MCA
IMP: Sec. 53-2-201, 53-6-101, 53-6-108, 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 (8) remain the same.

(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 rates for the period July 1, 2001 through June 30, 2002 and for rate years thereafter.

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

37.40.322 OBRA NURSE AIDE TESTING AND TRAINING COST REPORTING ~~COST REIMBURSEMENT~~ (1) ~~For rate years beginning on or after July 1, 1992,~~ Omnibus Budget Reconciliation Act of 1987

(OBRA) costs will be reimbursed under the per diem rate determined under ARM 37.40.307. No further reimbursement will be provided outside the per diem rate ~~for such costs except as specifically provided in these rules~~.

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

(3) ~~For periods beginning on or after April 1, 1992,~~ M~~m~~edicaid nursing facility reimbursement for the costs associated with training and competency evaluation programs for nurse aides employed in medicare and medicaid nursing facilities, as required under ~~the Omnibus Budget Reconciliation Act of 1987 (~~OBRA~~)~~, shall be as follows:

(a) Nurse aide certification training and competency evaluation (testing) costs documented in accordance with (2) and allowable under ARM 37.40.345 will be reimbursed to the extent provided under the per diem rate determined under ARM 37.40.307. No ~~further~~ additional reimbursement will be provided for such costs.

(4) through (5) 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

37.40.326 INTERIM PER DIEM RATES FOR NEWLY CONSTRUCTED FACILITIES AND NEW PROVIDERS (1) remains the same.

(a) Effective July 1, 2001 and thereafter, 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~~ (1)(b).

(b) Effective July 1, 2001 and thereafter, 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~~ ARM 37.40.307(5)(b).

~~(c) For the rate period July 1, 2000 through June 30, 2001, 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 as computed on July 1, 2000 for this rate year in accordance with the rule provisions in ARM 37.40.308. Following a change in provider as provided 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, for~~

~~the July 1, 2000 through June 30, 2001 transition rate year.~~

~~(2) 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:~~

~~(a) In a newly constructed facility or as a new provider not resulting from a change in provider as defined in ARM 37.40.325, the interim per diem rate shall be the bed-weighted median per diem rate for all nursing facility providers. The interim rate shall be determined based upon all non-interim provider rates determined by the department and effective as of July 1 of the rate year.~~

~~(b) As a new provider resulting from a change in provider as defined in ARM 37.40.325, the new provider's interim rate will be determined in accordance with ARM 37.40.307, 37.40.313, 37.40.314 and 37.40.323, based upon the most recent medicaid cost report covering a period of at least 6 months as filed by the previous provider, and subject to any applicable minimum or maximum rate under the provisions of ARM 37.40.307(3) through (3)(c), as applied to the facility's average per diem rate in effect for the entire previous rate year, as if no change in provider had occurred.~~

~~(c) The provider's interim rate shall become effective on the date a provider begins providing medicaid services in a newly constructed facility, as a new provider or on the effective date of a change in provider as defined in ARM 37.40.325.~~

~~(d) For changes in provider occurring on or after July 1, 1993, the provider's interim rate shall remain in effect until the provider has filed with the department in accordance with ARM 37.40.346 a complete and accurate cost report covering a period of 6 months participation in the medicaid program in a newly constructed facility, as a new provider or following a change in provider as defined in ARM 37.40.325. Subject to (2)(d)(iv), the interim rate will be adjusted only upon computation of a new interim rate effective July 1 of each rate year, or following a rate adjustment request by a new provider with an interim rate set using a previous provider's cost report, as follows:~~

~~(i) if a new provider disagrees with the interim rate as determined using the previous provider's cost report, the new provider may request an adjustment of the interim rate in accordance with this section. The rate adjustment request must request an exception to the cost base and include an explanation and documentation with substantive evidence that demonstrates the new provider's costs are and/or will be sufficiently different than the previous provider's specific costs to warrant a rate adjustment in accordance with ARM 37.40.307, 37.40.313, 37.40.314 and 37.40.323;~~

~~(ii) acceptable documentation to substantiate a different cost base will include:~~

~~(A) a budget for operation of the nursing facility through the new provider's fiscal year end, including all cost centers as identified on the department's medicaid cost report worksheet~~

~~A, with an explanation by cost center of why the costs will be different than the previous provider's; or~~

~~(B) actual costs incurred by the new provider to date and projected through the new provider's fiscal year end for all cost centers as identified on the department's medicaid cost report worksheet A, with an explanation by cost center of why the costs are different than the previous provider's;~~

~~(iii) the department will review the documentation submitted by the new provider and will prepare a proforma cost report utilizing the stepdown methodology of cost allocation to arrive at the allowable nursing facility costs. These costs will be considered as current costs of the rate year and as such no inflationary index will be applied. These costs will be used as the new basis for computing the interim rate in accordance with ARM 37.40.307, 37.40.313, 37.40.314 and 37.40.323, and the provider will receive a new interim rate based on such costs, regardless of whether such new interim rate is greater or less than the previous interim rate;~~

~~(iv) the new provider's interim rate shall be set as follows:~~

~~(A) if the previous provider's rate was less than or equal to the bed-weighted median rate for all facilities for the current year, then the new provider's interim rate shall be the lesser of:~~

~~(I) the previous provider's rate adjusted by an amount, if any, determined in accordance with (2)(d)(i) through (iii); or~~

~~(II) the bed-weighted median rate for all facilities for the current year.~~

~~(B) if the previous provider's rate was greater than the bed-weighted median rate for all providers for the current year, then the new provider's interim rate shall be the previous provider's rate.~~

~~(e) After the provider files a complete and accurate cost report as specified in (2)(d), the department will determine a per diem rate based upon such cost report according to the provisions of ARM 37.40.307, 37.40.313, 37.40.314 and 37.40.323. Such per diem rate shall be determined using the period covered by the cost report as the provider's base period. The per diem rate determined in accordance with this subsection shall be effective retroactive to the date the interim rate set under (2) became effective. Any overpayment or underpayment shall be adjusted in accordance with the cost settlement rules specified in ARM 37.40.347.~~

~~(3) For purposes of calculating a per diem rate as provided in (2)(e), the following shall apply with respect to patient assessment scores used to calculate the direct nursing personnel cost component:~~

~~(a) For providers who have received an interim rate under the provisions of this rule based upon a change in provider, the provider's direct nursing personnel cost component shall be calculated based upon the fiscal year 1999 average patient assessment score for the previous provider, as though no change in provider had occurred.~~

~~(b) For providers who have received an interim rate under~~

~~the provisions of this rule based upon provision of services in a new facility or as a new provider, the provider's direct nursing personnel cost component shall be calculated based upon the fiscal year 1999 state wide average patient assessment score.~~

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

37.40.346 COST REPORTING, DESK REVIEW AND AUDIT
(1) through (4) remain the same.
(a) A provider must file its cost report:
(i) within ~~90~~ 150 days after the end of its designated fiscal year;
(ii) within ~~90~~ 150 days after the effective date of a change in provider as defined in ARM 37.40.325; or
(iii) for changes in providers occurring on or after July 1, 1993, within ~~90~~ 150 days after 6 months participation in the medicaid program for providers with an interim rate established under ARM 37.40.326. Subsequent cost reports are to be filed in accordance with (4)(a)(i) above and subsequent cost reports shall not duplicate previous cost reporting periods.
(b) through (c) remain the same.
(d) If a provider does not file its cost report within ~~90~~ 150 days of the end of its fiscal year, or if a provider files an incomplete cost report, the department may withhold from payment to the provider an amount equal to 10% of the provider's total reimbursement for the month following the due date of the report or the filing of the incomplete report. If the report is overdue or incomplete a second month, the department may withhold 20% of the provider's total reimbursement for the following month. For each succeeding month for which the report is overdue or incomplete, the department may withhold the provider's entire medicaid payment for the following month. If the provider fails to file a complete and accurate cost report within 6 months after the due date, the department may recover all amounts paid to the provider by the department for the fiscal period covered by the cost report. All amounts so withheld will be payable to the provider upon submission of a complete and accurate cost report.
(e) through (5)(d) remain the same.
(6) Department audit staff may perform a desk review of cost statements or reports and may conduct on-site audits of provider records. Such audits will be conducted in accordance with audit procedures developed by the department.
(a) through (d) remain the same.
~~(e) For providers receiving per diem rates determined in accordance with ARM 37.40.313 and 37.40.314, if based upon desk review or audit of the provider's base period cost information used to determine the per diem rate, the department adjusts such costs upward or downward, the department shall adjust rates retroactively for the period of the per diem rate in accordance with adjusted costs and shall use adjusted cost information in any subsequent calculations for which such base period cost~~

~~information is used. The provider shall not be entitled to any adjustment until the department has mailed notice of final settlement to the provider. Any overpayment or underpayment shall be paid or collected in accordance with the cost settlement procedures in ARM 37.40.347.~~

(7) 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

37.40.361 ~~ADDITIONAL PAYMENTS FOR~~ DIRECT CARE WAGE REPORTING ~~AND BENEFITS INCREASES~~ (1) remains the same.

~~(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.~~

~~(3) The department will pay medicaid certified nursing care facilities located in Montana who submit an approved request to the department, an additional amount, computed as provided in (3), as an add-on to their computed medicaid payment rate to be used only for wage and benefit increases for direct care workers in nursing homes.~~

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

~~(5) To receive the direct care add-on, a nursing facility shall submit for approval a request form to the department which indicates how the direct care add-on will be spent in the facility. The facility shall submit all of the information required on a form to be developed by the department in order to continue to receive the additional add-on amount for the entire rate year. The form will request information including but not limited to, the number of FTE's employed by category of authorized direct care worker that will receive the benefit of the increased funds, current per hour rate of pay with benefits for each category of worker, projected per hour rate of pay with benefits after the direct wage increase has been implemented, number of staff receiving a wage or benefit increase by category of worker, effective date of implementation of the increase in wage and benefit, and number of projected hours to be worked in the budget period.~~

~~(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 state fiscal year 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.~~

~~(7) A facility that receives funds under this rule must maintain appropriate records documenting the expenditure of the funds. This documentation must be maintained and made available to authorized governmental entities and their agents to the same extent as other required records and documentation under applicable medicaid record requirements, including but not limited to ARM 37.40.345, 37.40.346 and 37.85.414.~~

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 rules 37.40.313 and 37.40.314 as proposed to be repealed are on pages 37-8771 through 37-8777 of the Administrative Rules of Montana.

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

The rules 37.40.323 and 37.40.324 as proposed to be repealed are on pages 37-8793 and 37-8795 of the Administrative Rules of Montana.

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

4. The Montana Medicaid program pays medical expenses for eligible low income and medically needy persons. Medical providers who furnish services to Medicaid participants are reimbursed in accordance with the rules governing the Montana Medicaid Program. ARM 37.40.301 through 37.40.361 contain provisions regarding Medicaid reimbursement for skilled nursing and intermediate care services.

The Department has been moving to a full price based system of reimbursement for nursing facilities. In fiscal year 2003, in order to continue the transition to this new reimbursement system, the Department will continue the methodology of providing proportionally larger rate increases 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 over the prior years rate during the transition period. Medicaid per diem rates will be established annually each July 1st. No nursing facility will receive a rate decrease during the transition period in which the Department is moving to a full price based system.

ARM 37.40.311

The Department will also continue the mechanism for rural "at-risk" county nursing facilities, to receive additional reimbursement up to the Medicare upper limit. For rate year

2003, 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 for the purpose of maintaining access and viability for a class of "at risk" county affiliated facilities who are predominately rural in nature and are, for the most part, the only nursing facility in their community or county. In order to qualify for this lump sum adjustment, each non-state governmental owed 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.

Additionally, subject to the availability of sufficient county, state and federal funding, the Department will continue for the period commencing on July 1, 2002, the provision 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.

As of July 1, 2002, the Department is implementing legislative funding increases for nursing facility reimbursement for state fiscal year 2003. The executive budget contains a 4.5% increase in funding to continue to move to a more predictable and stable system of reimbursement.

Moving to a full price based system of reimbursement 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 changes are not made to move toward a price based approach the Department will be faced with the following issues. Statewide occupancy rates are at 79% in Montana nursing facilities at the current time. 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 2003, as well as, the approval for the use of local county matching funds as a source of additional revenue for nursing facility providers in order to maintain access to, and the quality of, nursing facility services.

<u>ARM 37.40.301, 37.40.302, 37.40.307, 37.40.308, 37.40.315, 37.40.320, 37.40.322 and 37.40.326</u>

The Department has made a number of changes to these reimbursement rules in recent years to implement a full price based system of reimbursement for nursing facilities. Some provisions currently contained in the rules are no longer needed, such as certain portions of the definitions rule, ARM 37.40.302. The amendment of these rules is now necessary to eliminate outdated rule language that is no longer applicable to current nursing facility program management or reimbursement purposes. Revisions are also being made to provide clarification and to make the rules more understandable. This will make the rules easier for providers to follow. This elimination of unnecessary rule language will also lessen the number or rule pages that will be required to be published on an annual basis thus eliminating some unnecessary rule printing costs for the Department and the State.

<u>ARM 37.40.346</u>

A substantive change is being made to ARM 37.40.346, which currently specifies that providers must file their cost reports within 90 days after the end of the provider's fiscal year. The Department proposes to amend (4)(a) of the rule to adopt

Medicare cost report filing time lines for Medicaid cost report filing purposes. Medicare allows providers 150 days to file cost reports. The 90 day filing deadline for Medicaid cost reporting was appropriate when information that was contained in the cost report was utilized for reimbursement calculation purposes. Now that the system of reimbursement is a price based system the need for this cost report information to be filed within 90 days is not as critical. Many providers found it difficult to provide accurate cost report information in the 90 day time frame due to the reliance on Medicare information that was needed to file a cost report. This resulted in many providers requesting 30 to 60 day extensions in the filing deadlines to try to provide accurate information. The Department will utilize the Medicare filing deadlines in order to ease the burden on providers and to lessen the need to provide for extensions in the filing deadlines under Medicaid.

ARM 37.40.313, 37.40.314, 37.40.323 and 37.40.324

Similarly, the repeal of ARM 37.40.313, ARM 37.40.314, ARM 37.40.323 and ARM 37.40.324 is necessary to eliminate rules which are superfluous under the new reimbursement system.

Fiscal Impact

The total state and federal funding available for nursing facility reimbursement for fiscal year 2003 is currently projected at $109,853,992. The estimated total funding available for fiscal year 2003 nursing facility reimbursement from combined state funds, federal funds, and patient contributions is approximately $138,011,188. Appropriated days for state fiscal year 2003 are estimated at 1,297,897. The estimated financial impact of the proposed 4.5% provider rate increase approved by the legislature is approximately $4.8 million in state and federal funds in fiscal year 2003.

The estimated total funding impact of the one time payments to "at risk" non-state governmental providers and other nursing facilities not determined to be "at risk", is estimated at $4,315,204 of state special revenue funds and approximately $15,994,084 in total funds for the nursing home program.

These rule changes will take effect July 1, 2002. The legislative funding increases are available July 1, 2002, to provide for these increases in reimbursement, as well as other increases, that are being proposed in this rule for fiscal year 2003. This date will comply with legislative directives for funding increases for nursing facilities.

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 23, 2002. 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.

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

Certified to the Secretary of State April 15, 2002.

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

In the matter of the amendment of ARM 37.82.701, 37.82.1106 and 37.82.1107 pertaining to medically needy family medicaid coverage	)))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Interested Persons

1. On May 15, 2002, 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 10, 2002, 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.

37.82.701 GROUPS COVERED, NON-INSTITUTIONALIZED ~~FAIM FINANCIAL ASSISTANCE RELATED~~ FAMILIES AND CHILDREN

(1) Medicaid will be provided to:

~~(a) individuals participating in the pathways or community services programs of the FAIM project;~~

~~(i) An individual is participating if his needs are included in determining the grant amount.~~

~~(b) individuals deemed to be receiving cash assistance. This coverage is limited to:~~

~~(i) those individuals who are not receiving solely because the check amount is less than $10;~~

~~(ii)~~ (a) individuals under age 19 who currently reside in Montana and are receiving foster care or adoption assistance under Title IV-E of the Social Security Act, whether or not such assistance originated in Montana. Eligibility requirements for Title IV-E foster care and adoption assistance are found in ARM ~~46.10.307~~ 37.50.101, 37.50.105, 37.50.106 and 45 CFR part 233~~; and~~

~~(iii) individuals who choose medicaid as a benefit of the FAIM job supplement program~~.

~~(c)~~ (b) individuals who have been receiving assistance in the ~~FAIM project~~ non-medically needy family medicaid program and

whose assistance is terminated because of earned ~~and/or unearned~~ income or because of the ~~cessation of some limited benefits~~ loss of earned income disregards. These individuals may continue to receive medicaid for any or all of the ~~12~~ 6 calendar months immediately following the month in which ~~assistance~~ non-medically needy family medicaid is last received, providing:

(i) in cases where assistance was terminated due to earned income, a member of the assistance unit continues to be employed during the ~~12~~ 6 months; however, eligibility may continue even though no member of the assistance unit is employed if there was a good cause as defined in ARM ~~46.18.136~~ 37.78.508 for the termination or loss of employment. There is no requirement that a member of the assistance unit be employed in cases where assistance was terminated due to ~~unearned income or due to the cessation of limited benefits~~ the loss of earned income disregards;

(ii) they received ~~or are deemed to have received cash assistance in the FAIM project for at least 1 month~~ non-medically needy family medicaid for 3 of the 6 months immediately prior to the month they became ineligible for ~~FAIM assistance~~ non-medically needy family medicaid coverage; and

~~(iii) during the second 6 months of the 12-month period, their combined earned and unearned income does not exceed 185% of the federal poverty guidelines; and~~

~~(iv)~~ (iii) there continues to be an eligible child in the assistance unit. This coverage group is known as the "extended medicaid group".

~~(d)~~ (c) individuals under age 19 who ~~would be eligible for cash assistance, if they are full-time students in a secondary school or an equivalent program~~ live with a specified caretaker relative as defined in ARM 37.78.103 and who meet all other eligibility requirements;

~~(e)~~ (d) a pregnant woman whose pregnancy has been verified and whose family income and resources meet the requirements listed in ARM ~~46.18.118 and 46.18.122~~ 37.82.1106, 37.82.1107 and 37.82.1110. This coverage group is known as the "qualified pregnant woman group";

(i) remains the same.

~~(f)~~ (e) a pregnant woman whose pregnancy has been verified, whose family income does not exceed 133% of the federal poverty guidelines and whose countable resources do not exceed $3,000~~; this~~ . This coverage group is known as the "poverty level pregnant woman group";

(i) remains the same.

(ii) Newborn children are continuously eligible through the month of their first birthday, provided they continue to reside with their mother in Montana and she would continue to be eligible for assistance if she were still pregnant~~; this~~ . This coverage group is known as the "automatic newborn assistance group";

~~(g)~~ (f) a pregnant woman during a period of presumptive eligibility;

(i) Presumptive eligibility is established by submission of an application by the applicant on the form specified by the

department, to a qualified presumptive eligibility provider, verification of pregnancy and a determination by the qualified presumptive eligibility provider that applicant's household income and resources do not exceed the income and resource standards specified in (1)~~(f)~~ (e).

(A) A qualified presumptive eligibility provider is an entity which meets the requirements specified in section 3570~~.2~~ of the state medicaid manual, published by the ~~health care financing administration~~ centers for medicare and medicaid services (CMS) of the U.S. department of health and human services and who is enrolled with the department as a qualified presumptive eligibility provider under the presumptive eligibility program. Section 3570~~.2~~ of the state medicaid manual is hereby adopted and incorporated herein by this reference. A copy of the manual section may be obtained from the Department of Public Health and Human Services, ~~Child and Family~~ Human and Community Services Division, 1400 Broadway, P.O. Box ~~8005~~ 202952, Helena, MT ~~59604-8005~~ 59620-2952.

