ISSUE NO. 3

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 The Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

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

Page Number

TABLE OF CONTENTS

NOTICE SECTION

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 2.13.202, repeal of 2.13.201, 2.13.203, 2.13.205, 2.13.206, and adoption of New Rule I pertaining to implementing HB 27: Defining eligibility and distribution of HB 27 surcharge funds for wireless 911 emergency systems	))))))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT, REPEAL, AND ADOPTION

TO: All Concerned Persons

1. On March 5, 2008, at 1:30 p.m., the Department of Administration will hold a public hearing in Room 152 of Capitol Building, Helena, Montana, to consider the proposed amendment, repeal, and adoption of the above-stated rules.

2. The Department of Administration will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Department of Administration no later than 5:00 p.m. on February 29, 2008, to advise us of the nature of the accommodation that you need. Please contact Becky Berger, Department of Administration, P.O. Box 200117, Helena, Montana 59620; telephone (406) 444-1966; fax (406) 444-0165; Montana Relay Service 711; or e-mail BBerger@mt.gov.

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

2.13.202 DEFINITIONS As used in this chapter, the following definitions apply:

(1) "Automatic location identification (ALI)" means the automatic display at a public safety answering point of the ~~subscriber telephone number, the service address for the telephone and supplementary information.~~ caller's telephone number, the address/location of the telephone, and supplementary emergency services information of the location from which a call originates.

(2) remains the same.

(3) "Billing address" means the place of primary use.

(3) remains the same, but is renumbered (4).

(5) "Cost recovery" means recovering costs associated with carrier network element upgrades necessary for location-based emergency services.

(6) "Location-based emergency services" means emergency communications applications that include information associated with a subscriber's location.

~~(4)~~ (7) "Selective routing" is a ~~standard service which allows an enhanced 911 call to be routed to the appropriate public safety answering point based on the~~

~~calling party's telephone number.~~ telephone system feature that enables all 911 calls originating from within a defined geographical region to be answered at a predesignated 911 jurisdiction.

AUTH: 10-4-102, 10-4-114, MCA
IMP: 10-4-101, MCA

STATEMENT OF REASONABLE NECESSITY: (1) "Automatic location identification" needs to be changed because in the past, wireless providers were unable to deliver the service address of a wireless handset. This has evolved into a back-end database and computer-telephony application wherein this information is delivered. Location and supplementary information are no longer sent with the actual call. The technology has evolved toward location-based functionality that is external to the actual call, and this updated definition better reflects this evolution. If this definition is not changed, it could become a constraint to any law or rule that references this definition. This definition must be amended to reflect this change.

(3) "Billing address" needs to be defined as place of primary use because many of the billing addresses for wireless cellular services are located in areas different from where the cellular service is used. For example, the billing address for a large corporate cellular account might be quite far away from where the wireless phones are being used. HB 27 requires that wireless providers submit to the department quarterly subscriber counts. These subscriber counts are used to calculate the percentage due to the carrier when there are multiple providers applying for cost recovery in a jurisdiction. 10-4-115(1)(a), MCA, dictates that these subscriber counts be determined by billing address. By defining billing address as the place of primary use, a more accurate calculation of funds can be made. Also, if billing address is not defined as primary place of use, the wireless subscriber counts will be very inaccurate, and will not reflect real Montana wireless subscribers.

(5) "Cost recovery" is a standard industry term specific to recovering upgrading costs. It is necessary to define in this manner because Montana wireless providers can recover costs from 911 surcharge funds for allowable network expenses associated with location-based emergency 911 services.

(6) "Location-based emergency services" requires a specific definition for the purpose of constraining potential allowable costs from the wireless providers. Allowable costs for carrier cost recovery need to comply with Federal Communications Commission orders regarding location information associated with the delivery of the 911 call.

(7) "Selective routing" is no longer exclusively for enhanced 911 services. It also includes wireless calls, and potentially calls from other 911 accessible devices. The amended definition is also a more accurate description of what is entailed in selective routing.

4. The department proposes to repeal the following rules:

2.13.201 PURPOSE found at page 2-391 of the Administrative Rules of Montana.

AUTH: 10-4-102, 10-4-114, MCA
IMP: 10-4-101, 10-4-102, 10-4-103, 10-4-104, 10-4-111, 10-4-112, 10-4-113, 10-4-114, 10-4-115, 10-4-121, 10-4-122, 10-4-125, 10-4-126, 10-4-201, 10-4-202, 10-4-203, 10-4-204, 10-4-205, 10-4-206, 10-4-207, 10-4-211, 10-4-212, 10-4-301, 10-4-302, 10-4-303, 10-4-304, 10-4-311, 10-4-312, 10-4-313, MCA

STATEMENT OF REASONABLE NECESSITY: It is necessary to repeal this rule because it unduly repeats statutory language.

2.13.203 DEPARTMENT OF ADMINISTRATION DUTIES AND POWERS found at page 2-392 of the Administrative Rules of Montana.

AUTH: 10-4-102, 10-4-114, MCA
IMP: 10-4-102, 10-4-103, 10-4-104, MCA

STATEMENT OF REASONABLE NECESSITY: It is necessary to repeal this rule because it unduly repeats statutory language.

2.13.205 DISTRIBUTION OF BASIC AND ENHANCED EMERGENCY TELECOMMUNICATIONS ACCOUNTS found at page 2-393 of the Administrative Rules of Montana.

AUTH: 10-4-102, 10-4-114, MCA
IMP: 10-4-121, 10-4-301, 10-4-302, 10-4-303, 10-4-311, MCA

STATEMENT OF REASONABLE NECESSITY: It is necessary to repeal this rule because it unduly repeats statutory language, and parts of it are no longer applicable.

2.13.206 911 PROGRAM FUNDS HELD IN RESERVE BY 911 JURISDICTIONS found at page 2-396 of the Administrative Rules of Montana.

AUTH: 10-4-102, 10-4-114, MCA
IMP: 10-4-301, 10-4-302, 10-4-303, MCA

STATEMENT OF REASONABLE NECESSITY: There is inadequate statutory authority for this rule, therefore, it must be repealed.

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

NEW RULE I WIRELESS ENHANCED 911 DISTRIBUTION FOR WIRELESS PROVIDERS (1) If there are not enough funds to fully reimburse a wireless carrier for a particular quarter, the unpaid balance will be paid:

(a) after the county's quarterly allocation for wireless has occurred; and

(b) to the maximum of that carrier's quarterly calculated percentage for that county.

AUTH: 10-4-102, 10-4-114, MCA
IMP: 10-4-301, 10-4-313, MCA

STATEMENT OF REASONABLE NECESSITY: 10-4-313(1)(c), MCA, describes the processes involved if there are not enough funds in the per-county wireless accounts to pay the entire invoice from the wireless provider. This rule explains how the remaining balance will be paid. For subsection (1)(a), it is necessary that percentages be calculated and allocated before any outstanding balances are paid. This is an important distinction because if funds were not calculated before outstanding balances were paid, the money would be potentially depleted paying outstanding accounts, and no money would be left to pay other providers their due percentage. For example, if there are two providers applying for cost recovery in a jurisdiction, but the money was used to pay outstanding invoices for one of the providers, the other provider would not receive their fair percentage. Calculations and allocations should occur before any overdue monies are paid.

In subsection (1)(b), the maximum is specified to avoid depleting of funds before other providers get their share. For example, if a provider submits a large invoice, with amounts carried over, those outstanding balances will not be paid at the expense of what would normally be remitted to the other providers in a jurisdiction. If subscriber-based percentages are calculated first, the total due to providers can then be applied to any outstanding balances, without pulling potential funds from another eligible carrier.

6. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Becky Berger, Department of Administration, P.O. Box 200117, Helena, Montana 59620; telephone (406) 444-1966; fax (406) 444-0165; or e-mail BBerger@mt.gov, and must be received no later than 5:00 p.m., March 13, 2008.

7. Jeff Brandt, Department of Administration, has been designated to preside over and conduct this hearing.

8. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Such written request may be mailed or delivered to the contact person in 6 above or may be made by completing a request form at any rules hearing held by the department.

9. An electronic copy of this Proposal Notice is available through the department's web site at http://doa.mt.gov/administrativerules.asp. The department

strives to make the electronic copy of the notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the department works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

10. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was notified on July 20, 2007, by U.S. mail.

By: /s/ Janet R. Kelly
Janet R. Kelly, Director
Department of Administration

By: /s/ Dal Smilie
Dal Smilie, Rule Reviewer
Department of Administration

Certified to the Secretary of State February 4, 2008

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the proposed amendment of ARM 4.4.303 relating to insured crops	)))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On March 6, 2008, at 10:00 a.m. the Montana Department of Agriculture will hold a public hearing in Room 225 of the Scott Hart Building, 303 N. Roberts at Helena, Montana, to consider the proposed amendment of the above-stated rule.

2. The Department of Agriculture will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Agriculture no later than 5:00 p.m. on February 28, 2008, to advise us of the nature of the accommodation that you need. Please contact Cort Jensen at the Montana Department of Agriculture, 303 North Roberts, P.O. Box 200201, Helena, MT 59620-0201; Phone: (406) 444-3144; Fax: (406) 444-5409; or e-mail: agr@mt.gov.

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

4.4.303 INSURED CROPS (1) All crops authorized under 80-2-205, MCA, including the following, may be insured at any time ~~to~~ through August 15.

alfalfa	alfalfa seed	barley	beans
camelina	canary seed	canola	chick peas
corn	flax	fruit	grass crops*
herbs	lentils	millet	mint
mustard	oats	peas	potatoes
rape	rye	safflower	sanfoin
sorghum	soybeans	speltz	sugar beets
sunflowers	triticale	truck crops	wheat
wheat grass			

*~~(~~does not include forage~~)~~

AUTH: 80-2-201, MCA
IMP: 80-2-205, MCA

REASON: The Board of Hail Insurance voted on April 27, 2007 to include these crops to ensure producer's knowledge that these crops are eligible for coverage. These crops have been insured but the department needs to add them to the rule to make sure producers are aware of available coverage. The existing crops were alphabetized to make the list easier to use. This administrative rule will

not have an economic impact because crops are being added for clarification purposes that were already insured.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to Cort Jensen at the Montana Department of Agriculture, 303 North Roberts, P.O. Box 200201, Helena, MT 59620-0201; Fax: (406) 444-5409; or e-mail: agr@mt.gov. Any comments must be received no later than 5:00 p.m. on March 13, 2008.

5. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be sent or delivered to Montana Department of Agriculture, 303 North Roberts, P.O. Box 200201, Helena, MT 59620-0201; Fax: (406) 444-5409; or e-mail: agr@mt.gov or may be made by completing a request form at any rules hearing held by the Department of Agriculture.

6. An electronic copy of this Notice of Public Hearing on Proposed Amendment is available through the department's web site at www.agr.mt.gov, under the Administrative Rules section. The department strives to make the electronic copy of the Notice conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

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

DEPARTMENT OF AGRICULTURE

/s/ Gary Gollehon
Gary Gollehon, Chair
Board of Hail Insurance

/s/ Ron de Yong
Ron de Yong, Director

/s/ Cort Jensen
Cort Jensen, Rule Reviewer

Certified to the Secretary of State, February 4, 2008.

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the proposed amendment of ARM 4.5.201, 4.5.202, 4.5.203, and 4.5.204 and the adoption of New Rule I relating to noxious weed list categories	)))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT AND ADOPTION

TO: All Concerned Persons

1. On March 6, 2008, at 3:00 p.m. the Montana Department of Agriculture will hold a public hearing in Room 225 of the Scott Hart Building, 303 N. Roberts at Helena, Montana, to consider the proposed amendment and adoption of the above-stated rules.

2. The Department of Agriculture will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Agriculture no later than 5:00 p.m. on February 28, 2008, to advise us of the nature of the accommodation that you need. Please contact Cort Jensen at the Montana Department of Agriculture, 303 North Roberts, P.O. Box 200201, Helena, MT 59620-0201; Phone: (406) 444-3144; Fax: (406) 444-5409; or e-mail: agr@mt.gov.

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

4.5.201 DESIGNATION OF NOXIOUS WEEDS (1) The department designates certain exotic plants listed in these rules as statewide noxious weeds under the County Weed Control Act 7-22-2101(5), MCA. All counties must implement management standards for these noxious weeds consistent with weed management criteria developed under 7-22-2109(2)(b), MCA, of the Act. ~~The department established three categories of the noxious weeds.~~

AUTH: 80-7-802, MCA
IMP: 7-22-2101, MCA

REASON: The number of categories established by the department is self apparent and need not be stated in the rule.

4.5.202 CATEGORY 1 (1) through (2)(e) remain the same.
(f) Spotted knapweed (*Centaurea ~~maculosa~~ stobe L. spp. micranthos = Centaurea maculosa*);
(g) through (l) remain the same.
(m) Houndstongue (*Cynoglossum officinale L.*); ~~and~~
(n) Yellow toadflax (*Linaria vularis*)~~.~~ ; and

(o) Hoary alyssum (*Berteroa incana L.*).

AUTH: 80-7-802, MCA
IMP: 7-22-2101, MCA

REASON: The scientific community currently acknowledges *Centaurea stobe* as the scientific name of spotted knapweed.

The Montana Department of Agriculture received a recommendation from the Noxious Weed List Committee to list hoary alyssum as a Category 1 noxious weed. This plant has the potential for rapid spread and invasion of land in Montana. This plant is capable of economically and biologically adversely affecting range, forest, crop, and other lands. The designation as a Category 1 noxious weed will increase public awareness and recognition of this weed, encourage education, identification, and control, improve monitoring for infestations, improve control and containment of existing infestations, and provide for eradication of new or small infestations.

Weed control measures are a cost to public and private landowners through expenditures for herbicides, application costs, and/or mechanical control methods. The addition of hoary alyssum may result in some increased cost for control because it is already established in the state. However, in most counties where this invasive species is a problem, control measures are already in place as a result of previous inclusion of the species on individual county noxious weed lists and any increased cost should be minimal.

4.5.203 CATEGORY 2 (1) and (2) remain the same.
~~(a) Dyers woad (Isatis tinctoria);~~
(b) through (f) remain the same but are renumbered (a) through (e).
~~(g)~~ (f) Tamarisk (saltcedar) (*Tamarix spp.*); ~~and~~
~~(h)~~ (g) Perennial pepperweed (*Lepidium latifolium*);
(h) Blueweed *(Echium vulgare*);
(i) Rush skeletonweed (*Chondrilla juncee*); and
(j) Yellow flag iris (*Iris pseudacorus*).

AUTH: 80-7-802, MCA
IMP: 7-22-2101, MCA

REASON: The Montana Department of Agriculture received a recommendation from the Noxious Weed List Committee to list blueweed as a noxious weed. The Noxious Weed List Committee has reviewed the biology of blueweed and has determined it exhibits rapid spread and invasion of land in Montana. This plant is capable of economically and biologically adversely affecting range, forest, crop, and other lands. The designation as a Category 2 noxious weed will increase public awareness and recognition of this plant, encourage education, identification, and control, improve monitoring for infestations, improve control and containment of existing infestations, and provide for eradication of new or small infestations.

The committee also recommended to reclassify rush skeletonweed and yellow flag iris from a Category 3 listed weed to Category 2 listed weeds. For years, iris and skeletonweed were only present in isolated areas of the state, but have recently begun to spread exponentially.

Blueweed is a new invader. However, in the counties where this invasive species is a problem, control measures are already in place as a result of previous inclusion of the species on individual county noxious weed lists. There will be little or no additional economic impact due to listing this plant. The yellow flag iris and rush skeletonweed were plants previously listed as a Category 3 weed. The economic impact to the counties and state will not change by listing these weeds as a Category 2 noxious weed. The hope is to contain and eventually eradicate these invasive species. The cost to everyone in the state will be much higher if every effort is not taken to prevent further invasion in Montana by these invasive species. The value of Montana's agricultural croplands, rangelands, timberlands, waterways, and open spaces is diminished as a result of their presence.

4.5.204 CATEGORY 3 (1) and (2)(b) remain the same.

(c) ~~Rush skeletonweed (*Chondrilla juncea*)~~ Knotweed complex (*Polygonum cuspidatum, Polygonum sachalinense, polygonum polystachyum*);

(d) Eurasian watermilfoil (*Myriophyllum spicatum)*; ~~and~~

(e) ~~Yellow flag iris (*Iris pseudacorus*)~~ Flowering rush (*Bufomus umbellatus*); and

(f) Dyer's woad (*Isatis tincoria*).

AUTH: 80-7-802, MCA
IMP: 7-22-2101, MCA

REASON: The Montana Department of Agriculture received a recommendation from the Noxious Weed List Committee to list the knotweed complex and flowering rush as Category 3 noxious weeds. The Noxious Weed List Committee has reviewed the biology of these plants and has determined they have the potential for rapid spread and invasion of land in Montana. These plants are capable of economically and biologically adversely affecting Montana's waterways, riparian areas, and other lands. The designation as a Category 3 noxious weed will increase public awareness and recognition of these weeds, encourage education or identification and control, improve monitoring for infestations, improve control and containment of existing infestations, and provide for eradication of new or small infestations.

The committee also recommended reclassifying Dyer's woad from a Category 2 listed weed to a Category 3 listed weed. Dyer's woad was recommended to be moved to Category 3 because control measures have been effective on this species and eradication is now possible.

Flowering rush and the knotweed complex are new invaders and are in isolated areas in Montana. However, in the counties where these invasive species are a problem, control measures are already in place as a result of previous inclusion on individual county noxious weed lists. There will be little or no additional economic impact due to listing these plants. There will be no change regarding the economic impact for Dyer's woad.

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

NEW RULE I CATEGORY 4 – WATCH LIST (1) Category 4 plant species are plants that are invasive and may cause significant economic or environmental impacts if allowed to become established in Montana. Research and monitoring for Category 4 plant species may result in future listing as a Category 1, 2, or 3 noxious weed in Montana. Plant species designated as a Category 4 plant are prohibited from sale in or into Montana.

(2) The following are designated as Category 4 noxious weeds:

(a) Scotch broom (*Cytisus scoparius*).

AUTH: 80-7-802, MCA
IMP: 7-22-2101, MCA

REASON: The Montana Department of Agriculture received a recommendation from the Noxious Weed List Committee to create a Category 4 designation and to list scotch broom in this category. The intent of Category 4 listings is to prohibit nursery trade for plants that are invasive and may cause significant economic or environmental impacts if allowed to become established in Montana.

Scotch broom - The Noxious Weed List Committee has reviewed the biology of scotch broom and has determined it has the potential for rapid spread and invasion of land in Montana. This plant is capable of economically and biologically adversely affecting Montana's waterways, riparian areas, and other lands. Designation as a Category 4 noxious weed will increase public awareness and recognition of this weed, encourage education, identification, and control, improve monitoring for infestations, improve control and containment of existing infestations, and encourage eradication of new or small infestations.

There may be a small initial economic impact to the nursery industry because nurseries will not be able to sell scotch broom or other future Category 4 plants. Sale of these plants in Montana is believed to be minimal because of the invasive nature of these plants. The cost to the citizens of Montana will be much higher if efforts are not taken to prevent establishment in Montana by invasive species. The value of Montana's agricultural croplands, rangelands, timberlands, waterways, and open spaces will be reduced if invasive species become established.

5. Concerned persons may submit their data, views, or arguments concerning the proposed actions orally or in writing to Cort Jensen at the Montana Department of Agriculture, 303 North Roberts, P.O. Box 200201, Helena, MT 59620-

0201; Fax: (406) 444-5409; or e-mail: agr@mt.gov. Any comments must be received no later than 5:00 p.m. on March 13, 2008.

6. The Department of Agriculture 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, e-mail, and mailing address of the person and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to Montana Department of Agriculture, 303 North Roberts, P.O. Box 200201, Helena, MT 59620-0201; Fax: (406) 444-5409; or e-mail: agr@mt.gov or may be made by completing a request form at any rules hearing held by the Department of Agriculture.

7. An electronic copy of this Notice of Public Hearing on Proposed Amendment and Adoption is available through the department's web site at www.agr.mt.gov, under the Administrative Rules section. The department strives to make the electronic copy of the Notice conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

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

DEPARTMENT OF AGRICULTURE

/s/ Ron De Yong
Ron de Yong, Director

/s/ Cort Jensen
Cort Jensen
Rule Reviewer

Certified to the Secretary of State, February 4, 2008.

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

In the matter of the amendment of ARM 6.6.3101, 6.6.3102, 6.6.3103, 6.6.3104, 6.6.3104A, 6.6.3105, 6.6.3106, 6.6.3107, 6.6.3108, 6.6.3109, 6.6.3109A, 6.6.3109B, 6.6.3110, 6.6.3111, 6.6.3112, 6.6.3113, 6.6.3114, 6.6.3115, 6.6.3117, 6.6.3118, 6.6 3119, and 6.6.3120, the repeal of 6.6.3116, and the adoption of New Rules I through VI pertaining to Long-Term Care	)))))))))))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT, REPEAL, AND ADOPTION

TO: All Concerned Persons

1. On March 6, 2008, at 10:00 a.m., the State Auditor and Commissioner of Insurance will hold a public hearing in the upstairs conference room of the State Auditor's Office, at Helena, Montana, to consider the proposed amendment, repeal, and adoption of the above-stated rules.

2. The State Auditor's Office will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m., February 28, 2008, to advise us of the nature of the accommodation that you need. Please contact Darla Sautter, State Auditor's Office, 840 Helena Avenue, Helena, Montana 59601; telephone (406) 444-2726; TDD (406) 444-3246; fax (406) 444-3497; or e-mail dsautter@mt.gov.

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

6.6.3101 PURPOSE, ~~AND~~ SCOPE, AND AUTHORITY (1) In accordance with 33-22-1101, et seq., MCA, the Commissioner of Insurance declares that the purpose of these rules is to implement Title 33, chapter 22, part 11, MCA, to promote the public interest, to promote the availability of long-term care insurance, as defined in ARM 6.6.3102(7), to protect the public from unfair or deceptive sales or enrollment practices, to facilitate public understanding and comparison of long-term care insurance coverages, and to facilitate flexibility and innovation in the development of long-term care insurance.

(2) Except as otherwise specifically provided, these rules apply to all long-term care insurance policies or certificates including qualified long-term care contracts and life insurance policies that accelerate benefits for long-term care delivered or issued for delivery in this state on or after January 1, 1991, by issuers~~;~~, fraternal benefit societies~~;~~, nonprofit health, hospital, ~~and~~ medical service corporations~~;~~, prepaid health plans~~;~~, health maintenance organizations, and all

similar organizations. Certain provisions of these rules apply only to qualified long-term care insurance contracts, as noted.

(3) Group policies or certificates issued for delivery outside this state to Montana residents are subject to these rules and Title 33 of the Montana Code Annotated.

AUTH: 33-1-313, 33-22-1121, MCA
IMP: 33-22-1101 ~~through 33-22-1121~~, 33-22-1102, 33-22-1103, 33-22-1107, 33-22-1108, 33-22-1111, 33-22-1112, 33-22-1113, 33-22-1114, 33-22-1115, 33-22-1116, 33-22-1117, 33-22-1119, 33-22-1120, 33-22-1121, MCA

6.6.3102 DEFINITIONS ~~(1)~~ For ~~the~~ purposes of these rules, the following definitions ~~terms~~ apply: ~~"long-term care insurance," "group long-term care insurance," "applicant," "policy," and "certificate" shall have the meanings provided under 33-22-1107, MCA.~~

(1) "Applicant" is defined in 33-22-1107(2), MCA.

(2) "Certificate" is defined in 33-22-1107(4), MCA.

(3) "Commissioner" means the Montana State Auditor and Ex Officio Commissioner of Insurance.

(4) "Exceptional increase" means a premium rate increase filed by an insurer as exceptional; and

(a) for which the commissioner determines the need for a rate increase to be justified;

(i) due to a change in laws or rules applicable to long-term care coverage in this state; and

(ii) due to increased and unexpected utilization that affects the majority of insurers of similar products.

(b) except as provided in [New Rule III], exceptional increases are subject to the same requirements as other premium rate increases;

(c) the commissioner may request professional actuarial review of the basis for an exceptional increase submitted for commissioner approval;

(d) the commissioner in determining whether there is a necessary basis for an exceptional increase shall also determine any potential offsets to higher claims costs.

(5) "Group long-term care insurance" is defined in 33-22-1107(5), MCA.

(6) "Incidental" means that the value of the long-term care benefits provided is less than 10% of the total value of the benefits provided over the life of the policy. These values shall be measured as of the date of issue.

(7) "Long-term care insurance" is defined in 33-22-107(6), MCA.

(8) "Policy" is defined in 33-22-1107(7), MCA.

(9) "Qualified actuary" means a member in good standing of the American Academy of Actuaries.

AUTH: 33-1-313, 33-22-1121, MCA
IMP: 33-22-1101 ~~through 33-22-1121~~, 33-22-1102, 33-22-1103, 33-22-1107, 33-22-1108, 33-22-1111, 33-22-1112, 33-22-1113, 33-22-1114, 33-22-1115, 33-22-1116, 33-22-1117, 33-22-1119, 33-22-1120, 33-22-1121, MCA

6.6.3103 POLICY DEFINITIONS (1) No long-term care insurance policy or certificate delivered or issued for delivery in Montana ~~shall~~ may use the terms set forth below, unless the terms are defined in the policy or certificate ~~and the definitions satisfy the following requirements:~~ as follows in this rule.

(2) "Activities of daily living" as defined in 33-22-1107(1), MCA.

(2) and (3) remain the same but are renumbered (3) and (4).

~~(4)~~(5) "Bathing" means washing oneself by sponge bath~~;~~, or in ~~either~~ a tub or shower, including the task of getting into or out of the tub or shower.

(5) through (14) remain the same but are renumbered (6) through (15).

~~(15)~~(16) "Skilled nursing care," ~~"intermediate care,"~~ "personal care," "home care," "specialized care," "assisted living care," and other services shall be defined in relation to the level of skill required, the nature of the care, and the setting in which care must be delivered.

(16) and (17) remain the same but are renumbered (17) and (18).

~~(18)~~(19) All providers of services, including but not limited to "skilled nursing facility," "extended care facility," ~~"intermediate care facility,"~~ "convalescent nursing home," "personal care facility," "specialized care providers," "assisted living facility," and "home care agency" shall be defined in relation to the services and facilities required to be available and the licensure, certification, registration, or degree status of those providing or supervising the services. ~~The~~When the definition ~~may~~ requires that the provider be appropriately licensed, ~~or~~ certified, or registered, it shall also state what requirements a provider must meet in lieu of licensure, certification, or registration when the state in which the service is to be furnished does not require a provider of these services to be licensed, certified, or registered, or when the state licenses, certifies, or registers the provider of services under another name.

AUTH: 33-1-313, 33-22-1121, MCA
IMP: 33-22-1101 ~~through 33-22-1121~~, 33-22-1102, 33-22-1103, 33-22-1107, 33-22-1108, 33-22-1111, 33-22-1112, 33-22-1113, 33-22-1114, 33-22-1115, 33-22-1116, 33-22-1117, 33-22-1119, 33-22-1120, 33-22-1121, MCA

6.6.3104 POLICY PRACTICES AND PROVISIONS (1) through (4) remain the same.

(5) The term "level premium" may only be used when the insurer does not have the right to change the premium.

(6) In addition to the other requirements of this rule, a qualified long-term care insurance contract shall be guaranteed renewable, within the meaning of Section 7702B(b)(1)(C) of the Internal Revenue Code of 1986, as amended.

~~(5)~~(7) ~~No~~A policy or certificate may not be delivered or issued for delivery in this state as long-term care insurance if ~~such~~ the policy or certificate limits or excludes coverage by type of illness, treatment, medical condition, or accident, except it may include exclusions or limits for:

(a) remains the same.

(b) mental or nervous disorders; however, this shall not permit exclusion ~~of~~ or limitation of benefits on the basis of Alzheimer's disease or irreversible dementia;

(c) through (d)(iv) remain the same.

(v) aviation, ~~which~~ provided this exclusion applies only to nonfare-paying passengers;.

(e) and (f) remain the same.

(g) services provided by a member of the ~~insured's~~ covered person's immediate family ~~or~~ and services for which no charge is normally made in the absence of insurance. ;

(h) expenses for services or items available or paid under another long-term care insurance or health insurance policy;

(i) in the case of a qualified long-term care insurance contract, expenses for services or items to the extent that the expenses are reimbursable under Title XVIII of the Social Security Act or would be so reimbursable but for the application of a deductible or coinsurance amount;

(j) this rule is not intended to prohibit exclusions and limitations by type of provider; however:

(i) no long-term care issuer may deny a claim because services are provided in a state other than the state of policy issued, under the following conditions:

(A) when the state other than the state of policy issue does not have the provider licensing, certification, or registration required in the policy, but where the provider satisfies the policy requirements outlined for providers in lieu of licensure, certification, or registration; or

(B) when the state other than the state of policy issue issues licenses, certifies, or registers the provider under another name.

(ii) for purposes of this paragraph, "state of policy issue" means the state in which the individual policy or certificate was originally issued.

~~(h)~~(k) this ~~section~~ rule is not intended to prohibit exclusions or limitations by territorial limitations.

(6) through (7)(b) remain the same but are renumbered (8) through (9)(b).

(c) For the purposes of this ~~section~~ rule, "converted policy" means a policy or certificate of long-term care insurance providing benefits identical to or benefits determined by the Commissioner of Insurance to be substantially equivalent to or in excess of those provided under the group policy or certificate from which conversion is made. Where the group policy from which conversion is made restricts provision of benefits and services to, or contains incentives to use certain health care providers or facilities, the Commissioner of Insurance, in making a determination as to the substantial equivalency of benefits, may take into consideration the differences between managed care and nonmanaged care plans, including, but not limited to, health care provider system arrangements, service availability, benefit levels, and administrative complexity.

(d) through (f)(ii)(A) remain the same.

(B) the premium for which is calculated in a manner consistent with the requirements of (9)(e) ~~of this subsection~~.

(g) Notwithstanding any other provision of this rule, a converted policy or certificate issued to an individual who at the time of conversion is covered by another long-term care insurance policy or certificate which provides benefits on the basis of incurred expenses, may contain a provision which results in a reduction of benefits payable if the benefits provided under the additional coverage, together with the full benefits provided by the converted policy or certificate, would result in

payment of more than 100% of incurred expenses. ~~Such~~ The provision shall only be included in the converted policy or certificate if the converted policy or certificate also provides for a premium decrease or refund which reflects the reduction in benefits payable.

(h) The converted policy or certificate may provide that the benefits payable under the converted policy or certificate, together with the benefits payable under the group policy or certificate from which conversion is made, ~~shall~~ may not exceed those that would have been payable had the individual's coverage under the group policy or certificate remained in force and effect.

(i) Notwithstanding any other provision of ~~this section~~ these rules, any insured individual whose eligibility for group long-term care coverage is based upon his or her relationship to another person~~,~~ shall be entitled to continuation of coverage under the group policy or certificate upon termination of the qualifying relationship by death or dissolution of marriage.

(j) For the purposes of ~~this section~~ these rules, a "managed-care plan" is a health care or assisted living arrangement designed to coordinate patient care or control costs through utilization review, case management, or use of specific health care provider networks.

(8) remains the same but is renumbered (10).

(11) The premium charged to an insured shall not increase due to either:

(a) the increasing age of the insured at ages beyond 65; or

(b) the duration the insured has been covered under the policy.

(9) remains the same but is renumbered (12).

(a) and (b) remain the same.

(c) The telephonic or electronic enrollment providing necessary and reasonable safeguards to assure that the confidentiality of individually identifiable information and "privileged information," as defined by 33-19-104~~(22)~~(24), MCA, is maintained.

(d) remains the same.

(10) remains the same but is renumbered (13).

AUTH: 33-1-313, 33-22-1121, MCA
IMP: 33-22-1101 ~~through 33-22-1121~~, 33-22-1102, 33-22-1103, 33-22-1107, 33-22-1108, 33-22-1111, 33-22-1112, 33-22-1113, 33-22-1114, 33-22-1115, 33-22-1116, 33-22-1117, 33-22-1119, 33-22-1120, 33-22-1121, MCA

6.6.3104A UNINTENTIONAL LAPSE (1) through (2) remain the same.

AUTH: 33-1-313, 33-22-1121, MCA
IMP: 33-22-1113, MCA

6.6.3105 REQUIRED DISCLOSURE PROVISIONS (1) Individual long-term care insurance policies and certificates shall contain a renewability provision. ~~Such provision shall be appropriately captioned, shall appear on the first page of the policy or certificate, and shall clearly state the duration, where limited, of renewability and the duration of the term of coverage for which the policy or certificate is issued and for which it may be renewed. This provision shall not apply to policies which do not~~

~~contain a renewability provision, and under which the right to nonrenew is reserved solely to the policyholder.~~

(a) The provision shall be appropriately captioned, shall appear on the first page of the policy or certificate, and shall clearly state the duration, where limited, of renewability and the duration of the term of coverage for which the policy or certificate is issued and for which it may be renewed. This provision shall not apply to policies which do not contain a renewability provision, and under which the right to nonrenew is reserved solely to the policyholder; and

(b) A long-term care insurance policy, other than one where the insurer does not have the right to change the premium, shall include a statement that the premium rates may change.

(2) through (4) remain the same.

(5) A long-term care insurance policy or certificate containing any limitations or conditions for eligibility other than those prohibited in 33-22-1115~~(2)~~(1), MCA, shall set forth a description of such limitations or conditions, including any required number of days of confinement, in a separate paragraph of the policy or certificate and shall label such paragraph "limitations ~~of~~ or conditions on eligibility for benefits."

(6) With regard to life insurance policies that provide an accelerated benefit for long-term care, a disclosure statement is required at the time of application for the policy or rider and at the time the accelerated benefit payment request is submitted that receipt of these accelerated benefits may be taxable, and that assistance should be sought from a personal tax advisor. The disclosure statement shall be prominently displayed on the first page of the policy or rider and any other related documents. This provision does not apply to qualified long-term care insurance contracts.

