ISSUE NO. 9

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 The Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

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NOTICE SECTION

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the proposed amendment of ARM 2.59.1401, 2.59.1402, 2.59.1405, 2.59.1406, 2.59.1409, 2.59.1410, 2.59.1413, 2.59.1414, and 2.59.1417 pertaining to the regulation of title lenders and the proposed adoption of NEW RULES I through IX regarding title loan designation, notification to the department, rescinded loans, failure to correct deficiencies, department's cost of administrative action, examination fees, required record keeping, sale of repossessed property, and unfair practice	))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT AND ADOPTION

TO: All Concerned Persons

1. On May 29, 2008, at 10:30 a.m., a public hearing will be held in Room 342 of the Park Avenue Building, 301 S. Park, Helena, Montana, to consider the proposed amendment and adoption of the above-stated rules.

2. The Department of Administration, Division of Banking and Financial Institutions, 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 Division of Banking and Financial Institutions no later than 5:00 p.m. on May 22, 2008, to advise us of the nature of the accommodation that you need. Please contact Christopher Romano, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, Montana 59620-0546; telephone (406) 841-2928; TDD (406) 444-1421; facsimile (406) 841-2930; e-mail to cromano@mt.gov.

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

2.59.1401 DEFINITIONS For the purposes of the Montana Title Loan Act and this subchapter, the following definitions apply:

(1) "Borrower" in the case of jointly owned property, means all owners of the property listed on the title.

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

~~(3) "Extension" means an agreement whereby the licensee agrees to extend the due date beyond the term of the original title loan without releasing the security interest on the titled property.~~

(4) remains the same.

(5) "Fraud or financial dishonesty" includes, but is not limited to:

(a) a conviction, under the laws, rules, or regulations of any state or the federal government, that relates to fraud or dishonesty; or

(b) a conviction that involves robbery, illegal gambling, receiving stolen property, counterfeiting, extortion, check, credit card, or computer violations set forth in criminal laws, deception, fraud, theft, embezzlement, defrauding a creditor, issuing a bad check, deceptive practices, deceptive business practices, misappropriation of funds or property, misrepresentation, omission of material facts, unauthorized use of property, forgery, identity theft, or money laundering.

(6) "Fraudulent or dishonest financial dealings" includes, but is not limited to:

(a) a civil judgment, under the laws, rules, or regulations of any state or the federal government, that relates to fraud or dishonesty; or

(b) a civil judgment that involves deception, fraud, conversion, misappropriation of funds, misrepresentation, omission of material facts, forgery, unauthorized use of money or property, failure to pay taxes, or bad checks.

~~(5)~~ (7) "Redemption date" is the maturity date of the original title loan and any subsequent renewals ~~or extensions~~.

~~(6)~~ (8) "Renewal of a loan" means ~~extension~~ an agreement whereby the licensee agrees to extend the due date beyond the term of the original title loan without releasing the security interest on the titled property.

(9) "Restitution" may include, but is not limited to, refunds of any or all the interest and fees paid by the borrower and voiding any lien or security interest obtained in violation of the Title Loan Act.

(10) "Unencumbered title" or "clear title" means a valid state-issued certificate of title that has no liens or encumbrances attached.

AUTH: 31-1-802, MCA
IMP: 31-1-803, 31-1-804, 31-1-805, 31-1-810, 31-1-811, 31-1-812, 31-1-816, 31-1-818, 31-1-820, 31-1-815, MCA

STATEMENT OF REASONABLE NECESSITY: The division proposes to add section (1) to the current rule because it has become apparent from examinations of title lenders, and from complaints by individuals, that title lenders have been making title loans on jointly held personal property to one joint owner listed on the title. In some cases, the other joint owner listed on the title had no knowledge of the loan whatsoever until the titled personal property, generally a vehicle, is repossessed for nonpayment of the loan. In the case of a jointly held title, one joint owner can place a lien on the property, for instance a vehicle, without the knowledge and consent of the other joint owner. However, the joint owner without knowledge (hereinafter "the innocent spouse") must be given notice of the right of redemption and the title lender must go to district court for an apportionment of the respective interest held by each party in the vehicle. If the innocent spouse does not redeem the vehicle by paying all principle, interest, and penalties due, the title lender may sell the vehicle. However, after sale, the title lender must return the innocent spouse's share of the sale proceeds as apportioned by the court. At this time, title lenders are not following the proper procedure in the case of jointly held titles. The division proposes this new section because it believes that, in the case of titled personal property with two or more joint owners, all owners of the property should be aware

of, and consent to, a lien that is placed on the property. The division believes that it is unfair to allow one of two or more joint owners to place a lien on the property without the knowledge of the other joint owner(s). Therefore, it proposes this rule to require that all joint owners of titled personal property be treated as a "borrower" under the Montana Title Loan Act (Act). This will require that all joint owners sign for the title loan, consent to a lien being placed on the property, receive notice of amounts past due on the loan, receive notice of the right to rescission, and receive notice of the repossession of the titled personal property and right to redeem the property.

The division proposes to delete section (3) and portions of section (7) and (8) since all references to "extensions" were deleted as part of Senate Bill 74 enacted in the 2007 legislative session. Pursuant to 2-4-305(6)(a), MCA, an adoption, amendment, or repeal of a rule is not valid or effective unless it is consistent and not in conflict with the statute. The existing rule is in conflict with the amended statutes and therefore all references to "extension" must be deleted.

The division proposes to define two terms that are not currently defined in the rules; they are "fraud or financial dishonesty" and "fraudulent or dishonest financial dealings" as used in 31-1-805, MCA. Section (5) clarifies which types of convictions involving fraud or dishonesty may be taken into consideration in order to deny an application for licensure. The division has seen several instances in which licensees disclosed convictions involving theft, unauthorized use of property, burglary, and bad checks. However, at this time, there is no definition of fraud or dishonesty. The division believes the statutory authorization is such that these types of convictions were, in fact, intended to be included within the division's discretion to deny applications for licensure. The division chose this particular approach because other rules adopted by the division in regulating other areas use the same types of convictions to deny licensure.

Section (6) defines the types of adverse civil judgments which will be considered by the division as grounds to deny an application for licensure. The new section defines and specifies the types of financial misconduct to include various types of civil judgments that are fraudulent and dishonest. The division has seen applications in which applicants have civil actions against them for fraud, as well as various judgments for nonpayment of taxes owed. While some of these actions are normal business disputes, some of them are markedly different in that they involve fraud or dishonest dealings. It is the fraud or dishonest dealings that rise to the level of a judgment that the division would look closely at in the licensing process. Of course, any action to deny a license must be accompanied by notice and an opportunity for hearing. The division chose this particular approach because other rules it administers define these types of civil judgments as grounds to deny a license.

The division proposes to define "renewal" in section (8) because the old definition which defined renewal as an extension is no longer correct statutory language, since all references to extension were removed by the 2007 Legislature in SB74. The division believes it is important to define renewal. Section 31-1-816(2)(d), MCA, gives the lender the ability to renew the title loan if it is not paid in full at the expiration of its term. Beginning with the sixth renewal, the lender must reduce the principal balance amount owed by 10% for the sixth and each

subsequent renewal. Renewal in this context means to extend the due date of the loan without altering the other terms of the contract or releasing the security for the loan. "Renewal" is also used in the context of a license. However, that is not what the division proposes to define by this rule. So the division added the phrase "of a loan" to the definition of renewal to make clear that the rule defines renewal of a loan, not renewal of a license.

The division proposes to define restitution in section (9) because 31-1-811, MCA, allows the division to issue an order requiring restitution to the borrowers. Restitution means making the borrower whole. In order to provide restitution to borrowers, the division needs to able to order the refund of interest and fees paid by borrowers. In addition, 31-1-825(2), MCA, provides that if a title lender enters into a transaction contrary to 31-1-825, MCA, any lien or security interest obtained by the title lender is void. If a lender acts in a manner contrary to the statute, in order to make the borrower whole, it may be necessary to void the lien that the lender has placed against the borrower's titled personal property. The division chose this approach because the term is an important concept in 31-1-811, MCA, and this definition is needed to address making the borrower whole.

The division proposes to define unencumbered title in section (10) because 31-1-803(8), MCA, defines a title loan in relevant part as "a nonpurchase money loan secured by an unencumbered state-issued certificate of title or certificate of ownership to personal property that is designated as a title loan by the department." The concept of unencumbered means a title that has no liens or encumbrances attached. In 31-1-825, MCA, the lender is prohibited from entering into a title loan agreement unless the borrower presents clear title to the titled personal property. The division believes that these two terms are synonymous. These two statutes are for the protection of the lender. They are designed to ensure that there are no prior liens on the vehicle. The division chose this approach because it makes sense to define unencumbered or clear title in this context.

2.59.1402 LICENSING AND APPLICATION REQUIREMENTS - EXCEPTIONS (1) Except for those entities listed in (2), all persons or lenders must obtain a license under this rule in order to issue title loans. Persons or lenders that are licensed under the Consumer Loan Act, 32-5-101, MCA, ~~and~~ or Deferred Deposit Loan Act, 31-1-701, MCA, are not exempt from the licensing requirements of 31-1-801, MCA.

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

(b) information concerning the applicant's character, experience, qualifications; ~~and~~

(c) financial information about the applicant; and~~.~~

(d) the interest calculation tool or program that the applicant will use to calculate interest on title loans and interest rate reductions that occur beginning with the sixth renewal of a title loan.

AUTH: 31-1-802, MCA
IMP: 31-1-804, 31-1-805, 31-1-811, 31-1-816, 31-1-817, MCA

STATEMENT OF REASONABLE NECESSITY: The division is amending section (1) to substitute "or" for "and" in the first sentence of the rule. The rule currently states that persons who are licensed as both consumer lenders and deferred deposit lenders are not exempt from licensure under the Title Loan Act. The rule should say persons who are licensed under either the Consumer Loan Act or the Deferred Deposit Loan Act are not exempt from licensure under the Title Loan Act.

The division proposes to add subsection (5)(d) to the rule because the division has seen widespread confusion among title lenders regarding the calculation of interest on title loans as well as the interest rate reductions that occur starting with the sixth renewal of the title loan. The division often discovers errors in interest calculations done manually or through the use of computer programs when the division examines title lenders. The division would like to be able to review the interest calculation method the applicant proposes to use when an applicant applies for the license. If interest rate calculations are done improperly, the lender must correct the errors in their calculations which either results in a loss to the lender or the borrowers. In some cases, the title lender must refund sums to borrowers that were improperly charged due to faulty interest calculations.

2.59.1405 OWNERSHIP CHANGE (1) In the event there is a change of ownership in a licensee, the owner(s) shall file with the department an application for a new license. The applicant may not make any loans until they have been appropriately licensed. ~~For purposes of this rule, a change in ownership includes circumstances when 25% or more of the ownership is transferred to a new owner.~~

(2) For purposes of this rule, a person shall be deemed to own the licensee if the person, directly or indirectly, or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, or holds with the power to vote, or holds proxies representing 25% or more of the voting shares or rights of such company, or controls in any manner the election or appointment of 25% of the directors, managers, member-managers, or trustees of a company, or is a general partner in or has contributed 25% or more of the capital of the company.