(B) ~~Presumptive eligibility shall be effective for a period of 14 days. Upon submission of a medicaid application to the department during the initial 14-day period, presumptive eligibility shall be extended until the department determines that the applicant is ineligible for medicaid or the end of 45 days from initial establishment of presumptive eligibility, whichever is earlier.~~ Presumptive eligibility determinations ~~made on or after July 1, 1991~~ shall be effective through the earlier of the date the department makes a determination of eligibility or ineligibility based upon a medicaid application, or the last day of the month following the month of the presumptive eligibility determination, if no medicaid application is filed within such period. An individual is limited to one presumptive eligibility period per pregnancy.

(C) ~~An applicant or recipient whose presumptive eligibility is terminated based upon expiration of the 14-day presumptive eligibility period without submission of a medicaid application to the department or based upon expiration of the 45-day period without a determination of medicaid eligibility shall not be entitled to a fair hearing with respect to such termination, regardless of the provisions of ARM 46.2.202.~~ The applicant or recipient shall be entitled to a fair hearing with respect to a determination by the department based upon a medicaid application.

(ii) remains the same.

~~(h)~~ (g) a pregnant woman who becomes ineligible for medicaid due solely to increased income and whose countable resources do not exceed $3,000 and whose pregnancy is disclosed to the department and verified prior to the effective date of medicaid closure ~~of medicaid;~~ . This coverage group is known as the "continuous pregnant woman group";

(i) remains the same.

~~(ii) During a period of eligibility under (1)(h), a pregnant woman is limited to services covered under the Montana medicaid program related to pregnancy and conditions which may complicate pregnancy, including prenatal care, delivery,~~

~~postpartum and family planning services.~~

~~(i)~~ (h) a child born on or after October 1, 1983, who has attained age 6 but has not yet reached ~~the~~ age 19, whose family income does not exceed 100% of the federal poverty guidelines and whose countable resources do not exceed $3,000~~; this~~ . This coverage group is known as the "poverty six child group";

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

~~(l)~~ (k) a child of a minor custodial parent when the custodial parent is living in the child's grandparent's home and the grandparent's income is the sole reason rendering the child ineligible for ~~FAIM financial assistance~~ non-medically needy family medicaid;

~~(m)~~ (l) needy caretaker relatives as defined in ARM ~~46.18.103~~ 37.78.103 who have in their care an individual under age 19 who is eligible for medicaid, and whose countable income does not exceed the state's July 1996 AFDC standards increased by the consumer price index, as defined in the family medicaid manual, section 002; ~~and~~

~~(n) individuals who would be eligible for, but are not receiving, cash assistance.~~

~~(o)~~ (m) a child ~~born on or after October 1, 1983,~~ through the month of the child's 19th birthday, who lives in a household whose income and resources do not exceed the medically needy income and resource standards specified in ARM 37.82.1106, 37.82.1107 and 37.82.1110, regardless of whether the child lives with a parent or specified caretaker relative as defined in ARM ~~46.18.103;this~~ 37.82.103. This coverage group is known as the "Ribicoff child group";

(n) women, under the age of 65 who have been screened through the Montana breast and cervical health program who:

(i) have been diagnosed with cancer or precancer of the breast or cervix;

(ii) do not have creditable coverage to pay for their cancer/precancer treatment;

(iii) have countable income that does not exceed 200% of the federal poverty level; and

(iv) are not eligible for any other medicaid coverage group. This coverage group is known as "breast and cervical cancer treatment"; and

(o) families who, due to receipt of new or increased child or spousal support, lose eligibility for non-medically needy family medicaid. To be eligible the family must:

(i) receive new or increased child or spousal support in an amount great enough to cause their non-medically needy family medicaid eligibility to end; and

(ii) have received non-medically needy family medicaid in Montana for 3 of 6 months prior to the closure of non-medically needy family medicaid. The coverage will continue for 4 consecutive months. This program is know as the "extended child/spousal support group".

(2) Medicaid will continue ~~for 2 months~~ until the last day of the month in which the 60th postpartum day falls for pregnant women ~~after the month pregnancy ends~~ as long as the pregnant woman was eligible for and receiving medicaid on the date

pregnancy ends.

(3) Medicaid will continue for 1 year for newborn children providing:

(a) remains the same.

(b) the mother of the newborn remains eligible; ~~and~~

(c) the child remains in the same household as the mother, and

(d) the mother remains a Montana resident.

(4) Medicaid may be provided for up to 3 months prior to the date of application for individuals listed in (1)(a), ~~(1)(b)(i), (1)(b)(ii),~~ (1)(c), (1)(d), ~~(1)(e),~~ (1)(g), (1)(h), (1)(i), (1)(j), (1)(k), ~~and~~ (1)(l) and (1)(m) if all financial and non-financial eligibility criteria are met ~~the first day of the month for~~ as of the date medical services were received in each of those months.

AUTH: Sec. 53-4-212 and 53-6-113, MCA
IMP: Sec. 53-6-101, 53-6-131, 53-6-134 and 53-4-231, MCA

37.82.1106 MEDICALLY NEEDY INCOME STANDARDS (1) To be eligible for medically needy assistance, SSI and ~~FAIM financial assistance~~ family-related institutionalized and non-institutionalized recipients must meet:

(a) through (c) remain the same.

(2) Medically needy recipients must ~~pay copayments~~ participate in cost sharing as provided for in ARM 37.85.204.

(3) The adjusted income for individuals and families is compared to the following table to determine medically needy assistance eligibility.

(a) and (b) remain the same.

~~MEDICALLY NEEDY INCOME LEVELS~~
~~FOR SSI and FAIM FINANCIAL ASSISTANCE~~
~~RELATED INDIVIDUALS AND FAMILIES~~

~~Family Size~~	~~One Month Net Income Level~~
~~1~~	~~$ 491~~
~~2~~	~~491~~
~~3~~	~~523~~
~~4~~	~~555~~
~~5~~	~~650~~
~~6~~	~~744~~
~~7~~	~~838~~
~~8~~	~~933~~
~~9~~	~~980~~
~~10~~	~~1,024~~
~~11~~	~~1,064~~

~~12~~	~~1,104~~
~~13~~	~~1,140~~
~~14~~	~~1,173~~
~~15~~	~~1,206~~
~~16~~	~~1,234~~

MEDICALLY NEEDY INCOME LEVELS
FOR SSI and FAMILY-RELATED
INDIVIDUALS AND FAMILIES

Family Size	One Month Net Income Level
1	$ 525
2	525
3	658
4	792
5	925
6	1,058
7	1,192
8	1,317
9	1,383
10	1,450
11	1,508
12	1,558
13	1,608
14	1,658
15	1,700
16	1,742

AUTH: Sec. 53-6-113, MCA
IMP: Sec. 53-6-101, 53-6-131 and 53-6-141, MCA

37.82.1107 INCOME ELIGIBILITY, NON-INSTITUTIONALIZED MEDICALLY NEEDY (1) Medically needy income eligibility for SSI and family-related persons and families will be computed using a 1 month prospective budget period.

(a) For groups covered under ARM 37.82.1101(1)(a) through (1)(e), monthly countable income will be determined using ~~FAIM~~ family-related medicaid income requirements, in particular those with respect to prospective budgeting and earned income disregards, set forth in ~~ARM 46.18.120~~ the family medicaid manual, sections 601-1 and 602-1.

(i) In the case of individuals whose income must be deemed when determining eligibility, the ~~FAIM financial assistance~~ family-related medicaid income requirements contained in ~~ARM 46.18.119~~ the family medicaid manual, section 603-1 will be used.

(ii) remains the same.

~~(iii) To determine the income for the 1 month prospective period, individuals or families who, under ARM 46.18.124, are ineligible for FAIM financial assistance due to the receipt of a lump sum payment, use ARM 46.18.122.~~

(b) For groups covered under ARM 37.82.1101(4)(a) and (b), countable income will be determined using the SSI income requirements set forth in 20 CFR, part 416, subpart K, as amended through April 1, ~~1990~~ 2001, which contains the SSI criteria for evaluating income, including the income of financially responsible relatives. The department hereby adopts and incorporates by reference 20 CFR, part 416, subpart K, as amended through April 1, ~~1990~~ 2001. A copy of these federal regulations may be obtained from the Department of Public Health and Human Services, Human and Community Services Division, Public Assistance Bureau, 1400 Broadway, P.O. Box 202952, Helena, MT 59620-2952.

(b)(i) and (2) remain the same.

(3) When an otherwise eligible individual or family covered under ARM 37.82.1101 has countable income which exceeds the medically needy income level, the individual or family will become eligible:

(a) remains the same.

(i) Medical expenses may be used to reduce the cost-share amount. The only medical expenses which may be used are:

(A) remains the same.

(I) eligible or ineligible individuals who are considered members of the household for ~~FAIM financial assistance~~ family-related medicaid; or

(II) through (C) remain the same.

(D) expenses incurred by the individual or family or financially responsible relatives for necessary medical and remedial services that are recognized under state law but ~~is~~ are not ~~a~~ Montana medicaid covered ~~service~~ services; or

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

(A) eligible or ineligible individuals who are considered members of the household for ~~FAIM financial assistance~~ family-related medicaid; or

(B) through (v)(A) remain the same.

(B) paid or unpaid ~~balance on old~~ bills incurred in the three months immediately prior to the retroactive budget period ~~provided they are currently enforceable obligations, and payments made on such unpaid bills during the retroactive budget period~~.

(vi) for the prospective budget period:

(A) paid and unpaid expenses incurred during the three months immediately preceding the prospective budget period; and

(B) paid and unpaid expenses incurred during the prospective budget period~~; and~~

~~(C) unpaid balance on old bills incurred prior to the 3 months immediately preceding the prospective budget period, provided they are currently enforceable obligations, and payments made on such old bills during the prospective budget period~~.

(4) through (6) remain the same.

AUTH: Sec. 53-2-201, 53-4-212, 53-6-113 and 53-6-402, MCA
IMP: Sec. 53-2-201, 53-4-231, 53-6-101, 53-6-131 and 53-6-402, MCA

3. The Medicaid program provides medical care to eligible low income Montanans. The program is jointly funded by the state and federal governments and is administered by the state in accordance with federal and state law and regulations.

The proposed amendments to ARM 37.82.701 are necessary to incorporate changes needed due to several factors. First, clarification is needed for several coverage groups.

Also, Montana severed the ties between Medicaid and Temporary Assistance for Needy Families (TANF) at the behest of the Centers for Medicare and Medicaid Services (CMS), the federal Medicaid agency, in order to ensure that individuals would not lose Medicaid coverage as a result of a TANF requirement. Many changes in ARM 37.82.701 have been necessitated by CMS's request.

Changes to ARM 37.82.701 are also necessary to incorporate the changes to the Extended Medicaid program that are needed to help address unanticipated budget deficits in the Montana Medicaid program. The Department of Public Health and Human Services must bring expenditures within its appropriation for State Fiscal Year 2003. In order to accomplish this, the Department is proposing to eliminate the optional second 6-month period of Extended Medicaid coverage, and to drop the existing CMS Extended Medicaid Waiver. It is estimated that these changes will save the Department $961,733.11 in State General Fund per fiscal year, and that approximately 2,499 adults and 836 children will be impacted by this change. Of these figures, it is estimated that 641 adults and 387 children would lose Medicaid coverage when their non-medically needy family medicaid coverage ended, due to changing the criteria necessary to become eligible for extended Medicaid coverage. The remainder would be eligible for 6 months of extended coverage, instead of the current 12 months. Due to dropping the existing Centers for Medicare and Medicaid Services (CMS) Extended Medicaid Waiver, it is necessary to add the Extended Child/Spousal Support program back as this is a mandatory program per 42 CFR 435.115(f).

Another change to ARM 37.82.701 is necessary to add the Breast and Cervical Cancer Treatment group. The Breast and Cervical Cancer Prevention and Treatment Act of 2000 (Public Law 106-354) amended Title XIX of the Social Security Act to give States enhanced matching funds to provide Medicaid eligibility to a new group of individuals previously not eligible under the program. In House Bill (HB) 456, 2001 Laws of Montana Chapter 440, the 2001 Montana Legislature amended 53-6-131, MCA to allow Montana

to provide coverage to this optional group as defined in Section 1902(a)(10)(A)(ii)(XVIII) of the Social Security Act. When HB 456 was passed, it was estimated that the State General Fund cost for State Fiscal Year 2002 would be $129,270 and the general fund cost for State Fiscal Year 2003 would be $258,540. It is also estimated that the breast and cervical cancer treatment coverage will cost $1,292,700 in federal funds. The alternative to having this program is to provide no medical coverage for those women who would qualify for this program, but would not qualify for any other Medicaid coverage and who have no other resources available to pay for their cancer treatment. The Department anticipates that approximately 100 women will access Medicaid through the breast and cervical cancer treatment program for the biennium. This coverage constitutes a new benefit for qualifying women.

The proposed amendments to ARM 37.82.1106 are necessary to update the existing rule to the current medically needy income standards. The Department expects minimal increased costs to the program because the group covered is not anticipated to vary significantly due to the rule amendment. Those covered in this group are generally benefitting from the SSI cash assistance program and eligibility for that program is fairly stagnant.

The proposed amendments to ARM 37.82.1107 are necessary to incorporate changes needed to address unanticipated budget deficits in the Montana Medicaid program. The Department of Public Health and Human Services must bring expenditures within its appropriation for State Fiscal Year 2003. In order to accomplish this, the Department is proposing to limit medical expenses used to reduce the cost-share amount when a family's or individual's income exceeds the medically needy income level. It is estimated that these changes will save the Department $186,300 in State General Fund per fiscal year. We anticipate approximately 115 individuals per month would be impacted by this change. It is anticipated that no individuals will lose Medicaid eligibility due to this change, but instead those affected will be responsible for a larger portion of their own current medical expenses in order to establish Medicaid eligibility.

Minor changes to references to updated versions of the Code of Federal Regulations (CFR) and a grammatical correction are also made in this proposed change, as well as changes necessitated by the severing of the ties between Medicaid and TANF.

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 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 23, 2002. 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.

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

Certified to the Secretary of State April 15, 2002.

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 37.86.2801, 37.86.2901, 37.86.2905, 37.86.2910, 37.86.3001, 37.86.3005, 38.86.3007, 37.86.3016 and 37.86.3018 pertaining to inpatient and outpatient hospitals)	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION AND AMENDMENT

TO: All Interested Persons

1. On May 16, 2002, 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 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 10, 2002, 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:

RULE I INPATIENT AND OUTPATIENT HOSPITAL SERVICES, QUALIFIED RATE ADJUSTMENT PAYMENT, ELIGIBILITY AND COMPUTATION

(1) The department will pay a qualified rate adjustment (QRA) payment to an eligible rural hospital in Montana for inpatient services or outpatient services or both when:

(a) the hospital's most recently reported costs are greater than the reimbursement received from Montana medicaid;

(b) the hospital is county owned, county operated or partially county funded, including tax district funding;

(c) county funds are transferred directly to the department and are certified by the county as match for payment of services eligible for federal financial participation in accordance with 42 CFR 433.51;

(d) the county funds are not federal funds or are federal funds authorized by federal law to be used to match other federal funds; and

(e) the hospital has executed and entered into a written agreement with the department and has agreed to abide by the

terms of the written agreement:

(i) the written agreement between the department and the hospital must be executed prior to the issuance of the qualified rate adjustment payment;

(ii) a retroactive effective date on the written agreement shall not be allowed; and

(iii) a hospital that does not enter into a written agreement with the department or does not abide by the terms of the agreement will not be eligible for the qualified rate adjustment payment process.

(2) The qualified rate adjustment payment is subject to the restrictions imposed by federal law, to federal approval of the state plan with respect to qualified rate adjustment and to the availability of sufficient state, county and federal funding.

(3) The department will calculate the amount of the qualified rate adjustment payment for each eligible rural hospital using the hospital's most recently submitted cost report and paid claims data. The qualified rate adjustment payment for each eligible rural hospital shall be the lesser of:

(a) the amount of county funds transferred to the department plus federal financial participation;

(b) the difference between established medicaid rates and the upper payment limit (UPL) as set by federal regulation; or

(c) the amount of county match funds to be transferred to the department plus the federal matched funds equal the total QRA payment.

(4) The department will pay the qualified rate adjustment only to hospitals that choose to participate and such payments shall not be subject to the cost settlement process.

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

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

37.86.2801 ALL HOSPITAL REIMBURSEMENT, GENERAL

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

(C) except as provided in (1)(a)(ii) 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) and (a)(i)(E) remain the same.

(ii) Upon the request of an inpatient or outpatient hospital located more than 100 miles outside the borders of the state of Montana.

(A) The department may grant retrospective authorization if the person to whom services were provided was determined by the department to be retroactively eligible for Montana medicaid benefits including hospital benefits.

(B) The department may grant retrospective authorization if the hospital is retroactively enrolled as a Montana medicaid provider, and the enrollment includes the dates of service for which authorization is requested.

(C) The department may not grant retrospective authorization to a hospital under any other circumstances.

(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) through (4) remain the same.

(5) "Disproportionate share hospital" means a hospital which meets the following criteria:

(a) through (c) remain the same.

(d) subsection (5)(c) does not apply to hospitals which:

(i) through (6) remain the same.

(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 ~~2000~~ 2001 (July 1, ~~1999~~ 2000 through June 30, ~~2000~~ 2001); and

(d) of the total babies delivered in state fiscal year ~~2000~~ 2001, 53% covered were either medicaid primary or medicaid secondary.

(8) through (13)(b) remain the same.

(14) "Qualified rate adjustment payment" (QRA) means an additional payment as provided in ARM 37.86.2910 to a county owned, county operated or partially county funded rural hospital in Montana ~~reimbursed under the prospective payment system for inpatient services~~ where the hospital's most recently reported costs ~~customary charges~~ are greater than the reimbursement received from Montana medicaid for inpatient care.

(15) 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 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) capital-related costs as set forth in (4);

(ii) medical education costs as set forth in (5);

(iii) cost outliers as set forth in (6);

(iv) certified registered nurse anesthetist costs as provided in ~~(16)~~ (15);

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

~~(vi)~~ (v) disproportionate share hospital payments as provided in ~~(14)~~ (13) and ~~(15)~~ (14); and

~~(vii)~~ (vi) hospital policy adjustor payments as provided in ~~(17)~~ (16).

(b) Inpatient hospital services provided in hospitals located outside the state of Montana, but no more than 100 miles from the border, referred to in these rules as "border hospitals", will be reimbursed under the DRG prospective payment system described in (2). In addition to the prospective rate, border hospitals will be reimbursed for cost outliers as set forth in (6) ~~and (7)~~, and for capital costs as set forth in (4), but shall not be reimbursed in addition to the DRG payment for medical education costs, neonatal intensive care stop-loss reimbursement or certified registered nurse anesthetist costs or catastrophic cases.

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

(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 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)~~ (12).

(3) through (5)(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 389 provided by neonatal intensive care units described in (3).

(a) remains the same.