(7) Activities of daily living and cognitive impairment shall be used to measure an insured's need for long-term care and shall be described in the policy or certificate in a separate paragraph and shall be labeled "Eligibility for the Payment of Benefits." Any additional benefit triggers shall also be explained in this ~~rule~~ separate paragraph. If these triggers differ for different benefits, explanation of the trigger shall accompany each benefit description. If an attending physician or other specified person must certify a certain level of functional dependency in order to be eligible for benefits, this too shall be specified.

(8) A qualified long-term care insurance contract shall include a disclosure statement in the policy and/or certificate and in the outline of coverage that the policy is intended to be a qualified long-term care insurance contract under 7702B(b) of the Internal Revenue Code of 1986, as amended.

(9) A nonqualified long-term care insurance contract shall include a disclosure statement in the policy and in the outline of coverage as contained in ARM 6.6.3114(6) that the policy is not intended to be a qualified long-term care insurance contract.

AUTH: 33-1-313, 33-22-1121, MCA

IMP: 33-22-1101 ~~through 33-22-1121~~, 33-22-1102, 33-22-1103, 33-22-1107, 33-22-1108, 33-22-1111, 33-22-1112, 33-22-1113, 33-22-1114, 33-22-1115, 33-22-1116, 33-22-1117, 33-22-1119, 33-22-1120, 33-22-1121, MCA

6.6.3106 PROHIBITION AGAINST POST-CLAIMS UNDERWRITING

(1) and (2) remain the same.

(3) Except for policies or certificates which are guaranteed issue, the following language shall be set out conspicuously and in close conjunction with the applicant's signature block on an application for a long-term care insurance policy or certificate: **Caution: If your answers on this application are incorrect or untrue, [company] ~~has~~ may have the right to deny benefits or rescind your [policy] [certificate], pursuant to ARM 6.6.3104(13).**

(4) through (6) remain the same.

(7) Every issuer or other entity selling or issuing long-term care insurance benefits shall maintain a record of all policy or certificate rescissions, both state and countrywide, except those which the insured voluntarily effectuated and shall annually furnish this information to the Commissioner of Insurance in the format prescribed by the ~~national association of insurance commissioners~~ National Association of Insurance Commissioners in ~~Appendix A~~ ARM 6.6.3120, LTC Form A.

AUTH: 33-1-313, 33-22-1121, MCA
IMP: 33-22-1101 ~~through 33-22-1121~~, 33-22-1102, 33-22-1103, 33-22-1107, 33-22-1108, 33-22-1111, 33-22-1112, 33-22-1113, 33-22-1114, 33-22-1115, 33-22-1116, 33-22-1117, 33-22-1119, 33-22-1120, 33-22-1121, MCA

6.6.3107 MINIMUM STANDARDS FOR HOME HEALTH CARE BENEFITS IN LONG-TERM CARE INSURANCE POLICIES (1) through (1)(c) remain the same.

(d) by requiring that a nurse or therapist provide services covered by the policy or certificate that can be provided by a home health aide, or other licensed or certified home care worker acting ~~withing~~ within the scope of his or her licensure of certification;

(e) through (3) remain the same.

AUTH: 33-1-313, 33-22-1121, MCA
IMP: 33-22-1101 ~~through 33-22-1121~~, 33-22-1102, 33-22-1103, 33-22-1107, 33-22-1108, 33-22-1111, 33-22-1112, 33-22-1113, 33-22-1114, 33-22-1115, 33-22-1116, 33-22-1117, 33-22-1119, 33-22-1120, 33-22-1121, MCA

6.6.3108 REQUIREMENT TO OFFER INFLATION PROTECTION

(1) through (6) remain the same.

(7) Inflation protection as provided in (1)(a) ~~of this section~~ shall be included in a long-term care insurance policy or certificate unless an issuer obtains a rejection of inflation protection signed by the policyholder as required in this ~~section~~ rule. The rejection shall be considered a part of the application and shall state:

(a) I ~~have received~~ reviewed the outline of the coverage and the graphs that compare the benefits and premiums of this policy or certificate with and without inflation protection. Specifically, I ~~have~~ reviewed Plans_____, and I reject inflation protection.

AUTH: 33-1-313, 33-22-1121, MCA

IMP: 33-22-1101 ~~through 33-22-1121~~, 33-22-1102, 33-22-1103, 33-22-1107, 33-22-1108, 33-22-1111, 33-22-1112, 33-22-1113, 33-22-1114, 33-22-1115, 33-22-1116, 33-22-1117, 33-22-1119, 33-22-1120, 33-22-1121, MCA

6.6.3109 REQUIREMENTS FOR APPLICATION FORMS AND REPLACEMENT COVERAGE (1) through (6) remain the same.

AUTH: 33-1-313, 33-22-1121, MCA
IMP: 33-22-1101 ~~through 33-22-1121~~, 33-22-1102, 33-22-1103, 33-22-1107, 33-22-1108, 33-22-1111, 33-22-1112, 33-22-1113, 33-22-1114, 33-22-1115, 33-22-1116, 33-22-1117, 33-22-1119, 33-22-1120, 33-22-1121, MCA

6.6.3109A REPORTING REQUIREMENTS (1) remains the same.

(2) Every issuer shall report annually by June 30, on LTC Form G in ARM 6.6.3120(1)(g), the 10% of its producers with the greatest percentages of lapses and replacements as measured by (1) ~~above~~.

(3) remains the same.

(4) Every issuer shall report annually by June 30, on LTC Form E in ARM 6.6.3120(1)(e), the number of lapsed policies as a percentage of its total annual sales and as a percentage of its total number of policies in force as of the end of the preceding calendar year.

(5) and (6) remain the same.

(7) For purposes of this rule:

(a) "policy" ~~shall~~ means only long-term care insurance ~~and "report" means on a statewide basis.~~;

(b) subject to (7)(c) "claim" means a request for payment of benefits under an in-force policy regardless of whether the benefit claimed is covered under the policy or any terms or conditions of the policy have been met;

(c) "denied" means the insurer refuses to pay a claim for any reason other than for claims not paid for failure to meet the waiting period or because of an applicable preexisting condition; and

(d) "report" means on a statewide basis.

(8) Reports required under this rule shall be filed with the commissioner on the applicable forms contained in ARM 6.6.3120.

AUTH: 33-1-313, 33-22-1121, MCA
IMP: 33-22-1113, MCA

6.6.3109B LICENSING (1) ~~No~~ A producer ~~is authorized to~~ may not market, sell, solicit, negotiate, or otherwise act as an insurance producer ~~or otherwise contact a person for the purpose of marketing long-term care insurance unless the producer has demonstrated his or her knowledge of long-term care insurance and the appropriateness of such insurance by passing a test required by this state and maintaining appropriate licenses.~~ with respect to long-term care insurance in this state except as authorized by Title 33, chapter 17, part 2, MCA. The producer must also meet the training requirements set forth in 33-22-1128, MCA.

AUTH: 33-1-313, 33-22-1121, MCA
IMP: 33-17-201, MCA

6.6.3110 DISCRETIONARY POWERS OF COMMISSIONER OF INSURANCE (1) The Commissioner of Insurance may upon written request and after administrative hearing, issue an order to modify or suspend a specific provision or provisions of ~~this~~ these ~~regulation~~ rules with respect to a specific long-term care insurance policy or certificate upon a written finding that:

(a) and (b) remain the same.

(c) remains the same but is renumbered (i).

(i) and (ii) remain the same but are renumbered (ii) and (iii).

AUTH: 33-1-313, 33-22-1121, MCA
IMP: 33-22-1101 ~~through 33-22-1121~~, 33-22-1102, 33-22-1103, 33-22-1107, 33-22-1108, 33-22-1111, 33-22-1112, 33-22-1113, 33-22-1114, 33-22-1115, 33-22-1116, 33-22-1117, 33-22-1119, 33-22-1120, 33-22-1121, MCA

6.6.3111 RESERVE STANDARDS (1) remains the same.

(2) Reserves for policies and riders subject to this ~~subsection~~ rule should be based on the multiple decrement model utilizing all relevant decrements except for voluntary termination rates. Single decrement approximations are acceptable if the calculation produces essentially similar reserves, if the reserve is clearly more conservative, or if the reserve is immaterial. The calculations may take into account the reduction in life insurance benefits due to the payment of long-term care benefits. However, in no event shall the reserves for the long-term care benefit and the life insurance benefit be less than the reserves for the life insurance benefit assuming no long-term care benefit.

(3) In the development and calculation of reserves for policies and riders subject to this ~~subsection~~ rule, due regard shall be given to the applicable policy provisions, marketing methods, administrative procedures, and all other considerations which have an impact on projected claim costs, including, but not limited to~~,~~ the following:

(a) through (d) remain the same.

(e) existence ~~of~~ or absence of barriers to eligibility;

(f) through (5) remain the same.

AUTH: 33-1-313, 33-22-1121, MCA
IMP: 33-22-1101 ~~through 33-22-1121~~, 33-22-1102, 33-22-1103, 33-22-1107, 33-22-1108, 33-22-1111, 33-22-1112, 33-22-1113, 33-22-1114, 33-22-1115, 33-22-1116, 33-22-1117, 33-22-1119, 33-22-1120, 33-22-1121, MCA

6.6.3112 LOSS RATIO (1) remains the same.

(2) ~~Section (1)~~ This rule shall not apply to life insurance policies that accelerate benefits for long-term care. A life insurance policy or certificate that funds long-term care benefits entirely by accelerating the death benefit is considered to provide reasonable benefits in relation to premiums paid, if the policy or certificate complies with all of the following provisions:

(a) and (b) remain the same.

(c) The policy or certificate meets the disclosure requirements of 33-20-127, ~~and~~ 33-20-128, and 33-22-1123, MCA;

(d) Any policy illustration that meets the applicable requirements of ~~the NAIC Life Insurance Illustrations Model Regulation~~ ARM 6.6.701 through 6.6.718; and

(e) An actuarial memorandum is filed with and reviewed by the ~~insurance department~~ Insurance Department of the ~~state auditor's office~~ State Auditor's Office that includes:

(i) through (viii) remain the same.

AUTH: 33-1-313, 33-22-1121, MCA
IMP: 33-22-1101 ~~through 33-22-1121~~, 33-22-1102, 33-22-1103, 33-22-1107, 33-22-1108, 33-22-1111, 33-22-1112, 33-22-1113, 33-22-1114, 33-22-1115, 33-22-1116, 33-22-1117, 33-22-1119, 33-22-1120, 33-22-1121, MCA

6.6.3113 FILING REQUIREMENT (1) and (2) remain the same.

AUTH: 33-1-313, 33-22-1121, MCA
IMP: 33-22-1101 ~~through 33-22-1121~~, 33-22-1102, 33-22-1103, 33-22-1107, 33-22-1108, 33-22-1111, 33-22-1112, 33-22-1113, 33-22-1114, 33-22-1115, 33-22-1116, 33-22-1117, 33-22-1119, 33-22-1120, 33-22-1121, MCA

6.6.3114 STANDARD FORMAT OUTLINE OF COVERAGE (1) through (5) remain the same.

(6) Format for outline of coverage:

[COMPANY NAME]

[ADDRESS-CITY & STATE]

[TELEPHONE NUMBER]

LONG-TERM CARE INSURANCE

OUTLINE OF COVERAGE

[Policy Number of Group Master Policy and Certificate Number]
[Except for policies or certificates which are guaranteed issue, the following caution statement, or language substantially similar, must appear as follows in the outline of coverage.] Caution: The issuance of this long-term care insurance [policy] [certificate] is based upon your responses to the questions on your application. A copy of your [application][enrollment form] [is enclosed][was retained by you when you applied]. If your answers are incorrect or untrue, the company ~~has~~ may have the right to deny benefits, or rescind your policy or certificate. The best time to clear up any questions is now, before a claim arises! If, for any reason, any of your answers are incorrect, contact the company at this address: [insert address]
1. This policy is [an individual policy of insurance] ([a group policy] which was

issued in the [indicate jurisdiction in which group policy was issued]).

2. PURPOSE OF OUTLINE OF COVERAGE. This outline of coverage provides a very brief description of the important features of the policy. You should compare this outline of coverage to outlines of coverage for other policies available to you. This is not an insurance contract, but only a summary of coverage. Only the individual or group policy or certificate contains governing contractual provisions. This means that the policy or certificate or group policy sets forth in detail the rights and obligations of both you and the insurance company. Therefore, if you purchase this coverage, or any other coverage, it is important that you READ YOUR POLICY (OR CERTIFICATE) CAREFULLY!

3. TERMS UNDER WHICH THE POLICY OR CERTIFICATE MAY BE RETURNED AND PREMIUM REFUNDED.
   (a) [Provide a brief description of the right to return--"free look" provision of the policy or certificate.]
   (b) [include a statement that the policy or certificate either does or does not contain provisions providing for a refund or partial refund of premium upon the death of an insured or surrender of the policy or certificate. If the policy contains such provisions, include description of them.]

4. THIS IS NOT MEDICARE SUPPLEMENT COVERAGE. If you are eligible for Medicare, review the Mmedicare Ssupplement buyer's guide available from the insurance company.
   (a) [For producers] Neither [insert company name] nor its producers represent Mmedicare, the federal government or any state government.
   (b) [For direct response] [insert company name] is not representing Mmedicare, the federal government or any state government.

5. LONG-TERM CARE COVERAGE. Policies of this category are designed to provide coverage for one or more necessary or medically necessary diagnostic, preventive, therapeutic, rehabilitative, maintenance, or personal care services, provided in a setting other than an acute care unit of a hospital, such as in a nursing home, in the community or in the home. This policy or certificate provides coverage in the form of a fixed dollar indemnity benefit for covered long-term care expenses, subject to policy [limitations] [waiting periods] and [coinsurance] requirements. [Modify this paragraph if the policy is not an indemnity policy.]

6. BENEFITS PROVIDED BY THIS POLICY/CERTIFICATE.
   (a) [Covered services, related deductible(s), waiting periods, elimination periods and benefit maximums.]
   (b) [Institutional benefits, by skill level.]
   (c) [Non-institutional benefits, by skill level.]
   (d) [Activities of daily living and cognitive impairment shall be used to measure an insured's need for long-term care and must be defined and described as part of the outline of coverage.] [Any additional benefit triggers must also be explained. If these triggers differ for different benefits, explanation of the triggers should accompany each benefit description. If an attending physician or other

specified person must certify a certain level of functional dependency in order to be eligible for benefits, this too must be specified.]

7. LIMITATIONS AND EXCLUSIONS

[Describe:

(a) Preexisting conditions;

(b) Non-eligible facilities/provider;

(c) Non-eligible levels of care (e.g., unlicensed providers, care or treatment provided by a family member, etc.)

(d) Exclusions/exceptions;

(e) Limitations.]

[This section should provide a brief specific description of any policy provisions which limit, exclude, restrict, reduce, delay, or in any other manner operate to qualify payment of the benefits described in (6) above.]

THIS POLICY MAY NOT COVER ALL THE EXPENSES ASSOCIATED WITH YOUR LONG-TERM CARE NEEDS.

8. RELATIONSHIP OF COST OF CARE AND BENEFITS. Because the costs of long-term care services will likely increase over time, you should consider whether and how the benefits of this plan may be adjusted. [As applicable, indicate the following:

(a) That the benefit level will not increase over time;

(b) Any automatic benefit adjustment provisions;

(c) Whether the insured will be guaranteed the option to buy additional benefits and the basis upon which benefits will be increased over time if not by a specified amount or percentage;

(d) If there is such a guarantee, include whether additional underwriting or health screening will be required, the frequency and amounts of the upgrade options, and any significant restrictions or limitations;

(e) And finally, describe whether there will be any additional premium charge imposed, and how that is to be calculated.]

9. TERMS UNDER WHICH THE POLICY (OR CERTIFICATE) MAY BE CONTINUED IN FORCE OR DISCONTINUED.

(a) [For long-term care health insurance policies or certificates, describe one of the following policy renewability provisions:

(i) Policies and certificates that are guaranteed renewable shall contain the following statement:] RENEWABILITY: THIS POLICY [CERTIFICATE] IS GUARANTEED RENEWABLE. This means you have the right, subject to the terms of your policy [certificate], to continue this policy [certificate] as long as you pay your premiums on time. [Company Name] cannot change any of the terms of your policy [certificate] on its own, except that, in the future, it may increase the premium you pay.

(ii) [Policies and certificates that are noncancelable shall contain the following statement:] RENEWABILITY: THIS POLICY [CERTIFICATE] IS NONCANCELABLE. This means that you have the right, subject to the terms of your policy or certificate, to continue this policy as long as you pay your premiums on time. [Company Name]

cannot change any of the terms of your policy on its own and cannot change the premium you currently pay. However, if your policy or certificate contains an inflation protection feature where you choose to increase your benefits, [Company Name] may increase your premium at that time for those additional benefits.

(b) For group coverage, specifically describe continuation conversion provisions applicable to the certificate and group policy;

(c) Describe waiver of premium provisions or state that there are not such provisions;

(d) State whether or not the company has a right to change premium, and if such a right exists, describe clearly and concisely each circumstance under which premium may change.]

10. ALZHEIMER'S DISEASE, IRREVERSIBLE DEMENTIA, AND OTHER ORGANIC BRAIN DISORDERS.

[State that the policy or certificate provides coverage for insured clinically diagnosed as having Alzheimer's disease, irreversible dementia, or related degenerative and dementing illnesses. Specifically describe each benefit screen or other policy provision which provides preconditions to the availability of policy benefits for such an insured.]

11. PREMIUM.

[(a) State the total annual premium for the policy or certificate;

(b) If the premium varies with an applicant's choice among benefit options, indicate the portion of annual premium which corresponds to each benefit option.]

12. ADDITIONAL FEATURES.

(a) QUALIFIED LONG-TERM CARE INSURANCE. Indicate whether or not the policy or certificate is intended to be a federally tax-qualified long-term care insurance contract.

[(b) Indicate if medical underwriting is used;

(c) Describe other important features.]

AUTH: 33-1-313, 33-22-1121, MCA
IMP: 33-22-1101 ~~through 33-22-1121~~, 33-22-1102, 33-22-1103, 33-22-1107, 33-22-1108, 33-22-1111, 33-22-1112, 33-22-1113, 33-22-1114, 33-22-1115, 33-22-1116, 33-22-1117, 33-22-1119, 33-22-1120, 33-22-1121, MCA

6.6.3115 REQUIREMENT TO DELIVER SHOPPER'S GUIDE (1) through (2) remain the same.

AUTH: 33-1-313, 33-22-1121, MCA
IMP: 33-22-1101 ~~through 33-22-1121~~, 33-22-1102, 33-22-1103, 33-22-1107, 33-22-1108, 33-22-1111, 33-22-1112, 33-22-1113, 33-22-1114, 33-22-1115, 33-22-1116, 33-22-1117, 33-22-1119, 33-22-1120, 33-22-1121, MCA

6.6.3117 STANDARDS FOR MARKETING (1) remains the same.

(a) Establish marketing procedures and producer training requirements to

assure that:

(i) any marketing activities, including comparison of policies, by its producers or other producers, will be fair and accurate;

(b) and (c) remain the same.

(d) Provide copies of the disclosures required in [New Rule I] on forms specified in ARM 6.6.3120(1)(b) and (f);

~~(d)~~(e) Inquire and otherwise make every reasonable effort to identify whether a prospective applicant or enrollee for long-term care insurance already has accident and sickness or long-term care insurance and the types and amounts of any such insurance, except that in the case of qualified long-term care insurance contracts, an inquiry into whether a prospective applicant or enrollee for long-term care insurance has accident and sickness insurance is not required;

(e) remains the same but is renumbered (f).

~~(f)~~(g) The issuer must at solicitation, provide written notice to the prospective policyholder and certificateholder that a senior insurance counseling program is available and the name, address, and telephone number of the program; ~~and~~

~~(g)~~(h) For long-term care health insurance policies and certificates, use the terms "noncancelable" or "level premium" only when the insured has the right to continue the long-term care insurance in force by the timely payment of premiums during which period the issuer has no right to unilaterally make any change in any provision of the insurance or in the premium rate~~.~~; and

(i) Provide an explanation of contingent benefit upon lapse provided for in ARM 6.6.3119.

(2) and (2)(a) remain the same.

(b) High pressure tactics such as employing any method of marketing having the effect of, or tending to induce the purchase of insurance through force, fright, threat, whether explicit or implied, or undue pressure to purchase or recommend the purchase of insurance; ~~and~~

(c) Cold lead advertising such as making use directly or indirectly of any method of marketing which fails to disclose in a conspicuous manner that a purpose of the method of marketing is solicitation of insurance and that contact will be made by an insurance producer or insurance company~~.~~; and

(d) Misrepresenting a material fact in selling or offering to sell a long-term care insurance policy.

(3)~~(a)~~ With respect to the obligations set forth in this ~~subsection~~ rule, the primary responsibility of an association, as defined in 33-22-1107, MCA, when endorsing long-term care insurance shall be:

(a) to educate its members concerning long-term care issues in general so that its members can make informed decisions. Associations shall provide objective information regarding long-term care insurance policies or certificates endorsed or sold by such associations to ensure that members of such associations receive a balanced and complete explanation of the features in the policies or certificates that are being endorsed or sold.~~;~~

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

(ii) actively monitor the marketing efforts of the issuer and its producers; ~~and~~

(iii) review and approve all marketing materials or other insurance communications used to promote sales or sent to members regarding such policies

or certificates.; and

(iv) (3)(f)(i) through (3)(f)(iii) do not apply to qualified long-term care insurance contracts.

(g) No group long-term care insurance policy or certificate may be issued to an association unless the issuer files with the state insurance department the information required in this rule.

(h) The issuer shall not issue a long-term care policy or certificate to an association or continue to market such a policy or certificate unless the issuer certifies annually that the association has complied with the requirements set forth in this rule.

(i) remains the same.

AUTH: 33-1-313, 33-22-1121, MCA
IMP: 33-22-1101 through 33-22-1121, 33-22-1102, 33-22-1103, 33-22-1107, 33-22-1108, 33-22-1111, 33-22-1112, 33-22-1113, 33-22-1114, 33-22-1115, 33-22-1116, 33-22-1117, 33-22-1119, 33-22-1120, 33-22-1121, MCA

6.6.3118 APPROPRIATE SALE CRITERIA SUITABILITY STANDARDS

(1) remains the same.

(a) Ddevelop and use appropriate sale criteria suitability standards to determine whether the purchase or replacement of long-term care insurance is appropriate for the needs of the applicant;

(b) Ttrain its producers in the use of its appropriate sale criteria suitability standards; and

(c) Mmaintain a copy of its appropriate sale criteria suitability standards and make them available for inspection upon request by the commissioner.

(2)(a) To determine whether the applicant meets the standards developed by the issuer, the issuer shall:

(a) develop procedures that take the following into consideration:

(i) through (iii) remain the same.

(3) To determine whether the applicant meets the standards developed by the issuer, the producer and issuer shall:

(a) develop procedures that take the following into consideration:

(i) the ability to pay for the proposed coverage and other pertinent financial information related to the purchase of the coverage;

(ii) the applicant's goals or needs with respect to long-term care and the advantages and disadvantages of insurance to meet these goals or needs; and

(iii) the values, benefits, and costs of the applicant's existing insurance, if any, when compared to the values, benefits, and costs of the recommended purchase or replacement.

(b)(4) To determine whether the applicant meets the standards developed by the The issuer, and where a producer is involved, the producer shall make reasonable efforts to obtain the information set out in (2)(a) above. The efforts shall include presentation to the applicant, at or prior to application, the "Long-Term Care Insurance Personal Worksheet." The personal worksheet used by the issuer shall contain, at a minimum, the information in the format contained in Appendix B ARM

6.6.3120(1)(b) in not less than 12 point type. The issuer may request the applicant to provide additional information to comply with its ~~appropriate sale criteria~~ suitability standards. A copy of the issuer's personal worksheet shall be filed with the commissioner.

~~(c)~~(a) A completed personal worksheet shall be returned to the issuer prior to the issuer's consideration of the applicant for coverage~~.~~, except the personal worksheet need not be returned for sales of employer group long-term care insurance to employees and their spouses; and

~~(d)~~(b) The sale or dissemination outside the company or agency by the issuer or producer of information obtained through the personal worksheet in ARM 6.6.3120(1)(b), LTC Form B ~~Appendix B~~ is prohibited.

~~(3)~~(5) The issuer shall use the ~~appropriate sale criteria~~ suitability standards it has developed pursuant to this rule in determining whether issuing long-term care insurance coverage to an applicant is appropriate.

~~(4)~~(6) Producers shall use the ~~appropriate sale criteria~~ suitability standards developed by the issuer in marketing long-term care insurance.

~~(5)~~(7) At the same time as the personal worksheet is provided to the applicant, the disclosure form entitled "Things You Should Know Before You Buy Long-Term Care Insurance" shall be provided. The form shall be in the format contained in ARM 6.6.3120(1)(c), LTC Form C ~~Appendix C~~ in not less than 12 point type.

~~(6)~~(8) If the issuer determines that the applicant does not meet its financial ~~appropriate sale criteria~~ suitability standards, or if the applicant has declined to provide the information, the issuer may reject the application. In the alternative, the issuer shall send the applicant a letter similar to ARM 6.6.3120(1)(d), LTC Form D ~~Appendix D~~. However, if the applicant has declined to provide financial information, the issuer may use some other method to verify the applicant's intent. Either the applicant's returned letter or a record of the alternative method of verification shall be made part of the applicant's file.

~~(7)~~(9) The issuer shall report annually to the commissioner the total number of applications received from residents of this state, the number of those who declined to provide information on the personal worksheet, the number of applicants who did not meet the ~~appropriate sale criteria~~ suitability standards, and the number of those who chose to confirm after receiving ~~an appropriate sale criteria~~ a suitability letter.

(8) remains the same but is renumbered (10).

AUTH: 33-1-313, 33-22-1121, MCA
IMP: 33-22-1101 ~~through 33-22-1121~~, 33-22-1102, 33-22-1103, 33-22-1107, 33-22-1108, 33-22-1111, 33-22-1112, 33-22-1113, 33-22-1114, 33-22-1115, 33-22-1116, 33-22-1117, 33-22-1119, 33-22-1120, 33-22-1121, MCA

6.6.3119 NONFORFEITURE BENEFIT REQUIREMENT (1) through (2)(b) remain the same.

(3) If the offer of the long-term care insurance policy or certificate that includes nonforfeiture benefits is rejected, the issuer shall provide the contingent benefit upon

lapse described in this rule. Even if this offer is accepted for a policy with a fixed or limited premium paying period, the contingent benefit upon lapse in (4)(c) still applies.

(4) and (4)(a) remain the same.

(b) The contingent benefit upon lapse shall be triggered every time an issuer increases the premium rates to a level which results in a cumulative increase of the annual premium equal to or exceeding the percentage of the insured's initial annual premium set forth below based on the insured's issue age, and the policy or certificate lapses within 120 days of the due date of the premium so increased. Unless otherwise required, policyholders shall be notified at least 30 days prior to the due date of the premium reflecting the rate increase.

Triggers for ~~Contingent Benefit Upon Lapse~~ a Substantial Premium Increase

Issue Age	~~Substantial~~ Percent Over Initial Premium
29 and under	200%
30-34	190%
35-39	170%
40-44	150%
45-49	130%
50-54	110%
55-59	90%
60	70%
61	66%
62	62%
63	58%
64	54%
65	50%
66	48%
67	46%
68	44%
69	42%
70	40%
71	38%
72	36%
73	34%
74	32%
75	30%
76	28%
77	26%
78	24%
79	22%
80	20%
81	19%
82	18%
83	17%

84	16%
85	15%
86	14%
87	13%
88	12%
89	11%
90 and over	10%

(c) A contingent benefit on lapse shall also be triggered for policies with a fixed or limited premium paying period every time an issuer increases the premium rates to a level that results in a cumulative increase of the annual premium equal to or exceeding the percentage of the insured's initial annual premium set forth below based on the insured's issue age, the policy lapses within 120 days of the due date of the premium so increased, and the ratio in (4)(e)(ii), is 40% or more. Unless otherwise required, policyholders shall be notified at least 30 days prior to the due date of the premium reflecting the rate increase.

Triggers for a Substantial Premium Increase

Issue Age	Percent Increase Over Initial Premium
Under 65	50%
65-80	30%
Over 80	10%

This provision shall be in addition to the contingent benefit provided by (4)(c), and where both are triggered, the benefit provided shall be at the option of the insured.

(c) through (c)(ii) remain the same but are renumbered (d) through (d)(ii).

(iii) notify the policyholder or certificateholder that a default or lapse at any time during the 120-day period referenced in (4)(b) shall be deemed to be the election of the offer to convert in (4)(c)(ii) ~~above.~~ , unless the automatic option in (4)(e)(iii) applies.

(e) On or before the effective date of a substantial premium increase as defined in (4)(c), the issuer shall:

(i) offer to reduce policy benefits provided by the current coverage without the requirement of additional underwriting so that required premium payments are not increased;

(ii) offer to convert the coverage to a paid-up status where the amount payable for each benefit is 90% of the amount payable, in effect immediately prior to lapse, times the ratio of the number of completed months of paid premiums, divided by the number of months in the premium paying period. This option may be elected at any time during the 120 day period referenced in (4)(d); and

(iii) notify the policyholder or certificateholder that a default or lapse at any time during the 120 day period referenced in (4)(c) shall be deemed to be the election of the offer to convert in (2), if the ratio is 40% or more.

(5) Benefits continued as nonforfeiture benefits, including contingent benefits upon lapse in accordance with (4)(b), but not (4)(c), are described ~~in this rule~~ in (5)(a) through (e):

(a) and (b) remain the same.

(c) The standard nonforfeiture credit will be equal to 100% of the sum of all premiums paid, including the premiums paid prior to any changes in benefits. The issuer may offer additional shortened benefit period options, as long as the benefits for each duration equal or exceed the standard nonforfeiture credit for that duration. However, the minimum nonforfeiture credit shall not be less than 30 times the daily nursing home benefit at the time of lapse. In either event, the calculation of the nonforfeiture credit is subject to the limitation of ~~(5)(b)~~ (6).

(d) The nonforfeiture benefit ~~and the contingent benefit upon lapse~~ shall begin:

(i) not later than the end of the third year following the policy or certificate issue date. The contingent benefit upon lapse shall be effective during the first three years as well as thereafter;

(ii) except that for a policy or certificate with attained age rating, the nonforfeiture benefit shall begin on the earlier of:

(i) remains the same but is renumbered (A).

(ii) remains the same but is renumbered (B).

(e) through (8)(b) remain the same.

(c) The last sentence in (3) and (4)(c) and (4)(e) shall apply to any long-term insurance policy issued in Montana after six months after its adoption, except new certificates on a group policy as defined in 33-22-1107(5), MCA, one year after adoption.

(9) Premiums charged for a policy or certificate containing nonforfeiture benefits shall be subject to the loss ratio requirements of ARM 6.6.3112 or [New Rule III], whichever is applicable, treating the policy or certificate as a whole.

~~(10) The purchase of additional coverage shall not be considered a premium rate increase.~~

~~(a) For purposes of the calculation required under this section, the portion of the premium attributable to the additional coverage shall be added to and considered part of the initial annual premium.~~

~~(b) A reduction in benefits shall not be considered a premium change, but for purpose of the calculation required under this section, the initial annual premium shall be based on the reduced benefits.~~

~~(11)~~(10) To determine whether contingent nonforfeiture upon lapse provisions are triggered under (4)(b) or (4)(c), a replacing issuer that purchased or otherwise assumed a block or blocks of long-term care insurance policies or certificates from another issuer shall calculate the percentage increase based on the initial annual premium paid by the insured when the policy or certificate was first purchased from the original issuer.

(11) A nonforfeiture benefit for qualified long-term care insurance contracts that are level premium contracts shall be offered that meets the following requirements:

(a) the nonforfeiture provisions shall be appropriately captioned;

(b) the nonforfeiture provision shall provide a benefit available in the event of a default in the payment of any premiums and shall state that the amount of the

benefit may be adjusted subsequent to being initially granted only as necessary to reflect changes in claims, persistency, and interest as reflected in changes in rates for premium paying contracts approved by the commissioner for the same contract form; and

(c) the nonforfeiture provision shall provide at least one of the following:

(i) reduced paid-up insurance;

(ii) extended term insurance;

(iii) shortened benefit period; and

(iv) other similar offerings approved by the commissioner.

(12) remains the same.

AUTH: 33-1-313, 33-22-1121, MCA

IMP: 33-22-1101 ~~through 33-22-1121~~, 33-22-1102, 33-22-1103, 33-22-1107, 33-22-1108, 33-22-1111, 33-22-1112, 33-22-1113, 33-22-1114, 33-22-1115, 33-22-1116, 33-22-1117, 33-22-1119, 33-22-1120, 33-22-1121, MCA

6.6.3120 ADOPTION OF FORMS (1) The following forms ~~hereinafter listed~~ are ~~hereby~~ adopted and made a part of these rules for all purposes, and the same must be used as herein directed in giving notice. ~~Copies of the forms may be obtained from the State Auditor upon request at Room 270, Mitchell Building, P.O. Box 4009, Helena, Montana 59604.~~

(a) ~~Appendix~~ LTC Form A Rescission Reporting Form LTC Form A

RESCISSION REPORTING FORM FOR
LONG-TERM CARE POLICIES
FOR THE STATE OF MONTANA
FOR THE REPORTING YEAR 20[ ]

Company Name: _____

Address: _____

Phone Number: _____

Due: March 1 annually

Instructions:

The purpose of this form is to report all rescissions of long-term care insurance policies. Those rescissions voluntarily effectuated by an insured are not required to be included in this report. Please furnish one form per rescission.