AUTH: 31-1-802, MCA
IMP: 31-1-805, MCA

STATEMENT OF REASONABLE NECESSITY: The division is proposing to amend this rule to make clear that a change in ownership requires a new application which must be approved before the new entity can make any loans and to define ownership. At the present time there are no rules that define what a change of ownership means and no rules as to what happens on a change of control. The division routinely gets questions about what constitutes a change in ownership and whether an entity that was licensed can apply for a new license and continue on in business. The division seeks to make clear the types of transactions that constitute a change in ownership. Since the change in ownership is significant, the new entity needs to apply for a new license and must be treated as a new applicant, in that they cannot make loans until they are properly licensed.

2.59.1406 EXAMINATION OF TITLE LENDERS (1) The department may ~~shall~~ conduct an examination of each title loan licensee's lending operations to ensure compliance with both statutes and administrative rules.

(2) The department may examine the records or any location where records may be found of any licensee or a person who may be in violation of Title 31, chapter 1, part 8 or these rules.

~~(2)~~ (3) The examination shall consist of a comprehensive review of the records, operations, and affairs of the licensee. The review shall include, but is not limited to, inquiry into:

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

(4) The department shall provide the licensee with an oral and written report which details the areas examined and any deficiencies found.

AUTH: 31-1-802, MCA
IMP: 31-1-803, 31-1-810, 31-1-815, 31-1-816, 31-1-817, 31-1-818, 31-1-819, 31-1-820, 31-1-821, 31-1-822, 31-1-825, MCA

STATEMENT OF REASONABLE NECESSITY: The division proposes to amend section (1) in order to make it clear that the division has the authority to examine title lenders but not a mandatory duty to do so. The division does not have sufficient staff to examine every title lender licensed in Montana each year. The second part of section (1) is to make both statute and rule plural.

The division proposes to add section (2) to clarify its authority and procedure in conducting examinations of licensed title lenders. This authority and discretion to conduct these examinations is specifically authorized under 31-1-810, MCA. In examining licensees, the division has encountered situations where records are in garages, trunks of cars, and plastic bags. The rule is intended to make clear that the division may examine the records of licensees and unlicensed persons wherever the records may be found.

The division proposes to amend section (3) so that the division is able to examine information that will allow it to do its job. For instance, there may be additional records that are not listed which must be examined in order to determine if the licensee is complying with the Truth in Lending Act. The division must have the flexibility to examine all relevant records in conducting examinations.

The division proposes to add section (4) which embodies the practice that the division has followed for many years, but the practice has never been set forth in the rules.

2.59.1409 DURATION OF LOANS – INTEREST ~~– EXTENSIONS~~ (1) and (2) remain the same.

(3) ~~On any loan containing an automatic 30-day renewal provision, at the time of each renewal~~ On the business day following either the end of the original 30-day loan period, or the end of any agreed upon 30-day renewal period, licensees must provide, in person or by mail at the borrower's last known address, ~~an updated truth in lending statement~~ a statement disclosing the finance charges that will accrue with the renewal, the new maturity date of the loan, the amount financed, and the

annual percentage rate (APR). Licensees may not collect interest on the renewal without proof of having provided the borrower such a statement.

(4) Interest may not compound from one ~~extension or~~ renewal to another.

(5) Interest accrues on a daily basis.

(6) Interest may not be collected before it accrues.

(7) Interest may not be charged on fees.

(8) A licensee may not continue to accrue interest after the expiration of a title loan agreement, after the period of renewal, or after the redemption date of the loan.

~~(5)~~ (9) A licensee shall not extend or grant any additional credit other than that which was granted in the original title loan agreement without first requiring full payment of all principal and interest due on the original title loan~~, or any~~ and all subsequent ~~extensions~~ renewals, and releasing the security interest in the titled property.

(6) remains the same, but is renumbered (10).

(11) Licensees shall apply payments to interest and principal in the following order:

(a) first, to accrued interest; and

(b) then, to principal.

AUTH: 31-1-802, MCA
IMP: 31-1-816, 31-1-817, 31-1-818, 31-1-825, MCA

STATEMENT OF REASONABLE NECESSITY: The division proposes to amend ARM 2.59.1409 to provide for consistency with Senate Bill 74 which passed during the 2007 Regular Legislative Session. This bill deleted all references to extensions, while replacing this term with "renewals." Therefore it is necessary to amend the rule to use the same language as the statute.

The division is proposing to delete the phrase "On any loan containing an automatic 30 day renewal provision" to make clear that both automatic renewals and manual renewals are subject to the requirement set forth in the remainder of section (3). The division is proposing to add a specific timeframe for the notice, which is the business day following either the end of the original 30-day agreement period, or the end of any agreed-upon 30-day renewal period rather than "at the time of each renewal." At the time of each renewal is vague in that a licensee could wait several days after the redemption period ends to renew a loan. The Act provides that upon the failure of the borrower to redeem the certificate of title at the end of the original 30-day agreement period or at the end of any agreed-upon 30-day renewal, the borrower shall deliver the titled personal property to the title lender. The Act does not allow the lender to simply hold the loan in suspense after the end of the original 30-day agreement or the end of any agreed upon 30-day renewal. So this timeframe is being proposed to make clear that the renewal must be agreed upon, or the loan must be placed into default, the next business day after the loan period has run. The division proposes to amend section (3) to clarify exactly what must be provided to a borrower on renewal. The division has found that licensees do not understand what a truth in lending statement is. The rule is being redrafted to define exactly what must be disclosed to the borrower by the lender on renewal.

The division proposes section (5) because there is widespread confusion about interest as allowed by the Act. In conducting examinations, the division has seen lenders adopt practices contrary to each section of this rule. The new sections are intended to clarify how interest and fees are treated under the Act and how payments are to be applied to amounts owed by borrowers. Some title lenders believe that the interest they charge for a 30-day title loan is a fee, not interest. So, for instance, if a borrower comes in to pay off the title loan early, the title lender will charge the borrower the full principle balance owed, plus all interest that would have accrued if the loan had gone to the redemption date without being paid. The division believes that if a borrower comes in on the 25th day to pay off a title loan which is due on the 30th day, the borrower should be charged for 25 days of interest, not 30 days of interest. Sections (5) and (6) are designed to address the situation of a borrower who pays off a title loan early.

Section (7) clarifies that fees are a separate category on which interest may not be charged. A title lender may not roll fees into the principal amount owed and charge interest on the fees.

The division is proposing section (8) because some title lenders believe that the interest owed on a title loan continues to accrue until the obligation is repaid. This is clearly harmful to borrowers since the title lender could take no action to declare the loan in default and need not proceed to collection since the title lender would be accruing interest for the period after it became clear that the loan was in default but before the titled personal property was possessed and sold. The purpose of the Act is to protect consumers from abuses that occur in the credit marketplace when lenders are unregulated. In addition, the lender could simply wait for 30 days after the loan matured to see if a borrower would come in to renew a loan because the interest would still be accruing on the obligation. The division believes that lenders should not be allowed to accrue or collect interest after the redemption date of the loan.

Section (11) is designed to provide guidance on how payments made by borrowers should be allocated to outstanding obligations owed. The division has seen situations where title lenders apply a payment to interest that has not yet accrued instead of to interest accrued then to principal. The division proposes to standardize the manner that payments are applied to interest and principal under the Act. This will allow all licensees to know how the division expects licensees to apply payments to interest and principal owed.

2.59.1410 ~~EXTENSIONS~~ RENEWALS - REDUCTION OF PRINCIPAL

~~(1) Subject to (2), beginning with the sixth extension and for each subsequent extension, the borrower must pay at least 10% of the original principal amount along with all accrued interest before an extension may be granted.~~

(2) and (2)(a) remain the same, but are renumbered (1) and (1)(a).

(b) reduce the amount of principal balance used to calculate interest by 10% every 30 days beginning 180 days from the beginning of the original title loan agreement. In such event, the licensee must comply with all the requirements of ARM 2.59.1409 for ~~extensions~~ renewals.

~~(3)~~ (2) Under no circumstances may a licensee charge interest or fees beyond the fifteenth ~~extension~~ renewal.

AUTH: 31-1-802, MCA
IMP: 31-1-816, MCA

STATEMENT OF REASONABLE NECESSITY: The division proposes to repeal section (1) of the rule because it unnecessarily repeats the language of 31-1-816, MCA.

The division proposes to amend section (2) to provide for consistency with Senate Bill 74 which passed during the 2007 Regular Legislative Session. This bill deleted all references to extensions, while replacing this term with "renewals." Therefore, the rule is being changed to be consistent with the statute.

2.59.1413 REPORTS (1) through (1)(b) remain the same.

(c) all ~~officer~~ questionnaires must be answered within ten days of the ~~end~~ exit of ~~any~~ the examination.

AUTH: 31-1-802, MCA
IMP: 31-1-810, 31-1-815, MCA

STATEMENT OF REASONABLE NECESSITY: The division proposes to amend ARM 2.59.1413 in order to ensure that the questionnaires are received in a timely manner so that the examination may be concluded and the final report written and issued to the licensee. The questionnaire is a form that the division asks all licensees to complete and return to the division. The questionnaire asks the licensees to disclose the individuals or entities that are its owners, officers, partners, directors, trustees, or principal officers. It asks for disclosure of relevant criminal and civil histories of the individuals or entities involved. It is used to determine if the business is compliant with 31-1-805, MCA. The division has found that the current wording of the rule is confusing because some licensees interpret the end of the examination as the date the examination report is received by them, not the exit date when the examiners leave the examined premise and give an oral report to the licensee.

2.59.1414 SCHEDULE OF CHARGES (1) remains the same.

(a) the interest rate for each 30-day period;

(b) through (d) remain the same.

(e) a statement that storage fees and repossession ~~fees shall~~ costs may be added to the amount due based upon actual cost of these services to the licensee.

(2) remains the same.

AUTH: 31-1-802, MCA
IMP: 31-1-816, 31-1-817, 31-1-818, MCA

STATEMENT OF REASONABLE NECESSITY: The division proposes to amend this rule to reflect that the interest rate which should be disclosed to the applicant is the interest rate for each 30-day period, not the annual percentage rate. The Act uses the concept of 30-day periods throughout, not annual periods. The

applicant needs to know the actual interest they would be charged if they enter into the agreement in a manner that can be readily understood and applied to the loan they seek. Section 31-1-818, MCA, requires the title loan agreement to contain a disclosure that if the titled personal property is sold by the title lender, any proceeds of the sale in excess of the amount owed on the loan and the reasonable costs of repossession must be paid to the borrower. The intent of the amendment to this rule is to make the rule consistent with the language of the statute so "fees" is being changed to "costs." In addition, lenders may not charge storage and repossession costs in all cases; for instance, they may not charge storage and repossession costs for in-state repossessions but they may charge such costs for out-of-state repossessions. If the lender would ever charge the costs, under any circumstances, the lender should disclose that fact to the applicant. The mandatory language "shall" is being changed to "may" to reflect that the costs must be disclosed even if they may only be charged under certain circumstances.

2.59.1417 PROCEDURAL RULES FOR HEARINGS AND DISCOVERY

(1) In the case of hearings concerning the issuance, suspension, revocation, or other enforcement actions pertaining to a licensee or any unlicensed entity or person, hearings and related discovery shall be conducted pursuant to the ~~done under the~~ Montana Administrative Procedure Act ~~implementing the revised~~ as implemented by the Attorney General's Model Rules effective June 4, 1999.

