ISSUE NO. 3

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 The notice section contains state agencies' proposed new, amended or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

Inquiries regarding the rulemaking process, including material found in the Montana Administrative Register and the Administrative Rules of Montana, may be made by calling the Administrative Rules Bureau at (406) 444-2055.

Page Number

TABLE OF CONTENTS

NOTICE SECTION

BEFORE THE BOARD OF PARDONS AND PAROLE
DEPARTMENT OF CORRECTIONS
OF THE STATE OF MONTANA

In the matter of the proposed adoption of new rule I concerning training of board of pardons and parole board members	)))))	NOTICE OF PROPOSED ADOPTION NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On March 13, 2004, the Board of Pardons and Parole proposes to adopt the above-stated rule.

2. The Board of Pardons and Parole 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 Board of Pardons and Parole no later than 5:00 p.m. on March 5, 2004, to advise us of the nature of the accommodation that you need. Please contact Sherri Townsend, P.O. Box 201301, Helena, MT 59620-1301; phone: (406) 444-7843; fax: (406) 444-4920; e-mail: stownsend@state.mt.us.

3. Because the Board of Pardons and Parole is exempted from the notice and comment or opportunity for hearing requirements of the Montana Administrative Procedure Act, this notice is published in the Montana Administrative Register as a courtesy to those persons who may wish to offer comments and suggestions before the board makes its final decision.

4. The new rule is proposed to implement House Bill 211 (Ch. 559, L. 2003), which authorizes the board to adopt rules to train board members and auxiliary members regarding American Indian culture and problems in order for the board to deal appropriately with American Indian inmates appearing before the board. The legislation further authorizes rulemaking to address board member training regarding other matters pertinent to service on the board.

5. The proposed new rule provides as follows:

NEW RULE I BOARD TRAINING (1) All board members shall receive or have received training that addresses the following issues relevant to American Indians in the state of Montana:

(a) tribes and reservations;

(b) statistical and comparative data regarding correctional populations;

(c) distinctions between urban and reservation populations; and

(d) federal, state, and local community services available to paroled or discharged American Indian inmates.

(2) New board members may attend nationally recognized correctional training or a comparable program for parole board members.

(3) New board members will receive orientation from board staff regarding:

(a) state and federal law and rules pertinent to board operations;

(b) offender pathology, treatment and supervision; and

(c) department of corrections organization.

(4) The board shall evaluate and update training annually.

AUTH: 46-23-218, MCA
IMP: 46-23-218, MCA

6. Concerned persons may present their data, views or arguments concerning the proposed action in writing to Sherri Townsend, Department of Corrections, P.O. Box 201301, Helena, Montana 59620-1301; fax (406) 444-4920; e-mail stownsend@state.mt.us, and must be received no later than 5:00 p.m. on March 5, 2004.

7. The Department of Corrections maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices, and specifies that the person wishes to receive notices regarding community corrections, juvenile corrections, board of pardons and parole, private correctional facilities or general departmental rulemakings. Such written request may be mailed or delivered to Sherri Townsend, Department of Corrections, 1539 11th Ave., P.O. Box 201301, Helena, Montana 59620-1301; faxed to (406) 444-4920; e-mailed to stownsend@state.mt.us or may be made by completing a request form at any rules hearing held by the Department of Corrections.

8. An electronic copy of this Notice of Public Hearing is available through the board of pardons and parole's web site at www.discoveringmontana.com/bopp. The board tries to make the electronic version conform to the official version of this notice, as printed in the Montana Administrative Register. However, the board advises that it will decide any conflict between the official version and the electronic version in favor of the official printed version. In addition, the board advises that the website might be inaccessible at times, due to system maintenance or technical problems.

/s/ Kenneth D. Peterson
KENNETH D. PETERSON, Chair
Board of Pardons and Parole

/s/ Bill Slaughter
BILL SLAUGHTER, Director
Department of Corrections

/s/ Colleen A. White
Colleen A. White, Rule Reviewer
Department of Corrections

Certified to the Secretary of State February 2, 2004.

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

In the matter of the adoption of new rule I regarding a present value formula for determining a severance fee in a petition to exclude a tract from future services, assessments, and liabilities of an irrigation district	))))))	NOTICE OF PROPOSED ADOPTION NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On March 15, 2004, the Montana Department of Natural Resources and Conservation proposes to adopt new rule I regarding a present value formula for determining a severance fee in a petition to exclude a tract from future services, assessments, and liabilities of an irrigation district.

2. The Montana Department of Natural Resources and Conservation 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 Montana Department of Natural Resources and Conservation no later than 5:00 p.m. on March 8, 2004, to advise us of the nature of the accommodation that you need. Please contact Tim Bryggman, Montana Department of Natural Resources and Conservation, 1424 Ninth Avenue, P.O. Box 201601, Helena, MT 59620-1601, (406) 444-6889, fax (406) 444-0533, or e-mail tbryggman@state.mt.us.

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

NEW RULE I A PRESENT VALUE FORMULA FOR DETERMINING A SEVERANCE FEE IN A PETITION TO EXCLUDE A TRACT FROM FUTURE SERVICES, ASSESSMENTS, AND LIABILITIES OF AN IRRIGATION DISTRICT (1) The present values used in determining the severance fee pursuant to 85-7-2125, MCA, shall be calculated as follows:

(a) The present value of debt to be included in the severance fee shall be equal to the existing irrigation district debt apportioned to the petitioned tract.

(b) Future operation and maintenance costs are assumed to be based on the average of the operation and maintenance costs for the three most recent years before severance and are assumed to change annually over the 20-year period at a rate equal to the average annual change in the consumer price index (CPI-U) for the most recent 10 years before severance.

(2) The formula for calculating the average annual change in the CPI-U is:

$(v_0 / v_{0-10})^{.1} - 1$, where v_0 is the CPI-U index value for the most recent December before severance, and v_{0-10} is the December

index value 10 years prior to v_0.

(3) The present value formula for operation and maintenance costs is available through most spreadsheet programs and is specified as follows:

$\sum_{i=1}^{n} OM_i/(1+r)^i$, where n = 20 years, OM_i is the estimated cost of operation and maintenance for each year and r is equal to the average yield for 10-year treasury notes for the most recent 10-year period before severance.

AUTH: 85-7-2125, MCA
IMP: 85-7-2125, MCA

4. New Rule I is reasonably necessary because a formula is needed to determine the severance fee that landowners will be charged to be let out of an irrigation district. Land use changes in Montana over many years have resulted in the development of tracts of land three acres or smaller that are located within the boundaries of an irrigation district and that are no longer being served by an irrigation district. House Bill 388 enacted by the 2003 Legislature allows owners of such tracts to petition to be eliminated from an irrigation district's future services, assessments, and liabilities upon payment of a severance fee or negotiated amount. House Bill 388 states that the severance fee must be determined by adding, "(i) the present value of existing irrigation debt apportioned to the petitioned tract; and (ii) one-half of the present value of future irrigation district operation and maintenance costs apportioned to the petitioned tract for 20 years." This rule establishes a reasonable severance fee based on those factors, and informs the landowners and the public of how that severance fee is to be determined. House Bill 388 directs that "the department of natural resources and conservation shall adopt by rule the present value formula to be used in determining the severance fee." The rule must include: "(i) direction on whether current or average assessment rates must be used; and (ii) the treasury rate or interest rate to be used in the calculation." The rule relies on a standard present value formula and includes values specified in or required to be determined by House Bill 388.

5. Concerned persons may submit their data, views or arguments concerning the proposed rule in writing to Tim Bryggman, Montana Department of Natural Resources and Conservation, 1424 Ninth Avenue, P.O. Box 201601, Helena, MT 59620-1601, (406) 444-6889, fax (406) 444-0533, or e-mail tbryggman@state.mt.us. Any comments must be received no later than March 11, 2004.

6. If persons who are directly affected by the proposed adoption 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 Tim Bryggman, Montana Department of Natural Resources and Conservation, 1424 Ninth Avenue, P.O. Box 201601, Helena, MT 59620-1601, (406) 444-6889, fax (406) 444-0533, or e-mail tbryggman@state.mt.us. A written request for hearing must be received no later than March 11, 2004.

7. If the department receives requests for a public hearing on the proposed adoption from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed adoption; 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 400, based on approximately 4,000 persons affected by irrigation district policy.

8. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding conservation districts and resource development, forestry, oil and gas conservation, trust land management, water resources or combination thereof. Such written request may be mailed or delivered to Legal Unit, Department of Natural Resources and Conservation, P.O. Box 201601, 1625 11th Avenue, Helena, MT 59620-1601, faxed to the office at (406) 444-2684, or may be made by completing a request form at any rules hearing held by the department.

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

DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION

By: /s/ Arthur R. Clinch
ARTHUR R. CLINCH
Director

By: /s/ Tim Hall
TIM HALL
Rule Reviewer

Certified to the Secretary of State February 2, 2004.

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

In the matter of the amendment of ARM 37.86.4401, 37.86.4406, 37.86.4412 and 37.86.4413 pertaining to reimbursement of rural health clinics and federally qualified health centers	))))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Interested Persons

1. On March 3, 2004, 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 February 23, 2004, 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.

37.86.4401 RURAL HEALTH CLINICS AND FEDERALLY QUALIFIED HEALTH CENTERS, DEFINITIONS In this subchapter the following definitions apply:

(1) and (2) remain the same.

(3) "Federally qualified health center (FQHC)" means an entity which is a federally ~~-~~qualified health center as defined in 42 USC 1396d(l)(2)(B) (~~1995~~ 2003 Supp.). For purposes of defining "federally qualified health center" the department ~~hereby~~ adopts and incorporates ~~herein~~ by reference 42 USC 1396d(l)(2)(B) (~~1995~~ (2003) Supp.), which is a federal statute defining "federally qualified health center" for purposes of the medicaid program. A copy of the cited statute is available upon request from the Department of Public Health and Human Services, ~~Health Policy and Services Division~~ Child and Adult Health Resources Division, Medicaid Services Bureau, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

(4) "FQHC core services" means the FQHC ambulatory services defined in 42 USC 1396d(l)(2)(A) and described in 42 USC 1395x(aa)(1). For purposes of defining and describing FQHC core services, the department ~~hereby~~ adopts and incorporates

~~herein~~ by reference 42 USC 1396d(l)(2)(A) and 42 USC 1395x(aa)(1) (~~1995~~ 2003 Supp.). The cited statutes are federal medicaid and medicare statutes defining certain FQHC services for purposes of the medicaid and medicare programs. Copies of the cited statutes are available upon request from the Department of Public Health and Human Services, ~~Health Policy and Services Division~~ Child and Adult Health Resources Division, Medicaid Services Bureau, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

(5) and (6) remain the same.

(7) "Increase or decrease in the scope of service" means the addition of or elimination of a category of service to the clinic or center or an increase or decrease in the intensity of a category of service. The increase or decrease in the scope of service may reasonably be expected to last at least one year.

(8) remains the same.

(9) "Intensity" means the ~~increase or decrease in the~~ cost of a category of service due to ~~a change in~~ the level of medical care provided to the population served by the clinic or center ~~that may be reasonably expected to span at least 1 year~~.

(10) through (16) remain the same.

(17) "Visit" means a face-to-face encounter between a clinic or center patient and a clinic or center health professional for the purpose of providing RHC or FQHC core or other ambulatory services. Encounters with more than one clinic or center health professional, and multiple encounters with the same clinic or center health professional, that take place on the same day and at a single location constitute a single visit~~, except when after the first encounter, the patient suffers an additional illness or injury requiring additional diagnosis or treatment, or the patient has a mental health visit, dental visit or both with clinic or center health professionals that take place on the same day as a medical visit to the same clinic or center~~.

(a) Information concerning visits that can be billed to the department is located in the department's program manuals for RHCs and FQHCs. The department adopts and incorporates by reference the department's provider manuals for RHCs and FQHCs dated September 2001. Copies of the department's provider manuals are available from the Department of Public Health and Human Services, Child and Adult Health Resources Division, Medicaid Services Bureau, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

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

37.86.4406 RURAL HEALTH CLINICS AND FEDERALLY QUALIFIED HEALTH CENTERS, SERVICE REQUIREMENTS (1) The Montana medicaid program will cover and reimburse under the RHC or FQHC ~~services~~ programs only those services that are RHC services or FQHC services as defined in ARM 37.86.4401 and subject to the provisions of this subchapter.

(2) through (5)(f) remain the same.

(6) A provider must notify the department, in writing, of an ~~addition or elimination of a category of service~~ increase or decrease in the scope of service offered by the RHC or FQHC to medicaid recipients. The department will determine an increase or decrease in the ~~intensity~~ scope of services upon request of a provider.

(a) As a condition of approval, the department may require the provider to submit documentation and information necessary to demonstrate compliance with requirements applicable to the category of service or documentation and information necessary to determine the ~~cost~~ increase or decrease in the scope of service to include increases or decreases in the costs of the service and increases or decreases in the number of visits.

(b) Medicaid coverage and reimbursement of an additional category of service will not be available to a provider unless department approval was requested prior to provision of the services and unless the services comply with all applicable requirements. Department approval of any increase in the rate of reimbursement due to the addition or elimination of a category of service will be from date of notification. Any decrease in the rate of reimbursement due to ~~an~~ the addition or elimination of a category of service shall be effective from the date of notification or the date the department determines the category of service was added or eliminated, whichever is first.

(c) Any increase ~~or decrease~~ in the rate of reimbursement due to a change in the intensity of services shall be from the date of notification by the provider to the department. Any decrease in the rate of reimbursement due to a change in the intensity of services shall be from the date of notification by the provider or the date the department determines the change in intensity occurred, whichever is first.

(d) and (7) 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

37.86.4412 RURAL HEALTH CLINICS AND FEDERALLY QUALIFIED HEALTH CENTERS, REIMBURSEMENT (1) through (3) remain the same.

~~(4) The payment for RHCs and FQHCs will be as described in section 1902(a)(2)(B) and (C) of the Social Security Act 42 USC 1396a. For services furnished on or after January 1, 2001, payment for services for an RHC or FQHC shall be calculated on a per visit basis. This payment shall be equal to 100% of the average of the allowable costs of the RHC or FQHC furnishing such services during the RHC's or FQHC's fiscal years 1999 and 2000 which are reasonable and related to the cost of furnishing such services. This rate will be adjusted to take into account any increase or decrease in the scope of such services, as determined by the department, furnished by the RHC or FQHC during fiscal year 2001. Reasonableness shall be determined using the same methodology used under section 1833(a)(3) of the Social Security Act and using medicare allowable cost principles as set forth in 42 CFR 405.2468, HCFA manual provisions applicable to RHCs or FQHCs, including the Medicare Provider~~

~~Reimbursement Manual, HCFA Pub. 15 and HCFA Pub. 27. The RHC or FQHC shall report any increase or decrease in the scope of services for fiscal year 2001 to date by notifying the department within 60 days of receipt of their estimated prospective payment worksheet from the department. Other changes through the end of calendar year 2001 shall be as in ARM 37.86.4406(6).~~

~~(a) The formula for calculating this base per visit rate is: the total cost of core and other ambulatory services for fiscal year 1999 and fiscal year 2000 divided by the total core and other ambulatory visits for fiscal year 1999 and fiscal year 2000, as reported on the providers filed medicaid fiscal year 1999 and fiscal year 2000 cost reports. This base cost per visit rate may be adjusted by a percentage of the total cost increase/decrease due to changes in scopes of services for fiscal year 2001 to date.~~

~~(b) If the provider reports only costs of other ambulatory services and not visits on their fiscal year 1999 and/or fiscal year 2000 cost reports, the costs of the other ambulatory services shall be removed from the calculation, however, the provider may report the number of visits and have the costs and visits added back into the base cost per visit rate by notifying the department within 60 days of receipt of their estimated prospective payment worksheet from the department.~~

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

~~(6)~~(5) On January ~~first~~ 1 of each succeeding calendar year the rate shall be adjusted by the percentage increase or decrease in the medicare economic index (MEI) applicable to primary care services for that calendar year.

~~(7)~~(6) The department will reimburse the RHC or FQHC for the rate change in ~~(7)~~ (5) retroactive to the effective date of January ~~first~~ 1 of the calendar year, beginning with January 1, 2002.

~~(8)~~(7) Beginning in fiscal year 2002 (for clinics or centers that had their initial medicaid prospective system base visit rate calculated in 2001) or starting with the third fiscal year (for "new" clinics or centers as defined at ARM 37.86.4413), the ~~The~~ prospective payment per visit rate may be adjusted ~~by a percentage of the total cost increase or decrease due to changes in scope of services as reported in ARM 37.86.4406(6).~~ to take into account any increase or decrease in the scope of service.

(a) The formula NR=(R*PV)+C/(PV+CV) shall be used to determine a new rate when there is a change in the scope of service.

(i) For the purposes of determining a new reimbursement rate when an increase or decrease in the scope of service occurs, the following definitions apply:

(A) "NR" represents the new reimbursement rate adjusted for the increase or decrease in the scope of service;

(B) "R" represents the present OPPS medicaid rate;

(C) "PV" represents the present number of total visits which is the total number of visits for the RHC or FQHC during the 12-month time period prior to the change in scope of

service;

(D) "C" represents the expected change in costs due to the change in scope of service; and

(E) "CV" represents the expected change in the number of visits due to the change in scope of service.

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

37.86.4413 RURAL HEALTH CLINICS AND FEDERALLY QUALIFIED HEALTH CENTERS, ESTABLISHMENT OF INITIAL PAYMENT FOR NEW CLINICS OR CENTERS (1) and (2) remain the same.

(3) At the end of the RHC's or FQHC's first two fiscal years, a new per visit rate shall be established that is equal to 100% of the allowable costs of the RHC or FQHC furnishing such services during the RHC's or FQHC's first two fiscal years which are reasonable and related to the cost of furnishing such services. The provider must submit to the department or its agent the costs and visits for the RHC or FQHC for the reporting period in the form and detail required by the department and such other information as the department may require to establish a rate.

(a) The formula for calculating this new base per visit rate is~~:~~ the total cost of core and other ambulatory services for the first two fiscal years divided by the total core and other ambulatory visits for the first two fiscal years. This base cost per visit rate may be adjusted ~~by a percentage of the total cost increase/decrease due to changes in scopes of services~~ to take into account any increase or decrease in the scope of service as provided in ARM 37.86.4412(7).

(b) remains the same.

(4) Reimbursement for the third year forward shall be as in ARM 37.86.4406(6) and 37.86.4412~~(7)~~(5) and ~~(8)~~(7).

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

3. The Department of Public Health and Human Services (the Department) is proposing the amendment of ARM 37.86.4401, 37.86.4406, 37.86.4412 and 37.86.4413 pertaining to Medicaid reimbursement of Rural Health Clinic (RHC) and Federally Qualified Health Center (FQHC) services. The amendments are necessary to resolve a controversy between the Department and some providers about the methodology for adjusting the reimbursement rate when there is a change in the scope of services. Some providers have argued that the terms of ARM 37.86.4413 prevent the Department from considering changes in the number of visits when it increases or decreases rates due to a change in the scope of services. The Department disagrees and is proposing these amendments to specify that increases or decreases in the estimated number of visits must be considered whenever there is a change in the scope of services. This will allow reimbursement to remain equal to 100% of the costs of furnishing the services.

The "Medicare, Medicaid and SCHIP Benefits Improvement and Protection Act of 2000" (BIPA) required states to adopt a prospective payment system for reimbursement of RHC and FQHC services. The Department did so effective January 1, 2001. The rate for existing providers was based on 100% of average costs reported by the center or clinic for years 1999 and 2000. The result was a minimum medicaid per visit rate that reflected the average costs of providing services. It is adjusted annually by a percentage change in the Medicare economic index (MEI) to account for inflation.

The purpose of the proposed amendments is to notify providers of RHC and FQHC services of the Department's position that increases or decreases in the estimated number of visits must be considered when it calculates revised rates as a result of the addition or elimination of services.

ARM 37.86.4401

The Department is proposing to move the requirement that an increase or decrease in the scope of service be expected to last at least one year from the definition of the term "intensity" to the definition of "increase or decrease in the scope of service". The Department believes this proposal would make the rule easier to read and the provision easier to find.

The Department is also proposing to add language to the definition of the term "visit" so that providers will know information about visits that can be billed is in the Department's RHC and FQHC program manuals. The manuals would be adopted and incorporated into the rules by reference. This will make it easier for the providers to submit accurate bills.

The Department is taking this opportunity to update its address to reflect a recent reorganization of the division responsible for administering Medicaid programs in Montana. The Department is also taking this opportunity to update references to Federal regulations in this rule.

ARM 37.86.4406

Amendments proposed for ARM 37.86.4406 would conform the reporting requirements to the revised definition of "increase or decrease in the scope of service" proposed in ARM 37.86.4401. Since a change in the scope of service would include an increase or decrease in the intensity of services, references to the latter would be deleted.

ARM 37.86.4412

The Department is proposing that this rule governing reimbursement of RHC and FQHC services be amended to reflect the Department's position that increases or decreases in the

estimated number of visits must be considered whenever there is an increase or decrease in the scope of service. The Department considered and rejected the alternative of keeping the text of the rules unchanged. The Department is concerned that the current language would continue to be misinterpreted by providers, leading to continued controversy about the methodology for adjusting the reimbursement rate when there is an increase or decrease in the scope of service.

The Department is taking this opportunity to propose deletion of obsolete section (4) containing the methodology to determine RHC and FQHC reimbursement for services provided in fiscal year 2001 only. The 2001 Rural Health Clinics and Federally Qualified Health Centers reimbursement rate was based on an average of the costs for furnishing services during fiscal years 1999 and 2000 as required by section 1902(aa)(2) the Social Security Act, 42 USC 1396a(aa)(2), enacted as 702 of the Benefits Improvement and Protection Act of 2000 (BIPS), Public Law No. 106-554. BIPS and the terms of ARM 37.86.4412(4) limited application of the methodology to fiscal year 2001. The methodology was superseded by the methodology in (8) beginning in fiscal year 2002.

ARM 37.86.4413

The provisions of this rule governing reimbursement of RHC and FQHC services would be amended to conform to the amendments as proposed in ARM 37.86.4412.

Cumulative amount and persons affected

There are presently a total of 57 RHC and FQHC facilities in Montana. Together they receive a total of approximately $6.6 million in Medicaid reimbursement annually. Because the provisions in the proposed amendments are intended to clarify current Department policy, no material adverse effect on Medicaid recipients, RHCs or FQHCs is anticipated.

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 March 11, 2004. 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 February 2, 2004.

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 37.47.301 pertaining to the centralized intake system for reporting child abuse and neglect	)))))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION AND AMENDMENT

TO: All Interested Persons

1. On March 4, 2004, at 1:00 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 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 February 26, 2004, to advise us of the nature of the accommodation that you need. Please contact Kathy Munson, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 202951, Helena, MT 59620-2951; telephone (406)444-9503; FAX (406)444-9744; Email dphhslegal@state.mt.us.

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

RULE I CENTRALIZED INTAKE BUREAU (1) The centralized intake (CI) bureau is established within the department and is responsible for the operation of the statewide centralized intake system which receives all reports of suspected child abuse, neglect or abandonment statewide from both mandatory and discretionary reporters 24 hours a day, seven days a week.

(2) The department operates a child abuse hotline within the CI bureau to receive and screen incoming communications.

(3) All reports of child abuse or neglect must be made through the child abuse hotline. If a person calls, visits or writes a department office other than the child abuse hotline to report child abuse or neglect, that department office shall refer the person or written communication to the hotline.

AUTH: Sec. 2-4-201 and 41-3-208, MCA
IMP: Sec. 41-3-102, 41-3-201, 41-3-202 and 41-3-302, MCA

RULE II CHILD ABUSE HOTLINE: REPORT AND SCREENING OF INFORMATION (1) When the child abuse hotline receives an incoming communication, the CI specialist will:

(a) ask the caller's identity:

(i) if the caller does not wish to self-identify, the CI specialist shall also accept an anonymous call;

(b) use standardized questions to screen the communication and determine:

(i) the type of child abuse or neglect alleged;

(ii) the level of response required; and

(iii) how the report will be classified;

(c) check the program information system for prior reports on the same persons; and

(d) enter the report information into the protective service information system described at ARM 37.47.315.

(2) When the incoming communication received by the hotline contains an allegation of child abuse or neglect requiring investigation, the CI specialist shall transmit the report to a local office for a response pursuant to 41-3-202, MCA.

(3) When an incoming communication received by the hotline results in a report alleging child abuse or neglect which indicates a child may be in immediate danger of serious harm, thus requiring an immediate response, the CI specialist will promptly contact the appropriate social worker in the field designated to receive those reports and verbally inform the field social worker of:

(a) the nature of the concerns;

(b) where the child or children of concern can be located; and

(c) any other information necessary to facilitate protection of the child or children.

(4) Following verbal communication with the field social worker, the CI specialist shall promptly enter the report information into the protective service information system and transmit the report electronically to the department's local office.

(5) When an incoming communication received by the hotline does not contain an allegation of child abuse or neglect, but instead is classified as a request for services, as child protection information only, or a report regarding a licensee issue, the CI specialist shall also record that information.

AUTH: Sec. 2-4-201 and 41-3-208, MCA
IMP: Sec. 41-3-102, 41-3-201, 41-3-202 and 41-3-302, MCA

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

37.47.301 CHILD PROTECTIVE SERVICES: DEFINITIONS ~~For the purpose of implementing this Title and Mont. Code Ann. Title 41, chapter 3 only,~~ As used in this subchapter, the following definitions apply:

(1) "~~Any other~~ A person ~~legally~~ responsible for the child's welfare" means those persons ~~as~~ defined in ~~ARM 37.47.602~~ 41-3-102, MCA.

~~(2)~~ (6) "Identifiable and substantial impairment of the child's intellectual or psychological functioning" includes, but is not limited to severely humiliating, degrading, shaming, frightening or otherwise emotionally damaging behavior, tactics or discipline.

(2) "Centralized intake specialist" or "CI specialist" is an individual employed by the centralized intake bureau who has the same qualifications as a "social worker" as defined at 41-3-102, MCA.

(3) "Centralized intake system" means the child abuse hotline and the process for screening reports and other communications which are received by the hotline as described in [Rule II].

(4) "Child abuse hotline" or "hotline" means a statewide, toll-free telephone service, including telephone communication device for the deaf (TDD) service, that the department operates 24 hours per day, seven days per week, to receive calls about child abuse or neglect.

(5) "Child abuse or neglect" has the same meaning as defined at 41-3-102, MCA.