Date of Date/s

Policy Form #	Policy and Certificate #	Name of Insured	Policy Issuance	Claim/s Submitted	Date of Rescission

Detailed reason for rescission: _____
_____
_____
_____
_____

_____
Signature

_____
Name and Title (please type)

_____
Date

(b) ~~Appendix~~ LTC Form B Long-Term Care Insurance Personal Worksheet
LTC FORM B

Long-Term Care Insurance
Personal Worksheet

People buy long-term care insurance for many reasons. Some don't want to use their own assets to pay for long-term care. Some buy insurance to make sure they can choose the type of care they get. Others don't want their family to have to pay for care or don't want to go on Medicaid. But long-term care insurance may be expensive, and may not be right for everyone.

By state law, the insurance company must fill out part of the information on this worksheet and ask you to fill out the rest to help you and the company decide if you should buy this policy.

Premium Information

Policy Form Numbers _____

The premium for the coverage you are considering will be [$ ____ per month, or $ _____ per year,] [a one-time single premium of $ _____.]

Type of Policy (noncancelable/guaranteed renewable):_____

The Company's Right to Increase Premiums:

[The company cannot raise your rates on this policy.] [The company has a right to increase premiums in the future provided it raises rates for all policies in the same class in this state .][Insurers shall use appropriate bracketed statement. Rate guarantees shall not be shown on this form.]

Rate Increase History

The company has sold long-term care insurance since [year] and has sold this policy since [year]. [The last rate increase for this policy in this state was in [year], when premiums went up by an average of %]. [The company has not raised its rates for this policy.] [The company has never raised its rates for any long-term care policy it has sold in this state or any other state.] [The company has not raised its rates for this policy form or similar policy forms in this state or any other state in the last 10 years.] [The company has raised its premium rates on this policy form or similar policy forms in the last 10 years. Following is a summary of the rate increases.]

Questions Related to Your Income

[□ Have you considered whether you could afford to keep this policy if the premiums were raised, for example, by 20%?]

How will you pay each year's premiums?
□ From my Income □ From my Savings/Investments □ My Family Will Pay

Income

What is your annual income? (check one) □ Under $10,000 □ $10,000-20,000 □ $20,000-30,000 □ $30,000-50,000 □ Over $50,000

How do you expect your income to change over the next 10 years? (check one)
□ No change □ Increase □ Decrease

If you will be paying premiums with money received only from your own income, a rule of thumb is that you may not be able to afford this policy if the premiums will be more than 7% of your income.

Will you buy inflation protection: (check one) □ Yes □ No

If not, have you considered how you will pay for the difference between future costs and your daily benefit amount?

□ From my Income □ From my Savings/Investments □ My Family Will Pay

The national average annual cost of care in [insert year] was [insert $ amount], but this figure varies across the country. In ten years the national average annual cost would be about [insert $ amount] if costs increase 5% annually.

What elimination period are you considering? Number of days _____
Approximate cost $_____ for that period of care.

How are you planning to pay for your care during the elimination period?
(check one)
□ From my Income □ From my Savings/Investments □ My Family Will Pay

Questions Related to Your Savings and Investments

Not counting your home, about how much are all of your assets (your savings and investments) worth?

(check one)
□ Under $20,000 □ $20,000-$30,000 □ $30,000-$50,000 □ Over $50,000

How do you expect your assets to change over the next 10 years? (check one)
□ Stay about the same □ Increase □ Decrease

If you are buying this policy to protect your assets and your assets are less than $30,000, you may wish to consider other options for financing your long-term care.

Disclosure Statement

□ The answers to the questions above describe my financial situation. **Or** □ I choose not to complete this information. (Check one.)
□ I acknowledge that the carrier and/or its producer (below) has reviewed this form with me including the premium, premium rate increase history and potential for premium increases in the future. [For direct mail situations, use the following : I acknowledge that I have reviewed this form including the premium, premium rate increase history and potential for premium increases in the future.] I understand the above disclosures. **I understand that the rates for this policy may increase in the future.** (This box must be checked.)

Signed: _____ _____
(Applicant) (Date)

[□ I explained to the applicant the importance of completing this information.]

Signed: _____ _____
(Applicant) (Date)

Producer's Printed Name: _____]

In order for us to process your application, please return this signed statement to [name of company], along with your application.]

[My agent has advised me that this policy does not seem to be suitable for me. However, I still want the company to consider my application.]

Signed: _____ _____
(Applicant) (Date)

The company may contact you to verify your answers.

(c) ~~Appendix~~ LTC Form C Things You Should Know Before You Buy Long-Term Care Insurance
LTC FORM C

Things You Should Know Before You Buy
Long-Term Care Insurance

Long-Term ▪ A long-term care insurance policy may pay most of the costs for your care in a nursing home. Many policies also pay for care at home or other community settings. Since policies can vary in coverage, you should read this policy and make sure you understand what it covers before you buy it.

_____ ▪ [You should not buy this insurance policy unless you can afford to pay the premiums every year.] [Remember that the company can increase premiums in the future.]

_____ ▪ The personal worksheet includes questions designed to help you and the company determine whether this policy is suitable for your needs.

Medicare ▪ Medicare does not pay for most long-term care.

Medicaid ▪ Medicaid will generally pay for long-term care if you have very little income and few assets. You probably should not buy this policy if you are now eligible for Medicaid.

_____ ▪ Many people become eligible for Medicaid after they have used up their own financial resources by paying for long-term care services.

_____ ▪ When Medicaid pays your spouse's nursing home bills, you are allowed to keep your house and furniture, a living allowance, and some of your joint assets.

_____ ▪ Your choice of long-term care services may be limited if you are receiving Medicaid. To learn more about Medicaid, contact your local or state Medicaid agency.

Shopper's Guide ▪ Make sure the insurance company or agent gives you a copy of a book called the National Association of Insurance Commissioners' "Shopper's Guide to Long-Term Care Insurance." Read it carefully. If you have decided to apply for long-term care insurance, you have the right to return the policy within 30 days and get back any premium you have paid if you are dissatisfied for any reason or choose not to purchase the policy.

Counseling ▪ Free counseling and additional information about long-term care insurance are available through your state's insurance counseling program. Contact your state insurance department or department on aging for more information about the senior health insurance counseling program in your state.

Facilities ▪ Some long-term care insurance contracts provide for benefit payments in certain facilities only if they are licensed or certified, such as in assisted living centers. However, not all states regulate these facilities in the same way. Also, many people move into a different state from where they purchased their long-term care insurance policy. Read the policy carefully to determine what types of facilities qualify for benefit payments, and to determine that payment for a covered service will be made if you move to a state that has a different licensing scheme for facilities than the one in which you purchased the policy.

(d) LTC Form ~~Appendix~~ D Long-Term Care Insurance ~~Appropriate Sale~~ Suitability ~~Criteria~~ Letter

LTC FORM D

Long-Term Care Insurance Suitability Letter

Dear [Applicant]:

Your recent application for long-term care insurance included a "personal worksheet," which asked questions about your finances and your reasons for buying long-term care insurance. For your protection, state law requires us to consider this information when we review your application, to avoid selling a policy to those who may not need coverage.

[Your answers indicate that long-term care insurance may not meet your financial needs. We suggest that you review the information provided along with your application, including the booklet "Shopper's Guide to Long-Term Care Insurance" and the page titled "Things You Should Know Before Buying Long-Term Care Insurance." Your state insurance department also has information about long-term

care insurance and may be able to refer you to a counselor, free of charge, who can help you decide whether to buy this policy.]

[You chose not to provide any financial information for us to review.]

We have suspended our final review of your application. If, after careful consideration, you still believe this policy is what you want, check the appropriate box below and return this letter to us within the next 60 days. We will then continue reviewing your application and issue a policy if you meet our medical standards.

If we do not hear from you within the next 60 days, we will close your file and not issue you a policy. You should understand that you will not have any coverage until we hear back from you, approve your application and issue you a policy.

Please check one box and return in the enclosed envelope.

□ **Yes**, [although my worksheet indicates that long-term care insurance may not be a suitable purchase.] I wish to purchase this coverage. Please resume review of my application.

□ **No**, I have decided not to buy a policy at this time.

APPLICANT'S SIGNATURE _____ DATE _____

Please return to [issuer] at [address] by [date].

(e) LTC Form E Claims Denial Reporting Form

LTC FORM E
Claims Denial Reporting Form
Long-Term Care Insurance

For the State of Montana
For the Reporting Year of _____

Company Name : _____ Due: June 30 annually
Company Address: _____
Company NAIC: _____ Number: _____
Contact Person: _____ Phone Number: _____
Line of Business: Individual Group

Instructions:

The purposes of this form is to report all long-term care claim denials under in-force long-term care insurance policies. "Denied" means a claim that is not paid for any reason other than for claims not paid for failure to meet the waiting period or because of an applicable preexisting condition.

		State Data	Nationwide Data
1	Total Number of Long-Term Care Claims Reported		
2	Total Number of Long-Term Care Claims Denied/Not Paid		
3	Number of Claims Not Paid due to Preexisting Condition Exclusion		
4	Number of Claims Not Paid due to Waiting (Elimination) Period Not Met		
5	Net Number of Long-Term Care Claims Denied for Reporting Purposes (Line 2 Minus Line 3 Minus Line 4)		
6	Percentage of Long-Term Care Claims Denied of Those Reported (Line 5 Divided by Line 1)		
7	Number of Long-Term Care Claims Denied due to:		
8	▪ Long-Term Care Services		
9	▪ Provider/Facility Not Qualified under the Policy		
10	▪ Benefit Eligibility Criteria Not Met		
11	▪ Other		

1. The nationwide data may be viewed as a more representative and credible indicator where the data for claims reported and denied for your state are small in number.
2. Example—home health care claim filed under a nursing home only policy.
3. Example—a facility that does not meet the minimum level of care requirements or the licensing requirements as outlined in the policy.
4. Examples—a benefit trigger not met, certification by a licensed health care practitioner not provided, no plan of care.

You are eligible for the reduced "paid-up" contingent nonforfeiture benefit when all three conditions shown below are met:

1. The premium you are required to pay after the increase exceeds your original premium by the same percentage or more shown in the chart below:

Triggers for a Substantial Premium Increase

Issue Age	Percent Increase Over Initial Premium
Under 65	50%
65-80	30%
Over 80	10%

2. You stop paying your premiums within 120 days of when the premium increase took effect; and

3. The ratio of the number of months you already paid premiums is 40% or more than the number of months you originally agreed to pay.

If you exercise this option your coverage will be converted to reduced "paid-up" status. That means there will be no additional premiums required. Your benefits will change in the following ways:

a. The total lifetime amount of benefits your reduced paid up policy will provide can be determined by multiplying 90% of the lifetime benefit amount at the time the policy becomes paid up by the ratio of the number of months you already paid premiums to the number of months you agreed to pay them.

b. The daily benefit amounts you purchased will also be adjusted by the same ratio.

If you purchased lifetime benefits, only the daily benefit amounts you purchased will be adjusted by the applicable ratio.

Example:

- You bought the policy at age 65 with an annual premium payable for 10 years.
- In the sixth year, you receive a rate increase of 35% and you decide to stop paying premiums.
- Because you already paid 50% of your total premium payments and that is more than the 40% ratio, your "paid-up" policy benefits are .45 (.90 times .50) times the total benefit amount that was in effect when you stopped paying your premiums. If you purchased inflation protection, it will not continue to apply to the benefits in the reduced "paid-up" policy.

(f) LTC Form F Potential Rate Increase Reporting Form

LTC Form F

Instructions:

This form provides information to the applicant regarding premium rate schedules, rate schedule adjustments, potential rate revisions, and policy holder options in the event of a rate increase.

Insurers shall provide all of the following information to the applicant:

Long-Term Care Insurance
Potential Rate Increase Disclosure Form

[Premium Rate][Premium Rate Schedules]: [Premium rate][Premium rate schedules] that [is][are] applicable to you and that will be in effect until a request is made and [filed][approved] for an increase [is][are][on the application][$_____]

1. The [premium] [premium rate schedule] for this policy [will be shown on the schedule page of] [will be attached to] your policy.

2. **Rate Schedule Adjustments:**

The company will provide a description of when premium rate or rate schedule adjustments will be effective (e.g., next anniversary date, next billing date, etc.) (fill in the blank): _____.

3. **Potential Rate Revisions:**

This policy is Guaranteed Renewable. This means that the rates for this product may be increased in the future. Your rates can NOT be increased due to your increasing age or declining health, but your rates may go up based on the experience of all policyholders with a policy similar to yours.

If you receive a premium rate or premium rate schedule increase in the future, you will be notified of the new premium amount and you will be able to exercise at least one of the following options:

$ Pay the increased premium and continue your policy in force as is.
$ Reduce your policy benefits to a level such that your premiums will not increase. (Subject to state law minimum standards.)
$ Exercise your nonforfeiture option if purchased. (This option is available for purchase for an additional premium.)
$ Exercise your contingent nonforfeiture rights.* (This option may be available if you do not purchase a separate nonforfeiture option.)

Contingent Nonforfeiture

If the premium rate for your policy goes up in the future and you didn't buy a nonforfeiture option, you may be eligible for contingent nonforfeiture. Here's how to tell if you are eligible:

You will keep some long-term care insurance coverage, if:

$ Your premium after the increase exceeds your original premium by the percentage shown (or more) in the following table; and

$ You lapse (do not pay more premiums) within 120 days of the increase.

The amount of coverage (i.e., new lifetime maximum benefit amount) you will keep will equal the total amount of premiums you've paid since your policy was first issued. If you have already received benefits under the policy, so that the remaining maximum benefit amount is less than the total amount of premiums you've paid, the amount of coverage will be that remaining amount.

Except for this reduced lifetime maximum benefit amount, all other policy benefits will remain at the levels attained at the time of the lapse and will not increase thereafter.

Should you choose this Contingent Nonforfeiture option, your policy, with this reduced maximum benefit amount, will be considered "paid-up" with no further premiums due.

Example:

$ You bought the policy at age 65 and paid the $1,000 annual premium for 10 years, so you have paid a total of $10,000 in premium.

$ In the eleventh year, you receive a rate increase of 50%, or $500 for a new annual premium of $1,500, and you decide to lapse the policy (not pay any more premiums.)

$ Your "paid-up" policy benefits are $10,000 (provided you have at least $10,000 of benefits remaining under your policy.)

Contingent Nonforfeiture
Cumulative Premium Increase over Initial Premium
That Qualifies for Contingent Nonforfeiture

(Percentage increase is cumulative from date of original issue. It does NOT represent a one-time increase.)

Issue Age	Percent Increase Over Initial Premium
29 and under	200%
30-34	190%
35-39	170%
40-44	150%
45-49	130%
50-54	110%
55-59	90%
60	70%
61	66%
62	62%
63	58%

64	54%
65	50%
66	48%
67	46%
68	44%
69	42%
70	40%
71	38%
72	36%
73	34%
74	32%
75	30%
76	28%
77	26%
78	24%
79	22%
80	20%
81	19%
82	18%
83	17%
84	16%
85	15%
86	14%
87	13%
88	12%
89	11%
90 and over	10%

[The following contingent nonforfeiture disclosure need only be included for those limited pay policies to which ARM 6.6.3119(4)(c) and (e) of the regulation are applicable].

In addition to the contingent nonforfeiture benefits described above, the following reduced "paid-up" contingent nonforfeiture benefit is an option in all policies that have a fixed or limited premium payment period, even if you selected a nonforfeiture benefit when you bought your policy. If both the reduced "paid-up" benefit AND the contingent benefit described above are triggered by the same rate increase, you can chose either of the two benefits.

(g) LTC Form G Replacement and Lapse Reporting Form

LTC Form G

Long-Term Care Insurance
Replacement and Lapse Reporting Form

For the State of Montana For the Reporting Year of _____

Company Name: _____ Due: June 30 annually
Company Address: _____ Company NAIC # _____
Company NAIC Number: _____
Contact Person: _____
Phone Number: (___)_____

Instructions

The purpose of this form is to report, on a statewide basis, information regarding long-term care insurance policy replacements and lapses. Specifically, every insurer shall maintain records for each agent on that agent's amount of long-term care insurance replacement sales as a percent of the agent's total annual sales and the amount of lapses of long-term care insurance policies sold by the agent as a percent of the agent's total annual sales. The tables below should be used to report the 10% of the insurer's agents with the greatest percentages of replacements and lapses.

Listing of the 10% of Agents with the Greatest Percentage of Replacements

Agent's Name	Number of Policies Sold by This Agent	Number of Policies Replaced by This Agent	Number of Replacements as % of Number Sold by this Agent

Listing of the 10% of Agents with the Great Percentage of Lapses

Agent's Name	Number of Policies Sold by This Agent	Number of Policies Lapsed by This Agent	Number of Lapses as % of Number Sold by This Agent

Company Totals:
Percentage of Replacement Policies Sold to Total Sales _____%
Percentage of Replacement Policies Sold to Policies in Force (as of the end of the preceding calendar year) _____%
Percentage of Lapsed Policies to Total Annual Sales _____%
Percentage of Lapsed Policies to Policies in Force (as of the end of the preceding calendar year) _____%

AUTH: 33-1-313, 33-22-1121, MCA
IMP: 33-22-1101 ~~through 33-22-1121~~, 33-22-1102, 33-22-1103, 33-22-1107, 33-22-1108, 33-22-1111, 33-22-1112, 33-22-1113, 33-22-1114, 33-22-1115, 33-22-1116, 33-22-1117, 33-22-1119, 33-22-1120, 33-22-1121, MCA

4. The rule proposed for repeal is as follows:

6.6.3116 EFFECTIVE DATE located at page 6-525, Administrative Rules of Montana.

AUTH: 33-1-313, MCA
IMP: 33-22-1101 through 33-22-1121, MCA

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

NEW RULE I REQUIRED DISCLOSURE OF RATING PRACTICES TO CONSUMERS (1) This rule shall apply as follows:

(a) except as provided in (2), this provision applies to any long-term care policy issued in Montana on or after July 1, 2008; and

(b) for certificates issued on or after the effective date of this amended rule under a group long-term care insurance policy as defined in 33-22-1107(5), MCA, which policy was in force at the time this amended rule became effective, the provisions of this rule shall apply on the policy anniversary following July 1, 2008.

(2) Other than policies for which no applicable premium rate or rate schedule increases can be made, issuers shall provide all of the information listed in this rule to the applicant at the time of application or enrollment, unless the method of application does not allow for delivery at that time. In such case, an issuer shall provide all of the information listed in this rule to the applicant no later than at the time of delivery of the policy:

(a) a statement that the policy may be subject to rate increases in the future;

(b) an explanation of potential future premium rate revisions, and the policyholder's or certificateholder's option in the event of a premium rate revision;

(c) the premium rate or rate schedules applicable to the applicant that will be in effect until a request is made for an increase; and

(d) a general explanation for applying premium rate or rate schedule adjustments that shall include:

(i) a description of when premium rate or rate schedule adjustments will be effective, e.g., next anniversary date, next billing date, etc.; and

(ii) the right to a revised premium rate or rate schedule as provided in (2)(c) if the premium rate or rate schedule is changed.

(e) information regarding each premium rate increase on this policy form or similar policy forms over the past ten years for this state or any other state that, at a minimum, identifies:

(i) the policy forms for which the premium rates have been increased;

(ii) the calendar years when the form was available for purchase; and

(iii) the amount or percent of each increase. The percentage may be expressed as a percentage of the premium rate prior to the increase, and may also be expressed as minimum and maximum percentages if the rate increase is variable by rating characteristics.

(f) the issuer may, in a fair manner, provide additional explanatory information related to the rate increases;

(g) an issuer shall have the right to exclude from the disclosure premium rate increases that only apply to blocks of business acquired from other nonaffiliated

issuers or the long-term care policies acquired from other nonaffiliated issuers when those increases occurred prior to the acquisition;

(h) if an acquiring issuer files for a rate increase on a long-term care policy form acquired from nonaffiliated issuers or a block of policy forms acquired from nonaffiliated issuers on or before the later of the effective date of this rule or the end of a 24 month period following the acquisition of the block or policies, the acquiring issuer may exclude that rate increase from the disclosure. However, the nonaffiliated selling company shall include the disclosure of that rate increase in accordance with (2)(e); and

(i) if the acquiring issuer in (2)(h) files for a subsequent rate increase, even within the 24 month period, on the same policy form acquired from nonaffiliated issuers or block of policy forms acquired from nonaffiliated insurers referenced in (2)(h), the acquiring issuer shall make all disclosures required by (2)(e), including disclosure of the earlier rate increase referenced in (2)(h).

(3) An applicant shall sign an acknowledgment at the time of application, unless the method of application does not allow for signature at that time, that the issuer made the disclosure required under (2)(a) and (e). If due to the method of application the applicant cannot sign an acknowledgment at the time of application, the applicant shall sign no later than at the time of delivery of the policy.

(4) An issuer shall use the forms in ARM 6.6.3120(1)(b) and (f) to comply with the requirements of (2) and (3).

(5) An issuer shall provide notice of an upcoming premium rate schedule increase to all policyholders or certificateholders, if applicable, at least 45 days prior to the implementation of the premium rate schedule increase by the issuer. The notice shall include the information required by (2), when the rate increase is implemented.

AUTH: 33-1-313, 33-22-1121, MCA
IMP: 33-22-1101, 33-22-1102, 33-22-1103, 33-22-1107, 33-22-1108, 33-22-1111, 33-22-1112, 33-22-1113, 33-22-1114, 33-22-1115, 33-22-1116, 33-22-1117, 33-22-1119, 33-22-1120, 33-22-1121, MCA

NEW RULE II INITIAL FILING REQUIREMENTS (1) This rule applies to any long-term care policy issued in this state on or after July 1, 2008.

(2) An insurer shall provide the information listed in this rule to the commissioner 30 days prior to making a long-term care insurance form available for sale:

(a) a copy of the disclosure documents required in [New Rule I]; and

(b) an actuarial certification consisting of at least the following:

(i) a statement that the initial premium rate schedule is sufficient to cover anticipated costs under moderately adverse experience and that the premium rate schedule is reasonably expected to be sustainable over the life of the form with no future premium increases anticipated;

(ii) a statement that the policy design and coverage provided have been reviewed and taken into consideration;

(iii) a statement that the underwriting and claims adjudication processes have been reviewed and taken into consideration;

(iv) a complete description of the basis for contract reserves that are anticipated to be held under the form, to include:

(A) sufficient detail or sample calculations provided so as to have a complete depiction of the reserve amounts to be held;

(B) a statement that the assumptions used for reserves contain reasonable margins for adverse experience;

(C) a statement that the net valuation premium for renewal years does not increase, except for attained-age rating where permitted; and

(D) a statement that the difference between the gross premium and the net valuation premium for renewal years is sufficient to cover expected renewal expenses; or if such a statement cannot be made, a complete description of the situations where this does not occur:

(I) an aggregate distribution of anticipated issues may be used as long as the underlying gross premiums maintain a reasonably consistent relationship;

(II) if the gross premiums for certain age groups appear to be inconsistent with this requirement, the commissioner may request a demonstration under (3), based on a standard age distribution.

(v) a statement that the premium rate schedule is not less than the premium rate schedule for existing similar policy forms also available from the insurer except for reasonable differences attributable to benefits; or

(vi) a comparison of the premium schedules for similar policy forms that are currently available from the insurer with an explanation of the differences.

(3) The commissioner may request an actuarial demonstration that benefits are reasonable in relation to premiums. The actuarial demonstration shall include:

(a) either premium and claim experience on similar policy forms, adjusted for any premium or benefit differences, relevant and credible data from other studies, or both; and

(b) in the event the commissioner asks for additional information under this provision, the period in (2), does not include the period during which the insurer is preparing the requested information.

AUTH: 33-1-313, 33-22-1121, MCA
IMP: 33-22-1101, 33-22-1102, 33-22-1103, 33-22-1107, 33-22-1108, 33-22-1111, 33-22-1112, 33-22-1113, 33-22-1114, 33-22-1115, 33-22-1116, 33-22-1117, 33-22-1119, 33-22-1120, 33-22-1121, MCA

NEW RULE III PREMIUM RATE SCHEDULE INCREASES (1) Except as provided in (2), this rule applies to any long-term care policy issued in this state on or after July 1, 2008.

(2) For policies issued on or after the effective date of this amended rule under a group long-term care insurance policy as defined in 33-22-1107(5), MCA, which policy was in force at the time this amended rule became effective, the provisions of this rule shall apply on the policy anniversary following January 1, 2009.

(3) An issuer shall provide notice of a pending premium rate schedule increase, including an exceptional increase, to the commissioner at least 30 days prior to the notice to policyholders and shall include:

(a) information required by [New Rule I];

(b) certification by a qualified actuary that:

(i) if the requested premium rate schedule increase is implemented and the underlying assumptions, which reflect moderately adverse conditions, are realized, no further premium rate schedule increases are anticipated; and

(ii) the premium rate filing is in compliance with the provisions of this rule.

(c) an actuarial memorandum justifying the rate schedule change request that includes:

(i) lifetime projections of earned premiums and incurred claims based on the filed premium rate schedule increase; and the method and assumptions used in determining the projected values, including reflection of any assumptions that deviate from those used for pricing other forms currently available for sale;

(A) annual values for the five years preceding and the three years following the valuation date shall be provided separately;

(B) the projections shall include the development of the lifetime loss ratio, unless the rate increase is an exceptional increase;

(C) the projections shall demonstrate compliance with (4); and

(D) for exceptional increases the projected experience should be limited to the increases in claims expenses attributable to the approved reasons for the exceptional increase;

(I) in the event the commissioner determines, as provided in ARM 6.6.3102(4)(d) that offsets may exist, the issuer shall use appropriate net projected experience;

(ii) disclosure of how reserves have been incorporated in this rate increase whenever the rate increase will trigger contingent benefit upon lapse;

(iii) disclosure of the analysis performed to determine why a rate adjustment is necessary, which pricing assumptions were not realized and why, and what other actions taken by the company have been relied on by the actuary;

(iv) a statement that policy design, underwriting, and claims adjudication practices have been taken into consideration;

(v) in the event that it is necessary to maintain consistent premium rates for new business premium rate schedules, except for differences attributable to benefits, unless sufficient justification is provided to the commissioner; and

(vi) sufficient information for review of the premium rate schedule increase by the commissioner.

(4) All premium rate schedule increases shall be determined in accordance with the following requirements:

(a) exceptional increases shall provide that 70% of the present value of projected additional premiums from the exceptional increase will be returned to policyholders in benefits;

(b) premium rate schedule increases shall be calculated so that the sum of the accumulated value of incurred claims without the inclusion of active life reserves, and the present value of future projected incurred claims without the inclusion of active life reserves will not be less than the sum of the following:

(i) the accumulated value of the initial earned premium times 58%;

(ii) 85% of the accumulated value of prior premium rate schedule increases on an earned basis;

(iii) the present value of future projected initial earned premiums times 58%; and

(iv) 85% of the present value of future projected premiums not in (4)(b)(iii) on an earned basis.

(c) in the event that a policy form has both exceptional and other increases, the values in (4)(b)(ii) and (4)(b)(iv), will also include 70% for exceptional rate increase amounts; and

(d) all present and accumulated values used to determine rate increases shall use the maximum valuation interest rate for contract reserves as specified in 33-2-514, MCA. The actuary shall disclose as part of the actuarial memorandum the use of any appropriate averages.

(5) For each rate increase that is implemented, the issuer shall file for review by the commissioner updated projections, as defined in (3)(c)(i), annually for the next three years and include a comparison of actual results to projected values. The commissioner may extend the period to greater than three years if actual results are not consistent with projected values from prior projections. For group insurance policies that meet the conditions in (12), the projections required by this rule shall be provided to the policyholder in lieu of filing with the commissioner.

(6) If any premium rate in the revised premium rate schedule is greater than 200% of the comparable rate in the initial premium schedule, lifetime projections, as defined in (3)(c)(i), shall be filed for review by the commissioner every five years following the end of the required period in (5). For group insurance policies that meet the conditions in (12), the projections required by (6) shall be provided to the policyholder in lieu of filing with the commissioner.

(7) If the commissioner has determined that the actual experience following a rate increase does not adequately match the projected experience and that the current projections under moderately adverse conditions demonstrate that incurred claims will not exceed proportions of premiums specified in (4), the commissioner may require the insurer to implement any of the following:

(a) premium rate schedule adjustments; or

(b) other measures to reduce the difference between the projected and actual experience.

(i) In determining whether the actual experience adequately matches the projected experience, consideration should be given to (3)(c)(v), if applicable.

(8) if the majority of the policies to which the increase is applicable are eligible for the contingent benefit upon lapse, the issuer shall file:

(a) a plan, subject to commissioner approval, for improved administration or claims processing designed to eliminate the potential for further deterioration of the policy form requiring further premium rate schedule increases, or both, or to demonstrate that appropriate administration and claims processing have been implemented or are in effect; otherwise the commissioner may impose the condition in (9); and

(b) the original anticipated lifetime loss ratio, and the premium rate schedule increase that would have been calculated according to (4), had the greater of the original anticipated lifetime loss ratio or 58% been used in the calculations described in (4)(b)(i) and (iii).

(9) For a rate increase filing that meets the criteria in (9)(b)(i), (ii), and (iii),

the commissioner shall review, for all policies included in the filing:

(a) the projected lapse rates and past lapse rates during the twelve months following each increase to determine if significant adverse lapsation has occurred or is anticipated.

(b) the following criteria triggers a lapsation review:

(i) the rate increase is not the first rate increase requested for the specific policy form or forms;

(ii) the rate increase is not an exceptional increase; and

(iii) the majority of the policies to which an increase is applicable are eligible for the contingent benefit upon lapse.

(c) in the event significant adverse lapsation has occurred, is anticipated in the filing or is evidenced in the actual results as presented in the updated projections provided by the issuer following the requested rate increase, the commissioner may determine that a rate spiral exists. Following the determination that a rate spiral exists, the commissioner may require the issuer to offer, without underwriting to all in force insureds subject to the rate increase, the option to replace existing coverage with one or more reasonably comparable products being offered by the issuer or its affiliates.

(i) The offer shall:

(A) be subject to the approval of the commissioner;

(B) be based on actuarially sound principles, but not be based on attained age; and

(C) provide that maximum benefits under any new policy accepted by an insured shall be reduced by comparable benefits already paid under the existing policy.

(d) the issuer shall maintain the experience of all the replacement insureds separate from the experience of insureds originally issued the policy forms. In the event of a request for a rate increase on the policy form, the rate increase shall be limited to the lesser of:

(i) the maximum rate increase determined based on the combined experience; and

(ii) the maximum rate increase determined based only on the experience of the insureds originally issued the form plus 10%.

(10) If the commissioner determines that the issuer has exhibited a persistent practice of filing inadequate initial premium rates for long-term care insurance, the commissioner may, in addition to the provisions of (9), prohibit the issuer from either of the following:

(a) filing or marketing comparable coverage for a period of up to five years; or

(b) offering all other similar coverages and limiting marketing of new applications to the products subject to recent premium rate schedule increases.

(11) Sections (1) through (10) shall not apply to policies for which the long-term care benefits provided by the policy are incidental, as defined in ARM 6.6.3102(6), if the policy complies with all of the following provisions:

(a) the interest credited internally to determine cash value accumulations, including long-term care, if any, are guaranteed not to be less than the minimum guaranteed interest rate for cash value accumulations without long-term care set

forth in the policy;

(b) the portion of the policy that provides insurance benefits other than long-term care coverage meets the nonforfeiture requirements as applicable in any of the following:

(i) 30-20-201 et seq., MCA; and

(ii) 30-20-501 et seq., MCA.

(c) the policy meets the disclosure requirements of 33-22-1123 and 33-22-1124, MCA;

(d) the portion of the policy that provides insurance benefits other than long-term care coverage meets the requirements as applicable in the following:

(i) policy illustrations as required by ARM 6.6.701 et seq.; and

(ii) disclosure requirements in ARM 6.6.805.

(e) an actuarial memorandum is filed with the insurance department that includes:

(i) a description of the basis on which the long-term care rates were determined;

(ii) a description of the basis for the reserves;

(iii) a summary of the type of policy, benefits, renewability, general marketing method, and limits on ages of issuance;

(iv) a description and a table of each actuarial assumption used. For expenses, an issuer must include percent of premium dollars per policy and dollars per unit of benefits, if any;

(v) a description and a table of the anticipated policy reserves and additional reserves to be held in each future year for active lives;

(vi) the estimated average annual premium per policy and the average issue age;

(vii) a statement as to whether underwriting is performed at the time of application. The statement shall indicate whether underwriting is used and, if used, the statement shall include a description of the type or types of underwriting used, such as medical underwriting or functional assessment underwriting. Concerning a group policy, the statement shall indicate whether the enrollee or any dependent will be underwritten and when underwriting occurs; and

(viii) a description of the effect of the long-term care policy provision on the required premiums, nonforfeiture values and reserves on the underlying insurance policy, both for active lives and those in long-term care claim status.

(12) [New Rule III(7) and (9)] do not apply to group insurance policies defined in 33-22-1107(5), MCA, where:

(a) the policies insure 250 or more persons and the policyholder has 5,000 or more eligible employees of a single employer; or

(b) the policyholder, and not the certificateholder, pays a material portion of the premium that shall not be less than 20% of the total premium for the group in the calendar year prior to the year a rate increase is filed.

AUTH: 33-1-313, 33-22-1121, MCA

IMP: 33-22-1101, 33-22-1102, 33-22-1103, 33-22-1107, 33-22-1108, 33-22-1111, 33-22-1112, 33-22-1113, 33-22-1114, 33-22-1115, 33-22-1116, 33-22-1117, 33-22-1119, 33-22-1120, 33-22-1121, MCA

NEW RULE IV PROHIBITION AGAINST PREEXISTING CONDITIONS AND PROBATIONARY PERIODS IN REPLACEMENT POLICIES (1) If a long-term care insurance policy replaces another long-term care policy, the replacing issuer shall waive any time periods applicable to preexisting conditions and probationary periods in the new long-term care policy for similar benefits to the extent that similar exclusions have been satisfied under the original policy.