(b) The department determines the outlier reimbursement for cost outliers for all hospitals and distinct part units, entitled to receive cost outlier reimbursement, as follows:

(i) computing an estimated cost for the inpatient hospital

stay by multiplying the allowed charges for the stay by the statewide medicaid cost to charge ratio set forth in ~~(12)~~ (11);

(ii) and (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 $144,000.~~

~~(b) The department will identify catastrophic cases and notify the provider that additional reimbursement may be available upon medical review. The provider must submit to the Department of Public Health and Human Services, Health Policy and Services Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951, the following:~~

~~(i) a copy of the claim and remittance advice identifying the DRG reimbursement paid for the same case; and~~

~~(ii) a copy of the patient's medical records, including but not limited to admission summary notes, physician orders, progress notes and discharge summary notes, necessary to document the medical necessity of the length and cost of the inpatient hospital stay. The medical necessity of the days and services of the inpatient hospital stay may be reviewed by the department or its designated agent prior to payment of the catastrophic case.~~

~~(c) The department determines the maximum catastrophic case reimbursement for all DRG hospitals by:~~

~~(i) computing an estimated cost for the inpatient hospital stay by multiplying the allowed charges for the stay by the statewide medicaid cost to charge ratio set forth in (12); and~~

~~(ii) subtracting any previous payments for the case.~~

~~(d) Catastrophic payments will be distributed as follows:~~

~~(i) providers will receive the base DRG payment and any appropriate outlier payments for each catastrophic case through the regular claims payment process and shall receive an amount equal to the estimated cost for the inpatient hospital stay less the base DRG payment amount and any applicable outlier payment amounts.~~

(8) through (9)(b) remain the same but are renumbered (7) through (8)(b).

~~(10)~~ (9) Inpatient hospital service providers shall be subject to the billing requirements set forth in ARM 37.85.406. At the time a claim is submitted, the hospital must have on file a signed and dated acknowledgment from the attending physician that the physician has received the following notice: "Notice to physicians: medicaid payment to hospitals is based in part on each patient's principal and secondary diagnoses and the major procedures performed on the patient, as attested to by the patient's attending physician by virtue of his or her signature in the medical record. Anyone who misrepresents, falsifies or conceals essential information required for payment of federal

funds, may be subject to fine, imprisonment or civil penalty under applicable federal laws." The acknowledgment must be completed by the physician at the time that the physician is granted admitting privileges at the hospital, or before or at the time the physician admits his or her first patient to the hospital. Existing acknowledgments signed by physicians already on staff remain in effect as long as the physician has admitting privileges at the hospital. The provider may, at its discretion, add to the language of this statement the word "medicare" so that two separate forms will not be required by the provider to comply with both state and federal requirements. In addition, except for distinct part rehabilitation units and hospital resident cases, provider may not submit a claim until the recipient has been either:

(10)(a) and (b) remain the same but are renumbered (9)(a) and (b).

(c) designated by the department as a hospital resident as set forth in ~~(11)~~ (10).

~~(11)~~ (10) "Hospital resident" means a recipient who is unable to be cared for in a setting other than the acute care hospital.

(11)(a) through (a)(iii) remain the same but are renumbered (10)(a) through (a)(iii).

(b) Payment for hospital residents will be made as follows:

(i) upon obtaining hospital residency status, claims for that recipient may be billed on an interim basis;

(ii) payment for the first 180 days of inpatient care will be the DRG payment for the case as computed in (2) and any appropriate outlier~~s and catastrophic~~ payment~~s~~ as computed in (6) ~~and (7)~~; and

(iii) payment for all patient care subsequent to 180 days will be reimbursed at a rate computed by multiplying the statewide average cost to charge ratio by the usual and customary billed charges.

~~(12)~~ (11) The medicaid statewide average cost to charge ratio excluding prospective capital expenses is 56%.

~~(13)~~ (12) 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 (April ~~2001~~ 2002 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 (April ~~2001~~ 2002 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 (14)(c) remain the same but are renumbered (13) through (13)(c).

~~(15)~~ (14) Disproportionate share hospital payments will be limited to the cap established by the federal health care financing administration for the state of Montana. The adjustment percentages specified in ~~(14)~~ (13)(a), (b) and (c)

shall be ratably reduced as determined necessary by the department to avoid exceeding the cap.

(16) through (18) remain the same but are renumbered (15) through (17).

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) Subject to the availability of sufficient county and federal funding, the department will pay in addition to the established medicaid rates provided in ARM 37.86.2905 a qualified rate adjustment payment to an eligible rural hospital in Montana as provided in [Rule I]. ~~The 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) the hospital's most recently reported usual and customary (billed) charges are greater than the reimbursement received from Montana medicaid for inpatient care;~~

~~(b) the hospital is county owned, county operated or partially county funded, including tax district funding;~~

~~(c) the hospital is reimbursed under Montana medicaid's prospective payment system for inpatient services;~~

~~(d) county funds are transferred directly to the department and are certified by the county as match for payment of services eligible for federal financial participation in accordance with 42 CFR 433.51;~~

~~(e) the county funds are not federal funds or are federal funds authorized by federal law to be used to match other federal funds; and~~

~~(f) the hospital has executed and entered into a written agreement with the department and has agreed to abide by the terms of the written agreement:~~

~~(i) the written agreement between the department and the hospital must be executed prior to the issuance of the qualified rate adjustment payment;~~

~~(ii) a retroactive effective date on the written agreement shall not be allowed; and~~

~~(iii) a hospital that does not enter into a written agreement with the department or does not abide by the terms of the agreement will not be eligible for the qualified rate adjustment payment process.~~

~~(2) The qualified rate adjustment payment is subject to the restrictions imposed by federal law, to federal approval of the state plan with respect to qualified rate adjustment and to the availability of sufficient state, county and federal funding.~~

~~(3) The department will calculate the amount of the qualified rate adjustment payment for each eligible rural hospital using the hospital's most recent submitted cost report and paid claims data. The qualified rate adjustment payment for each eligible rural hospital shall be the lesser of:~~

~~(a) the amount of county funds transferred to the department plus federal financial participation; or~~

~~(b) 90% of the difference between the hospital's usual and customary (billed) charges and the reimbursement received from Montana medicaid.~~

~~(4) The department will pay the qualified rate adjustment only to inpatient hospitals that choose reimbursement on a prospective basis and such payments shall not be subject to the cost settlement process.~~

~~(a) Reimbursement on a prospective basis will remain in effect during the contract period.~~

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

37.86.3001 OUTPATIENT HOSPITAL SERVICES, DEFINITIONS

~~(1)~~ (6) "Outpatient hospital services" means preventive, diagnostic, therapeutic, rehabilitative, or palliative services provided to an outpatient by or under the direction of a physician, dentist or other practitioner as permitted by federal law, by an institution that:

(a) is licensed or formally approved as a hospital by the officially designated authority in the state where the institution is located; and

(b) except as otherwise permitted by federal law, meets the requirements for participation in medicare as a hospital.

~~(2)~~ (5) "Outpatient" means a person who has not been admitted by a hospital as an inpatient, who is expected by the hospital to receive services in the hospital for less than 24 hours, who is registered on the hospital records as an outpatient and who receives outpatient hospital services, other than supplies alone, from the hospital.

~~(3)~~ (1) "Diagnostic service" means an examination or procedure performed on an outpatient or on materials derived from an outpatient to obtain information to aid in the assessment or identification of a medical condition.

(4) "Imaging service" means diagnostic and therapeutic radiology, nuclear medicine, CT scan procedures, magnetic resonance imaging services, ultra-sound, and other imaging procedures.

~~(5)~~ (7) "Partial hospitalization services" means an active treatment program that offers therapeutically intensive, coordinated, structured clinical services provided only to individuals who are determined to have a serious emotional disturbance or severe disabling mental illness. Partial hospitalization services are time-limited and provided within either an acute level program or a sub-acute level program. Partial hospitalization services include day, evening, night and weekend treatment programs that employ an integrated, comprehensive and complementary schedule of recognized treatment or therapeutic activities.

(a) Acute level partial hospitalization is provided by programs which:

(i) are operated by a hospital as described in ~~(5)~~ (7) and

are co-located with that hospital such that in an emergency a patient of the acute partial hospitalization program can be transported to the hospital's inpatient psychiatric unit within 15 minutes;

(ii) serve primarily individuals being discharged from inpatient psychiatric treatment or residential treatment; and

(iii) are designed to stabilize patients sufficiently to allow discharge to a less intensive level of care, on average, after 15 or fewer treatment days.

(b) Acute level partial hospitalization is reimbursed according to ARM 37.86.3022.

(c) Sub-acute level partial (SAP) hospitalization is provided by programs which:

(i) operate under the license of a general hospital with a distinct psychiatric unit or an inpatient psychiatric hospital for individuals under 21;

(ii) operate in a self-contained facility and offer integrated mental health services appropriate to the individual's needs as identified in an individualized treatment plan;

(iii) provide psychotherapy services consisting of at least 3 group sessions per week and 5 individual and/or family sessions per month;

(iv) encourage and support parent and family involvement;

(v) provide services in a supervised environment by a well-integrated, multi-disciplinary team of professionals which includes but is not limited to program therapists, behavioral specialists, teachers and ancillary staff;

(A) a program therapist must be a licensed mental health professional who is site based;

(B) a program therapist must have an active caseload that does not exceed 10 program clients;

(C) a behavioral specialist must be site based and have a bachelor's degree in a behavioral science field or commensurate experience working with children with serious emotional disturbance. There must be 1 behavioral specialist for each 5 youth in the SAP program; and

(D) all staff responsible for implementing the treatment plan must have a minimum of 24 hours orientation training and 12 additional hours of continuing education each year relating to serious emotional disturbance in children and its treatment. Training must include specific instruction on recognizing the effects of medication.

(vi) provides education services through one of the following:

(A) full collaboration with a school district;

(B) certified education staff within the program; or

(C) interagency agreements with education agencies.

(vii) provide crisis intervention and management, including response outside of the program setting;

(viii) provides psychiatric evaluation, consultation, and medication management on a regular basis. Psychiatric consultation to the program treatment staff is provided at least twice each month and includes at least one face-to-face

evaluation with each youth each month;

(ix) serves children or youth with a serious emotional disturbance being discharged from inpatient psychiatric treatment or residential treatment or who would be admitted to such treatment in the absence of partial hospitalization; and

(x) are designed to stabilize patients sufficiently to allow discharge to a less intensive level of care, on average, after 60 or fewer treatment days.

(d) Sub-acute level partial hospitalization is reimbursed at the rate specified in the department's medicaid mental health fee schedule.

(6) (2) "Full-day partial hospitalization program" means a partial hospitalization program providing services at least 6 hours per day, 5 days per week.

(7) (3) "Half-day partial hospitalization program" means a partial hospitalization program providing services for at least 4 but less than 6 hours per day, at least 4 days per week.

(8) "Qualified rate adjustment" (QRA) payment means an additional payment to a county owned, operated or partially county funded rural hospital in Montana as provided in ARM 37.86.3005, when the hospital's most recently reported costs are greater than the reimbursement received from Montana medicaid for outpatient care.

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 AND QUALIFIED RATE ADJUSTMENT PAYMENT (1) through (4) remain the same.

(5) Subject to the availability of sufficient county and federal funding, the department will pay in addition to the established medicaid rates provided in this rule a qualified rate adjustment payment to an eligible rural hospital in Montana as provided in [Rule I].

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

37.86.3007 OUTPATIENT HOSPITAL SERVICES, PROSPECTIVE PAYMENT METHODOLOGY, CLINICAL DIAGNOSTIC LABORATORY SERVICES

(1) Clinical diagnostic laboratory services will be reimbursed on a fee basis as follows:

(a) The fee for a clinical diagnostic laboratory service is the lesser of the provider's usual and customary charge (billed charges) or the applicable percentage of the medicare fee schedule as follows:

(i) 60% of the prevailing medicare fee schedule where a hospital laboratory acts as an independent laboratory, i.e., performs tests for persons who are non-hospital patients;

(ii) 62% of the prevailing medicare fee schedule for a hospital designated as a sole community hospital as defined in

ARM 37.86.2901; or

(iii) 60% of the prevailing medicare fee schedule for a hospital that is not designated as a sole community hospital as defined in ARM 37.86.2901~~;~~.

(b) For clinical diagnostic laboratory services:

(i) 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~~.~~; or

(ii) if a medicaid fee has been assigned, the fee is the amount set in ARM 37.85.212(9).

(c) For purposes of this rule, clinical diagnostic laboratory services include the laboratory tests listed in codes ~~80002-89399 of the Current Procedural Terminology, Fourth Edition (CPT-4)~~ defined in the healthcare common procedure coding system (HCPCS). Certain tests are exempt from the fee schedule. These tests are listed in the HCFA Pub-45, State Medicaid Manual, Payment For Services, Section 6300. These exempt clinical diagnostic laboratory services will be reimbursed under the retrospective payment methodology specified in ARM 37.86.3005(2).

(d) 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

37.86.3016 OUTPATIENT HOSPITAL SERVICES, PROSPECTIVE PAYMENT METHODOLOGY, IMAGING SERVICES (1) Imaging services will be reimbursed ~~on a fee basis.~~ as follows:

(a) For each imaging service or procedure, the fee will be the lesser of the provider's usual and customary charges (billed charges) or 100% of the 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)~~ codes defined in the healthcare common procedure coding system (HCPCS).

(b) For imaging services where no APC rate or 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.

(c) For imaging services where no APC rate has been assigned, but a medicaid fee has been assigned, the fee is the amount set in ARM 37.85.212(9).

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~~ as follows:

(a) ~~t~~The lesser of the provider's usual and customary charges (billed charges) or 100% of the medicare APC rate. The individual diagnostic services reimbursed under this subsection are those ~~listed in the Current Procedural Terminology, Fourth Edition (CPT-4)~~ defined in the healthcare common procedure coding system (HCPCS).

~~(a)~~ (b) Other diagnostic services ~~contained in the CPT-4 manual~~ without a medicare APC rate and for which no medicare APC rate has been assigned will be reimbursed under the retrospective cost basis as specified in ARM 37.86.3005(3)~~.~~; or

(c) For other diagnostic services without an APC rate, but for which a medicaid fee has been assigned, the fee is the amount set in ARM 37.85.212(9).

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

4. The proposed changes to the inpatient and outpatient hospital Medicaid reimbursement rules are necessary to adjust DRG weights and thresholds, and to eliminate catastrophic reimbursement policy in order to bring the overall Montana Medicaid budget for hospitals into alignment with appropriations. The proposed language change related to "quality rate adjustment" payments reflects the federal policy of establishing the upper payment limit from July 1, 2001 to April 14, 2002 at 150% of the hospital's cost for the service and after April 15, 2002 the upper payment limit is defined as 100% of the hospital's cost for the service. The "quality rate adjustment" payment policy is added to in the outpatient rule. The proposed amendment includes clarification as to when a retrospective review for authorization of hospital services may be obtained. In alignment with the proposed amendment for the physician's program, the hospital rules are being amended to include when there is not a Medicare fee for lab, imaging and other diagnostic service codes, the Department may consider setting a fee.

The Department considered and rejected the option of making no changes to components of the hospital reimbursement rules as the Montanan Medicaid expenditures for impatient 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 geographic areas serviced by those providers would consequently suffer reduced availability of hospital services. Therefore, the Department is proposing amendments to limit costs.

The Department proposed adjustment of the DRG weights to reflect

a case mix of 1.000. Furthermore, the Department is proposing an adjustment to the cost outlier thresholds for inflation. Another cost saving measure is to eliminate the catastrophic reimbursement policy altogether. The proposal updates the data used in determining which hospitals qualify for the hospital policy adjustor.

ARM 37.86.2801

The proposed amendment to ARM 37.86.2801 would clarify when a retrospective authorization for inpatient and outpatient hospital services located more than 100 miles outside the border of the state of Montana may be requested. Retrospective authorization may be requested if the recipient is determined retroactively eligible for Montana Medicaid reimbursement for hospital services or the hospital is retroactively enrolled as a Montana Medicaid provider.

ARM 37.86.2901

The Department proposes that the data used for determining which hospital qualifies for the hospital policy adjustor be amended to SFY 2001.

The "quality rate adjustment payment" definition removes language that the hospital must be reimbursed under the prospective payment system for inpatient services and states the hospital's costs must be greater than the reimbursement received from Montana Medicaid for inpatient care.

ARM 37.86.2905

The reimbursement for catastrophic cases would be eliminated as a cost saving measure. High cost cases would continue to be eligible for cost outlier payments.

Due to the budget issues experienced in SFY 2002 and in order to alleviate potential budget issues in SFY 2003, the Department proposes to amend ARM 37.86.2905, deceasing the Diagnosis Related Grouping (DRG) weights. Prospective payment for inpatient hospital services is made using the DRG payment methodology. For most cases, payment equals the relative weight for the DRG times the base price plus the applicable additive factors, such as medical education, capital expenses, outlier payments, and disproportionate share. The case mix takes into consideration all of the weights and the utilization for Montana Medicaid and is designed to equal 1.000. Currently, the case mix is 1.0187.

In addition, ARM 37.86.2905 would be amended to adjust the cost outlier thresholds for inflation. Outlier payments are a feature to protect hospitals from unfair risks. Cases that have been identified as having unusually high costs or long lengths of stay are eligible for outlier payments if they exceed the

thresholds for outlier status. The outlier payment is an additional payment added to the DRG payment. Inflation is currently at 11.4%, up from 7.18% last year. 7% of the DRG cases are projected to qualify for cost outlier payments. Currently 8.9% of the DRG cases are receiving the cost outlier payments.

ARM 37.86.2910 and [Rule I]

[Rule I] would contain the provisions governing eligibility for and calculation of the qualified rate adjustment (QRA), moving it to the general medicaid part of ARM Title 37, chapter 28. This change would implement the expansion of QRA to outpatient hospitals. ARM 37.86.2910 is simplified to adopt [Rule I] by reference.

The proposed language would make the qualified rate adjustment payments available for inpatient and outpatient services when reported costs are greater then the reimbursement from Montana Medicaid. There are two computations defining the upper payment limit in accordance with federal regulations. Effective July 1, 2001 to April 14, 2002, the upper payment limit is the cost times 150% minus Montana Medicaid reimbursement. Effective April 15, 2002 the upper payment limit is the cost at 100% minus Montana Medicaid reimbursement.

ARM 37.86.3001

A new definition is added allowing for qualified rate adjustment payments for outpatient services. Existing subsections have been renumbered in order to place the definitions in the standard alphabetical order used by the Department in definition rules.

ARM 37.86.3005

A new reimbursement subsection is added outlining the qualified rate adjustment payment for outpatient services. It adopts the provisions of proposed [Rule I] by reference.

ARM 37.86.3007; 37.86.3016 and 37.86.3018

The proposed language provides the Department an opportunity to set a fee in conjunction with any fee set by the physician's program where there is no established Medicare fee. This proposal would simplify and clarify the rates for these services. These rules would be further simplified by adopting the Healthcare Common Procedure Coding System (HCPCS) in place of the Current Procedural Terminology, Fourth Edition (CPT-4). HCPCS is the entire coding system, which encompasses Level I codes (CPT-4), Level II codes (alpha-numeric codes) and Level III codes.

Fiscal impact and persons affected

The Department projects approximately $1,900,000 in savings from adjustments to the weights and thresholds and the elimination of the catastrophic reimbursement process. Approximately 100,112 persons eligible for Montana Medicaid who may require hospital services would be affected by the proposed amendments. Additionally, 57 hospitals in Montana and approximately 250 hospitals outside Montana would be affected.

The proposed amendments to qualified rate adjustments are expected to result in payments to county owned or operated hospitals totaling approximately $600,000. Although no additional state funds would be expended, federal financial participation would increase by $436,980.

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 23, 2002. 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.

Dawn Sliva
Rule Reviewer

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

Certified to the Secretary of State April 15, 2002.