(2) remains the same.

AUTH: 31-1-802, MCA
IMP: 31-1-811, 31-1-812, 31-1-826, 31-1-841, MCA

STATEMENT OF REASONABLE NECESSITY: The division proposes to amend this rule to include a reference to enforcement actions taken against unlicensed entities. This amendment was passed as part of Senate Bill 74 during the 2007 Regular Legislative Session. The remainder of the amendment to this rule is proposed to correct the reference to the Montana Administrative Procedure Act implementing the Attorney General's Model Rules.

4. The proposed new rules provide as follows:

NEW RULE I TITLE LOAN DESIGNATION (1) The department designates that a title loan is:

(a) a nonpurchase money loan secured by an unencumbered state issued title to personal property;

(b) on which the annual percentage rate exceeds 35%; and

(c) the lender does not take physical possession of the titled personal property.

(2) If a loan meets the criteria set forth in (1), the entity making it must be licensed as provided in Title 31, chapter 1, part 8, MCA, and must comply with the provisions of Title 31, chapter 1, part 8, MCA, and these rules, except as provided in 31-1-802(5), MCA.

AUTH: 31-1-802, MCA
IMP: 31-1-803, MCA

STATEMENT OF REASONABLE NECESSITY: The division proposes NEW RULE I to designate a title loan because in 2003, when the Act was amended by the Legislature, approximately one-half of the entities that had been licensed as title lenders switched their licenses to consumer loan licenses in order to evade the provisions of the Act which cap interest rates that title lenders can charge and prohibit title lenders from suing borrowers for deficiency judgments owed after the titled personal property is repossessed and sold. While the lenders continued to make loans using titled personal property as collateral, they altered the term of the loan so that the loan did not fit within the 30-day, single-payment structure of a title loan. Entities making title loans should be licensed as title lenders and subject to the interest rate caps and the prohibition against suing the borrower individually for a deficiency judgment for amounts owed after the collateral for the loan has been seized and sold.

In the 2007 Legislative Session, the Legislature amended the definition of title loan in 31-1-803(8), MCA, to read, "a nonpurchase money loan secured by an unencumbered state-issued certificate of title or certificate of ownership to personal property that is designated as a title loan by the department." The division proposes to designate a title loan as a nonpurchase money loan since the borrower already owns the titled personal property being used as collateral for the loan. The loan is not made to secure the purchase of the titled personal property, rather the titled personal property is collateral for the loan. The rule repeats the statutory language of 31-1-803(8), MCA. However, it is necessary in this context to repeat the language of 31-1-803(8), MCA, in order to designate what a title loan is. Therefore, the rule is not unnecessarily repeating the language of the statute. The division has designated a title loan as having an annual percentage rate that exceeds 35%. Because of the short term of the loan, typically title loans have annual percentage rates that exceed 35%. The division has designated title loans as being secured by state-issued certificates of title to personal property because that is the distinguishing feature of a title loan. The last sentence of this rule is intended to distinguish a title loan from a pawn. In a title loan, the lender does not take physical possession of the titled personal property. In a pawn, the pawnbroker does take physical possession of the titled personal property.

If a loan meets the criteria set forth in this rule, it is a title loan and it is subject to the Act. Any entity making a title loan as defined in NEW RULE I must be licensed as a title lender and comply with the Act and these rules. The exemption set forth in 31-1-802(5), MCA, states that the Act does not apply to a person that makes less than four loans per year and complies with the provision of Title 31, chapter 1, part 1, MCA.

NEW RULE II NOTIFICATION TO THE DEPARTMENT (1) The licensee shall notify the department by the close of business on the business day following:

(a) a change in the physical location of the office;

(b) any change in the phone number of the business;

(c) a change in the nature of the business;

(d) any change in the board of directors, principal officers, trustees, or limited liability company managers or member-managers;

(e) the acquisition or disposition of another company;

(f) any civil action involving fraud or dishonesty filed against the licensee;

(g) any criminal charge involving fraud or financial dishonesty filed against the licensee;

(h) any change which would cause the department not to issue a license, if it had occurred before licensure; and

(i) the addition of other business to be conducted at the location.

AUTH: 31-1-802, MCA
IMP: 31-1-805, MCA

STATEMENT OF REASONABLE NECESSITY: The division is proposing NEW RULE II to ensure that the information-related changes in a licensee's ownership, business operations, contact information, and character and fitness are promptly reported to the division. This next day reporting is reasonably necessary given that this information is critical to the daily operations and financial stability of a licensee. The division has encountered numerous situations in which licensees change their business location, change ownership, change business plans, and start selling some new product(s) or have significant civil or criminal judgments entered against them but they fail to notify the division of these facts. The division proposes to have licensees notify it of changes that can affect licensure by the close of business on the next business day following the event.

NEW RULE III RESCINDED LOANS (1) The licensee shall keep all records required by 31-1-821, MCA, for rescinded loans in a separate file and retain those records according to records retention schedules as set by state or federal law, whichever is longer.

AUTH: 31-1-802, MCA
IMP: 31-1-815, 31-1-816, 31-1-821, MCA

STATEMENT OF REASONABLE NECESSITY: The division proposes to adopt this new rule because it has found that licensees do not keep records of rescinded loans. When the division does examinations, one of the areas that it examines is rescinded loans to verify that licensees provide borrowers the right to rescind their loan as provided by 31-1-816(2)(b)(ii), MCA. The division has found that some title lenders do not keep records of rescinded loans since the loans did not go to the maturity or redemption date. This rule is intended to make clear that records of rescinded loans are subject to the record keeping requirements in 31-1-821, MCA. The records should be kept in a separate file from loans that are not rescinded since they are not active loans. This allows the licensees to keep inactive loans out of their files and allows the examiners to check to see if the licensee is complying with all provisions of the Act.

NEW RULE IV FAILURE TO CORRECT DEFICIENCIES (1) The department may suspend or revoke a license of an entity as provided in 31-1-811, MCA, that does not correct the deficiencies found by the department after an examination within the time frame granted by the department.

AUTH: 31-1-802, MCA
IMP: 31-1-810, 31-1-811, MCA

STATEMENT OF REASONABLE NECESSITY: The division has examined licensees several years in a row to find the same violations of Montana law exist year after year. Each year the division notes the deficiencies and the business says it will correct the deficiencies, but does not do so. The division seeks to clarify that repeated failure to address violations of Montana law which have been documented and noted for corrective action after an examination will result in loss of license. Of course, as with any action against a licensee's license, the licensee is entitled to due process under the Montana Administrative Procedure Act prior to any action affecting his or her license as provided in 31-1-811, MCA.

NEW RULE V DEPARTMENT'S COST OF ADMINISTRATIVE ACTION

(1) The department may order reimbursement of its costs of bringing the administrative action which may include but are not limited to:

(a) examiner time charges;
(b) department legal counsel time charges;
(c) administrative law judge charges;
(d) court reporter costs;
(e) transcription fees;
(f) document preparation fees;
(g) other hearing costs;
(h) costs of subpoenaing documents;
(i) any other cost is incurred by the department in bringing the action; and
(j) travel costs.

AUTH: 31-1-802, MCA
IMP: 31-1-811, MCA

STATEMENT OF REASONABLE NECESSITY: The division is proposing NEW RULE V to clarify which types of costs may be reimbursed to the division in the course of bringing an administrative action against a title lender. This reimbursement was authorized by an amendment made to 31-1-811, MCA. This amendment was part of Senate Bill 74, which was passed during the 2007 Regular Legislative Session. Of course, as with any action against a licensee's license, the licensee is entitled to due process under the Montana Administrative Procedure Act prior to the imposition of any sanction.

NEW RULE VI EXAMINATION FEES (1) If any examination fees are not paid within 30 days of the department's mailing of an invoice, the license of the title

lender may be suspended or revoked as provided by 31-1-811, MCA, until the fees are paid.

AUTH: 31-1-802, MCA
IMP: 31-1-810, 31-1-811, MCA

STATEMENT OF REASONABLE NECESSITY: The division is proposing to adopt NEW RULE VI to ensure that a title loan licensee remits payment for examinations conducted by the division in a timely manner. The division is authorized to charge an examination fee to licensees pursuant to 31-1-810, MCA. The division is funded by the examination fees that it charges to licensees. The division often receives bad checks or no checks at all from licensees for examination fees. The division cannot operate without these fees. Of course, as with all other actions against a licensee's license, the licensee is entitled to due process under the Montana Administrative Procedure Act as provided by 31-1-811, MCA, before an adverse action can be taken against a license.

NEW RULE VII REQUIRED RECORD KEEPING (1) Each licensee shall keep the following records, accounts, and books for a minimum of 24 months from the date the loan agreement was signed by the borrower, or longer if required by federal law:

(a) all loan documents signed by or given to the borrower;

(b) all loan application documents;

(c) all records of payments made by the borrower, including the date and amount of the payment;

(d) account files detailing the application of borrower payments to interest, principal, and other fees;

(e) account files recording the accrual of interest updated every 30 days;

(f) copies of loan renewal agreements and disclosures;

(g) copies of paid loan agreements;

(h) invoices for repossession, towing, and storage of titled personal property;

(i) an accurate statement or photograph that documents the condition of the titled personal property after repossession but before sale; and

(j) the bill of sale of repossessed titled personal property.

AUTH: 31-1-802, MCA
IMP: 31-1-815, 31-1-821, MCA

STATEMENT OF REASONABLE NECESSITY: The division is proposing NEW RULE VII because when it conducts examinations, the division has found that some licensees do not keep proper records and do not know what records are proper to keep. The listed records must be available to the division's examination staff in order to ensure that the transactions also comply with all provisions of the Act. The division cannot determine if a licensee is complying with the Act if the business does not keep appropriate records. The division is proposing the new rule on documenting the condition of the property after repossession but before sale. The division has reviewed files in which title lenders have sold repossessed motor

vehicles to a salvage dealer for $25. Depending on the condition of the motor vehicle, this may or may not be a commercially reasonable sale. The lenders need to document the condition of the titled personal property before sale in order to prove that the sale was conducted in a commercially reasonable manner and protect themselves from allegations that the lender deprived the borrower of value that they should have had returned to them after sale.

NEW RULE VIII SALE OF REPOSSESSED PROPERTY (1) The sale of repossessed titled personal property shall be conducted in a commercially reasonable manner.

AUTH: 31-1-802, MCA
IMP: 31-1-816, 31-1-818, 31-1-820, MCA

STATEMENT OF REASONABLE NECESSITY: The division is proposing NEW RULE VIII because in conducting examinations, it has found one company that sold every repossessed motor vehicle to the salvage yard for $25. While it may be commercially reasonable in some cases to dispose of titled personal property in this manner, it is unlikely that every vehicle was worth only the salvage value. Title lenders must refund the surplus received after sale to the borrower after the title loan and all expenses related to it have been repaid. The failure to conduct a repossession sale in a commercially reasonable manner could deprive the borrower of surplus funds due after repossession. The concept of commercially reasonable manner comes from the Uniform Commercial Code 30-9A-610, MCA, which is applicable to all commercial transactions involving sale of property after default, including those under the Act. All sales of repossessed property are required to be conducted in a commercially reasonable manner. The division believes that it is necessary to have this directly applicable by rule in order to remind our licensees that they must comply with the Uniform Commercial Code in a title loan transaction as well as to protect borrowers who may be entitled to have the surplus amount returned to them after the titled personal property has been repossessed and sold.