AUTH: 33-1-313, 33-22-1121, MCA
IMP: 33-22-1101, 33-22-1102, 33-22-1103, 33-22-1107, 33-22-1108, 33-22-1111, 33-22-1112, 33-22-1113, 33-22-1114, 33-22-1115, 33-22-1116, 33-22-1117, 33-22-1119, 33-22-1120, 33-22-1121, MCA

NEW RULE V AVAILABILITY OF NEW SERVICES OR PROVIDERS (1) An issuer shall notify policyholders of the availability of a new long-term policy series that provides coverage for new long-term care services or providers, material in nature, and not previously available through the issuer to the general public. The notice shall be provided within twelve months of the date the new policy series is made available for sale in Montana.

(2) Notwithstanding (1), notification is not required for any policy issued prior to the effective date of this rule or to any policy issued prior to the effective date of this rule or to any policyholder or certificateholder who is currently eligible for benefits within an elimination period or on a claim, or who previously had been in claim status, or who would not be eligible to apply for coverage due to issue age limitations under the new policy. The issuer may require that policyholders meet all eligibility requirements, including underwriting and payment of the required premium to add such new services or providers.

(3) The issuer shall make the new coverage available in one of the following ways:

(a) by adding a rider to the existing policy and charging a separate premium for the new rider based on the insured's attained age;

(b) by exchanging the existing policy for one with an issue age based on the present age of the insured and recognizing past insured status by granting premium credits toward the premiums for the new policy. The premium credits shall be based on premiums paid or reserves held for the prior policy;

(c) by exchanging the existing policy for a new policy in which consideration for past insured status shall be recognized by setting the premium for the new policy at the issue age of the policy being exchanged. The cost for the new policy may recognize the difference in reserves between the new policy and the original policy; or

(d) by an alternative program developed by the issuer that meets the intent of this rule if the program is filed with and approved by the commissioner.

(4) An issuer is not required to notify policyholders of a new proprietary policy series created and filed for use in a limited distribution channel. For purposes of this section, "limited distribution channel" means through a discrete entity, such as a financial institution or brokerage, for which specialized products are available that are not available for sale to the general public. Policyholders that purchased such a

new proprietary policy shall be notified when a new long-term care policy series that provides coverage for new long-term care services or providers, material in nature, is made available to that limited distribution channel.

(5) Policies issued pursuant to this rule shall be considered exchanges and not replacements. These exchanges shall not be subject to ARM 6.6.3109 and 6.6.3118, and the reporting requirements of ARM 6.6.3109A(1) through (5).

(6) Where the policy is offered through an employer, labor organization, professional, trade, or occupational association, the required notification in (1) shall be made to the offering entity. However, if the policy is issued to a group defined in 33-22-1107, MCA, the notification shall be made to each certificateholder.

(7) Nothing in this rule prohibits an issuer from offering any policy, rider, or coverage change to any policyholder or certificateholder. However, upon request, any policyholder may apply for currently available coverage that includes the new services or providers. The issuer may require that policyholders meet all eligibility requirements, including underwriting and payment of the required premium to add such new services or providers.

(8) This rule does not apply to life insurance policies or riders containing accelerated long-term care benefits.

AUTH: 33-1-313, 33-22-1121, MCA
IMP: 33-22-1101, 33-22-1102, 33-22-1103, 33-22-1107, 33-22-1108, 33-22-1111, 33-22-1112, 33-22-1113, 33-22-1114, 33-22-1115, 33-22-1116, 33-22-1117, 33-22-1119, 33-22-1120, 33-22-1121, MCA

NEW RULE VI RIGHT TO REDUCE COVERAGE AND LOWER PREMIUMS

(1) Every long-term care insurance policy shall include:

(a) a provision that allows the policyholder or certificateholder to reduce coverage and lower the policy premium in at least one of the following ways:

(i) reducing the maximum benefit; or

(ii) reducing the daily, weekly, or monthly benefit amount.

(b) the issuer may also offer other reduction options that are consistent with the policy design or the carrier's administrative processes.

(2) The provision shall include a description of the ways in which coverage may be reduced and the process for requesting and implementing a reduction in coverage.

(3) The age to determine the premium for the reduced coverage shall be based on the age used to determine the premiums for the coverage currently in force.

(4) The issuer may limit any reduction in coverage to plans or options available for that policy form and to those for which benefits will be available after consideration of claims paid or payable.

(5) If a policy is about to lapse, the issuer shall provide a written reminder to the policyholder or certificateholder of his or her right to reduce coverage and premiums in the notice required by ARM 6.6.3104A(1)(c).

(6) This rule does not apply to life insurance policies or riders containing accelerated long-term care benefits.

(7) This rule applies to any long-term care policy issued in Montana on or after January 1, 2009.

AUTH: 33-1-313, 33-22-1121, MCA
IMP: 33-22-1101, 33-22-1102, 33-22-1103, 33-22-1107, 33-22-1108, 33-22-1111, 33-22-1112, 33-22-1113, 33-22-1114, 33-22-1115, 33-22-1116, 33-22-1117, 33-22-1119, 33-22-1120, 33-22-1121, MCA

STATEMENT OF REASONABLE NECESSITY: In 2006, the U.S. Congress passed the Deficit Reduction Act (DRA), which in part enabled the states to develop long-term care partnership programs that may be able to access federal Medicaid matching funds in a different way. In 2005, the Montana Legislature adopted a statute that enabled the Montana Department of Public Health and Human Services to implement a Long Term Care Partnership program. In order to move forward with a state plan amendment to be filed with the U.S. Department of Health, the DRA requires that a state must first adopt updated versions of the National Association of Insurance Commissioner's (NAIC) Long Term Care Insurance Model Act and Model Regulations. In 2007 the Montana Legislature adopted the changes to the Long Term Care Insurance Act in Title 33, chapter 22, part 11, Montana Code Annotated in conformity with the most current version of the NAIC Long Term Care Insurance Model Act. These amendments and additions to the Montana Long Term Care Insurance Rules reflect the most recent version of the NAIC Long Term Care Insurance model regulations. In addition, these changes to the rules allow Montana to be more uniform because most other states have already adopted the NAIC model regulations regarding Long Term Care Insurance. Therefore, Montana consumers will have the same protections as consumers in other states, and insurers will have uniform rules to follow.

Changes and additions to ARM 6.6.3101 PURPOSE AND SCOPE, 6.6.3102 DEFINITIONS, 6.6.3103 POLICY DEFINITIONS, 6.6.3104 POLICY PRACTICES AND PROVISIONS reflect mainly technical additions and changes to the NAIC model regulations and incorporate new definitions and terms that are needed to support the New Rules proposed in this notice.

Amendments to ARM 6.6.3104A UNINTENTIONAL LAPSE, 6.6.3106 PROHIBITION AGAINST POST-CLAIMS UNDERWRITING, 6.6.3107 MINIMUM STANDARDS FOR HOME HEALTH CARE BENEFITS IN LONG-TERM CARE INSURANCE POLICIES, 6.6.3108 REQUIREMENT TO OFFER INFLATION PROTECTION, 6.6.3109 REQUIREMENTS FOR APPLICATION FORMS AND REPLACEMENT COVERAGE, 6.6.3109B LICENSING, 6.6.3110 DISCRETIONARY POWERS OF COMMISSIONER OF INSURANCE, 6.6.3111 RESERVE STANDARDS, 6.6.3112 LOSS RATIO, 6.6.3113 FILING REQUIREMENT, 6.6.3114 STANDARD FORMAT OUTLINE OF COVERAGE, 6.6.3115 REQUIREMENT TO DELIVER SHOPPER'S GUIDE, and 6.6.3117 STANDARDS FOR MARKETING reflect minor additions, and corrections contained in the NAIC model act or changes in style required by the Montana Secretary of State.

Additions to ARM 6.6.3105 REQUIRED DISCLOSURE PROVISIONS improve the disclosures required to be given to consumers who are purchasing long-term care insurance products and clarify disclosures required for qualified long-term care insurance products. Changes to ARM 6.6.3109A add definitions that clarify the reporting requirements. Additions to ARM 6.6.3118 SUITABILITY STANDARDS clarify that suitability standards must include an analysis of the consumer's ability to pay, goals and needs, and the value and benefit of any existing insurance. Additions and changes to ARM 6.6.3119 NONFORFEITURE BENEFIT REQUIREMENT detail additional circumstances that trigger when a consumer is entitled to the benefits of a contingent benefit on lapse, pursuant to the NAIC model regulation. Consumers need options when a substantial premium increase occurs. Substantial premium increase is defined in the changes. ARM 6.6.3120 ADOPTION OF FORMS was previously contained in an appendix to the rules and has now been incorporated into the rule itself.

NEW RULE I REQUIRED DISCLOSURE OF RATING PRACTICES TO CONSUMERS is part of the current NAIC model regulation and is necessary to fully inform consumers at the time they purchase a new long-term care insurance policy of the rating practices of that insurer and also to provide information to the consumer concerning the amount of rate increases they may face in the future.

NEW RULE II INITIAL FILING REQUIREMENTS is contained in the current NAIC model regulation and requires the insurer to file the disclosure statement contained in NEW RULE I and an actuarial certification attesting that the rates charged for a particular policy form are actuarially sound and detailing certain information that must be provided in order to justify to the rates.

NEW RULE III PREMIUM RATE SCHEDULE INCREASES is contained in the current NAIC model regulation and requires the insurer to provide a notice of a pending premium increase to the commissioner at least 30 days prior to the notice to policyholders and details the information required to be included in that notice, including actuarial certification and justification. This rule protects consumers from unreasonable and unjustified premium increases.

NEW RULE IV PROHIBITION AGAINST PREEXISTING CONDITIONS AND PROBATIONARY PERIODS IN REPLACEMENT POLICIES is contained in the current NAIC model regulation and prevents preexisting condition exclusions under certain circumstances when a consumer is replacing one long-term care policy with another long-term care policy.

NEW RULE V AVAILABILITY OF NEW SERVICES OR PROVIDERS is contained in the current NAIC model regulation and requires the insurer to notify policyholders of the availability of new types of long-term care services or providers material in nature and not previously available to the general public within 12 months after the date the new policy series is made available for sale in Montana. It also details how the new coverage shall be made available to existing policyholders. This rule protects consumers by allowing them to update their previously purchased long-term

care policies with more modern coverage.

NEW RULE VI RIGHT TO REDUCE COVERAGE AND LOWER PREMIUMS is contained in the current NAIC model regulation and allows policyholders to reduce their coverage in order to lower their premiums. This option is available to consumers so that they will not lose their coverage entirely if their financial circumstances change or if the premium otherwise becomes too expensive.

It is necessary to repeal ARM 6.6.3116 because a separate rule just to establish an effective date is not required.

6. Concerned persons may submit their data, views, or arguments concerning the proposed actions either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Christina L. Goe, Chief Legal Counsel, State Auditor's Office, 840 Helena Ave., Helena, Montana 59601; telephone (406) 444-5237; fax (406) 444-3497; or e-mail cgoe@mt.gov, and must be received no later than 5:00 p.m., March 13, 2008.

7. Christina L. Goe, Chief Legal Counsel, has been designated to preside over and conduct this hearing.

8. The department maintains a list of concerned persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Such written request may be mailed or delivered to Darla Sautter, State Auditor's Office, 840 Helena Ave., Helena, Montana, 59601, or may be made by completing a request form at any rules hearing held by the department.

9. An electronic copy of this Proposal Notice is available through the Secretary of State's web site at http://sos.mt.gov/ARM/Register. The Secretary of State strives to make the electronic copy of the Notice conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the Secretary of State works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

10. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled. The bill sponsor was notified by letter dated January 25, 2008, sent postage prepaid by the USPS.

/s/ Carol Roy
Carol Roy
Rule Reviewer

/s/ Christina L. Goe
Chief Legal Counsel
State Auditor's Office

Certified to the Secretary of State February 4, 2008.

BEFORE THE BOARD OF HOUSING
DEPARTMENT OF COMMERCE
OF THE STATE OF MONTANA

In the matter of the proposed amendment of ARM 8.111.305 and 8.111.305A pertaining to the homeownership program	))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On March 7, 2008, at 11:00 a.m, the Board of Housing will hold a public hearing in Room 228 of 301 South Park Avenue, at Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Board of Housing will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the board no later than 5:00 p.m., February 22, 2008, to advise us of the nature of the accommodation that you need. Please contact Diana Hall, Board of Housing, Department of Commerce, 301 South Park Avenue, P.O. Box 200528, Helena, Montana 59620-0528; telephone (406) 841-2840; TDD (406) 841-2702; fax (406) 841-2841; or e-mail dihall@mt.gov.

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

8.111.305 ~~QUALIFIED LENDING INSTITUTIONS~~ APPROVED LENDERS

(1) ~~Any~~ A public or private ~~form or corporation~~ entity ("applicant") maintaining an office in the state ~~that is~~ and authorized by law to make or participate in making new, residential mortgage loans may request, in writing, ~~to be designated~~ designation as ~~a qualified and~~ an approved ~~lending institution~~ lender for ~~under a specific program of the~~ board programs.

(2) remains the same.

(a) a ~~listing~~ list of the applicant's principal officers and ~~officer~~ the officers authorized to execute contracts~~, agreements,~~ and other documents~~, plus a copy of the authorized officer's statement~~;

(b) a ~~listing~~ list of the personnel ~~and their qualifications~~ principally involved in making and servicing mortgage loans, the office address, phone number, description of qualifications, the position in the applicant's organizational structure for each person, and a copy of each person's mortgage broker and loan originator license if applicable;

~~(c) an indication of the programs under which the applicant seeks designation as a qualified lending institution; and~~

~~(d)~~(c) ~~a certificate~~ evidence of errors and omissions insurance ~~coverage in a minimum amount as is required by the program documents for each bond issue in which the lending institution participates~~ and ~~a~~ fidelity insurance ~~bond of an~~, each of

which must be in the amount currently required by the FHA but not less than $300,000.;

(e)(d) an applicant which is governed by one of the regulatory agencies defined herein, must submit its most recent regulatory agency report, which must indicate a positive return on average assets, and (based on generally-accepted accounting principles (GAAP)) indicate a total capital as a percentage of average assets of at least 6% or meet all applicable capital requirements of the regulatory agency and must have and maintain a minimum net worth according to generally-accepted accounting principles (GAAP) of $1 million. An applicant not governed by a regulatory agency defined herein, must submit its the applicant's most recent audited financial statements and current financial statements which have been prepared within 60 days of submission. Current financial statements shall be comprised of a balance sheet, year-to-date income statement, and a statement of change covering at least a the immediately preceding six-month period. Current financial statements which must, based on generally accepted accounting principles (GAAP), indicate a positive return on average assets, based on generally- accepted accounting principles (GAAP), and current financial statements must indicate total capital as a percentage of average assets of at least 6%, and must have and maintain a minimum net worth according to generally-accepted accounting principles (GAAP) of $1 million $1,000,000.;

(f)(e) evidence of current corporate and ownership structure demonstrating more than one year of existence. This existence of the business entity for at least one year prior to the date of application (also applies applicable to existing approved lending institutions which are lenders restructured by the institution's lender's regulatory agency or corporate through reorganization.); and

(f) designation of the office or offices within the state of Montana at which residential loans using board programs will be made, including the address, telephone number, facsimile number, and e-mail address of each office.

(3) The board will determine whether or not an applicant is qualified approved under the terms and conditions of 90-6-103, 90-6-104, 90-6-106 and 90-6-108, Title 90, chapter 6, MCA, the applicable trust indenture, and the rules then in effect. Approved and qualified applicants A lender approved under this section will be notified and advised of the conditions of their its approval.

(4) The board will restrict the financial returns and benefits of the funds provided to qualified and approved lending institutions as provided in the applicable trust indentures under which its programs are financed.

(5) No qualified lending institutions may enter into any written commitment to make mortgage loans to be purchased or financed by the board with a builder, developer or real estate agent or broker unless the board first determines that, due to economic and other conditions prevailing in the area involved, such commitments are made necessary or desirable to provide decent, safe and sanitary housing which is within the capabilities of lower income persons and families.

(6)(4) Each year or as may be requested by the board, the qualified and an approved lending institutions lender participating in the board's bond programs shall submit:

(a) file audited financial statements or equivalent regulatory agency reports. The financial statements shall exhibit total capital as a percentage of average assets

~~of at least 6%. If the qualified and approved lending institution's capital to average assets ratio is below 6%, the institution must meet the capital requirements of its regulatory agency or demonstrate, with current financial statements, an increasing ratio of capital to average assets.~~ demonstrating that the financial standards described in (2)(d) continue to be met;

(b) an updated list of the officers required in (2)(a);

(c) an updated list of the personnel required under (2)(b); and

(d) an updated list of the offices required under (2)(f).

~~(7)~~(5) ~~Any~~ An applicant ~~which fails~~ failing to meet the requirements ~~set forth in this regulation, will not be allowed to~~ of this rule may not submit a new application ~~to qualify as an approved lending institution~~ for approval as a lender for a minimum period of 180 days from the date of its previous application.

(6) The relationship between the board and an approved lender is contractual in nature. The approved lender must comply with the provisions of the board's Mortgage Purchase and Servicing Guide as the same may be amended from time to time. The board may terminate a lender's approval to make board loans at any time without cause and without a termination fee. The board will terminate a lender's approval to make board loans for repeated or material failure of the lender to comply with the provisions of the board's Mortgage Purchase and Servicing Guide.

AUTH: 90-6-104, 90-6-106, 90-6-108, MCA
IMP: 90-6-106, 90-6-108, 90-6-110, MCA

8.111.305A ~~QUALIFIED~~ APPROVED LOAN SERVICERS (1) ~~Any institution~~ A public or private entity which has~~,~~ as its function~~,~~ the servicing of mortgage loans secured by residential real estate~~,~~ and maintains an office in the state~~,~~ may apply ~~in writing~~ to be ~~designated as a qualified and~~ an approved servicer for board ~~of housing~~ mortgage loans ("applicant").

(2) All applications shall be in writing and include the following:

(a) designation of the office(s) in the state of Montana for loan servicing;

(b) evidence of ~~current corporate and ownership structure demonstrating more than one year of~~ existence of the business entity for at least one year prior to the date of application (also applicable to an existing approved servicer restructured by the servicer's regulatory agency or through reorganization);

(c) a list of the applicant's principal officers, addresses and phone numbers, and designation of the officers authorized to execute ~~legal~~ contracts~~, agreements or~~ and other documents;

(d) a ~~listing~~ list of the applicant's personnel principally involved with servicing mortgage loans, ~~their~~ the office ~~location~~ address, phone number, ~~and~~ description of ~~their~~ qualifications, and the position in the applicant's organizational structure for each person;

(e) ~~a certificate~~ evidence of errors and omissions insurance ~~coverage and/or~~ and fidelity insurance ~~coverage in a minimum amount as is required by the program documents for each bond issue in which the loan servicer participates~~, each of which must be in the amount required by the FHA but not less than $300,000;

(f) ~~an applicant which is governed by one of the regulatory agencies defined herein, must submit its most recent regulatory agency report which must indicate a~~

~~positive return on average assets, and (based on generally-accepted accounting principles (GAAP)) must indicate a total capital as a percentage of average assets of at least 6% or meet all applicable capital requirements of their regulatory agency and must have and maintain a minimum net worth according to generally-accepted accounting principles (GAAP) of~~ $1 million. ~~An applicant not governed by a regulatory agency defined herein, must submit its~~ the applicant's most recent audited financial statements and ~~current~~ financial statements ~~which have been~~ prepared within 60 days of submission~~. Current financial statements shall be~~ comprised of a balance sheet, year-to-date income statement, and a statement of change covering at least ~~a~~ the immediately preceding six-month period~~. Current financial statements~~ which must indicate, based on generally accepted accounting principles (GAAP), a positive return on average assets, ~~based on generally-accepted accounting principles (GAAP), and current financial statements and must indicate~~ total capital as a percentage of average assets of at least 6%, and ~~must have and maintain~~ a minimum net worth ~~according to generally-accepted accounting principles (GAAP)~~ of ~~$1 million.~~ $1,000,000; and

(g) evidence that the applicant is an approved servicer of the ~~FHA/VA~~ FHA, VA, RD, or a private mortgage insurer approved ~~servicer~~ by the board.

~~(2)~~(3) A ~~qualified and approved servicing institution~~ previously approved servicer that is restructured by the ~~institution's~~ servicer's regulatory agency~~,~~ or through corporate reorganization ~~or ownership restructure shall~~ must reapply for designation as an approved ~~and qualified~~ servicer. The restructured ~~institution~~ servicer ~~shall be~~ is exempt from the ~~one year corporate ownership requirement set forth~~ requirements in ~~(1)~~(2)(b)~~, above,~~ - providing evidence of one year of existence, and ~~the requirement for a financial statement covering a six-month period as set forth in (1)~~(2)(f)~~, above.~~ - submittal of financial statements for the preceding six-month period ~~The~~ but shall submit financial statements ~~required shall cover~~ for the period from the date the servicer was restructured or reorganized through the date of application.

~~(3)~~(4) The application will be reviewed by the board's staff, and the institution will be notified in writing of the status of the application. The board will determine whether or not an applicant is approved under the terms and conditions of Title 90, chapter 6, MCA, the applicable trust indenture, and the rules then in effect. A servicer approved under this section will be notified and advised of the condition of its approval.

~~(4) The approved and qualified servicer for mortgage loans shall continue to meet the following requirements to retain the status of approved and qualified servicer:~~

~~(a) maintain an office in the state of Montana for loan servicing;~~

~~(b) provide the board with a certificate of errors and omissions insurance coverage in a minimum amount as is required by the program documents for each bond issue in which the loan servicer participates;~~

~~(c)~~(5) ~~each~~ Each year or as may be requested by the board, an approved servicer shall submit:

(a) ~~file~~ audited financial statements ~~or equivalent regulatory agency reports. The financial reports shall exhibit total capital as a percentage of average assets of at least 6%. If the institution's capital to average assets ratio is below 6%, the~~

~~institution must meet the capital requirements of its regulatory agency or demonstrate, with current financial statements, an increasing ratio of capital to average assets.~~ demonstrating that the financial standards described in (2)(f) continue to be met;

(b) an updated list of the office(s) required in (2)(a);

(c) an updated list of the officers required under (2)(c);

(d) an updated list of the personnel required under (2)(d); and

(e) evidence demonstrating that the servicer has internal controls providing for security of board funds and confidentiality of information related to board mortgagors, which evidence can be the servicer's most recent Statement of Auditing Standard 70 Report or equivalent regulatory agency report.

~~(5)~~(6) ~~Any~~ An applicant ~~which fails~~ failing to meet the requirements ~~set forth in this regulation, will not be allowed to~~ of this rule may not submit a new application ~~to qualify~~ for approval as a ~~loan~~ servicer for a minimum period of 180 days from the date of its previous application.

(7) An approved servicer must maintain at least one office within the state where a board borrower can make payments, obtain relevant information about the borrower's loan, and obtain resolution of servicing issues regarding the borrower's loan. If the servicer elects to service board loans outside of the state, the servicer must either have the capability of providing loan documents requested for audit purposes by electronic means or reimburse the board for the cost of its auditors to travel to and conduct an audit at the out-of-state servicing site.

(8) The relationship between the board and an approved servicer is contractual in nature. The approved servicer must comply with the provisions of the board's Mortgage Purchase and Servicing Guide as the same may be amended from time to time. The board may terminate a servicer's approval to make board loans at any time without cause and without a termination fee. The board will terminate a servicer's approval to make board loans for repeated or material failure of the servicer to comply with the provisions of the board's Mortgage Purchase and Servicing Guide.

AUTH: 90-6-104, 90-6-106, MCA
IMP: 90-6-108, MCA

REASON: The Montana Board of Housing is amending these rules to delete outdated language, to clarify requirements for approval and continuation as approved lender and servicers under the board's homeownership program, and to emphasize that the relationship between the board and an approved lender or servicer is contractual and can be terminated without cause.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Nancy Leifer, Homeownership Program Manager, Montana Board of Housing, Department of Commerce, 301 South Park Avenue, P.O. Box 200528, Helena, Montana 59620-0528; telephone (406) 841-2849; fax (406) 841-2841; or e-mail nleifer@mt.gov, and must be received no later than 5:00 p.m., March 17, 2008.

5. Nancy Leifer, Homeownership Program Manager, Board of Housing, Department of Commerce, has been designated to preside over and conduct this hearing.

6. The board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the board. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the Board of Housing, Department of Commerce, 301 South Park Avenue, P.O. Box 200528, Helena, Montana 59620-0528, by fax to (406) 841-2841, by e-mail to dihall@mt.gov, or may be made by completing a request form at any rules hearing held by the board.

7. An electronic copy of this Proposal Notice is available through the Secretary of State's web site at http://sos.mt.gov/ARM/Register. The Secretary of State strives to make the electronic copy of the Notice conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the Secretary of State works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

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

MONTANA BOARD OF HOUSING
J. P. Crowley, Chair

/s/ KELLY A. CASILLAS
KELLY A. CASILLAS
Rule Reviewer

/s/ ANTHONY J. PREITE
ANTHONY J. PREITE
Director
Department of Commerce

Certified to the Secretary of State February 4, 2008.

BEFORE THE DEPARTMENT OF CORRECTIONS
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 20.7.1101 and 20.7.1102 pertaining to conditions on probation or parole	))))	NOTICE OF SECOND PUBLIC HEARING AND EXTENSION OF COMMENT PERIOD ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On December 6, 2007, the Department of Corrections published MAR Notice No. 20-7-38 regarding the notice of public hearing on the proposed amendment of the above-stated rules at page 1984 of the 2007 Montana Administrative Register, Issue No. 23.

2. On March 5, 2008, at 10:00 a.m. a second public hearing will be held in Room 24 of the Department of Corrections Annex at 515 N. Sanders, Helena, Montana, to consider the proposed amendment of the above-stated rules. This second public hearing supplements the hearing that occurred on January 3, 2008. It has come to the attention of the department that certain interested parties were not initially notified of the proposed rule change. This second hearing has been scheduled to permit those parties to provide testimony and written comment.

3. The Department of Corrections will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m. on February 27, 2008, to advise us of the nature of the accommodation that you need. Please contact Myrna Omholt-Mason, 1539 11th Ave., P.O. Box 201301, Helena, Montana 59620-1301, telephone: (406) 444-3911, fax: (406) 444-4920, e-mail: momholt-mason@mt.gov.

4. The department is also extending the time within which to submit written comment. Written data, views, or arguments may be submitted to Myrna Omholt-Mason at the contact information listed in paragraph 3, and must be received no later than 5:00 p.m. on March 14, 2008. Testimony and comments that have already been submitted pursuant to the initial notice and hearing need not be repeated.

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

20.7.1101 CONDITIONS ON PROBATION OR PAROLE (1) ~~Residence.~~ The offender must obtain prior approval from his/her supervising officer before taking up residence in any location. The ~~probationer/parolee~~ offender shall not change his/her place of residence without first obtaining written permission from his/her supervising officer or the officer's designee. The offender must make the residence open and available to an officer for a home visit or for a search upon reasonable

suspicion. The offender will not own dangerous or vicious animals and will not use any device that would hinder an officer from visiting or searching the residence.

(2) ~~Travel.~~ The ~~probationer/parolee shall not leave his assigned district without first obtaining written permission from his supervising officer. At the time of his release, the probationer/parolee will be assigned a district and provided written notification of the same.~~ offender must obtain permission from his/her supervising officer or the officer's designee before leaving his/her assigned district.

(3) ~~Employment and/or program.~~ The ~~probationer/parolee shall~~ offender must seek and maintain employment or maintain a program approved by the ~~b~~Board of ~~p~~Pardons and Parole or the supervising officer. Unless otherwise directed by his/her supervising officer, the offender must inform his/her employer and any other person or entity, as determined by the supervising officer, of his/her status on probation, parole, or other community supervision. ~~He shall not change such employment or program without first obtaining permission from his supervising officer.~~

(4) ~~Reports.~~ Unless otherwise directed, the offender must ~~The probationer/parolee is required to~~ submit written monthly reports to his/her supervising officer on forms ~~that will be~~ provided by the probation and parole bureau. ~~He shall personally contact his probation/parole officer on the dates and times specified by the officer.~~ The offender must personally contact his/her supervising officer or designee when directed by the officer.

(5) ~~Weapons.~~ The ~~probationer/parolee shall not own, possess or be in control of any firearm, including black powder, or deadly weapon as so defined by state or federal statute.~~ offender is prohibited from using, owning, possessing, transferring, or controlling any firearm, ammunition (including black powder), weapon, or chemical agent such as oleoresin capsicum or pepper spray.

(6) ~~Financial.~~ The ~~probationer/parolee shall always consult with his supervising officer and shall~~ offender must obtain permission from his/her supervising officer before engaging in a business, purchasing real or personal property, ~~or~~ purchasing an automobile, or incurring a debt.

(7) ~~Search of person or property.~~ Upon reasonable ~~cause, the probation or parole client shall submit to a search of their person, vehicle or residence by a probation/parole officer at any time without a warrant.~~ suspicion that the offender has violated the conditions of supervision, a probation and parole officer may search the person, vehicle, and residence of the offender, and the offender must submit to such search. A probation and parole officer may authorize a law enforcement agency to conduct a search, provided the probation and parole officer determines reasonable suspicion exists that the offender has violated the conditions of supervision.

(8) ~~Laws and conduct. A probationer/parolee shall~~ The offender must comply with all municipal, county, state, and federal laws and ordinances~~.~~ and ~~He~~ shall ~~further~~ conduct himself/herself as a good citizen. The offender is required, within 72 hours, to report any arrest or contact with law enforcement to his/her supervising officer or designee. The offender must be cooperative and truthful in all communications and dealings with any probation and parole officer and with any law enforcement agency.

(9) The offender is prohibited from using or possessing alcoholic beverages and illegal drugs, including marijuana, regardless of whether the offender has

received a registry identification card from the Department of Public Health and Human Services pursuant to Title 50, chapter 46, part 1, MCA. The offender is required to submit to bodily fluid testing for drugs or alcohol on a random or routine basis and without reasonable suspicion.

(10) The offender is prohibited from gambling.

(11) The offender shall pay all fines, fees, and restitution ordered by the sentencing court.

~~(9)~~ (12) ~~Special conditions.~~ The Montana ~~b~~Board of ~~p~~Pardons~~,~~ and Parole and the sentencing court~~, or the department of corrections and human services may require other and~~ have the authority to order the offender to abide by additional conditions ~~to be placed upon the probationer or parolee.~~ and such conditions must be contained in the judgment or parole decision. The Department of Corrections may require an offender committed to the department to abide by additional conditions for the privilege of serving the offender's sentence in the community instead of in a correctional facility, prerelease center, or other correctional facility. ~~The conditions shall be in writing by the agency involved and shall be made a part of any agreement signed by the probationer/parolee.~~

AUTH: 2-4-201, 46-23-1011, 53-1-203, ~~53-24-204,~~ MCA
IMP: 46-23-1011, 46-23-1021, MCA

STATEMENT OF REASONABLE NECESSITY: The Department of Corrections proposes these rule changes to provide guidance to offenders and probation and parole officers, as well as to the general public. The proposed rule changes are necessary to provide explicit direction to offenders about the types of activities that are restricted or prohibited as well as about the types of activities and behaviors that are expected of offenders while on community supervision. The proposed rule changes are necessary to provide notice to offenders about how their rights may be infringed upon as a result of being supervised in the community instead of being incarcerated. The proposed rule changes are reasonable because they are designed to provide for the safety of the public by permitting adequate monitoring of offenders on probation and parole. The changes are reasonable because they comport with Montana statutes and case law.

These rules have been in existence for several decades without any revision or updating. The changes proposed here have been drafted so as to update and modernize the rules so as to more accurately reflect the reality of supervising felony offenders in the community. Each of the changes are addressed below:

(1) Currently, the rules only address the obligations of an offender when he/she changes residence. The first sentence is proposed so as to encompass the requirement that the offender's address must be approved by the P&P officer upon entering probation or parole. The requirement of obtaining permission is not just for a change of residence. Permission is required of any residence, even the offender's initial residence upon entering supervision.
(2) This proposed change more concisely states the obligation of the offender to obtain permission to travel outside of the designated area.

(3) The addition of the second sentence imposes an obligation on the offender to inform his/her employer of his/her status on probation and parole. The Department of Corrections believes public safety is enhanced by requiring offenders to so inform employers. This sentence also gives discretion to the P&P officer to require additional notification. For example, offenders who are self-employed as carpenters, painters, or in other trades should be required to inform customers of their probationary or parole status. The Department of Corrections believes this is appropriate policy and that the public would want to be informed before permitting someone into their home or residence.
(4) This proposed change more concisely states the obligation of the offender to regularly report to the P&P officer.
(5) This proposed change more concisely states the prohibition against weapons.
(6) This proposed change more concisely states the obligation of the offender to communicate with the P&P officer when contemplating significant financial decisions. All offenders have the financial obligation associated with their crime, including fees and restitution to victims; therefore, this financial condition is necessary and reasonable to provide adequate supervision by the P&P officer.
(7) This proposed change more concisely and accurately states the right of a P&P officer to search the person, residence, or vehicle of an offender upon reasonable suspicion that a violation has occurred.
(8) The second sentence is necessary because P&P officers must know when an offender has had contact with law enforcement. Even so-called minor traffic violations should be reported to P&P officers, but sometimes are not disclosed. It is critical that P&P officers are notified when an offender has contact with law enforcement.
(9) This has been the subject of a recent Supreme Court oral argument during which a justice noted that the Department of Corrections has the authority to promulgate an administrative rule prohibiting offenders on probation or parole from using alcohol. The justice noted that such a rule change would clear up confusion about alcohol use among offenders and would standardize the policy statewide. The Department of Corrections believes this prohibition is critical to protect the public and provide offenders with the best chance at rehabilitation from criminality. As for marijuana, several P&P officers have experienced offenders who have "doctor shopped" so as to obtain permission to use "medical marijuana." Several of these offenders have been convicted of drug offenses. The Department of Corrections believes it is poor public policy to permit offenders to use illegal drugs. The final sentence of this section ensures the P&P officer can test offenders for the use of prohibited substances, a necessary tool to supervise offenders.
(10) Offenders have financial obligations to the state and to the victims of their crimes and gambling is not an appropriate use of the limited financial resources available to most offenders.
(11) This rule concisely states the offender's obligation to pay fines, fees, and restitution.
(12) This rule change concisely states the ability of the Board of Pardons and Parole to impose additional restrictions on an offender who seeks early release on parole.