BEFORE THE SUPERINTENDENT OF PUBLIC INSTRUCTION
OF THE STATE OF MONTANA

In the matter of the proposed amendment of ARM 10.41.101 through 10.41.104, 10.41.106, 10.41.109, 10.41.111, 10.41.115, 10.41.118, 10.41.120, 10.41.124 through 10.14.126, 10.41.130 and the amendment and transfer of ARM 10.44.103, 10.44.104, 10.44.106 and 10.44.211 and the repeal of 10.41.105, 10.41.107, 10.41.108, 10.41.116, 10.41.117, 10.41.119, 10.41.127, 10.41.129, 10.44.102 and 10.44.105 pertaining to vocational education)	CORRECTED NOTICE OF AMENDMENT AND AMENDMENT AND TRANSFER

TO: All Concerned Persons

1. On March 14, 2002, the Office of Public Instruction published a notice at page 780 of the 2002 Montana Administrative Register, Issue Number 5, of the amendment, amendment and transfer, and repeal of the above captioned rules relating to vocational education.

2. The reason for the correction is that the Office of Public Instruction intended to strike language from ARM 10.41.101(8), 10.41.109 and 10.41.132 as stated in the response to Comment No. 3. However, the subject language was only stricken from ARM 10.41.101 in the notice published on March 14, 2002. ARM 10.41.109 and 10.41.132 are also corrected as follows:

10.41.109 EXECUTION OF LOCAL CAREER AND VOCATIONAL/ TECHNICAL EDUCATION PROGRAMS (1) Instructors shall be certified in accordance with the board of public education requirements and endorsed in the program area for which they are making application. ~~As certification relates to program approval under ARM 10.41.132, exceptions may be made by OPI for emerging career and vocational/technical programs where industry certification is required for a specific skill area such as CISCO academies, and where such certification is an industry standard.~~

(2) and (3) remain the same.

10.44.103 [10.41.132] ELIGIBILITY REQUIREMENTS FOR STATE CAREER AND VOCATIONAL/TECHNICAL EDUCATION FUNDING (1) through (1)(i) remain the same.

(j) Instructors shall be certified in accordance with the board of public education requirements and endorsed in the

program area for which they are making application~~. As certification relates to program approval under this rule, exceptions may be made by OPI for emerging career and technical programs where industry certification is required for a specific skill area, such as CISCO academies, and where such certification is an industry standard~~;

(k) through (2) remain the same.

3. Replacement pages for this corrected notice were submitted to the Secretary of State on March 31, 2002.

/s/ Linda McCulloch
Linda McCulloch
Superintendent of Public Instruction

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

Certified to the Secretary of State April 15, 2002.

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

In the matter of the adoption of new rules I and II and amendment of ARM 12.9.802 pertaining to the issuance of supplemental game damage licenses to hunters in lieu of kill permits	NOTICE OF ADOPTION AND AMENDMENT

TO: All Concerned Persons

1. On January 17, 2002, the Department of Fish, Wildlife and Parks (department) published notice of the proposed adoption and amendment of the above-stated rules pertaining to the issuance of supplemental game damage licenses to hunters in lieu of kill permits at page 20 of the 2002 Montana Administrative Register, Issue Number 1.

2. The department has adopted new rule I (ARM 12.9.808) and amended ARM 12.9.802 exactly as proposed.

3. The department has adopted new rule II (ARM 12.9.805) with the following changes, stricken matter interlined, new matter underlined:

NEW RULE II (ARM 12.9.805) SUPPLEMENTAL GAME DAMAGE LICENSES (1) To assist landowners who qualify for game damage assistance under the provisions of 87-1-225, MCA, the department, through the regional supervisor or designated staff, has the discretion to issue supplemental game damage licenses for antlerless animals to hunters~~,~~ for game management purposes or as an alternative to a kill permit being issued to a landowner. Criteria used to determine when to issue a supplemental game damage license may include, but are not limited to, the following:

(a) the number of animals to be killed does not exceed 12;

(b) the animals causing the damage are present on the property during legal hunting hours;

(c) the circumstances make a game damage hunt under ARM 12.9.801 impractical; ~~and~~

(d) hunting is likely to be an effective way to remove animals causing damage~~.~~;

(e) damage to be addressed occurs between August 15 and February 15, in accordance with ARM 12.9.801(1);

(f) each hunter will have sufficient opportunity to utilize licenses; and

(g) proposed harvest is consistent with regional wildlife management objectives.

(2) The department will specify the number of licenses to be issued, the species to be hunted, the time period in which the license may be lawfully used, and the property ~~or~~

~~properties~~ where the licenses may be used. The time period for which a supplemental game damage license is issued may be extended by the department. If continued damage requires harvest of additional animals, the department may issue additional supplemental game damage licenses upon approval by the regional supervisor.

(3) When the department authorizes the use of a supplemental game damage license, the landowner experiencing the game damage, subject to the provisions of 87-2-520, MCA, may designate some or all of the resident hunters to receive the supplemental game damage licenses by mailing or delivering in person a list of names~~,~~ with associated mailing addresses and phone numbers on a signed form provided by the department, to the department regional office, local biologist, or local game warden in the region where the game damage is occurring.

(4) through (7) remain as proposed.

AUTH: 87-2-520, MCA
IMP: 87-2-520, MCA

4. A total of 82 people offered comments. Of those 82 people, 30 offered comments by signing a letter, circulated by one individual, which addressed many issues, five of which were specific to supplemental game damage licenses. Those five issues, and corresponding department responses, are addressed below under Comments 1 through 5. Additional issues identified as annotated notes on the circulated letter, as well as all other issues identified in public comments, are addressed below under Comments 6 though 28.

Comment 1: Supplemental game damage license booklets of 20 should be made available to any ranch suffering game damage in these areas.

Response: The statute that resulted from passage of SB 437 (87-2-520(1), MCA), provided authority for the department to issue nontransferable resident and nonresident supplemental game damage licenses. While statutory and ARM authority exists for the department to appoint license agents (87-2-901 though 87-2-904, MCA, and ARM 12.3.201 through 12.3.235), the department believes the legal and administrative requirements associated with appointing landowners as license agents for issuing supplemental game damage licenses make adoption of this suggestion impractical and unwarranted. Additionally, 87-1-225, MCA and ARM 12.9.802 direct the department to investigate complaints of game damage and determine the best course of action to reduce or prevent the damage. Issuing supplemental game damage licenses is one of many possible courses of action to address game damage, and is not automatically determined to be the best course of action in all game damage situations.

Comment 2: A list of interested sportsmen from the department would be useful.

Response: By law (2-6-109, MCA), the department may not distribute lists for the purposes of solicitation. However, published lists of successful permit applicants are made available annually in all regional department offices for the public's review. Also, in some hunting districts, permit applicants may designate that if they are unsuccessful in drawing a permit, they would like to be listed on a game damage roster from which names will be selected in the event that damage hunts are initiated. These lists may currently be made available to people upon request.

Comment 3: If the landowner feels the need to charge for his or her time and effort managing these damage hunts, the option is theirs.

Response: This comment suggests a change to law enacted by passage of SB 437. ARM rule adoption cannot change existing law. Section 87-2-520(2), MCA, specifically states that "A landowner may not charge a fee to a hunter using a license obtained pursuant to this section."

Comment 4: Maybe the department should pay the landowner $50 for every tag filled under the supplemental game damage conditions.

Response: The department has no statutory authority to pay a landowner a fee for an animal harvested by a hunter.

Comment 5: The supplemental game damage license season should begin July 15, end the beginning of archery season, resume the day after the regular hunting season ends, and run through March 15, 2003.

Response: ARM 12.9.801(1)(a) confines issuance of game damage licenses and hunts to addressing damage which occurs between August 15 and February 15. The reason for this limitation is so that animals in the later stages of pregnancy and animals with fawns or calves are not hunted.

Comment 6: Forty-one comments were offered in general support of the concept of the department issuing supplemental game damage licenses to hunters.

Response: The department appreciates the support of the individuals offering the comments.

Comment 7: Twenty-seven comments were offered in opposition to the portion of the law, and subsequent portion of the proposed ARM rule, that allows a landowner to designate either 75% or 100% of resident license applicants, depending upon the hunting district involved.

Response: This issue has already been decided by the 2001 Legislature with the passage of SB 437. Sections 87-2-520(4)(a) and (b), MCA, provide specific authorization for landowners to designate supplemental game damage license recipients.

Comment 8: Three comments were offered in support of the portion of the law and subsequent portion of the proposed ARM rule that allows a landowner to designate either 75% or 100% of resident license applicants, depending upon the hunting district involved.

Response: This provision was enacted by the 2001 Legislature and is codified in section 87-2-520, MCA.

Comment 9: Sixteen comments pertained to the statutory game damage eligibility criteria that requires public hunting. While some comments were general in nature, suggesting that in order to qualify for any game damage assistance a landowner should have to allow some measure of public hunting, others were more specific in suggesting that a specific level or kind of public hunting should be required.

Response: These comments addressed issues beyond the scope of the proposed new rule II (ARM 12.9.805) and the proposed amendments to ARM 12.9.802, pertaining to supplemental game damage licenses.

Comment 10: Three comments referred to the proposed limit of 12 supplemental game damage licenses being issued. One of those comments suggested that a limit of 12 might be too low. One comment inquired as to the rationale for the proposed limit of 12. One comment suggested that language should be included in new rule II (ARM 12.9.805) that specified how additional licenses could be issued if needed.

Response: Supplemental game damage licenses are issued as an alternative to kill permits. Typically, the department does not issue kill permits for more than twelve animals, so limiting issuance of to twelve animals on a given property is consistent with past policy and procedures. Additionally, if the game damage problem cannot be alleviated by removing twelve animals, it is possible that a supplemental game damage license is not the appropriate tool to deal with the damage and the department should consider other alternatives. However, the department agrees that additional language should be added to new rule II (ARM 12.9.805) explaining a process for issuance of additional licenses should this be the best way to address the game damage on a given property. The language was added accordingly.

Comment 11: Three comments suggested that the department should review and perhaps revise current administrative policies and procedures regarding how landowners identify

designated license recipients and how hunters can obtain supplemental game damage licenses.

Response: Pending adoption of ARM rules implementing section 87-2-520, MCA, the department has operated under interim administrative policies and procedures for issuing supplemental game damage licenses. Upon adoption of new rule II (ARM 12.9.805), the department will develop and adopt new administrative policies and procedures for issuing supplemental game damage licenses that incorporate as much as possible these suggestions and concerns.

Comment 12: Three comments suggested that language should be inserted in the proposed rules to address issuance of supplemental game damage licenses "for game management purposes."

Response: The department agrees with this comment and has included language to that effect in new rule II (ARM 12.9.805(1)).

Comment 13: Four comments made reference to the time period during which supplemental game damage licenses should be issued.

Response: The department agrees that the ARM rules should specify when supplemental game damage licenses may be issued, and has included language to that effect in new rule II (ARM 12.9.805(1)(e)).

Comment 14: One comment suggested that language should be included to provide for equity of opportunity for all license recipients.

Response: The department agrees with this comment and has included language to that effect in new rule II (ARM 12.9.805(1)(f)).

Comment 15: One comment suggested proposed new rule II (ARM 12.9.805(2)) should be changed from "property or properties" to "property" to clarify that, consistent with MCA 87-2-520, supplemental game damage licenses may only be issued for use on a qualifying landowner's property.

Response: The department agrees with this comment and has made that change in the final rule.

Comment 16: One comment suggested that a landowner who qualifies for assistance in the form of issuance of supplemental game damage licenses should be required to submit a post-hunt summary as part of the administrative process.

Response: The department will address this issue in administrative policy to be developed upon adoption of and amendments of the rules.

Comment 17: One comment suggested that new rule II (ARM 12.9.805(3)) be changed from "a list of names" to "a list of names, with associated mailing addresses and phone numbers."

Response: The department believes this is a good suggestion and has made that change in the final rule.

Comment 18: One comment suggested that a landowner experiencing game damage should be the first to be issued a supplemental game damage license on his/her property since the landowner provides the habitat and feed for the wildlife.

Response: Nothing in section 87-2-520, MCA, or proposed new rule II (ARM 12.9.805) prevents a landowner from receiving a supplemental game damage license for his own use, subject to the same restrictions as other hunters.

Comment 19: One comment suggested that the tax base of properties that privatize wildlife by charging fees for hunting should be changed from an agricultural status to a recreational status for the portion of the year that the properties are used for recreational income.

Response: This would require legislation and is beyond the scope of this ARM process.

Comment 20: One comment suggested that only people who have purchased an elk license for use during the general season should be considered for issuance of a supplemental game damage license for use after the general season.

Response: The department understands the intent of section 87-2-520, MCA, as allowing for hunter selection from a broad spectrum of possible recipients. Subsequently, this suggestion is acknowledged, but not incorporated in the final ARM rules.

Comment 21: One comment suggested that non-residents should be disallowed from participating in a game damage hunt.

Response: This issue has already been decided by the 2001 Legislature with the passage of SB 437. Section 87-2-520(5), MCA provides specific authority for issuance of supplemental game damage licenses to nonresidents.

Comment 22: One comment suggested that the department select hunters for game damage hunts from unsuccessful special permit applicant pools, or allow hunters to sign-up for post-season game damage hunts at regional department headquarters or on-line through an internet site.

Response: The department will consider these suggestions in subsequent policy development. Existing ARM rule and department policy provides sufficient authority to accommodate these suggestions.

Comment 23: One comment suggested that under new rule II (ARM 12.9.805(1)), a provision should be added that provides for consideration of population dynamics and effects to the herd, ensuring that proposed harvests are biologically sound.

Response: The department agrees with this comment and has included necessary language in the final rule.

Comment 24: One comment noted that nothing in the proposed new rule II (ARM 12.9.805) identifies criteria for determining the game damage that might cause supplemental game damage licenses to be issued.

Response: Current statutes, ARM rules, and the department policy provide adequate authority for the department to determine, on a case-by-case basis, the extent of damage and subsequent appropriate response for reducing or preventing further damage.

Comment 25: Two comments from hunters inquired as to how they could get their names entered onto lists with landowners or the department for consideration in being issued supplemental game damage licenses.

Response: ARM 12.9.801 outlines procedures used by the department to identify individuals who wish to participate in game damage hunts. Hunters who wish to be considered by landowners as potential landowner-designated hunters must contact individual landowners to make those arrangements.

Comment 26: One comment suggested that supplemental game damage licenses should be valid for antlered animals as well as antlerless animals.

Response: This issue has already been decided by the 2001 Legislature upon passage of SB 437. Section 87-2-520(2), MCA, limits issuance of supplemental game damage licenses to antlerless animals.

Comment 27: One comment suggested that proposed new rule II (ARM 12.9.805) should contain language that further clarifies the provision in 87-2-520, MCA that prohibits a landowner from charging a fee to a hunter using a license obtained pursuant to this section.

Response: The department acknowledges the comment, but believes the statutory language is adequate to address compliance awareness and enforcement concerns.

Comment 28: One comment suggested supplemental game damage licenses should be issued for turkeys and year-round geese.

Response: The department interprets section 87-2-520(2), MCA, as applying only to antlerless big game animals or specifically limiting issuance of supplemental game damage licenses to antlerless big game animals.

By: /s/ M. Jeff Hagener
M. Jeff Hagener
Director

By: /s/ Rebecca Dockter Engstrom
Rebecca Dockter Engstrom
Rule Reviewer

Certified to the Secretary of State April 15, 2002

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the adoption of NEW RULE I and the amendment of ARM 17.30.502, 17.30.602, 17.30.607 through 17.30.611, 17.30.621 through 17.30.629, 17.30.635, 17.30.641, 17.30.645, 17.30.646, 17.30.702, 17.30.715, 17.30.1001, 17.30.1006 and 17.30.1007, pertaining to surface water quality	)	CORRECTED NOTICE OF AMENDMENT (WATER QUALITY)

TO: All Concerned Persons

1. On October 11, 2001, the Board of Environmental Review published a notice of the proposed adoption and amendment of the above-stated rules at page 1920, 2001 Montana Administrative Register, issue number 19. On February 14, 2002, the Board published the notice of adoption and amendment of the rules at page 387, 2002 Montana Administrative Register, issue number 3.

2. This corrected notice of amendment is being published to reflect how ARM 17.30.610(1)(h) should have been renumbered in the original proposal. The amendment is shown below.

17.30.610 WATER-USE CLASSIFICATIONS--MISSOURI RIVER DRAINAGE EXCEPT YELLOWSTONE, BELLE FOURCHE, AND LITTLE MISSOURI RIVER DRAINAGES (1) through (1)(g) remain the same as proposed.

(h) Milk River drainage from the International Boundary to the Missouri River except the tributaries listed in ~~(a)~~ (1)(h)(i) through ~~(d)~~ (iv) below B-3

(h)(i) through (i)(iv) remain the same as adopted.

3. The replacement pages for this rule were filed with the Secretary of State's office on March 31, 2002.

BOARD OF ENVIRONMENTAL REVIEW Reviewed by:

By: *JOSEPH W. RUSSELL*
JOSEPH W. RUSSELL, M.P.H.,
Chairman

JAMES M. MADDEN
JAMES M. MADDEN,
Rule Reviewer

Certified to the Secretary of State, April 15, 2002.

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 17.53.102, 17.53.105, 17.53.107, 17.53.111, 17.53.112, 17.53.113, 17.53.208, 17.53.301, 17.53.402, 17.53.502, 17.53.602, 17.53.802, 17.53.902, 17.53.1002, 17.53.1202, 17.53.1301 and 17.53.1303 pertaining to management of hazardous wastes)	CORRECTED NOTICE OF AMENDMENT (HAZARDOUS WASTE)

TO: All Concerned Persons

1. On January 17, 2002, the Department of Environmental Quality published a notice of the proposed amendment of the above-stated rules at page 35, 2002 Montana Administrative Register, issue number 1. On March 14, 2002, the Board published the notice of amendment of the rules at page 789, 2002 Montana Administrative Register, issue number 5.

2. This corrected notice of amendment is being published because a new (1) was added to ARM 17.53.113 in the original proposed notice and the existing (1) and (2) were renumbered (2) and (3). The new subsection (3) contained an internal reference to (1) that should have been amended to reflect the new (2) as shown below.

17.53.113 REGISTRATION FEES: FEE EXEMPTION, FEE ASSESSMENT, AND MAINTAINENCE OF REGISTRATION (1) and (2) remain the same as proposed.

(3) To be exempted from the payment of a fee under this rule, a generator must qualify for the exclusions of ~~(1)~~ (2) for the entire registration year.

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

3. The replacement pages for this rule were filed with the Secretary of State's office on March 31, 2002.

DEPARTMENT OF ENVIRONMENTAL QUALITY

By: *JAN P. SENSIBAUGH*
JAN P. SENSIBAUGH,
Director

Reviewed by:

DAVID RUSOFF
DAVID RUSOFF,
Rule Reviewer

Certified to the Secretary of State, April 15, 2002.

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 23.3.127, 23.3.130, 23.3.131, 23.3.147, and 23.3.149 pertaining to driver licensing and identification cards	)	NOTICE OF AMENDMENT

To: All Concerned Persons

1. On February 28, 2002, the Department of Justice published notice of public hearing on the proposed amendment of rules 23.3.127, 23.3.130, 23.3.131, 23.3.147, and 23.3.149 concerning driver licensing and identification cards. The proposed amendments relate to name, identity, and residence standards for driver's licenses and identification cards issued by the department and the requirements for issuance of a duplicate driver's license at page 428 of the 2002 Montana Administrative Register, issue number 4.