(7) "Incoming communication" means any telephonic, written, or in-person contact to the department that is received by or ultimately directed to the child abuse hotline.

~~(3)~~ (8) "Parent" ~~means the child's biological, adoptive or step-parent~~ has the same meaning as provided in 41-3-102, MCA.

(9) "Report" means an incoming communication after it has been screened by the child abuse hotline and found to include information concerning the safety and welfare of a child.

(10) "Response" means the steps taken by a local child protective services office after it receives a report from the hotline to determine the status and safety of the child or children named in the report in order to take further action on reporting as described at 41-3-202, MCA.

(11) "Screen" or "screening" means an initial process of determining:

(a) if an incoming communication involves reasonable suspicion of child abuse or neglect; and

(b) the classification to be applied to the report.

AUTH: Sec. 2-4-201, 41-3-208 and 52-2-111, MCA
IMP: Sec. 41-3-102, 41-3-201, 41-3-202 and 41-3-302, MCA

4. New definitions are added to ARM 37.47.301 to supplement the proposed Rule I and Rule II for the Centralized Intake Bureau, which is set up to implement the provisions of 2-4-201 and 41-3-203, MCA. Some of the existing definitions in this rule are also being amended at this time to remove unnecessary repetition of statutory language and to conform the definitions to the current language of 41-3-102, MCA.

It is reasonably necessary to implement Rule I and Rule II for the purpose of establishing operating rules for the Centralized Intake Bureau. The Bureau was established for the purpose of implementing the 2001 Legislative amendments to 41-3-202, MCA

(Sec. 5, Ch. 311, L. 2001) (also known as Senate Bill 116) which allowed the Department to assess reports of child abuse and neglect and authorized it to use its discretion to determine the appropriate level of response to a report of alleged child abuse or neglect. This statutory change, among other changes, removed the obligation for a local county attorney or peace officer to investigate each and every report.

The Centralized Intake Bureau and Child Abuse Hotline were established under the authority granted to the Department by 2-4-201 and 41-3-208, MCA to implement the 2001 changes to 41-3-202, MCA. These changes authorized the Department to assess the information contained in a report of child abuse or neglect to determine if an investigation was necessary and make a determination regarding the level of response required. As described in the minutes of the House Committee on Human Services of March 14, 2001, SB 116 was supplemented by an appropriation in House Bill 2 for the creation of a mechanism to centralize the process of taking child abuse and neglect reports. The result was the creation of the Centralized Intake Bureau and Child Abuse Hotline, which has now been in operation since January 1, 2002.

The establishment of the Bureau has provided for availability of a trained social worker to receive reports of child abuse and neglect, toll-free, statewide, 24 hours a day, seven days a week and to provide current, accurate data for the allocation of resources in the field. The Bureau establishes statewide consistency in the identification of what constitutes a report of child abuse or neglect requiring investigation pursuant to 41-2-202, MCA. The Bureau also provides for more efficient use of Department resources.

Rule I is intended to clarify the role of the centralized intake bureau. The bureau promotes better service to the people of Montana in processing reports of child abuse and neglect. The toll-free hotline frees up workers in the field to be available to provide investigations and services needed to children and families already identified as needing those services, as opposed to keeping individuals in 41 county offices away from their work in the field in order to receive reports of child abuse and neglect from just their local area.

Rule II is intended to outline the policies and procedures under which the Child Abuse Hotline operates.

The Department has chosen to adopt CI rules at this time in order to provide information to the public on the manner in which reports of child abuse and neglect are handled and obtain statewide public comment on the system. Though the Department believes these rules are exempt under 2-2-201, MCA from notice and hearing requirements, it has chosen to seek input from the public on these proposed rules.

5. Interested persons may submit their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to Kathy Munson, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 202951, Helena, MT 59620-2951, no later than 5:00 p.m. on March 12, 2004. Data, views or arguments may also be submitted by facsimile (406)444-9744 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.

Russell Cater
Rule Reviewer

Mike Billings for
Director, Public Health
and Human Services

Certified to the Secretary of State February 2, 2004.

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

In the matter of the amendment of ARM 37.86.1506 pertaining to home infusion therapy services reimbursement	))))	NOTICE OF PROPOSED AMENDMENT NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On April 1, 2004, the Department of Public Health and Human Services proposes to amend the above-stated rule.

The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who need an alternative accessible format of this notice. If you need to request an accommodation, contact the department no later than 5:00 p.m. on March 4, 2004, to advise us of the nature of the accommodation that you need. Please contact Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210; telephone (406)444-5622; FAX (406)444-1970; Email dphhslegal@state.mt.us.

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

37.86.1506 HOME INFUSION THERAPY SERVICES, REIMBURSEMENT

(1) Subject to the requirements of these rules, the Montana medicaid program will pay for home infusion therapy services on a fee basis, as specified in the department's home infusion therapy services fee schedule. The department ~~hereby~~ adopts and incorporates by reference the home infusion therapy services fee schedule dated ~~July 2003~~ April 2004. A copy of the home infusion therapy services 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 specified fees are on a per day or a per dose basis as specified in the fee schedule. The fees are bundled fees which cover all home infusion therapy services as defined in ARM 37.86.1501.

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

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

3. The proposed amendment to ARM 37.86.1506 changes the reference date of the current fee schedule for home infusion therapy services from July 2003 to April 2004. This change is necessary because the medical procedure coding used to identify infusion therapy procedures is being changed. In the past Montana Medicaid home infusion therapy fee schedules used local

codes. The fee schedule in effect as of April 2004 will use standardized national codes known as the health care financing administration's common procedure coding system (HCPCS codes).

For many medical transaction purposes, including billing, medical procedures are described by a standardized numbering system that is referred to as medical code sets. The Health Insurance Portability and Accountability Act, 42 USC 1320d-1320d-8, (HIPAA) and federal regulations (45 CFR 162.1002) require health plans, including the states' Medicaid programs, to adopt standard medical code sets and coding guidelines. The intent of standardization is to improve cost effectiveness and avoid administrative duplication. Generally the Montana Medicaid program already uses the standard code sets, but a few services, such as home infusion therapy, use local coding. By this rule, the local codes will be changed to the standard codes on April 1, 2004.

The Department estimates this change will affect 20 providers. It should have no overall effect on revenue or reimbursement to the providers because the fee schedule revision is not intended to change the reimbursement rates. In a few cases there may be a slight change in the rate of reimbursement because the description of a particular service has resulted in its transfer into another service category.

4. Interested persons may submit their data, views or arguments concerning the proposed action in writing 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 March 12, 2004. Data, views or arguments may also be submitted by facsimile (406)444-9744 or by electronic mail via the Internet to dphhslegal@state.mt.us. The Department also maintains lists of persons interested in receiving notice of administrative rule changes. These lists are compiled according to subjects or programs of interest. For placement on the mailing list, please write the person at the address above.

5. If a person who is directly affected by the proposed action wishes to express data, views and arguments orally or in writing at a public hearing, that person must make a written request for a public hearing and submit such request, along with any written comments to Kathy Munson, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 202951, Helena, MT 59620-2951, by facsimile (406)444-9744 or by electronic mail via the Internet to dphhslegal@state.mt.us no later than 5:00 p.m. on March 12, 2004.

6. If the Department of Public Health and Human Services receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of those who are directly affected by the proposed action, from the Administrative Rule Review Committee of the legislature, from a governmental agency or subdivision, or from an association

having no less than 25 members who are directly affected by the proposed action, a hearing will be held at a later date and a notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be two based on the 20 providers affected by rules covering home infusion therapy services reimbursement.

Russell Cater
Rule Reviewer

Mike Billings for
Director, Public Health
and Human Services

Certified to the Secretary of State February 2, 2004.

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

In the matter of the adoption of new rules I through V, the amendment of ARM 37.106.2801, 37.106.2802, 37.106.2803, 37.106.2804, 37.106.2805, 37.106.2809, 37.106.2814, 37.106.2815, 37.106.2816, 37.106.2821, 37.106.2823, 37.106.2824, 37.106.2828, 37.106.2829, 37.106.2830, 37.106.2835, 37.106.2836, 37.106.2838, 37.106.2839, 37.106.2843, 37.106.2846, 37.106.2847, 37.106.2855, 37.106.2859, 37.106.2861, 37.106.2865, 37.106.2866, 37.106.2872, 37.106.2873 and 37.106.2874, and the repeal of ARM 37.106.2884 pertaining to the minimum standards for assisted living facilities	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION, AMENDMENT AND REPEAL

TO: All Interested Persons

1. On March 3, 2004, at 1:30 p.m., a public hearing will be held in the auditorium of the Department of Public Health and Human Services Building, 111 N. Sanders, Helena, Montana to consider the proposed adoption, 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 February 25, 2004, 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 adopted provide as follows:

RULE I CATEGORY C REQUIREMENTS (1) In addition to meeting all other requirements for assisted living facilities stated in this subchapter, if a secured distinct part or locked unit within a category C assisted living facility is designated for the exclusive use of residents with severe cognitive impairment, the facility must:

(a) staff the unit with direct care staff at all times there are residents in the unit;

(b) provide a separate dining area, at a ratio of 30 square feet per resident on the unit; and

(c) provide a common day or activities area, at a ratio of 30 square feet per resident on the unit. The dining area listed in (1)(b) may serve this purpose.

(2) Staff must remain awake, fully dressed and be available in the facility or on the unit at all times to provide supervision and care to the resident as well as to assist the resident in evacuation of the facility if a disaster occurs.

AUTH: Sec. 50-5-103, 50-5-223 and 50-5-227, MCA
IMP: Sec. 50-5-225, 50-5-226, 50-5-227 and 50-5-228, MCA

RULE II ADMINISTRATOR QUALIFICATIONS: CATEGORY C (1) An assisted living category C facility must be administered by a person who meets the conditions of ARM 37.106.2814 and has:

(a) three or more years experience in working in the field of geriatrics or caring for disabled residents in a licensed facility; or

(b) a documented combination of education and training that is equivalent to the experience required in (1), as determined by the department.

(2) At least eight of the 16 hours of annual continuing education the administrator must complete under ARM 37.106.2814(3) shall pertain to caring for persons with severe cognitive impairments.

AUTH: Sec. 50-5-103, 50-5-223 and 50-5-227, MCA
IMP: Sec. 50-5-225, 50-5-226, 50-5-227 and 50-5-228, MCA

RULE III DIRECT CARE STAFF: CATEGORY C (1) In addition to meeting all other requirements for direct care staff stated in this subchapter, assisted living category C facility direct care staff must receive additional documented training in:

(a) the facility or unit's philosophy and approaches to providing care and supervision for persons with severe cognitive impairment;

(b) the skills necessary to care for, intervene and direct residents who are unable to perform activities of daily living;

(c) techniques for minimizing challenging behavior including:

(i) wandering;

(ii) hallucinations, illusions and delusions; and

(iii) impairment of senses;

(d) therapeutic programming to support the highest possible level of resident function including:

(i) large motor activity;

(ii) small motor activity;

(iii) appropriate level cognitive tasks; and

(iv) social/emotional stimulation;

(e) promoting residents' dignity, independence, individuality, privacy and choice;

(f) identifying and alleviating safety risks to residents;
(g) identifying common side effects and untoward reactions to medications; and
(h) techniques for dealing with bowel and bladder aberrant behaviors.

AUTH: Sec. 50-5-103, 50-5-223 and 50-5-227, MCA
IMP: Sec. 50-5-225, 50-5-226, 50-5-227 and 50-5-228, MCA

RULE IV HEALTH CARE PLAN: CATEGORY C (1) Within 21 days of admission of a resident to an assisted living category C facility, a resident certification must be conducted, and a written health care plan shall be developed which meets the requirements of ARM 37.106.2875, and which also includes detailed assessment, therapeutic management and intervention techniques for the following behaviors and resident needs:
(a) memory;
(b) judgement;
(c) ability to care for oneself;
(d) ability to solve problems;
(e) mood and character changes;
(f) behavioral patterns;
(g) wandering; and
(h) dietary needs.

AUTH: Sec. 50-5-103, 50-5-223 and 50-5-227, MCA
IMP: Sec. 50-5-225, 50-5-226, 50-5-227 and 50-5-228, MCA

RULE V DISCLOSURES TO RESIDENTS: CATEGORY C (1) Each assisted living category C facility or unit must, prior to admission, inform the resident's guardian, or if no guardian has been appointed, inform the family member or other appropriate person acting on the resident's behalf in writing of the following:
(a) the overall philosophy and mission of the facility regarding meeting the needs of residents afflicted with severe cognitive impairment and the form of care or treatment offered;
(b) the process and criteria for move-in, transfer and discharge;
(c) the process used for resident assessment;
(d) the process used to establish and implement a health care plan, including how the health care plan will be updated in response to changes in the resident's condition;
(e) staff training and continuing education practices;
(f) the physical environment and design features appropriate to support the functioning of cognitively impaired residents;
(g) the frequency and type of resident activities;
(h) the level of involvement expected of families and the availability of support programs; and
(i) any additional costs of care or fees.
(2) The facility must obtain from the resident's legal representative a written acknowledgment that the information specified in (1) was provided. A copy of this written

acknowledgment must be kept as part of the permanent resident file.

AUTH: Sec. 50-5-103, 50-5-223 and 50-5-227, MCA
IMP: Sec. 50-5-225, 50-5-226, 50-5-227 and 50-5-228, MCA

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

37.106.2801 SCOPE (1) The rules in this chapter pertain to facilities which provide personal care services. These rules constitute the basis for the licensure of ~~personal care~~ assisted living facilities by the Montana department of public health and human services.

AUTH: Sec. 50-5-103, 50-5-226 and 50-5-227, MCA
IMP: Sec. 50-5-225, 50-5-226 and 50-5-227, MCA

37.106.2802 PURPOSE (1) The purpose of these rules is to establish standards for ~~personal care~~ assisted living A~~,~~ ~~and~~ B and C facilities ~~as found at 50-5-225, 50-5-226, 50-5-227 and 50-5-228~~. ~~Personal care or assisted~~ Assisted living facilities are a setting for frail, elderly or disabled persons which provide supportive health and service coordination to maintain the resident's independence, individuality, privacy and dignity.

(2) An ~~personal care~~ assisted living facility offers a suitable living arrangement for persons with a range of capabilities, disabilities, frailties and strengths. In general however, ~~personal care~~ assisted living is not appropriate for individuals who are incapable of responding to their environment, expressing volition, interacting or demonstrating any independent activity. For example, individuals in a persistent vegetative state who require long term nursing care should not be placed or cared for in an ~~personal care~~ assisted living facility.

AUTH: Sec. 50-5-103, 50-5-226 and 50-5-227, MCA
IMP: Sec. 50-5-225, 50-5-226 and 50-5-227, MCA

37.106.2803 APPLICATION OF RULES (1) Category A facilities must meet the requirements of ARM 37.106.2801 through ~~37.106.2866~~ 37.106.2871 ~~apply to both category A and category B facilities~~.

(2) Category B facilities must meet the requirements of ARM ~~37.106.2872~~ 37.106.2801 through ~~37.106.2885~~ 37.106.2886 ~~in addition to those contained in the rules cited in (1)~~.

(3) Category C facilities must meet the requirements of ARM 37.106.2801 through 37.106.2886 and [NEW RULES I through V].

AUTH: Sec. 50-5-103, 50-5-226 and 50-5-227, MCA
IMP: Sec. 50-5-225, 50-5-226 and 50-5-227, MCA

37.106.2804 APPLICATION OF OTHER RULES (1) To the extent

that other licensure rules in ARM Title 37, chapter 106, subchapter 3 conflict with the terms of ARM Title 37, chapter 106, subchapter 27, the terms of subchapter 27 will apply to ~~personal care~~ assisted living facilities.

AUTH: Sec. 50-5-103, 50-5-226 and 50-5-227, MCA
IMP: Sec. 50-5-225, 50-5-226 and 50-5-227, MCA

37.106.2805 DEFINITIONS The following definitions apply in this subchapter:

(1) "Activities of daily living" means tasks usually performed in the course of a normal day in ~~an individual's~~ a resident's life ~~including~~ that include eating, walking, mobility, dressing, grooming, bathing, ~~personal hygiene, mobility, transferring and~~ toileting and transferring.

(2) through (4) remain the same.

(5) "Assisted living facility" ~~means personal care facility~~ is defined at 50-5-101, MCA.

(6) through (8) remain the same.

(9) "Health care plan" means a written resident specific plan identifying what ongoing assistance with activities of daily living and health care services is provided on a daily or regular basis by a licensed health care professional to a category B or C resident under the orders of the resident's practitioner. Health care plans are developed as a result of a resident assessment performed by a licensed health care professional who may consult with a multi-disciplinary team.

(10) "Health care service" means any service provided to a resident of ~~a personal care~~ an assisted living facility that is ordered by a practitioner and required to be provided or delegated by a licensed, registered or certified health care professional. Any other service, whether or not ordered by a physician or practitioner, that is not required to be provided by a licensed, registered or certified health care professional is not to be considered a health care service.

(11) and (12) remain the same.

(13) "Licensed health care professional" means a licensed physician, ~~a~~ physician assistant-certified, ~~an~~ advanced practice registered nurse, or ~~a~~ registered nurse who is practicing within the scope of ~~their~~ the license issued by the department of labor and industry.

(14) remains the same.

(15) "Nursing care" means the practice of nursing as governed by Title 37, chapter 8, MCA and by administrative rules adopted by the board of nursing, found at ARM Title 8, chapter 32, subchapters 1 through 17.

(16) "Personal care" means the provision~~, by direct care staff, of assistance with the activities of daily living to the resident~~ of services and care for residents who need some assistance in performing the activities of daily living.

~~(17) "Personal care facility" or "facility" means a facility in which personal care is provided for either category A or category B residents under 50-5-227, MCA.~~

~~(18)~~ (17) "Practitioner" means an individual licensed by

the ~~professional and occupational licensing bureau in the~~ department of labor and industry ~~that~~ who has assessment, admission and ~~prescriptive~~ prescription authority.

(19) remains the same but is renumbered (18).

~~(20)~~ (19) "Resident" means anyone at least 18 years of age accepted for care in an ~~personal care~~ assisted living facility.

(21) remains the same but is renumbered (20).

~~(22)~~ (21) "Resident certification" means written certification by a licensed health care professional ~~whose work is unrelated to the daily operation of the facility~~ that the facility can adequately meet the particular needs of a resident. The licensed health care professional making the resident certification must have:

(a) visited the resident on site; and

(b) determined that the resident's health care status does not require services at another level of care.

(23) through (30) remain the same but are renumbered (22) through (29).

AUTH: Sec. 50-5-103, 50-5-226 and 50-5-227, MCA
IMP: Sec. 50-5-225, 50-5-226 and 50-5-227, MCA

37.106.2809 LICENSE APPLICATION PROCESS (1) Application for a license accompanied by the required fee shall be made to the Department of Public Health and Human Services, Quality Assurance Division, Licensure Bureau, 2401 Colonial Drive, P.O. Box 202953, Helena, MT 59620-2953 upon forms provided by the department and shall include full and complete information as to the identity of:

(a) each officer and director of the corporation, if organized as a corporation;

(b) each general partner if organized as a partnership or limited liability partnership;

(c) name of the administrator and administrator's qualifications;

(d) name, address and phone number of the management company if applicable;

(e) physical location address, mailing address and phone number of the facility;

(f) maximum number of A beds, ~~and~~ B beds and C beds in the facility;

(g) policies and procedures as outlined in ARM 37.106.2815; and

(h) the resident agreement intended to be used as outlined in ARM 37.106.2823.

(2) Every facility shall have distinct identification or name and shall notify the department in writing within 30 days prior to changing such identification or name.

(3) Each ~~personal care~~ assisted living facility shall promptly report to the department any plans to relocate the facility at least 30 days prior to effecting such a move.

(4) In the event of a facility change of ownership, the new owners shall provide the department the following:

(a) a completed application with fee;

(b) a copy of the fire inspection conducted within the past year;

(c) policies and procedures as prescribed in ARM 37.106.2815 ~~of this chapter~~;

(i) if applicable, a written statement indicating that the same policies and procedures will be used is required;

(d) a copy of the resident agreement as outlined in ARM 37.106.2823 to be used; and

(e) documentation of compliance with ARM 37.106.2814.

(5) Under a change of ownership, the seller shall return to the department the ~~personal care~~ assisted living license under which the facility had been previously operated. This information must be sent to the Department of Public Health and Human Services, Quality Assurance Division, Licensure Bureau, 2401 Colonial Drive, P.O. Box 202953, Helena, MT 59620-2953.

AUTH: Sec. 50-5-103, 50-5-226 and 50-5-227, MCA
IMP: Sec. 50-5-225, 50-5-226 and 50-5-227, MCA

37.106.2814 ADMINISTRATOR (1) Each ~~personal care~~ assisted living facility shall employ an administrator. The administrator is responsible for operation of the ~~personal care~~ assisted living facility at all times and shall ensure 24-hour supervision of the residents.

(2) ~~No personal care facility may employ an~~ The administrator ~~who does not~~ must meet the following minimum requirements:

(a) ~~the administrator must hold a current Montana~~ be currently licensed as a nursing home administrator ~~license; or~~ in Montana or another state; or

~~(b) have proof of holding a current and valid nursing home administrator license from another state; or~~

~~(c)~~ (b) have successfully completed all of the self study modules of "The Management Library for Administrators and Executive Directors", a component of the assisted living training system published by the assisted living federation of America university (ALFA)~~; or~~ and maintain current ALFA certification; or

~~(i)~~ (c) be enrolled in and complete the self study course referenced ~~above~~ in (2)(b), within ~~a~~ six months from hire. ~~successful completion; and~~

~~(d)~~ (3) ~~the~~ The administrator must show evidence of at least 16 contact hours of annual continuing education ~~which shall be~~ relevant to the individual's duties and responsibilities as administrator of the assisted living facility.

(a) A nursing home administrator license or the ALFA certification may be used for the required 16 hours of annual continuing education for the calendar year in which the license or certification was initially granted.

~~(3)~~ (4) In the absence of the administrator, a staff member must be designated to oversee the operation of the facility during the administrator's absence. The administrator or designee shall be in charge, on call and physically available

on a daily basis as needed, and shall ensure there are sufficient, qualified staff so that the care, well being, health and safety needs of the residents are met at all times. ~~The administrator or designee may not be a resident of the facility.~~

(a) If the administrator will be absent from the facility for more than 30 continuous days, the department shall be given written notice of the individual who has been appointed the designee. The appointed designee must meet all the requirements of ARM 37.106.2814(1) and (2).

(5) The administrator or designee may not be a resident of the facility.

(a) A designee must:

(i) be age 18 or older; and

(ii) have demonstrated competencies required to assure protection of the safety and physical, mental and emotional health of residents.

(4) and (5) remain the same but are renumbered (6) and (7).

~~(6)~~ (8) The administrator or designee shall initiate transfer of a resident through the resident and/or the resident's practitioner, appropriate agencies or the resident's personal representative or responsible party when the resident's condition is not within the scope of services of the ~~personal care~~ assisted living facility.

(7) remains the same but is renumbered (9).

~~(8)~~ (10) The administrator or designee must ensure that a resident who is ambulatory only with mechanical assistance is:

(a) able to safely self-evacuate the facility without the aid of an elevator or similar mechanical lift~~, or~~;

(b) have the ability to move past a building code approved occupancy barrier or smoke barrier into an adjacent wing or building section~~,~~; or

(c) reach and enter an approved area of refuge.

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

~~(11)~~ (13) The owner of an ~~personal care~~ assisted living facility may serve as administrator, or in any staff capacity, if they meet the qualifications specified in these rules.

AUTH: Sec. 50-5-103, 50-5-226 and 50-5-227, MCA
IMP: Sec. 50-5-225, 50-5-226 and 50-5-227, MCA

37.106.2815 WRITTEN POLICIES AND PROCEDURES (1) A policy and procedure manual for the organization and operation of the ~~personal care~~ assisted living facility shall be developed, implemented, kept current and reviewed as necessary to assure the continuity of care and day to day operations of the facility. Each review of the manual shall be documented, and the manual shall be available in the facility to staff, residents, residents' legal representatives and representatives of the department at all times.

(2) The manual must include an organizational chart delineating the lines of authority, responsibility and accountability for the administration and resident care services of the facility.

AUTH: Sec. 50-5-103, 50-5-226 and 50-5-227, MCA
IMP: Sec. 50-5-225, 50-5-226 and 50-5-227, MCA

37.106.2816 ~~PERSONAL CARE~~ ASSISTED LIVING FACILITY STAFFING (1) The administrator shall develop minimum qualifications for the hiring of direct care staff and support staff.

(2) The administrator shall develop policies and procedures for screening, hiring and assessing staff which include practices that assist the employer in identifying employees that may pose risk or threat to the health, safety or welfare of any resident and provide written documentation of findings and the outcome in the employee's file.

(3) New employees shall receive orientation and training in areas relevant to the employee's duties and responsibilities, including:

(a) an overview of the facility's policies and procedures manual in areas relevant to the employee's job responsibilities;

(b) a review of the employee's job description;

(c) services provided by the facility;

(d) the Montana Elder and Persons with Developmental Disabilities Abuse Prevention Act found at 52-3-801, MCA; and

(e) the Montana Long-Term Care Resident Bill of Rights Act found at 50-5-1101, MCA.

(4) In addition to meeting the requirements of (3), direct care staff shall be trained to perform the services established in each resident service plan.

(5) Direct care staff shall be trained in the use of the Heimlich maneuver and basic first aid. If the facility offers cardiopulmonary resuscitation (CPR), at least one person per shift shall hold a current CPR certificate.

(6) The following rules must be followed in staffing the ~~personal care~~ assisted living facility:

(a) direct care staff shall have knowledge of resident's needs and any events about which the employee should notify the administrator or their designated representative;

(b) the facility shall have a sufficient number of qualified staff on duty 24 hours a day to meet the scheduled and unscheduled needs of each resident, to respond in emergency situations, and all related services, including, but not limited to:

(i) maintenance of order, safety and cleanliness;

(ii) assistance with medication regimens;

(iii) preparation and service of meals;

(iv) housekeeping services and assistance with laundry; and

(v) assurance that each resident receives the supervision and care required by the service or health care plan to meet their basic needs;

(c) an individual on each work shift shall have keys to all relevant resident care areas and access to all items needed to provide appropriate resident care;

(d) direct care staff may not perform any service for

which they have not received appropriate documented training; and

(e) facility staff may not perform any health care service that has not been appropriately delegated under the Montana Nurse Practice Act or in the case of licensed health care professionals that is beyond the scope of their license.