20.7.1102 WRITTEN AGREEMENT (1) The ~~foregoing conditions will be reduced to writing and indicated as conditions of probation and parole and will be signed by the probationer or parolee before they may be effected.~~ probation and parole officer is required to provide in writing to the offender all of the conditions of probation, parole, or other community supervision. The offender must agree to the conditions before he/she is eligible to be supervised on probation, parole, or other community supervision. Further, such written agreement will contain the following statement: "I do hereby waive extradition to the state of Montana from any state in the union and from any territory or country outside the continental United States or to the state of Montana. I understand that this probation or parole is granted to and accepted by me subject to the conditions, limitations, and restrictions stated herein and with the knowledge that the Montana ~~b~~Board of ~~p~~Pardons and Parole, or the sentencing court or the Montana ~~d~~Department of ~~c~~Corrections ~~and human services~~ have the power at any time in case of violation of the conditions, limitations, and restrictions of my probation or parole, ~~and~~ to cause my detention and return to incarceration at any institution so designated by the department. I have read or have had read to me the foregoing conditions of my probation and parole. I fully understand them and I agree to abide by and strictly follow them and fully understand the penalties involved should I in any manner violate the foregoing conditions, limitation, or restrictions."

AUTH: 2-4-201, MCA
IMP: 46-23-1101, MCA

STATEMENT OF REASONABLE NECESSITY: This proposed rule change is necessary to clarify the obligation of the P&P officer to provide a written copy of the rules to the offender. The rule change is necessary to ensure that the offender will not be supervised unless he/she agrees to and signs the rules. The rule change is reasonable because it is designed to provide written notice to the offender of his/her obligations while supervised in the community.

6. 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, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be sent or delivered to the Department of Corrections, 1539 11th Ave., Helena, MT 59601, by fax to (406) 444-4920, by e-mail to momholt-mason@mt.gov, or may be made by completing a request form at any rules hearing held by the department.

7. An electronic copy of this Notice of Public Hearing is available through the department's web site at www.cor.mt.gov. The department strives to make the electronic copy of this Notice of Public Hearing conform to the official version of the Notice, as printed in the Montana Administrative Register. However, the department 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 department advises that the web site may be inaccessible at times, due to system maintenance or technical problems.

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

9. Brenda Elias, Hearings Examiner, will preside over and conduct the hearing.

/s/ Mike Ferriter	/s/ Coleen A. White
MIKE FERRITER	COLLEEN A. WHITE
Director of Corrections	Rule Reviewer

Certified to the Secretary of State February 4, 2008.

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

In the matter of the proposed amendment of ARM 24.159.301 definitions, 24.159.1003 through 24.159.1006 and 24.159.1010 standards related to the practical nurse, and 24.159.1011 prohibited IV therapies	))))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On March 6, 2008, at 10:00 a.m., a public hearing will be held in room B-07, 301 South Park Avenue, Helena, Montana to consider the proposed amendment of the above-stated rules.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Nursing (board) no later than 5:00 p.m., on February 29, 2008, to advise us of the nature of the accommodation that you need. Please contact Mary Ann Zeisler, Board of Nursing, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2332; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail dlibsdnur@mt.gov.

3. GENERAL STATEMENT OF REASONABLE NECESSITY: The board determined it is reasonable and necessary to amend certain rules as they have not been updated for several years and do not address current nursing trends, practices, technology, and education. As practical nursing continues to evolve with technological advances in the field of medicine, the practical nurse's role in maintaining standards for patient care also has changed. The proposed rule amendments neither redefine nor expand the legislatively established scope of practice for LPNs, set forth in 37-8-102, MCA. Instead, the amendments seek to identify and clarify the existing standards of practice for licensed practical nurses in Montana to ensure adequate protection of both the public and licensees.

Additional amendments are technical and nonsubstantive in nature, such as renumbering, correcting syntax or grammar choices, and amending punctuation to comply with ARM formatting requirements. Similar changes replace out-of-date terminology for current language, delete unnecessary or redundant sections, and amend rules for simplicity, consistency, and ease of use. Where additional specific bases for a proposed action exist, the board will identify those reasons immediately following that rule.

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

24.159.301 DEFINITIONS As used in Title 37, chapter 8, MCA, and this chapter, unless defined specifically in a particular subchapter, the following definitions apply:

(1) remains the same.

(2) "Charge nurse" means the nurse who is in charge of patient and/or resident care during a nursing shift. An LPN may serve as a charge nurse in the absence of an RN.

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

(4) "Direction" means a communication of a plan of care based upon assessment of a patient by a registered nurse or a licensed independent health care provider pursuant to 37-8-102, MCA, that sets forth the parameters for the provision of care or for the performance of a procedure.

(5) "Direct supervision" means the supervisor is on the premises, and is quickly and easily available.

(6) "Focused nursing assessment" means an assessment conducted by an LPN and includes an appraisal of the client's current status, initial and ongoing data collection, and communication with other members of the health team as appropriate.

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

(8) "Immediate supervision" means the supervisor is on the premises and is within audible and visual range of the patient.

(9) "Nursing assessment" means a systematic collection of data to determine the patient's health status and to identify any actual or potential health problems.

(4) and (5) remain the same but are renumbered (10) and (11).

~~(6)~~(12) "Practical nurse" means the same thing as "licensed practical nurse," ~~,~~ "PN," ~~,~~ and "LPN" unless the context of the rule dictates otherwise. The practice of practical nursing is defined at 37-8-102, MCA.

~~(7)~~(13) "PRN medication" ("pro re nata," ~~,~~ Latin for "according as circumstances may require") means medication taken as necessary for the specific reason stated in the medication order, together with specific instructions for its use.

(8) through (11) remain the same but are renumbered (14) through (17).

~~(12)~~(18) "Strategy of care" means the goal-oriented plan developed to assist individuals or groups to achieve optimum health potential. This includes initiating and maintaining comfort measures, promoting and supporting human functions and responses, establishing an environment conducive to well being, providing health counseling and teaching, and collaborating on certain aspects of the medical regimen~~,~~ including but not limited to~~,~~ the administration of medications and treatments.

~~(13)~~(19) "Supervision" or "general supervision" means provision of guidance by a qualified nurse or a person specified in 37-8-102, MCA, for the accomplishment of a nursing task or activity with initial direction of the task or activity and periodic inspection of the actual act of accomplishing the task or activity.

(20) "Supervisor" means the health care professional identified by these rules as the person qualified to supervise another in the performance of nursing procedures and care.

AUTH: 37-1-131, 37-8-202, MCA
IMP: 37-1-131, 37-8-101, 37-8-102, 37-8-202, 37-8-422, MCA

REASON: It is reasonable and necessary to amend this rule to define relevant terminology and delineate among three levels of supervision (general, direct, and immediate) that correspond with the levels of elevated risk to a patient by various nursing interventions. The nursing rules establish the necessary level of supervision a licensed nurse with higher qualifications must exercise when overseeing the actions of other licensed or unlicensed health care workers. The board is amending this rule to distinguish the attributes of a "nursing assessment," which only an RN or APRN is qualified to perform, from the more limited "focused nursing assessment," which an LPN is qualified to perform. Although the term "charge nurse" appears in 37-8-102, MCA, the board is defining the term for the first time in rule to clarify that an LPN may serve in the capacity of a charge nurse in a long-term or intermediate care facility when no RN is present. The definition of "charge nurse" is reasonably necessary to preclude an LPN from being placed in the position of evaluating the performance of RN duties or RN competencies.

24.159.1003 PURPOSE OF STANDARDS OF NURSING PRACTICE FOR THE PRACTICAL NURSE (1) remains the same.

(a) establish ~~minimal~~ minimum acceptable levels of safe and effective practice for the practical nurse; and

(b) remains the same.

AUTH: 37-1-131, 37-8-202, MCA
IMP: 37-1-131, 37-8-202, MCA

24.159.1004 STANDARDS RELATED TO THE PRACTICAL NURSE'S ~~CONTRIBUTION TO~~ APPLICATION OF THE NURSING PROCESS (1) The practical nurse shall ~~contribute~~ perform ~~to the~~ standardized, focused nursing ~~assessment~~ assessments in the care of clients by:

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

(2) The practical nurse shall participate in the development of the strategy of care ~~by~~ in collaboration with other members of the health team by:

(a) remains the same.

(b) ~~contributing to the identification of~~ identifying priorities;

(c) ~~contributing to~~ setting realistic and measurable goals; ~~and~~

(d) ~~assisting in the identification of~~ identifying measures to maintain comfort, support human functions and responses, and maintain an environment conducive to well-being~~.~~; and ~~provide~~

(e) providing health teaching.

(3) remains the same.

(a) providing nursing care for clients under the supervision of ~~a registered nurse, physician, dentist, osteopath, or podiatrist~~ licensed health care providers as per 37-8-102, MCA;

(b) providing an environment conducive to safety and health; and

(c) documenting and otherwise communicating nursing interventions and client responses to care with other members of the health care team via written, electronic, or verbal mechanisms of communication, as appropriate, based on client evaluations.; and

~~(d) communicating nursing interventions and responses to care to appropriate members of the health team.~~

~~(4) The practical nurse shall contribute to the evaluation of the responses of individuals or groups to nursing interventions.~~

~~(5) Evaluation data shall be documented and communicated to appropriate members of the health team.~~

~~(6)~~(4) The practical nurse shall contribute to the modification of the strategy of care ~~on the basis of the evaluation~~.

AUTH: 37-1-131, 37-8-202, MCA
IMP: 37-1-131, 37-8-202, MCA

REASON: It is reasonable and necessary to amend this rule to clarify the role of the LPN as a participating member of the health care team. The amendment will more explicitly and particularly define the tasks performed by the LPN in relation to the standards, particularly the LPN's involvement in conducting focused nursing assessments as part of the nursing process. The Legislature has amended the types of individuals having prescriptive authority in 37-8-102, MCA, numerous times. The change to (3)(a) deletes the specific listing and instead refers to statute which eliminates the need for constant rule revision.

24.159.1005 STANDARDS RELATED TO THE PRACTICAL NURSE'S RESPONSIBILITIES AS A MEMBER OF THE HEALTH TEAM (1) through (1)(b) remain the same.

(c) function under the supervision of licensed health care providers as per 37-8-102, MCA; ~~a registered nurse, physician, dentist, osteopath, or podiatrist;~~

(d) consult with and seek guidance from registered nurses and/or other health team members ~~and seek guidance~~ as necessary;

~~(e) obtain instruction and supervision as necessary when implementing nursing techniques or practices;~~

(f) remains the same but is renumbered (e).

~~(g)~~(f) contribute to the formulation, interpretation, implementation, and evaluation of the objectives and policies related to practical nursing practice ~~within the employment setting~~;

~~(h)~~(g) participate in the evaluation of nursing practices ~~through peer review~~;

(i) through (l) remain the same but are renumbered (h) through (k).

~~(m)~~(l) respect the client's right to privacy by protecting confidential information, unless obligated by law to disclose such information; ~~and~~

~~(n)~~(m) respect the property of clients, family, significant others, and the employer~~.~~; and

(n) follow the written, established policies and procedures of the health care organization that are consistent with this chapter.

AUTH: 37-1-131, 37-8-202, MCA
IMP: 37-1-131, 37-8-202, MCA

REASON: It is reasonably necessary to amend this rule to specify that the LPN is required to follow those written, established policies and procedures of the health care organization that are consistent with this chapter, which is a general requirement of professional conduct. While an employer may choose to limit the practice of an LPN, the employer may not expand an LPN's practice beyond these rules. The amendment will ensure the LPN holds to the standard of these rules.

The Legislature has amended the types of individuals having prescriptive authority in 37-8-102, MCA, numerous times. The change to (1)(c) deletes the specific listing and refers to statute to eliminate the need for constant rule revision.

24.159.1006 STANDARDS RELATED TO THE PRACTICAL NURSE'S ROLE IN COSMETIC PROCEDURES (1) ~~A~~ The practical nurse who has the proper training and on-going competency ~~may perform the following tasks and procedures only~~ and while under the ~~on-site~~ direct supervision of a physician may perform procedures using the following technologies:

(a) ~~procedures using~~ lasers;

(b) ~~procedures using~~ intense pulsed light sources;

(c) ~~procedures using~~ microwave energy;

(d) ~~procedures using~~ radio frequency;

(e) ~~procedures using~~ electrical impulse; and

(f) ~~dermatologic procedures employing~~ dermatologic technologies that cut or alter living tissue~~; and~~.

~~(g) injections or insertions of the following:~~

(2) The practical nurse who has the proper training and on-going competency and while under the direct supervision of a physician may inject or insert the following:

(i) through (v) remain the same but are renumbered (a) through (e).

AUTH: 37-1-131, 37-8-202, MCA
IMP: 37-1-131, 37-8-102, 37-8-202, MCA

REASON: It is reasonable and necessary to amend the authority and implementation cites to accurately reflect all statutes implemented through the rule and to provide the complete sources of the board's rulemaking authority.

24.159.1010 STANDARDS RELATED TO ~~THE PRACTICAL NURSE'S ROLE IN~~ INTRAVENOUS (IV) THERAPY (1) ~~"IV therapy" means the introduction of fluid solutions directly into the circulatory system through a venous line.~~ Prior to performing IV therapy, the practical nurse must have successfully completed a course of study that includes a process for evaluation, demonstration, and documentation of the knowledge, skills, and abilities required for safe administration of IV therapy procedures. Education and competency may be obtained through a board-approved, prelicensure nursing education program or a course of study utilizing appropriate education methods and qualified faculty.

~~(2) "Intravenous fluids" means fluid solutions of electrolytes, nutrients, vitamins, drugs, blood and blood products.~~

~~(3) "Standard intravenous solution" means an isotonic or hypotonic solution and the following hypertonic solutions:~~

~~(a) D5.2 normal saline;~~

~~(b) D5.3 normal saline;~~

~~(c) D5.45 normal saline;~~

~~(d) D5.9 normal saline;~~

~~(e) D5 in ringers; and~~

~~(f) D5 in lactated ringers.~~

~~(4) Any of the following IV therapy tasks related to peripheral vessel IVs may be performed by an LPN:~~

(2) The practical nurse who has met the education and competency requirements of this rule may perform the following functions with venous access devices (central, midline, and peripheral) under appropriate supervision:

(a) calculate and adjust IV infusion flow rate, including monitoring and discontinuing infusions;

(b) observe and report subjective and objective signs of adverse reactions to any IV administration and initiate appropriate nursing interventions;

(c) draw blood;

(d) monitor access site and perform site care and maintenance;

(e) monitor infusion equipment;

(f) change administration set, including add-on device and tubing;

(g) perform intermittent flushes for line patency maintenance;

(h) convert a continuous infusion to an intermittent infusion;

(i) insert or remove a peripheral venous access device, except central or midline catheters;

(j) initiate and administer IV medications and fluids that are commercially prepared or mixed and properly labeled by a registered nurse, pharmacist, physician, podiatrist, APRN, or dentist, in accordance with ARM 24.174.511;

(k) administer the following classifications of medications for adult clients via push or bolus:

(i) analgesics (including opiates);

(ii) antiemetics;

(iii) analgesic antagonists;

(iv) diuretics;

(v) corticosteroids;

(vi) standard flush solutions (heparin or saline); or

(vii) glucose.

(l) administer, monitor, and discontinue parenteral nutrition, fat emulsion solutions;

(m) assume monitoring of the administration of blood, blood components, or plasma volume expanders after the registered nurse has initiated and monitored the client for fifteen minutes; and

(n) discontinue the infusion blood, blood components, or plasma volume expanders.

(3) The practical nurse may not perform any procedures or administer any fluids or medications prohibited by ARM 24.159.1011.

~~(a) perform the initial venipuncture using a standard IV solution containing additives not otherwise prohibited by this rule, or using an intermittent infusion device, provided that the venipuncture is:~~

~~(i) made into a peripheral vessel only, and not into a peripherally inserted central catheter (PICC) line; or~~

~~(ii) made into a cannula or butterfly device;~~

~~(b) monitor the site;~~

~~(c) monitor and adjust flow rate;~~

~~(d) change dressing;~~

~~(e) hang additional standard solution;~~

~~(f) mix medication solution from a unit dose vial, except potassium, and add to IV solution or volutrol;~~

~~(g) hang medication solutions that are premixed and properly labeled by a registered nurse or pharmacist;~~

~~(h) flush intermittent infusion devices with heparin flush or normal saline solution;~~

~~(i) initiate IV pumps;~~

~~(j) administer metered dose of medication, including narcotics, by way of a patient controlled analgesia (PCA) pump;~~

~~(k) hang a PCA medication cartridge subsequent to the first, when the RN has initialized and programmed the unit;~~

~~(l) discontinue peripheral IVs except for PICC line;~~

~~(m) monitor and report the client physiological and psychological response to IV therapy; and~~

~~(n) administer injectable local anesthetics prior to venipuncture if prescribed or allowed by standing order.~~

~~(5) Any of the following tasks related to central venous lines may be performed by an LPN:~~

~~(a) change standard solutions, which may include additives not otherwise prohibited, on continuous flow, preestablished central line system; and~~

~~(b) access, draw blood, flush with a normal saline solution or a specific heparin flush solution, and change dressings.~~

~~(6)~~(4) Under the direct supervision of a dialysis ~~RN~~ registered nurse, the following hemodialysis procedures may be performed by a competent practical nurse ~~an LPN may perform hemodialysis procedures that include~~:

(a) insert an arterio-venous fistula/graft needle ~~insertion~~;

(b) ~~administration of~~ administer prescribed local anesthesia as needed prior to dialysis needle insertion;

(c) ~~accessing~~ access, ~~drawing~~ draw blood, ~~flushing~~ flush with a normal saline solution or a specific heparin flush solution, and ~~changing~~ change dressings of hemodialysis central venous catheters; and

(d) ~~administration of~~ administer prescribed doses of routine dialysis heparin.

AUTH: 37-1-131, 37-8-202, MCA
IMP: 37-1-131, 37-8-202, MCA

REASON: The board is amending this rule to recognize that education specific to IV therapy is now offered by many practical nursing education programs and health care facilities. While the performance of IV therapy is not new to LPN practice, the revised rule specifies that only the LPN who has received the proper training and established competency in IV therapy is qualified to perform certain IV procedures under appropriate supervision. At this time, eight states in the U.S. do not permit LPNs to perform any IV therapy and, consequently, the nursing programs in these states do not offer training in IV therapy. This rule clarifies that each LPN licensed in Montana, whether educated in Montana or in another state, is responsible for making certain that the LPN has received the proper training and has gained the necessary competency prior to performing IV therapy.

24.159.1011 PROHIBITED INTRAVENOUS (IV) THERAPIES (1) The practical nurse may not perform any of the following IV therapy ~~tasks~~ procedures ~~may not be performed by a practical nurse~~:

(a) initiate blood, blood components, and plasma volume expanders; ~~IV push medications directly into the vein except as in ARM 24.159.1010;~~

(b) ~~administration of any of the following:~~ mix unit dose IV medication solutions;

~~(i) blood and blood components;~~
~~(ii) narcotics except in ARM 24.159.1010;~~
~~(iii) tranquilizers;~~
~~(iv) vasodilator;~~
~~(v) vasopressor;~~
~~(vi) oxytoxics;~~
~~(vii) pediatric medications;~~
~~(viii) antineoplastic drugs;~~
~~(ix) chemotherapy;~~
~~(x) investigational drugs;~~
~~(xi) experimental drugs;~~
~~(xii) colloid therapy;~~
~~(xiii) hyperalimentation;~~
~~(xiv) hypertonic solutions, except as in ARM 24.159.1010;~~
~~(xv) anticoagulants;~~
~~(xvi) antidysrythmics; and~~
~~(xvii) thrombolytic agents;~~

(c) access or program an implanted IV infusion pump;

(d) insert or remove any IV access device placed for central or midline administration;

(e) manage central venous access devices for hemodynamic monitoring;

(f) perform repair of central or midline venous access devices; or

(g) perform arterial sticks, blood draws, or inline flushes.

(2) The practical nurse may not administer the following medications or fluids:

(a) oxytocics;

(b) neonatal and pediatric medications;

(c) antineoplastic and chemotherapy drugs;
(d) investigational and experimental drugs;
(e) colloid therapy;
(f) hyperosmolar solutions not appropriate for peripheral venous infusion;
(g) thrombolytic or fibrinolytic agents;
(h) tissue plasminogen activators, or immunoglobulins;
(i) medications for purposes of procedural sedation, moderate sedation, or anesthesia;
(j) medications requiring titration;
(k) medications or fluids via an epidural, intrathecal, intraosseouus, umbilical route, or ventricular reservoir; or
(l) medications or fluids via an arteriovenous fistula or graft, except for dialysis per ARM 24.159.1010.
~~(c) performance of arterial:~~
~~(i) sticks;~~
~~(ii) blood draws; or~~
~~(iii) line flushes;~~
~~(d) performance of catheter declotting with thrombolytic agents.~~

AUTH: 37-1-131, 37-8-202, MCA
IMP: 37-1-131, 37-8-202, MCA

REASON: It is reasonably necessary to amend this rule to recognize that the LPN with the proper education is competent to monitor certain on-going IV therapies after initiation by an RN, APRN, or physician, and to reflect the national evolution in nursing education, practice, and policy. The amended rule still prohibits the LPN from initiating specific IV therapies but also recognizes that the properly trained LPN is qualified to administer IV push or bolus medications in certain circumstances. While the current rule prohibits LPN administration of specific drugs, the amended rule will delineate prohibited classifications of IV drug therapies due to the significant patient risk and the requirement for direct RN involvement.

5. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Board of Nursing, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to dlibsdnur@mt.gov, and must be received no later than 5:00 p.m., March 14, 2008.

6. An electronic copy of this Notice of Public Hearing is available through the department and board's site on the World Wide Web at www.nurse.mt.gov. The department strives to make the electronic copy of this Notice conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical

problems, and that technical difficulties in accessing or posting to the e-mail address do not excuse late submission of comments.

7. The Board of Nursing maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this board. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies the person wishes to receive notices regarding all Board of Nursing administrative rulemaking proceedings or other administrative proceedings. The request must indicate whether e-mail or standard mail is preferred. Such written request may be sent or delivered to the Board of Nursing, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, faxed to the office at (406) 841-2305, e-mailed to dlibsdnur@mt.gov, or made by completing a request form at any rules hearing held by the agency.

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

9. Pat Bik, attorney, has been designated to preside over and conduct this hearing.

BOARD OF NURSING
SUSAN RAPH, R.N., PRESIDENT

/s/ DARCEE L. MOE
Darcee L. Moe
Alternate Rule Reviewer

/s/ KEITH KELLY
Keith Kelly, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State February 4, 2008

BEFORE THE BOARD OF LAND COMMISSIONERS AND
THE DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION OF THE STATE OF MONTANA

In the matter of the proposed amendment of ARM 36.25.801, 36.25.804, 36.25.805, 36.25.807, 36.25.808, 36.25.810, 36.25.811, 36.25.812, 36.25.813, 36.25.815, and the proposed repeal of ARM 36.25.806 regarding the land banking program	)))))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT AND REPEAL

To: All Concerned Persons

1. On March 7, 2008, at 2:00 p.m., the Department of Natural Resources and Conservation will hold a public hearing in Department of Health and Human Services Auditorium, 111 North Sanders, Helena, Montana, to consider the amendment and repeal of the above-stated rules.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m. on March 3, 2008, to advise us of the nature of the accommodation that you need. Please contact Emily Cooper, 1625 11th Avenue, Helena, MT 59620; telephone (406) 444-4165; fax (406) 444-2684; or e-mail ecooper@mt.gov.

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

36.25.801 DEFINITIONS As used in this subchapter, the following definitions apply, except where the context clearly indicates otherwise:

~~(1) "Annual rate of return" means the annual return divided by the asset value multiplied by 100%.~~

(1) "Accounting period" means the interval of time used to calculate and compare investment decision criteria for various land classes.

(2) and (3) remain the same.

(4) "Average annual rate of return" means the average annual return over the accounting period, divided by the purchase price, and multiplied by 100.

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

~~(5)~~ (6) "Bid bond" means bid deposit, as defined in ~~(6)~~ (7).

~~(6)~~ (7) "Bid deposit" means a certified check or cashier's check drawn on any Montana bank equal to ~~50%~~ 20% of the minimum sales price submitted in connection with a bid as an assurance of the performance of a contractual or promissory requirement.

(7) remains the same but is renumbered (8).

~~(8) "Current annual rate of return" means the average annual return for three years divided by the purchase price and multiplied by 100%.~~

(9) remains the same.

~~(10) "Earnest money" means a sum of money paid by a prospective purchaser as proof of that person's intention to complete the purchase transaction.~~

(10) "Estimated costs" means the estimated costs to prepare the parcel for sale, including but not limited to appraisal fees and archeological surveys.

(11) remains the same.

(12) "Net annual income" means total revenues from all sources less total average expenses from all sources based on all available cost information, including information in the "Report on the Return on Asset Value by Trust and Land Office for State Trust Lands."

(13) "Net present value" means the sum of the discounted net annual income over the accounting period.

(13) remains the same but is renumbered (14).

(15) "Processing costs" means estimated costs of preparing the parcel for sale, including but not limited to appraisals, cultural surveys, environmental review (pursuant to Title 75, chapter 1, parts 1 through 3, MCA), and land surveys.

~~(14)~~ (16) "Report on the Return on Asset Value by Trust and Land Office for State Trust Lands" means the annual report produced to analyze the rates of return originating on trust land on land classified as forest, agricultural and grazing, and other.

(15) remains the same but is renumbered (17).

~~(16) "20-year average annual rate of return" means the sum of the annual rates for return for the most recent 20 consecutive years divided by 20.~~

AUTH: 77-1-328, 77-2-362, MCA
IMP: 77-2-328, 77-2-363, MCA

REASONABLE NECESSITY: These amendments to the rules are reasonably necessary to conform definitions for the administration of the land banking program according to the provisions of Chapters 396 and 456 of the Laws of Montana, 2007.

36.25.804 PRELIMINARY REVIEW OF PARCELS BEFORE NOMINATION

(1) The department shall conduct a preliminary review of each parcel prior to nomination to determine whether further review is warranted. The department may consider the following factors in the preliminary review:

(a) through (d) remain the same.

(e) the estimated net annual income from the parcel~~, based on information in the "Report on the Return on Asset Value by Trust and Land Office for State Trust Land"~~;

(f) through (2) remain the same.

AUTH: 77-1-204, 77-2-362, MCA
IMP: 77-2-328, 77-2-363, MCA

REASONABLE NECESSITY: These amendments to the rules are reasonably necessary to conform definitions for the administration of the land banking program according to the provisions of Chapters 396 and 456 of the Laws of Montana, 2007.

36.25.805 PROCEDURES FOR NOMINATING AND EVALUATING STATE TRUST LANDS FOR SALE PURSUANT TO LAND BANKING

(1) remains the same.

(2) The board reserves the right to approve or deny nominations for the sale of state trust land. The department reserves the right to prioritize activities related to the sale of state trust land.

(3) The board, the department, or the current lessee may nominate a parcel or parcels of state trust land for sale~~.~~ :

(a) ~~Nominations~~ nominations must be on a form issued by the department and must be sent to the appropriate department office, as noted on the form~~.~~ ;

(b) ~~A~~ a lessee may nominate one or more parcels currently held by that lessee under a state of Montana surface lease agreement. The nominating lessee shall pay a nonrefundable $100 processing fee for each parcel of land nominated~~.~~ ;

(c) ~~The~~ the department may not accept incomplete nominations~~.~~ ;

(d) ~~The~~ the department shall review the classification of the parcel, as provided in 77-1-401, MCA, and classify the parcel if it is not classified~~.~~ ; and

(e) ~~When~~ when a parcel is nominated, the department shall notify all persons holding a license on the parcel, the representative of the trust beneficiary, and the lessee of the parcel if board or department nominated. Notice to the trust beneficiary must go to the representative identified for each trust affected by the proposed sale.

(4) If the department determines that a parcel meets the preliminary suitability requirements for sale, the department shall ~~conduct~~ contract for an environmental review of the parcel under MEPA. If the MEPA analysis determines that the sale would result in a significant adverse impact on natural resources, the parcel is generally not suitable for sale unless the board determines otherwise. If the department conducts a checklist environmental assessment under MEPA, the department shall briefly explain in writing ~~each conclusion of "no impact."~~ the potential impacts and mitigations for each resource and issue analyzed, including written explanations of resource or issue analysis conclusions of "no impact."

(5) After evaluation of the preliminary review and the MEPA analysis, the department shall determine whether a parcel is suitable for sale and report to the board on the parcel's suitability for sale~~.~~ :

(a) ~~If~~ if the department determines the parcel is not suitable for sale, the department may remove the parcel from nomination and eliminate the parcel from further review without board approval~~.~~ ;

(b) ~~The~~ the department shall post the report required by (4), including the MEPA analysis, in a dated notice on the department's web site or other equivalent electronic medium. The notice must be posted at least 15 days before the ~~next~~ meeting ~~of~~ the board will consider the sale~~.~~ ;

(c) ~~The~~ the department shall notify the lessee of the department's recommendation by certified mail, as provided in 77-2-363(3), MCA. As a courtesy, the department shall try to contact the lessee by telephone about the determination.

The notification must be mailed on or before the day the department posts the notice on its web site or other equivalent electronic medium~~.~~ ;

(d) ~~The~~ the department shall notify all persons holding a license on the parcel and the trust beneficiary about the determination~~.~~ ;

(e) ~~Any~~ any person may appeal to the board the department's removal of a parcel from nomination within 15 days of the department posting the report on the web site or other equivalent electronic medium. The board shall place the appeal on the next available agenda of a regularly scheduled board meeting no later than 15 days before the meeting~~.~~ ; and

(f) ~~On~~ on a board- or department-nominated parcel, the lessee may, within 60 days of the determination, notify the department that the lessee intends to propose a land exchange.

(6) remains the same.

(7) Upon the department's report to the board under (4), the board shall approve or reject the proposed sale~~.~~ :

(a) ~~If~~ if the board rejects the proposed sale of the parcel, the department shall remove the parcel from nomination~~.~~ ; and

(b) ~~If~~ if the board approves the proposed sale of the parcel, the department shall post the parcel on the department's web site or other equivalent electronic medium within 30 days of the board's approval.

(8) If the board has approved a proposed sale nominated by the lessee, the department will estimate the costs of the appraisal and will notify the lessee of the approval and request submission of the estimated costs of the appraisal and associated costs of preparing the parcel for sale. Payment must be made within ten days after the board has given preliminary approval of the sale under ARM 36.25.807(2)(b).

~~(8)~~ (9) If the board has approved a proposed sale, land exchange, or acquisition, the department shall contract with a Montana-licensed certified general appraiser to appraise the parcel under consideration for sale. The department will review or contract the review of the appraisal conducted by the contract appraiser: ~~shall commission an appraisal from a list of licensed, department-approved appraisers.~~

(a) ~~The~~ the department shall ~~conduct or~~ contract for the appraisal, to be reimbursed by the appropriate party under ARM 36.25.807(2)(b); ~~or 36.25.808(8)(a).~~

(b) ~~The~~ the appraisal must:

(i) include state-owned improvements in the valuation;

(ii) exclude lessee-owned or licensee-owned improvements from the valuation;

(iii) use comparable sales for like properties; ~~and~~

(iv) include details of the value of the parcel with legal access and a discount in appraised value due to lack of access~~.~~ ; and

(v) be reviewed and or updated one year from the date of the appraisal.

(c) The department shall post the appraised value of the parcel in a dated notice on the department's web site or other equivalent electronic medium.

~~(9)~~ (10) Any person may commission, at that person's own expense, another appraisal from a list of department approved appraisers~~.~~ :

(a) ~~A~~ a person commissioning another appraisal shall notify the department within 15 days of the posting of the appraised value~~.~~ ;

(b) ~~Any~~ any subsequent appraisal must be completed within 60 days of notification to the department of the intent to commission the appraisal~~.~~ ; and

(c) ~~Any~~ any subsequent appraisal must include all elements required of the first appraisal and be submitted to the department for review.

~~(10)~~ (11) The department shall present to the board the first appraisal and review and any subsequent appraisals and reviews that are provided to the department.

~~(11)~~ (12) Upon receiving the appraisal(s) and review(s) ~~or appraisals and survey,~~ the board shall set a minimum bid on the parcel. The department shall add the minimum bid to the parcel's listing on the department's web site or other equivalent electronic medium.

~~(12)~~ (13) If the board has approved a proposed sale, the department shall make the minimum bid, contents and findings of any title review, and any environmental due-diligence review available to the public, all bidders, and the lessee.

~~(13)~~ (14) The department shall provide notice of the proposed sale to the following ~~persons~~:

(a) ~~the~~ Department of Fish, Wildlife and Parks;

(b) ~~the~~ Department of Transportation;

(c) ~~the~~ Department of Environmental Quality;

(d) all adjacent landowners of record;

(e) the appropriate trust beneficiaries;

(f) the board of county commissioners in the county where the parcel is located;

(g) any surface lessees by certified mail. The notice to lessees must include an estimate of costs necessary to complete the sale if the lessees nominated the parcel; and

~~(h) any surface lessees by certified mail. The notice to lessees must include an estimate of costs necessary to complete the sale if the lessees nominated the parcel.~~

(h) all persons holding a license on the parcel.

~~(14)~~ (15) If necessary, the department shall conduct a survey of the parcel or parcels proposed for sale. The department shall pay for the survey, to be reimbursed by the appropriate party under ARM 36.25.807(2)(c) or 36.25.808(7)(d).