2. The department has amended ARM 23.3.127, 23.3.130, 23.3.131, 23.3.147, and 23.3.149 exactly as proposed.

3. A public hearing on the proposed rules was held on March 26, 2002 at 9:15 a.m., in the auditorium of the Scott Hart Building, 303 North Roberts, Helena, Montana. Four people attended the hearing, all of whom were employees of the Motor Vehicle Division. Ms. Anita Drews-Oppedahl, chief of the Field Operations Bureau of the Motor Vehicle Division of the Department of Justice, submitted oral testimony in support of the proposed amendments. The testimony mirrored the rationale for the proposed amendments published in the notice.

4. In addition to testimony from those present, written comments concerning the proposed amendments were received following the hearing, but within the time prescribed for written comments. Those comments were duly noted by the presiding hearing officer, Brenda Nordlund.

COMMENT: Mr. Ryan C. Rusche, Tribal Attorney for the Assiniboine and Sioux Tribes of the Fort Peck Reservation (hereinafter "Fort Peck Tribes"), in accordance with the government-to-government relationship between the State of Montana and the Fort Peck Tribes, submitted a formal comment in support of the proposed amendment to ARM 23.3.131(2)(i) to recognize a digital identification card issued to an applicant by a federally recognized Indian tribe whose reservation is located in Montana as a primary identity document if the card met the criteria set forth in the proposed amendment. The Fort Peck Tribes urged the adoption of the proposed amendment as soon as possible, as being consistent with the

government-to-government relationship between Montana and the Fort Peck Tribes and the Governor's policy regarding Indian tribes in Montana. Mr. Rusche stated that the amendment would alleviate immediate hardship for individuals living on the Fort Peck Reservation who must travel long a distance to apply for a Montana driver's license and who have limited access to obtain other forms of identification. Mr. Rusche noted that the current rule did not address the use of a Tribal Identification Card as documentation for department identification cards and was not consistent with the government-to-government relationship between Montana and the Fort Peck Tribes.

RESPONSE: The department fully concurs with the comments submitted by Mr. Rusche and appreciates the submission of his comments upon behalf of the Fort Peck Tribes as a furtherance of the government-to-government relationship between the Fort Peck Tribes and Montana.

MONTANA DEPARTMENT OF JUSTICE

By: /s/ Mike McGrath
MIKE McGRATH
Attorney General

/s/ Ali Sheppard
ALI SHEPPARD
Rule Reviewer

Certified to the Secretary of State April 15, 2002.

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

In the matter of the amendment of ARM 8.14.402, 8.14.601, 8.14.603, 8.14.605, 8.14.606, 8.14.608, 8.14.611, 8.14.801, 8.14.802, 8.14.805, 8.14.813 and 8.14.814, the adoption of new rules I and II, and the repeal of ARM 8.14.803, 8.14.804 and 8.14.1005 concerning the elimination of the required practical examination for cosmetologists	) NOTICE OF AMENDMENT, ADOPTION, AND REPEAL

TO: All Concerned Persons

1. On February 28, 2002, the Board of Cosmetologists published a notice of proposed amendment, adoption and repeal of the above-stated rules at page 465, 2002 Montana Administrative Register, Issue Number 4.

2. A public hearing was held in Helena on March 25, 2002.

3. The Board has amended ARM 8.14.402, 8.14.601, 8.14.605, 8.14.606, 8.14.611, 8.14.805, 8.14.813 and 8.14.814 exactly as proposed.

4. The Board has adopted NEW RULE I (24.132.511) and NEW RULE II (24.132.703) exactly as proposed.

5. The Board has amended 8.14.603, 8.14.608, 8.14.801 and 8.14.802 as proposed, but with the following changes (stricken matter interlined, new matter underlined, changed matter in all CAPS):

8.14.603 SCHOOL OPERATING STANDARDS (1) through (19) same as proposed.

(20) ~~Upon~~ EFFECTIVE JUNE 1, 2002, UPON completion by the student of at least 90% of the required hours of a course of study in cosmetology, manicuring or esthetics and prior to graduating and receiving a diploma, the student shall take the school's final practical examination. The examination schedule shall be determined by the school. The final practical examination must include all components for evaluation as provided in ARM 8.14.605 for each course of study. The final practical examination passing score will be consistent with the school's academic passing requirements.

AUTH: 37-1-131, 37-31-203, 37-31-311, MCA
IMP: 37-31-301, 37-31-304, 37-31-311, 37-31-312, MCA

8.14.608 INSTRUCTOR REQUIREMENTS - TEACHER-TRAINING PROGRAMS (1) through (6) same as proposed.

(7) ~~Upon completion of 650 hours of teacher training, student or cadet instructors may apply for a temporary permit and may continue to function as student or cadet instructors until the examination results are available from the next regularly scheduled examination for instructors.~~ ~~Upon~~ EFFECTIVE JUNE 1, 2002, UPON completion by the student of at least 90% of the teacher-training course, the school shall administer a final practical examination prior to graduation and issuance of a diploma. A final practical examination must include all components for evaluation as provided in ARM 8.14.611. The final practical examination and passing score shall be consistent with the school's academic passing requirements.

AUTH: 37-31-203, MCA
IMP: 37-31-305, 37-31-311, 37-31-312, MCA

8.14.801 APPLICATION FOR INSTRUCTOR'S LICENSE

(1) through (1)(a)(ii) same as proposed.

(iii) proof of the applicant's high school graduation~~. An equivalent will not be accepted~~ OR EQUIVALENCY;

(iv) through (vi) same as proposed.

(1)(b) through (7) same as proposed.

AUTH: 37-31-203, MCA
IMP: 37-31-301, 37-31-302, 37-31-303, 37-31-305, 37-31-308, 37-31-321, MCA

8.14.802 APPLICATIONS FOR LICENSE - COSMETOLOGIST, MANICURIST, ESTHETICIAN (1) through (3) same as proposed.

(4) STUDENTS THAT GRADUATE PRIOR TO JUNE 1, 2002, THAT HAVE BEEN EVALUATED PURSUANT TO ARM 8.14.603(13), WILL BE PERMITTED TO TAKE THE WRITTEN EXAMINATION.

(4) through (9) same as proposed, but are renumbered (5) through (10).

AUTH: 37-1-131, 37-31-203, MCA
IMP: 37-31-303, 37-31-304, 37-31-308, 37-31-321, MCA

6. The Board has repealed ARM 8.14.803, 8.14.804, and 8.14.1005 as proposed.

7. The Board received comments from several people. The comments received and the Board's responses are as follows:

Comments concerning ARM 8.14.601 - APPLICATION FOR SCHOOL LICENSE

COMMENT No. 1: One commentor requested clarification of the change indicated as "final practical examination and passing score" as it conflicted with the change in ARM 8.14.603 School

Operating Standards which is worded as "final practical examination with scores".

RESPONSE: The Board acknowledged the comment and explained that with application for a school license, a school will be required to submit the policies and procedures for administering the practical examination and what the passing score will be. The Board further explained that in ARM 8.14.603 School Operating Standards the school must maintain in the student's file documentation of the practical examination with the score obtained.

COMMENT No. 2: One commentor stated that with the changes in this rule, it holds the school accountable when applying for a license that all documentation and paperwork must be completed with the application. The commentor feels that this holds the school accountable for the practical examination.

RESPONSE: The Board acknowledged the comment and agreed that it is the intention of the rule for the school to provide what the passing score of the practical examination shall be. As a part of the rule, it is the responsibility of the school to incorporate the requirements for the practical examination within their policies and procedures. It will be the responsibility of the school to give the Board what the passing score shall be.

Comments concerning ARM 8.14.603 - SCHOOL OPERATING STANDARDS

COMMENT No. 3: One commentor wanted clarification of the change regarding the final practical examination score being consistent with the school's academic requirements.

RESPONSE: The Board acknowledged the comment and stated that the school is responsible for setting the passing grades. The passing score for the practical examination cannot be lower than what the other academic passing grades are within the school. No comparison to other schools will be required. The Board does determine the passing grades of the written examination but not of the practical examination. The previous rule which established the passing score for the practical examination is no longer applicable and the new rule will allow the school to determine their passing score for the practical examination.

COMMENT No. 4: One commentor indicated that the Board did not strike the rule that the applicant has to receive 75 percent on the written and 75 percent on the practical for cosmetologists, estheticians and manicurists and the 85 percent for instructors.

RESPONSE: The Board did strike the rule that specified that the applicant had to pass both the written and the practical

examination with 75 percent or better for cosmetology, ARM 8.14.802 and the rule of 85 percent or better for passage of the practical and written examination for instructors, ARM 8.14.801(5).

COMMENT No. 5: One commentor wanted clarification as to whether or not each school had to submit their practical examination to the board for approval. Also, they felt that some aspects of the curriculum were unable to be tested practically, such as statutes and rules.

RESPONSE: The Board acknowledged the comment and stated that the schools would be required to submit the examinations to the Board, but only for completing the file. It will not be evaluated by the Board. As far as covering the curriculum, the Board believes that the schools will be testing more of the curriculum than previously. The Board believes that as long as the exam covers the main subsections of the curriculum, the written exam will cover the theory portion of the curriculum.

COMMENT No. 6: Three commentors indicated a concern of the Board's ability to monitor the examination to control any biases. The commentors were also concerned about quality control of the practical examination. They also stated that there should be a standardized test for all schools to administer.

RESPONSE: The Board acknowledged the comments and indicated that there is a rule in place that allows the Board to audit a school that is appearing deficient in any rules. The Board believes that it could apply this rule if there were a lot of complaints coming from any particular school and investigate the problem.

COMMENT No. 7: Two commentors stated that the school would be tougher on them in a practical examination as opposed to an examiner that knows nothing about them. These commentors stated that the school observes them from the beginning and knows the strength and weaknesses of the students. The commentors stated the school would not graduate them unless the students were the best they could be.

RESPONSE: The Board acknowledged the comment and stated that currently schools have the ability to keep a student past their required hours if the student has not successfully completed all aspects of the curriculum. The Board noted that its rules provide for the minimum number of hours of training that is acceptable. Schools and students are permitted to expand beyond those minimums.

COMMENT No. 8: One commentor stated that she felt that some students should remain in school beyond the required hours. This was based on the fact that some people advance more

quickly than others.

RESPONSE: The Board acknowledged the comment and referenced the response to Comment No. 7.

COMMENT No. 9: One commentor stated that the salons are expecting all of the training to be placed on the schools and that salons are not taking any responsibility for the new graduates. The commentor also indicated that there should be more training beyond the required hours that students receive.

RESPONSE: The Board acknowledged the comment and referenced the response to Comment No. 7.

COMMENT No. 10: A written comment submitted and signed by 14 persons expressed concern over the value in other states as being licensed in Montana as a cosmetologist. They stated that to have a national practical examination kept them at the same standard as other states. They also stated that Board is lowering their standards by not using a national practical examination.

RESPONSE: The Board acknowledged the comment and stated that many other states have changed to the format of the practical examinations in the schools and have a national written examination. The Board believes that the students would not lose any value as a result of this process change. Even though the Board is not requiring a national practical examination, a practical examination is still required at the school level. The practical examination at the school level will test more aspects of the curriculum.

COMMENT No. 11: One commentor submitted a written comment that they were in favor of the Board's proposed elimination of the practical examination. They stated that the required hours of education and on the job training has always and will continue to be all that is necessary for success. The commentor applauded the efforts of the Board for streamlining the process.

RESPONSE: The Board acknowledged the response. The Board also explained that the elimination of the practical examination will also eliminate the need for the temporary permit. Numerous hours of the Board's time are spent processing temporary permits.

COMMENT No. 12: One commentor stated that the Board made a swift motion to discontinue the process for obtaining a cosmetology license. The commentor said that existing raters are trained to conduct an examination in a uniform testing environment to ensure that all candidates are treated fairly and equally. The commentor stated that the Board has the responsibility to ensure the public safety and would like to see a Board member present at all practical examinations.

<u>RESPONSE</u>: The Board acknowledged the comment and stated that a year's worth of research occurred prior to this decision. The Board also consulted with NIC who is the current examination provider. The Board stated that all proper processes and notices occurred in order to notify the public of this rule change. As far as the uniform testing environment, the Board references the response to Comment No. 10. The Board stated that public safety is not being jeopardized as there will still be a practical examination given to students. The Board stated that it would be cost prohibitive to have a Board member present at every practical examination along with the inability to schedule the members to attend. The Board indicated that it would limit the students' ability to take their examinations in a timely manner.

<u>COMMENT No. 13</u>: The commentor stated that any Board member affiliated with a school should not be allowed to vote on the final decision for the rule change to eliminate the practical examination.

<u>RESPONSE</u>: The Board acknowledged the comment, but believes there is no conflict of interest. The Board believes there is no advantage to anyone concerned if a voting board member also is affiliated with a particular salon.

Comments concerning ARM 8.14.801 - APPLICATION FOR INSTRUCTOR'S LICENSE

<u>COMMENT No. 14</u>: One written comment regarding the change in the educational requirements. The commentor opposed not allowing equivalency tests for a high school diploma.

<u>RESPONSE</u>: The Board acknowledged the comment and noted that statute requires an equivalency to be allowed. The rule will be amended to allow for an equivalency test.

Comments concerning ARM 8.14.802 - APPLICATION FOR LICENSE - COSMETOLOGIST, MANICURIST, ESTHETICIAN

<u>COMMENT No. 15</u>: Many commentors were concerned about meeting the qualifications to take only the written examination after May 1. These students will not be taking a graded practical examination at their school prior to receiving their diploma.

<u>RESPONSE</u>: The Board acknowledged the comment and voted to amend the rule to "grandfather" the students that are graduating from a school that does not offer a practical examination.

Comments concerning ARM 8.14.803 - APPLICATION FOR EXAMINATION - TEMPORARY PERMITS

COMMENT No. 16: One commentor stated that she has a student that will not be 18 until July. The student would be taking the examination in July and wanted to apply for a temporary permit. With the elimination of temporary permits the student would be unable to obtain a temporary permit and therefore would be out of work for four months.

RESPONSE: The Board acknowledged the comment and stated that even under the current rules the student would be unable to obtain a temporary permit. It is a requirement of the temporary permit that you must be registered to take an examination, and in addition, in order to register for the examination you must not be less than 18 years of age. Therefore, this student is not eligible either way to take the examination or receive a temporary permit.

Comments concerning ARM 8.14.814 FEES - INITIAL, RENEWAL, PENALTY AND REFUND

COMMENT No. 17: One commentor was concerned that students who registered for the examination with the current administrator and applied for and received a temporary permit will be unable to use the temporary permit after May 1, 2002.

RESPONSE: The Board acknowledged the comment and explained that the temporary permits issued under the current process will be valid until the written examination is taken or until June 1, 2002.

COMMENT No. 18: One commentor wanted clarification of the examination fee and to whom it is submitted.

RESPONSE: The Board acknowledged the response and explained that under the proposed rule the examination fee will not exceed $90.00 and that it will be submitted to the examination service, not the Board office.

Comments concerning NEW RULE I: EXAMINATION REQUIREMENTS AND PROCESS

COMMENT No. 19: One commentor wanted clarification regarding the process should they fail the exam. He wanted to know if they had to wait 6 months and go back to school for more training or is it either/or.

RESPONSE: The Board acknowledged the response and explained that the a student failing the examination twice will be required to either wait 6 months or take the required additional 200 hours of training prior to retaking the examination.

COMMENT No. 20: One commentor wanted clarification if whether or not she should register for the examination with M.J. Sorum, Inc., as that there may not be a practical and written

examination administered on May 19, 2002.

RESPONSE: The Board acknowledged the comment and stated that in order for a person to obtain a temporary permit they would have to register for the May examination.

COMMENT No. 21: One commentor wanted to know if a person must obtain the 2000 hours before being allowed to take the written examination.

RESPONSE: The Board acknowledged the comment and indicated that yes, a student must meet the 2000 hours or the required hours for the other types of licensure to be able to take the written exam.

BOARD OF COSMETOLOGISTS
WENDELL PETERSEN, CHAIRMAN

By: /s/ KEVIN BRAUN	By: /s/ WENDY J. KEATING
Kevin Braun	Wendy J. Keating, Commissioner
Rule Reviewer	DEPARTMENT OF LABOR & INDUSTRY

Certified to the Secretary of State, April 15, 2002.

BEFORE THE BOARD OF PROFESSIONAL
ENGINEERS AND LAND SURVEYORS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of ARM 8.48.401, 8.48.403, 8.48.408, 8.48.502, 8.48.504, 8.48.507, 8.48.508, 8.48.511, 8.48.601, 8.48.604, 8.48.801, 8.48.802, 8.48.901, 8.48.903, 8.48.1105, 8.48.1106, and 8.48.1109, pertaining to board organization, board meetings, screening panel, applications and the reclassification of engineers and land surveyors, the adoption of NEW RULE I classification of experience for land surveying applicants, and the repeal of ARM 8.48.602, 8.48.603, 8.48.1102, 8.48.1103 and 8.48.1104	NOTICE OF AMENDMENT AND REPEAL

TO: All Concerned Persons

1. On February 28, 2002, the Board of Professional Engineers and Land Surveyors published a notice of proposed amendment, adoption and repeal of the above-stated rules at page 450, 2002 Montana Administrative Register, Issue Number 4.

2. A public hearing was held in Helena on March 25, 2002.

3. The Board has amended ARM 8.48.401, 8.48.403, 8.48.408, 8.48.502, 8.48.504, 8.48.508, 8.48.511, 8.48.601, 8.48.801, 8.48.802, 8.48.901, 8.48.903, 8.48.1105, 8.48.1106, and 8.48.1109 exactly as proposed.

4. The Board has amended 8.48.604, but with the following changes (stricken matter interlined, new matter underlined):

8.48.604 COMITY CONSIDERATION FOR PROFESSIONAL LAND SURVEYORS (1) same as proposed.

(a) Applicants who have a current national council of examiners for engineering and surveying (NCEES) ~~council~~ record must request a copy of their record be sent to the board office. In addition, they must complete only the following sections of the application for licensure as a professional land surveyor:

(a)(i) through (iv) same as proposed.

(b) If the comity applicant does not have a ~~council~~ NCEES record, the entire application must be completed and submitted. The applicant shall submit the following within three months of the boards' receipt of a completed application:

(b)(i) through (2) same as proposed.

AUTH: 37-67-202, MCA
IMP: 37-1-304, 37-67-313, MCA

5. The Board is still considering the comments received for ARM 8.48.507 and NEW RULE I. Therefore, the Board has not taken final action on ARM 8.48.507 Classification Experience and NEW RULE I Classification of Experience for Land Surveying Applicants at this time. Both rules will be reconsidered for amendment and adoption at the board meeting scheduled for May 16 and 17, 2002.

6. The Board has repealed ARM 8.48.602, 8.48.603, 8.48.1102, 8.48.1103, and 8.48.1104 as proposed.

7. The Board received written comments concerning ARM 8.46.604. The comments received and the Board's responses follow:

COMMENT 1: In ARM 8.48.604(1)(a) the term "national council of examiners for engineering and surveying" should be capitalized and the term "council" should be deleted.

RESPONSE 1: The Secretary of State's style requirement for administrative rules is that organization names are not capitalized. The Board has amended the rule to delete the term "council" as requested.

COMMENT 2: In ARM 8.48.604(1)(b) the term "council" should be replaced with "NCEES".

RESPONSE: The Board acknowledges the comment and agrees with suggested change.