NEW RULE IX UNFAIR PRACTICE (1) It is an unfair practice to renew a title loan if the borrower has failed to make a payment toward either principal or interest for 60 days.

AUTH: 31-1-802, MCA
IMP: 31-1-825, MCA

STATEMENT OF REASONABLE NECESSITY: The division is proposing NEW RULE IX because in conducting examinations, the division has found that some title lenders will let loans continue to accrue interest and penalties month after month when the borrower has not made a payment and it is clear that the borrower is unable to make a payment. If the borrower has not been able to make any payment toward either principal or interest for 60 days, they cannot repay the loan and the loan should be placed into default and the collateral repossessed. Renewing a loan on which no payment has been made for 60 days means the

lender is accruing more interest and fees that will ultimately be taken out of the proceeds of sale. If the loan is called after 60 days, it is at least possible that the borrower may be entitled to some of the proceeds of the sale of the titled personal property.

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 Kelly O'Sullivan, Legal Counsel, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, Montana 59620-0546; faxed to the office at (406) 841-2930; e-mailed to kosullivan@mt.gov, and must be received no later than 5:00 p.m., June 6, 2008.

6. Kelly O'Sullivan, Legal Counsel, Division of Banking and Financial Institutions, has been designated to preside over and conduct the hearing.

7. 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.

8. The Division of Banking and Financial Institutions maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this division. Persons who wish to have their name added to the mailing list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding division rulemaking actions. Such written requests may be mailed or delivered to Christopher Romano, Division of Banking and Financial Institutions, 301 S. Park, Ste. 316, P.O. Box 200546, Helena, Montana 59620-0546; faxed to the office at (406) 841-2930; e-mailed to cromano@mt.gov; 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. Senator Larry Jent, the primary bill sponsor of SB 74 (2007), was notified on July 27, 2007, by U.S. mail.

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

By: /s/ Denise Pizzini
Denise Pizzini, Rule Reviewer
Department of Administration

Certified to the Secretary of State April 28, 2008.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the proposed adoption of NEW RULES I through IV regarding mortgage lender surety bond, branch office licensing, supervision of branch offices and loan officers, and responsibility for acts of agents	))))))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION

TO: All Concerned Persons

1. On May 29, 2008, at 9:00 a.m., a public hearing will be held in Room 342 of the Park Avenue Building, 301 S. Park, Helena, Montana, to consider the proposed adoption of the above-stated rules.

2. The Department of Administration, Division of Banking and Financial Institutions, 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 Division of Banking and Financial Institutions no later than 5:00 p.m. on May 22, 2008, to advise us of the nature of the accommodation that you need. Please contact Christopher Romano, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, Montana 59620-0546; telephone (406) 841-2928; TDD (406) 444-1421; facsimile (406) 841-2930; e-mail to cromano@mt.gov.

3. The proposed new rules provide as follows:

NEW RULE I MORTGAGE LENDER SURETY BOND (1) Every applicant for a mortgage lender license shall file with the department a bond as specified in (3) during the period of licensure. Each surety bond shall be subject to the filing of a claim for acts during the term of the bond for a period of five years.

(2) In no less than five years after a person ceases to be licensed as a mortgage lender, the writer of the surety bond may apply to the commissioner on forms approved by the department for release of the surety bond. Unless the commissioner determines that claims are pending against the person for violation of the Montana Residential Mortgage Lender Licensing Act, the commissioner shall release the surety bond.

(3) A surety bond shall be in a form and on terms approved by the commissioner in the minimum sum of $50,000 for each principal office and $5,000 for each branch office authorized to do business in this state. The surety bond shall be renewed or replaced annually.

AUTH: 32-10-303, 32-10-502, MCA
IMP: 32-10-203, 32-10-207, 32-10-208, 32-10-209, 32-10-303, 32-10-502, MCA

STATEMENT OF REASONABLE NECESSITY: The Residential Mortgage Lender Licensing Act (Act) requires all licensees to continuously maintain a surety bond, which may used for the recovery of expenses, fines, and fees levied by the department for losses or damages incurred by borrowers or consumers as a result of the licensee's noncompliance with the Act. The division believes that the proposed amount of $50,000 for the mortgage lender entity principal office license and $5,000 for each branch office license will be sufficient to meet the requirements set forth by 32-10-303(1)(b), MCA. The division chose these amounts because it was concerned that the amount should be large enough to protect borrowers from the actions of mortgage lenders that result in harm to borrowers. Yet, at the same time, the division is aware that Montana is a small market and if the division sets the bond requirement too high, some lenders will choose not to do business in Montana instead of complying with the bonding requirement. The division seeks to protect borrowers, but does not want to stifle business in this state by setting unrealistically high bonding requirements. The division believes that this rule accomplishes both objectives.

The division proposes to have the bond remain in effect for five years after the period of licensure. This is because it may take several years after a mortgage lender closes its doors for actions against the lender to proceed through the court system. Borrowers are entitled to be reimbursed for the harm caused to them by the lender while it was in existence. The division chose five years because that is the period of time for which mortgage lenders must retain their records in 32-10-310, MCA.

The division estimates that there will be 125 mortgage lenders, including 350 branches that will apply for licenses on or before October 1, 2008. The cost of maintaining a surety bond will be at the expense of the licensees. This cost will be established by insurance companies that will offer this product. The estimated cost of the surety bond is not known to the division.

NEW RULE II BRANCH OFFICE LICENSING (1) In the event a mortgage lender desires to operate a branch office as defined in 32-10-103, MCA, the licensee must submit an application and the licensing fee specified in 32-10-202, MCA, and provide the following information on the original license application form, or upon an amendment to the original application, at least 30 days before the branch commences operation:

(a) the physical address of each branch office, the mailing address if different, and the telephone number, e-mail address, and facsimile number;

(b) the information required pursuant to this rule regarding the branch supervisor who will supervise the activities of loan officers employed by the branch to ensure compliance with all applicable rules and regulations; and

(c) upon satisfaction of the requirements listed in (1)(a) and (b), a separate branch office license will be issued by the commissioner for posting in the branch office location as allowed by 32-10-203, MCA.

AUTH: 32-10-203, 32-10-502, MCA

IMP: 32-10-103, 32-10-202, 32-10-203, 32-10-207, 32-10-208, 32-10-301, 32-10-401, 32-10-402, 32-10-403, 32-10-404, 32-10-405, 32-10-406, 32-10-501, 32-10-512, MCA

STATEMENT OF REASONABLE NECESSITY: The division is proposing New Rule II to make it clear that each branch office must be licensed separately as required by 32-10-203, MCA. The division will require the applicant to provide the physical address, phone number, e-mail address, and facsimile number of each branch office in addition to the mailing address of the branch. This is because under the Montana Mortgage Broker and Loan Originator Licensing Act, the division has seen mortgage broker entities attempt to license an individual working out of their home as a branch, or claim that a hotel room is a branch location. The division seeks to ensure that licensees are providing actual branch locations.

The division is seeking to require the licensee to properly supervise each branch location for two reasons. First, under the Act the licensee is responsible for the actions of its employees at all of its locations including branches. Second, the division will not allow net branching in Montana. Net branching is an arrangement whereby a mortgage lender takes on an existing separate mortgage company and allows that separate entity to originate loans under the licensee's license. The Act requires a license to comply with all the provisions of Title 31, chapter 10, MCA, directly and indirectly through its employees. If a mortgage lender wants to establish a branch, it may do so as long as it maintains control and responsibility for the actions of its employees at that branch. A licensee may not disclaim responsibility for the actions of the employees or independent contractors at one of its branches.

This rule has been drafted to require the branch applicant to comply with the rule in order to receive a separate branch office license which must be posted in the branch office location.

NEW RULE III SUPERVISION OF OFFICES AND LOAN OFFICERS

(1) For purposes of this rule:

(a) "Loan officer employed by the licensee" means every individual operating under the authority of the licensee's license, regardless of whether the individual is an employee of the licensee or purports to act as an agent or independent contractor for the licensee.

(b) "Supervisor" means a partner, officer, branch manager, or other experienced person with management or supervisory responsibilities who is an employee of the licensee.

(2) Each principal office and branch office shall be supervised by the licensee to ensure compliance with the Montana Residential Mortgage Lender Licensing Act. The licensee must diligently supervise and control every loan officer of the licensee who is or should be licensed in Montana.

(3) To diligently supervise and control a loan officer employed by the licensee, the licensee shall:

(a) establish, maintain, and enforce written procedures to supervise the activities of loan officers employed by the licensee and other associated persons that are subject to its supervision and to supervise the operation of each office of the licensee transacting loans with Montana consumers. The procedures shall be

reasonably designed to achieve compliance with applicable Montana and federal lending laws and rules, including the Montana Residential Mortgage Lender Licensing Act;

(b) review the activities of each office transacting loans with Montana consumers, which shall include the examination of open and closed customer loan files. The reviews shall be reasonably designed to assist in detecting violations of, preventing violations of, and achieving compliance with applicable mortgage lending laws and rules, as well as detecting and preventing irregularities or abuses. Each mortgage lender shall retain a record of the dates and findings of each review. The duties of this rule may be delegated to a qualified supervisor;

(c) provide a copy of the procedures required by this rule to every loan officer employed by the licensee in printed or electronic format;

(d) ensure that loan officers obtain training to address deficiencies identified by the licensee in loan file and operations reviews; and

(e) establish procedures for handling consumer complaints and develop procedures to identify the types of consumer complaints that must be forwarded to a supervisor for review. Complaints that must be forwarded to a supervisor include complaints about material changes in loan terms, fees, or expenses, or material omissions about loan terms, fees, or expenses. The licensee shall also develop procedures for investigating, responding to, and keeping a record of complaints forwarded to a supervisor.

(4) In establishing the procedures in (2) and in determining the frequency of office reviews, the licensee shall consider the following:

(a) the number of loan transactions made by the licensee;

(b) the number of office locations transacting loans with Montana consumers;

(c) the number of affiliated persons assigned to each location;

(d) the nature and complexity of the loan transactions that the licensee predominantly makes;

(e) the number of loan officers assigned to a location;

(f) the number of loan officers assigned to the supervision of an individual supervisor; and

(g) the results of previous office reviews.

(5) In establishing the procedures in (2) and in determining the number of files from each loan officer to be reviewed, the licensee shall consider the following:

(a) the knowledge and years of lending experience of a loan officer;

(b) the disciplinary history of and the number of complaints received about a loan officer;

(c) the experience and level of sophistication of the borrowers of a loan officer, if specific segments of society are targeted as customers by the loan officer or licensee;

(d) the nature and complexity of the loan transactions that the licensee predominantly makes; and

(e) the results of previous file reviews for a particular loan officer.

(6) The licensee is subject to disciplinary action for any violation of the Montana Residential Mortgage Lender Licensing Act or corresponding rules committed by a loan officer employed by the licensee, whether or not that accountability is documented in any written agreement.