AUTH: 77-1-204, 77-2-363, 77-2-364, MCA
IMP: 77-2-363, 77-2-364, MCA

REASONABLE NECESSITY: This rule amendment is reasonably necessary because Chapter 456 of the Laws of Montana, 2007, now requires that all parcels under consideration for sale, exchange, or acquisition be appraised by a Montana-certified, licensed appraiser. Section 1 of Chapter 396 of the Laws of Montana, 2007: 1) decreases the number of days prior to auction that bid deposits must be received in order to aid potential bidders in securing loans; 2) authorizes the department to collect funds from prospective purchasers to reimburse the

department for sale preparation costs; and 3) decreases the bid bond amount in order allow more bidders to participate in the bid process.

36.25.807 TERMINATION OF LESSEE-INITIATED LAND BANKING SALE AFTER ~~EARNEST MONEY~~ DEPOSIT AND PROCESSING COSTS PAID BY LESSEE (1) If the current lessee of the land to be sold has initiated the sale, as authorized by 77-2-361 through 77-2-367, MCA, and ~~deposited earnest money~~ submitted processing costs with the department, the lessee may cancel the sale. The lessee shall send written notice by certified mail to the department, postmarked no later than ~~30~~ ten days before the date of the auction.

(2) If the lessee cancels the sale after the department has given notice of the auction, the lessee shall pay all costs incurred by the department in preparing the sale, including but not limited to:

(a) any costs incurred for preparation of documents required by 75-1-201, et seq., MCA;

(b) appraisal;

(c) survey;

(d) cultural resource inventory;

(e) natural resource inventories;

(f) public hearings; and

(g) other costs that may be incurred by the department and/or board.

(3) The ~~earnest money~~ processing costs and bid deposit, as required in ARM 36.25.805(8) and 36.25.808(4)~~,~~ that are paid by the lessee must be applied toward costs incurred by the department for the canceled sale.

(4) Any amount of ~~earnest money~~ processing costs and bid deposit remaining after payment of department costs must be returned to the lessee.

AUTH: 77-2-328, MCA
IMP: 77-2-328, 77-2-363, MCA

REASONABLE NECESSITY: This rule change is reasonably necessary because Chapter 396 of the Laws of Montana, 2007, now authorizes the department to collect funds from potential purchasers to reimburse the department for sale preparation costs.

36.25.808 PROCEDURE FOR CONDUCTING STATE TRUST LAND SALES

(1) and (2) remain the same.

(3) As required by 77-2-322, MCA, the department shall, at a minimum, publish notice of the auction in a newspaper of general circulation in the county where the auction is to take place, once each week for four consecutive weeks preceding the due date for bid deposits. The department shall post the notice on the department's web site or other equivalent electronic medium and provide links to associated realty web sites when feasible.

(4) A person wishing to bid upon a nominated state trust land parcel offered for sale at auction shall submit a bid deposit and execute a purchase agreement with the department. The bid deposit and purchase agreement must be postmarked no later than ~~45~~ 20 days before the date of the auction.

(5) Subject to (6), land must be sold to the highest bidder who consummates the terms of the sale.

(6) In accordance with 77-2-324, MCA, the current lessee has the preference right to match the high bid.

(7) remains the same.

(8) The department shall retain the bid deposit and processing costs of the successful bidder. The department shall return the bid deposits of all unsuccessful bidders within five business days following the auction.

(9) If the highest bidder fails to consummate the sale for any reason~~,~~ the bidder forfeits the bid deposit and processing costs. The ~~the~~ department may offer the parcel to the next highest bidder at the final sale price. If the next highest bidder, or a subsequent bidder, in sequence of bid amount, agrees to the terms of the sale, that bidder shall complete a purchase agreement and submit a bid deposit and processing costs to the department. The bid deposit and processing costs will be returned to the highest bidder if a subsequent bidder completes a purchase agreement and submits a bid deposit and processing costs.

(10) If the final bidder who agrees to consummate the sale fails to comply with the terms of the sale for any reason, that bidder's bid deposit ~~is~~ and processing costs are forfeited. ~~and the~~ The bid deposit must be credited to the land banking trust fund. ~~and the~~ The processing costs will be credited to the land banking administration account. ~~after deduction of sale costs incurred by the department if the department has returned their bid deposit.~~

AUTH: 77-2-362, MCA
IMP: 77-2-328, 77-2-363, MCA

REASONABLE NECESSITY: This rule change is reasonably necessary because Chapter 396 of the Laws of Montana, 2007, authorizes the department to collect funds from potential purchasers in order to reimburse the department for sale preparation costs.

36.25.810 FINAL BOARD APPROVAL AND ISSUANCE OF DOCUMENTS OF CONVEYANCE (1) Before issuing documents of conveyance, the department shall present the proposed sale to the board~~.~~ :

(a) ~~The~~ the board shall approve or disapprove the sale~~.~~ ; and

(b) ~~If~~ if the ~~land~~ board disapproves the sale, the successful bidder is not responsible for costs.

(2) For the sale of land acquired from the federal government pursuant to the state's Enabling Act, the board may convey title through a state patent, pursuant to 77-2-341~~, 77-2-342, and~~ through 77-2-343, MCA.

(3) through (6) remain the same.

AUTH: 77-1-204, 77-2-308, 77-2-362, MCA
IMP: 77-2-328, 77-2-363, MCA

REASONABLE NECESSITY: The amendments are reasonably necessary to correct grammar and formatting errors.

36.25.811 THE LAND BANKING TRUST FUNDS (1) The proceeds from a sale of state trust land must be deposited in the land banking trust fund to which the land belonged.

(2) When the board conducts a sale of state trust land pursuant to the land banking program, the board shall distribute the proceeds according to the provisions of 77-1-109, 77-2-337, and 77-2-361~~, 77-2-362, 77-2-363, 77-2-364, 77-2-365, 77-2-366, and~~ through 77-2-367, MCA.

(3) Proceeds from the sale of land from ~~within individual~~ trusts may be pooled to acquire tracts of land to add to state trust land, if approved by the board after consultation with the affected beneficiaries.

(4) If land banking expires in ~~2008~~ 2011, any proceeds remaining in the state trust land bank fund must be expended by the tenth year after the effective date of each sale.

(5) and (6) remain the same.

(7) If land banking is authorized beyond ~~2008~~ 2011, the proceeds in the land banking trust funds must remain intact and available for land banking ~~purposes~~ acquisitions.

AUTH: 77-2-366, MCA
IMP: 77-2-366, MCA

REASONABLE NECESSITY: These rule changes are reasonably necessary because Section 3 of Chapter 396 of the Laws of Montana, 2007, extended the date of the land banking program, and the changes are necessary to correct formatting errors.

36.25.812 NOMINATION OF TRACTS FOR ACQUISITION

(1) remains the same.

(2) Nominations must be on a form issued by the department and must be sent to Land Banking, Department of Natural Resources and Conservation, P.O. Box 201601, Helena, MT 59620-1601.

(a) ~~Every person nominating land, except the department or the board, shall pay a nonrefundable $100 fee for each tract of land nominated.~~ The department may not accept incomplete nominations.

(b) through (5) remain the same.

AUTH: 77-2-328, MCA
IMP: 77-2-328, MCA

REASONABLE NECESSITY: These rule changes are reasonably necessary because Chapter 396 of the Laws of Montana, 2007, which authorizes the Department of Natural Resources and Conservation to collect funds for sale preparation costs, makes the collection of a nomination fee obsolete.

36.25.813 PRELIMINARY REVIEW OF TRACTS NOMINATED FOR ACQUISITION (1) The department reserves the right to prioritize activities related to the acquisition of land.

(2) The department shall obtain from the seller and evaluate a disclosure statement that describes any known material defects in the property~~.~~ :

(a) ~~The~~ the seller shall provide disclosure on a form provided by the department~~.~~ ; and

(b) ~~If~~ if the seller fails to provide disclosure within 60 days of the department's request, the tract must be considered unsuitable for acquisition.

(3) through (6) remain the same.

AUTH: 77-1-204, 77-2-308, 77-2-362, MCA
IMP: 77-2-328, MCA

REASONABLE NECESSITY: These rule amendments are reasonably necessary to correct grammar and formatting errors.

36.25.815 ANALYSIS, REVIEW, AND DUE DILIGENCE IN PREPARING TO ACQUIRE STATE TRUST LAND (1) The department may not purchase a tract, easement, or improvement pursuant to 77-2-361~~, 77-2-362, 77-2-363, 77-2-364, 77-2-365, 77-2-366, and~~ through 77-2-367, MCA, without preparing a financial analysis. The analysis must include:

(a) the average annual rate of return calculated over a ~~20~~ 60-year accounting period for Class 2 lands;

(b) ~~a 20-year average annual rate of return~~ the average annual rate of return calculated over a 20-year accounting period for Class 1, 3, and 4 lands;

(c) a comparison with the current average annual rate of return of the parcel or parcels sold, the proceeds of which are used to fund this transaction;

(d) a prudent determination that the ~~acquisition is likely to produce more net revenue~~ lands to be acquired have a higher net present value for the affected trust or trusts than the ~~revenue that was produced from the land~~ lands sold, and a greater or equal average annual rate of return as may be reasonably expected over a 20-year accounting period for Class 1, 3, and 4 lands and a 60-year accounting period for Class 2 lands, with an acceptable level of risk for the affected trust or trusts; and

(e) the expected classification of the tract under 77-1-401, MCA.

(2) Before acquiring a tract, easement, or improvement, the board shall determine that the financial risks and benefits of the purchase are prudent, financially productive investments that are consistent with the board's fiduciary duty as a reasonably prudent trustee of a perpetual trust. That duty requires the board to comply with the requirements of 72-34-114 and 77-2-364(3)~~, (4),~~ through (5), MCA.

(3) The department shall prepare a description of each proposed acquisition. The description must include the following elements:

(a) an inventory of:

(i) soils~~,~~ ;

(ii) vegetation~~,~~ ;

(iii) wildlife use~~,~~ ;

(iv) mineral characteristics~~,~~ ;

(v) public use~~,~~ ;

(vi) recreational use~~,~~ ;

(vii) aesthetic values~~,~~ ;

(viii) cultural values~~,~~ ;
(ix) surrounding land use~~,~~ ;
(x) zoning~~,~~ ;
(xi) planning information~~,~~ ;
(xii) weeds~~,~~ ;
(xiii) floodplain information~~,~~ ;
(xiv) water resources~~,~~ ;
(xv) fisheries~~,~~ ;
(xvi) wetlands~~,~~ ; and
(xvii) riparian characteristics;

(b) through (f) remain the same.

(4) Before acquiring any interest in land, the department and/or board shall conduct a due-diligence review as follows:

(a) ~~conduct or review a current appraisal compliant with the Uniform Appraisal Standards for Federal Land Acquisition of the tract to determine fair market value by using comparable sales for like properties;~~ the department shall contract with a Montana-licensed certified general appraiser to appraise the parcel under consideration for acquisition. The department will review or contract the review of the appraisal conducted by the contract appraiser. The appraisal must follow the department's current scope of work and the supplemental appraisal instructions for the property. A copy of the appraisal and review shall be provided to the board and department. The appraisal will be reviewed and/or updated one year from the date of the appraisal;

(b) remains the same.

(c) if necessary, require a survey of the tract; ~~and~~

(d) the seller shall take the necessary steps to cure defects or remove encumbrances or uses of record or not of record, as requested by the department; and

~~(d)~~ (e) determine any limiting factors for future uses or development of the real property or the presence of toxic or hazardous materials. This may include, but is not limited to:

(i) phase I assessments, such as searches of government agency records and chain-of-title searches for evidence of property history and regulatory compliance, a review of permit applications, environmental health records, environmental compliance data, and other relevant information available from federal and state administrative agencies, discussions with former property owners and employees, and preliminary site visits;

(ii) phase II assessments, such as sampling of soils, water, and structural materials, well drilling, chemical analysis of samples, geotechnical survey, and a toxicological risk assessment.

(5) remains the same.

AUTH: 77-2-364, MCA
IMP: 77-2-364, MCA

REASONABLE NECESSITY: These rule amendments are reasonably necessary because Chapter 396 of the Laws of Montana, 2007, lengthened the accounting period

for estimating the rate of return upon forested lands. Chapter 456 of the Laws of Montana, 2007, requires that all parcels under consideration for sale, exchange, or acquisition be appraised by a Montana-licensed, certified appraiser. These amendments also correct grammar and formatting errors.

4. The department proposes to repeal the following rule:

36.25.806 REQUIREMENTS FOR LAND BANKING EARNEST MONEY DEPOSIT found at ARM page 36-5822.

AUTH: 77-1-204, 77-2-308, 77-2-328, MCA
IMP: 77-2-328, 77-2-363, MCA

REASONABLE NECESSITY: This rule repeal is reasonably necessary because Chapter 396 of the Laws of Montana, 2007 no longer requires an earnest money deposit.

5. Concerned persons may submit their data, views, or arguments concerning the proposed amendment and repeal in writing to Emily Cooper, 1625 11th Avenue, Helena, MT 59620; telephone (406) 444-4165; e-mail ecooper@mt.gov. Comments must be received no later than 5:00 p.m. on April 16, 2008.

6. Jeanne Holmgren, Department of Natural Resources and Conservation, has been designated to preside over and conduct the hearing.

7. An electronic copy of this Notice of Proposed Amendment and Repeal is available through the department's site on the World Wide Web at http://www.dnrc.mt.gov. The department strives to make the electronic copy of this Notice of Public Hearing on Proposed Amendment and Repeal conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered.

8. The agency maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request which includes the name, e-mail, 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 a combination thereof. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written requests may be sent or delivered to the contact person in (5) above 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. The bill sponsor was notified by regular mail on February 4, 2008.

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

/s/ Mary Sexton
MARY SEXTON
Director
Natural Resources and Conservation

/s/ Tommy H. Butler
TOMMY H. BUTLER
Rule Reviewer

Certified to the Secretary of State February 4, 2008.

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

In the matter of the amendment of ARM 37.108.507 pertaining to components of quality assessment activities	)))))	NOTICE OF PROPOSED AMENDMENT NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On March 28, 2008 the Department of Public Health and Human Services proposes to amend the above-stated rule.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or who need an alternative accessible format of this notice. If you need an accommodation, contact the department no later than 5:00 p.m. on March 3, 2008. Please contact Gwen Knight, 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; e-mail dphhslegal@mt.gov.

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

37.108.507 COMPONENTS OF QUALITY ASSESSMENT ACTIVITIES

(1) Annually, the health carrier shall evaluate its quality assessment activities by using the following HEDIS year ~~2007~~ 2008 measures:

(a) childhood immunization;

(b) breast cancer screening;

(c) cervical cancer screening;

(d) comprehensive diabetes care; and

(e) HEDIS/Consumer Assessment of Health Plan Survey (CAHPS) for adults.

(2) through (3) remain the same.

(4) The department adopts and incorporates by reference the HEDIS year ~~2007~~ 2008 measures for the categories listed in (1)(a) through (e). The HEDIS year ~~2007~~ 2008 measures are developed by the National Committee for Quality Assurance and provide a standardized mechanism for measuring and comparing the quality of services offered by managed care health plans. Copies of HEDIS ~~2007~~ 2008 measures are available from the National Committee for Quality Assurance, 2000 L Street NW, Suite 500, Washington, DC 20036 or on the internet at www.ncqa.org.

AUTH: 33-36-105, MCA
IMP: 33-36-105, 33-36-302, MCA

4. The Managed Care Plan Network Adequacy and Quality Assurance Act (Title 33, chapter 36, MCA) established standards for health carriers offering managed care plans and for the implementation of quality assurance standards in administrative rules. ARM 37.105.501 et seq. were adopted in 2001 to establish mechanisms for the department to evaluate quality assurance activities of health carriers providing managed care plans in Montana. ARM 37.108.507 requires health carriers to report their quality assessment activities to the department using health plan employer data and information set (HEDIS) measures, nationally-utilized measures that are updated annually. Since the HEDIS standards change somewhat every year, the rule must also be updated annually to reflect the current year's measures and ensure that national comparisons are possible, since the other states will also be using the same updated measures. The changes from adopted 2007 measures to the proposed 2008 measures are quoted below:

"Changes to HEDIS 2008

Childhood Immunization Status

- Deleted "documented history of illness" and "seropositive test result" as numerator evidence for DTaP, IPV, HiB and pneumococcal conjugate.
- Require four acellular pertussis vaccines for the DTaP antigen.
- Deleted CPT code 90709 from Table CIS-A.
- Deleted HCPCS codes Q3021, Q3023 from Table CIS-A.
- Deleted ICD-9-CM Diagnosis codes 032, 033, 037, 038.41, 041.5, 045, 138, 320.0, 482.2, V02.4, V12.02 from Table CIS-A.
- Replaced ICD-9-CM Diagnosis code 323.5 with 323.51 in Table CIS-B.

Breast Cancer Screening

- Added CPT codes 77055-77057 to Table BCS-A.
- Added CPT codes 19303-19307 to Tables BCB-B.

Cervical Cancer Screening

- Deleted CPT codes 88144, 88145 from Table CCS-A.

Comprehensive Diabetes Care

- Added glimepiride-pioglitazone and metformin-sitagliptin to Table CDC-A.

- Added CPT Category II codes 3044F, 304SF to Tables CDC-D and CDC-E.

- Added Table CDC-F: Codes to Identify HbAlc Levels <7%.

- Added CPT codes 67030, 67031, 67036, 67121, 67220, 67221 to Table CDC-G.

- Added HCPCS codes G0392, G0393 to Table CDC-K.

- Expanded ICD-9-CM Diagnosis codes in Table CDC-K (evidence of treatment for nephropathy description) to include the entire range of 580-588.

- Added eprosartan-hydrochiorothiazide and hydrochlorothiazide-olmesartan to Table CDC-L.

- Added Table CDC-M: *Codes to Identify Systolic and Diastolic BP Levels <130/80*.

- Added CPT Category II codes 3074F, 307SF to Table CDC-N.

- Clarified how to identify the medical record from which to abstract the BP level.

- Clarified that organizations should not use a BP from an acute inpatient stay.

HEDIS/Consumer Assessment of Health Plan Survey (CAHPS) for Adults

- This measure is collected using survey methodology. Detailed specifications and summary of changes are contained in *HEDIS 2008. Volume 3: Specifications for Survey Measures*.

<u>Corrections, policy changes and clarifications to HEDIS 2008</u>

Updated Random Number Table for Measures Using the Hybrid Method

Childhood Immunization Status

- Table CIS-B

  Add an asterisk after ICD-9-CM Diagnosis code 323.51 in the

DTaP row, and add the following below the table.

*Use ICD-9-CM Diagnosis code 323.5 (with no fifth digit) to identify DTaP prior to October 1, 2006; the date of service *must* be before October 1, 2006.

Cervical Cancer Screening

- Table CCS-A

  Add LOINC code 47527-7.

Comprehensive Diabetes Care

- Administrative Specification—HbAlc good control (<7%)

  Replace the last sentence (in first paragraph) with the following. The member is not numerator compliant if the automated result for the most recent HbAlc test is ≥7% or is missing a result, or if an HbAlc test was not done during the measurement year.

- Table CDC-H

  Add LOINC code 49132-4.

- Table CDC-J

  Add LOINC codes 1757-4, 34535-5, 40486-3, 40662-9, 40663-7, 43605-5, 43606-3, 43607-1, 44292-1.

- Blood pressure control—Identifying the medical record

  Replace the test with the following.

  The organization should use the medical record from which it abstracts data for the other CDC indicators. If the organization does not abstract for other indicators, it should use the medical record of the provider that manages the member's diabetes. If that medical record does not contain a BP, the organization may use the medical record of another PCP or specialist from which the member receives care.

<u>Addendum: MS-DRG Crosswalk</u>

- Comprehensive Diabetes Care

Page 128

Table Name CDC-B: Codes to Identify Diabetes

Description Diabetes

CMS-DRG 294, 295

MS-DRG 637, 638, 639

- Comprehensive Diabetes Care

Page 132

Table Name CDC-K: Codes to Identify Evidence of Nephropathy

Description Evidence of treatment for nephropathy

CMS-DRG 316, 317

MS-DRG 682-685".

The option of not updating the HEDIS measure was considered and rejected because these are national quality measures which allow comparison among health plans. If the measures are not kept current, this function is lost.

5. This rule amendment will be applied retroactively to January 1, 2008. There is no negative impact to the affected health insurance companies by applying the rule amendment retroactively.

6. Interested persons may submit their data, views, or arguments concerning the proposed action in writing to Gwen Knight, 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 13, 2008. Comments may also be faxed to (406)444-9744 or e-mailed to dphhslegal@mt.gov. The department maintains lists of persons interested in receiving notice of administrative rule changes. These lists are compiled according to subjects or programs of interest. To be included on such a list, please notify this same person.

7. If a person who is directly affected by the proposed action wishes to comment orally or in writing at a public hearing, the person must make a written request for a public hearing and submit such request, with any written comments to Gwen Knight, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 202951, Helena MT 59620-2951; by fax (406)444-9744; or by e-mail to dphhslegal@mt.gov no later than 5:00 p.m. on March 13, 2008.

8. If the agency receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action; from the appropriate administrative rule review committee; from a governmental subdivision or agency; or from an association having no 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 directly affected has been determined to be one, based on the two health insurance providers affected by this rule change.

9. An electronic copy of this proposal notice is available through the Secretary of State's web site at http://sos.mt.gov/ARM/Register. The Secretary of State strives to make the electronic copy of this notice conform to the official version of the notice as printed in the Montana Administrative Register, but advises all concerned persons that, in the event of a discrepancy between the official printed text of the Notice and the electronic version of the notice, only the official printed text will be considered. The web site may be unavailable at times, due to system maintenance or technical problems.

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

/s/ Lisa A. Swanson
Rule Reviewer

/s/ John Chappuis for
Director, Public Health and Human Services

Certified to the Secretary of State February 4, 2008.

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 X pertaining to 72-hour presumptive eligibility for adult crisis stabilization services	))))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION

TO: All Interested Persons

1. On March 5, 2008, at 3:00 p.m., the Department of Public Health and Human Services will hold a public hearing in the Wilderness Room, 2401 Colonial Drive, Helena, Montana, to consider the proposed adoption of the above-stated rules.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process (including reasonable accommodations at the hearing site) or who need an alternative accessible format of this notice. If you need an accommodation, contact the department no later than 5:00 p.m. on February 25, 2008. Please contact Rhonda Lesofski, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena MT 59604-4210; telephone (406)444-4094; fax (406)444-1970; e-mail dphhslegal@mt.gov.

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

RULE I 72-HOUR PRESUMPTIVE ELIGIBILITY FOR ADULT CRISIS STABILIZATION SERVICES: DEFINITIONS As used in this subchapter, unless expressly provided otherwise, the following definitions apply:

(1) "Adult" means an individual who is 18 years of age or older.

(2) "Assessment" means a face-to-face interview or observation of an individual by a mental health practitioner to evaluate the individual's mental status or the nature and severity of the individual's mental illness for the purpose of determining which interventions are needed to stabilize the individual.

(3) "Care coordination" means the process of planning and coordinating care and services to meet the individual's mental health service needs. Care coordination includes:

(a) the development and monitoring of the crisis stabilization plan;

(b) identifying available natural and community services and supports for the individual being served;

(c) contact with others as appropriate, for the purpose of supporting;

(d) assisting the individual being served;

(e) service coordination;

(f) referral; and

(g) discharge planning.

(4) "Crisis" means a serious unexpected situation resulting from an individual's apparent mental illness in which the symptoms are of sufficient severity, as determined by a mental health practitioner, to require immediate care to avoid:

(a) jeopardy to the life or health of the individual; or

(b) death or bodily harm to the individual or to others.

(5) "Crisis care manager" means a trained mental health staff member who is responsible for managing the implementation of a crisis stabilization plan until the individual is discharged from crisis stabilization services.

(6) "Crisis management services" means the services listed in [RULE II], when delivered by an enrolled provider.

(7) "Crisis stabilization" means development and implementation of a short-term intervention to respond to a crisis, for the purposes of reducing the severity of an individual's mental illness symptoms and attempting to prevent admission of the individual to a more restrictive environment.

(8) "Crisis stabilization plan" means an initial, brief, individualized plan that complies with [RULE III] and is created within 24 hours of an assessment.

(9) "Crisis stabilization provider" means a provider of services that is a legal entity enrolled under ARM 37.89.115 and has executed a provider enrollment addendum approved by the department, or is a hospital.

(10) "Crisis stabilization services" means the services listed in [RULE IV] when delivered by a crisis stabilization provider during an individualized psychiatric emergency intervention, delivered in a safe environment, to:

(a) stabilize a crisis;

(b) improve diagnostic clarity;

(c) find appropriate alternatives to psychiatric hospitalization;

(d) treat those symptoms that can be improved within a brief period of time; and

(e) arrange appropriate follow-up care or to refer an individual to a provider of the appropriate level of care and treatment.

(11) "Day" means a 24 hour period beginning with the first hour that crisis stabilization services are delivered.

(12) "Department" means the Montana Department of Public Health and Human Services.

(13) "Discharge" means the end of reimbursement for crisis stabilization services delivered under this subchapter.

(14) "Eligibility determination" means a decision made by a mental health practitioner that an individual's situation meets the definition of crisis as defined in this rule. This decision establishes presumptive eligibility as defined in (15).

(15) "Medically necessary mental health services" means outpatient and inpatient psychiatric clinical crisis stabilization services delivered to an individual under this subchapter.

(16) "Medically necessary service" means a service that is necessary to assess, diagnose, treat, or prevent the worsening of conditions for an individual who is experiencing a crisis.

(17) "Mental health practitioner" means an individual who is:

(a) a physician licensed under Title 37, chapter 3, MCA;

(b) a professional counselor licensed under Title 37, chapter 23, MCA;

(c) a psychologist licensed under Title 37, chapter 17, MCA;

(d) a social worker licensed under Title 37, chapter 22, MCA;

(e) an advanced practice registered nurse, as provided for in Title 37, chapter 8, MCA, and ARM 24.159.1490 with a clinical specialty in psychiatric mental health nursing; or

(f) a physician assistant licensed under Title 37, chapter 20, MCA, with clinical mental health experience.

(18) "Presumptive eligibility" means a period of up to 72 hours during which time-limited mental health crisis stabilization services delivered to an individual experiencing a crisis will be reimbursed by the department.

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

RULE II 72-HOUR PRESUMPTIVE ELIGIBILITY FOR ADULT CRISIS STABILIZATION SERVICES: CRISIS MANAGEMENT SERVICES (1) Crisis management services may include, but are not limited to:

(a) observation of symptoms and behavior;

(b) support or training for self-management of psychiatric symptoms;

(c) close supervision of the individual being served;

(d) monitoring behaviors after administration of medication during the stabilization period;

(e) psychotropic medications administered during the 72 hour period of crisis stabilization; and

(f) laboratory services necessary for evaluation and assessment during the 72 hour crisis stabilization period.

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

RULE III 72-HOUR PRESUMPTIVE ELIGIBILITY FOR ADULT CRISIS STABILIZATION SERVICES: CRISIS STABILIZATION PLAN (1) A crisis stabilization plan must:

(a) identify the person who will serve as the crisis care manager;

(b) list problems identified by the mental health crisis assessment;

(c) delineate responsibilities for implementing the plan;

(d) list the individual's strengths and resources;

(e) address cultural considerations;

(f) identify support network options; and

(g) identify referral and transition activities that will occur at discharge.

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

RULE IV 72-HOUR PRESUMPTIVE ELIGIBILITY FOR ADULT CRISIS STABILIZATION SERVICES: REIMBURSABLE SERVICES (1) To be reimburseable under this subchapter, crisis stabilization services must be:

(a) medically necessary mental health services;
(b) delivered in direct response to a crisis as defined in this subchapter;
(c) limited in scope and duration as provided in this subchapter; and
(d) delivered or contracted for by a crisis stabilization provider and are limited to:
(i) a psychiatric diagnostic interview examination;
(ii) care coordination;
(iii) individual psychotherapy;
(iv) family psychotherapy with or without patient;
(v) one to one community-based psychiatric rehabilitation and support;
(vi) crisis management services; and
(vii) services delivered by a primary care provider as defined in ARM 37.86.5001(25), for screening and identifying psychiatric conditions and for medication management.

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

RULE V 72-HOUR PRESUMPTIVE ELIGIBILITY FOR ADULT CRISIS STABILIZATION SERVICES: REIMBURSEMENT FOR SERVICES

(1) Reimbursement for services delivered under this subchapter will be the amounts listed in the Crisis Stabilization Services Fee Schedule dated March 1, 2008.

(2) Reimbursement for services will be limited in accordance with the enrollment agreement between the department and the crisis stabilization provider up to the maximum allowable fee.

(3) The department may revise the Crisis Stabilization Services Fee Schedule from time to time. A copy of the current fee schedule may be obtained from the Department of Public Health and Human Services, Addictive and Mental Disorders Division, 555 Fuller, P.O. Box 202905, Helena, MT 59620-2905.

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

RULE VI 72-HOUR PRESUMPTIVE ELIGIBILITY FOR ADULT CRISIS STABILIZATION SERVICES: REIMBURSEMENT EXCLUSIONS (1) This subchapter does not cover:

(a) services defined as "nursing facility services" in ARM 37.40.302, or otherwise required by law to be delivered by a nursing facility;
(b) any form of transportation;
(c) services delivered under 53-21-132, MCA, pursuant to a petition for civil commitment; and
(d) medical services that are not directly related to crisis stabilization services.

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

RULE VII 72-HOUR PRESUMPTIVE ELIGIBILITY FOR ADULT CRISIS STABILIZATION SERVICES: WHERE SERVICES MAY BE PROVIDED (1) There are no restrictions regarding where crisis stabilization services under this subchapter may be delivered.

(2) Nursing home residents otherwise eligible under this subchapter may receive crisis stabilization services in a nursing facility.

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

RULE VIII 72-HOUR PRESUMPTIVE ELIGIBILITY FOR ADULT CRISIS STABILIZATION SERVICES: CONFIDENTIALITY REQUIREMENTS (1) For all individuals served under this subchapter, including persons assessed but not determined eligible, providers must comply with the record keeping and confidentiality requirements that apply to Medicaid providers under ARM 37.85.414.

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

RULE IX 72-HOUR PRESUMPTIVE ELIGIBILITY FOR ADULT CRISIS STABILIZATION SERVICES: CLAIMS AND REIMBURSEMENT (1) All provider claims for crisis stabilization services delivered under this subchapter must be submitted to the department's Medicaid Management Information System (MMIS) contractor according to requirements set forth in ARM 37.85.406. Payments will be made to the provider through the department's Medicaid MMIS contractor.

(2) Providers must accept the amounts payable under this subchapter as payment in full for services delivered to eligible individuals.

(3) The provisions of ARM 37.85.407 apply with respect to third party resources and seeking payment from those sources. Providers are responsible for due diligence to identify and bill other payment sources.

(4) Reimbursement for crisis stabilization services delivered under this subchapter is subject to post payment review and audit by the department, including record management and audit as provided in ARM 37.85.414.

(5) The department may collect from a provider any payment under this subchapter as provided with respect to Medicaid overpayments in ARM 37.85.406(9) through (10)(b).

(6) The department may recover overpayments by withholding or offset as provided in ARM 37.85.513(1).

(7) Services delivered to individuals experiencing a crisis may not be reimbursed if:

(a) they are delivered to an individual within seven days following discharge from crisis stabilization services delivered by this or another provider;

(b) the services delivered were not approved for reimbursement by the department; or

(c) the provider is not enrolled with the department.

(8) If reimbursement is denied because services were delivered to an individual within seven days following discharge from crisis stabilization services

delivered by another provider, the provider may request a review to determine whether payment is warranted. A written request for review must be received by the Department of Public Health and Human Services, Addictive and Mental Disorders Division, 555 Fuller, P.O. Box 202905, Helena, MT 59620-2905 within 30 days after the date of a notice denying a claim. The department will conduct an informal administrative review and may grant full or partial reimbursement for services if it determines that:

(a) complications have arisen because of premature discharge, treatment errors, or omissions in the previous crisis stabilization plan;

(b) the crisis stabilization services are for a condition that could not have been treated during the previous crisis stabilization plan; or

(c) the provider could not have discovered the previous stabilization plan using due diligence.

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

RULE X 72-HOUR PRESUMPTIVE ELIGIBILITY FOR ADULT CRISIS STABILIZATION SERVICES: LIMITATIONS (1) This subchapter is not intended to and does not establish an entitlement to:

(a) reimbursement for services delivered to any individual; or

(b) receive any services under the program.

(2) The category of services, the particular provider of services, the duration of services, and other details regarding the services to be covered for a particular individual will be determined and may be restricted by the department or its designee based upon and consistent with the services medically necessary for an eligible individual, the availability of appropriate alternative services, the relative cost of services, the degree of medical need, and other relevant factors.

(a) If the department determines with respect to the program that it is necessary to suspend or eliminate service coverage or otherwise limit services, benefits, or provider participation, in a manner other than provided in this subchapter, the department may implement such changes by providing ten days advance notice published in Montana major daily newspapers with statewide circulation, and by providing ten days advance written notice of changes to affected providers.

(b) Reimbursement for crisis stabilization services delivered under this subchapter will be retroactive to March 1, 2008.

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

4. The Department of Public Health and Human Services (the department) is proposing the adoption of Rules I through X, pertaining to 72 hour presumptive eligibility for adult crisis stabilization services. This proposal is necessary to implement a restricted appropriation by the Montana Legislature in the General Appropriations Act of 2007 (Chapter 5, March 2007 Special Session Laws of Montana, commonly referred to as "HB 2") with explicit instructions that it must be

used only to develop community mental health crisis services and for provision of psychiatric consulting services for community providers who manage and administer community mental health crisis services. To implement the restricted appropriation provided in HB 2 the department is relying on its general rulemaking authority.