BOARD OF PROFESSIONAL ENGINEERS
AND LAND SURVEYORS
STEVE WRIGHT, CHAIRMAN

By: /s/ WENDY J. KEATING
Wendy J. Keating, Commissioner
DEPARTMENT OF LABOR & INDUSTRY

By: /s/ KEVIN BRAUN
Kevin Braun
Rule Reviewer

Certified to the Secretary of State April 15, 2002

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

In the matter of the adoption of Rules I and II and the amendment of ARM 37.86.2207, 37.86.2219, 37.86.2221, 37.86.3505, 37.86.3507, 37.86.3515, 37.86.3705, 37.86.3707, 37.86.3715, 37.88.101, 37.88.907, 37.88.1106, 37.89.106 and 37.89.114 pertaining to mental health services	)	NOTICE OF ADOPTION AND AMENDMENT

TO: All Interested Persons

1. On February 28, 2002, the Department of Public Health and Human Services published notice of the proposed adoption and amendment of the above-stated rules at page 503 of the 2002 Montana Administrative Register, issue number 4.

2. The Department has amended ARM 37.86.2207, 37.86.2219, 37.86.2221, 37.86.3505, 37.86.3507, 37.86.3515, 37.86.3705, 37.86.3707, 37.86.3715, 37.88.907 and 37.88.1106 as proposed.

3. The Department has adopted the following rules as proposed with the following changes from the original proposal. Matter to be added is underlined. Matter to be deleted is interlined.

RULE I [37.88.110] TEMPORARY RATE ADJUSTMENT (1) through (5) remain as proposed.

AUTH: Sec. 53-6-113 and ~~53-12-201~~ 53-21-201, MCA
IMP: Sec. 53-6-101, 53-6-113 and 53-21-201, MCA

RULE II [37.88.1110] FRONTIER RATE ADJUSTMENT PAYMENT, ELIGIBILITY AND COMPUTATION (1) through (6) remain as proposed.

AUTH: Sec. 53-6-113 and ~~53-12-201~~ 53-21-201, MCA
IMP: Sec. 53-6-101, 53-6-113 and 53-21-201, MCA

4. The Department has amended the following rules as proposed with the following changes from the original proposal. Matter to be added is underlined. Matter to be deleted is interlined.

37.88.101 MEDICAID MENTAL HEALTH SERVICES, AUTHORIZATION REQUIREMENTS (1) ~~Prior authorization is required f~~For all mental health services provided to a medicaid recipient under the Montana medicaid program~~, except~~ for which prior authorization is required, the following exceptions apply:

(a) the first 24 visits in the 12 month period beginning July 1, 2002 and each 12 month period thereafter for outpatient mental health counseling services billed under Current Procedure Terminology, 4th edition (CPT4) codes 90804, 90806, 90808, 90810, 90812, 90814, 90846~~,~~ and 90847~~, 90849, 90853, and 90857~~ only. For purposes of this rule, the term "visit" does not include a session with a physician for the purpose of medication management. Practitioners who believe that more than 24 sessions are medically necessary may request prior authorization for additional sessions;

(b) the first 12 visits in the period from January 11, 2002 through June 30, 2002 for outpatient mental health counseling services billed under CPT4 codes 90804, 90806, 90808, 90810, 90812, 90814, 90846~~,~~ and 90847~~, 90849, 90853, and 90857~~ only. Practitioners who believe that more than 12 sessions are medically necessary may request prior authorization for additional sessions;

~~(c) other services designated by the department;~~

~~(d)~~ (c) the department may waive a requirement for ~~timely~~ prior authorization when the provider can document that:

(i) there was a clinical reason why the ~~filing~~ request for prior authorization could not ~~happen~~ be made at the required time; or

(ii) ~~filing~~ a timely request for prior authorization was not possible because of a failure or malfunction of equipment that prevented the transmittal of the ~~filing~~ request at the required time~~; or~~.

~~(iii)~~ (d) the ~~timely~~ prior authorization requirement shall not be waived except as provided in this rule; ~~or~~ and

(e) under no circumstances may a waiver under ~~(1)(d)~~ (1)(c) be granted more than 30 days after the ~~deadline set in (1)(a) and (b)~~ initial date of service.

(2) through (5) remain as proposed.

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

37.89.106 MENTAL HEALTH SERVICES PLAN, MEMBER ELIGIBILITY (1) through (6)(d)(iii) remain as proposed.

AUTH: Sec. 41-3-1103, 53-2-201, 52-2-603, 53-6-113, 53-6-131, 53-6-701 and 53-6-706, MCA
IMP: Sec. 41-3-1103, 53-1-601, 53-1-602, 53-2-201, 52-2-603, 53-6-101, 53-6-113, 53-6-116, 53-6-117, 53-6-131, 53-6-701, 53-6-705, 53-6-706, 53-21-139 and 53-21-202, MCA

37.89.114 MENTAL HEALTH SERVICES PLAN, COVERED SERVICES (1) through (11)(a)(ii) remain as proposed.

AUTH: Sec. 41-3-1103, 52-1-103, 53-2-201, 52-2-603, 53-6-113, 53-6-131 and 53-6-706, MCA
IMP: Sec. 41-3-1103, 52-1-103, 52-2-603, 53-1-405, 53-1-601, 53-1-602, 53-2-201, 53-6-101, 53-6-113, 53-6-116, 53-6-701, 53-6-705, 53-6-706, 53-21-139 and 53-21-202, MCA

5. The Department has determined that the new subsection (1)(d) which has been added to ARM 37.88.101 is somewhat confusing as written, and it is not clear what the words "timely" and "filing" mean.

Subsection (1)(d) waives the requirement for obtaining authorization for mental health services prior to providing the service under certain circumstances. The punctuation has been changed to clarify the meaning of this subsection. The words "timely" and "filing" are being replaced by "prior" and "request for prior authorization" which convey the Department's meaning more accurately. However, the Department still intends to use the word "timely" in subsection (1)(c)(ii) as the Department still expects a timely request for prior authorization.

The Department further determined that subsection (1)(d)(iii) of ARM 37.88.101 was inappropriately placed and would be more appropriately placed as subsection (1)(d).

6. The Department has thoroughly considered all commentary received. The comments received and the department's response to each follow:

COMMENT #1: Many of the comments about the proposed rule amendments suggest that a preferable alternative would be to increase the appropriation for mental health services.

RESPONSE: The Department does not have the ability to do so at this time and has been advised that a supplemental appropriation for the remainder of the biennium is not a consideration. Furthermore, the Department has no reason to believe that the next Legislative session will provide an increased level of funding for either the Medicaid mental health program or the mental health services plan. The purpose of the proposed amendments is to make permanent the temporary emergency rules effective January 11, 2002 that address imminent and substantial budget deficits in the public mental health programs administered by the Department.

COMMENT #2: The Department received the greatest number of comments from providers who opposed the proposal to limit the number of outpatient sessions reimbursed each year. The action by the Department was viewed as one that would be extremely detrimental to the care of individuals with serious emotional disturbance or severe disabling mental illness. In combination with other cuts proposed or contemplated by the Department, this action would seriously disrupt the continuum of care and likely result in increased costs to the mental health system through utilization of high-end, more expensive services.

RESPONSE: The Department believes that the provision within the proposed rule for continued outpatient therapy beyond the initial limit will ensure that medically necessary and clinically appropriate therapy can continue. The previous

policy of reimbursing for outpatient therapy without verification of the medical necessity of the treatment is no longer financially feasible. The Department has, however, reconsidered the specific kinds of therapy that will require prior authorization and will eliminate current procedural terminology (CPT) codes 90849, 90853, and 90857. These specific codes will no longer be limited as of the effective date of the permanent rules.

COMMENT #3: One provider requested consideration of the Department's reduced financial obligation for those clients for whom Medicare is the primary payer.

RESPONSE: The Department does not have a mechanism to differentiate between services based upon the primary payer. The Department believes that the provision for continued outpatient therapy beyond the initial limit will ensure that medically necessary and clinically appropriate therapy will continue to be reimbursed.

COMMENT #4: A provider requested reconsideration of the change in the criteria for determination of medical necessity for therapeutic family and group home for children and adolescents.

RESPONSE: The Department believes that the criteria as proposed provide appropriate clinical and adaptive guidelines for the determination of the appropriate level of therapeutic living services for children and adolescents. The Department intends that high-cost, out-of-home services are available only to those youth who have demonstrated clinical need and who cannot receive appropriate treatment in a less restrictive environment.

COMMENT #5: A provider group indicated its support for the proposed changes to the criteria.

RESPONSE: The Department thanks the provider group for its support and understanding.

COMMENT #6: A provider group indicted its support of the proposed changes that limit intensive case management for youth in therapeutic family or group care.

RESPONSE: The Department thanks the provider group for its support and understanding.

COMMENT #7: A provider requested that the Department would reconsider its proposal to eliminate reimbursement for room and board for youth in therapeutic living services.

RESPONSE: The Department understands that the elimination of reimbursement for room and board for youth in therapeutic family or group care has created a hardship for providers and for youth in care at the time of the emergency rule amendment. If the Department did not eliminate reimbursement for room and board

for youth in therapeutic family or group care, however, it would have to make alternative cuts elsewhere in the mental health program to achieve necessary savings. The other alternatives would be equally undesirable, if not more so, as eliminating reimbursement for room and board as proposed.

COMMENT #8: It was requested that those youth who were in placement at the time of the emergency rule would be exempt from the proposed rule.

RESPONSE: In an attempt to mitigate the impact of the emergency rule, the Department provided a financial grant to providers to be applied toward the cost of room and board for youth in care on January 11, 2002. The Department recognizes that the amount of each award was only a percentage of the amount reimbursed prior to the emergency rule, but would have had to target additional savings elsewhere in the mental health program in order to continue full reimbursement for room and board for youth in care at the time of the rule amendment.

COMMENT #9: A provider commented that the elimination of care coordination case management as a service reimbursed to private practitioners would effectively eliminate private practitioners from participation in the treatment team.

RESPONSE: The Department disagrees and finds it unfortunate that a provider would only consider participating in a treatment team if reimbursement were available. The Department believes that the proposed amendment is consistent with the practices of commercial insurance carriers.

COMMENT #10: A provider commented that the proposal to eliminate simultaneous reimbursement of services that duplicate one another will result in limiting services to clients, mass confusion, and the likelihood of some professionals being unpaid for services that they have provided.

RESPONSE: The Department agrees that the proposal will result in limiting services but believes it is appropriate to eliminate payment for duplicate services. A review by the Department of utilization patterns has indicated that many services are provided simultaneously, at great expense to the Department. Many services reimbursed by the Department include several components and this amendment restricts multiple providers from receiving reimbursement for duplicate services provided on the same day. The amendment underscores the importance of treatment planning and coordination.

COMMENT #11: A provider expressed a need to allow for exceptions or special circumstances where medical necessity supports the use of services identified as duplicate on the Department matrix.

RESPONSE: The Department acknowledges that there might be

extraordinary circumstances where simultaneous reimbursement of duplicate services could be justified. If such cases arise in the future, the Department will consider amending the rule to make provision for exceptions in special circumstances.

COMMENT #12: A provider group expressed concern that the proposed amendments were inconsistent with the Guiding Principles that were outlined by the Mental Health Oversight Advisory Council. The proposed changes will have a significant effect on community services and not the more costly residential services.

RESPONSE: The Department considers the Guiding Principles developed by the Mental Health Oversight Advisory Council to be a valuable guide in making decisions on changes in the public mental health system. The Department disagrees that the proposed amendments will have a disproportionate effect on community services. Substantial amendments were proposed that impact residential services including the elimination of room and board payments, restriction of case management, and changes in the criteria for levels of care.

COMMENT #13: Practitioners were opposed to the reduction in reimbursement rates by 2.6%. Providers are currently caring for and treating children and youth for 75 to 80% of the cost of the care. A rate cut is detrimental to an already stressed and under funded provider network.

RESPONSE: The Department understands the hardship created by the temporary reduction in Medicaid reimbursement rates through June 30, 2002. The reduction is consistent with reimbursement changes implemented throughout the Medicaid program, however, and was necessary, in combination with other actions taken, to reduce expenditures to the amount appropriated for mental health services.

COMMENT #14: Some providers were opposed to the frontier rate adjustment for community mental health centers. One believed that the money could offset the deficit within Addictive and Mental Disorders Division (AMDD) rather than support a single provider type.

RESPONSE: The Medicaid frontier rate adjustment is based upon the availability of county and federal funds. Pursuant to 53-21-204, MCA, a community mental health center receives a proportionate level of financial participation from each of the counties within its region for the provision of mental health services. The proposed rule establishes a mechanism for the transfer of these county funds directly to the Department. The transferred county funds are used to match federal funds for payment of the frontier rate adjustment for selected services provided to Medicaid beneficiaries. The county funds that are transferred to the Department are returned to the contributing county in the form of enhanced reimbursement for mental health

services provided to residents of the county. Pursuant to 53-21-204, MCA the Department does not have discretion to retain the contributed funding and applying it to overall budget shortages.

COMMENT #15: A request was made to verify the legality of the proposed rule.

RESPONSE: The proposed rule was developed by the Department's Office of Legal Affairs in conjunction with the Addictive and Mental Disorders Division and the Health Policy and Services Division. The Department believes that the proposed rule complies with all applicable state and federal laws and constitutional requirements. The rule has also been reviewed and approved by the Centers for Medicaid and Medicare Services.

COMMENT #16: The majority of the providers serving children and youth are not eligible for the frontier rate adjustment, in spite of the fact that they provide services in frontier counties.

RESPONSE: As indicated in the Department's response to Comment 13, the funds used to pay the frontier rate adjustment consist of a county's contribution to the community mental health center which has been transferred to the Department for match with federal funds. The identification of community mental health centers as the recipient of frontier rate adjustments for Medicaid services is based upon their ability to enter into an agreement to transfer county funds to the Department under 53-21-204, MCA. The Department has no statutory authority to use such a mechanism to provide enhanced reimbursement to providers of mental health services which are not community mental health centers.

COMMENT #17: Given the current funding problems within the mental health system, a provider questioned the development of a financial incentive for select providers to expand services.

RESPONSE: Please see response to Comments 13 through 15. The Department does not believe that there has been an expansion of services within the frontier counties based upon a financial incentive.

COMMENT #18: A provider asked if access to services had been increased to either community mental health centers or to those providers not receiving the adjustment.

RESPONSE: The Department has compared the number of individuals served in July 2001 with that in January 2002. The monthly fluctuations notwithstanding, there does not appear to be a significant change in access to mental health services for either community mental health centers or other providers.

COMMENT #19: A provider requested that the Department reconsider its proposed rule that would limit permanency therapeutic family care to adoptive families or foster families considering adoption. The higher rate should be based upon the intensity of need rather than on the legal status of the child's primary caregiver.

RESPONSE: The Department believes that permanency therapeutic family care may be an appropriate service for families who have expressed a commitment to adopting a child with serious emotional disturbance and who are in need of the intensive level of support and training provided by this level of care. The reimbursement rate was developed based upon the components of the service as described in the Department's administrative rule. Permanency therapeutic family care was intended to provide an incentive for families considering adoption but concerned about their ability to meet the child's therapeutic needs.

COMMENT #20: A provider expressed concern about the removal of service reimbursement fees from administrative rule. If the intent was to allow the Department to alter rates without benefit of the rulemaking process, the opportunity for public forum and a formal review process would be lost.

RESPONSE: Over the past year the Department has attempted to replace lists of reimbursement rates in the rule with a reference to the applicable fee schedule, but the Department inadvertently failed to do so with rates for case management. Adopting and incorporating a fee schedule or other document by reference is permitted by the Montana Administrative Procedure Act (MAPA) and is more cost effective in many cases than including lengthy lists of fees in the rule itself.

Adoption by reference neither permits the Department to alter rates without going through the rulemaking process nor deprives the public of the opportunity to have notice and input as to proposed rate or other rule changes. The Department cannot change reimbursement rates without the public's knowledge and input by adopting a fee schedule by reference, because when it wishes to adopt a more current fee schedule this fact must be indicated in a notice of proposed amendment. As stated in the rule whenever a document is adopted by reference, copies of the document are available from the Department upon request, and this statement will be included in the notice of proposed adoption.

COMMENT #21: There is an apparent difference between the provisions of proposed [Rule I] ARM 37.88.110 adopting a 2.6% across-the-board cut in mental health reimbursement rates and the emergency rule adopted by the Department on January 11, 2002. The emergency rule included references to the Mental Health Services Plan (MHSP) which provides mental health services to low income persons who are not eligible for either

Medicaid or the Children's Health Insurance Plan (CHIP). Proposed [Rule I] ARM 37.88.110 provides a reduced reimbursement rate only in the Medicaid Program, not MHSP.

RESPONSE: The references in the emergency rule to MHSP were in error. The Department did not intend to reduce rates for MHSP services and has not implemented any rate reductions for those services. The error was corrected in [Rule I] ARM 37.88.110 by deleting all references to MHSP. Proposed [Rule I] ARM 37.88.110 will be applied retroactive to January 11, 2002, thus correcting the error which occurred in the emergency rule. It is the Department's intent that the emergency rule be superseded by [Rule I] ARM 37.88.110. The Department further intends that the 2.6% rate reduction in [Rule I] ARM 37.88.110 shall not affect reimbursement for MHSP services.

COMMENT #22: The emergency rule adopting a 2.6% across-the-board cut in mental health reimbursement rates was adopted without adequate notice to providers. The public did not have enough time to submit input to the Department before the adoption of the emergency rule.

RESPONSE: The emergency rule was adopted in accordance with the procedure specified in 2-4-303(1), MCA, which permits a temporary emergency rule to be adopted without prior notice or hearing or upon any abbreviated notice and hearing which the state agency finds practicable. Although the Department was not required under 2-4-303(1), MCA to give any advance notice before the emergency rule was adopted, due to time constraints, the Department gave notice in the only manner the Department considered feasible, namely by publishing notice of its intent to adopt the emergency rules in the newspaper of all cities in Montana with a population of 50,000 or more people on December 26th, and 27th, 2001. The Department also posted a copy on its Internet home page. The notice invited providers, beneficiaries and their representatives, and other concerned Montana residents to submit written data, views, or arguments concerning the emergency rules. The version printed on the Internet clarified the Department's January 1, 2002 amendment of provider rates so that pharmacies would know that psychotropic drug reimbursement rates would be reduced by 2.6%.

COMMENT #23: The Department proposes to amend ARM 37.88.101 on authorization requirements for mental health services by adding subsections (1)(a), (b) and (c) which specify exceptions to the prior authorization requirement. Subsection (1)(c) provides an exception for "other services designated by the department". Could subsection (1)(c) be interpreted to mean that mental health services provided in a hospital setting do not need prior authorization?

RESPONSE: The Department does not intend subsection (1)(c) of ARM 37.88.101 to mean that mental health services provided in hospital settings do not need prior authorization. Prior

authorization is still required for many mental health services. When prior authorization is required, this requirement is stated in the specific rule which governs reimbursement for that particular mental health service. Since there are a number of mental health services which do not require prior authorization, the Department is revising the format of subsection (1), which currently states that prior authorization is required for all mental health services and then lists exceptions to the prior authorization requirement. The Department is deleting the part of subsection (1) which states prior authorization is required for all mental health services and will rely instead on the provisions for prior authorization stated in specific mental health services reimbursement rules. The rule will now state that for services for which prior authorization is required, exceptions apply as stated in (1)(a) and (b). The revision of subsection (1) to eliminate the statement that prior authorization is required for all mental services does not alter the requirement for prior authorization stated in any other mental health rule.

COMMENT #24: Legislative Council noted that some statutory cites were incorrectly listed following the rules to which they pertained.

RESPONSE: The Department agrees and has corrected the citations. [Rule I] ARM 37.88.110 and [Rule II] ARM 37.88.1110 incorrectly list 53-12-201, MCA as an authorizing cite. This is a typo and has been corrected to 53-21-201, MCA.

Furthermore, ARM 37.89.106 and 37.89.114 cite 41-3-1103, MCA as both an authorizing and implementing cite. This statute has been renumbered to 52-2-603, MCA. Consequently the Department has added 52-2-603, MCA. The Department will continue to retain the 41-3-1103, MCA cite as it still is a part of the rule history, and is useful for research purposes.