AUTH: 32-10-207, 32-10-502, MCA
IMP: 32-10-103, 32-10-202, 32-10-203, 32-10-207, 32-10-208, 32-10-301, 32-10-401, 32-10-402, 32-10-403, 32-10-404, 32-10-405, 32-10-406, 32-10-501, 32-10-512, MCA

STATEMENT OF REASONABLE NECESSITY: The division is proposing New Rule III to ensure that licensees have in place an individual who is responsible for supervising each branch office. Since mortgage lending is a complex area and lenders are responsible for compliance with state and federal laws, it is incumbent on the lenders to have in place procedures regarding supervision of its employees and independent contractors. Those policies should include actual reviews of loan files for compliance with all applicable laws, rules, and regulations. If deficiencies are found, there must be procedures in place to ensure that deficiencies are corrected and that loan officers are adequately trained. The procedures should also be in place for handling customer complaints and determining which customer complaints should be forwarded to supervisors for investigation, response, and recording. The licensee is at liberty to establish the procedures that work for them as long as they take into account the factors listed in (3) and (4) of the rule. The last section of the rule is a restatement of 32-10-501, MCA, which allows the division to impose civil penalties against the licensee and suspend or revoke the licensee's license for actions directly by the licensee or indirectly through an officer, director, partner, trustee, employee, or representative. The Act licenses only entities, but makes the entity responsible for the actions of its officers, directors, partners, trustees, employees, and representatives. Without strong internal controls in place, licensees will not be able to adequately supervise their employees in order to remain compliant under the Act.

NEW RULE IV RESPONSIBILITY FOR ACTS OF AGENTS (1) A licensee is responsible for the acts and omissions of its officers, directors, partners, trustees, employees, and representatives, including independent contractors in the conduct of the licensee's business.

AUTH: 32-10-207, 32-10-502, MCA
IMP: 32-10-103, 32-10-207, 32-10-208, 32-10-401, 32-10-402, 32-10-403, 32-10-404, 32-10-406, 32-10-512, MCA

STATEMENT OF REASONABLE NECESSITY: The division is proposing New Rule IV to ensure that licensees understand that they are responsible for the acts of their agents. Section 32-10-501, MCA, allows the division to impose civil penalties against the licensee and suspend or revoke the licensee's license for actions directly by the licensee or indirectly through an officer, director, partner, trustee, employee, or representative. The Act licenses only entities, but make the entity responsible for the actions of its officers, directors, partners, trustees, employees, and representatives. Section 32-10-207, MCA, makes the entity responsible for acts of independent contractors as well as employees. It is common in the mortgage lending brokering industries to see companies hire independent

contractors because of the tax and benefit advantages of independent contractors to the entity. Regardless of status of the individual as an employee or independent contractor, the entity is still responsible for his acts and omissions under the Act.

4. Concerned persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Kelly O'Sullivan, Legal Counsel, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, Montana 59620-0546; faxed to the office at (406) 841-2930; e-mailed to kosullivan@mt.gov, and must be received no later than 5:00 p.m., June 6, 2008.

5. Kelly O'Sullivan, Legal Counsel, Division of Banking and Financial Institutions, has been designated to preside over and conduct the hearing.

6. 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.

7. The Division of Banking and Financial Institutions maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this division. Persons who wish to have their name added to the mailing list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding division rulemaking actions. Such written requests may be mailed or delivered to Christopher Romano, Division of Banking and Financial Institutions, 301 S. Park, Ste. 316, P.O. Box 200546, Helena, Montana 59620-0546; faxed to the office at (406) 841-2930; e-mailed to cromano@mt.gov; or may be made by completing a request form at any rules hearing held by the department.

8. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled. Representative Walter McNutt, the primary bill sponsor of HB 69 (2007), was notified on July 27, 2007, by U.S. mail.

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

By: /s/ Denise Pizzini
Denise Pizzini, Rule Reviewer
Department of Administration

Certified to the Secretary of State April 28, 2008.

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

In the matter of the amendment of ARM 6.6.4201, 6.6.4202, 6.6.4203, 6.6.4204, 6.6.4205, and 6.6.4206 pertaining to Continuing Education Program for Insurance Producers, Adjusters, and Consultants	))))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On May 29, 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, 840 Helena Ave., Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The department 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., May 22, 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:

6.6.4201 SCOPE OF RULES (1) These rules apply to continuing education programs for insurance producers, adjusters, and consultants, and include course content, qualifications of instructors, instructional format, courses and materials, review and approval procedures, application forms, and fees.

AUTH: 33-1-313, 33-17-1206, MCA
IMP: 33-17-1203, 33-17-1204, MCA

6.6.4202 DEFINITIONS For the purposes of this ~~sub-chapter~~ subchapter, the following terms have the following meanings:

(1) through (6) remain the same.

(7) "Licensee" means an individual required to be licensed under Title 33, chapter 17, parts 2, 3, 4, or 5, MCA.

(8) through (10) remain the same.

(11) "Sponsoring organization" means any group(s) or organization(s) and their agent(s) that submit courses for department review and offer or provide approved courses for continuing education credit to allow licensees to meet the requirements of 33-17-1203 and 33-17-1204, MCA, and are responsible for those course offerings, or any individual Montana insurance producer, adjuster, or

consultant who submits a course pursuant to ARM 6.6.4203(14) for department review to allow that licensee to meet the requirements of 33-17-1203 and 33-17-1204, MCA.

AUTH: 33-1-313, 33-17-1206, MCA
IMP: 33-17-1203, 33-17-1204, MCA

6.6.4203 COURSE SUBMISSIONS (1) and (1)(a) remain the same.

(b) the course enhances the ability of a ~~producer~~ licensee to provide insurance services to the public effectively;

(c) through (13) remain the same.

(14) An individual Montana insurance producer, adjuster, or consultant who must meet the requirement of 33-17-1203, MCA, who submits a course for review and approval to meet that requirement:

(a) and (b) remain the same.

(15) Any credit hours assigned to a course submitted as described in (14)~~,~~ are available only to the producer, adjuster, or consultant who made the course submission for that one offering.

AUTH: 33-1-313, 33-17-1206, MCA
IMP: 33-17-1204, MCA

6.6.4204 QUALIFICATIONS FOR INSTRUCTORS (1) through (2) remain the same.

(a) has had an insurance producer's, adjuster's, or consultant's license suspended or revoked in Montana or any other state;

(b) and (c) remain the same.

(d) has been found to have violated a rule, subpoena, or order of the commissioner or by any regulatory authority in any other state, during a contested case proceeding within the preceding two years.

(e) through (5) remain the same.

AUTH: 33-1-313, 33-17-1206, MCA
IMP: 33-17-1203, 33-17-1204, MCA

6.6.4205 EXAMINATIONS (1) and (2) remain the same.

(3) The sponsoring organization shall administer, monitor, grade, and record the results of the test.

(4) The sponsoring organization shall retain completed tests for a period of not less than 12 months, and the tests must not be returned to any licensee.

(5) remains the same.

AUTH: 33-1-313, 33-17-1206, MCA
IMP: 33-17-1204, MCA

6.6.4206 CERTIFICATION REQUIREMENTS FOR LICENSEES AND LIMIT ON CREDIT FOR COURSES REPEATED (1) remains the same.

(2) Producers, adjusters, and consultants may not earn credit for any courses repeated as either student or instructor within a two-year period.

AUTH: 33-1-313, 33-17-1206, MCA
IMP: 33-17-1203, 33-17-1204, MCA

4. STATEMENT OF REASONABLE NECESSITY: House Bill 300 (HB 300) was enacted in 2005 and required insurance adjusters to complete certain insurance continuing education requirements. These amendments add insurance adjusters to the continuing education program rules and are reasonably necessary to conform the rules to the statutes.

5. 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: Jennifer L. Massman, Staff Attorney, State Auditor's Office, 840 Helena Ave., Helena, Montana 59601; telephone (406) 444-5223; fax (406) 444-3497; or e-mail jmassman@mt.gov, and must be received no later than 5:00 p.m., June 6, 2008.

6. Jennifer Massman, Staff Attorney, has been designated to preside over and conduct this hearing.

7. 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.

8. 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.

9. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled. The bill sponsor was notified by letter dated April 11, 2008, sent postage prepaid by the USPS.

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

/s/ Janice S. VanRiper
Deputy State Auditor
State Auditor's Office

Certified to the Secretary of State April 28, 2008.

BEFORE THE DEPARTMENT OF COMMERCE
OF THE STATE OF MONTANA

In the matter of the proposed adoption of New Rule I pertaining to administration of Treasure State Endowment (TSEP) grants awarded by the 2007 Legislature	)))))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION

TO: All Concerned Persons

1. On May 29, 2008, at 1:30 p.m, the Department of Commerce will hold a public hearing in Room 226 of the Park Avenue Building, 301 South Park Avenue, at Helena, Montana, to consider the proposed adoption of the above-stated rule.

2. The Department of Commerce will make reasonable accommodations for persons with disabilities who wish to participate in this 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., May 22, 2008, to advise us of the nature of the accommodation that you need. Please contact Penney Clark, Community Development Division, Department of Commerce, 301 South Park Avenue, P.O. Box 200523, Helena, Montana 59620-0523; telephone (406) 841-2770; TDD (406) 841-2702; fax (406) 841-2771; or e-mail PClark@mt.gov.

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

NEW RULE I INCORPORATION BY REFERENCE OF RULES FOR THE ADMINISTRATION OF TREASURE STATE ENDOWMENT GRANTS AWARDED BY THE 2007 LEGISLATURE (1) The Department of Commerce adopts and incorporates by reference the Montana Treasure State Endowment Program Project Administration Manual, dated May 2007, published by it as rules for the administration of TSEP grants awarded by the 2007 Legislature.

(2) The rules incorporated by reference in (1) relate to the following:

(a) project start-up requirements;
(b) environmental requirements;
(c) procurement requirements;
(d) financial management;
(e) protection of civil rights;
(f) labor requirements;
(g) property acquisition;
(h) public facilities construction management;
(i) involving the public;
(j) project monitoring;
(k) project closeout;
(l) preliminary engineering grants; and
(m) emergency grants.

(3) Copies of the regulation adopted by reference in (1) may be obtained from the Department of Commerce, Community Development Division, 301 S. Park Avenue, P.O. Box 200523, Helena, Montana 59620-0523, or viewed on the department's web site at http://comdev.mt.gov/CDD_TSEP_AM.asp

AUTH: 90-6-710, MCA
IMP: 90-6-710, MCA

REASON: It is reasonably necessary to adopt this rule because local government entities must be made aware of the state statutory and regulatory requirements, and the department's requirements, for obtaining the TSEP funds that have been awarded by the 2007 Legislature, administering the funds during the construction of their projects, and managing their construction projects in general. The rule is also reasonably necessary to set out the requirements for administering preliminary engineering and emergency grant funds appropriated to and awarded by the department.

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: Community Development Division, Department of Commerce, 301 South Park Avenue, P.O. Box 200523, Helena, Montana 59620-0523; telephone (406) 841-2770; fax (406) 841-2771; or e-mail jedgcomb@mt.gov, and must be received no later than 5:00 p.m., June 6, 2008.