The department did not consider an alternative way to achieve the result of this proposal because the appropriation may be used only to develop community mental health crisis services and to provide psychiatric consulting services for community providers who manage and administer community mental health crisis services. The department is proposing these rules to establish the administrative and reimbursement structure for crisis stabilization services and to implement the Legislature's stated intent. In the course of arriving at an appropriation, the Legislature gave consideration to the possible options, decided whether to establish a reimbursement mechanism, and determined an amount necessary to reimburse service providers. Failure to implement the reimbursement appropriation would be contrary to legislative direction and would not provide the intended compensation for providers. Not implementing the compensation as appropriated in HB 2 would serve as a disincentive to providers participating in the program and thereby adversely affect any individual who may be experiencing a mental health crisis.

The rules proposed in this matter are intended to address administrative and reimbursement details not specified in HB 2. The proposed rules address the following subjects for which there was no statutory instruction or guidance. They are necessary to implement and spend the appropriation:

- who could be served;
- what services would be reimbursed;
- who would provide the services;
- how the service providers could be reimbursed;
- what referral mechanism should be used after 72 hours; and
- whether the services would be considered an entitlement.

Fiscal effects

The department expects the effect of these proposed rules to equal the amount appropriated, $2,032,770 annually.

Persons affected

This proposal would affect about 50 mental health services providers and approximately 900 to 1000 individuals.

5. The department intends to apply the proposed reimbursement rules to services provided on or after March 1, 2008. There is no negative impact to providers or individuals if these rules are retroactive to that date.

6. Interested persons may submit comments orally or in writing at the hearing. Written comments may also be submitted to Rhonda Lesofski, 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 13, 2008. Comments may also be faxed to (406)444-1970 or e-mailed to dphhslegal@mt.gov. The department maintains lists of persons interested in receiving notice of administrative rule changes. These lists are compiled according to subjects or programs of interest. To be included on such a list, please notify this same person or complete a request form at the hearing.

7. An electronic copy of this proposal notice is available through the Secretary of State's web site at http://sos.mt.gov/ARM/Register. The Secretary of State strives to make the electronic copy of this notice conform to the official version of the notice as printed in the Montana Administrative Register, but advises all concerned persons that, in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. The web site may be unavailable at times, due to system maintenance or technical problems.

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

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

/s/ John Koch
Rule Reviewer

/s/ John Chappuis for
Director, Public Health and Human Services

Certified to the Secretary of State February 4, 2008.

BEFORE THE DEPARTMENT OF COMMERCE
OF THE STATE OF MONTANA

In the matter of the adoption of New Rule I pertaining to the submission and review of applications to the Treasure State Endowment Program (TSEP)	)))))	NOTICE OF ADOPTION

TO: All Concerned Persons

1. On November 21, 2007, the Department of Commerce published MAR Notice No. 8-94-62 pertaining to the public hearing on the proposed adoption of the above-stated rule at page 1853 of the 2007 Montana Administrative Register, Issue Number 22.

2. The department has adopted New Rule I (ARM 8.94.3813) as proposed, but has amended the Montana TSEP Application Guidelines dated 2008 concerning the submission and review of applications for the 2009 Legislature that are incorporated by reference in New Rule I based on comments received.

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

COMMENT #1: Three comments were received in regard to the proposed limit of $500,000 unless the applicant's proposed user rates would be 150% of the target rate, in which case $750,000 could be requested. The first comment received stated that 150% is too high of a cut-off for a $750,000 grant and requested that 125% be used instead. The commenter said the "real user rate number" would be higher than 150% if an applicant went for the $750,000 amount. The second comment received stated that this proposal in essence raises the target rate, which is supposed to reflect a level of affordability, based on a community's median household income. By raising the target rate 50 percent, the rates will be more and more difficult for low and moderate income families. Increased construction costs alone warrant raising the maximum grant amount to $750,000. Higher target rates will have a greater impact on smaller towns than on larger towns, because larger towns tend to have more large volume water and sewer rates, which raises the average without raising the impact on low-end users as much. In smaller towns without industry or business, small residential customers, often senior citizens living alone, constitute a very high percentage of the total rate users. The third comment received stated that the rationale for limiting the grant amount on just water and sewer projects is not clear because there is no similar proposed limitation for bridge construction. This suggests that bridges are more important than water, sewer, or storm drain projects and should automatically qualify for more funding. While the commenter generally agreed with limiting the grant amount, presuming it was intended to allow more applicants to obtain grant funding, it was suggested that funding levels for bridges should be reduced to $500,000 unless extenuating circumstances exist. Another

commenter stated that the $750,000 limit for water and sewer projects should remain unchanged, because a reduced limit of $500,000 could dramatically affect the scope of proposed projects.

RESPONSE #1: The proposed change is in response to concerns by legislators and the administration that too few projects were being funded. This was compounded by the fact that every applicant could apply for $750,000 regardless of where their user rates would be in relation to their target rate as long as it was above the target rate. In order to provide some additional flexibility, the department will add a third level of funding. Applicants that have proposed user rates between 125 percent and 150 percent will be eligible to request $625,000. The second commenter stated that the target rate is being raised 50 percent, which is incorrect. The department is proposing a revision of how the target rate is calculated, which has the net effect of raising the target rate by approximately six percent, but that is a separate issue from the amount that can be applied for. Having rates high enough to qualify for the higher grant does not change the target rate. The department recognizes that construction costs have risen dramatically, and this proposal could have a greater impact on smaller communities with fewer customers to spread the cost among. Finally, target rates do not apply to bridge projects, and therefore cannot be used to distinguish between grant amounts. Furthermore, based on past applications, it is not likely that many, if any, counties would apply for the full $750,000 due to the fact that they have limited resources for the required grant match. However, in order to be fair to all applicants, the department will modify the proposed changes to reflect that bridge projects will be limited to $500,000 unless the applicant can clearly demonstrate that there are extenuating circumstances that exist.

COMMENT #2: A comment was received stating that the guidelines suggest that some applicants have unscrupulously set user rates artificially high to improve their scores for the TSEP grant, and in the future, they would not qualify for the additional funding of $250,000. The commenter stated that while this "rate-jacking" practice may, in the rare occasion, happen, it would be very difficult for TSEP staff to appropriately make the determination as to what user rates should be for a given system without the benefit of a detailed rate study, which would again be "raising the bar" for the application process.

RESPONSE #2: The proposed change was added because staff has been asked in the past by applicants if it would be acceptable to raise rates to qualify for a higher grant, with the excess amount collected to be placed in reserves. This change should not be an issue for applicants as long as they can reasonably demonstrate that the proposed rates are needed to proceed with the project. Reserves are an appropriate component of the user rate, but the department expects that the reserve amount be reasonable. The department does not plan to modify the proposed change.

COMMENT #3: A comment was received in regard to a provision added that states that "the department reserves the right to modify the information submitted by the applicant in order to ensure that the projected user rate is computed properly and

most accurately reflects what the projected rate is likely to be." The commenter questioned how staff can presume that they will know how to establish a user rate for a project more appropriately than the owner of the utility.

RESPONSE #3: The proposed change is simply to provide notice that when the applicant does not properly or accurately compute the proposed user rate using the specified methodology, that the department will make changes as necessary to ensure that it is reasonably accurate. In order to compare applications equally, all applicants need to use the same methodology and apply it properly. Modifications such as this are frequently made by the department after consultation with the applicant. The department does not plan to modify the proposed change.

COMMENT #4: A comment was received that objected to the proposal that projects would need to meet start-up conditions by December 31, 2012. There are often good reasons not to meet start-up conditions by a certain deadline, including environmental, water rights, land acquisition, etc. Every project is different and this issue has not been a serious problem.

RESPONSE #4: The proposed change is in response to legislators expressing a concern about TSEP funds not being used for several years, when other projects are ready to proceed. The proposed change does include a provision that allows the department to waive the requirement if the grant recipient can demonstrate that there are extenuating circumstances beyond its control that prohibit it from completing its start-up conditions. The department does not plan to modify the proposed change.

COMMENT #5: One comment was received in regard to the proposal that would allow counties to submit one bridge application and one water or wastewater application for a preliminary engineering grant. It was requested that multiple applications should be allowed for multiple unincorporated areas.

RESPONSE #5: The department is concerned that allowing multiple applications would primarily benefit urban counties with adequate resources to submit multiple grants at the expense of more rural counties with few resources and money to submit and administer even one grant. The proposed change would already allow an additional application, which was not previously permitted. The department does not plan to modify the proposed change.

COMMENT #6: A comment was received that objected to the proposal requiring that an engineer be procured within six months if a preliminary engineering grant is awarded, and requested a longer time period, preferably nine months.

RESPONSE #6: The department is concerned about grantees not moving forward with their preliminary engineering studies in a timely manner, when there are other local governments that were unsuccessful in seeking grants for their proposed projects. Six months should be an adequate amount of time, and the proposed change does include a provision that allows the department to waive the

requirement if the grantee can demonstrate substantial progress in procuring an engineer. The department does not plan to modify the proposed change.

COMMENT #7: A comment was received regarding the clarification that the costs of the application are not eligible as a match for a preliminary engineering grant.

RESPONSE #7: Only expenses related to the preparation of the preliminary engineering report can be used for matching a preliminary engineering grant. The costs of preparing the application and the cost of the preliminary engineering report are eligible as match for a construction grant. The change in the guidelines is proposed to make this existing policy more clear. The department does not plan to modify the proposed change.

COMMENT #8: A comment was received regarding the clarification that emergency grants are not to be utilized for routine or preventative maintenance or for projects which serve as a backup for a system component. A replacement of a failed water or sewer line was used as an example of ineligibility. The commenter stated that the replacement of failed water or sewer lines is not routine, preventive, or a backup project component, but rather an unanticipated capital improvement project.

RESPONSE #8: The department agrees with the comment and will eliminate the example. However, the department will elaborate further on the clarification to point out that emergency grants are for "unforeseen events" and not for situations where a system has simply deteriorated.

COMMENT #9: Two comments were received that objected to the proposed change in scoring levels for priority #3. One commenter stated that preliminary engineering reports are the perfect tie breaker as compared to issues such as public support. The other commenter noted that the scoring weight of technical aspects of the project is being reduced with the proposed quartile scoring system, yet this part of the project application represents over 75% of the cost of preparing the application.

RESPONSE #9: The department decided to use four levels versus five levels to score priority #3, because of the difficulty in distinguishing between a good preliminary engineering report and an excellent one. This particular issue has been a major point of contention for many years with applicants, engineers, and legislators. The proposed change will allow the department to clearly distinguish between preliminary engineering reports that are adequately prepared and those that have potentially serious issues that have not been adequately addressed. The department does not plan to modify the proposed change.

COMMENT #10: Two comments were received regarding a comment attached to one of the examples of projects in the scoring of Statutory Priority #1 - specifically certain types of wastewater projects. The comment states: "The opportunities for contact with people must be documented with photos, maps, or other supporting evidence in order to demonstrate the level of public use of the area." One commenter stated that the proposal suggesting that public contact with wastewater

discharges be documented may be difficult to do. It would not be practical, for example, to wait by a stream so that people floating by can be photographed. The other commenter stated that it is difficult, if not impossible, to document a situation where someone has come in contact with wastewater. Furthermore, the requirement that wastewater projects must meet this higher level of documentation is inherently unfair. Does the program require photos and maps of people drinking water with elevated levels of contaminants? Any increased level of documentation should apply to all potential TSEP projects uniformly.

RESPONSE #10: The department is simply requesting that applicants provide as much documentation as they can, in the form of photographs primarily, so that the engineers reviewing the technical information can gain a better understanding of the area and the problem. The review engineers will probably not have the opportunity to visit the site in person and need as much insight into the nature of the area from the application in order to determine if the area is likely to be visited by the public or used for recreational purposes. For example, an aerial photo of the area obtained from the Internet accompanied by a few of regular photos from different angles is all that is being requested. The department will more clearly state in the application guidelines what is being requested from applicants based on the example provided in the previous sentence. In regard to the last comment, all projects are held to a similar level of documentation. Data regarding contaminants in drinking water, modeling of fire flow, and pictures of decayed pipe are just a few examples of documentation that may be appropriate for other types of projects.

COMMENT #11: A comment was received regarding a proposed change that encourages applicants to submit drawings, photos, etc. in electronic format to help the TSEP staff understand (visualize) the project. Is this a new scoring criterion and will failure to submit the information be cause for a reduced score? Is not the costly PER adequate documentation of a project? Undoubtedly some applicants will now prepare movies or Power Point presentations in support of their project, seeking better scores.

RESPONSE #11: The department understands the concerns expressed and will more clearly state in the application guidelines what is being requested from applicants. The department is simply looking for some of the materials already provided in the application to be submitted in an electronic format if available.

COMMENT #12: A comment was received in regard to the guidance that is provided about what is needed for a "competitive" capital improvements plan (CIP). It should be recognized that small districts cannot always afford a costly CIP, particularly when their authority is limited to water or sewer system. Also, applicants that have some type of comprehensive planning process, regardless of whether it meets the TSEP prescribed planning process, should be given some credit for their efforts.

RESPONSE #12: There are several types of comprehensive planning processes, and the TSEP ranking process does recognize and reward applicants for the range

of planning tools that can be used by communities. However, the department thinks that a CIP is the most important and appropriate tool for long-term infrastructure planning, and should be utilized whenever possible. There are grant funds to assist communities in preparing a CIP. In order for a CIP to be truly valuable, it needs to contain certain information and be used as part of the annual budget process. The department receives a wide range of CIP documents, and thinks that applicants with complete CIP documents, that are actively being utilized, should be recognized for their efforts. The department does not plan to modify the proposed change.

COMMENT #13: A comment was received that the department continues to add additional requirements for the preliminary engineering report, levels of documentation, more technical detail, etc., and the commenter encourages the department to quit "raising the bar" regarding the planning aspects of the project and focus more on the project itself. The commenter states that it is very difficult to see that the projects have benefited by this additional detail and the cost of planning has become a significant burden on small needy communities. Furthermore, the planning and grant writing expense detracts from the true financial demands of project – the cost of designing and building the facilities.

RESPONSE #13: Although the department is sensitive to the need to minimize procedural requirements for the program, the level of documentation related to certain aspects of the application, as noted by the commenter, has been increased in order for the department to be able to meaningfully distinguish between applicants and how they are scored on the seven statutory priorities. The department does not plan to modify the proposed change.

COMMENT #14: A comment was received that objected to the proposed minimum requirement of 2,700 points to be recommended for a grant, because anything that makes a project more difficult to move forward is bad.

RESPONSE #14: The Legislature funded all of the TSEP projects in 2007. The department is concerned that local governments will hastily submit an application for a project that is not well thought out or ready to proceed in hopes that the Legislature will fund all of the projects again. This provision sets a minimum standard to help eliminate those applications that are poorly prepared from being eligible for a grant. The department does not plan to modify the proposed change.

COMMENT #15: A comment was received regarding the scoring level definitions and examples that were added to the application guidelines. The commenter stated that the department should maintain some subjectivity in the process that would allow reviewers to recognize health and safety impacts. He stated that not every problem "fits into a box."

RESPONSE #15: The examples of the different kinds of projects that fit into each scoring level under Statutory Priority #1 are simply examples and are not intended to cover every scenario or unique situation. The definition of the scoring levels guides the scoring team when scoring projects. Examples are added over time as new

examples of projects arise in the scoring process, in order to assist in scoring projects. The department does not plan to modify the proposed change.

COMMENT #16: Two comments were received in regard to environmental pollution, and that there are many environmental problems that do not affect public health such as Total Maximum Daily Load (TMDL), ammonia toxicity, etc. The first comment stated that the most significant problems that communities face is satisfying environmental regulations and the commenter is concerned that environmental problems will no longer be scored high enough to be funded. The other comments, from the Department of Environmental Quality (DEQ), voiced very similar view points. To summarize, DEQ had the same concerns in regard to the scoring definitions and examples under each score level and that they do not place enough emphasis on the reduction of nutrient pollution. Furthermore, subjectivity in the ranking process could easily prevent most wastewater projects from ever reaching a level 4, while a level 5 does not appear to be achievable by the vast majority of wastewater projects.

RESPONSE #16: Solving environmental pollution problems is not included as one of the statutory purposes of the program, nor is it mentioned as part of Statutory Priority #1 ("Projects that solve urgent and serious public health or safety problems, or that enable local governments to meet state or federal health or safety standards"). Even so, the department has generally interpreted environmental pollution as a long-term indicator related to declining public health and safety. Wastewater projects have always scored equally as well as other projects, and the department thinks that they may continue to do so in the future. Over the last two application competitions, which used the same scoring level definitions, 12.5% of the wastewater projects received a level five score, 35% a level four score, and 47.5% a level three score. Comparatively, 7.5% of water projects received a level five score, 45% a level four score, and 45% a level three score. The average score given under Statutory Priority #1 for both wastewater and water projects in the last two competitions was 3.6. The department does not plan to modify the proposed change.

COMMENT #17: A comment was received in regard to a requirement that inspectors be properly trained in order to inspect and evaluate bridges. The requirement for NBI certification requires two weeks of training at an out-of-state location to become certified to rate these small simplistic bridges. Completion of the course allows persons to inspect all bridges from a short single span structure to major structures, so the commenter thinks the bulk of the course will be on longer more complex structures. If someone wants to "fudge" the numbers it is as easy to do if they are certified or not. The commenter requested that short bridges, under 20 feet, could be inspected and documented using the State Highway procedure by individuals not completing the training.

RESPONSE #17: The requirement for the NBI certification is taken from the Code of Federal Regulations. The proposal states that "inspections performed by individuals that do not meet these criteria will likely result in a lower score, or even

the minimum score, for Statutory Priority #1." The department's intent is to ensure that people are properly qualified to inspect and rate bridges, and that the bridges are properly rated. If the department thinks that the inspection and rating has been properly completed using the proper methodology and there is adequate documentation to confirm that, the department wants to have the latitude to accept the rating. The department will soften the language to "inspections performed by individuals that do not meet these criteria may result in a lower score, or even the minimum score, for Statutory Priority #1."

COMMENT #18: A comment was received in regard to the proposal that income surveys be no older than two years in order to qualify. Income surveys are a time-consuming and difficult process. If an applicant fails in their initial application, another income survey must be completed in order to apply again. This seems like an unnecessary requirement, especially for small communities where the number of households does not exceed 200. The commenter requested that a minimum frequency of four years be used instead. If necessary, the department could adjust incomes from a survey two to four years old using wage or cost adjustment factors appropriate for the area.

RESPONSE #18: The department understands that income surveys are an onerous undertaking. As such, the department agrees with the comments received and will modify guidelines accordingly. Any income survey that meets all of the TSEP requirements will be accepted so long as it was completed after the last decennial U.S. Census was taken. Income surveys older than one year will be adjusted using appropriate wage or cost adjustment factors.

COMMENT #19: A comment was received that it is not clear whether the changes will be adopted through rulemaking or if the changes are adopted only to the guidelines themselves. If the changes are adopted only to the guidelines themselves, it seems that the changes (and perhaps the guidelines themselves) would not have the effect of rules and could only be used as guidance.

RESPONSE #19: The changes to the TSEP Application Guidelines will be adopted by reference into the Administrative Rules of Montana as provided by state law. The proposed changes will be adopted through the rulemaking process and have the effect of administrative rules.

COMMENT #20: A comment was received that the commenter was pleased to see that MDOC is planning on utilizing staff engineers rather than contract engineers to review applications.

RESPONSE #20: Although not discussed in the TSEP application guidelines, the department is in the process of attempting to recruit an additional engineer so that the technical aspects of applications can be reviewed by the department's own staff rather than hiring consultants to perform that task.

COMMENT #21: A comment was received that the commenter hopes that the department adequately considers comments provided by the applicant on the department's draft technical review report. The commenter stated that the applicant's engineer has a far better understanding of the specific technical aspects of the project in comparison to a program review engineer who cannot allocate much time to learn about each project individually.

RESPONSE #21: The process of applicants reviewing the department's draft technical review report is not discussed in the TSEP application guidelines. The commenter is correct in that the applicant's engineer has a far better understanding of the project in comparison to a review engineer. However, the TSEP program has a statutory responsibility to ensure that projects solve serious health and safety problems as well as incorporate an appropriate, cost-effective technical design and provide thorough long-term solutions to the community. It is ultimately the responsibility of the department to determine the seriousness of the health and safety problems presented and assign a score that reflects the degree of seriousness. In addition, not every preliminary engineering report reviewed by the department has been adequately prepared, and some of the projects have had significant problems in terms of their technical design and proposed solutions. The department disagrees that responses by the applicant to the review engineer's comments have been ignored. There will always be differences of opinion since the evaluation process involves a great deal of judgment. Review engineers are not allowed to consider "new" information and the review engineer also has the discretion to disagree with the responses of the project engineer.

COMMENT #22: A comment was received that the added description of scoring levels is helpful.

RESPONSE #22: Comment is noted.

/s/ KELLY A. CASILLAS
KELLY A. CASILLAS
Rule Reviewer

/s/ ANTHONY J. PREITE
ANTHONY J. PREITE
Director
Department of Commerce

Certified to the Secretary of State February 4, 2008.

BEFORE THE DEPARTMENT OF COMMERCE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 8.99.901, 8.99.904, 8.99.908, and 8.99.912 pertaining to the award of grants and loans under the Big Sky Economic Development Program	)))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On December 6, 2007, the Department of Commerce published MAR Notice No. 8-99-63 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 1981 of the 2007 Montana Administrative Register, Issue Number 23.

2. On January 4, 2008, a public hearing was held on the proposed amendment of the above-stated rules. One comment was received by the January 14, 2008, deadline.

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

4. The department has thoroughly considered the comment. A summary of the comment received and the department's response is as follows:

COMMENT #1: One commenter stated that the department should set forth requirements that the Big Sky Economic Development Trust Fund Grant Review Committee meet within one month of an application's submission and that the director would review the Grant Review Committee's recommendations within one week of that meeting.

RESPONSE #1: The department agrees that it is in the best interest of the applicant as well as the department for complete applications to be reviewed as soon as possible after their receipt. Once an application is determined, on a case by case basis, to be complete, the department has always set meeting dates as early as possible and does not believe that having a fixed time schedule for making awards is always reasonable or would provide for more effective funding decisions.

/s/ G. MARTIN TUTTLE
G. MARTIN TUTTLE
Rule Reviewer

/s/ ANTHONY J. PREITE
ANTHONY J. PREITE
Director
Department of Commerce

Certified to the Secretary of State February 4, 2008.

BEFORE THE BOARD OF RADIOLOGIC TECHNOLOGISTS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of ARM 24.204.401 fees, 24.204.404 permit fees, 24.204.408 applications, and 24.204.511 examinations	))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On November 8, 2007, the Board of Radiologic Technologists (board) published MAR Notice No. 24-204-34 regarding the proposed amendment of the above-stated rules, at page 1754 of the 2007 Montana Administrative Register, issue no. 21.

2. On November 29, 2007, a public hearing was held on the proposed amendment of the above-stated rules in Helena. No comments or testimony were received.

3. The board has amended ARM 24.204.401, 24.204.404, 24.204.408, and 24.204.511 exactly as proposed.

BOARD OF RADIOLOGIC
TECHNOLOGISTS
ANNE DELANEY, R.T., CHAIRPERSON

/s/ DARCEE L. MOE
Darcee L. Moe
Alternate Rule Reviewer

/s/ KEITH KELLY
Keith Kelly, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State February 4, 2008

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

In the matter of the amendment of ARM 36.12.102, forms and ARM 36.12.103, form and special fees	)))	NOTICE OF AMENDMENT

To: All Concerned Persons

1. On December 20, 2007, the Department of Natural Resources and Conservation published MAR Notice No. 36-22-125 regarding a notice of public hearing on the proposed amendment of the above-stated rules at page 2075 of the 2007 Montana Administrative Register, Issue No. 24.

2. The department has amended ARM 36.12.102 and 36.12.103 exactly as proposed.

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

COMMENT 1
Through this "rulemaking" attempt, the department is placing the entire cost burden of water protection on CGA petitioners by asking them to pay unrealistic fees, with the DNRC setting all the ground rules on what petitioners must pay for. Particularly egregious is Section 1.l.v which states "other costs of holding the hearing, conducting investigations or studies, and making records pursuant to 85-2-506 and 85-2-507, MCA, except the cost of salaries of the department personnel."

Investigations or studies cost thousands of dollars and are the responsibility of DNRC as legislatively mandated in 85-2-507(5)(b), MCA, which states, "During the 2-year period and any extensions of the time period, studies necessary to obtain the facts needed to assist in the designation or modification of a permanent controlled ground water area must be commenced under the supervision and control of the department. Facts gathered during the study period must be presented at a hearing prior to the designation or modification of a permanent controlled ground water area."

RESPONSE 1
The water resources statutes set forth many powers and duties that may be implemented by the Department of Natural Resources and Conservation. All of the department's duties and powers are not funded by the Legislature. The department has limited resources and therefore must prioritize the services that it can provide. Some services must be provided by the department because they cannot be performed by the public. The section of statute noted in the comment is interpreted by the department to mean that the department must ensure that the hearing order is followed and that the department provide guidance (supervision and control) over fact gathering, analysis, or modeling used during the study period. By providing

guidance of the study, both proponents and opponents understand what information the department believes is necessary to evaluate whether a controlled groundwater area would be designated and can avoid extra expense by having to go back and repeat the study.

The department does not believe the statute requires the department perform the study tasks. There are other statutes which focus on groundwater assessments and there are members of the public that have the expertise to complete the necessary requirements in a controlled groundwater area petition.

In 1991, the Legislature established a groundwater steering committee (85-2-902(2)(b), MCA), which was charged with producing and maintaining longterm records of groundwater chemistry and water level changes throughout the state. The committee sets the priorities for the Montana Bureau of Mines and Geology which gathers the technical data, analyzes, and compiles the groundwater information. Many areas of the state have been completed (see Ground Water Assessment Program at http://www.mbmg.mtech.edu/grw/grwassessmemt.asp.).

COMMENT 2
This is a clear attempt by DNRC to abrogate its responsibilities under current Montana Code. The department is flouting the legislative intent of the Controlled Groundwater Area (CGA) statute. They were thwarted during the 2007 session in attempting to place the financial and legal burden on aggrieved citizens. DNRC is now making an attempt to circumvent the legislative process for its own agenda.

RESPONSE 2
The proposed legislation was supported by the department because it set forth an administrative rules process similar to that found in 85-2-319, MCA, for highly appropriated surface water basins. The department provided projections that showed a rules process would reduce costs to petitioners by 75 percent. The proposed fee increase was based on the services required for evaluation of the petition, which greatly exceed the evaluation of a permit or change application.

COMMENT 3
The DNRC attempting to raise fees from $500 to $1500 for citizens filing a petition for a controlled groundwater area is outrageous! People who are not well-off, but are trying to protect their water rights might not be able to come up with such a fee. DNRC is mandated by law to hear these petitions, not sell them to the highest bidder!

RESPONSE 3
Please refer to Response 1.

COMMENT 4
We already pay for DNRC's services with our tax dollars.

RESPONSE 4
A portion of the funding for water rights is through the General Fund, however 23 percent of the funds for water right services must be generated from water right filing fees. The proposed fees would generate that 23 percent needed to maintain services in the increasingly complex arena of water resource management.

COMMENT 5
With the inclusion of additional petitioner paid copies, postage, etc., it is as if DNRC is attempting to eliminate the CGA process altogether; the last hope for residents like us who have valid concerns about their water.

RESPONSE 5
The items included in comments are already referred to in the existing rule. In this rule proposal, the department clarified what costs were the responsibility of the petitioner so that the items billed to petitioners were the same from petition to petition. One must recognize however, that the actual costs for the various petitions will vary because of the size of the area chosen to be closed; the location of the proposed closed area; and the number of opponents and controversy surrounding the petition. Permit and change applicants also incur additional expenses depending on the complexity of the application proposal.

COMMENT 6
At a time when working with residents would seem more prudent than ever, DNRC chooses to raise fees, making it difficult for average people to have any interaction or say in the management of a dwindling resource. It seems incomprehensible to us that as our water resources continue to erode, the state agency charged with conservation of such perpetuates a management style that hastens the process.

RESPONSE 6
The department believes that in addition to the CGA petition process, there are other groundwater monitoring projects in place that will help to ensure wise management of Montana's groundwater resources. Also, please refer to Response 1.

COMMENT 7
We respectfully request that DNRC look elsewhere to enhance its revenue stream.

RESPONSE 7
Please see Response 4.

COMMENT 8
Any changes should make the process simpler and less costly to the citizen.

RESPONSE 8
As Montana grows and water supply diminishes, the processes employed by the department have necessarily become more complex, and the services provided by the department more costly.

COMMENT 9
I am very disturbed that DNRC personnel did not implement fairness into the rules, but rather increased the burden on petitioners with the "open checkbook" policy of uncapped expenditures. Petitioners need to know if they can afford a process before they commit to it with their time and money.

RESPONSE 9
The department did not intend to imply that costs for a CGA petitioner would go unchecked. Please refer to Response 5.

COMMENT 10
Opponents and DNRC need a reason to keep costs low since they have the ability to increase the expenses. As currently written and proposed, petitioners' checkbooks are at the mercy of DNRC and opponents. Neither have motivation to keep the tab small. An amendment is needed to share expenses with all who are involved.

RESPONSE 10
The petition to designate a CGA will likely have petitioners who want a CGA sparring with opponents who do not. The very process is controversial. In this proceeding where there are those for, and those against a proposal, each side is responsible for its own costs incurred to support its opinion. Those proposing a closure should bear the cost of the proceeding because they initiated the process and controlled the scope of the proposed closure.

COMMENT 11
Establish a cap on ALL expenses: meeting room and electronics, copy costs, etc. Require meetings/hearing use government buildings verses expensive private rentals.

RESPONSE 11
It would be difficult to place a maximum amount on various costs incurred in a controlled groundwater petition process. Meeting rooms are difficult to find in some locations and can be expensive, but can be found for free in others. The department has considered holding all hearings in Helena, where meeting room and electronic recording costs might be eliminated. 85-2-506, MCA, however, requires that CGA proceedings be held in the area of the proposed CGA. In the past, department staff made the required file copies and petitioners were charged $0.25 a page, which could be very costly if the petition file was large. The department has changed its practice; now the department takes the file to a local printer where copy costs range from $0.07 to $0.15 per page. The petitioners pay only the amount charged to the department.

COMMENT 12
The department should require all petition material be posted on DNRC web site versus mailed in paper form. Copies of motions/responses to full party lists (Certificate of Service) should be posted on the web site instead of mailed.

RESPONSE 12
This is a good suggestion, and as technology evolves may be implemented. At this time however, not all members of the public have computers or e-mail access. The department will explore this option, and may be able to e-mail those who have access, and mail hard copies to those who do not. However, some statutes like 85-2-506, MCA (CGA), expressly require notice by mail.

COMMENT 13
Setting no limits on running the bill up for aggrieved citizens who are trying to fight the good fight for us all is not a good thing.

RESPONSE 13
Please refer to Responses 5, 10, and 11.

COMMENT 14
I believe the proposed rule change unjustly creates a system of "haves" and "have-nots," which runs counter to our constitutional commitment to liberty and justice for all. DNRC seems to have lost sight of the public trust doctrine and the fundamentals of public service. The result will make it more likely that water will continue to flow uphill toward money. New development will gain more advantage over senior water rights as the system drifts further away from the needs of average Montanans.

RESPONSE 14
Please refer to Responses 4 and 8.

COMMENT 15
Under the provisions of 15-6-206, MCA, water rights are tax-exempt. While I am certain DNRC believes strongly in its justification for raising processing fees, from a water rights owner's perspective this is a tax: nothing more than a tax on water rights.

RESPONSE 15
Please refer to Response 4.

COMMENT 16
In my opinion, excessive costs associated with DNRC's petition/permit/application procedures are a result of inefficient and ineffective programs designed and perpetuated by the agency. Before raising fees, DNRC should revisit its programs and procedures to discover where improvements could lower costs for the agency and for water rights owners.

RESPONSE 16
The department appreciates the commenter's suggestion and regularly evaluates processes to ensure that they remain effective and efficient.

COMMENT 17

DNRC appears to have a special passion for taxing Controlled Groundwater Area Petition (Form No. 630, $1500), Closure of a Highly Appropriated Basin Petition (Form No. 63, $1500), and Water Reservation Application for Instream Flow (Form No. 638, $800). When considered together, these three administrative procedures represent the most effective regulatory mechanisms available to Montana citizens seeking statutory enforcement and/or protection against over-appropriation of groundwater and surface water.

RESPONSE 17
CGA and highly appropriated basin petitions are a mechanism that can be used by water users when facts presented by petitioners show that the criteria under 85-2-506, MCA, are occuring. A CGA petition, if granted, may place strict requirements on current and future water users; however, a petition is not the only mechanism that may ensure protection against over-appropriation. An applicant seeking a new beneficial water use permit must meet criteria that includes proving water is legally available for the applicant's use and will not create an adverse effect to senior water users. In the case of surface water, users can petition the district court for a water commissioner who, under the direction of the court, allocates water to the individuals on the source. The three referenced proceedings can be particularly resource intensive because of the large number of the public potentially affected by the action required of the department.

COMMENT 18
There are reasonable alternatives to fee increases which have not been considered. The DNRC could ask for appropriated dollars to pay for increased needs and expenditures associated with an expanding population and additional demands on the state's water resources. Apparently, no alternative revenue strategies are being seriously considered.

RESPONSE 18
Please refer to Response 4.

COMMENT 19
It is unclear to me how more revenue will help solve the most pressing programmatic problems facing DNRC. Unfortunately, the public hearing notice contains no background details, assumptions, or analysis. It is difficult to understand the thought process that led DNRC to the proposed amendment.

RESPONSE 19
Please see Response 4.

COMMENT 20
Commenter does not support or oppose the proposed fee increases, but believes the fee for filing an Objection to Application should be raised commensurate with the rest of the fees.

RESPONSE 20

The department places a small fee on those who oppose an application to help defray a small part of the services provided because it was not the objector who initiated the process and the objector must defend his or her interest.