Dawn Sliva
Rule Reviewer

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

Certified to the Secretary of State April 15, 2002.

NOTICE OF FUNCTION OF ADMINISTRATIVE RULE REVIEW COMMITTEE

Interim Committees and the Environmental Quality Council

Administrative rule review is a function of interim committees and the Environmental Quality Council (EQC). These interim committees and the EQC have administrative rule review, program evaluation, and monitoring functions for the following executive branch agencies and the entities attached to agencies for administrative purposes.

Economic Affairs Interim Committee:

- Department of Agriculture;
- Department of Commerce;
- Department of Labor and Industry;
- Department of Livestock;
- Department of Public Service Regulation; and
- Office of the State Auditor and Insurance Commissioner.

Education and Local Government Interim Committee:

- State Board of Education;
- Board of Public Education;
- Board of Regents of Higher Education; and
- Office of Public Instruction.

Children, Families, Health, and Human Services Interim Committee:

- Department of Public Health and Human Services.

Law and Justice Interim Committee:

- Department of Corrections; and
- Department of Justice.

Revenue and Transportation Interim Committee:

- Department of Revenue; and
- Department of Transportation.

State Administration, and Veterans' Affairs Interim Committee:

- Department of Administration;
- Department of Military Affairs; and
- Office of the Secretary of State.

Environmental Quality Council:

- Department of Environmental Quality;
- Department of Fish, Wildlife, and Parks; and
- Department of Natural Resources and Conservation.

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 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 that have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through December 31, 2001. This table includes those rules adopted during the period January 1, 2002 through March 31, 2002 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, 2001, 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 2001 and 2002 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.

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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 2002, appear. Vacancies scheduled to appear from May 1, 2002, through July 31, 2002, 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 5, 2002.

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 2002

Appointee	Appointed by	Succeeds	Appointment/End Date
Alternative Livestock Advisory Council (Fish, Wildlife, and Parks)			
Dr. Duane Douglas Sidney	Governor	reappointed	3/11/2002 1/1/2004
Qualifications (if required): veterinarian			
Ms. Becky Mesaros Cascade	Governor	Taylor	3/11/2002 1/1/2004
Qualifications (if required): representative of the alternative livestock industry			
Mr. Stanley Rauch Victor	Governor	Allestad	3/11/2002 1/1/2004
Qualifications (if required): representative of sportspersons			
Board of Architects (Labor and Industry)			
Mr. Eugene Vogl Billings	Governor	not listed	3/27/2002 3/27/2005
Qualifications (if required): licensed architect			
Board of Crime Control (Justice)			
Mr. Richard L. Kirn Poplar	Governor	Hegstad Deschamps	3/17/2002 1/1/2003
Qualifications (if required): representative of local government			
Board of Dentistry (Labor and Industry)			
Mr. Clifford R. Christenot Libby	Governor	reappointed	3/29/2002 3/29/2007
Qualifications (if required): denturist			
Dr. Sheldon Ivers Great Falls	Governor	reappointed	3/29/2002 3/29/2007
Qualifications (if required): dentist			

BOARD AND COUNCIL APPOINTEES FROM MARCH 2002

Appointee	Appointed by	Succeeds	Appointment/End Date
Board of Dentistry (Labor and Industry) cont.			
Ms. Carol Price Clancy	Governor	Fullerton	3/29/2002 3/29/2007
Qualifications (if required): dental hygienist			
Ms. Lesley Robinson Malta	Governor	Rupert	3/29/2002 3/29/2007
Qualifications (if required): public member			
Commission on Practice of the Supreme Court (Supreme Court)			
Mr. Gary Davis Helena	elected	not listed	3/28/2002 3/28/2006
Qualifications (if required): none specified			
Mr. Bruce A. Fredrickson Kalispell	elected	not listed	3/28/2002 3/28/2006
Qualifications (if required): none specified			
Governor's Council on Organ and Tissue Donor Awareness (Public Health and Human Services)			
Mr. Paul Buck Missoula	Governor	not listed	3/25/2002 3/25/2004
Qualifications (if required): ex-officio member			
Ms. Mary Hainlin Helena	Governor	not listed	3/25/2002 3/25/2004
Qualifications (if required): representative of donor families			
Ms. Jan Hendrix Kalispell	Governor	not listed	3/25/2002 3/25/2004
Qualifications (if required): ex-officio member			

BOARD AND COUNCIL APPOINTEES FROM MARCH 2002

Appointee	Appointed by	Succeeds	Appointment/End Date

Governor's Council on Organ and Tissue Donor Awareness (Public Health and Human Services) cont.

Ms. Jennifer Keck Conrad	Governor	not listed	3/25/2002 3/25/2004

Qualifications (if required): representative of donor recipients

Ms. Joyce Kramer Billings	Governor	not listed	3/25/2002 3/25/2004

Qualifications (if required): ex-officio member

Mr. Ted Marchion Anaconda	Governor	not listed	3/25/2002 3/25/2004

Qualifications (if required): representative of donor recipients

Governor Judy Martz Helena	Governor	not listed	3/25/2002 3/25/2004

Qualifications (if required): representative of donor families and state government

Ms. Pamela Meyer Lame Deer	Governor	not listed	3/25/2002 3/25/2004

Qualifications (if required): representative of Native Americans and medical representation

Rev. Kenneth Mottram Kalispell	Governor	not listed	3/25/2002 3/25/2004

Qualifications (if required): representative of clergy

Mr. Dean Roberts Helena	Governor	not listed	3/25/2002 3/25/2004

Qualifications (if required): representative of the Department of Justice

BOARD AND COUNCIL APPOINTEES FROM MARCH 2002

Appointee	Appointed by	Succeeds	Appointment/End Date
Governor's Council on Organ and Tissue Donor Awareness (Public Health and Human Services) cont.			
Ms. Sandi Stroot Superior	Governor	not listed	3/25/2002 3/25/2004
Qualifications (if required): ex-officio member			
Information Technology Board (Administration)			
Sen. Wm. E. (Bill) Glaser Huntley	President of the Senate	Taylor	3/1/2002 7/1/2003
Qualifications (if required): none specified			
Judicial Nomination Commission (Justice)			
Judge Diana G. Barz Billings	Chief Justice	not listed	3/1/2002 1/1/2006
Qualifications (if required): none specified			
Montana Abstinence Education Advisory Council (Public Health and Human Services)			
Mr. Matt Antonich Kremlin	Governor	not listed	3/11/2002 3/11/2004
Qualifications (if required): public member			
Ms. Elaine Collins Helena	Governor	not listed	3/11/2002 3/11/2004
Qualifications (if required): public member			
Ms. Elisabeth Dellwo Helena	Governor	not listed	3/11/2002 3/11/2004
Qualifications (if required): youth representative			
Mr. Jason Gleason Butte	Governor	not listed	3/11/2002 3/11/2004
Qualifications (if required): public member			

BOARD AND COUNCIL APPOINTEES FROM MARCH 2002

Appointee	Appointed by	Succeeds	Appointment/End Date
Montana Abstinence Education Advisory Council (Public Health and Human Services) cont.			
Mr. Jim Good	Governor	not listed	3/11/2002
Bozeman			3/11/2004
Qualifications (if required): public member			
Sen. Duane Grimes	Governor	not listed	3/11/2002
Clancy			3/11/2004
Qualifications (if required): legislator			
Ms. Traci Hronek	Governor	not listed	3/11/2002
Great Falls			3/11/2004
Qualifications (if required): public member			
Ms. Julie Ippolito	Governor	not listed	3/11/2002
Helena			3/11/2004
Qualifications (if required): public member			
Ms. Judy LaPan	Governor	not listed	3/11/2002
Sidney			3/11/2004
Qualifications (if required): public member			
Mr. Collins Lawlor	Governor	not listed	3/11/2002
Helena			3/11/2004
Qualifications (if required): youth representative			
Ms. Janet Meissner	Governor	not listed	3/11/2002
Belt			3/11/2004
Qualifications (if required): public member			
Rep. Ken Peterson	Governor	not listed	3/11/2002
Billings			3/11/2004
Qualifications (if required): legislator			

BOARD AND COUNCIL APPOINTEES FROM MARCH 2002

Appointee	Appointed by	Succeeds	Appointment/End Date
Montana Abstinence Education Advisory Council (Public Health and Human Services) cont.			
Dr. Tom Rasmussen	Governor	not listed	3/11/2002
Helena			3/11/2004
Qualifications (if required): public member			
Mr. Bryce Skjervem	Governor	not listed	3/11/2002
Helena			3/11/2004
Qualifications (if required): public member			
Ms. Geraldine (Jeri) Snell	Governor	not listed	3/11/2002
Miles City			3/11/2004
Qualifications (if required): public member			
Ms. Joleen Spang	Governor	not listed	3/11/2002
Lame Deer			3/11/2004
Qualifications (if required): public member			
Ms. Jessie Stinger	Governor	not listed	3/11/2002
Polson			3/11/2004
Qualifications (if required): public member			
Mr. Gary Swant	Governor	not listed	3/11/2002
Deer Lodge			3/11/2004
Qualifications (if required): public member			
Montana Arts Council (Montana Arts Council)			
Ms. Mary Crippen	Governor	Morrison	3/27/2002
Billings			2/1/2007
Qualifications (if required): public member			

BOARD AND COUNCIL APPOINTEES FROM MARCH 2002

Appointee	Appointed by	Succeeds	Appointment/End Date
Montana Arts Council (Montana Arts Council) cont.			
Mr. John B. Dudis Kalispell	Governor	reappointed	3/27/2002 2/1/2007
Qualifications (if required): public member			
Ms. Delores Heltne Havre	Governor	Brenden	3/27/2002 2/1/2007
Qualifications (if required): public member			
Mr. Neal Lewing Polson	Governor	Clarke	3/27/2002 2/1/2007
Qualifications (if required): public member			
Mr. James R. Smrcka Glasgow	Governor	Dolack	3/27/2002 2/1/2005
Qualifications (if required): public member			
Mr. Mark Tyers Bozeman	Governor	Novotne	3/27/2002 2/1/2007
Qualifications (if required): public member			
Montana Facility Finance Authority (Commerce)			
Mr. Kenneth Jansa Glasgow	Governor	Brubaker	3/1/2002 1/1/2003
Qualifications (if required): public member			
Montana High School Association Board of Control (Governor)			
Mr. Gail Peterson Sidney	Governor	McKee	3/1/2002 1/1/2006
Qualifications (if required): public member			

BOARD AND COUNCIL APPOINTEES FROM MARCH 2002

Appointee	Appointed by	Succeeds	Appointment/End Date
State 9-1-1 Advisory Council (Administration)			
Mr. Jim Anderson	Director	not listed	3/1/2002
Helena			3/1/2004
Qualifications (if required): Department of Military Affairs			
Mayor Larry J. Bonderud	Director	not listed	3/1/2002
Shelby			3/1/2004
Qualifications (if required): Montana League of Cities and Towns			
Mr. Richard Brumley	Director	not listed	3/1/2002
Lewistown			3/1/2004
Qualifications (if required): Montana Emergency Medical Services Association			
Mr. Joe Calnan	Director	not listed	3/1/2002
Montana City			3/1/2004
Qualifications (if required): Montana State Volunteer Fire Fighters' Association			
Ms. Sherry Cargill	Director	not listed	3/1/2002
Boulder			3/1/2004
Qualifications (if required): Montana Association of Counties			
Dr. Drew Dawson	Director	not listed	3/1/2002
Helena			3/1/2004
Qualifications (if required): Department of Public Health and Human Services			
Mr. Geoff Feiss	Director	not listed	3/1/2002
Helena			3/1/2004
Qualifications (if required): Montana Telephone Association			

BOARD AND COUNCIL APPOINTEES FROM MARCH 2002

Appointee	Appointed by	Succeeds	Appointment/End Date
State 9-1-1 Advisory Council (Administration) cont.			
Ms. Jenny Hansen	Director	not listed	3/1/2002
Helena			3/1/2004
Qualifications (if required): Department of Administration 9-1-1 Program			
Mr. Dan Hawkins	Director	not listed	3/1/2002
Helena			3/1/2004
Qualifications (if required): Association of Public Safety Communications Officials			
Mr. Don Hollister	Director	not listed	3/1/2002
Kalispell			3/1/2004
Qualifications (if required): PTI Communications			
Ms. Andrea Homier	Director	not listed	3/1/2002
Helena			3/1/2004
Qualifications (if required): Verizon Wireless			
Mr. Bob Jones	Director	not listed	3/1/2002
Great Falls			3/1/2004
Qualifications (if required): Montana Association of Chiefs of Police			
Mr. Tom Kuntz	Director	not listed	3/1/2002
Red Lodge			3/1/2004
Qualifications (if required): Montana Public Safety Communications Council			
Col. Bert Obert	Director	not listed	3/1/2002
Helena			3/1/2004
Qualifications (if required): Montana Highway Patrol			

BOARD AND COUNCIL APPOINTEES FROM MARCH 2002

Appointee	Appointed by	Succeeds	Appointment/End Date
State 9-1-1 Advisory Council (Administration) cont.			
Mr. Jim Oppedahl	Director	not listed	3/1/2002
Helena			3/1/2004
Qualifications (if required): Montana Board of Crime Control			
Ms. Jody Pierce	Director	not listed	3/1/2002
Helena			3/1/2004
Qualifications (if required): Public Safety Answering Point Representative			
Ms. Wilma Puich	Director	not listed	3/1/2002
Butte			3/1/2004
Qualifications (if required): Association of Disaster and Emergency Services Coordinators			
Sheriff Ronald Rowton	Director	not listed	3/1/2002
Lewistown			3/1/2004
Qualifications (if required): Montana Sheriffs' and Peace Officers' Association			
Mr. Larry Sheldon	Director	not listed	3/1/2002
Helena			3/1/2004
Qualifications (if required): Qwest Communications			
Mr. Michael Strand	Director	not listed	3/1/2002
Helena			3/1/2004
Qualifications (if required): Montana Independent Telecommunications Systems			
Mr. Chuck Winn	Director	not listed	3/1/2002
Bozeman			3/1/2004
Qualifications (if required): Montana State Fire Chiefs' Association			
Mr. Mark Yahne	Director	not listed	3/1/2002
Cedar City			3/1/2004
Qualifications (if required): Western Wireless			

VACANCIES ON BOARDS AND COUNCILS -- May 1, 2002 through July 31, 2002

Board/current position holder	Appointed by	Term end
Aging Advisory Council (Public Health and Human Services)		
Ms. Mary Alice Rehbein, Lambert	Governor	7/18/2002
Qualifications (if required): public member		
Ms. Pauline Nikolaisen, Kalispell	Governor	7/18/2002
Qualifications (if required): public member		
Ms. Dorothea C. Neath, Helena	Governor	7/18/2002
Qualifications (if required): public member		
Mr. Wilbur Swenson, Havre	Governor	7/18/2002
Qualifications (if required): public member		
Agriculture Development Council (Agriculture)		
Mr. Everett Snortland, Conrad	Governor	7/1/2002
Qualifications (if required): actively engaged in agriculture		
Mr. Robert Hanson, White Sulphur Springs	Governor	7/1/2002
Qualifications (if required): actively engaged in agriculture		
Ms. Susan Lake, Ronan	Governor	7/1/2002
Qualifications (if required): actively engaged in agriculture		
Board of Barbers (Commerce)		
Ms. Delores Lund, Reserve	Governor	7/1/2002
Qualifications (if required): public member		
Mr. Edward Dutton, Kalispell	Governor	7/1/2002
Qualifications (if required): licensed barber		

VACANCIES ON BOARDS AND COUNCILS -- May 1, 2002 through July 31, 2002

Board/current position holder	Appointed by	Term end
Board of Funeral Services (Commerce)		
Ms. Jean Ruppert, Butte	Governor	7/1/2002
Qualifications (if required): public member		
Mr. Niles Nelson, Libby	Governor	7/1/2002
Qualifications (if required): licensed mortician		
Mr. Jered Scherer, Billings	Governor	7/1/2002
Qualifications (if required): representative of a cemetery company		
Board of Hearing Aid Dispensers (Commerce)		
Mr. John Delano, Helena	Governor	7/1/2002
Qualifications (if required): public member who uses a hearing aid		
Ms. Stacia Moore, Kalispell	Governor	7/1/2002
Qualifications (if required): national certified hearing aid dispenser with a masters degree		
Board of Landscape Architects (Commerce)		
Mr. Robert Broughton, Hamilton	Governor	7/1/2002
Qualifications (if required): licensed landscape architect		
Board of Nursing (Commerce)		
Reverend Steve Rice, Miles City	Governor	7/1/2002
Qualifications (if required): public member		
Ms. Rita Harding, Billings	Governor	7/1/2002
Qualifications (if required): registered professional nurse		
Ms. Jeanine Thomas, Ronan	Governor	7/1/2002
Qualifications (if required): licensed practical nurse		

VACANCIES ON BOARDS AND COUNCILS -- May 1, 2002 through July 31, 2002

Board/current position holder	Appointed by	Term end
Board of Nursing (Commerce) cont.		
Ms. Lorena Erickson, Corvallis	Governor	7/1/2002
Qualifications (if required): public member		
Board of Nursing Home Administrators (Commerce)		
Ms. Jaena Richards, Deer Lodge	Governor	5/28/2002
Qualifications (if required): representative of an institution concerned with the care of the aged		
Board of Pharmacy (Commerce)		
Ms. Sherry Lersbak, Troy	Governor	7/1/2002
Qualifications (if required): public member		
Board of Physical Therapy Examiners (Commerce)		
Mr. Jeff Swift, Great Falls	Governor	7/1/2002
Qualifications (if required): licensed physical therapist		
Board of Plumbers (Commerce)		
Mr. Jerry Lyford, Kalispell	Governor	5/4/2002
Qualifications (if required): master plumber		
Mr. Terry Tatchell, Helena	Governor	5/4/2002
Qualifications (if required): journeyman plumber		
Board of Professional Engineers and Land Surveyors (Commerce)		
Ms. Janet Markle, Glasgow	Governor	7/1/2002
Qualifications (if required): public member		
Mr. Richard Ainsworth, Missoula	Governor	7/1/2002
Qualifications (if required): professional land surveyor		
Mr. Steve Wright, Columbia Falls	Governor	7/1/2002
Qualifications (if required): professional engineer		

VACANCIES ON BOARDS AND COUNCILS -- May 1, 2002 through July 31, 2002

Board/current position holder	Appointed by	Term end
Board of Public Accountants (Commerce)		
Ms. Irma Paul, Helena	Governor	7/1/2002
Qualifications (if required): public member		
Board of Radiologic Technologists (Commerce)		
Ms. Debbie Sanford, Lewistown	Governor	7/1/2002
Qualifications (if required): permit holder		
Ms. Cynthia L. Smith-Finch, Billings	Governor	7/1/2002
Qualifications (if required): radiologic technologist		
Mr. Alan Sevier, Glendive	Governor	7/1/2002
Qualifications (if required): public member		
Dr. Dennis Palmer, Helena	Governor	7/1/2002
Qualifications (if required): radiologist		
Board of Real Estate Appraisers (Commerce)		
Mr. Thomas C. Moss, Billings	Governor	5/1/2002
Qualifications (if required): real estate appraiser		
Board of Real Estate Appraisers (Labor and Industry)		
Mr. Donald Andrews, Ronan	Governor	5/1/2002
Qualifications (if required): real estate appraiser		
Board of Realty Regulation (Commerce)		
Mr. Terry Hilgendorf, Great Falls	Governor	5/9/2002
Qualifications (if required): public member		
Board of Research and Commercialization Technology (Commerce)		
Mr. Leonard J. Smith, Jr., Poplar	Governor	7/1/2002
Qualifications (if required): Native American		