(7) Employees and volunteers may perform support services, such as cooking, housekeeping, laundering, general maintenance and office work after receiving an orientation to the appropriate sections of the facility's policy and procedure manual. Any person providing direct care, however, is subject to the orientation and training requirements for direct care staff ~~listed above~~.

(8) Volunteers may be utilized in the facility, but may not be included in the facility's staffing plan in lieu of facility employees. In addition, the use of volunteers is subject to the following:

(a) volunteers must be supervised and be familiar with resident rights and the facility's policy and procedures which apply to their duties as a volunteer; and

(b) volunteers shall not assist with medication administration, delegated nursing tasks, bathing, toileting or transferring.

(9) Residents may participate voluntarily in performing household duties and other tasks suited to the individual resident's needs and abilities, but residents may not be used as substitutes for required staff or be required to perform household duties or other facility tasks.

AUTH: Sec. 50-5-103, 50-5-226 and 50-5-227, MCA
IMP: Sec. 50-5-225, 50-5-226 and 50-5-227, MCA

37.106.2821 RESIDENT APPLICATION AND NEEDS ASSESSMENT PROCEDURE (1) All facilities must develop a written application procedure for admission to the facility which includes the prospective resident's name and address, sex, date of birth, marital status and religious affiliation (if volunteered).

(2) The facility shall determine whether a potential resident meets the facility's admission requirements and that the resident is appropriate to the facility's license endorsement as either a category A, ~~or~~ category B or category C facility.

(3) Prior to admission the facility shall conduct an initial resident needs assessment to determine the prospective resident's needs.

~~(4)~~(5) The department shall collect a fee of $100 from a prospective resident, resident or facility appealing a rejection or relocation decision made pursuant to ARM 37.106.2821, to cover the cost of the independent nurse resident needs assessment.

~~(5)~~(4) The initial resident's needs assessment must include documentation of the following:

(a) cognitive patterns~~:~~ such as short-term memory, long

term memory, memory recall, decision making change in cognitive status/awareness or thinking disorders;

(b) sensory patterns~~:~~ such as hearing, ability to understand others, ability to make self understood and ability to see in adequate light;

(c) activities of daily living (ADL) functional performance~~:~~ such as ability to transfer, locomotion, mobility devices, dressing, eating, use of toilet, bladder continence, bowel continence, continence appliance/programs, grooming and bathing;

(d) mood and behavior patterns, sadness or anxiety displayed by resident, wandering, verbally abusive, physically abusive and socially inappropriate/disruptive behavior;

(e) health problems/accidents;

(f) weight/nutritional status~~:~~ such as current weight and nutritional complaints;

(g) skin problems;

(h) medication use~~:~~ such as takes prescription and/or over-the-counter, recent changes, currently taking an antibiotic, antipsychotic use, antianxiety/hypnotic use and antidepressant use; and

(i) use of restraints, safety or assistive devices.

AUTH: Sec. 50-5-103, 50-5-226 and 50-5-227, MCA
IMP: Sec. 50-5-225, 50-5-226 and 50-5-227, MCA

37.106.2823 RESIDENT AGREEMENT (1) ~~A personal care~~ An assisted living facility shall enter into a written resident agreement with each prospective resident prior to admission to the ~~personal care~~ assisted living facility. The agreement shall be signed and dated by a facility representative and the prospective resident or their legal representative. The facility shall provide the prospective resident or their legal representative a copy of the agreement and shall explain the agreement to them. The agreement shall include at least the following items:

(a) the criteria for requiring transfer or discharge of the resident to another level of care;

(b) a statement explaining the availability of skilled nursing or other professional services from a third party provider to a resident in the facility;

(c) the extent that specific assistance will be provided by the facility as specified in the resident service plan~~.~~;

(d) a statement explaining the resident's responsibilities including but not limited to house rules, the facility grievance policy, facility smoking policy and policies regarding pets;

(e) a listing of specific charges to be incurred for the resident's care, frequency of payment and facility rules relating to nonpayment of services and security deposits, if any are required;

(f) a statement of all charges, fines, penalties or late fees that shall be assessed against the resident;

(g) a statement that the agreed upon facility rate shall not be changed unless 30 day advance written notice is given to

the resident and/or their legal representative; and

(h) an explanation of the ~~personal care~~ assisted living facility's policy for refunding payment in the event of the resident's absence, discharge or transfer from the facility and the facility's policy for refunding security deposits.

(2) When there are changes in services, financial arrangements, or in requirements governing the resident's conduct and care, a new resident/provider agreement must be executed or the original agreement must be updated by addendum and signed and dated by the resident or their representative and by the facility representative.

AUTH: Sec. 50-5-103, 50-5-226 and 50-5-227, MCA
IMP: Sec. 50-5-225, 50-5-226 and 50-5-227, MCA

37.106.2824 INVOLUNTARY DISCHARGE CRITERIA (1) Residents shall be given a written 30 day notice when they are requested to move-out. The administrator or designee shall initiate transfer of a resident through the resident's physician or practitioner, appropriate agencies, or the resident, resident's personal representative or responsible party when:

(a) the resident's needs exceed the level of ADL services the facility provides;

(b) the resident exhibits behavior or actions that repeatedly and substantially interferes with the rights, health, safety or well being of other residents and the facility has tried prudent and reasonable interventions;

(i) documentation of the interventions attempted by the facility shall become part of the resident record;

(c) the resident, due to severe cognitive decline, is not able to respond to verbal instructions, recognize danger, make basic care decisions, express needs or summon assistance, except as permitted by ~~ARM 37.106.2884~~ [NEW RULES I through V];

(d) the resident has a medical condition that is complex, unstable or unpredictable and treatment cannot be appropriately developed in the ~~personal care~~ assisted living environment;

(e) the resident has had a significant change in condition that requires medical or psychiatric treatment outside the facility and at the time the resident is to be discharged from that setting to move back into the ~~personal care~~ assisted living facility, appropriate facility staff have re-evaluated the resident's needs and have determined the resident's needs exceed the ~~facilities~~ facility's level of service. Temporary absence for medical treatment is not considered a move-out; or

(f) the resident has failed to pay charges after reasonable and appropriate notice.

(2) The resident 30 day written move-out notice shall, at a minimum, include the following:

(a) the reason for transfer or discharge;

(b) the effective date of the transfer or discharge;

(c) the location to which the resident is to be transferred or discharged;

(d) a statement that the resident has the right to appeal the action to the department; and

(e) the name, address and telephone number of the state long term care ombudsman.

(3) A resident may be involuntarily discharged in less than 30 days for the following reasons:

(a) if a resident has a medical emergency;

(b) the resident exhibits behavior that poses an immediate danger to self or others; or

(c) if the resident has not resided in the facility for 30 days.

(4) A resident has a right to a fair hearing to contest an involuntary transfer or discharge.

(a) Involuntary transfer or discharge is defined in ARM 37.106.2805.

(b) A resident may exercise his or her right to appeal an involuntary transfer or discharge by submitting a written request for fair hearing to the Department of Public Health and Human Services, Quality Assurance Division, Office of Fair Hearings, P.O. Box 202953, 2401 Colonial Drive, Helena, MT 59620-2953, within 30 days of notice of transfer or discharge.

(c) The parties to a hearing regarding a contested transfer or discharge are the facility and the resident contesting the transfer or discharge. The department is not a party to such a proceeding, and relief may not be granted to either party against the department in a hearing regarding a contested transfer or discharge.

(d) Hearings regarding a contested transfer or discharge shall be conducted in accordance with ARM 37.5.304, 37.5.305, 37.5.307, 37.5.313, 37.5.322, 37.5.325 and 37.5.334, and a resident shall be considered a claimant for purposes of these ~~sections~~ rules.

(e) The request for appeal of a transfer or discharge does not automatically stay the decision of the facility to transfer or discharge the resident. The hearing officer may, for good cause shown, grant a resident's request to stay the facility's decision pending a hearing.

(f) The hearing officer's decision following a hearing shall be the final decision for the purposes of judicial review under ARM 37.5.334.

AUTH: Sec. 50-5-103, 50-5-226 and 50-5-227, MCA
IMP: Sec. 50-5-225, 50-5-226 and 50-5-227, MCA

37.106.2828 RESIDENT RIGHTS (1) The facility shall comply with the Montana Long-Term Care Residents' Bill of Rights, found at 50-5-1101, et seq., MCA. This includes the posting of the facility's statement of resident rights in a conspicuous place. Prior to or upon admission of a resident, the ~~personal care~~ assisted living facility shall explain and provide the resident with a copy of the Montana Long-Term Care Residents' Bill of Rights.

(2) Residents have the right to execute living wills and other advance health care directives, and to have those advance directives honored by the facility in accordance with law.

(3) Prior to admission of a resident, the ~~personal care~~

assisted living facility must inform a potential resident in writing of:

(a) their right (at the individual's option) to make decisions regarding medical care, including the right to accept or refuse medical treatment, and the right to formulate an advance directive; and

(b) explain and provide a copy of the facility's policies regarding advance directives, including a policy that the facility cannot implement an advance directive, either because of a conscientious objection (under 50-9-203, MCA), or, for some other reason as stated in facility policy (under 50-9-203, MCA).

(4) If the facility policy is not to implement an advanced directive the facility shall:

(a) take all reasonable steps to transfer the resident to a facility which has no prohibition against implementation of advance directives; or

(b) shall inform the resident in writing of any limitations placed upon implementation of the resident's advance directive by the facility.

(5) ~~A personal care~~ An assisted living facility may not require an execution of an advance directive as a condition for admission.

AUTH: Sec. 50-5-103, 50-5-226 and 50-5-227, MCA
IMP: Sec. 50-5-225, 50-5-226 and 50-5-227, MCA

37.106.2829 RESIDENT FILE (1) At the time of admission, a separate file must be established for each category A, ~~and~~ category B or category C resident. This file must be maintained on site in a safe and secure manner and must preserve the resident's confidentiality.

(2) The file shall include at least the following:

(a) the resident application form;

(b) a completed resident agreement, in accordance with ARM 37.106.2823;

(c) updates of resident/provider agreements, if any;

(d) the service plan for all category A residents;

(e) resident's weight on admission and at least annually thereafter for category A residents or more often as the resident, or the resident's licensed health care professional, determine a weight check is necessary;

(f) reports of significant events including:

(i) the provider's response to the event;

(ii) steps taken to safeguard the resident; and

(iii) facility contacts with family members or another responsible party;

(g) a record of communication between the facility and the resident or their representative if there has been a change in the resident's status or a need to discharge; and

(h) the date and circumstances of the resident's final transfer, discharge, or death, including notice to responsible parties and disposition of personal possessions.

(3) The resident file must be kept current. The file must be retained for a minimum of three years following the

resident's discharge, transfer or death.

AUTH: Sec. 50-5-103, 50-5-226 and 50-5-227, MCA
IMP: Sec. 50-5-225, 50-5-226 and 50-5-227, MCA

37.106.2830 THIRD PARTY SERVICES (1) A resident may purchase third party services provided by an individual or entity, licensed if applicable, to provide health care services under arrangements made directly with the resident or resident's legal representative under the provisions of 50-5-225(2)(a) and (b), MCA.

(2) The resident or resident's legal representative assumes all responsibility for arranging for the resident's care through appropriate third parties.

(3) Third party services shall not compromise the ~~personal care~~ assisted living facility operation or create a danger to others in the facility.

AUTH: Sec. 50-5-103, 50-5-226 and 50-5-227, MCA
IMP: Sec. 50-5-225, 50-5-226 and 50-5-227, MCA

37.106.2835 RESIDENT UNITS (1) A resident of ~~a personal care~~ an assisted living facility who uses a wheelchair or walker for mobility, or who is a category B or category C resident, must not be required to use a bedroom on a floor other than the first floor of the facility that is entirely above the level of the ground, unless the facility is designed and equipped in such a manner that the resident can move between floors or to an adjacent ~~uniform building code~~ international conference of building code officials approved occupancy/fire barrier without assistance and the below grade resident occupancy is or has been approved by the local fire marshal.

(2) Each resident bedroom must satisfy the following requirements:

(a) in a previously licensed facility, no more than four residents may reside in a single bedroom;

(b) in new construction and facilities serving residents with severe cognitive impairment, occupancy must be limited to no more than two residents per room;

(c) exclusive of toilet rooms, closets, lockers, wardrobes, alcoves, or vestibules, each single bedroom must contain at least 100 square feet, and each multi-bedroom must contain at least 80 square feet per resident;

(d) each resident must have a wardrobe, locker, or closet with minimum clear dimensions of one foot 10 inches in depth by one foot eight inches in width, with a clothes rod and shelf placed to permit a vertically clear hanging space of five feet for full length garments;

(e) a sufficient number of electrical outlets must be provided in each resident bedroom and bathroom to meet staff and resident needs without the use of extension cords;

(f) each resident bedroom must have operable exterior windows which meet the approval of the local fire or building code authority having jurisdiction ~~and may not be below ground~~

~~level grade~~;

(g) the resident's room door may be fitted with a lock if approved in the resident service plan, as long as facility staff have access to a key at all times in case of an emergency. Deadbolt locks are prohibited on all resident rooms. Resident room door locks must be operable, on the resident side of the door, with a single motion and may not require special knowledge for the resident to open;

(h) kitchens or kitchenettes in resident rooms are permitted if the resident's service plan permits unrestricted use and the cooking appliance can be removed or disconnected if the service plan indicates the resident is not capable of unrestricted use.

(3) A hallway, stairway, unfinished attic, garage, storage area or shed or other similar area of an ~~personal care~~ assisted living facility must not be used as a resident bedroom. Any other room must not be used as a resident bedroom if it:

(a) can only be reached by passing through a bedroom occupied by another resident;

(b) does not have an operable window to the outside; or

(c) is used for any other purpose.

(4) Any provision of this rule may be waived at the discretion of the department if conditions in existence prior to the adoption of this rule or construction factors would make compliance extremely difficult or impossible and if the department determines that the level of safety to residents and staff is not diminished.

AUTH: Sec. 50-5-103, 50-5-226 and 50-5-227, MCA
IMP: Sec. 50-5-225, 50-5-226 and 50-5-227, MCA

37.106.2836 FURNISHINGS (1) Each resident in ~~a personal care~~ an assisted living facility must be provided the following at a minimum by the facility:

(a) individual towel rack;

(b) handicap accessible mirror mounted or secured to allow for convenient use by both wheelchair bound residents and ambulatory persons;

(c) clean, flame-resistant or non-combustible window treatments or equivalent, for every bedroom window;

(d) an electric call system comprised of a fixed manual, pendant cordless or two way interactive, UL or FM listed system, must be provided connecting resident rooms to the care staff center or staff pagers; and

(e) for each multiple-bed room, either flame-resistant privacy curtains for each bed or movable flame-resistant screens to provide privacy upon request of a resident.

(2) Following the discharge of a resident, all of the equipment and bedding used by that resident and owned by the facility must be cleaned and sanitized.

AUTH: Sec. 50-5-103, 50-5-226 and 50-5-227, MCA
IMP: Sec. 50-5-225, 50-5-226 and 50-5-227, MCA

37.106.2838 RESIDENT TOILETS AND BATHING (1) The facility shall provide:

(a) at least one toilet for every four residents;

(b) one bathing facility for every 12 residents; and

(c) a toilet and sink in each toilet room.

(2) All resident rooms with toilets or shower/bathing facilities must have an operable window to the outside or must be exhausted to the outside by a mechanical ventilation system.

(3) Each resident room bathroom shall:

(a) be in a separate room with a toilet. A sink need not be in the bathroom but shall be in close proximity to the toilet. A shower or tub is not required if the facility utilizes a central bathing unit or units; and

(b) have at least one towel bar per resident, one toilet paper holder, one accessible mirror and storage for toiletry items.

(4) All doors to resident bathrooms shall open outward or slide into the wall and shall be unlockable from the outside.

(5) In rooms used by ~~severe cognitively impaired~~ category C or other special needs residents, the bathroom does not have to be in a separate room and does not require a door.

(6) Each resident must have access to a toilet room without entering another resident's room or the kitchen, dining or living areas.

(7) Each resident bathroom or bathing room shall have an emergency call system reporting to the staff location with an audible signal. The device must be silenced at the location only and shall be accessible to an individual collapsed on the floor.

(8) Any provision of this rule may be waived at the discretion of the department if conditions in existence prior to the adoption of this rule or construction factors would make compliance extremely difficult or impossible and if the department determines that the level of safety to residents and staff is not diminished.

AUTH: Sec. 50-5-103, 50-5-226 and 50-5-227, MCA
IMP: Sec. 50-5-225, 50-5-226 and 50-5-227, MCA

37.106.2839 ENVIRONMENTAL CONTROL (1) The ~~personal care~~ assisted living facility shall provide a clean, comfortable and well maintained home that is safe for residents and employees at all times.

(2) A minimum of 10 foot candles of light must be available in all rooms, with the following exceptions:

(a) all reading lamps must have a capacity to provide a minimum of 30 foot candles of light;

(b) all toilet and bathing areas must be provided with a minimum of 30 foot candles of light;

(c) general lighting in food preparation areas must be a minimum of 30 foot candles of light; and

(d) hallways must be illuminated at all times by at least a minimum of five foot candles of light at the floor.

(3) Temperature in resident rooms, bathrooms, and common

areas must be maintained at a minimum of 68°F.

(4) A resident's ability to smoke safely shall be evaluated and addressed in the resident's service or health care plan. If the facility permits resident smoking:

(a) the rights of non-smoking residents shall be given priority in settling smoking disputes between residents; and

(b) if there is a designated smoking area within the facility, it shall be designed to keep all contiguous, adjacent or common areas smoke free.

(5) An ~~personal care~~ assisted living facility may designate itself as non-smoking provided that adequate notice is given to all residents or all applicants in the facility residency agreement.

AUTH: Sec. 50-5-103, 50-5-226 and 50-5-227, MCA
IMP: Sec. 50-5-225, 50-5-226 and 50-5-227, MCA

37.106.2843 PERSONAL CARE SERVICES (1) Personal care assistance must be provided to each resident in accordance with their established agreement and needs. Assistance must include, but is not limited to assisting with:

(a) personal grooming such as bathing, hand washing, shaving, shampoo and hair care, nail filing or trimming and dressing;

(b) oral hygiene or denture care;

(c) toileting and toilet hygiene;

(d) eating;

(e) the use of crutches, braces, walkers, wheelchairs or prosthetic devices, including vision and hearing aids; and

(f) self-medication.

(2) Evidence that the facility is meeting each resident's needs for personal care services include the following outcomes for residents:

(a) ~~P~~physical well being of the resident means the resident:

(i) has clean and groomed hair, skin, teeth and nails;

(ii) is nourished and hydrated;

(iii) is free of pressure sores, skin breaks or tears, chaps and chaffing;

(iv) is appropriately dressed for the season in clean clothes;

(v) ~~minimizing the~~ risk of accident, injury and infection has been minimized; and

(vi) receives prompt emergency care for illnesses, injuries and life threatening situations~~.~~;

(b) ~~B~~behavioral and emotional well being of the resident includes:

(i) opportunity to participate in age appropriate activities that are meaningful to the resident if desired;

(ii) sense of security and safety;

(iii) reasonable degree of contentment; and

(iv) feeling of stable and predictable environment~~.~~;

(c) ~~In agreement that the resident (~~unless medically

~~contradicted with~~ required by a physician or other practitioner's written order~~)~~ is:

(i) free to go to bed at the time desired;

(ii) free to get up in the morning at the time desired;

(iii) free to have visitors;

(iv) granted privacy;

(v) assisted to maintain a level of self care and independence;

(vi) assisted as needed to have good oral hygiene;

(vii) made as comfortable as possible by the facility;

(viii) free to make choices and assumes the risk of those choices;

(ix) fully informed of the services they can ~~be~~ expect~~ed~~ to be provided by the facility;

(x) free of abuse, neglect and exploitation;

(xi) ~~is~~ treated with dignity; and

(xii) ~~has~~ given the opportunity to participate in activities, if desired.

(3) In the event of accident or injury to a resident requiring emergency medical, dental or nursing care or, in the event of death, the ~~personal care~~ assisted living facility shall:

(a) immediately make arrangements for emergency care or transfer to an appropriate place for treatment;

(b) immediately notify the resident's practitioner and next of kin or responsible party.

(4) A resident shall receive skin care that meets the following standards:

(a) the facility shall practice preventive measures to identify those at risk and maintain a resident's skin integrity. Risk factors include:

(i) skin redness lasting more than 30 minutes after pressure is relieved from a bony prominence, such as hips, heels, elbows or coccyx; and

(ii) malnutrition/dehydration, whether secondary to poor appetite or another disease process; and

(b) an area of broken or damaged skin must be reported within 24 hours to the resident's practitioner. Treatment must be as ordered by the resident's practitioner.

(5) A person ~~with an open wound or having a pressure or stasis ulcer requiring treatment by a health care professional~~ with a stage 3 or 4 pressure ulcer may not be admitted or permitted to remain in a category A facility.

(6) The facility shall ensure records of observations, treatments and progress notes are entered in the resident record and that services are in accordance with the resident health care plan.

(7) Direct care staff shall receive training related to maintenance of skin integrity and the prevention of pressure sores, by:

(a) keeping residents clean and dry;

(b) providing residents with clean and dry bed linens;

(c) keeping residents well hydrated;

(d) maintaining or restoring healthy nutrition; and

(e) keeping the resident physically active and avoiding the overuse of wheelchairs, sitting for long periods of time, and other sources of skin breakdown in ADL~~'~~s.

AUTH: Sec. 50-5-103, 50-5-226 and 50-5-227, MCA
IMP: Sec. 50-5-225, 50-5-226 and 50-5-227, MCA

37.106.2846 MEDICATIONS: STORAGE AND DISPOSAL (1) With the exception of resident medication organizers as discussed in ARM ~~37.106.2847~~ 37.106.2848, all medication must be stored in the container dispensed by the pharmacy or in the container in which it was purchased in the case of over-the-counter medication, with the label intact and clearly legible.

(2) Medications that require refrigeration must be segregated from food items and stored within the temperature range specified by the manufacturer.

(3) All medications administered by the facility shall be stored in locked containers in a secured environment such as a medication room or medication cart. Residents who are responsible for their own medication administration must be provided with a secure storage place within their room for their medications. If the resident is in a private room, locking the door when the resident leaves will suffice.

(4) Over-the-counter medications or home remedies requested by the resident shall be reviewed by the resident's practitioner or pharmacist as part of the development of a resident service plan. Residents may keep over-the-counter medications in their room with a written order by the resident's practitioner.

(5) The facility shall develop and implement a policy for lawful disposal of unused, outdated, discontinued or recalled resident medications. The facility shall return a resident's medication to the resident or resident's legal representative upon discharge.

AUTH: Sec. 50-5-103, 50-5-226 and 50-5-227, MCA
IMP: Sec. 50-5-225, 50-5-226 and 50-5-227, MCA

37.106.2847 MEDICATIONS: PRACTITIONER ORDERS

(1) Medication and treatment orders shall be carried out as prescribed. The resident has the right to consent to or refuse medications and treatments. The practitioner shall be notified if a resident refuses consent to an order. Subsequent refusals to consent to an order shall be reported as required by the practitioner.

(2) A prescription medication for which the dose or schedule has been changed by the practitioner must be ~~returned to the pharmacy for relabeling~~ relabeled by an appropriate licensed health care professional.

AUTH: Sec. 50-5-103, 50-5-226 and 50-5-227, MCA
IMP: Sec. 50-5-225, 50-5-226 and 50-5-227, MCA

37.106.2855 INFECTION CONTROL (1) The ~~personal care~~

assisted living facility must establish and maintain infection control policies and procedures sufficient to provide a safe environment and to prevent the transmission of disease. Such policies and procedures must include, at a minimum, the following requirements:

(a) any employee contracting a communicable disease that is transmissible to residents through food handling or direct care must not appear at work until the infectious diseases can no longer be transmitted. The decision to return to work must be made by the administrator or designee, in accordance with the policies and procedures instituted by the facility;

(b) if, after admission to the facility, a resident is suspected of having a communicable disease that would endanger the health and welfare of other residents, the administrator or designee~~,~~ must contact the resident's practitioner and assure that appropriate safety measures are taken on behalf of that resident and the other residents; and

(c) all staff shall use proper hand washing technique after providing direct care to a resident.

(2) The facility, where applicable, shall comply with applicable statutes and rules regarding the handling and disposal of hazardous waste.

AUTH: Sec. 50-5-103, 50-5-226 and 50-5-227, MCA
IMP: Sec. 50-5-225, 50-5-226 and 50-5-227, MCA

37.106.2859 PETS (1) Unless the facility disallows it, residents in an ~~personal care~~ assisted living facility may keep household pets, as permitted by local ordinance, subject to the following provisions:

(a) pets must be clean and disease-free;

(b) the immediate environment of pets must be kept clean;

(c) birds must be kept in appropriate enclosures, unless the bird is a companion breed maintained and supervised by the owner; and

(d) pets that are kept at the facility shall have documentation of current vaccinations, including rabies, as appropriate.

(2) The administrator or designee shall determine which pets may be brought into the facility. Upon approval, family members may bring pets to visit, if the pets are clean, disease-free and vaccinated as appropriate.

(3) Facilities that allow birds shall have procedures that protect residents, staff and visitors from psittacosis, ensure minimum handling of droppings and require droppings to be placed in a plastic bag for disposal.

(4) Prior to admission of companion birds, documentation of the import, out-of-state veterinarian health certificate and import permit number provided by the pet store or breeder will be provided and maintained in the owners records. If the health certificate and import permit number is not available, or if the bird was bred in-state, a certificate from a veterinarian stating that the bird is disease free is required prior to residency. If the veterinarian certificate cannot be obtained by

the move-in date the resident may keep the bird enclosed in a private single occupancy room, using good hand washing after handling the bird and bird droppings until the veterinarian examination is obtained.

(5) Pets may not be permitted in food preparation, storage or dining areas during meal preparation time or during meal service or in any area where their presence would create a significant health or safety risk to others.

AUTH: Sec. 50-5-103, 50-5-226 and 50-5-227, MCA
IMP: Sec. 50-5-225, 50-5-226 and 50-5-227, MCA

37.106.2861 LAUNDRY (1) Laundry service must be provided by the facility, either on the premises or off the facility site.