5. Jim Edgcomb, TSEP Program Manager, Department of Commerce, has been designated to preside over and conduct this hearing.

6. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the Department of Commerce, 301 South Park Avenue, P.O. Box 200501, Helena, Montana 59620-0501, by fax to (406) 841-2701, by e-mail to lgregg@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 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.

/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 April 28, 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, 24.159.1229 foreign educated applicants for RN licensure requirements, 24.159.1404, 24.159.1405, 24.159.1411 through 24.159.1414, 24.159.1416, 24.159.1418, 24.159.1427, 24.159.1428, 24.159.1430, 24.159.1431, 24.159.1436, 24.159.1443, 24.159.1461 through 24.159.1464, 24.159.1466 through 24.159.1468, 24.159.1470, 24.159.1475, 24.159.1480, 24.159.1485, 24.159.1490, adoption of NEW RULE I, and repeal of 24.159.1401, 24.159.1415, 24.159.1417, 24.159.1426, 24.159.1442, and 24.159.1465 pertaining to APRNs	)))))))))))))))))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT, ADOPTION, AND REPEAL

TO: All Concerned Persons

1. On May 30, 2008, at 1:00 p.m., a public hearing will be held in room B-07, 301 South Park Avenue, Helena, Montana to consider the proposed amendment, adoption, and repeal 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 May 23, 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 update certain rules to address current advanced nursing trends, practices, technology, terminology, and education. The proposed rule amendments neither redefine nor expand the legislatively established scope of practice for the advanced practice registered nurse (APRN) per 37-8-102 and 37-8-409, MCA. Instead, the amendments seek to identify and clarify the existing standards of practice for APRNs in Montana to ensure protection of both the public and licensees. The rule amendments clarify that the APRN's scope and standard of practice and quality assurance criteria are established and updated by the board-approved national professional organization identified by the APRN.

The majority of the proposed amendments to the APRN rules are technical and nonsubstantive in nature, such as renumbering, correcting syntax, spelling, and punctuation, improving readability through reorganization and streamlining, and eliminating redundancies. A number of the original APRN rules were drawn verbatim or adapted from the registered nursing (RN) rules and still include numerous inapplicable provisions since 1991. Therefore, the amendments are reasonable and necessary to distinguish APRN practice standards from those of the RN and to clarify the special prerequisites to APRN licensure and license renewal. Authority and implementation cites are being amended throughout to accurately reflect all statutes implemented through the rule and to provide the complete sources of the board's rulemaking authority. 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) "Accrediting organization" means a professional organization, which has been approved by the board, that establishes standards and criteria for continuing education programs in nursing, advanced nursing, medicine, and other health care specialties.

(2) "Advanced practice registered nurse" or "APRN" means a registered nurse licensed by the board to practice as an advanced practice registered nurse pursuant to 37-8-202, MCA, and ARM 24.159.1414. Four types of APRNs are recognized by Montana law:

(a) nurse practitioner (NP);

(b) certified nurse midwife (CNM);

(c) certified registered nurse anesthetist (CRNA); and

(d) clinical nurse specialist (CNS).

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

(4) "Certifying body" means a national certifying organization that has been approved by the board to use psychometrically sound and legally defensible examinations for certification of APRN specialties.

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

(6) "Contact hour" means the time period of instruction determined by the continuing education provider and indicated on the participant's certificate of completion. One academic semester credit equals 15 contact hours; one academic quarter credit equals 12.5 contact hours.

(7) "Continuing education" means a planned learning activity that occurs in a classroom, on-line, audio-conference, video-conference, or as independent study. All continuing education must be approved by an accrediting organization or provided by an academic institution of higher learning, an APRN certifying body, or a continuing education accrediting organization.

(8) "Department" means the Department of Labor and Industry as provided for in Title 2, chapter 15, part 17, MCA.

(9) "Drug" means a substance defined by 37-7-101, MCA.

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

(11) "National professional organization" means a board-recognized professional nursing membership organization that delineates scope of practice standards and guidelines for an APRN specialty.

(4) through (5)(e) remain the same but are renumbered (12) through (13)(e).

(14) "Peer review" means the process of evaluating the practice of nursing, conducted by a peer-reviewer.

(15) "Peer-reviewer" means a licensed APRN or physician whose credentials and practice encompass the APRN's scope and type of practice setting. The peer-reviewer may be a consultant working for a professional peer review organization.

~~(6)~~(16) "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.

(17) "Preceptorship" means practical training in the specialized area of APRN practice for which the applicant seeks licensure by the board.

(18) "Prescribing" means specifying advanced nursing intervention(s) intended to implement the defined strategy of care.

(19) "Prescription" means an order for a drug, as defined by 37-7-101, MCA, or any medicine, devices, or treatments.

~~(7)~~(20) "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 (13) remain the same but are renumbered (21) through (26).

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 incorporate the APRN definitions from ARM 24.159.1401 into the general definitions rule. The board concluded that maintaining definitions within a single rule eliminates redundancy and lessens confusion among readers.

The board is adding the definition of "contact hour" as used in NEW RULE I and other amendments concerning the requirements of academic instruction and continuing education (CE) for APRNs. The board is adding (11) to define "national professional organization" in amendments in this notice regarding APRN practice standards and quality assurance criteria. The definitions of "peer" and "physician reviewer" from ARM 24.159.1401 are combined into "peer reviewer" to eliminate confusion and redundancy. A definition for "preceptorship" is added to clarify the practical training educational requirement for APRN licensure in ARM 24.159.1414.

24.159.1229 FOREIGN EDUCATED APPLICANTS FOR REGISTERED NURSE LICENSURE REQUIREMENTS (1) For purposes of this rule, "foreign educated" applicants are those individuals whose nursing education credential was conferred by an educational institution located outside the United States or its jurisdictions. The term includes~~,~~ but is not limited to~~,~~ applicants who studied nursing in the United States through either a distance learning program offered by or through

a foreign educational institution or whose nursing education involved a collaboration between a foreign educational institution and an educational institution in the United States, so long as the credential was conferred by the foreign educational institution.

(2) and (3) remain the same.

(4) The provisions of (2)(c)(i) and (3)~~(d)~~(e) do not apply if the foreign educated applicant graduated from a nursing program at a college, university, or professional nurses' training school in one of the following countries:

(a) through (g) remain the same.

AUTH: 37-1-131, 37-8-202, MCA
IMP: 37-1-131, 37-8-101, 37-8-405, 37-8-415, MCA

REASON: The board is amending (4) to correct a typographical error made when this rule was adopted in September 2005. The board always intended to require all foreign educated nurses to take an English proficiency examination prior to licensure, unless a nurse was educated in certain English-speaking countries. This requirement was correctly implemented in ARM 24.159.1029 for foreign educated practical nurses in 2005, but was incorrectly set forth in this rule. Due to the inadvertent error, applicants educated in certain English-speaking countries must complete an English proficiency examination but are exempt from the requirement that CGFNS conduct a course-by-course evaluation of the foreign nurses' education credentials and compare the foreign education with U.S. nursing education standards. The board did not intend for either of these consequences to occur and is amending this rule to correct the error.

24.159.1404 STANDARDS RELATED TO THE ADVANCED PRACTICE REGISTERED NURSE'S RESPONSIBILITY TO APPLY THE NURSING PROCESS

(1) The APRN shall:

(a) perform and document ~~thorough and~~ comprehensive~~, or focused assessment of clients~~ assessments, as appropriate to the client or client group, by:

(i) collecting, synthesizing, and analyzing data, ~~utilizing~~ using nursing principles and nursing process at an advanced level; and

(ii) ~~utilizing~~ using evidence-based research data in ~~practice~~ clinical decision-making.~~;~~

(b) establish and document an appropriate diagnosis, treatment plan, and strategy of care based on the individual assessment~~, including~~ that addresses:

(i) ~~individual~~ client needs;

(ii) remains the same.

(iii) the need for collaborations when appropriate;

(iv) method by which treatment will be evaluated; and

(v) plan of action for appropriate follow-up or referral to other health care providers.~~;~~

(c) provide and document expert guidance and education when working with clients, families, populations, and other members of the health team; and

~~(d) manage and document identified aspects of the client's health status within the APRN's competencies, scope and practice; and~~

~~(e)~~(d) document ~~appropriate~~ referrals when a client's health status and needs exceed the APRN's certification and competencies ~~and/or scope of practice~~.

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

REASON: The board is amending (1)(a) to distinguish an APRN's "comprehensive" nursing assessment from a "focused" nursing assessment, which is a more limited client condition assessment performed by an LPN. The board is amending (1)(b)(v) to identify referrals to other health care providers as part of an APRN plan of action.

24.159.1405 STANDARDS RELATED TO THE ADVANCED PRACTICE REGISTERED NURSE'S RESPONSIBILITIES AS A MEMBER OF THE NURSING PROFESSION (1) The APRN shall:

(a) adhere to the ~~same~~ standards ~~as those required~~ for the RN in ARM 24.159.1205 ~~for the registered nurse~~;

(b) abide by the current standards and scope of practice established by a national professional organization for the APRN's specialty area of practice as identified by the APRN;

~~(b)~~(c) possess the ~~requisite~~ knowledge, ~~judgement~~ judgment, and skill to safely and competently perform any APRN function ~~that the APRN undertakes~~;

~~(c)~~(d) ~~have on file in the board office:~~ submit documentation to the board of the APRN's quality assurance plan, as set forth by ARM 24.159.1466; and

~~(i) method of quality assurance used to evaluate the practice of the APRN; and~~

~~(ii) a referral process including licensed physicians and a method to document referral in the client records;~~

~~(d) immediately file with the board any proposed change in the method for referral, client record documentation, or quality assurance method. Any change will be subject to approval by the board;~~

~~(e) in even-numbered years, submit a declaration made under penalty of perjury to the board office documenting the following:~~

~~(i) quality assurance plan and reviewer(s);~~

~~(ii) acknowledgement of scope of practice;~~

~~(iii) continuing education; and~~

~~(iv) practice site; and~~

~~(f)~~(e) submit to the board ~~proof~~ verification of recertification by the national certifying body within 30 days of its expiration.

AUTH: 37-1-131, 37-8-202, MCA
IMP: 37-1-131, 37-8-202, 37-8-409, MCA

REASON: It is reasonable and necessary to amend this rule to clarify that the board will hold each APRN to the standards and scope of practice as set by a board approved national professional organization for the APRN's specialty area of practice. The board acknowledges that these organizations have the resources and expertise to identify and stay current with evolving APRN practice issues and are

best suited to set APRN scope and practice standards and quality assurance criteria. The board is deleting the APRN quality assurance provisions as adequately set forth at ARM 24.159.1466.

24.159.1411 TEMPORARY PERMITS FOR GRADUATE ~~ADVANCED PRACTICE REGISTERED NURSES~~ APRNS (1) To qualify for a temporary permit, the ~~graduate APRN~~ applicant must hold a Montana RN license and provide the board with documentation of acceptance ~~have applied for and been accepted~~ for the first certifying ~~exam~~ examination following completion of an APRN program.

~~(a) Proof of acceptance to the certifying examination will be a~~ A copy of the examination ~~registration~~ authorization sent to the applicant ~~upon acceptance of the examination application~~ by the national certifying body serves as documentation of acceptance.