VACANCIES ON BOARDS AND COUNCILS -- May 1, 2002 through July 31, 2002

Board/current position holder	Appointed by	Term end
Board of Sanitarians (Commerce)		
Mr. John Shea, Missoula	Governor	7/1/2002
Qualifications (if required): public member		
Board of Veterans' Affairs (Military Affairs)		
Mr. George G. Hageman, Jordan	Governor	5/18/2002
Qualifications (if required): veteran		
Commission on Community Service (Governor)		
Ms. Wanda Raining Bird, Harlem	Governor	7/1/2002
Qualifications (if required): representing tribal government		
Community Services Advisory Council (Governor)		
Ms. Sherry Stevens Wulf, Kalispell	Governor	7/1/2002
Qualifications (if required): representative of non-profit organizations		
Mr. Bob Maffit, Helena	Governor	7/1/2002
Qualifications (if required): representative of the disabled community		
Ms. Bea Ann Malichar, Billings	Governor	7/1/2002
Qualifications (if required): representative of aging human services		
Mr. Jeffrey Shapiro, Great Falls	Governor	7/1/2002
Qualifications (if required): representative of the private sector		
Mr. John Allen, Helena	Governor	7/1/2002
Qualifications (if required): representative of the Corporation for National Service		
Ms. Nan LeFebvre, Helena	Governor	7/1/2002
Qualifications (if required): representative of the director of Department of Public Health		

VACANCIES ON BOARDS AND COUNCILS -- May 1, 2002 through July 31, 2002

Board/current position holder	Appointed by	Term end
District Court Council (Supreme Court)		
Judge Diana G. Barz, Billings	elected	6/30/2002
Qualifications (if required): none specified		
Judge John Warner, Havre	elected	6/30/2002
Qualifications (if required): none specified		
Mr. Mike Hutchin, Polson	Supreme Court	6/30/2002
Qualifications (if required): non-voting member		
Mr. Tim Smith	Supreme Court	6/30/2002
Qualifications (if required): non-voting member		
Eastern Montana State Veterans' Cemetery Advisory Council (Military Affairs)		
Mr. Tony Harbaugh, Miles City	Director	6/1/2002
Qualifications (if required): Custer County sheriff/coroner		
Mr. James F. Jacobsen, Helena	Director	6/1/2002
Qualifications (if required): Montana Veterans Affairs Division		
Mr. Henry "Bill" Hopkins, Ismay	Director	6/1/2002
Qualifications (if required): Disabled American Veterans		
Ms. Betty Hopkins, Ismay	Director	6/1/2002
Qualifications (if required): Disabled American Veterans Auxiliary		
Jess Erickson, Miles City	Director	6/1/2002
Qualifications (if required): Veterans of Foreign Wars		
Mr Bob Beals, Forsyth	Director	6/1/2002
Qualifications (if required): American Legion		

VACANCIES ON BOARDS AND COUNCILS -- May 1, 2002 through July 31, 2002

Board/current position holder	Appointed by	Term end
Eastern Montana State Veterans Cemetery Advisory Council (Military Affairs) cont.		
Ms. Linda Dolatta, Terry	Director	6/1/2002
Qualifications (if required): American Legion Auxiliary		
Mr. Bill Dolatta, Terry	Director	6/1/2002
Qualifications (if required): Vietnam Veterans of America		
Mr. Jim Bertrand, Miles City	Director	6/1/2002
Qualifications (if required): Military Order of the Cooties		
Mr. Stanley Watson, Forsyth	Director	6/1/2002
Qualifications (if required): Marine Corp League		
Mr. Victor Leikam, Billings	Director	6/1/2002
Qualifications (if required): 40 & 8		
Mr. Frank Stoltz, Miles City	Director	6/1/2002
Qualifications (if required): Prisoners of War		
Mr. Ralph Dukart, Miles City	Director	6/1/2002
Qualifications (if required): Department of Military Affairs		
Mr. Joe Stevenson, Miles City	Director	6/1/2002
Qualifications (if required): Custer County commissioner		
Ms. Edith Pawlowski, Circle	Director	6/1/2002
Qualifications (if required): Veterans of Foreign Wars Auxiliary		
Mr. Wayne Kleppelid, Circle	Director	6/1/2002
Qualifications (if required): Military Order of the Purple Heart		

VACANCIES ON BOARDS AND COUNCILS -- May 1, 2002 through July 31, 2002

Board/current position holder	Appointed by	Term end
Electrical Board (Commerce)		
Ms. Louise Glimm, Conrad	Governor	7/1/2002
Qualifications (if required): public member		
Family Education Savings Program Oversight Committee (Education)		
Mr. Gerry Meyer, Great Falls	Governor	7/1/2002
Qualifications (if required): public member		
Mental Disabilities Board of Visitors (Governor)		
Ms. Joan-Nell Macfadden, Great Falls	Governor	7/1/2002
Qualifications (if required): experience dealing with treatment and welfare of children with emotional disturbance		
Mr. Graydon Davies Moll, Polson	Governor	7/1/2002
Qualifications (if required): having experience with developmentally disabled adults		
Mr. Steve Cahill, Clancy	Governor	7/1/2002
Qualifications (if required): experience with the treatment and welfare of adults with mental illnesses		
Montana Agricultural Heritage Commission (Agriculture)		
Mr. Bob Dompier, Great Falls	Governor	6/30/2002
Qualifications (if required): representative of a tourism industry organization		
Ms. Cece Reiner, Bozeman	Governor	6/30/2002
Qualifications (if required): representative of real estate or building industry organization		
Montana Heritage Preservation and Development Commission (Historical Society)		
Mr. Jeffrey J. Safford, Bozeman	Governor	5/23/2002
Qualifications (if required): Montana historian		

VACANCIES ON BOARDS AND COUNCILS -- May 1, 2002 through July 31, 2002

Board/current position holder	Appointed by	Term end
Montana Heritage Preservation and Development Commission (Historical Society) cont.		
Ms. Maureen Averill, Bigfork	Governor	5/23/2002
Qualifications (if required): member of the Tourism Advisory Council		
Rep. Jeanette S. McKee, Hamilton	Governor	5/23/2002
Qualifications (if required): experienced in historic preservation		
Montana Historical Society Board of Trustees (Historical Society)		
Mr. Steve Browning, Helena	Governor	7/1/2002
Qualifications (if required): public member		
Ms. Mary Murphy, Bozeman	Governor	7/1/2002
Qualifications (if required): historian		
Montana Mint Committee (Agriculture)		
Mr. John Ficken, Kalispell	Governor	7/1/2002
Qualifications (if required): mint grower		
Mr. Clyde Fisher, Columbia Falls	Governor	7/2/2002
Qualifications (if required): representative of the mint industry council		
Montana Public Safety Communications Council (Administration)		
Dr. Drew Dawson, Helena	Governor	5/31/2002
Qualifications (if required): representative of the emergency medical services community		
Mr. Dennis M. Taylor, Billings	Governor	5/31/2002
Qualifications (if required): representative of local government		
Ms. Barbara Ranf, Helena	Governor	5/31/2002
Qualifications (if required): representative of the Department of Administration		

VACANCIES ON BOARDS AND COUNCILS -- May 1, 2002 through July 31, 2002

Board/current position holder	Appointed by	Term end
Montana Public Safety Communications Council (Administration) cont.		
Mr. Bill Slaughter, Helena	Governor	5/31/2002
Qualifications (if required): representative of law enforcement		
Mr. Lloyd Jackson, Pablo	Governor	5/31/2002
Qualifications (if required): tribal representative		
Mr. William S. Strizich, Great Falls	Governor	5/31/2002
Qualifications (if required): representative of federal government		
Mr. John Blacker, Helena	Governor	5/31/2002
Qualifications (if required): representative of state government		
Mr. Larry Fasbender, Helena	Governor	5/31/2002
Qualifications (if required): representative of state government		
Mr. Bob Jones, Great Falls	Governor	5/31/2002
Qualifications (if required): representative of law enforcement		
Mr. William Jameson, Bozeman	Governor	5/31/2002
Qualifications (if required): representative of citizens at large		
Mr. Scott Waldron, Frenchtown	Governor	5/31/2002
Qualifications (if required): representative of fire protection services		
Ms. Elisabeth S. Rice, Butte	Governor	5/31/2002
Qualifications (if required): representative of Montana Power Company		

VACANCIES ON BOARDS AND COUNCILS -- May 1, 2002 through July 31, 2002

Board/current position holder	Appointed by	Term end
Montana Public Safety Communications Council (Administration) cont.		
Mr. Robin Stobe, Billings	Governor	5/31/2002
Qualifications (if required): representative of federal government		
Ms. Anne Kindness, Billings	Governor	5/31/2002
Qualifications (if required): representative of the 9-1-1 community		
Mr. Dan Gutebier, Livingston	Governor	5/31/2002
Qualifications (if required): representative of local government		
Montana Special Education Advisory Panel (Office of Public Instruction)		
Ms. Cecilia C. Cowie, Helena	Director	6/30/2002
Qualifications (if required): state agency		
Mr. Hugh Smith, Great Falls	Director	6/30/2002
Qualifications (if required): private school representative		
Ms. Gwen Beyer, Missoula	Director	6/30/2002
Qualifications (if required): Part C/IDEA representative		
Rep. Holly Raser, Missoula	Director	6/30/2002
Qualifications (if required): legislator		
Ms. Patrice MacDonald, Wolf Point	Director	6/30/2002
Qualifications (if required): regular classroom teacher		
Ms. Kathleen Mudd, Bridger	Director	6/30/2002
Qualifications (if required): parent of a child with disabilities		
Ms. LaDonna Fowler, Missoula	Director	6/30/2002
Qualifications (if required): higher education		

VACANCIES ON BOARDS AND COUNCILS -- May 1, 2002 through July 31, 2002

Board/current position holder	Appointed by	Term end
Montana Special Education Advisory Panel (Office of Public Instruction) cont.		
Ms. Sarah Eyer, Boulder	Director	6/30/2002
Qualifications (if required): teacher of children with disabilities		
Ms. Karla Wohlwend, Havre	Director	6/30/2002
Qualifications (if required): special education program administrator		
Mr. Ellis Parry, Rudyard	Director	6/30/2002
Qualifications (if required): state/local administrator		
Ms. Judith Herzog, Billings	Director	6/30/2002
Qualifications (if required): business concerned with transitions		
Mr. Tim Ferriter, Boulder	Director	6/30/2002
Qualifications (if required): representative from juvenile and adult corrections		
Mr. Jeff Handelin, Helena	Superintendent	6/30/2002
Qualifications (if required): student representative		
Native American Advisory Council (Public Health and Human Services)		
Ms. Clara Spotted Elk, Colstrip	Director	6/2/2002
Qualifications (if required): none specified		
Mr. Ernie Bighorn, Miles City	Director	6/2/2002
Qualifications (if required): none specified		
Ms. Arlene Templer, St. Ignatius	Director	6/2/2002
Qualifications (if required): none specified		
Mr. Tim Zimmerman, Billings	Director	6/2/2002
Qualifications (if required): none specified		

VACANCIES ON BOARDS AND COUNCILS -- May 1, 2002 through July 31, 2002

Board/current position holder	Appointed by	Term end
Native American Advisory Council (Public Health and Human Services) cont.		
Mr. Duncan Standing Rock, Sr., Box Elder	Director	6/2/2002
Qualifications (if required): none specified		
Mr. Myron Littlebird, Lame Deer	Director	6/2/2002
Qualifications (if required): none specified		
Ms. Toni Plummer, Kalispell	Director	6/2/2002
Qualifications (if required): none specified		
Ms. Deborah Wetsit, Billings	Director	6/2/2002
Qualifications (if required): none specified		
Mr. Tommy Billing, Jordan	Director	6/2/2002
Qualifications (if required): none specified		
Mr. Gordon Belcourt, Billings	Director	6/2/2002
Qualifications (if required): none specified		
Mr. William Snell, Billings	Director	6/2/2002
Qualifications (if required): none specified		
Ms. Carole Lankford, Pablo	Director	6/2/2002
Qualifications (if required): none specified		
Ms. Evelyn Werk, Harlem	Director	6/2/2002
Qualifications (if required): none specified		
Ms. Rosemary Lincoln, Crow Agency	Director	6/2/2002
Qualifications (if required): none specified		
Ms. Loretta Rex, Browning	Director	6/2/2002
Qualifications (if required): none specified		

VACANCIES ON BOARDS AND COUNCILS -- May 1, 2002 through July 31, 2002

Board/current position holder	Appointed by	Term end
Native American Advisory Council (Public Health and Human Services) cont.		
Ms. Carol Myers, Missoula	Director	6/2/2002
Qualifications (if required): none specified		
Ms. Jackie Tang, Lame Deer	Director	6/2/2002
Qualifications (if required): none specified		
Mr. Jim Baker, Cut Bank	Director	6/2/2002
Qualifications (if required): none specified		
Ms. Jo Ann Birdshead, Billings	Director	6/2/2002
Qualifications (if required): none specified		
Ms. Louise Zokan-delos Reyes, Billings	Director	6/2/2002
Qualifications (if required): none specified		
Mr. Garfield Little Light, Billings	Director	6/2/2002
Qualifications (if required): none specified		
Mr. Walter Denny, Box Elder	Director	6/2/2002
Qualifications (if required): none specified		
Ms. Roberta Spotted Horse, Billings	Director	6/2/2002
Qualifications (if required): none specified		
Ms. Teresa Wall McDonald, Pablo	Director	6/2/2002
Qualifications (if required): none specified		
Mr. Arnie Bighorn, Kalispell	Director	6/2/2002
Qualifications (if required): none specified		
Ms. Patricia McGeshick, Wolf Point	Director	6/2/2002
Qualifications (if required): none specified		

VACANCIES ON BOARDS AND COUNCILS -- May 1, 2002 through July 31, 2002

Board/current position holder	Appointed by	Term end
Petroleum Tank Release Compensation Board (Environmental Quality)		
Ms. Linda Cockhill, Helena	Governor	6/30/2002
Qualifications (if required): representing the financial or banking industry		
Mr. Lee Bruner, Butte	Governor	6/30/2002
Qualifications (if required): attorney		
Mr. Daniel Manson, Butte	Governor	6/30/2002
Qualifications (if required): attorney		
Private Land/Public Wildlife Advisory Council (Fish, Wildlife, and Parks)		
Rep. Paul Clark, Trout Creek	Governor	6/30/2002
Qualifications (if required): legislator		
Mr. Verle L. Rademacher, White Sulphur Springs	Governor	6/30/2002
Qualifications (if required): sportsperson		
Mr. Dan Walker, Billings	Governor	6/30/2002
Qualifications (if required): Fish, Wildlife, and Parks Commissioner		
Mr. Tom Hougen, Melstone	Governor	6/30/2002
Qualifications (if required): landowner		
Sen. Walter L. McNutt, Sidney	Governor	6/30/2002
Qualifications (if required): legislator		
Mr. Cecil Noble, Kalispell	Governor	6/30/2002
Qualifications (if required): outfitter		
Mr. Lee Gustafson, Billings	Governor	6/30/2002
Qualifications (if required): sportsperson		

VACANCIES ON BOARDS AND COUNCILS -- May 1, 2002 through July 31, 2002

Board/current position holder	Appointed by	Term end
Private Land/Public Wildlife Advisory Council (Fish, Wildlife, and Parks) cont.		
Mr. Ray Marxer, Dillon	Governor	6/30/2002
Qualifications (if required): landowner		
Mr. John Wilkinson, Miles City	Governor	6/30/2002
Qualifications (if required): outfitter		
Mr. Tommy Billing, Jordan	Governor	6/30/2002
Qualifications (if required): landowner		
Mr. Leland Blatter, Nashua	Governor	6/30/2002
Qualifications (if required): landowner		
Mr. Daniel Dart, Laurel	Governor	6/30/2002
Qualifications (if required): sportsperson		
Ms. Mavis M. Lorenz, Missoula	Governor	6/30/2002
Qualifications (if required): sportsperson		
Mr. Bryan Dunn, Great Falls	Governor	6/30/2002
Qualifications (if required): sportsperson		
Mr. Paul Roos, Ovando	Governor	6/30/2002
Qualifications (if required): outfitter		
Mr. Mike Nathe, Redstone	Governor	6/30/2002
Qualifications (if required): landowner		
State Banking Board (Commerce)		
Mr. Max Agather, Kalispell	Governor	7/1/2002
Qualifications (if required): public member		

VACANCIES ON BOARDS AND COUNCILS -- May 1, 2002 through July 31, 2002

Board/current position holder	Appointed by	Term end
State Banking Board (Commerce) cont.		
Mr. Wayne Edwards, Denton	Governor	7/1/2002
Qualifications (if required): state bank officer in a smaller bank		
State Library Commission (Education)		
Ms. Dorothy Laird, Whitefish	Governor	5/22/2002
Qualifications (if required): public member		
Mr. Alvin Randall, Troy	Governor	5/22/2002
Qualifications (if required): public member		
State-Tribal Economic Development Commission (Governor)		
Mr. Lloyd Irvine, Pablo	Governor	6/30/2002
Qualifications (if required): representing the Salish and Kootenai tribes		
Mr. Jake Parker, Box Elder	Governor	6/30/2002
Qualifications (if required): representing the Rocky Boy tribe		
Mr. John Woodenlegs, Lame Deer	Governor	6/30/2002
Qualifications (if required): representing the Northern Cheyenne tribe		
Teachers' Retirement Board (Administration)		
Ms. Emily Hall Bogut, Kalispell	Governor	7/1/2002
Qualifications (if required): teacher and a member of the retirement system		
Telecommunications Access Services/Persons with Disabilities (Public Health and Human Services)		
Mr. Thomas P. McGree, Helena	Governor	7/1/2002
Qualifications (if required): representative of interLATA interexchange carrier		
Mr. Edward Van Tighem, Great Falls	Governor	7/1/2002
Qualifications (if required): deaf		

VACANCIES ON BOARDS AND COUNCILS -- May 1, 2002 through July 31, 2002

Board/current position holder	Appointed by	Term end
Telecommunications Access Services/Persons with Disabilities (Public Health and Human Services) cont.		
Ms. Flo Ellen Hippe, Great Falls	Governor	7/1/2002
Qualifications (if required): person with a disability		
Mr. Jack Sterling, Billings	Governor	7/1/2002
Qualifications (if required): representative of an independent local exchange company		
Tourism Advisory Council (Commerce)		
Mr. Carl Kochman, Great Falls	Governor	7/1/2002
Qualifications (if required): representing Russell Country		
Mr. Kelly Flynn, Townsend	Governor	7/1/2002
Qualifications (if required): representing Gold West Country and outfitters		
Mr. Bob Dompier, Great Falls	Governor	7/1/2002
Qualifications (if required): representing Russell Country		
Ms. Lynda Bourque, Billings	Governor	7/1/2002
Qualifications (if required): representative of Custer Country		
Ms. A. Ramona Holt, Lolo	Governor	7/1/2002
Qualifications (if required): representing Glacier Country		
Ms. Michele Reese, Whitefish	Governor	7/1/2002
Qualifications (if required): representing Glacier Country		
Mr. Rick McCamley, Whitefish	Governor	7/1/2002
Qualifications (if required): representing the Montana Innkeepers		

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Board/current position holder	Appointed by	Term end
Western Interstate Commission on Higher Education (Education)		
Sen. Emily Stonington, Bozeman	Governor	6/19/2002
Qualifications (if required): legislator		