(2) If an ~~personal care~~ assisted living facility processes its laundry on the premises it must:

(a) equip the laundry room with a mechanical washer and a dryer vented to the outside, hand washing facilities, a fresh air supply and a hot water supply system which supplies the washer with water of at least 110°F during each use;

(b) have ventilation in the sorting, holding and processing area that shall be adequate to prevent heat and odor build-up;

(c) dry all bed linen, towels and washcloths in a dryer; and

(d) ensure that facility staff handling laundry wash their hands both after working with soiled laundry and before they handle clean laundry.

(3) Resident's personal clothing must be laundered by the facility unless the resident or the resident's family accepts this responsibility. If the facility launders the resident's personal clothing, the facility is responsible for returning the clothing. Residents capable of laundering their own personal clothing and wishing to do so shall be provided the facilities and necessary assistance by the facility.

(4) The facility shall provide a supply of clean linen in good condition at all times that is sufficient to change beds often enough to keep them clean, dry and free from odors. Facility provided linens must be changed at least once a week and more often if the linens become dirty. In addition, the facility must ensure that each resident is supplied with clean towels and washcloths that are changed at least twice a week, a moisture-proof mattress cover and mattress pad, and enough blankets to maintain warmth and comfort while sleeping.

(5) Residents may use their own linen in the facility if they choose.

AUTH: Sec. 50-5-103, 50-5-226 and 50-5-227, MCA
IMP: Sec. 50-5-225, 50-5-226 and 50-5-227, MCA

37.106.2865 PHYSICAL PLANT (1) ~~A personal care~~ An assisted living facility must be constructed and maintained so

as to prevent as much as possible the entrance and harborage of rats, mice, insects, flies and other vermin.

(2) The facility and facility grounds shall be kept orderly and free of litter and refuse and secure from hazards.

(3) When required by the building code authority having jurisdiction, at least one primary grade level entrance to the facility shall be arranged to be fully accessible to disabled persons.

(4) All exterior pathways or accesses to the facility's common use areas and entrance and exit ways shall be of hard, smooth material, accessible and be maintained in good repair.

(5) All interior or exterior stairways used by residents shall have sturdy handrails on one side installed in accordance with the uniform building code with strength and anchorage sufficient to sustain a concentrated 250-pound load to provide residents safety with ambulation.

(6) All interior and exterior materials and surfaces (e.g., floors, walls, roofs, ceilings, windows and furniture) and all equipment necessary for the health, safety and comfort of the resident shall be kept clean and in good repair.

(7) Carpeting and other floor materials shall be constructed and installed to minimize resistance for passage of wheelchairs and other ambulation aids. Thresholds and floor junctures shall also be designed and installed for passage of wheelchairs and to prevent a tripping hazard.

(8) The facility shall install grab bars at each toilet, shower, sitz bath and tub with a minimum of one and one half inches clearance between the bar and the wall and strength and anchorage sufficient to sustain a concentrated 250-pound load. If a toilet grab bar assist is used over a toilet, it must be safely stabilized and secured in order to prevent mishap.

(9) Any structure such as a screen, half wall or planter which a resident could use for support while ambulating shall be securely anchored.

(10) The bottoms of tubs and showers must have surfaces that inhibit falling and slipping.

(11) Hand cleansing soap or detergent and single use individual towels must be available at each sink in the commonly shared areas of the facility. A waste receptacle must be located near each sink. Cloth towels and bar soap for common use are not permitted.

(12) Hot water temperature supplied to hand washing, bathing and showering areas may not exceed 120°F.

(13) The facility shall provide locked storage for all poisons, chemicals, rodenticides, herbicides, insecticides and other toxic material. Hazardous material safety sheets and labeling shall be kept available for staff for all such products used and stored in the facility.

(14) Flammable and combustible liquids shall be safely and properly stored in original or approved, properly labeled containers in areas inaccessible to residents in accordance with the uniform fire code in amounts acceptable to the fire code authority having jurisdiction.

(15) Containers used to store garbage in resident bedrooms and bathrooms are not required to be covered unless they are used for food, bodily waste or medical waste. Resident containers shall be emptied as needed, but at least weekly.

(16) If the facility utilizes a non-municipal water source, the water source is tested at least once every 12 months for total coliform bacteria and fecal coliform or E. coli bacteria and corrective action is taken to assure the water is safe to drink. Documentation of testing is retained on the premises for 24 months from the date of the test.

(17) If a non-municipal sewage system is used, the sewage system must be in working order and maintained according to all applicable state laws and rules.

AUTH: Sec. 50-5-103, 50-5-226 and 50-5-227, MCA
IMP: Sec. 50-5-225, 50-5-226 and 50-5-227, MCA

37.106.2866 CONSTRUCTION, BUILDING AND FIRE CODES

(1) Any construction of or alteration, addition, modification or renovation to an ~~personal care~~ assisted living facility must meet the requirements of the building code and fire marshal agencies having jurisdiction and be approved by the officer having jurisdiction to determine if the building and fire codes are met by the facility.

(2) When a change in use and building code occupancy classification occurs, licensure approval shall be contingent on meeting the building code and fire marshal agencies' standards in effect at the time of such a change. Changes in use include adding a category B license endorsement to a previously licensed category A facility.

(3) Changes in the facility location, use or number of facility beds cannot be made without written notice to, and written approval received from, the department.

(4) Exit doors shall not include locks which prevent evacuation, except as approved by the fire marshal and building codes agencies having jurisdiction.

(5) Stairways, halls, doorways, passageways and exits from rooms and from the building shall be kept unobstructed at all times.

(6) All operable windows and outer doors that may be left open~~,~~ shall be fitted with insect screens.

(7) ~~A personal care~~ An assisted living facility must have an annual fire inspection conducted by the appropriate local fire authority or the state fire marshal's office and maintain a record of such inspection for at least three years following the date of the inspection.

(8) An employee and resident fire drill is conducted at least two times annually, no closer than four months apart and includes residents, employees and support staff on duty and other individuals in the facility. A resident fire drill includes making a general announcement throughout the facility that a resident fire drill is being conducted or sounding a fire alarm.

(9) Records of employee and resident fire drills are

maintained on the premises for 24 months from the date of the drill and include the date and time of the drill, names of the employees participating in the drill and identification of residents needing assistance for evacuation.

(10) A 2A10BC portable fire extinguisher shall be available on each floor of a greater than 20 resident facility and shall be as required by the fire authority having jurisdiction for facilities of less than 20 residents.

(11) Portable fire extinguishers must be inspected, recharged and tagged at least once a year by a person certified by the state to perform such services.

(12) Smoke detectors installed and maintained per the manufacturer's directions shall be installed in all resident rooms, bedroom hallways, living room, dining room and other open common spaces or as required by the fire authority having jurisdiction. An annual maintenance log of battery changes and other maintenance services performed shall be kept in the facility and made available to the department upon request.

(13) If there is an inside designated smoking area, it shall be separate from other common areas, and provided with adequate mechanical exhaust vented to the outside.

AUTH: Sec. 50-5-103, 50-5-226 and 50-5-227, MCA
IMP: Sec. 50-5-225, 50-5-226 and 50-5-227, MCA

37.106.2872 REQUIREMENTS FOR CATEGORY B FACILITIES ONLY

(1) ~~A personal care~~ An assisted living category B endorsement to the license shall be made by the licensing bureau of the department only after:

(a) initial department approval of the facility's category B policy and procedures;

(b) evidence of the administrator's and facility staff qualifications; and

(c) written approval from the building and fire code authorities having jurisdiction.

(2) ~~A personal care~~ An assisted living category B facility shall employ or contract with a registered nurse to provide or supervise nursing service to include:

(a) general health monitoring on each category B resident;

(b) performing a nursing assessment on category B residents when and as required;

(c) assistance with the development of the resident health care plan and, as appropriate, the development of the resident service plan; and

(d) routine nursing tasks, including those that may be delegated to licensed practical nurses (LPN) and unlicensed assistive personnel in accordance with the Montana Nurse Practice Act.

AUTH: Sec. 50-5-103, 50-5-226 and 50-5-227, MCA
IMP: Sec. 50-5-225, 50-5-226 and 50-5-227, MCA

37.106.2873 ADMINISTRATOR QUALIFICATIONS: CATEGORY B

(1) An ~~personal care~~ assisted living category B facility

must be administered by a person who, in addition to the requirements found in ARM 37.106.2814, ~~either has a nursing home administrator's license or have successfully completed all components of the ALFA self study program "The Management Library for Administrators and Executive Directors" and~~ has ~~not less than~~ one or more years experience working in the field of geriatrics or caring for disabled residents in a licensed facility.

(2) Providers in existence on the date of the final adoption of this rule will be granted one year to meet the category B administrator requirements found in (1).

AUTH: Sec. 50-5-103, 50-5-226 and 50-5-227, MCA
IMP: Sec. 50-5-225, 50-5-226 and 50-5-227, MCA

37.106.2874 DIRECT CARE STAFF QUALIFICATIONS: CATEGORY B

(1) In addition to the requirements found in ARM 37.106.2816, each nonprofessional staff providing direct care in an ~~personal care~~ assisted living category B facility shall show documentation of in-house training related to the care and services they are to provide under direct supervision of a registered nurse or supervising nursing service providing category B care, including those tasks that may be delegated to licensed practical nurses (LPN) and unlicensed assistive personnel in accordance with the Montana Nurse Practice Act.

(2) Staff members whose job responsibilities will include supervising or preparing special or modified diets, as ordered by the resident's practitioner, shall receive training prior to performing this responsibility.

(3) Prior to providing direct care, direct care staff must:

(a) work under direct supervision for any direct care task not yet trained or properly oriented; and

(b) not take the place of the required certified person.

AUTH: Sec. 50-5-103, 50-5-226 and 50-5-227, MCA
IMP: Sec. 50-5-225, 50-5-226 and 50-5-227, MCA

4. The rule 37.106.2884 as proposed to be repealed is on page 37-26645 of the Administrative Rules of Montana.

AUTH: Sec. 50-5-103, 50-5-226 and 50-5-227, MCA
IMP: Sec. 50-5-225, 50-5-226 and 50-5-227, MCA

5. The Department proposes to adopt new rules I through V, to repeal ARM 37.106.2884 and to make the proposed amendments to ARM 37.106.2801 through 37.106.2874 in response to the various amendments made by the 2003 Legislature via House Bill 51 to 50-5-101, 50-5-225, 50-5-226 and 50-5-227, MCA, adopted as Chapter 54, Montana Session Laws 2003.

Rules I through V and Proposed Repeal of ARM 37.106.2884

50-5-226 and 50-5-227, MCA (2001), previously provided the

parameters and requirements for category A and category B facilities. The administrative rules previously adopted by the Department pursuant to these sections (Title 37, Chapter 106, subchapter 28, MCA), currently provide standards for the operation and licensure of category A and category B facilities.

The 2003 Legislature amended 50-5-226 and 50-5-227, MCA, in part, to add a new category C for severely cognitively impaired residents. These sections now provide parameters and requirements for the operation of a category C facility, and require the Department to adopt administrative rules providing for the licensure and operation of category C assisted living facilities. Of specific relevance is 50-5-226(7)(f), MCA, which provides that "the Department shall provide by rule...standards for operating a category C assisted living facility, which must include the standards for a category B assisted living facility and additional standards for residents assessment, the provision of specialty care to residents with cognitive impairments, and additional qualifications of and training for the administrator and direct care staff."

The Department proposes to comply with 50-5-226(7)(f), MCA, by adopting Rules I through V and repealing ARM 37.106.2884. Adoption of Rules I through V does not represent implementation of completely new regulations for assisted living facilities. Rather, the majority of the substantive requirements of Rules I through V are currently contained in ARM 37.106.2884 and currently apply to category B personal care facilities providing care to cognitively impaired category B residents.

Because the residents falling within the newly created category C are the same residents previously categorized as category B residents with severe cognitive impairments, and previously served by category B facilities in accordance with ARM 37.106.2884, it is only necessary to implement new requirements to the extent necessary to satisfy 50-5-226(7)(f), MCA.

The proposed Rules I through V are minimum standards necessary to implement 50-5-226, MCA and assure the safety and well being of severely cognitively impaired residents served by category C assisted living facilities. The Department intends that the standards to be adopted involve only those basic aspects of care that are not already part of local ordinances and that the rules do not over regulate or require more than absolutely necessary for the safety of the residents. In many instances, the assisted living facilities in which residents will live are the homes of those persons managing them. The Department recognizes a preference by many senior citizens and their relatives for seniors to live in a home setting in a private home or residence rather than in a nursing home. The Department further recognizes that there are a number of persons in this state who are willing to care for seniors in their own homes or in homes operated by them in which the home setting is preserved. The quality of care given in these homes or residences may be

preferable under many circumstances because the resident-to-staff ratio is considerably lower than in a nursing home and the home setting avoids the institutional atmosphere and associated problems.

Proposed Rule I, which represents a renumbering of the current ARM 37.106.2884(3) and (5), provides criteria for secured distinct or locked units within a facility designated for the exclusive use of category C residents.

Proposed Rule II, which represents a renumbering of ARM 37.106.2884(1), provides the minimum experience and education qualifications for an administrator of a category C facility. This proposed rule also contains an additional requirement (not previously required by ARM 37.106.2884) that 8 of the 16 hours of continuing education required for an assisted living facility administrator must pertain to caring for persons with severe cognitive impairments. The special needs and treatment requirements of severely cognitively impaired residents necessitate that administrators of category C facilities maintain an ongoing knowledge base in the evolution of new medical developments and therapeutic interventions to meet the specialty needs of the severely cognitively impaired resident.

Proposed Rule III, which represents a renumbering of ARM 37.106.2884(4), provides the training requirements of category C direct care staff. This proposed rule also contains additional requirements (not previously required by ARM 37.106.2884), i.e., training in techniques for minimizing challenging behaviors, identifying and alleviating safety risks to residents, and identifying common side effects and untoward reactions to medications. In order to ensure the safety and welfare of severely cognitively impaired residents, it is necessary that category C direct care staff be required to have the knowledge necessary to recognize, intervene in, and protect residents from the hazards unique to the severely cognitively impaired resident population, and to understand and interact with behaviors and meet the physical needs commonly encountered with individuals who are severely cognitively impaired.

Proposed Rule IV contains criteria not previously required by ARM 37.106.2884. This proposed rule details the additional requirements for assessment and health care plan criteria for category C residents. These criteria define the unique symptoms and needs of this population and inclusion of these needs in the health care plan to enhance quality of life and to reduce the risk of abuse and neglect. These criteria were developed from multiple resources including the ALFA Alzheimer/Dementia Care for Assisted Living and the Johns Hopkins Dementia and Alzheimer Education Program.

Proposed Rule V, which represents a renumbering of ARM 37.106.2884(2), requires category C facilities to make certain disclosures to new residents, including the facility's overall

philosophy, transfer and discharge criteria, resident assessment processes, processes for implementation and updating of health care plans, staff training, physical environment, resident activities, family involvement and costs of care.

The sole purpose of ARM 37.106.2884 is to regulate category B facilities providing services to severely cognitively impaired category B residents. Because severely cognitively impaired residents will now be categorized as category C residents, and because category B facilities will no longer be serving severely cognitively impaired (category C) residents, ARM 37.106.2884 no longer serves any purpose. The Department therefore proposes to repeal ARM 37.106.2884, and replace it with Rules I through V which will be applicable to category C facilities.

ARM 37.106.2801 through 37.106.2874

Sections 50-5-225, 50-5-226 and 50-5-227, MCA, previously provided requirements for "personal care" facilities, and required the Department to adopt administrative rules regarding the licensure and operation of "personal care" facilities. Section 50-5-101, MCA, previously defined the term "personal care facility". These statutory sections were amended by the 2003 Legislature to replace the term "personal care" with the term "assisted living" and to delete the definition for "personal care facility".

Pursuant to 50-5-227, MCA (2001), ARM Title 37, Chapter 103, subchapter 28 currently implements 50-5-225 and 50-5-226, MCA (2001) by providing standards for the licensure and operation of "personal care" facilities. Therefore, in order to maintain consistency between the administrative rules set forth at ARM Title 37, Chapter 103, subchapter 28, and the statutory sections authorizing and implemented by those administrative rules, it is necessary to amend ARM 37.106.2801 through 37.106.2874 to replace the term "personal care facility" with the term "assisted living facility". The Department therefore proposes to replace all references to the term "personal care facility" contained in ARM 37.106.2801 through 37.106.2874 with a reference to the term "assisted living facility".

ARM 37.106.2805

The 2003 Legislature amended 50-5-101, MCA in part, to add a definition for the term "activities of daily living". ARM 37.106.2805 currently provides a different definition for the same term. Because an administrative rule may not be contrary to a statutory provision implemented by that rule, it is necessary to amend ARM 37.106.2805 to the extent that both definitions are the same.

The 2003 Legislature amended 50-5-101, MCA in part, to add a definition for the term "assisted living facility". ARM 37.106.2805 currently provides a different definition for the

same term. Because an administrative rule may not be contrary to a statutory provision implemented by that rule, it is necessary to amend ARM 37.106.2805 to the extent that both definitions are the same.

The 2003 Legislature amended 50-5-101, MCA in part, to add a definition for the term "licensed health care professional". ARM 37.106.2805 currently provides a different definition for the same term. Because an administrative rule may not be contrary to a statutory provision implemented by that rule, it is necessary to amend ARM 37.106.2805 to the extent that both definitions are the same.

ARM 37.106.2805 currently provides a definition for the term "personal care". Because that term will no longer be used substantially in ARM Title 37, Chapter 106, subchapter 28 and because it is defined at 50-5-101, MCA, the Department proposes to delete this term from ARM 37.106.2805.

ARM 37.106.2805 currently provides a definition for the term "personal care facility". Because that term will no longer be used in ARM Title 37, Chapter 106, subchapter 28, the Department proposes to delete this term from ARM 37.106.2805.

ARM 37.106.2805 currently defines the term "resident certification" in part as "certification by a licensed health care professional whose work is unrelated to the daily operation of the facility...". This definition reflects the requirement in 50-5-226(3)(f), MCA that a health care professional assess residents and certify that the resident's needs can be adequately met by the facility. The 2003 Legislature amended 50-5-226(3) (in part) to remove the requirement that the professional conducting the assessment be unrelated to the operation of the facility. Because an administrative rule may not be contrary to a statutory provision implemented by that rule, it is necessary to amend ARM 37.106.2805 to remove the same restriction.

The 2003 Legislature amended 50-5-101, MCA in part, to add a definition for the term "practitioner". ARM 37.106.2805 currently provides a different definition for the same term. Because an administrative rule may not be contrary to a statutory provision implemented by that rule, it is necessary to amend ARM 37.106.2805 to the extent that both definitions are the same.

ARM 37.106.2814

ALFA Certification: ARM 37.106.2814 currently requires a facility administrator to either be currently licensed as a nursing home administrator in any state, or to be certified as an administrator by the Assisted Living Federation of America (ALFA). The intent of this section was to ensure that all facility administrators remain qualified to administer an

assisted living facility by either maintaining a current nursing home administrator's license, or by maintaining current ALFA certification.

However, the current rule language is arguably unclear as to the requirement of maintaining current ALFA certification. Although it is the Department's position that maintenance of current ALFA certification is implied by the current language, amendment of the rule to add clarifying language is necessary to avoid confusion and unnecessary disputes. The Department therefore proposes to amend ARM 37.106.2814 to specifically state that facility administrators must maintain current ALFA certification.

Continuing Education: ARM 37.106.2814 currently requires that facility administrators participate annually in at least 16 hours of continuing education relevant to their duties and responsibilities as an assisted living facility administrator. The Department considers the required curriculum for obtaining a nursing home administrator's license or for obtaining an ALFA administrator certification to be education relevant to the duties and responsibilities of an assisted living facility administrator, and does not require administrators to attend 16 hours of continuing education in addition to the nursing home administrator license or ALFA certification curriculum.

However, the current rule language could be construed to require that facility administrators obtain 16 hours of continuing education in addition to attending the required curriculum for obtaining a nursing home administrator license or ALFA administrator certification. In order to clarify what the Department requires of facility administrators, it is therefore necessary to amend ARM 37.106.2814 to specify that class hours attended in pursuit of a nursing home administrator's license or in pursuit of an ALFA administrator certification count towards the annual 16 hour continuing education requirement for the year the course was taken.

Administrative Designees: ARM 37.106.2814 currently permits a facility administrator to designate a staff member to oversee the operation of the facility in the absence of the administrator. The Department recognizes that the administrator cannot be present at the facility 24 hours a day, 7 days a week. However, the intent of this provision is to permit the temporary designation of a staff member during short absences (such as overnight, during weekends, or vacations), not to permit the long term or permanent designation of a staff member not qualified to administer an assisted living facility.

However, the absence of any time limits in the current rule could be construed in such a fashion as to permit a facility administrator to designate any staff member to perform the administrator's duties for any period of time, including during extended absences of the administrator. The current rule

language could also be construed to permit the permanent designation of a staff member to perform the administrator's duties, potentially resulting in a situation where the official facility administrator is qualified on paper to operate an assisted living facility, but with the person actually operating the facility not having to meet any of the criteria for employment as a facility administrator.

In order to ensure that assisted living facilities are administered by qualified personnel, and to prevent the long term or permanent designation of unqualified staff to fulfill the duties and obligations of the facility administrator, it is necessary to amend ARM 37.106.2814 to include a time limit beyond which any administrative designee must be fully qualified to administer an assisted living facility. The Department asserts that the safety and welfare of facility residents requires that any administrator absence beyond a maximum period of 30 continuous days necessitates designation of a substitute administrator who is fully qualified to administer an assisted living facility. The Department therefore proposes to amend ARM 37.106.2814 to require notice to the Department of any administrator absence beyond 30 days, as well as designation of a fully qualified substitute administrator during any such extended absence.

ARM 37.106.2821

ARM 37.106.2821 requires that the "initial resident's needs assessment" include documentation of the resident's ability to perform certain designated "activities of daily living (ADL)". The 2003 Legislature amended 50-5-101, MCA, in part, to add a definition for the term "activities of daily living". In order to require facility assessment of a resident's ability to perform activities of daily living as that term is now defined at 50-5-101, MCA, it is necessary to amend ARM 37.106.2821 to add "grooming" to the activities of daily living designated for assessment by the facility.

ARM 37.106.2835

ARM 37.106.2835 provides the requirements for resident units in assisted living facilities. The rule currently provides that residents using wheelchairs or walkers must be provided an above ground room on the first floor of the facility unless the facility is designed and equipped to permit such residents to move between floors without assistance. The basis for this requirement is that residents dependant upon wheelchairs or walkers for mobility may not be able to self-evacuate from the second or higher or below ground stories of a facility in the case of an emergency.

The Department contends that the same considerations apply to category B and category C residents. The physical and cognitive impairments of residents falling into these categories makes

self-evacuation from the second or higher story of a facility in the case of an emergency problematic, thereby placing at risk such residents not residing on the facility's ground floor.

In order to ensure the safety and welfare of category B and category C residents residing in facilities not designed and equipped in such a manner as to permit such residents to move between floors without assistance, it is necessary to require that such residents reside on the ground floor so as to permit self-evacuation in times of emergency. The Department therefore proposes to amend ARM 37.106.2835 to add category B and category C residents to the current restrictions applicable to wheelchair and walker dependant residents.

Additionally, because alternative forms of evacuation available in second or higher stories are not available in below ground units, these units present hazards to wheelchair and walker dependant residents and category B and category C residents, not presented by ground level and above ground level units. Resident safety requires that below ground units be easily evacuated in times of emergency. The Department proposes to further ensure the safety of wheelchair and walker dependant residents, and category B and category C residents, residing in below ground units by amending ARM 37.106.2835 to include a requirement that below ground units be approved by the local fire marshal. Additionally, because all below ground units will be subject to fire marshal approval, the prohibition against below ground units in ARM 37.106.2835 will be deleted. Adoption of the international building code will provide the benefits of nationally studied and approved standards.

The Department also proposes to replace the reference in ARM 37.106.2835 to the "uniform building code" with a reference to the international building code. The international building code is a nationally recognized model code setting forth minimum standards and requirements for building design, construction, alteration and repair which has been approved by the Montana Department of Labor and Industry and incorporated by reference into the Administrative Rules of Montana at ARM 24.301.131.

ARM 37.106.2847(2)

ARM 37.106.2847(2) currently requires prescriptions to be returned to the pharmacy for relabeling when the dosage or schedule has been changed by the practitioner. Because pharmacies will not relabel a previously issued prescription, the Department proposes to amend ARM 37.106.2847(2) to provide for relabeling by an appropriate licensed health care professional.

ARM 37.106.2843(5)

ARM 37.106.2843(5) currently provides that no person with an open wound or having a pressure or stasis ulcer requiring

treatment by a health care professional may be admitted to a category A facility. The 2003 Legislature amended 50-5-226, MCA, to provide that category A residents may not "have a stage 3 or stage 4 pressure ulcer". Because the administrative rule is now more restrictive than the statutory provision it implements, it is necessary to amend ARM 37.106.2843(5) to the extent that it is no more restrictive than 50-5-226, MCA.

6. 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 March 11, 2004. Data, views or arguments may also be submitted by facsimile (406)444-9744 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.

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

Russell Cater
Rule Reviewer

Mike Billings for
Director, Public Health
and Human Services

Certified to the Secretary of State February 2, 2004.

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

In the matter of the adoption of new rules I through VII and the amendment of ARM 37.85.501 and 37.85.502 pertaining to informal dispute resolution and sanctions	))))))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION AND AMENDMENT

TO: All Interested Persons

1. On March 4, 2004, 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 February 26, 2004, 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 adopted provide as follows:

RULE I PURPOSE (1) The purpose of [RULES I through VII] is to supplement those provisions of the Code of Federal Regulations (CFR) which provide the requirements nursing facilities must meet in order to participate in the medicaid program, and which govern the certification of these facilities by the state survey agency for participation in the medicaid program.

(2) All nursing facilities must be certified by the state survey agency in order to participate in the medicaid program and receive reimbursement from that program. Nursing facilities must comply with the applicable provisions of 42 CFR Parts 442, 483 and 488, updated through February 2004 as well as the definitions and standards outlined in this chapter. The department adopts and incorporates by reference 42 CFR Parts 442, 483 and 488, updated through February 2004. A copy of the cited requirements is available from the Department of Public Health and Human Services, Quality Assurance Division, 2401 Colonial Drive, P.O. Box 202953, Helena, MT 59620-2953.