(2) If the graduate passes the certifying examination, the temporary permit ~~shall remain~~ remains valid until the board grants ~~full~~ APRN ~~recognition~~ licensure.

(3) If the graduate does not pass the certifying examination, privileges granted by the temporary practice permit are voided ~~and the temporary practice permit shall be returned to the board office immediately~~. The graduate shall notify the board of the examination results and return the temporary practice permit within five days of receipt of examination results.

~~(3) The temporary permit holder shall immediately notify the board of the results of the certifying examination.~~ Failure to notify the board constitutes unprofessional conduct and may be a basis for proposed disciplinary action or license denial.

(4) If the graduate fails to take the scheduled examination, privileges granted by the temporary practice permit are voided and the graduate must notify the board and return the temporary practice permit to the board office immediately. Failure to notify the board within five days constitutes unprofessional conduct and may be a basis for disciplinary action or license denial.

~~(4)~~(5) The graduate APRN working with a temporary APRN permit~~,~~ must have a consultant. The consultant must possess an unencumbered license and be ~~recognized as a Montana advanced practice registered nurse,~~ either an APRN or a physician whose practice encompasses the scope of the graduate ~~APRN~~ APRN's practice. The consultant ~~and~~ must be available to and directly supervise the graduate APRN at all times.

AUTH: ~~37-1-305,~~ 37-8-202, 37-8-409, MCA
IMP: ~~37-1-305, 37-1-319,~~ 37-8-202, 37-8-409, MCA

REASON: It is reasonably necessary to amend this rule to clarify that a graduate from a board-approved APRN certification program applying for a temporary APRN permit must possess a Montana RN license. While not a new requirement, the amendment is necessary to address constant confusion among applicants. The board is amending the rule to require applicants who fail to sit for a certifying APRN examination to notify the board and return the temporary practice permit or face potential disciplinary action. To address ongoing questions from applicants, the

board is amending (5) to clarify that a graduate APRN with a temporary permit must practice under the direct supervision of a consultant.

24.159.1412 APPLICATION FOR ~~RECOGNITION~~ INITIAL APRN LICENSURE ~~(1) Upon application a person licensed under the provisions of 37-8-406, MCA, and meeting the requirements set forth under the educational requirements and other qualifications applicable to advanced practice registered nursing shall be granted recognition and shall have the registered nurse renewal certificate also designate the licensee's area of advanced practice.~~

~~(2)~~(1) The applicant for APRN licensure ~~following~~ must ~~be submitted with the appropriate advanced practice registered nurse application:~~ possess a current Montana RN license.

(2) The applicant must submit the APRN application form provided by the department and the nonrefundable fee.

~~(a) completed application for recognition form provided by the board. The application will be kept on file for one year. If the applicant fails to complete the requirements for application within one year, a new application will be required;~~

(3) The applicant shall request that

~~(b)~~ an official transcript ~~of the advanced practice registered nurse~~ be sent to the board directly from the applicant's APRN program~~;~~.

~~(c) certificate of program completion;~~

~~(d)~~(4) The applicant shall submit evidence of preceptorship (if not shown on transcript)~~;~~.

~~(e)~~(5) The applicant shall submit a copy of current national certification in ~~advanced practice registered nurse~~ APRN specialty~~;~~.

~~(f) current RN licensure in Montana; and~~

~~(g) payment of nonrefundable fee.~~

~~(3) Renewal of advanced practice registered nurse is concurrent with registered nurse licensure renewal.~~

(6) The board shall keep the application on file for one year. If the applicant fails to complete the requirements for application within one year, a new application must be submitted.

(7) When the board approves a licensed RN's application for APRN licensure, the RN will be issued an APRN license in addition to the applicant's current RN license.

(8) Within one month of initiating APRN practice, the APRN must submit to the board a quality assurance plan, as outlined by ARM 24.159.1466.

AUTH: 37-1-131, 37-8-202, MCA
IMP: 37-1-131, 37-1-134, 37-8-202, 37-8-409, MCA

REASON: The board determined it is reasonably necessary to amend this rule to clarify that an applicant for APRN licensure must possess a Montana RN license and, upon board approval, a separate APRN license will be issued. This licensure requirement is not new, but the amendment will address confusion among applicants and licensees. To achieve consistency among all nursing applications, the board is amending the rules throughout to specify that the board must receive official

transcripts directly from an APRN education program. The board is adding (8) to notify newly licensed APRNs to submit a quality assurance plan within one month of licensure per the amendments to ARM 24.159.1466.

24.159.1413 ADVANCED PRACTICE NURSING TITLE (1) Only a licensed RN ~~person~~ holding ~~approval by the board as an advanced practice registered nurse~~ a current Montana APRN license has ~~shall have~~ the right to use the title of APRN and the appropriate title of the specialties of nurse practitioner (NP), certified nurse midwife (CNM), certified registered nurse anesthetist (CRNA), or clinical nurse specialist (CNS)~~., provided that the registered nurse:~~

~~(a) holds a current license to practice professional nursing in the state of Montana;~~

~~(b) has submitted application with supporting credentials for advanced practice nursing title and application has been approved by the board;~~

~~(c) pays appropriate application and annual renewal fees; and~~

~~(d) holds an endorsement on the professional nursing license which recognizes the advanced practice.~~

(2) An APRN ~~Advanced practice registered nurses who are recognized~~ licensed in ~~the state of~~ Montana may only practice ~~as an advanced practice registered nurse~~ in the specialized clinical area ~~of specialty practice~~ in which ~~they have~~ the APRN has current national certification~~. according to the scope, standards, or description of practice as defined by the following certifying bodies:~~

~~(a) American Academy of Nurse Practitioners;~~

~~(b) American Association of Critical Care Nurses Certification Corporation;~~

~~(c) American College of Nurse-Midwives;~~

~~(d) American Nurses Credentialing Center;~~

~~(e) Councils on Certification or Recertification of Nurse Anesthetists;~~

~~(f) National Certification Board of Pediatric Nurse Practitioners;~~

~~(g) National Certification Corporation for Obstetric, Gynecologic and Neonatal Nursing Specialties; and~~

~~(h) Oncology Nursing Certification Corporation.~~

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

REASON: The board is amending this rule to correct the nomenclature of the four specialty APRN areas of practice recognized by statute. To more effectively manage the list of board approved certifying bodies, the board decided to maintain the list via the board's web site and is deleting the list from this rule.

24.159.1414 EDUCATIONAL REQUIREMENTS AND ~~OTHER~~ QUALIFICATIONS ~~APPLICABLE TO ADVANCED PRACTICE REGISTERED NURSING~~ FOR APRN (1) Applicants ~~for recognition in the advanced practice registered nurse areas~~ seeking APRN licensure in the specialties of ~~certified nurse-midwife~~ CNM, ~~nurse practitioner~~ NP, ~~and certified registered nurse anesthetist~~ CRNA, or CNS ~~shall~~ must possess the following educational and certification qualifications:

(a) for those licensed in 2008 or after, a master's degree from an APRN program that provided a minimum of 250 hours of didactic instruction and a minimum of 500 hours of preceptorship;

~~(a)~~(b) for those licensed between 1995 and 2007, ~~For original recognition after June 30, 1995,~~ a master's degree from an accredited nursing education program, or a certificate from an accredited post master's program as defined in (1)~~(b)~~(c), which prepares the ~~registered nurse~~ RN for the APRN recognition sought; and, individual certification from a ~~board-approved~~ certifying body. APRNs who completed an accredited APRN program and obtained national certification prior to June 30, 1995, may be recognized in Montana; or

~~(b)~~(c) for those licensed prior to 1995, a degree from ~~Successful completion of~~ a post-basic professional nursing education program in ~~the advanced practice registered nurse area of~~ an APRN specialty with the minimum length of one academic year consisting of at least 250 hours of didactic instruction and 400 hours under a preceptor; and, individual certification from a ~~board-approved~~ certifying body ~~for those recognized prior to July 1, 1995~~.

~~(2) Applicants for recognition as a CNS shall possess a master's degree in nursing from an accredited nursing education program which prepares the nurse for a CNS practice, and individual certification from a board-approved certifying body.~~

~~(3)~~(2) Applicants ~~for recognition~~ seeking APRN licensure as a psychiatric CNS ~~shall~~ must possess a master's degree in nursing from an accredited nursing education program that integrates ~~which prepares the nurse for a psychiatric CNS practice. If the psychiatric CNS plans to utilize medical diagnosis and treatment, proof of education related to medical diagnosing, treating and managing psychiatric clients shall be provided. This education must integrate~~ pharmacology and clinical practice.

~~(4)~~(3) ~~For approval in a subspecialty practice setting, the licensee shall submit documentation of, or a plan for, achievement of competency in the subspecialty area.~~ Applicants seeking APRN licensure must pass the examination of and be certified by a national certifying body in the congruent area of specialization.

~~(5)~~(4) ~~Applicants for recognition in any APRN area are subject to the provisions of 37-8-441, MCA.~~ Contact information for national certifying bodies may be obtained from the board office.

AUTH: 37-1-131, ~~37-1-319,~~ 37-8-202, MCA
IMP: 37-1-131, 37-8-202, 37-8-409, MCA

REASON: The board determined it is reasonably necessary to amend this rule to update the 2008 APRN educational requirements to align with current nationally recognized educational standards for APRN practice preparation. The board is also deleting a reference to a repealed statute in (4).

24.159.1416 GROUNDS FOR DENIAL OF A LICENSE (1) The board may deny an application for APRN licensure ~~A license may be denied~~ for:

(a) remains the same.

(b) failure to ~~pass the licensing examination~~ possess an active Montana RN license;

(c) fraud or misrepresentation in association with the ~~examination application,~~ licensure application~~,~~ or ~~licensure~~ certifying examination; or

(d) unprofessional conduct ~~which~~ that would be grounds for discipline under 37-1-316, MCA~~; or~~.

~~(e) conviction of a felony except as provided in 37-1-203, MCA.~~

AUTH: 37-1-136, 37-8-202, MCA
IMP: 37-1-136, 37-1-137, 37-1-316, MCA

REASON: The board is deleting (1)(e) as misleading since a felony conviction may not always be grounds for license denial per 37-1-201, MCA, et seq.

24.159.1418 LICENSURE BY ENDORSEMENT ~~REQUIREMENTS~~ (1) An applicant for APRN licensure by endorsement ~~in this state~~ shall submit to the board:

(a) ~~a~~ completed ~~application including the following identifiers:~~ applications for both RN and APRN licensure in Montana;

~~(i) a picture, social security number, birthdate, and documentation of name change;~~

~~(ii) the application will be kept on file for one year. If the applicant fails to complete the application requirements for licensure by endorsement within one year, a new application will be required;~~

(b) ~~evidence of meeting the standards for~~ transcript from an advanced nursing education program, which must be sent to the board directly from the program and must indicate date of completion and degree conferred; ~~in this state at the time of original licensure;~~

~~(c) verification of initial licensure by examination with evidence of completion of a board approved program;~~

~~(d)~~(c) verification ~~and documentation~~ of APRN licensure status from all jurisdictions ~~of licensure~~ for preceding two years; and

~~(e) registered nurse applicants shall present evidence of having passed a licensure examination as follows:~~

~~(i) a passing score on a state-constructed licensure examination prior to the use of the state board test pool examination in the original state of licensure; or~~

~~(ii) 350 on each part of the state board test pool examination for registered nurses; or~~

~~(iii) a passing score on a NCLEX-RN examination taken after September 1988; or~~

~~(iv) a minimum scaled score of 1600 on a NCLEX-RN examination taken prior to September 1988;~~

~~(f)~~(d) the required fees for APRN licensure by endorsement as specified ~~in~~ by ARM 24.159.401~~; and~~.