COMMENT 21

Commenter opposes the amendment of ARM 36.12.102 to abolish Form No. 627, "Notice of Exempt Water Right". Although existing rights for livestock and individual domestic uses based upon instream flow or groundwater sources are exempt from the filing requirements of 85-2-221, MCA, such claims may be voluntarily filed (85-2-222, MCA). Discontinuing the use of Form No. 627 does not change either of the statutes passed by the Legislature, and therefore cannot prohibit owners of exempt water rights from either owning a valid exempt water right or from filing some sort of notice to the department and other water users. Additionally, under the Montana Water Use Act, the DNRC does not have the authority to reject notice of an exempt water right.

The Montana Constitution, Article IX, Section 3 states that the Legislature shall provide for the administration, control, and regulation of water rights and shall establish a system of centralized records. The Legislature delegated that duty to the department in 85-2-112, MCA. Those duties included prescribing procedures, forms, and requirements for applications, permits, certificates, claims of existing rights; establishing and keeping in its Helena office a centralized record system of all existing rights, and a public record of permits, certificates, claims of existing rights, applications, and other documents filed under this chapter; and cooperating, assisting and advising in matters pertaining to measuring water or filing claims of existing rights with a district court 85-2-112(2), (3), and (5), MCA.

If Form No. 627 is discontinued, the owners of exempt water rights still have the right to notify the department of an exempt water right; however, the department will lose the $50 filing fee for the form as well as a uniform notice of the water right to assist the department in one of its primary tasks -- keeping a centralized record system of all existing water rights. If the department exceeds its authority by refusing to keep track of the exempt water rights, the owners will be deprived of notice of water developments or water right changes that may affect them. Also, applicants for new beneficial water use permits or changes in an existing water right will be affected by the lack of information regarding exempt water rights in that they will be hard-pressed to determine legal availability of a source or to analyze adverse effects without a record of all rights.

RESPONSE 21

In the late 1970s, the Legislature decided to exempt certain water uses from the filing requirements of the adjudication ("exempt" water rights). Pursuant to 85-2-212, MCA, and Montana Supreme Court Order No. 14833, a person asserting a claim to an existing right to the use of water arising prior to July 1, 1973, for stock or domestic uses based upon instream flow or groundwater sources was not required to file a claim in order to avoid abandonment of the claim, but could voluntarily file.

While these types of claims were exempt from the filing requirements, it did not mean that they were not valid water rights, or that they would be deemed abandoned if not filed (In re Adjudication of Existing Yellowstone River Water Rights (1992), 253 Mont. 167,832 P.2d 1210). What was not addressed in 1979, however, was any kind of process that described where and how such exempt rights could be established later on, which court had jurisdiction, and what the process was for proving them. The claims filing period ended April 30, 1982, but later extended to July 1, 1996 (see 85-2-221(3), MCA).

At this point any water user who did not file claims for exempt water rights faces the issue of how to establish judicially their water right. If a water user tries to file a claim with the district court, the district court will most likely say it does not have jurisdiction to adjudicate exempt water rights; only the Water Court can adjudicate water rights (Mildenberger v. Galbraith, (1991), 249 Mont. 161, 166, 815 P.2d 130, 134; State ex rel. Jones v. District Court, (1997), 283 Mont. 1, 7, 938 P.2d 1313, 1316; Hidden Hollow Ranch v. Fields, 2004 MT 153, 27, 321 Mont. 505, 513, 92 P.3d 1185, 1191). Section 85-2-216, MCA, further states that, "all matters concerning the determination and interpretation of existing water rights shall be brought before or immediately transferred to the water judge in the proper water division…" If someone tries to file such exempt water rights with the Water Court, the Water Court could likely find that the claims filing period concluded July 1, 1996, and that it does not have jurisdiction to accept, process, and adjudicate those claims within this adjudication. Although valid, exempt rights not voluntarily filed are not abandoned because they were not filed. However, at present, there is no clear forum in which they can be proved and adjudicated. Anyone trying to go to either the district court or the Water Court would likely face expensive litigation costs just to try to establish which court has jurisdiction.

The department allowed exempt water users to file a Form No. 627, Notice of Exempt Water Right for notice purposes only. This is not a form that puts the water rights into the general adjudication conducted by the Water Court. The department has no authority for creating or receiving this form.

In essence, a Form No. 627 is simply a piece of paper on file with the department. It is not a claim in the adjudication, and the department's acceptance of the Form No. 627 in no way establishes or confirms a water right. Many water users, however, are under the mistaken impression that filing a Form No. 627 confirms or establishes an exempt water right.

Commenter notes that "…owners will be deprived of notice of water developments or water right changes that may affect them" and "applicants for new beneficial water use permits or changes in an existing water right will be affected by the lack of information regarding exempt water rights..." Statute requires that water right applications be published "… in a newspaper of general circulation in the area of the source." An owner of an exempt water right can obtain information about new water right applications from that publication.

The department does not want to promote the impression that filing a Form No. 627 establishes or confirms a water right and is removing the form.

COMMENT 22
Commenters raised many issues pertaining to the processing of controlled ground water areas, but which do not pertain to this proposed form and fee rules adoption.

RESPONSE 22
The department did not provide a response to issues not pertaining to the form and fee rules adoption.

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

/s/ Mary Sexton
MARY SEXTON
Director
Natural Resources and Conservation

/s/ Anne Yates
ANNE YATES
Rule Reviewer

Certified to the Secretary of State on February 4, 2008.

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 XVI pertaining to home and community services for seriously emotionally disturbed youth	))))	NOTICE OF ADOPTION

TO: All Interested Persons

1. On December 20, 2007, the Department of Public Health and Human Services published MAR Notice No. 37-426 pertaining to the adoption of the above-stated rules, at page 2100 of the 2007 Montana Administrative Register, issue number 24.

2. The department has adopted New Rules I (37.87.1303), II (37.87.1305), III (37.87.1306), IV (37.87.1307), V (37.87.1321), VI (37.87.1323), VII (37.87.1325), VIII (37.87.1331), IX (37.87.1333), X (37.87.1335), XI (37.87.1338), XIII (37.87.1340), XIV (37.87.1341), XV (37.87.1342), and XVI (37.87.1343) as proposed.

3. Rule XII (37.87.1339), in section (3) as proposed in the first notice, required that customized goods and services must be prior authorized and were to be limited to $200 per youth per federal fiscal year. In Rule I (37.87.1303), as adopted, the $200 limitation for goods and services is now predicated upon the eligible youth's enrollment year. The limitation was misstated in the proposed rule and the department has determined that the correction of this misstatement is necessary. The limitation now reads "Customized goods and services must be prior authorized and are limited in expenditure to $200 for each annual period beginning with a youth's most recent date of enrollment into the waiver". This period of reference is necessary to reasonably accommodate the needs of each enrolled youth based on a period beginning with enrollment rather than on a period that is arbitrary with respect to the youth's enrollment and needs. This change facilitates administration of the program and does not adversely affect the program enrollees.

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 XII (ARM 37.87.1339) HOME AND COMMUNITY SERVICES FOR YOUTH WITH SERIOUS EMOTIONAL DISTURBANCE: CUSTOMIZED GOODS AND SERVICES, REQUIREMENTS (1) through (2)(c) remain as proposed.

(3) Customized goods and services must be prior authorized and are limited in expenditure to $200 for each annual period beginning with a youth's most recent date of enrollment into the waiver ~~per youth per federal fiscal year~~.

(4) and (5) remain as proposed.

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

5. No comments or testimony were received.

/s/ Cary B. Lund
Rule Reviewer

/s/ Joan Miles
Director, Public Health and Human Services

Certified to the Secretary of State February 4, 2008.

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

In the matter of the amendment of ARM 37.104.601, 37.104.604, 37.104.606, 37.104.610, and 37.104.615 pertaining to automated external defibrillators	)))))	NOTICE OF AMENDMENT

TO: All Interested Persons

1. On December 20, 2007, the Department of Public Health and Human Services published MAR Notice No. 37-425 pertaining to the public hearing on the proposed amendment of the above-stated rules, at page 2094 of the 2007 Montana Administrative Register, issue number 24.

2. The department has amended ARM 37.104.601, 37.104.604, 37.104.606, and 37.104.610 as proposed.

3. The department has amended the following rule as proposed with the following changes from the original proposal. New matter to be added is underlined. Matter to be deleted is interlined.

37.104.615 MEDICAL PROTOCOL (1) remains as proposed.

(2) The department adopts and incorporates by reference the guidelines for defibrillation referred to in (1), which set ~~standards~~ guidelines for proper defibrillation. A copy of the documents referred to in (1) may be obtained from the American Heart Association at ~~http://cir.ahajournals.org/content/vol112/22/22_suppl/~~ http://circ.ahajournals.org/content/vol112/24_suppl/.

AUTH: 50-6-503, MCA
IMP: 50-6-502, MCA

4. The department has thoroughly considered all commentary received. The comments received and the department's response to each follow:

The department received comments from two individuals on its proposed rule changes pertaining to automated external defibrillator (AED) programs. The two commentors raised a total of four issues, which will be separately addressed.

COMMENT #1: The department received one comment that suggested that the word "standards" in the proposed rules be changed to "guidelines" and that this would be consistent with the terminology the American Heart Association itself uses in their own documents.

RESPONSE: The department agrees with this comment and this change is

reflected in ARM 37.104.615(2). No other use of the word "standard" appears in the proposed rules.

COMMENT #2: One comment asked whether AEDs placed in public facilities such as malls, libraries, etc. must meet the requirements of ARM 37.104.604(1)(e) and if they would be required to obtain a medical supervisor.

RESPONSE: Medical supervision for AEDs located in facilities such as malls and libraries is required. Under 50-6-501 through 50-6-606, MCA, all public agencies, departments, offices, boards, commissions, or other governmental organizations and private corporations, partnerships, groups, businesses, or other private organizations are required to register their AED program with the department and to have medical supervision.

COMMENT #3: There was one comment that it is redundant for the department to adopt a reporting requirement in ARM 37.104.606 because the information required to be reported is already relayed to the responding Emergency Medical Services (EMS) provider and is therefore already included within their documentation.

RESPONSE: The department disagrees that collection of this information by the AED entity is already always documented by the EMS provider. Cardiac arrest events can be emotionally charged and the consistent relay of all the required AED data elements to EMS providers may not always occur. Additionally, the AED entities themselves need this documentation for their own performance improvement and for legal purposes.

COMMENT #4: The last comment received was that current technology of the AED is advanced enough that untrained persons can effectively use the AED in an emergency. The commentor then further inquired if these rules then would address this issue beyond the Good Samaritan Act.

RESPONSE: The department disagrees that untrained persons can effectively utilize AEDs. Under the guidelines for AED use with currently existing technology, persons with relatively little training can effectively use an AED. However, training is still needed. The American Heart Association, American Red Cross, and others all strongly recommend that AEDs be operated by trained persons. In addition to properly operating an AED, a responder must know how to recognize the signs of a sudden cardiac arrest, when to activate the EMS system, and how to do CPR. It's also important for operators to receive formal training on the AED model they will use so that they become familiar with the device and are able to successfully operate it in an emergency. Lastly, training also teaches the operator how to avoid potentially hazardous situations.

Under 50-6-505, MCA, persons who provide emergency care or treatment by using an AED in compliance with the statute and the rules adopted by the department are immune from civil liability. Therefore, these rules do not need to address the liability issue since individuals functioning under an entity approved by the department to

conduct an AED program are covered under the Good Samaritan Act.

/s/ Kim Kradolfer
Rule Reviewer

/s/ John Chappuis for
Director, Public Health and Human Services

Certified to the Secretary of State February 4, 2008.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the adoption of New Rule I (42.2.310); amendment of ARM 42.2.304, 42.2.306, 42.2.321, 42.2.501, 42.2.503, 42.2.505, 42.2.510; amendment and transfer of ARM 42.2.401 (42.15.526); and repeal of ARM 42.2.309 and 42.2.320 relating to general department rules	))))))))	NOTICE OF ADOPTION, AMENDMENT, AMENDMENT AND TRANSFER, AND REPEAL

TO: All Concerned Persons

1. On December 6, 2007, the department published MAR Notice No. 42-2-792 regarding the proposed adoption, amendment, amendment and transfer, and repeal of the above-stated rules at page 2000 of the 2007 Montana Administrative Register, issue no. 23.

2. A public hearing was held on January 8, 2008, to consider the proposed adoption, amendment, amendment and transfer, and repeal. No one appeared at the hearing to testify and no written comments were received.

3. The department adopts New Rule I (42.2.310); amends ARM 42.2.304, 42.2.306, 42.2.321, 42.2.501, 42.2.503, 42.2.505, 42.2.510; amends and transfers ARM 42.2.401 (42.15.526); and repeals ARM 42.2.309 and 42.2.320 as proposed.

4. An electronic copy of this Adoption Notice is available through the department's site on the World Wide Web at www.mt.gov/revenue, under "for your reference"; "DOR administrative rules"; and "upcoming events and proposed rule changes." The department strives to make the electronic copy of this Adoption Notice conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

/s/ Cleo Anderson
CLEO ANDERSON
Rule Reviewer

/s/ Dan R. Bucks
DAN R. BUCKS
Director of Revenue

Certified to Secretary of State February 4, 2008

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 P.O. 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 or Register) 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

2. Go to cross reference table at end of each number and title which lists MCA section numbers and department 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, 2007. This table includes those rules adopted during the period September 1, 2007, through December 31, 2007, 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 include the contents of this issue of the Montana Administrative Register (MAR or Register).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through September 30, 2007, 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 2006, 2007, and 2008 Montana Administrative Register.

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 2008 Montana Administrative Register, p. 1310, 1682

ADMINISTRATION, Department of, Title 2

I	Examination Fees for Business and Industrial Development Corporations, p. 1500, 1932
2.4.202	and other rule - Minimum Refunds - State's Volume Cap Allocation, p. 1351, 35
2.4.401	and other rule - Single Audit Act, p. 552, 964
2.5.120	and other rules - Procurement of Supplies and Services - Surplus Property, p. 1116, 1657, 36
2.6.101	Insurance Requirements, p. 1130, 37
2.59.104	Semiannual Assessment of Banks, p. 1493, 1926
2.59.301	and other rules - Regulation of Consumer Loan Licensees - Notification to the Department - Examinations, Suspension, and Revocation of Licenses - Protection of Confidential Borrower Information - Application Procedure Required to Engage in Consumer Lending, Default, and Accrual of Interest or Amortization of Net Fees or Costs, p. 1353
2.59.401	Credit Union Supervisory and Examination Fees, p. 1496, 1928

2.59.1401 and other rules - Regulation of Title Lenders - Notification to the Department - Rescinded Loans - Examinations, Suspension, and Revocation of Licenses - Protection of Confidential Borrower Information - Department's Cost of Administrative Action - Policy to Implement Limitations on Terms of Credit to Servicemembers and Dependents - Examination Fees - Required Record Keeping - Accrual of Interest - Unlicensed Activity - Title Loan Designation, p. 1377

2.59.1501 and other rules - Regulation of Deferred Deposit Lenders - Affidavit of Borrower - Rescinded Loans - Examinations, Suspension, and Revocation of Licenses - Protection of Confidential Borrower Information - Department's Cost of Administrative Action - Policy to Implement Limitations on Terms of Credit to Servicemembers and Dependents - Examination Fees, p. 1387

2.59.1701 and other rules - Licensing and Regulation of Mortgage Brokers and Loan Originators - Continuing Education - Prelicensing Examination - Fees, Nontraditional Mortgage Products - Designated Managers - Yield Spread Premium - Examinations - Failure to Correct Deficiencies - Protection of Confidential Borrower Information - Grounds for Denial of Applications - Requirements for Renewal Applications - Department's Cost of Administrative Action, p. 1360

(Public Employees' Retirement Board)

2.43.441 Purchase of Service Credit Through Trustee-to-Trustee Fund Transfers, p. 1841, 117

2.43.1002 and other rule - Investment Policy Statement for the Defined Contribution Retirement Plan - Investment Policy Statement for the 457 Deferred Compensation Plan, p. 320, 677

(Teachers' Retirement Board)

2.44.301A and other rules - Definitions - Optional Retirement Program - Calculating Service Credits - Corrections of Errors, Family Law Orders - Withholding of Insurance Premium from Retirement Benefit, p. 1132, 2120

2.44.308 and other rules - Independent Contractors - Calculating Service Credits - Termination Pay - Earned Compensation - Benefit Adjustments, p. 1558, 2121, 38

(State Compensation Insurance Fund)

2.55.320 Classifications of Employments, p. 1566, 2123

(State Lottery Commission)

2.63.1201 and other rule - State Lottery's Procedures Pertaining to Prizes and Sales Incentives, p. 1569, 2009

2.63.1201 and other rule - State Lottery's Procedures Pertaining to Prizes and Sales Incentives, p. 1139

AGRICULTURE, Department of, Title 4

I-VII (Departments of Agriculture and Livestock) Montana Certified Natural Beef Cattle Marketing Program, p. 1
4.12.1410 and other rules - Virus-indexing Program, p. 1247, 1811
4.17.102 and other rules - Organic Certification Program, p. 990

STATE AUDITOR, Title 6

I-VI Permitting the Recognition of Preferred Mortality Tables for Use in Determining Minimum Reserve Liabilities, p. 1844, 136
I-IX Military Sales Practices, p. 902, 1180
I-XII Funeral Insurance Rules, p. 1718, 118

COMMERCE, Department of, Title 8

I Administration of the 2008-2009 Federal Community Development Block Grant (CDBG) Program, p. 1850
I Submission and Review of Applications to the Treasure State Endowment Program (TSEP), p. 1853
8.99.401 and other rules - Microbusinesses, p. 1730
8.99.803 Grant Review Committee - Submission and Review of Applications for Workforce Training Grants, p. 740, 1314
8.99.901 and other rules - Award of Grants and Loans Under the Big Sky Economic Development Program, p. 1981

(Hard-Rock Mining Impact Board)
8.104.101 and other rules - Organizational and Procedural Rules of the Hard-Rock Mining Impact Board, p. 81

(Board of Housing)
I-III Board of Housing - Low Income Housing Tax Credit Program, p. 1061, 1543
8.111.501 and other rules - Housing Loans, p. 1855, 40

(Montana Heritage Preservation and Development Commission)
10.125.101 and other rules - Sale of Real and Personal Property by the Montana Heritage Preservation and Development Commission, p. 2026

EDUCATION, Title 10

(Superintendent of Public Instruction)
10.16.3007 and other rules - Access to Instructional Materials - Procedural Safeguards - Special Education Data Collection and Reporting - Resolution Process - Expedited Due Process Hearing Resolution Process - Response to Scientific, Research Based Intervention in Learning Disability Identification - Severe Discrepancy in Learning

Disability Identification - Documentation Requirements in Learning Disability Identification - Extended School Year Services - Special Education, p. 220, 678

(Board of Public Education)
10.55.602 and other rules - Accreditation Standards, p. 169, 692

(Montana State Library)
10.102.8101 and other rule - Depository Procedures for State Documents, p. 1065, 1396, 1661

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

I Purchase of Duplicate Licenses, p. 912, 1024
12.3.403 Replacement Licenses, p. 995, 1323
12.6.1601 and other rules - Game Bird Farms - Possession of Captive-Reared Game Birds - Field Trial Permits, p. 743, 1025

(Fish, Wildlife, and Parks Commission)
I No Wake Zone on Echo Lake, p. 85
I No Wake Zone on Swan Lake, p. 87
I Notice of Adoption of a Temporary Emergency Rule - Closing a Portion of Rock Creek in Granite and Missoula Counties, p. 1320
I Notice of Adoption of a Temporary Emergency Rule - Closing Placid Lake and Seeley Lake, Missoula County, MT, p. 1183, 1315, 1318
I Notice of Adoption of a Temporary Emergency Rule - Closing Lake Inez, Missoula County, MT, p. 1185, 1319
I Notice of Adoption of a Temporary Emergency Rule - Closing the Missouri River From American Bar Gulch to Beartooth Landing, Lewis and Clark County, MT, p. 1094, 1182
12.3.185 Adding Three New Species to the Annual Lottery of Hunting Licenses, p. 565, 965
12.6.401 Time Zones, p. 1142, 1662
12.6.2203 and other rules - Exotic Species, p. 560, 632, 1187
12.9.1105 Hunting Season Extensions, p. 750, 1442
12.11.3205 No Wake Zone at White Sandy Recreation Area on Hauser Lake, p. 326, 776

ENVIRONMENTAL QUALITY, Department of, Title 17

I-III Definitions - Certification of Energy Production, Transportation, and Research Facilities for Tax Abatement and Classification, p. 2046
17.56.101 and other rules - Underground Storage Tanks - Management of Underground Storage Tanks - Incorporation by Reference - Assessment of Administrative Penalties, p. 915, 1189, 1667
17.56.502 and other rules - Underground Storage Tanks - Reporting and Numbering Petroleum Releases, p. 1743, 2124

17.74.401 and other rules - Asbestos - Asbestos Control Program Fees, p. 942, 1933

(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. 800, 1663

17.8.501 and other rules - Air Quality - Definitions - Air Quality Operation Fees - Open Burning Fees, p. 795, 1664

17.30.502 and other rules - Water Quality - Subdivisions - CECRA - Underground Storage Tanks - Department Circular DEQ-7, p. 2035

17.30.610 Water Quality - Surface Water Quality, p. 2043

17.30.617 and other rule - Water Quality - Outstanding Resource Water Designation for the Gallatin River, p. 2294, 328, 1398

17.38.101 and other rule - Public Water and Sewage Systems - Plans for Public Water Supply or Wastewater System - Fees, p. 1067, 1666

TRANSPORTATION, Department of, Title 18

18.4.110 and other rules - Acceptance and Use of Electronic Records and Electronic Signatures, p. 998, 1445

CORRECTIONS, Department of, Title 20

I-VI Security and Confidentiality of Youth Records, p. 1144

20.7.1101 and other rule - Conditions on Probation or Parole, p. 1984

JUSTICE, Department of, Title 23

(Gambling Control Division)

23.16.102 and other rules - Effective Date of Forms - Removal of Form 1 from the Rules - Application Time Limit for Utilizing an Approved Automated Accounting and Reporting System as Part of a Vending Agreement, p. 1572, 1859, 2010, 2126

23.16.209 and other rules - Possession and Display of Antique Slot Machines - Approved Accounting and Reporting System Availability Date - General Specifications of Approved Automated Accounting and Reporting Systems, p. 1149, 1544

23.16.209 and other rules - Display of Antique Illegal Gambling Devices - Dealer License Application Process - Temporary Dealer Licenses - Possession of Dealer License - Card Game Tournament Rules - Card Dealer Restrictions - House Player Restrictions - Rake Restrictions - Casino Night Requirements, p. 567, 848, 966

LABOR AND INDUSTRY, Department of, Title 24

Boards under the Business Standards Division are listed in alphabetical order following the department rules.

I Insurer Reporting Requirements, p. 337, 697
I-III Medical Benefits Payable by the Uninsured Employers Fund, p. 1077, 1446
24.7.201 and other rules - Board of Labor Appeals - Procedural Rules, p. 813, 1325
24.7.302 and other rules - Board of Labor Appeals Procedural Rules, p. 8
24.11.445 and other rules - Unemployment Insurance Matters, p. 1258, 1669
24.17.127 Prevailing Wage Rates for Public Works Projects - Building Construction Services - Heavy and Highway Construction Services - Nonconstruction Services, p. 404, 851, 968
24.29.207 and other rules - Workers' Compensation Medical Fee Schedule for Nonfacilities - Workers' Compensation Medical Treatment and Utilization Guidelines for Occupational Therapists, Physical Therapists, and Chiropractors - Other Matters Related to Workers' Compensation Claims, p. 1265, 1670
24.29.1416 and other rule - Allowable Charges for Prescription Drugs Under a Workers' Compensation Claim, p. 753, 1192
24.29.1529 Allowable Charges for Prescription Drugs Under a Workers' Compensation Claim, p. 1581, 2011
24.29.1529 Allowable Charges for Prescription Drugs Under a Workers' Compensation Claim, p. 1152, 1676
24.29.4315 Insurer Reporting Requirements, p. 633, 1028
24.30.102 Occupational Safety Matters in Public Sector Employment, p. 823, 1097

(Board of Architects and Landscape Architects)
24.114.401 and other rule - Fee Schedule - Examination, p. 11

(Board of Barbers and Cosmetologists)
24.121.301 and other rules - Definitions - Premises and General Requirements - Applications for Licensure - School-Facility and Operation - Teacher-Training Curriculum - Salons/Booth Rental - Sanitary Standards - Unprofessional Conduct - Anonymous Complaints - Disinfecting Agents - Blood Spills, p. 1502
24.121.407 and other rule - Premises and General Requirements - Restrooms, p. 4, 859

(Board of Clinical Laboratory Science Practitioners)
24.129.401 and other rules - Fees - Supervision - Standards for Licensure - Unprofessional Conduct - Inspections - Notification, p. 1584

(Board of Dentistry)

24.138.403 and other rules - Mandatory Certification - Initial Licensure of Dentists by Examination - Initial Licensure of Hygienists by Examination - Dentist Licensure by Credentials - Dental Hygienist Licensure by Credentials - Dentist Licensure by Credentials for Specialists - Dental Hygiene Local Anesthetic Agent Certification -Denturist Application Requirements - Application to Convert an Inactive Status License to an Active Status License - Renewals - Reactivation of an Expired License - Licensure of Retired or Nonpracticing Dentist or Dental Hygienist for Volunteer Service - Reactivation of a Lapsed License, p. 1004, 1812

24.138.407 and other rules - Functions for Dental Hygienists - Specialty Advertising - Hygiene Diagnosis and Treatment Planning, p. 14

(Board of Medical Examiners)

24.156.1306 Professional Conduct - Standards of Professional Practice, p. 1751

24.156.2701 and other rules - Definitions - Unprofessional Conduct - EMT License Application - Equivalent Education - License Renewal - Fees - EMT Training Program/Course Application and Approval - Examinations - EMT Levels of Licensure - EMT Course Requirements - EMT Clinical Requirements - Revision of Curriculum and Statewide Protocols - Scope of Practice, p. 1081, 1813

(Board of Occupational Therapy Practice)

24.165.404 and other rules - Applications - Supervision - Instruction - Training - Modalities - Unprofessional Conduct, p. 757, 1450

(Board of Pharmacy)

24.174.301 and other rules - Definitions - Internship - Fee Schedules - Examination - Transfer - Vaccines - Collaborative Practice - Preceptor Requirements - General Licensure - Ownership - Ambulatory Facilities - Wholesale Licensing - Pharmacy Closure - Change in Location - Change in Ownership - Medical Gas - Foreign Interns - Technicians - Centralized Prescription and Drug Orders - Central Filling by Hub Pharmacies, p. 636, 1936

24.174.401 Fee Schedule, p. 2051

(Board of Plumbers)

24.180.401 Fee Schedule, p. 498, 970, 1029

(Board of Private Security)

24.182.401 and other rule - Experience Requirements, p. 89

(Board of Professional Engineers and Professional Land Surveyors)

24.101.413 and other rules - Renewal Dates - Fees - Applications - Application Disposal -Examination Procedures - Grant and Issue Licenses -

Inactive Status - Teaching Engineering Subjects - Certificate of Authorization, p. 762, 1327

(Board of Psychologists)
24.189.401 and other rule - Fees - Minimum Standards, p. 771, 1337

(Board of Radiologic Technologists)
24.204.401 and other rules - Fees - Permit Fees - Applications - Examinations, p. 1754

(Board of Realty Regulation)
24.101.413 and other rules - Renewal Dates and Requirements - Definitions - General Provisions - Brokers and Salespersons - Property Management - Inactive Status - Continuing Education - Application of Rules - Investigations Committee - Application for Examination - Nonresident License - Application for Examination, p. 407, 1329
24.210.401 and other rules - Fees - Unprofessional Conduct - Continuing Education - Timeshare Course - Timeshare Exam - Timeshare Renewal - Fee Schedule, p. 947, 1815

(Board of Respiratory Care Practitioners)
24.101.413 and other rules - Renewal Dates and Requirements - Fee Schedule - Application for Licensure - Renewals - Inactive Status - Continuing Education Requirements - Traditional Education by Nonsponsored Organizations - Waiver of Continuing Education Requirement - Temporary Permit, p. 574, 1447

(Board of Sanitarians)
24.216.402 and other rules - Fee Schedule - Minimum Standards for Licensure - Examination, p. 953, 1817

(Board of Speech-Language Pathologists and Audiologists)
24.222.301 and other rules - Definitions - Licensure - Temporary Practice Permits - Supervision - Functions of Aides or Assistants - Continuing Education, p. 2054

(Board of Veterinary Medicine)
24.225.401 and other rules - Fees - Infectious Waste - Licensing - Embryo Transfer - Euthanasia Technicians and Agencies - Complaints - Screening Panel - Nonroutine Applications, p. 2062

LIVESTOCK, Department of, Title 32

32.2.403 Diagnostic Laboratory Fees, p. 1285, 1678
32.18.101 Hot Iron Brands, p. 1294, 1679

(Board of Horse Racing)

I-VIII Advance Deposit Account Wagering on Horse Racing and Greyhound Racing, p. 18

32.28.709 and other rules - Horse Racing, p. 1861, 41

MILITARY AFFAIRS, Department of, Title 34

I-VIII Montana Military Family Relief Fund, p. 1870, 43

I-XV Montana Military Family Relief Fund, p. 1157

34.7.101 and other rules - Reimbursement for Life Insurance Premiums Paid by Montana Reserve Component Service Members Serving Outside Montana in a Contingency Operation, p. 1864, 42

34.7.102 and other rules - Eligibility - Limitations on Reimbursement - Application for Reimbursement - Termination Date; Further Appropriation Required Pertaining to Military Life Insurance Reimbursement - Termination Date - United States Assumes Payment of Premiums or Increases Death Gratuity Pertaining to Military Life Insurance Reimbursement, p. 1154

NATURAL RESOURCES AND CONSERVATION, Department of, Title 36

36.12.101 and other rules - Definitions - Filing Fee Refunds - Objection to Application, p. 1527

36.12.101 and other rule - Definitions - Basin Closure Area Exceptions and Compliance, p. 1164, 140

36.12.101 and other rule - Definitions - Reservoir Standards, p. 456, 774, 1098

36.12.102 and other rule - Forms - Form and Special Fees, p. 2075

PUBLIC HEALTH AND HUMAN SERVICES, Department of, Title 37

I-VIII Newborn Hearing Screening, p. 2082, 171

I-IX Awarding Grants to Carry Out the Purposes of the Montana Community Health Center Support Act, p. 1990

I-XVI Home and Community Services for Seriously Emotionally Disturbed Youth, p. 2100

37.8.102 and other rules - Vital Statistics, p. 1768, 2127, 169

37.12.401 Laboratory Testing Fees, p. 581, 973

37.30.404 and other rule - Vocational Rehabilitation Program Financial Need Standards and Payment for Services, p. 458, 860

37.30.730 Vocational Rehabilitation Program Provider Fees, p. 1588, 2012

37.40.307 and other rules - Medicaid Nursing Facility Reimbursement, p. 826, 1100

37.57.301 and other rules - Newborn Screening Tests and Eye Treatment, p. 1790, 44

37.70.305 and other rules - Low Income Energy Assistance Program (LIEAP) - Low Income Weatherization Assistance Program (LIWAP), p. 584, 974

37.70.401 and other rules - Low Income Energy Assistance Program (LIEAP) - Low Income Weatherization Assistance Program (LIWAP), p. 1532, 1948
37.78.102 and other rules - Temporary Assistance for Needy Families (TANF), p. 1296, 1818, 172
37.78.102 and other rules - Temporary Assistance for Needy Families (TANF), p. 597, 976
37.79.102 and other rules - Children's Health Insurance Program (CHIP), p. 1591, 49
37.80.101 and other rules - Child Care Assistance Program, p. 1758, 174
37.82.101 Medicaid Eligibility, p. 1619, 2131
37.82.435 Medicaid Real Property Liens, p. 1608, 2132
37.85.207 and other rules - Inpatient Hospital, Outpatient Hospital, and Rural Health Clinic (RHC) Services, p. 957, 1680
37.85.212 Resource Based Relative Value Scale (RBRVS), p. 462, 1339
37.86.702 and other rules - Audiology Services - Dental - Outpatient Drug Services - Home Infusion Therapy - Durable Medical Equipment and Medical Supplies - Optometric Services - EPSDT - Transportation - Ambulance Services, p. 1400, 1824
37.86.1101 and other rule - Medicaid Reimbursement for Dispensing Fees and Outpatient Compound Prescriptions, p. 1611, 53
37.86.1801 and other rules - Durable Medical Equipment - Medical Supplies, p. 1633, 2134
37.86.2207 Medicaid Reimbursement for the Therapeutic Portion of Therapeutic Youth Group Home Treatment Services, p. 31
37.86.3607 Case Management Services for Persons With Developmental Disabilities, Reimbursement, p. 1015, 1681
37.86.3701 and other rules - Case Management Services for Youth With Serious Emotional Disturbance, p. 660, 1197
37.86.5201 and other rules - Disease Management Program, p. 656, 978
37.104.601 and other rules - Automated External Defibrillators, p. 2094

PUBLIC SERVICE REGULATION, Department of, Title 38

38.2.5001 and other rules - Protective Orders - Protection of Confidential Information, p. 833, 2135
38.5.1902 Cogeneration and Small Power Production, p. 1020, 2140
38.5.2202 and other rule - Pipeline Safety, p. 1642, 2145
38.5.6001 and other rules - Public Utilities - Electricity Suppliers - Natural Gas Suppliers, p. 93
38.5.8301 and other rule - Renewable Energy Standards for Public Utilities and Electricity Suppliers, p. 1798, 2146

REVENUE, Department of, Title 42

I Property Tax Refund Hardship Request, p. 1804, 2156
I & II Tax Year 2007 Property Tax Credit, p. 1807, 58