(3) The state survey agency shall apply the applicable provisions of 42 CFR Parts 442, 483 and 488, updated through

February 2004, as well as the definitions and standards outlined in this chapter to both the survey and certification process and the informal dispute resolution process when issuing or reviewing a deficiency citation to a nursing facility.

AUTH: Sec. 53-6-109 and 53-6-113, MCA
IMP: Sec. 53-6-106, 53-6-109 and 53-6-113, MCA

RULE II DEFINITIONS The following definitions shall apply to nursing facilities participating in the medicaid program, and to the certification of nursing facilities for participation in the medicaid program by the state survey agency, as provided for at 42 CFR Parts 442, 483 and 488. The following definitions shall also be applicable to the informal dispute resolution process required by 42 CFR 488.331, and outlined in this subchapter. These definitions are in addition to those found in the CFR:

(1) "Actual harm" means the facility's failure to comply with any federal or state standard or condition for participation in the medicaid program resulting in harm to a resident in one of the following ways:

(a) an identifiable and substantial impairment of cognitive or psychological functioning or emotional well being;

(b) an identifiable and substantial impairment of any bodily organ or function;

(c) permanent or temporary disfigurement; or

(d) death.

(2) "Avoidable" means capable of being prevented through the application of an ongoing process of assessment, planning, intervention, monitoring and evaluation that is consistent with currently accepted standards of practice for facilities.

(3) "Complaint survey" or "complaint investigation survey" means a survey of a nursing facility conducted by the state survey agency following receipt of a complaint or allegation that the nursing facility has violated a federal or state standard or condition for participation in the medicaid program. The purpose of a complaint survey is to determine compliance with federal and state standards and conditions for participation in the medicaid program.

(4) "Deficiency citation" means the state survey agency's determination of a facility's failure to meet any federal or state standard or condition for participation in the medicaid program, as recorded by the state survey agency on the form designated for this purpose by the centers for medicare and medicaid services (CMS).

(5) "Department" means the department of public health and human services provided for in 2-15-2201, MCA.

(6) "Facility" or "nursing facility" means a nursing facility or a distinct part of a nursing facility that participates in the medicaid program.

(7) "Immediate jeopardy" means a situation in which immediate corrective action is necessary because the facility's failure to comply with any federal or state standard or condition for participation in the medicaid program has caused,

or is likely to cause, serious injury, harm, impairment or death to a resident.

(8) "Informal dispute resolution (IDR)" means the process required by 42 CFR 488.331 by which a facility is given an informal opportunity, at the facility's request, to dispute a deficiency citation.

(9) "Minimal harm" means the facility's failure to comply with any federal or state standard or condition for participation in the medicaid program resulting in harm to a resident in one of the following ways:

(a) an identifiable, but less than substantial, impairment of cognitive or psychological functioning or emotional well being; or

(b) an identifiable, but less than substantial, impairment of any bodily organ or function.

(10) "Potential for more than minimal harm" means actual harm is likely to occur due to the facility's failure to comply with any federal or state standard or condition for participation in the medicaid program.

(11) "Presiding official" means an individual appointed or hired by the department to preside over or conduct informal dispute resolution proceedings. The presiding official may not have been directly involved in the certification survey regarding which informal dispute resolution has been requested.

(12) "Resident" means an individual residing in a nursing facility.

(13) "Revisit" or "survey revisit" means a follow-up survey conducted by the state survey agency subsequent to the citation of a deficiency for the purpose of determining whether the facility now meets the requirements for participation in the medicaid program.

(14) "Scope and severity" of a deficiency refers to a determination of the state survey agency regarding:

(a) whether a cited deficiency constitutes:

(i) no actual harm with a potential for minimal harm;

(ii) no actual harm with a potential for more than minimal harm but not immediate jeopardy;

(iii) actual harm that is not immediate jeopardy; or

(iv) immediate jeopardy to resident health or safety; and

(b) whether a cited deficiency:

(i) is isolated;

(ii) constitutes a pattern; or

(iii) is widespread.

(15) "Serious" means having important or dangerous possible consequences, as in the phrase "a serious injury".

(16) "Standard survey" means the survey of each nursing facility conducted by the state survey agency at least every 15 months in accordance with 42 CFR Part 488, Subpart E. The purpose of a standard survey is to determine compliance with federal and state standards and conditions for participation in the medicaid program.

(17) "State survey agency" means the department of public health and human services to the extent that the department conducts medicaid surveys of facilities on behalf of and under

contract with the federal CMS pursuant to 53-6-106, MCA, section 1864 of the Social Security Act (42 USC 1395aa), and 42 CFR 488.10 and 488.11.

(18) "Substandard quality of care" means any deficiency citation that constitutes:

(a) immediate jeopardy to resident health or safety;

(b) a pattern of widespread actual harm that is not immediate jeopardy; or

(c) a widespread potential for more than minimal harm that is not immediate jeopardy, with no actual harm.

(19) "Substantial compliance" means a level of compliance with the federal or state standards or conditions for participation in the medicaid program such that any identified deficiencies pose no greater risk to resident health or safety than the potential for causing minimal harm.

(20) "Tag" means the reference number utilized by the state survey agency on the statement of deficiencies to designate a standard or condition of participation with which a facility is out of compliance. Each tag corresponds to one or more federal regulations pertaining to the standards and conditions for participation in the medicaid program.

(21) "Unavoidable" means not capable of being prevented through the application of an ongoing process of assessment, planning, intervention, monitoring and evaluation that is consistent with currently accepted standards of practice for facilities. An unavoidable decline occurs when appropriate interventions have been consistently implemented, but despite these interventions, the resident's condition has declined.

AUTH: Sec. 53-6-109 and 53-6-113, MCA
IMP: Sec. 53-6-106, 53-6-109 and 53-6-113, MCA

RULE III OPPORTUNITY FOR INFORMAL DISPUTE RESOLUTION

(1) A facility may request an informal dispute resolution to refute a deficiency citation made by the state survey agency.

(2) An informal dispute resolution is a different and separate form of procedure from an administrative review and/or fair hearing. A facility is not entitled to an administrative review, fair hearing or other process in addition to an informal dispute resolution unless specifically provided for by department rule or otherwise required by law.

(3) Informal dispute resolution is an informal opportunity for the facility to dispute deficiency citations. Informal dispute resolutions conducted under this chapter are subject to neither the provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, MCA, nor to statutory rules or provisions regarding civil procedure or evidence.

(4) This rule does not require that the informal dispute resolution be conducted prior to the state survey agency making a recommendation to the CMS.

(5) Nothing in this chapter shall be construed to impede, prevent or delay any enforcement action or proceedings by the CMS or the department, acting as the state medicaid agency.

(6) The determination of the presiding official who

conducts the informal dispute resolution is not binding upon CMS nor does it affect any right the facility may have to pursue any available federal administrative hearings or appeals processes.

(7) Only one informal dispute resolution to dispute deficiencies cited is available for either a standard survey or a complaint investigation survey.

(8) Regardless of whether a facility has used the opportunity for informal dispute resolution at the standard or complaint investigation survey, a facility may request an additional informal dispute resolution under the following circumstances:

(a) if a deficiency cited as a result of a standard or complaint survey continues at a survey revisit (that is, the facility has failed to correct a deficiency cited as a result of the standard or complaint survey prior to the revisit), the facility may request informal dispute resolution to dispute citation of the deficiency at the survey revisit;

(b) if a new deficiency is cited as a result of a survey revisit or as the result of an informal dispute resolution, the facility may request informal dispute resolution to dispute citation of the deficiency at the survey revisit or following informal dispute resolution; or

(c) if, on the basis of new facts discovered at the survey revisit, or as the result of an informal dispute resolution, a new example of a deficiency cited as a result of a standard or complaint survey is added following the survey revisit, or following informal dispute resolution, the facility may request informal dispute resolution to dispute the new example of the deficiency citation.

(9) A second informal dispute resolution is not available if a different deficiency is cited at the survey revisit or as a result of an informal dispute resolution but the factual basis for the deficiency is the same as the factual basis for a deficiency cited in the original standard or complaint investigation.

(10) Scope and severity classification of the deficiency citation(s) shall not be the sole basis of a facility's dispute of a state survey agency deficiency citation unless the scope and severity assessment constitutes substandard quality of care or immediate jeopardy. The informal dispute resolution process may, however, result in a change in the scope and severity classification.

AUTH: Sec. 53-6-109 and 53-6-113, MCA
IMP: Sec. 53-6-109 and 53-6-113, MCA

RULE IV INFORMAL DISPUTE RESOLUTION FACILITY REQUIREMENTS

(1) A request for informal dispute resolution must be in writing and either received by the department or postmarked within 10 calendar days of the facility's receipt of the state survey agency's written deficiency citations. The department will accept timely applications by fax.

(2) A facility's failure to submit a timely request for informal dispute resolution shall be deemed a waiver of the

facility's right to request informal dispute resolution, and the department shall be entitled to deny any request for informal dispute resolution which is not either received by the department or postmarked within 10 calendar days following the facility's receipt of the state survey agency's written deficiency citations.

(3) Requests for an informal dispute resolution must be mailed or delivered to the Office of Fair Hearings, 2401 Colonial Drive, P.O. Box 202953, Helena, MT 59620-2953 or faxed to the attention of the Office of Fair Hearings at (406) 444-3980.

(4) The written request for an informal dispute resolution must:

(a) list the specific survey deficiency citation(s) being disputed and briefly summarize the facility's objections to each survey deficiency citation;

(b) specify whether the facility desires:

(i) a record review;

(ii) a telephone conference; or

(iii) an in-person conference;

(c) provide the name, address and telephone number of the person who is coordinating the informal dispute resolution for the facility; and

(d) specify whether legal counsel will represent the facility at the informal dispute resolution, so that the department may arrange for legal representation as well. The informal dispute resolution will be cancelled and rescheduled if the facility does not notify the presiding official in its request for informal dispute resolution that it will be represented by legal counsel, but subsequently appears at the informal dispute resolution with legal counsel.

(5) Any substantiating materials the facility wishes to have considered as part of the informal dispute resolution process must be mailed to the presiding official and must be received or postmarked no later than seven calendar days prior to the time of any scheduled telephone or in-person conference, or prior to the deadline set by the presiding official for receipt of substantiating materials in the case of a record review. The facility shall clearly:

(a) identify and describe the relevance of any material submitted;

(b) label and cross reference all attachments to the disputed citation;

(c) highlight or otherwise notate relevant facts; and

(d) indicate the desired outcome for each disputed citation.

(6) The facility shall provide to the state survey agency a duplicate copy of all substantiating materials submitted to the presiding official.

(7) Prior to the commencement of any informal dispute resolution conducted via in-person or telephone conference, a facility representative with authority to act on the facility's behalf must present to the presiding official a signed statement listing all of the participants who will be present on the

facility's behalf. This statement:

(a) must specify that the facility feels the named persons are necessary to present the facility's case;

(b) must state that the facility takes responsibility to ensure that any person appearing on the facility's behalf will comply with all applicable federal and state health information security, privacy, and confidentiality regulations; and

(c) may list as participants staff members of a professional association(s) or legal counsel who are advising or representing the facility in the informal dispute resolution.

(8) Any observer who is not representing or advising the state survey agency or the facility must leave the informal dispute resolution during any portion of the proceedings where protected health information will be disclosed.

(9) Any person who is the subject of protected health care information discussed during an informal dispute resolution shall be entitled to receive, upon written request, a list of the names of anyone that participated in the informal dispute resolution.

AUTH: Sec. 53-6-109 and 53-6-113, MCA
IMP: Sec. 53-6-109 and 53-6-113, MCA

RULE V INFORMAL DISPUTE RESOLUTION STATE SURVEY AGENCY RESPONSIBILITIES (1) The state survey agency shall not interfere with the right of a facility to request an informal dispute resolution.

(2) The state survey agency must give the facility notice of the facility's right to request informal dispute resolution at the same time that written deficiency citation(s) findings are sent. This notice must inform the facility of:

(a) the name, address and telephone number of the person the facility must contact to request informal dispute resolution;

(b) the specific information that must be contained in the facility request for informal dispute resolution, as specified in [RULE IV];

(c) the name and/or the position title of the person who will conduct the informal dispute resolution, if known; and

(d) a statement that the facility must inform the presiding official of its intent to be represented by legal counsel as specified in [RULE IV(4)].

(3) Upon request of the facility, the state survey agency must mail supporting documentation used in reaching its deficiency citation(s) to the facility and the presiding official. This documentation must be received or postmarked seven calendar days prior to any scheduled telephone or in person conference, or prior to the deadline set by the presiding official for receipt of substantiating materials in the case of a record review. The facility must specify each disputed deficiency for which it is requesting supporting documentation. Information will only be provided for disputed deficiencies. The state survey agency may charge the facility $.20 per page to cover the cost of retrieving, copying and mailing this

information. There will not be a charge if fewer than 20 pages are produced.

(4) The state survey agency shall review and take into consideration the information submitted by the facility prior to the informal dispute resolution. The state survey agency shall notify both the facility and the presiding official prior to the informal dispute resolution conference of any changes to the deficiency citation(s) or scope and severity classification(s) it intends to make.

(5) Following informal dispute resolution, the state survey agency shall take one or more of the following actions in accordance with the written determination of the presiding official:

(a) an existing deficiency citation may be amended, modified, deleted or remain unchanged;

(b) the scope and severity of an existing deficiency citation may be changed;

(c) different or additional deficiency citations may be cited; or

(d) an existing deficiency may be cited under a different tag.

(6) If a deficiency is deleted:

(a) the deficiency must be signed, dated and marked "deleted" by the state survey agency and any enforcement action(s) recommended or imposed solely because of that deficiency must be rescinded. In addition, the scope and severity classification is adjusted to reflect only the remaining findings; or

(b) the facility may request a new written deficiency citation form that does not have the deleted deficiencies printed on it. The clean form must have the remaining applicable plan of correction placed upon it and be signed by the facility's representative before it can replace the original in the facility's public file. If a clean, signed plan of correction is not provided, the original deficiency citation form with the signed plan of correction may be disclosed.

(7) If the state survey agency disagrees with the determination of the presiding official, the state survey agency may, but is not required to, include with its official recommendation to the CMS or to the state medicaid agency a written statement stating that it disagrees with the determination of the presiding official, and specifying the reason(s) why it disagrees. A copy of this statement must also be sent to the facility and the presiding official.

AUTH: Sec. 53-6-109 and 53-6-113, MCA
IMP: Sec. 53-6-109 and 53-6-113, MCA

RULE VI INFORMAL DISPUTE RESOLUTION PROCESS (1) Upon receipt by the department of a timely written request for informal dispute resolution complying with the requirements of this chapter, the department shall designate an individual who was not directly involved in the certification survey for which informal dispute resolution was requested to serve as the

presiding official.

(2) If the facility has requested an in-person or telephone conference, the presiding official will schedule the informal dispute resolution conference and provide at least 10 calendar days advance notice to the facility and state survey agency of the date, time and place or telephone conference call information set for the informal dispute resolution. Each party to the informal dispute resolution shall be given one reasonable opportunity to reschedule a telephonic or in-person informal dispute resolution conference.

(3) If the facility has requested a record review, the presiding official will set a deadline for submission of substantiating or relevant information and materials by the facility and the state survey agency.

(4) All in-person conferences will be held in Helena, Montana.

(5) All facility costs associated with the informal dispute resolution process, including, but not limited to, witness and attorney fees, shall be borne by the facility, regardless of the outcome of the informal dispute resolution.

(6) The presiding official will conduct the informal dispute resolution conference in a way that allows for an orderly presentation of facts. The presiding official may:

(a) limit testimony and/or rebuttal of information by either the facility or the state survey agency that is irrelevant, redundant or beyond the scope of the informal dispute resolution;

(b) determine whether facility and state survey agency witnesses will be allowed to ask each other questions and limit those questions in accordance with (a);

(c) ask questions as deemed appropriate;

(d) request additional documentation; and

(e) permit a facility or the state survey agency to submit additional substantiating materials at the informal dispute resolution in the case of an in-person or telephone conference, or after the deadline set by the presiding official in the case of a record review, but only if the presiding officer is satisfied that, despite diligent efforts, the facility or the state survey agency was unable to comply with the time limits for submission of materials established by this chapter. All additional substantiating materials presented must meet the requirements of [RULE IV], and two copies of the materials must be presented, one for the presiding official and one for the other party.

(7) The informal dispute resolution will be confined to disputes over the factual basis of the deficiency citations and the subsequent application of federal or state laws and regulations governing the survey and certification processes. The informal dispute resolution may not be used to challenge the:

(a) adequacy, accuracy or fairness of the state or federal regulations;

(b) classification of deficiencies as to scope and severity unless the state survey agency is alleging substandard

quality of care or immediate jeopardy;

(c) remedies imposed as a result of the certification survey;

(d) survey team compliance with a requirement of the survey process unless this failure by the survey team has a significant impact on the relevance of the deficiency; or

(e) consistency of the survey team in citing deficiencies in previous surveys of this facility or of other facilities.

(8) After reviewing all materials and information presented by the parties, the presiding official shall determine whether:

(a) the facility has demonstrated that any disputed deficiency should not have been cited;

(b) whether any deficiency should be deleted, amended, or modified;

(c) whether the scope and severity of any deficiency should be changed;

(d) whether any deficiency should be cited under a different tag; and

(e) whether any additional deficiencies should be cited.

(9) The presiding official shall provide the state survey agency and the facility with a brief, written opinion stating his or her determination.

(10) The deficiency citation form shall be amended as specified in [RULE V] based on the determination of the presiding official. If any amendments are made, the amended deficiency citation form will be sent to the facility and CMS.

(11) Determinations made by the presiding official shall be limited to the particular facts surrounding the disputed deficiency citation. No precedent will be set by the presiding official's determination, and no presiding official determination shall be binding upon the state survey agency in subsequent surveys or informal dispute resolution proceedings, nor shall any such determination be binding upon the presiding official presiding over any subsequent informal dispute resolution proceeding.

AUTH: Sec. 53-6-109 and 53-6-113, MCA
IMP: Sec. 53-6-109 and 53-6-113, MCA

RULE VII INCORPORATION OF STANDARDS FOR MONITORING AND REFERRAL FOR MEDICATIONS AND TREATMENTS IN THE CERTIFICATION PROCESS (1) In compliance with 53-6-109, MCA, the following facility monitoring and referral standards for medications and treatments shall be used in the survey and certification process:

(a) the facility shall have a process in place to monitor all residents who receive a medication or treatment for excessive dose, duplicate therapy, excessive duration, inadequate monitoring based on current practice standards, inadequate indications or contraindications for use, adverse consequences which indicate the dose should be reduced or discontinued, or any combination of these reasons;

(b) the facility must notify the attending physician and,

if appropriate, the facility medical director, the consulting pharmacist and/or other appropriate medical professionals when it identifies any of the conditions outlined in (a) and request his or her review of continuing the medication or treatment as ordered. Such notifications, and any resulting conclusions about continuing the medication or treatment or any changes in medications or treatments must be documented in the resident's medical record by the facility staff;

(c) if the process described in (a) is in place and is being fully implemented and utilized, but a violation of any federal or state standard or condition for participation in the medicaid program still exists, the state survey agency will cite the deficiency on the facility's deficiency citation form. The state survey agency will also refer the attending physician to the board of medical examiners for review of the care provided by the physician; or

(d) if the process described in (a) is not in place or is not being implemented or utilized fully and a violation of any federal or state standard or condition for participation in the medicaid program exists, the state survey agency will cite the deficiency on the facility's deficiency citation form.

AUTH: Sec. 53-6-109 and 53-6-113, MCA
IMP: Sec. 53-6-109 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.

37.85.501 GROUNDS FOR SANCTIONING (1) Sanctions may be imposed by the department against a provider of medical assistance, provided under ~~this chapter;~~ ARM Title 37, chapters 40, 80, 82, 83, 85, 86, 88, ~~ARM 37.85.415; ARM 37.83.201 and 37.83.202, and Title 46, chapter 25,~~ for any one or more of the following reasons:

(a) through (r) remain the same.

(s) Failure to correct deficiencies as defined by the ARM or federal regulation after receiving written notice of these deficiencies from the department, or the federal department of health and human services. The standards set forth at 42 CFR Part 442, ~~and the amendments proposed to this section as published in the federal register, vol. 52, no. 126 on July 1, 1987, at page 24752 et seq.~~ Part 483 and Part 488, updated through February 2004, which identify deficiencies for providers of ~~long term care~~ intermediate care facilities for the mentally retarded, skilled nursing and nursing facility services, are ~~hereby~~ incorporated by reference. A copy of 42 CFR Part 442, ~~and the amendments proposed to this section as published in the federal register, vol. 52, no. 126 on July 1, 1987, at page 24752 et seq.~~ Part 483 and Part 488, updated through February 2004, are available from the Department of Public Health and Human Services, ~~Health Policy and Services Division, 1400 Broadway~~ Quality Assurance Division, 2401 Colonial Drive, P.O. Box 202653, Helena, MT 59620-~~2951~~ 2953.

(t) through (z) remain the same.

AUTH: Sec. 53-2-201, 53-2-803, 53-4-111, 53-6-111 and 53-6-113, MCA
IMP: Sec. 53-2-306, 53-2-801, 53-2-803, 53-4-112, 53-6-111 and 53-6-131, MCA

37.85.502 SANCTIONS (1) The following sanctions may be invoked against providers based on the grounds specified in ARM 37.85.501:

(a) through (h) remain the same.

(i) In addition to the sanctions listed above, ~~long term care~~ intermediate care facilities for the mentally retarded, skilled nursing and nursing facilities shall be subject to termination of participation when the deficiencies resulting from failure to meet conditions or standards of participation pose immediate jeopardy or the denial of payments for new admissions if the facility's deficiencies resulting from failure to meet conditions or standards of participation do not pose immediate jeopardy. Federal laws regarding termination from participation and intermediate sanctions provided in ~~42 U.S.C. 1396a(i),~~ 42 CFR 442.2, ~~and~~ 42 CFR 442.117 through 442.119, and 42 CFR Part 483 and 488, updated through February 2004, are ~~hereby~~ incorporated by reference. A copy of ~~42 U.S.C. 1396a(i),~~ 42 CFR 442.2, ~~and~~ 42 CFR 442.117 through 442.119, and 42 CFR Part 483 and 488, updated through February 2004 may be obtained from the Department of Public Health and Human Services, ~~Health Policy and Services Division, 1400 Broadway~~ Quality Assurance Division, 2401 Colonial Drive, P.O. Box ~~202951~~ 202953, Helena, MT 59620-~~2951~~ 2953; or

(j) remains the same.

AUTH: Sec. 53-2-201, 53-2-803, 53-4-111, 53-6-108, 53-6-111 and 53-6-113, MCA
IMP: Sec. 53-2-306, 53-2-801, 53-4-112, 53-6-106, 53-6-107 and 53-6-111, MCA

4. The proposed rules implement 53-6-106 and 53-6-109, MCA. 53-6-109, MCA instructs the Department to develop rules to provide for more consistent regulation of long term care facilities that provide intermediate and skilled nursing care. A work group of long term care providers, provider associations, the long term care ombudsman, consumer groups, legislators, and department personnel was formed to provide consultation to the Department on the certification and survey process, the informal dispute resolution process, and development of these proposed rules. This work group met five times in full day meetings over the course of two years. The work group was productive, but was unable to achieve consensus in all areas.

Rule I as proposed simply states the purpose of the subsequent proposed rules, which is to supplement those provisions of the Code of Federal Regulations (CFR) stating the requirements nursing facilities must meet in order to participate in the

Medicaid program, and governing the survey and certification process. Because Medicaid is a joint federal/state program, participating facilities must meet the requirements set by both the federal government and by the state, and the state survey agency must determine compliance with both federal and state requirements. It is therefore necessary to require participating nursing facilities to comply with both federal and state requirements. The relevant federal regulations are located at 42 CFR Parts 442, 483, and 488, which are incorporated by reference in Rule I. The public was given opportunity to comment on the federal regulations at the time they were adopted by the federal government. The reader is referred back to the relevant federal rule notices for both the comments and responses.

Rule II provides definitions for the survey process. The Department is required to define actual harm, potential for more than minimal harm, avoidable, unavoidable, and immediate jeopardy in accordance with 53-6-109, MCA. These are all terms used in the federal survey and certification process to describe facility deficiencies. These terms should be thought of as a continuum. Minimal harm to a resident is much less serious than actual harm. Avoidable consequences are more serious than unavoidable consequences. It is necessary to provide for incremental categories of deficiencies in order to adequately protect residents from the most serious facility deficiencies, while at the same time avoiding the implementation of unnecessarily harsh sanctions or remedies regarding less serious deficiencies. Incremental categories of deficiencies also provide the public with a clearer description of the level of care provided each facility, thereby enabling members of the public to make better informed choices regarding long term care. The other definitions in this rule were added to provide the public and providers with a clear meaning of the terms used in the accompanying rules. Failing to provide these explanations would lead to confusion about their meanings.

Rule III explains when a facility may request an informal dispute resolution. This informal dispute resolution process is separate from the administrative review and fair hearing process. Informal dispute resolution is a process established for long term care facilities by the Centers for Medicare and Medicaid Services (CMS). For Medicare and dually certified facilities, appeal of the findings of the informal dispute resolution process are made to the federal Medicare agency, CMS. The rule sets forth with great specificity when the informal dispute resolution may be used. Rule III is necessary in order to limit jurisdictional disputes between the authority for review granted to the Department or retained by CMS and legal requirements to satisfy "due process," and to reduce confusion about the scope of the informal dispute resolution.

Rule IV describes the requirements that a facility must meet in order to participate in an informal dispute resolution. Section

(5) of the rule requires facilities to provide documentation prior to the informal dispute resolution. This rule is being proposed to reduce the number of informal dispute resolutions that are conducted. Currently, for a variety of reasons, some information is unavailable at the time of the survey and many facilities present information at the time of the dispute resolution disputing the findings of the certification survey. In many instances, if this information had been presented prior to the informal dispute resolution, the informal dispute resolution would have been unnecessary because the information persuades the state to withdraw its deficiency finding. By requiring the information ahead of time, the Department hopes to avoid unnecessary informal dispute resolution processes. This is especially important because many times facilities choose to present their information in person and travel great distances for something that could have been resolved through a paper review of the medical records.

Section (6) requires facilities to take responsibility for compliance with federal HIPAA and state privacy regulations when protected health information is presented at the informal dispute resolution. Failure to require this acknowledgment might result in inadvertent release of protected health information.

Rule V outlines the state survey agency responsibilities during the informal dispute resolution process. It states the information that must be contained in the notice when deficiencies are cited and sent to the facility. It also states that supporting documentation will be supplied to the facility upon request for their review prior to the informal dispute resolution and that a charge will be assessed, in accordance with the Department policy, for pages in excess of twenty.

There are 102 nursing facilities subject to this rule. The number of documents requested will vary. Therefore, it is not possible to estimate the exact total cost.

Section (4) states that the state survey agency will notify the facility and the presiding official of any changes based on their review of the substantiating materials presented by the facility. This feature is necessary to help reduce unnecessary informal dispute resolution processes.

Sections (5) and (6) outline what the state agency will do if the informal dispute resolution results in a change to the deficiency report. This process is important to facilities because they must by federal law post the deficiency findings in a conspicuous place in their facility. Most facilities prefer that a clean copy be provided after the informal dispute resolution and these sections require that upon facility request.

Section (7) gives an opportunity to alert CMS to the fact that

the surveyors disagree with the finding(s) of the presiding official. This information is important because CMS makes the final decision as to whether a facility is officially cited for a deficiency and whether any sanctions or penalties will be imposed upon the facility. This authority is not delegated to the state for Medicare only or dually certified facilities. This provision will provide CMS with a broader array of facts when making its final decision. It is also important because the state is subject to annual review by the federal government to determine compliance with the federal contractual obligations of its survey and certification process. The new presiding official will be independent of the survey process and may make decisions that do not reflect the training that CMS has provided surveyors.

Rule VI establishes the process under which a presiding official may conduct the informal dispute resolution. These reviews can become quite contentious, lengthy, and can introduce information and ask for rulings beyond the scope of an informal dispute resolution. The rule establishes criteria for both how the information will be presented and for the scope of the process itself. The rule is necessary to make it clear to all parties involved what the informal dispute resolution can and cannot accomplish. It was apparent in the workgroup meetings and at recent presentations at provider association meetings that there is not currently a clear understanding of the function of the informal dispute resolution process. This rule should help clear some of the misunderstandings.

Rule VII is needed to establish the standards for monitoring and referral of medication and treatment deficiencies. It establishes a protocol that facilities must follow to monitor all residents who receive a medication or treatment. This rule was drafted in compliance with 53-6-109, MCA. Its primary purpose is to protect residents of long term facilities. Less restrictive guidelines as well as more restrictive guidelines were considered and rejected. The proposed rule protects residents without being unduly burdensome to facilities.

The proposed changes to ARM 37.85.501(1)(s) and 37.85.502(1)(i) are necessary to update the state sanction rules to incorporate the most recent standards used by CMS. Updating these requirements will make the regulations consistent for long term care facilities who are regulated under both state and federal regulations. In addition, federal law as referenced in these rules requires nursing facilities to follow these updated regulations if they intend to receive reimbursement under the Medicare and Medicaid programs. The current difference between the two standards is confusing to providers.

5. Interested persons may submit their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to Kathy Munson, Office of Legal Affairs, Department of Public Health and Human

Services, P.O. Box 202951, Helena, MT 59620-2951, no later than 5:00 p.m. on March 11, 2004. Data, views or arguments may also be submitted by facsimile (406) 444-9744 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.

Russell Cater
Rule Reviewer

Mike Billings for
Director, Public Health and Human Services

Certified to the Secretary of State February 2, 2004.

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 4.5.301, 4.5.302, 4.5.305, 4.5.306, 4.5.308, 4.5.309, 4.5.313, and 4.5.315 relating to noxious weeds	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On December 24, 2003, the Department of Agriculture published MAR Notice No. 4-14-143 regarding the proposed amendment of the above-stated rules relating to noxious weeds at page 2781 of the 2003 Montana Administrative Register, Issue Number 24.

2. The agency has amended ARM 4.5.301, 4.5.302, 4.5.305, 4.5.306, 4.5.308, 4.5.309, 4.5.313, and 4.5.315 exactly as proposed.

3. No comments or testimony were received.

/s/ W. Ralph Peck
Ralph Peck
Director

/s/ Tim Meloy
Tim Meloy, Attorney
Rule Reviewer

Certified to the Secretary of State, February 2, 2004.

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the amendment) NOTICE OF AMENDMENT
Of ARM 4.12.1427 relating to)
shipping point inspection fees)

TO: All Concerned Persons

1. On December 24, 2003, the Department of Agriculture published MAR Notice No. 4-14-147 regarding the proposed amendment of the above-stated rule relating to shipping point inspection fees at page 2789 of the 2003 Montana Administrative Register, Issue Number 24.

2. The agency has amended ARM 4.12.1427 exactly as proposed.

3. No comments or testimony were received.

/s/ W. Ralph Peck
Ralph Peck
Director

/s/ Tim Meloy
Tim Meloy, Attorney
Rule Reviewer

Certified to the Secretary of State, February 2, 2004.

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

In the matter of the amendment of ARM 6.6.503, 6.6.504, 6.6.505, 6.6.506, 6.6.507, 6.6.507A, 6.6.507B, 6.6.507C, 6.6.508, 6.6.508A, 6.6.509, 6.6.510, 6.6.511, 6.6.517, 6.6.519, 6.6.521 and 6.6.522, pertaining to Medicare Supplements; ARM 6.6.607 pertaining to Medicare Select Full Coverage; and the adoption of New Rule I (ARM 6.6.523) pertaining to separability, and New Rule II (ARM.6.6.502A) pertaining to purpose	)))))))))))))))))))	NOTICE OF AMENDMENT AND ADOPTION

TO: All Concerned Persons

1. On October 16, 2003, the State Auditor and Commissioner of Insurance published MAR Notice No. 6-144 regarding a public hearing on the proposed amendment of the above-stated rules pertaining to Medicare Supplements, Medicare Select Full Coverage, and the adoption of new rules pertaining to separability and purpose at page 2125 of the 2003 Montana Administrative Register, Issue No. 19.

2. The Department has amended ARM 6.6.503, 6.6.504, 6.6.505, 6.6.506, 6.6.507, 6.6.507A, 6.6.507B, 6.6.507C, 6.6.508, 6.6.508A, 6.6.509, 6.6.510, 6.6.511, 6.6.517, 6.6.519, 6.6.521, 6.6.522 and 6.6.607 as proposed, and adopted New Rule I (ARM 6.6.523) and New Rule II (ARM 6.6.502A) as proposed.

3. The following comments were received and appear with the State Auditor's responses:

COMMENT 1: Regarding ARM 6.6.507(4)(a)(iii), "The recognition of the requirement contained in the underlined language is positive."

RESPONSE 1: The State Auditor's Office, Department of Insurance, is unsure what the commenter means by this statement. This language was taken directly from the 2002 NAIC Medicare Supplement Insurance Minimum Standards Model Act, which was drafted to comply with the requirements of the Federal regulations relating to the minimum standards for Medicare supplement insurance.

There is a drafting note in the model that may be helpful in interpreting this language:

The issuer stands in the place of Medicare, and so the provider must accept the issuer's payment as payment in full. The Outline of Coverage specifies that the beneficiary will pay "$0", and the provider cannot balance bill the insured. [Model Act, Section 8(B)(3)]

COMMENT 2: Regarding ARM 6.6.507C, "The amendments appear to apply to Medicare+Choice. Is this correct?"

RESPONSE 2: No, the NAIC model and the applicable Federal regulations clearly state that the guarantee issue provisions must apply to all eligible persons [which are described in ARM 6.6.507C(2)], and the current amendments to the Montana Medicare Supplement Rules reflect that requirement. Eligibility for guarantee issue is not restricted to only those individuals coming from Medicare+Choice plans.

COMMENT 3: Regarding ARM 6.6.510, "State to Applicant by Issuer, or Producer" (2) "Why delete language 'as long as you have not allowed your policy to lapse over 31 days.'"

RESPONSE 3: Once again, this change was made to conform the Montana Rules to the NAIC model and the federal regulations. In certain cases, a person may have 63 days to replace coverage.

COMMENT 4: Regarding ARM 6.6.517(1), "What constitutes 'or other entity' providing commission or compensation?"

RESPONSE 4: This change was made to conform the Montana Rules to the NAIC model and the federal regulations. "Other entity" would be any other entity besides an issuer, which may pay commissions to producers (such as a producer agency).

COMMENT 5: Regarding New Rule I (ARM 6.6.523), "Should this provision be 'separability' or 'severability?"

RESPONSE 5: The Model uses the term "separability," and Black's Law Dictionary indicates that the terms "separability" and "severability" can be used interchangeably.

JOHN MORRISON, State Auditor
and Commissioner of Insurance

By: /s/ Alicia Pichette
Alicia Pichette
Deputy Insurance Commissioner

By: /s/ Christina L. Goe
Christina L. Goe
Rule Reviewer

Certified to the Secretary of State on February 2, 2004.

BEFORE THE DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the repeal of ARM 8.2.102, 8.2.103, 8.2.104, 8.2.105, and 8.2.106 relating to model rules exceptions of the board of milk control and state banking board	NOTICE OF REPEAL

TO: All Concerned Persons

1. On December 11, 2003, the department published MAR Notice No. 8-2-40 regarding the proposed repeal of the above-stated rules relating to procedures for the Board of Milk Control and the State Banking Board at page 2673 of the 2003 Montana Administrative Register, issue no. 23.

2. No comments or testimony were received.

3. The department has repealed the rules as proposed.

DEPARTMENT OF COMMERCE

By: /s/ MARK A. SIMONICH
MARK A. SIMONICH, DIRECTOR
DEPARTMENT OF COMMERCE

By: /s/ G. MARTIN TUTTLE
G. MARTIN TUTTLE, RULE REVIEWER

Certified to the Secretary of State, February 2, 2004.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 17.24.201, 17.24.202, 17.24.203, 17.24.206, 17.24.207, 17.24.212, 17.24.213, 17.24.214, the adoption of new rules I through X, and the repeal of 17.24.204, 17.24.205 and 17.24.215 pertaining to opencut mining	NOTICE OF AMENDMENT, ADOPTION AND REPEAL (OPENCUT MINING)

TO: All Concerned Persons

1. On October 16, 2003, the Board of Environmental Review published MAR Notice No. 17-200 regarding a notice of public hearing on the proposed amendment, adoption and repeal of the above-stated rules at page 2190, 2003 Montana Administrative Register, issue number 19.

2. The Board has amended ARM 17.24.201, 17.24.202, 17.24.203, 17.24.206, 17.24.207 and 17.24.214, adopted new rules I (17.24.216), II (17.24.217), VI (17.24.221), VII (17.24.222), and VIII (17.24.223), and repealed ARM 17.24.204, 17.24.205 and 17.24.215 exactly as proposed. The Board has amended ARM 17.24.212 and 17.24.213 and adopted new rules III (17.24.218), IV (17.24.219), V (17.24.220), IX (17.24.224) and X (17.24.225) as proposed, but with the following changes, deleted matter interlined, new matter underlined:

17.24.212 APPROVAL OR DISAPPROVAL OF AN APPLICATION FOR A PERMIT (1) remains as proposed.

(2) The department shall approve a permit application if it determines that:

(a) the application contains the following:

(i) through (iv) remain as proposed.

(v) a completed copy of the landowner consent form; and

(vi) a completed copy of the zoning compliance form; and

(b) through (5) remain as proposed.

17.24.213 AMENDMENT OF PERMITS (1) An operator may apply for an amendment to its permit by submitting an amendment application to the department. Upon receipt of an amendment application and within the time limits provided in 82-4-432(4), MCA, the department shall, if it determines that site inspection is necessary to adequately evaluate the application, inspect the proposed site and evaluate the application to determine if the requirements of the Act and this subchapter will be satisfied. If the department determines that a site inspection is necessary and it is unable to evaluate an application because weather or other field conditions prevent an adequate site inspection, the department shall disapprove the application.

(2) The department shall approve an amendment application if it determines that:

(a) the application contains a completed copy of the amendment application form provided by the department, additional bond if necessary, a new landowner consent form if required under ARM 17.24.206(1), a new zoning compliance form if required under ARM 17.24.223, and ~~the proposed~~ plan of operation revisions, if necessary; and

(b) through (4) remain as proposed.

NEW RULE III (17.24.218) PLAN OF OPERATION--SITE PREPARATION, MINING, AND PROCESSING PLANS--AND PERFORMANCE STANDARDS (1) The plan of operation must include the following site preparation, mining, and processing plan commitments and information:

(a) an access road and main permit area boundary markers section, including a statement that the operator has clearly marked on the ground the access road segments to be improved or constructed and the main permit area boundary segments that require marking, and will maintain the markings as required by this rule. Road segments to be improved or constructed must be marked at every corner and along each segment so that the markers are easily visible with the naked eye from one to the next and no more than approximately 300 feet apart. Those portions of the boundary defined by definite topographic changes, natural barriers, or man-made structures, or located in active hayland or cropland, need not be marked. Other boundary segments must be marked at every corner and along each segment so that the markers are easily visible with the naked eye from one to the next and no more than approximately 300 feet apart. Acceptable road and boundary markers include brightly colored, brightly painted, or brightly marked fenceposts, rocks, trees, and other durable objects. A boundary marker must remain functional until the beginning of final reclamation of the area next to that marker;

(b) through (e)(ii) remain as proposed.

(f) a mine material handling section, including:

(i) remains as proposed.

(ii) a description of the types, grades, and ~~estimated~~ quantities of mine material proposed to remain stockpiled, per landowner request, at the conclusion of opencut operations, and justifications for the quantities based on current and expected demand for the materials. The department shall reject a landowner's request that certain mine materials remain stockpiled if adequate justification is not provided.

(g) through (2) remain as proposed.

NEW RULE IV (17.24.219) PLAN OF OPERATION--RECLAMATION PLAN--AND PERFORMANCE STANDARDS (1) The plan of operation must include the following site reclamation plan commitments and information:

(a) remains as proposed.

(b) a soil and overburden handling section, including:

(i) a statement that the operator will strip soil before other opencut operation disturbances occur; strip, stockpile, and replace soil separately from overburden; strip a minimum of six inches of soil, if available, from accessible facility-level areas; strip all soil from accessible mine-level areas; strip and retain enough overburden, if available, from mine-level areas so that up to an 18-inch thickness of overburden and soil can be replaced on dryland mine-level reclamation, and up to a 36-inch thickness of overburden and soil can be replaced on cropland and irrigated mine-level reclamation; maintain at least a 10-foot buffer stripped of soil and needed overburden along the edges of highwalls; haul soil and overburden directly to areas prepared for resoiling, or stockpile them and protect them from erosion, contamination, compaction, and unnecessary disturbance; at the first seasonal opportunity, shape and seed to an approved perennial species mix the soil and overburden stockpiles that will remain in place for more than ~~one~~ two years; and keep all soil on site and accessible until the approved postmining land uses are assured to the department's satisfaction. Only initial setup activities and soil stockpiling may occur on unstripped areas. The department may require that more than a six-inch thickness of soil be stripped from facility-level areas in order to protect soil quantity or quality for certain postmining land uses; and

(c) a surface cleanup and grading section, including:

(i) a statement that the operator will retrieve and properly use, stockpile, or dispose of all refuse, surfacing, and spilled materials found on and along access roads and in the main permit area, and leave reclaimed surfaces in a stable condition and with 5:1 or flatter slopes for hayland and cropland, 4:1 or flatter slopes for sandy surfaces, and 3:1 or flatter slopes for other sites and surfaces; leave them graded to drain off-site or concentrate water in low areas; leave them at least three feet above the ordinary water table level for dryland reclamation and at approved depths below the ordinary water table level for pond reclamation; and blend them into the surrounding topography and drainageways. The applicant may ~~apply for and the department may approve~~ propose the establishment of steeper slopes for certain postmining land uses and the construction of seasonal ponds. The department may require water-table-level monitoring to ensure that appropriate reclaimed surface elevations are established; and

(ii) a description of the locations and designs for special reclamation features such as drainageways, ponds, and building sites. Reclaimed drainageways must be located in their approximate premine locations~~,~~ and have channel and floodplain dimensions and gradients that approximate premine conditions, unless otherwise approved by the department. ~~and~~ Reclaimed drainageways must connect to undisturbed drainageways in a stable manner.

(d) through (e)(ii) remain as proposed.

(f) a reclamation timeframes section, including:

(i) a statement that the operator will complete all reclamation work on an area no longer needed for opencut

operations, or that the operator no longer has the right to use for opencut operations, within one year after the cessation of such operations or termination of such right. If it is not practical for the operator to reclaim a certain area until other areas are also available for reclamation, the operator may ~~request, and the department may approve,~~ propose an alternate reclamation deadline for that area; and

(ii) and (2) remain as proposed.

NEW RULE V (17.24.220) PLAN OF OPERATION--RECLAMATION BOND CALCULATION (1) A proposed reclamation bond calculation must be submitted as part of the plan of operation ~~on a form provided by the department~~. The bond amount must be based on a reasonable estimate of what it would cost the department to reclaim, in accordance with the plan of operation, the anticipated maximum disturbance during the life of the opencut operation, including equipment mobilization and administrative costs. The department shall review the proposed bond calculation and make a final determination.

(2) remains as proposed.

NEW RULE IX (17.24.224) ASSIGNMENT OF PERMITS (1) remains as proposed.

(2) The department shall approve an assignment application if it determines that:

(a) the application contains ~~a~~ completed ~~copy~~ copies of the ~~assignment~~ application for assignment and assignment forms provided by the department, and necessary revisions to the permit. The ~~assignment~~ application for assignment form shall include a statement that the applicant assumes responsibility for outstanding permit and site issues;

(b) through (4) remain as proposed.

NEW RULE X (17.24.225) PERMIT COMPLIANCE (1) remains as proposed.

(2) A permittee may allow another person to mine and process mine materials at ~~from~~ the permitted operator's site, only if the permittee retains control over that person's activities and ensures that no violations of the Act, this subchapter, or the permit occur. If the person violates the provisions of the Act, this subchapter, or the permit, the permittee is responsible for the violation, and the department may require abatement pursuant to (1).

(3) remains as proposed.

3. The following comments were received and appear with the Board's responses:

COMMENT NO. 1: How broadly would the proposed definition of "access road" in ARM 17.24.202(1) be interpreted? For example, if material were needed from an off-mine site for constructing a road, would that site need to be included in the permit area? Is this definition basically how access roads are being considered now?

RESPONSE: The definition would be interpreted to include the disturbances that are normally associated with an access road, i.e., cut and fill slopes, ditches, etc. However, if off-site materials were needed for construction of an access road, those disturbed areas would need to be included in the permit area, or permitted as a stand-alone mine site. The proposed definition reflects how the Department is currently including access roads in program administration.

COMMENT NO. 2: ARM 17.24.212(2)(a)(v) and (vi) should be amended by adding the language "a completed copy of the" before the landowner consent form and zoning compliance form. This change is necessary to provide consistency with the language in (2)(a)(ii).

RESPONSE: The Board agrees with the suggested changes and has amended the rule as shown above.

COMMENT NO. 3: In ARM 17.24.213(1) Amendment of Permits, the following is stated: "If the department determines that a site inspection is necessary and it is unable to evaluate an application because weather or other field conditions prevent an adequate site inspection, the department shall disapprove the application."

My concern is that, in a normal snow year, a pit could not be approved between December and the following April. Would you consider a specific time limit, e.g., 30 days maximum, for weather conditions to hold up a permit?

RESPONSE: The Board agrees that a period of time for the opportunity to do a site inspection before disapproving an application is warranted. Thus, the Board has inserted a reference to 82-4-432, MCA. With this insertion, the same timeframes applicable to initial applications are made applicable to amendment applications.

COMMENT NO. 4: ARM 17.24.213(2)(a) should be amended by deleting the language "the proposed" and adding the language "if necessary." This change is necessary to help clarify that if any revisions have been made to the plan of operation, they must be submitted to the Department with the amendment application.

RESPONSE: The Board agrees with the suggested changes and has amended the rule as shown above.

COMMENT NO. 5: In New Rule III(1)(a), permit boundary markers would need to be placed so that they are visible from one to the next and no more than 300 feet apart. It is recommended that this be changed by deleting the 300-foot requirement and requiring that the markers be placed close enough to each other so that they can be easily seen with the naked eye from one to the other.

RESPONSE: The Board does not concur with complete elimination of the 300-foot requirement. A distance requirement between markers is necessary to insure that each marker is readily visible from the adjacent markers. This is in the interest of operators, as well as the Department, by providing a

tool to protect against mining activity outside of the permit area. The Department believes that a distance of 300 feet is adequate to accomplish this. However, to provide some flexibility to the 300-foot requirement, the Board has added the word "approximately" in the appropriate locations. In addition, the Board agrees with the idea of markers being "easily seen with the naked eye," and has added text to that effect accordingly.

COMMENT NO. 6: New Rule III(1)(b)(ii) includes this provision: "A road or portion thereof may remain open for a reasonable postmining use and must be left in a condition suitable for that use..." Why would the Department determine what is "reasonable" for the landowner's use? This decision should be the landowner's.

RESPONSE: The Board has the obligation to ensure that proposed postmining land uses meet the requirements of the Opencut Mining Act. The Act requires that land be returned to "productive use." A road proposed to remain open must, therefore, have a legitimate purpose in relation to the use or capability of surrounding lands (mined or unmined) or have an appropriate tie to a landowner's plans for management or economic development. The Board does not view these standards as unwarranted or burdensome to the landowner and believes they are necessary to ensure that the disturbed land is returned to productive use.

COMMENT NO. 7: How will the Department use the information in New Rule III(1)(c)? Mining is dependent on the nature of the resource, and the mining process needs to be flexible. Will the operator be held to his estimate of location and use of equipment? I recommend a statement that a mine plan is required, but there is an understanding that it will change with the resource.

RESPONSE: The Department will use information submitted under this subsection to examine the basic layout and mine plan in relation to, for example, required soil salvage and stockpiling operations, expected noise levels, hours of operation, and potential hydrologic impacts and the need for hydrologic monitoring and mitigations. All of this would be done to assure that the operation can be conducted in its various aspects in compliance with the Opencut Mining Act and rules. Similarly, compliance with the mining, processing, and hauling subsection is necessary to ensure compliance with the Act and rules. For these reasons, the Board has not included a provision allowing the permittee to deviate from the mine plan. However, the Board recognizes that the plan may need to change because of the nature of the resource. Should a change in the location or use of equipment be necessary, the permittee can apply for a permit amendment. In addition, minor deviations from the plan may not require an amendment. A permittee can consult with the Department to determine whether an amendment is necessary.

COMMENT NO. 8: In reference to New Rule III(1)(f)(ii), the opencut mining staff is taking over what should be the landowner's decision to leave stockpiles of remaining mine material for his use. How can the landowner predict demand for such materials or the needs of his farm or ranch? Expansion of roads on the ranch (which would require use of such materials) may depend on market conditions.

RESPONSE: Section 82-4-423, MCA, requires that land disturbed by open mining operations be reclaimed. Section 82-4-403(13), MCA, defines the term "reclamation" as returning the land to productive use. In order to ensure that a gravel stockpile meets this requirement, the Department must make a determination that there is a reasonable possibility that the amount of gravel in the stockpile will be used. For this reason, the Board has adopted the rule as proposed.

COMMENT NO. 9: New Rule III(1)(f)(ii) should be amended by deleting the reference to estimated quantities of mine material. The proposed change is necessary to assist the Department in its administration of the Act and rules by requiring that operators and landowners provide more accurate figures for quantities of mine material. The addition of the two commas is a grammatical housekeeping change.

RESPONSE: The Board agrees with the suggested changes and has amended the rule as shown above.

COMMENT NO. 10: The proposed requirement in New Rule IV(1)(b)(i) that soil stockpiles that will remain in place for more than one year must be seeded would be an unnecessary expense for companies having short-term gravel needs for projects, such as road construction, where the stockpiles would only exist for two to three years before they are used for final reclamation of the mine site. Thus, this seeding requirement should be extended to three years for isolated pits that have limited usage.

RESPONSE: The Board agrees that the time should be extended, but the Board believes that it should be limited to two years for the following reason. After seeding of a stockpile, a vegetative cover that provides any significant protection does not develop for at least a year. Thus, there may be little benefit to seeding a soil stockpile that will be in existence for less than two years. However, a soil stockpile that will be in existence for greater than two years should be seeded to stabilize the surface. The Board has amended the rule as shown above.

COMMENT NO. 11: New Rule IV(1)(c)(i) should be amended by adding the language "propose the establishment of" and delete "apply for and the department may approve." The proposed change is necessary because it is commonly understood that opencut permitting and operations are subject to Department review and approval or denial; therefore, that phrase is not necessary. The language "the construction of" should be added to provide clarity.

RESPONSE: The Board agrees with the suggested changes and has amended the rule as shown above.

COMMENT NO. 12: In New Rule IV(1)(c)(ii), the following provision occurs: "Reclaimed drainageways must be located in their approximate premine locations, have channel and floodplain dimensions and gradients that approximate premine conditions, and connect to undisturbed drainageways in a stable manner." Some landowners use the gravel excavation as an improvement to their property and may wish to create better habitat. As long as the discharge water leaves the reclaimed area in a manner as stable as before mining, the landowner should be allowed with best management to improve his property. The commentor recommended changing the word "and" to "and/or". Another commentor recommended that the Department have flexibility to allow deviation from drainageway location and channel and floodplain dimension and gradient requirements.

RESPONSE: The Board agrees to revise the text to allow for some flexibility in drainageway location and channel and floodplain dimensions. However, compromising the standard for a stable connection of disturbed and undisturbed drainageways is unacceptable. The Board has amended the rule as shown above.

COMMENT NO. 13: New Rule IV(1)(f)(i) should be amended by deleting the language "request, and the department may approve," and by adding the word "propose." These changes are necessary because it is commonly understood that opencut permitting and operations are subject to Department review and approval or denial; therefore, that phrase is not necessary. The proposed changes are also necessary to provide consistency and clarity throughout the rules.

RESPONSE: The Board agrees with the suggested changes and has amended the rule as shown above.

COMMENT NO. 14: The title of New Rule V should be amended by adding the word "Calculation." This change is necessary for clarification. ARM 17.24.203 is entitled "Bond Or Other Security," and the title "Reclamation Bond" in New Rule V may cause confusion because it does not accurately reflect the content of the rule.

RESPONSE: The Board agrees with the suggested change and has amended the rule as shown above.

COMMENT NO. 15: In New Rule V(1), the first requirement is: "A proposed reclamation bond calculation must be submitted as part of the plan of operation on a form provided by the department." The Department has an incorrect figure for highwall reduction on its current bond form: the $1.00/cubic yard should instead be in the range of $0.25-0.30/cubic yard. I would recommend revising the bond form. Also, an operator should have the opportunity to submit his own calculated, site-specific reclamation costs for the purpose of determining the appropriate bond, and not strictly need to use the bond form provided by the Department.

RESPONSE: The Board agrees that the operator should be able to submit his own calculations for the Department's consideration regarding the bond of a proposed mine site, without having to use the Department's bond form. Thus, the rule has been amended to allow for that alternative as shown above.

The statement regarding the incorrect amount for highwall reduction on the currently used bond form is not germane to proposed New Rule V(1); rather, it relates to the specifics of the form itself. The commentor should discuss this matter with the Department outside of this rulemaking proceeding.

COMMENT NO. 16: How would a request for the possible additional information requirements of New Rule VII(1) and (2) relate to the timeframes allowed for approval (30 to 60 days)? It would be helpful for both the Department and industry if there were clear guidelines on when an application is considered complete and when the 30 to 60 day review period begins.

RESPONSE: An application would not be considered complete until all information required by the Department under this rule was submitted. The Opencut Mining Act does not require the Department to automatically grant an operator approval of an application 30 to 60 days after submittal. Required timelines for review of an application after submittal to the Department and for a decision after an application is determined to be complete are found in 82-4-432(4), MCA. If the Department determines that an application is not complete, the Department must send the applicant a detailed identification of all deficiencies. Such deficiencies would include any information the Department believes would be necessary under New Rule VII. This matter is addressed directly in New Rule I(2) as follows: "If, in its review, the department identifies additional information pursuant to [New Rules III(3), VI(7), and VII(1)] that must be submitted, the application is deficient until that information is submitted." Also in 82-4-432(4), MCA, the Department is obligated to notify an operator when the application is complete, at which point the 30 to 60 day clock for a decision starts.

COMMENT NO. 17: New Rule IX(2)(a) should be amended as follows: "~~a~~ completed ~~copy~~ copies of the ~~assignment~~ application for assignment and assignment forms provided by the department, and necessary revisions to the permit. The ~~assignment~~ application for assignment form shall include a statement that the applicant assumes responsibility for outstanding permit and site issues". The proposed changes are necessary to clarify that the Department requires completed copies of two forms be submitted with an assignment application.

RESPONSE: The Board agrees with the suggested changes and has amended the rule as shown above.

COMMENT NO. 18: New Rule X(2) should be amended as follows: "permittee may allow another person to mine and process mine materials at ~~from~~ the permitted operator's site, only if

the permittee retains control over that person's activities and ensures that no violations of the Act, this subchapter, or the permit occur. If the person violates the provisions of the Act, this subchapter, or the permit, the permittee is responsible for the violation, and the department may require abatement pursuant to (1)."

This change is necessary for consistency with the intent of the rule, which is to allow a permittee to control mining activities within the permitted area. The word "from" indicates that control of mining activities and mine material processing could extend to any area where the mine material is taken, which is contrary to the intent of the rule. Use of the word "at" provides proper context with the intent of the rule (within the permit area). The addition of the two commas is a grammatical housekeeping change.

RESPONSE: The Board agrees with the suggested changes and has amended the rule as shown above.

Reviewed by: BOARD OF ENVIRONMENTAL REVIEW

John F. North By: *Joseph W. Russell*
JOHN F. NORTH JOSEPH W. RUSSELL, M.P.H.
Rule Reviewer Chairman

Certified to the Secretary of State, February 2, 2004.

BEFORE THE BOARD OF VETERINARY MEDICINE
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of ARM 8.64.501 and 8.64.509, pertaining to application requirements and licensure by endorsement	)))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On December 24, 2003, the Board of Veterinary Medicine published MAR Notice No. 8-64-29 regarding the proposed amendment of the above-stated rules relating to application requirements and licensure by endorsement, at page 2825 of the 2003 Montana Administrative Register, issue no. 24.

2. No comments or testimony were received.

3. The Board has amended ARM 8.64.501 and ARM 8.64.509 exactly as proposed.

BOARD OF VETERINARY MEDICINE
JOHN SMITH, DVM, PRESIDENT

/s/ WENDY J. KEATING
Wendy J. Keating, Commissioner
Department of Labor and Industry

/s/ MARK CADWALLADER
Mark Cadwallader
Alternate Rule Reviewer

Certified to the Secretary of State February 2, 2004

BEFORE THE BOARD OF HEARING AID DISPENSERS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of ARM 24.150.501, 24.150.2201 and 24.150.2301, pertaining to examination, continuing education and unprofessional conduct	))))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On August 14, 2003, the Board of Hearing Aid Dispensers published MAR Notice No. 24-150-33 regarding the public hearing on the proposed amendment of the above-stated rules relating to examination, continuing education and unprofessional conduct, at page 1779 of the 2003 Montana Administrative Register, issue no. 15.

2. The public hearing was held on September 18, 2003. One witness testified and two written comments were received. A summary of the comments received and the Board's responses are as follows:

COMMENT 1: David Main appeared, testified and submitted a written comment. He stated that he "believes" in specific guidelines regarding cerumen removal of a limited nature with certification by cerumen management training which is occasionally available as continuing education. He also requested the information as to how many complaints had been received involving removal of cerumen.

RESPONSE 1: The Board thanked the commenter and stated that it is required to protect the public health, safety and welfare. As such, the Board believes it necessary to declare that cerumen removal is beyond the scope of practice for hearing aid dispensers. The Board has received complaints which demonstrated injury to clientele of the hearing aid dispenser. For that reason, the Board has determined removal of cerumen is beyond the scope of practice of a hearing aid dispenser and any removal of cerumen is unacceptable.

COMMENT 2: Sandy Harshaw wrote that she would like to know how "numerous" the complaints were, who the people were and what companies are involved. She felt that "it is our right to know what these rules are based on." She went on to state that "If you cannot remove wax in order to perform your job then you no longer have a profession." She also stated that removal of cerumen was necessary to take an impression of an ear. She formally requested that this rule change be permanently dropped.

RESPONSE 2: The Board thanked Ms. Harshaw for her input and stated that removal of cerumen was definitely beyond the scope of practice of hearing aid dispensers. The Board also stated that "even one complaint is too many." The Board does agree that removal of impacted cerumen is necessary to take a proper ear impression, but hearing aid dispensers are not the professionals authorized to perform such an action.

3. After consideration of the comments the Board has amended ARM 24.150.501, 24.150.2201 and 24.150.2301 exactly as proposed.

BOARD OF HEARING AID DISPENSERS
SUSAN KALARCHIK, CHAIR

/s/ WENDY J. KEATING
Wendy J. Keating, Commissioner
Department of Labor and Industry

/s/ MARK CADWALLADER
Mark Cadwallader
Alternate Rule Reviewer

Certified to the Secretary of State February 2, 2004.

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

In the matter of the adoption of new rules I and II, and amendment of ARM 37.79.101, 37.79.102, 37.79.201, 37.79.202, 37.79.206, 37.79.207, 37.79.301, 37.79.302, 37.79.303, 37.79.308, 37.79.309, 37.79.316, 37.79.317, 37.79.321, 37.79.322, 37.79.326, 37.79.501, 37.79.503, 37.79.504, 37.79.505, 37.79.601, 37.79.602, 37.79.605, 37.79.606, 37.79.607, and 37.79.801 pertaining to children's health insurance plan (CHIP)	)	NOTICE OF ADOPTION AND AMENDMENT

TO: All Interested Persons

1. On November 13, 2003, the Department of Public Health and Human Services published MAR Notice No. 37-307 pertaining to the public hearing on the proposed adoption and amendment of the above-stated rules relating to children's health insurance plan (CHIP), at page 2503 of the 2003 Montana Administrative Register, issue number 21.

2. The Department has adopted rule II [37.79.208] as proposed.

3. The Department has amended ARM 37.79.101, 37.79.102, 37.79.301, 37.79.302, 37.79.303, 37.79.308, 37.79.309, 37.79.317, 37.79.321, 37.79.322, 37.79.326, 37.79.501, 37.79.504, 37.79.505, 37.79.601, 37.79.602, 37.79.606, 37.79.607 and 37.79.801 as proposed.

4. The Department has adopted the following rule as proposed with the following changes from the original proposal. Matter to be added is underlined. Matter to be deleted is interlined.

RULE I [37.79.209] ELIGIBILITY VERIFICATION REVIEWS

(1) To verify the eligibility determination ~~process~~, a random sample of families will be required to participate in an eligibility verification review and provide documentation to verify the income information as stated on their applications.

(a) through (c) remain as proposed.

(2) If an enrollee's family income exceeds CHIP income guidelines, the enrollment will be terminated ~~and~~ or if

applicable, the applicant's name will be removed from the waiting list.

(3) through (3)(l) remain as proposed.

AUTH: Sec. 53-4-1009, MCA
IMP: Sec. 53-4-1004, MCA

5. 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.

37.79.201 ELIGIBILITY (1) An applicant may be eligible for covered services under CHIP if:

(a) through (f) remain as proposed.

(g) the applicant is not an inpatient in an institution for mental disease on the date of ~~enrollment~~ application or reapplication;

(h) through (h)(v) remain as proposed.

(i) the applicant or the applicant's parent is not eligible for health insurance coverage under the state of Montana employee's health insurance plan ~~unless a less-than-nominal contribution as defined in 42 CFR 457.310 is available from the State of Montana~~; and

(j) the applicant is not eligible or potentially eligible for medicaid coverage as determined by the department~~; and~~.

~~(k) the family's adjusted gross income is within the CHIP income guidelines for the family size.~~

(2) through (2)(b) remain as proposed.

(3) An applicant whose CHIP enrollment ended because his or her parent was activated into military service and who was insured through tri-care, which is the insurance available to active duty and retired military families during the parent's military activation period, is not subject to the three month waiting period for previous creditable health insurance and will ~~bypass the waiting list~~ be enrolled in CHIP if he or she continues to be eligible for CHIP. Upon notification that the parent was deactivated and the applicant loses tri-care coverage, the applicant may be re-enrolled:

(a) through (4) remain as proposed.

(5) Applicants who are losing medicaid coverage or who were denied medicaid for a reason other than the family withdrew their application or failed to comply with medicaid requirements will be~~:~~ referred to CHIP via an electronic report. CHIP eligibility will be determined and applicants will be enrolled in CHIP or placed on the CHIP waiting list.

~~(a) referred to CHIP via an electronic report;~~

~~(b)~~ (a) A~~a~~pplicants will be mailed a form to authorize the use and disclosure of health information that will include questions about the family's health insurance and whether health insurance is available to the family.

~~(6) Upon receipt by the department of a signed and completed authorization form for the use and disclosure of health insurance information, the applicant will be notified:~~

~~(a) whether the applicant qualifies for benefits based on CHIP-pertinent information obtained electronically from the family's most recent medicaid application; or~~

~~(b) if additional information is required to make a decision.~~

~~(7) If the signed and completed authorization for the use and disclosure of health information form is received by CHIP:~~

~~(a) during the same month it was mailed to the family and the applicant qualifies for CHIP benefits, the applicant will bypass the CHIP waiting list and be enrolled the first day of the following month;~~

~~(b) during the same month it was mailed to the family and it cannot be determined whether the applicant qualifies for CHIP benefits, the applicant may receive up to one month of CHIP benefits while required information is being provided;~~

~~(c) the month after it was mailed to the family, the CHIP qualified applicant will be placed at the top of the CHIP waiting list; or~~

~~(d) if later than (7)(c), the CHIP qualified applicant will be treated as a new applicant and placed on the CHIP waiting list.~~

(8) through (12) remain as proposed but are renumbered (6) through (10).

AUTH: Sec. 53-4-1004 and 53-4-1009, MCA
IMP: Sec. 53-4-1003 and 53-4-1004, MCA

37.79.202 NON-QUALIFYING APPLICANTS (1) Applicants determined by the department to be eligible for medicaid through a medicaid ~~screening~~ determination process are not eligible to receive CHIP benefits.

(2) through (6) remain as proposed.

AUTH: Sec. 53-4-1004 and 53-4-1009, MCA
IMP: Sec. 53-4-1003 and 53-4-1004, MCA

37.79.206 ELIGIBILITY REDETERMINATION, NOTICE OF CHANGES (1) Eligibility determinations shall be effective for a period of ~~one year~~ 12 months unless one or more of the following changes occurs:

(a) through (e) remain as proposed.

(f) the enrollee or the enrollee's parent becomes eligible for state employee benefits before the expiration of the ~~one year~~ 12 month eligibility period ~~except when a less-than-nominal contribution as defined in 42 CFR 457.310 is available from the state of Montana~~;

(g) the ~~child~~ enrollee dies; or

(h) the ~~child~~ enrollee becomes eligible for medicaid.

(2) Parents or guardians must give notice within 30 days when the family moves or another change specified in (1) occurs. ~~Termination of CHIP coverage will be effective:~~

~~(a) the day an enrollee enters a correctional facility;~~

~~(b) the day after an enrollee dies; or~~

~~(c) the last day of the month CHIP discovers a change~~

~~occurred.~~

(3) A CHIP renewal application must be completed and CHIP eligibility redetermined every 12 months. If the renewal application is not returned before CHIP enrollment is scheduled to end, benefits will terminate. A new application may be completed at a later date but the applicant may be placed on the waiting list ~~until sufficient funds are available to enroll the applicant~~.

AUTH: Sec. 53-4-1009, MCA
IMP: Sec. 53-4-1003, MCA

37.79.207 TERMINATION OF ELIGIBILITY AND GUARDIAN LIABILITY (1) through (1)(b) remain as proposed.

(2) CHIP eligibility terminates at the end of the month:

(a) remains as proposed.

(b) the parent or guardian or enrollee becomes eligible for state employee insurance benefits ~~except when a less-than-nominal contribution as defined in 42 CFR 457.310 is available from the State of Montana~~;

(c) through (4) remain as proposed.

AUTH: Sec. 53-4-1009, MCA
IMP: Sec. 53-4-1003, MCA

37.79.316 MENTAL HEALTH BENEFITS (1) Mental health benefits include:

(a) remains as proposed.

(b) outpatient services furnished by public or private licensed and qualified practioners in a community based setting or in a mental hospital.

(2) Mental health benefits are limited to:

(a) 21 days of inpatient mental health care per benefit year; ~~and~~

(b) partial hospitalization benefits which are exchanged for inpatient days at a rate of two partial treatment days for one inpatient day~~.~~ ; or

(c) 20 outpatient visits per year which can be furnished in community based settings or in a mental hospital.

(3) through (4) remain as proposed.

AUTH: Sec. 53-4-1009, MCA
IMP: Sec. 53-4-1003, MCA

37.79.503 ENROLLMENT WITH AN INSURER (1) through (4) remain as proposed.

(5) The enrollment date will always be the first day of the enrollment month. An applicant will be enrolled the later of:

(a) the month after the applicant is determined eligible; or

~~(b) when there is more than one insurer, the month after the family chooses an insurer; or~~

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

(6) through (6)(b) remain as proposed.

AUTH: Sec. 53-4-1009, MCA
IMP: Sec. 53-4-1003 and 53-4-1007, MCA

37.79.605 PARTICIPATING PROVIDERS (1) through (5) remain as proposed.

(6) Physicians, ~~advance~~ advanced practice registered nurses and physician assistants shall either have admitting privileges to at least one general or critical shortage area hospital or shall have a mechanism in place to ensure hospitalization when appropriate.

(7) through (11)(b) remain as proposed.

AUTH: Sec. 53-4-1009, MCA
IMP: Sec. 53-4-1003, MCA

6. The Department has thoroughly considered all commentary received. The comments received and the Department's response to each follow:

COMMENT #1: A commentor proposed two changes to Rule I, delete the word "process" in (1) and change the word "and" to "or" in (2).

RESPONSE: The Department agrees that the edits more accurately state CHIP's eligibility verification reviews.

COMMENT #2: A commentor proposed changing the word "enrollment" to "application or re-application" in ARM 37.79.201(1)(g).

RESPONSE: The Department agrees and has amended the rule accordingly. Federal regulations state "at the time of application or during any periodic review of eligibility". Because of the waiting list for CHIP benefits, a significant amount of time may lapse between the application date and the enrollment date.

COMMENT #3: A commentor proposed deleting the phrase "unless a less-than-nominal contribution as defined in 42 CFR 457.310 is available from the State of Montana" from ARM 37.79.201(1)(i).

RESPONSE: The Department agrees and has amended the rule accordingly. Centers for Medicare and Medicaid Services (CMS) has recently ruled that this option is not available to Montana.

COMMENT #4: A commentor suggested deleting ARM 37.79.201(1)(k) because it is redundant.

RESPONSE: The Department agrees and has amended the rule accordingly. This subsection repeats ARM 37.79.201(1)(c).

COMMENT #5: A commentor proposed changing ARM 37.79.201(3) to read: "An applicant whose CHIP enrollment ended because his or

her parent was activated into military service and who was insured through Tri-care, which is the insurance available to active duty and retired military families during the parent's military activation period, is not subject to the three month waiting period for previous creditable health insurance and will be enrolled in CHIP if he or she continues to be eligible. Upon notification that the parent was deactivated and the applicant loses Tri-care coverage, the applicant may be re-enrolled:"

RESPONSE: The Department agrees and has amended the rule accordingly. Applicants who were insured through Tri-care qualify for immediate enrollment or re-enrollment if they are otherwise eligible for CHIP.

COMMENT #6: A commentor proposed deleting ARM 37.79.201(6) and (7) and changing ARM 37.79.201(5) to: "Applicants who are losing Medicaid coverage or who were denied Medicaid for a reason other than the family withdrew the application or failed to comply with Medicaid requirements will be referred to CHIP via an electronic report. CHIP eligibility will be determined and applicants will be enrolled in CHIP or placed on the CHIP waiting list".

RESPONSE: The Department agrees and has amended the rule accordingly. The detail provided in ARM 37.79.201(6) and (7) does not need to be stated in rule. Based on funding, a CHIP enrollment cap may exist which will prohibit enrollment of children who lose Medicaid.

COMMENT #7: A commentor suggests changing "one year" to "12 months" in ARM 37.79.206(1) for consistency in wording.

RESPONSE: The Department agrees and has amended the rule accordingly.

COMMENT #8: A commentor suggested continuing to use the term "guardian" alone instead of the proposed change to "parent or guardian" or "parent" where appropriate. Commentor also noted that the use of parent or guardian was not consistent, sometimes just parent, sometimes guardian.

RESPONSE: The Department does not agree. The term "guardian" is a word of art and a legal relationship governed by the provisions of Title 72, Chapter 5, MCA. A parent is defined in 42-1-103, MCA as "the birth or adoptive mother or the birth, adoptive, or legal father whose parental rights have not been terminated". The terms are not always interchangeable in the CHIP program. When a rule applies to either a parent or guardian the phrase "parent or guardian" is used. Otherwise, the rules have been amended to clearly state provisions that apply only to guardians or only to parents.

COMMENT #9: A commentor suggested deleting the phrase "except when a less-than-nominal contribution as defined in 42 CFR

457.310 is available from the State of Montana" from ARM 37.79.206(1)(f).

RESPONSE: The Department agrees and has amended the rule accordingly. CMS has recently ruled that this option is not available to Montana.

COMMENT #10: A commentor proposed deleting the phrase "until sufficient funds are available to enroll the applicant" from ARM 37.79.206(3).

RESPONSE: The Department agrees and has amended the rule accordingly. The number of CHIP enrollees may not always be calculated solely on available funds.

COMMENT #11: A commentor suggested deleting the proposed addition of ARM 37.79.206(2) because similar language is included in ARM 37.79.207(1) and (2) and the addition of ARM 37.79.206(2) creates ambiguity.

RESPONSE: The Department agrees in part. The first sentence of ARM 37.79.206(2), which outlines the length of time a family has to report changes to CHIP, must be retained. The remainder of the proposed new language has been deleted.

COMMENT #12: A commentor suggests deleting the phrase "except when a less-than-nominal contribution as defined in 42 CFR 457.310 is available from the State of Montana" from ARM 37.79.207(2)(b).

RESPONSE: The Department agrees and has made the change accordingly. This phrase has been eliminated because CMS recently ruled that this option is not available to Montana.

COMMENT #13: Two commentors state reasons that contraceptives used for birth control purposes should be included as CHIP benefits.

RESPONSE: State statute (53-4-1005(2), MCA) prohibits payment for birth control contraceptives as a CHIP benefit.

COMMENT #14: A commentor stated, "...not covering durable medical equipment (DME) does not make sense, without the necessary equipment, some illnesses will not improve and some may even worsen."

RESPONSE: If DME were included as a CHIP benefit, the services would increase premium costs and, consequently, reduce the number of children insured. Because the number of children requiring DME is limited, the Department has chosen to provide insurance coverage to more children.

COMMENT #15: Two commentors stated that the proposed language in ARM 37.79.316(1)(b) is not clear. It seems to exclude

community based private practitioners from providing outpatient mental health services.

RESPONSE: The Department did not intend to exclude licensed and qualified private practitioners from providing outpatient mental health services. ARM 37.79.316(1)(b) has been revised to clarify that private practitioners may provide outpatient mental health services.

COMMENT #16: A commentor suggested adding the following language to ARM 37.79.316(2)(c), "Twenty outpatient visits per year which can be furnished in community based settings or in a mental hospital".

RESPONSE: The Department agrees and has amended the rule accordingly. This mental health benefit is available.

COMMENT #17: A commentor noted that for grammatical correctness the word "advance" should be corrected to "advanced" in ARM 37.79.605(6).

RESPONSE: The Department agrees and has made the suggested change.

COMMENT #18: A commentor proposed changing ARM 37.79.606(2) to, "The insurer may retain any savings realized by the insurer from the expenditures for necessary health benefits by the enrolled population totaling less than the premium paid by the department, unless the insurer and the department negotiate other contract agreements relating to premium paid in excess of expenditures".

RESPONSE: The Department determined that this change should not be made by administrative rule at this time. If the parties agree, the Department and an insurer could address this by contract.

COMMENT #19: A comment was received that the statements of reasonable necessity in the notice of proposed adoption and amendment were inadequate.

RESPONSE: The Department does not agree. MAR Notice 37-307, the proposal notice, stated the Department's principal reasons and rationale for the new and amended rules, including the reasons for a particular approach.

Russell Cater
Rule Reviewer

Mike Billings for
Director, Public Health and Human Services

Certified to the Secretary of State February 2, 2004.

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

In the matter of the repeal of ARM 37.106.1506 pertaining to licensure of health maintenance organizations (HMO)	)))))	NOTICE OF REPEAL

TO: All Interested Persons

1. On December 11, 2003, the Department of Public Health and Human Services published MAR Notice No. 37-311 pertaining to the proposed repeal of the above-stated rule relating to health maintenance organizations (HMO), at page 2748 of the 2003 Montana Administrative Register, issue number 23.

2. The Department has repealed ARM 37.106.1506 as proposed.

3. No comments or testimony were received.

Russell Cater
Rule Reviewer

Mike Billings for
Director, Public Health
and Human Services

Certified to the Secretary of State February 2, 2004.

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

In the matter of the amendment of ARM 38.5.2202 and 38.5.2302, pertaining to Pipeline Safety, ARM 38.5.1010 and 38.5.2101, pertaining to the National Electric Safety Code, and ARM 38.5.2102, pertaining to the American National Standards Institute	)	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On October 16, 2003, the Department of Public Service Regulation, Public Service Commission (PSC) published MAR Notice No. 38-2-174 regarding a public hearing on the proposed amendment of ARM 38.5.2202 and 38.5.2302, pertaining to pipeline safety, ARM 38.5.1010 and 38.5.2101, pertaining to the National Electric Safety Code, and ARM 38.5.2102, pertaining to the American National Standards Institute, at page 2224 of the 2003 Montana Administrative Register, issue number 19.

2. The PSC has amended ARM 38.5.2202, 38.5.2302, 38.5.1010, 38.5.2101 and 38.5.2102 exactly as proposed:

3. No comments or testimony were received.

/s/ Bob Rowe
Bob Rowe, Chairman

/s/ Robin A. McHugh
Reviewed by Robin A. McHugh

Certified to the Secretary of State on February 2, 2004.

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

In the matter of the repeal of ARM 38.5.2401 through 38.5.2407 and the adoption of new rules I and II, all pertaining to charges for raising or cutting wires or cables or moving poles to accommodate relocation of structures	))))))))	NOTICE OF REPEAL AND ADOPTION

TO: All Concerned Persons

1. On October 16, 2003, the Department of Public Service Regulation, Public Service Commission (PSC) published MAR Notice No. 38-2-173 regarding a public hearing on the proposed repeal of ARM 38.5.2401 through 38.5.2407 and the adoption of new rules I and II, all pertaining to utility charges for raising or cutting wires or moving poles to accommodate relocation of structures, at page 2220 of the 2003 Montana Administrative Register, issue number 19.

2. The PSC has repealed ARM 38.5.2401 through 38.5.2407 exactly as proposed. In the notice of public hearing, a word was inadvertently left out of the catchphrase for ARM 38.5.2404. The correct catchphrase is EXCEPTIONS TO NECESSARY AND REASONABLE EXPENSES.

3. The PSC has adopted new rules I (38.5.2410) and II (38.5.2414) exactly as proposed.

4. The following comments were received and appear with the PSC's responses:

COMMENT 1: At the hearing several persons in the house moving business presented views on the proposed rules and the legislation upon which the rules are based. The views included suggestions (the statutes are unclear, electric cooperatives should not be exempt, and the charges for movement of structures are unclear) and questions (who is to be billed by the utility, what charges apply if the utility does not file cost schedules).

RESPONSE: The clarity of the statutes and the existing exemptions for certain utilities are matters for the legislature. The PSC does not find the statutes unclear. The charges that will apply are to be based on cost schedules filed with the PSC, updated annually as necessary. If a utility subject to the statutes does not file a cost schedule the utility is in violation of Montana law. The practical effect for persons moving structures is unknown, as the law does not specify a remedy for the person moving a structure and the law

does not authorize the PSC to fashion such a remedy. The statutes appear to contemplate that the person arranging with the utility for moving the structure will be the person billed by the utility. The owner of the structure and the transporter of the structure should reach agreement regarding billing and payment and inform the utility accordingly.

COMMENT 2: The Montana Telecommunications Association suggested the PSC notify those required to file rates prior to the time annual updates are required.

RESPONSE: The responsibility to timely comply with the filing of cost schedules or updates rests with the utilities. However, the PSC attempts to make a reasonable effort, as a courtesy, time and resources permitting, to timely remind utilities of requirements for filing.

/s/ Bob Rowe
Bob Rowe, Chairman

/s/ Robin A. McHugh
Reviewed by Robin A. McHugh

Certified to the Secretary of State February 2, 2004.

BEFORE THE BOARD OF REALTY REGULATION
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the petition for declaratory ruling on the issue of whether a real estate broker or salesperson, who is engaged in property management, shall provide relationship disclosures as are provided by §37-51-314, MCA, or as are provided by ARM 8.58.714(3)(n)	AMENDED NOTICE OF PETITION FOR DECLARATORY RULING

TO: All Concerned Persons

1. On March 4, 2004, at 9:00 a.m., in room 471, Park Avenue Building, 301 South Park Avenue, Helena, Montana, the Board of Realty Regulation will conduct a public comment hearing regarding a petition for declaratory ruling on the following question:

"Shall a real estate broker or salesperson, who is engaged in property management, provide the relationship disclosures as are provided by MCA §37-51-314 or the disclosures as are provided by ARM §8.58.714(3)(n)?"

2. The original Notice of Petition for Declaratory Ruling was published in the Montana Administrative Register in the Interpretation Section on November 13, 2003 at page 2557, issue no. 21. Hearing on the original notice was set for December 12, 2003 and was conducted on that date. However, notice of the previous hearing may have been inadequate. Therefore, the Department has extended the time for comment and set another date for hearing on this matter.

3. The Department of Labor and Industry will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or who need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Realty Regulation no later than 5:00 p.m., March 2, 2004, to advise us of the nature of the accommodation that you need. Please contact Grace Berger, Board of Realty Regulation, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 444-2961; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2323; e-mail dlibsdrre@state.mt.us.

4. This petition for declaratory ruling is submitted at the request of Merilynn J. Foss, Chair of the Property Managers Working Group of the Montana Association of REALTORS®, and the Montana Association of REALTORS®, Inc. (MAR) (Collectively the Petitioners).

5. Petitioners allege that licensed brokers and salespersons are subject to rigorous disclosure requirements pursuant to 37-51-314, MCA. On the other hand, licensed property managers are only required to disclose their contractual relationships pursuant to ARM 8.58.714(3)(n). Petitioners question which disclosure requirements are applicable to licensed brokers or salespersons who are engaged in property management.

6. The statutes and rules upon which the declaratory ruling is requested are 37-51-102(7), (8), (16), (20), (21), (22), (23), and (24), MCA, 37-51-314, MCA, ARM 8.58.419(3)(q), and ARM 8.58.714(3)(n), as set forth herein:

37-51-102 DEFINITIONS Unless the context requires otherwise, in this chapter, the following definitions apply:

...

(7) "Buyer broker agreement" means a written agreement in which a prospective buyer employs a broker to locate real estate of the type and with terms and conditions as designated in the written agreement.

(8) "Buyer subagent" means a broker or salesperson who, pursuant to an offer of a subagency, acts as the agent of a buyer.

...

(16) "Person" includes individuals, partnerships, associations, and corporations, foreign and domestic, except that when referring to a person licensed under this chapter, it means an individual.

...

(20) "Salesperson" includes an individual who for a salary, commission, or compensation of any kind is associated, either directly, indirectly, regularly, or occasionally, with a real estate broker to sell, purchase, or negotiate for the sale, purchase, exchange, or renting of real estate.

(21) "Seller" means a person who has entered into a listing agreement to sell real estate and includes landlords who have an interest in or are a party to a lease or rental agreement.

(22) "Seller agent" means a broker or salesperson who, pursuant to a written listing agreement, acts as the agent of a seller and includes a seller subagent and an in-house seller agent designate.

(23) "Seller subagent" means a broker or salesperson who, pursuant to an offer of a subagency, acts as the agent of a seller.

(24)(a) "Statutory broker" means a broker or salesperson who assists one or more parties to a real estate transaction without acting as an agent or representative of any party to the real estate transaction.

(b) A broker or salesperson is presumed to be acting as a statutory broker unless the broker or salesperson has entered into a listing agreement with a seller or a buyer broker agreement with a buyer or has disclosed, as required in

this chapter, a relationship other than that of a statutory broker.

37-51-314 RELATIONSHIP DISCLOSURE REQUIREMENTS (1) A broker or salesperson shall disclose the existence and nature of relevant agency or other relationships to the parties to a real estate transaction as provided in this section.

(2) A seller agent shall make the required relationship disclosures as follows:

(a) The initial disclosure, as provided in subsection (6), must be made to the seller at the time the listing agreement is executed.

(b) If a broker or salesperson is acting as a seller subagent, a subsequent disclosure, as provided in subsection (7), must be made to the seller at the time negotiations commence.

(c) The subsequent disclosure established in subsection (7) must be made to the buyer or buyer agent at the time negotiations commence.

(3) A buyer agent shall make the required relationship disclosures as follows:

(a) The initial disclosure, as provided in subsection (6), must be made to the buyer at the time the buyer broker agreement is executed.

(b) If a broker or a salesperson is acting as a buyer subagent, a subsequent disclosure, as provided in subsection (7), must be made to the buyer at the time negotiations commence.

(c) The subsequent disclosure established in subsection (7) must be made to the seller or seller agent at the time negotiations commence.

(4) A statutory broker shall make the required relationship disclosures as follows:

(a) The initial disclosure, as provided in subsection (6), must be made to the buyer at the time the statutory broker first endeavors to locate property for the buyer.

(b) The subsequent disclosure, as provided in subsection (7), must be made to the seller or seller agent at the time negotiations commence.

(5) A buyer agent or seller agent who contemplates becoming or subsequently becomes a dual agent shall disclose the potential or actual relationship to the buyer and seller and receive their consent prior to the time or at the time that the dual agency arises. If the buyer agent or seller agent who contemplates becoming a dual agent has not previously given the buyer or seller the initial disclosure, as provided in subsection (6), the initial disclosure must be used, but if the initial disclosure has been given, any subsequent disclosures must take the form of the disclosure provided in subsection (7).

(6) The initial disclosure as required by subsections (2)(a), (3)(a), (4)(a), and (5) must be written and contain substantially the following information:

(a) a description of the duties owed by the broker and the salesperson as set forth in 37-51-313;

(b) a statement that reads as follows: "IF A SELLER AGENT IS ALSO REPRESENTING A BUYER OR A BUYER AGENT IS ALSO REPRESENTING A SELLER WITH REGARD TO A PROPERTY, THEN A DUAL AGENCY RELATIONSHIP MAY BE ESTABLISHED. IN A DUAL AGENCY RELATIONSHIP, THE DUAL AGENT IS EQUALLY OBLIGATED TO BOTH THE SELLER AND THE BUYER. THESE OBLIGATIONS MAY PROHIBIT THE DUAL AGENT FROM ADVOCATING EXCLUSIVELY ON BEHALF OF THE SELLER OR BUYER AND MAY LIMIT THE DEPTH AND DEGREE OF REPRESENTATION THAT YOU RECEIVE. A BROKER OR A SALESPERSON MAY NOT ACT AS A DUAL AGENT WITHOUT THE SIGNED, WRITTEN CONSENT OF BOTH THE SELLER AND THE BUYER".

(c) a definition of "adverse material fact";

(d) identification of the type of relationship disclosed;

(e) the signature of the seller or the buyer to whom the disclosure is given;

(f) the signature of the broker or the salesperson making the disclosure; and

(g) the date of the disclosure.

(7) The subsequent disclosure required by subsections (2)(b), (2)(c), (3)(b), (3)(c), (4)(b), and (5) or otherwise necessitated by a change or prospective change in a relationship described in a previous disclosure must be written, must contain the information required in subsections (6)(d), (6)(e), and (6)(g), and may be included in other documents involved in the real estate transaction. If a seller or buyer has not previously consented to the entry of the broker or the salesperson into a dual agency relationship, a subsequent disclosure must include all the information required in subsection (6), including the seller's or buyer's written consent to the dual agency relationship.

(8) Any disclosure required by this section may contain the following information:

(a) a description of the other relationships and corresponding duties available under this part, as long as the disclosure clearly indicates the relationship being disclosed;

(b) a consent to the creation of a dual agency relationship;

(c) other definitions in or provisions of this chapter; and

(d) other information not inconsistent with the information required in the disclosure.

(9) A written disclosure that complies with the provisions of this section must be construed as a sufficient disclosure of the relationship between a broker or salesperson and a buyer or seller and must be construed as conclusively establishing the obligations owed by a broker or salesperson to a buyer or seller in a real estate transaction.

8.58.419 GROUNDS FOR LICENSE DISCIPLINE – GENERAL PROVISIONS - UNPROFESSIONAL CONDUCT

...

(3) In addition to all other provisions contained in the statutes and rules administered by the board, failure to comply with any of the following shall constitute an act against the interest of the public:

...

(q) Licensees, while managing properties for owners, shall abide by the requirements of 37-51-607, MCA, and the requirements of the board of realty regulation's rules for property management as set forth in ARM 8.58.712 and 8.58.714;

...

8.58.714 GROUNDS FOR DISCIPLINE OF PROPERTY MANAGEMENT LICENSEES - GENERAL PROVISIONS - UNPROFESSIONAL CONDUCT

...

(3) In addition to all other provisions contained in the statutes and rules administered by the board, particularly 37-51-606, MCA, failure to comply with any of the following will constitute an act against the interest of the public:

...

(n) Licensees shall disclose to all customers and clients their contractual relationship.

...

7. Petitioner Foss requests that the Board of Realty Regulation declare that a licensed real estate broker or salesperson, who is engaged in property management, does not need to provide relationship disclosures as provided in Montana Code Annotated Section 37-51-314 but rather, must provide disclosure as provided by ARM 8.58.714(3)(n).

Petitioner Montana Association of REALTORS®, Inc. does not advance a position but merely requests that the Board of Realty Regulation determine an answer to the question.

8. M. Gene Allison, attorney, has been designated to preside over and conduct this hearing.

9. The Board of Realty Regulation and Petitioners have identified the following as interested persons: The Montana Association of Realtors and all Montana licensed sales persons, brokers and property management agents.

10. 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 by mail to Grace Berger, Board of Realty Regulation, Department of Labor and Industry, P.O. Box 200513, Helena, MT 59620-0513; by facsimile to (406) 841-2323; or by e-mail to dlibsdrre@state.mt.us and must be received no later than 5:00 p.m., March 11, 2004.

11. After the hearing and the close of the public comment period, Board Counsel will prepare Proposed Findings of Fact, Conclusions of Law and a recommended Order for the Board's consideration. Such consideration will be conducted

at a regularly scheduled open Board meeting at which time the Board will take final action on the Petition. The public and interested persons are welcome to come and observe the deliberations of the Board.

BOARD OF REALTY REGULATION
LAURA ODEGAARD, CHAIRPERSON

/s/ WENDY J. KEATING
Wendy J. Keating, Commissioner
DEPARTMENT OF LABOR & INDUSTRY

Certified to the Secretary of State February 2, 2004.

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;
- Office of the State Auditor and Insurance Commissioner; and
- Office of Economic Development.

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.

Energy and Telecommunications Interim Committee:

- Department of Public Service Regulation.

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 September 30, 2003. This table includes those rules adopted during the period October 1, 2003 through December 31, 2003 and any proposed rule action that was pending during the past six-month period. (A notice of adoption must be published within six 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 September 30, 2003, 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 2002 and 2003 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.

GENERAL PROVISIONS, Title 1

1.2.419 Scheduled Dates for the Montana Administrative Register, p. 2267, 2632

ADMINISTRATION, Department of, Title 2

I & II Do-Not-Call List, p. 2015, 2847
I-VII State of Montana Voluntary Employees' Beneficiary Association Health Benefit Plan, p. 1703
2.4.406 Roster of Independent Auditors Authorized to Conduct Audits of Local Government Entities, p. 1572, 2076
2.12.101 and other rules - Implementation of the Montana Information Technology Act, p. 1821, 2417
2.21.3603 and other rules - Veterans' Employment Preference Policy, p. 1699, 2077
2.21.3704 and other rules - Recruitment and Selection - Reduction in Work Force, p. 859, 1531
2.59.307 and other rule - Examination Fees for Consumer Loan Businesses - Dollar Amounts to Which Consumer Loan Rates are to be Applied, p. 1147, 1802

(Public Employees' Retirement Board)
2.43.404 and other rules - Membership Options for Officials Elected to Positions Covered by the Public Employees' Retirement System and the Reporting of Those Officials by Their Employers, p. 1420, 1981

2.43.404 Changing the Required Time for Agencies to Submit Their Payroll Contribution Reports to the Public Employees' Retirement Board, p. 611, 1186
2.43.421 Uniformed Services Employment and Reemployment Right Act of 1994 (USERRA) and the Receipt of Service When Called to Perform Duty in the Uniformed Service, p. 2480
2.43.422 and other rules - Purchase of Federal Volunteer Service by Members of the Public Employees' Retirement System Defined Benefit Retirement Plan, p. 1414, 1707, 1982
2.43.437 and other rule - Purchasing Active and Reserve Military Service, p. 2484
2.43.441 and other rules - Public Employees' Retirement System Defined Contribution Retirement Plan Administered by the Public Employees' Retirement Board, p. 1143, 1800
2.43.801 and other rules - Volunteer Firefighters' Compensation Act - Reports Required to be Submitted by Fire Companies to the Public Employees' Retirement Board, p. 615, 1188
2.43.1104 and other rule - Municipal Police Officers' Retirement System Deferred Retirement Option Plan Administered by the Public Employees' Retirement Board, p. 1139, 1801

(Teachers' Retirement System)
2.44.301A and other rules - Teachers' Retirement System, p. 1401

(State Compensation Insurance Fund)
2.55.320 and other rules - Classifications of Employments - Overall Rate Levels - Expense Constants, p. 2321, 176

AGRICULTURE, Department of, Title 4

I-XV Organic Certification, p. 2324, 2848
4.4.301 and other rules - Hail Insurance, p. 152
4.4.303 Insured Crops, p. 1710, 2079
4.5.202 and other rules - Designation of Noxious Weeds, p. 867, 1272
4.5.301 and other rules - Noxious Weeds, p. 2781
4.9.401 Wheat and Barley Assessment and Refunds, p. 871, 1273
4.12.607 and other rule - Reporting of Fertilizer and Fee Schedules, p. 1576, 1985, 2421
4.12.1427 Shipping Point Inspection Fees, p. 2789

STATE AUDITOR, Title 6

I & II Prohibition of Discretionary Clauses in Insurance Policy Forms, p. 504, 1150

6.6.503 and other rules - Medicare Supplements - Medicare Select Full Coverage - Separability - Purpose, p. 2125
6.6.1610 and other rules - Collection in Advance of Fees for a Public Adjuster's License and Examination - Certification Requirements for Licensees and Limit on Credit for Courses Repeated - Extensions of Time for Course Completions, p. 2488, 2849
6.6.2203 Rebates and Inducements, p. 1435, 2752
6.6.3504 Contents of an Annual Audited Financial Report, p. 2578, 73
6.10.126 Unethical Practices by Broker-Dealers and Salesmen Defined, p. 273, 1078
6.10.140 and other rules - Minimum Financial Requirements for Investment Advisers - Bonding Requirements for Certain Investment Advisers - Custody of Client Funds or Securities by Investment Advisers - Custody of Notice Filings for Offerings of Federal Covered Securities, p. 1427, 2850

COMMERCE, Department of, Title 8

8.2.102 and other rules - Model Rules Exceptions of the Board of Milk Control and State Banking Board, p. 2673
8.99.401 and other rules - Definitions Concerning Microbusiness Development Corporations - Job Investment Act - Science and Technology Development, p. 2792

(Community Development Division)
I Administration of the 2004-2005 Federal Community Development Block Grant (CDBG) Program, p. 2158, 2852
I Submission and Review of Applications to the Treasure State Endowment Program (TSEP), p. 1713, 2422
I Administration of Projects Funded by the Treasure State Endowment Program (TSEP), p. 1581, 2270

(Business Resources Division)
I-VI Certified Regional Development Corporation Program (CRDC), p. 1829, 2425

EDUCATION, Title 10

(Office of Public Instruction)
10.13.307 and other rule - Traffic Education, p. 1152, 1627

(Board of Public Education)
10.55.602 Definition of Combined School District, p. 1715, 2080
10.55.907 Distance, Online, and Technology Delivered Learning, p. 157

Accreditation in an Asbestos-Related Occupation - Approval of Training Courses Offered for Accreditation - Audits of Training Courses and Refresher Courses - Penalties, p. 1595, 2624

(Board of Environmental Review)

17.8.102 and other rules - Air Quality - Incorporation by Reference of Current Federal Regulations and Other Materials into Air Quality Rules, p. 2801

17.8.501 and other rules - Air Quality - Definitions - Permit Application Fees - Operation Fees - Application/ Operation Fee Assessment Appeal Procedures - Open Burning Fees, p. 1242, 2271

17.8.749 and other rules - Air Quality - Conditions for Issuance or Denial of Permits - Review of Permit Applications - Revocation of Permits - Administrative Amendment to Permits, p. 1252, 2272

17.8.1213 Air Quality - Requirements for Air Quality Operating Permit Content Relating to Compliance, p. 2187, 2856

17.24.201 and other rules - Opencut Mining, p. 2190

17.30.502 and other rules - Water Quality - Water Use Classifications - Department Circular WQB-7, p. 2808

17.30.602 and other rules - Water Quality - Standards for Electrical Conductivity and Sodium Adsorption Ratio - Classifications for Constructed Coal Bed Methane Water Holding Ponds - Definitions for Water Quality Standards - Informational Requirements for Nondegradation Significance/Authorization Review - Nonsignificance Criteria, p. 2269, 3489, 779, 1274

17.30.716 Water Quality - Categories of Activities that Cause Non-significant Changes in Water Quality, p. 1233, 2274

17.38.101 and other rules - Public Water Supply and Wastewater System Requirements - Ground Water under the Direct Influence of Surface Water Determinations, p. 622, 1279, 1630

17.38.602 and other rule - Public Water and Sewage System Requirements - Definitions - Enforcement Procedures, p. 1227, 2291

17.50.401 and other rules - Solid Waste Fees, p. 1720, 2857

CORRECTIONS, Department of, Title 20

I-V Collection of Restitution from Felony Offenders, p. 1737, 2432

JUSTICE, Department of, Title 23

23.5.101 and other rules - Incorporate Amendments to Federal Regulations Pertaining to Motor Vehicle Standards Previously Incorporated by Reference in Current Rules - General Revisions to Clarify Scope of Rules, p. 2816

23.6.101 and other rules - Definitions - Classification of Tow Truck Equipment - Establishment of the Tow Truck Complaint Resolution Committee - Establishment of the Procedures Governing the Committee - Clarification of the Rules Governing the State Rotation System, p. 2019, 2628
23.7.101A and other rules - NFPA 1 Uniform Fire Code, p. 17
23.16.102 and other rules - Multi-Game Video Gambling Machine Approval - Software Specifications for Video Multi-Game Machines - Automated Accounting and Reporting System - Video Gambling Machine Hardware and Software Specifications - Daily Pot Raffles - Definitions - Requirements for Permitting and Fees - Software Specifications for Multi-Game Video Gambling Machines - Fingerprinting Requirements, p. 1601, 1989
23.16.120 and other rules - Determination of Annual Permit Surcharge - Change in Designation of Number of Machines for Annual Permit Surcharge - Implementation of the Video Gambling Machine Permit Fee Surcharge - Regulation of Gambling, p. 874, 1282

LABOR AND INDUSTRY, Department of, Title 24

Boards under the Business Standards Division are listed in alphabetical order following the department rules.

I Interpreting Legislative Changes to Statutes that Regulate Local Building Code Enforcement Programs, p. 1449, 1991
24.16.7506 and other rule - Wage Claims Mediation, p. 1944, 2433, 77
24.17.127 Prevailing Wage Rates - Non-construction Services - Heavy and Highway Construction Services, p. 2371, 2867
24.17.127 Adoption of Standard Prevailing Wage Rates - Building Construction Services, p. 1155, 1631
24.17.144 and other rule - Obligations of Public Contracting Agencies, Employers, and Contractors, p. 2367, 2869
24.29.902 and other rules - Workers' Compensation Assessments, p. 2681
24.29.1526 Disallowed Medical Procedures for Workers' Compensation Purposes, p. 1617, 2870
24.29.2831 Collection of Payments and Penalties from Uninsured Employers, p. 1838, 2296
24.29.3802 Hourly Attorney Fee Rates, p. 2374, 78
24.29.4301 and other rules - Reporting of Workers' Compensation Data, p. 1768, 2297
24.30.102 and other rule - Recording and Reporting Occupational Injuries and Illness, p. 1445, 1884
24.35.111 and other rules - Independent Contractor Exemptions - Status Determinations, p. 2028, 2550
24.301.131 and other rules - Building Codes - Boilers - Pressure Vessels, p. 2695

24.301.201 and other rules - Building Codes, p. 1783, 2299, 2763

(Board of Alternative Health Care)
24.111.502 and other rules - Licensing by Examination - Direct-Entry Midwife Apprenticeship Requirements - Vaginal Birth After Cesarean (VBAC) Deliveries - Naturopathic Physician Continuing Education Requirements - Midwives Continuing Education Requirements - Scope of Practice for Naturopaths, p. 1620, 2873

(Board of Barbers)
I Rules Applicable to Barbers, Cosmetologists, Electrologists, Manicurists and Estheticians, p. 1776, 2630

(Board of Barbers and Cosmetologists)
I Rules Applicable to Barbers, Cosmetologists, Electrologists, Manicurists and Estheticians, p. 1776, 2630

(Board of Chiropractors)
8.12.101 and other rules - Transfer from the Department of Commerce, p. 2761
8.12.607 and other rules - Unprofessional Conduct - Fee Schedule - Advertising - Purpose of the Board, p. 1021
24.126.301 and other rules - Definitions - Fee Schedule - Unprofessional Conduct - Display of License - Purpose of the Board, p. 169

(Board of Clinical Laboratory Science Practitioners)
24.129.401 Fees, p. 360, 1195

(Board of Cosmetologists)
I Rules Applicable to Barbers, Cosmetologists, Electrologists, Manicurists and Estheticians, p. 1776, 2630

(Board of Dentistry)
8.16.401 and other rules - Dentistry - Dental Hygiene - Denturitry, p. 1742, 2435

(State Electrical Board)
I Master Electrician License Qualifications, p. 2377

(Board of Hearing Aid Dispensers)
24.150.501 and other rules - Examination - Continuing Education - Unprofessional Conduct, p. 1779

(Board of Medical Examiners)
I Medical Assistants, p. 2380
24.156.606 Examination, p. 1158, 1636

(Board of Social Work Examiners and Professional Counselors)
I Ethics Code, p. 1613, 2294

(Board of Speech-Language Pathologists and Audiologists)
I Ethics Code, p. 1617

(Board of Veterinary Medicine)
8.64.501 and other rule - Application Requirements - Licensure by Endorsement, p. 2825
8.64.501 and other rule - Application Requirements - Continuing Education, p. 166, 1288

LIVESTOCK, Department of, Title 32

32.2.401 and other rules - Fees Charged by the Department for Various Licenses, Permits and Services Performed by the Department, p. 879, 1289
32.6.712 Food Safety and Inspection Service for Meat and Poultry, p. 35
32.23.301 Fees Charged by the Department on the Volume on All Classes of Milk, p. 1948, 2439

(Board of Horse Racing)
32.28.502 and other rules - Annual License Fees - Racing Secretary - Chart Companies - Duties of the Licensee - Programs - Owner and Breeder Bonuses - Jockey Incentive Award Program, p. 38

NATURAL RESOURCES AND CONSERVATION, Department of, Title 36

36.12.102 and other rules - Water Rights Forms and Fees, p. 1041, 1535

(Board of Land Commissioners and the Department of Natural Resources and Conservation)
Establishment of a Negotiated Rulemaking Committee on Land Banking, p. 2041
I-VI Obtaining a Conservation License in Lieu of Timber Sale, p. 1453, 2874

PUBLIC HEALTH AND HUMAN SERVICES, Department of, Title 37

I-IV Implementation of the Montana Medicaid Disease Management Program, p. 2406, 2892
I-XXVII and other rules - Bed and Breakfast Establishments, p. 897, 1338
I-XXXIX and other rules - Intermediate Care Facilities for the Developmentally Disabled (ICF/DD), p. 935, 1322
37.2.101 and other rules - Department Procedures for Administrative Rules, Recovery and Offset of Debts, Self-sufficiency Trusts, State Facility Reimbursement and Community Services Block Grants, p. 1951, 2440

PUBLIC SERVICE REGULATION, Department of, Title 38

REVENUE, Department of, Title 42

42.19.401 and other rules - Extended Property Tax Assistance Program and Other Property Tax Rules, p. 45
42.19.501 and other rules - Property Taxes, p. 1516, 1886
42.20.302 and other rules - Agricultural and Forest Land Properties, p. 1464, 1888
42.21.113 and other rules - Personal Property - Centrally Assessed Property Tax Trend Tables, p. 2245, 2901
42.24.214 Corporation Taxes and Multi-state Tax Commission, p. 51
42.26.302 and other rules - Water's-Edge Election for Multinational Corporations, p. 70
42.29.101 and other rules - Miscellaneous Fees Collected by the Department, p. 965, 1352
42.31.131 and other rules - Cigarette and Tobacco Taxes, p. 1527, 1890
42.31.702 Reporting Requirements for Montana Tobacco Wholesalers and Retailers, p. 1168, 1665
42.35.101 and other rules - Inheritance and Estate Taxes, p. 2233, 2765

SECRETARY OF STATE, Title 44

I Requirements for Filing Trademark Applications, Renewals, and Assignments, p. 1183, 1892
1.2.419 Scheduled Dates for the Montana Administrative Register, p. 2267, 2632
44.3.1401 and other rules - Elections - Overseas and Military Electors, p. 2526, 93
44.5.114 and other rules - Corporations - Profit and Nonprofit Fees - Limited Liability Partnership Fees - Assumed Business Name Fees - Miscellaneous Fees Regarding the Reduction or Elimination of Business Document Filing Fees, p. 1179, 2090
44.6.101 and other rules - Uniform Commercial Code Filing Fees - UCC Refiling Fees - Agriculture Filing Fees - Federal Tax Lien Fees - UCC Filing Fees - Title 71 Lien Requirements - UCC Filings - Farm Bill Master List - On-line UCC Lien Filings, p. 1170, 1894