~~(g) if the applicant's education was obtained in a foreign country, the applicant must also meet the conditions of ARM 24.159.1229.~~

(2) The board may, on a case-by-case basis, issue a license to an applicant for APRN licensure by endorsement whose license is under investigation or in

disciplinary action of a board in another jurisdiction or to an applicant who is under investigation for a felony criminal offense.

(3) An applicant for APRN licensure by endorsement in Montana may be granted a temporary APRN permit concurrent with a temporary permit to practice registered nursing, pursuant to ~~the provisions of~~ ARM 24.159.1221.

~~(4) The board shall issue a license based on satisfactory completion of the requirements.~~

AUTH: 37-1-131, 37-8-202, 37-8-409, MCA
IMP: 37-1-131, 37-1-304, 37-8-409, MCA

REASON: It is reasonable and necessary to amend this rule to clarify that an applicant for APRN licensure by endorsement must also obtain a Montana RN license. This requirement is not new, but the amendment is needed to address confusion among applicants and licensees. The board is amending (3) to reduce staff and licensee uncertainty by clarifying that applicants may be granted concurrent APRN and RN temporary permits. The board is deleting provisions on RN licensure by endorsement as they are adequately set forth at ARM 24.159.1228.

24.159.1427 RENEWALS (1) APRN license renewal is concurrent with RN license renewal. Renewal notices will be sent as specified ~~in~~ by ARM 24.101.414. The licensee ~~must fill out~~ shall submit the renewal application ~~and return it to the board~~ by the date set by ARM 24.101.413, together with the renewal fee. ~~Upon receiving the renewal application and fee, the board shall issue a certificate of renewal for the two-year period following the renewal date set by ARM 24.101.413. If the renewal application is postmarked after the renewal deadline, it is subject to the late penalty fee specified in ARM 24.101.403. If the renewal application is postmarked after the renewal deadline, it is subject to the late penalty fee specified in ARM 24.101.403.~~ The renewal application includes affirmation that:

(a) all continuing education requirements have been met during the renewal period; and

(b) the quality assurance plan has been followed and peer review has occurred on a quarterly basis during the renewal period.

(2) If the APRN renewal application is submitted on-line or postmarked after the renewal deadline, the applicant is subject to the late penalty fee specified in ARM 24.101.403.

~~(2)~~(3) The provisions of ARM 24.101.408 apply for APRN license renewal, lapse, termination, and expiration.

~~(3) Renewal notices will be sent to all currently licensed advanced practice registered nurses (APRNs) as specified in ARM 24.101.414. The licensee shall complete the application and return it, the proof of continuing education required by (3)(a)(iii) and (4), and the renewal fee to the board before the date set by ARM 24.101.413. Upon receiving the completed renewal application and fee, the board shall issue a certificate of renewal for the two-year period following the date set by ARM 24.101.413. If the renewal application is postmarked after the renewal deadline, it is subject to the late penalty fee specified in ARM 24.101.403. The provisions of ARM 24.101.408 apply.~~

~~(a) The renewal application includes a declaration made under penalty of perjury of the laws of Montana. The declaration must include:~~

~~(i) a description of how the individual will implement the plan of quality assurance, including identification of the reviewer(s);~~

~~(ii) an acknowledgement of the scope of the individual's practice;~~

~~(iii) a description of the continuing education units earned or applicable to the renewal period;~~

~~(iv) the location of practice site(s); and~~

~~(v) the individual's current DEA registration number, if applicable.~~

~~(4) All APRNs shall complete 20 continuing education units per year, or 40 units per renewal period, pertaining to the areas of the individual's certification. APRNs who practice in a subspecialty setting shall complete the majority of the required continuing education credits in the area of the individual's subspecialty.~~

AUTH: 37-1-131, ~~37-1-141,~~ 37-8-202, MCA
IMP: 37-1-131, 37-1-134, 37-1-141, 37-8-202, MCA

REASON: The board determined it is unnecessary to have licensees swear to a renewal application's veracity under penalty of perjury. The board will instead require that applicants affirm to completing CE requirements and maintaining quarterly peer review. The CE provisions of (4) are being moved to New Rule I.

24.159.1428 INACTIVE APRN STATUS (1) A licensed APRN ~~advanced practice registered nurse~~ who wishes to retain a license but who will not be practicing advanced nursing may obtain an inactive status APRN license upon submission of an application to the board and payment of the appropriate fee.

(2) An APRN ~~individual licensed~~ on inactive status may not practice advanced nursing during the period in which the licensee remains on inactive status.

~~(2)~~(3) An individual may not remain licensed on inactive APRN status for longer than two years without reestablishing qualifications for initial licensure.~~, including but not limited to, passage of the licensing examination.~~

~~(3)~~(4) ~~A licensee~~ An APRN on inactive status may convert ~~an inactive status license~~ to active status by ~~submission of~~ submitting:

(a) an appropriate application and payment of the renewal fee for the current renewal period~~.~~;

(b) affirmation of 20 continuing education contact hours congruent with the APRN's specialty certification and obtained within 12 months prior to reactivation; and

(c) documentation of current certification from a national certifying body.

(5) To reactivate prescriptive authority, an APRN must affirm completion of ten continuing education contact hours in pharmacology and/or pharmacotherapeutics obtained within 12 months prior to reactivation.

~~(4) An APRN must also hold a registered nurse license.~~

~~(5) An APRN may request inactive status if the APRN's RN license is either active or inactive.~~

~~(6) To reactivate an inactive APRN license, the APRN shall submit proof of 20 continuing education units obtained within the 12-month period preceding reactivation.~~

~~(a) If prescriptive authority is requested, an additional five continuing education units are required in pharmacology or pharmaceutical management.~~

AUTH: 37-1-131, 37-1-319, 37-8-202, MCA
IMP: 37-1-131, 37-1-319, MCA

REASON: It is reasonably necessary to amend this rule to increase the CE required for inactive prescriptive authority APRNs to convert to active status. The board noted that pharmaceuticals is a rapidly changing field and prescribing is a critical and high risk area of advanced practice nursing. To ensure APRNs with prescriptive authority are staying current, the board will require ten additional contact hours.

24.159.1430 DUPLICATE OR LOST LICENSES (1) The board may replace a lost APRN license upon the written request of the licensee and submission of the fee specified in ARM 24.101.403. ~~An original license will not be changed or replaced.~~

~~(2) The current renewal certificate issued by the board which carries the license number satisfies as proof of licensure. In the few cases where this does not suffice, the board will provide a statement of licensure.~~

~~(3) Upon written request, and payment of the proper fee as specified in ARM 24.101.403, the board may provide a duplicate renewal certificate.~~

AUTH: 37-8-202, MCA
IMP: 37-1-134, 37-8-202, MCA

REASON: It is reasonably necessary to remove outdated information since the on-line renewal system allows licensees to print replacement licenses as needed.

24.159.1431 VERIFICATION OF LICENSURE (1) The board directs ~~Licensees requesting~~ licensees seeking verification and documentation of Montana licensure status ~~to~~ for another United States board of nursing jurisdiction or foreign country ~~shall submit a completed request with the appropriate fee~~ to contact ~~www.nursys.com or~~ NCSBN, at 111 East Wacker Dr., Suite 2900, Chicago, IL, 60601-4277 or www.nursys.com ~~35331 Eagle Way, Chicago, IL 60678-1353~~.

(2) Licensees may request ~~requesting~~ paper ~~verifications~~ verification of licensure by submitting ~~shall submit~~ a ~~completed~~ written request and the required fee specified in ARM 24.101.403 to the board office.

AUTH: 37-1-131, 37-8-202, MCA
IMP: 37-1-131, ~~37-1-304,~~ 37-8-202, MCA

REASON: It is reasonably necessary to amend this rule to provide correct contact information for licensees seeking verification and documentation of licensure status.

24.159.1436 SUPERVISION OF PROBATIONARY LICENSEES (1) ~~Any~~ An APRN working pursuant to a probationary license must work under the direct supervision of another ~~nurse~~ APRN or physician~~.~~ who has prior board approval and possesses ~~The supervisor for an APRN on probation must be an APRN or a physician with~~ a current, unencumbered license.

AUTH: 37-1-131, 37-1-136, ~~37-1-319,~~ 37-8-202, MCA
IMP: 37-1-131, 37-1-136, ~~37-1-319,~~ 37-8-202, MCA

REASON: It is reasonably necessary to amend this rule to clarify that only a physician or another APRN may supervise an APRN on probation. The board concluded that prior board approval of supervisors is necessary due to the independent level of APRN practice and the need for close, in-depth supervision.

24.159.1443 LICENSE REAPPLICATION ~~CONSIDERATIONS~~ AFTER DENIAL, REVOCATION, OR SUSPENSION (1) Reapplication for ~~a license previously denied, revoked, or suspended~~ licensure must include evidence of rehabilitation~~, or elimination~~ or cure of the conditions for denial, revocation, or suspension.

~~(2) Evaluation of reapplication for a license denied will be based upon, but not limited to:~~

~~(a) the severity of the act or omission which resulted in the denial of license; and/or~~

~~(b) the conduct of the applicant subsequent to the denial of license; and/or~~

~~(c) the lapse of time since denial of license; and/or~~

~~(d) compliance with any condition the board may have stipulated as a prerequisite for reapplication; and/or~~

~~(e) the degree of rehabilitation attained by the applicant as evidenced by statements sent directly to the board from qualified people who have professional knowledge of the applicant; and/or~~

~~(f) personal interview by the board, at their discretion.~~

(2) The board places the burden upon the applicant for relicensure to demonstrate a sufficient degree of rehabilitation. Evidence of rehabilitation may include statements sent directly to the board from qualified persons who have professional knowledge of the applicant.

(3) The applicant shall submit proof of compliance with all conditions the board may have stipulated as a prerequisite for reapplication.

(4) The board may request a personal interview with the applicant.

(5) The decision to issue a license to an APRN whose license previously has been denied, suspended, or revoked rests with the board.

AUTH: 37-1-136, 37-8-202, MCA
IMP: 37-1-136, 37-1-314, 37-8-202, MCA

REASON: The board is amending this rule to clearly set forth APRN relicensure requirements. The rule will no longer list some of the possible board considerations

for reapplication, but will instead emphasize what applicants must prove to the board to demonstrate their fitness for practice.

24.159.1461 PRESCRIPTIVE AUTHORITY FOR ELIGIBLE APRNS (1) An APRN granted prescriptive authority by the board may prescribe and dispense drugs pursuant to applicable state and federal laws. ~~If the APRN has prescriptive authority, the peer shall also have prescriptive authority.~~

~~(a)~~ NPs, CRNAs, ~~and~~ CNMs, and psychiatric CNSs with unencumbered licenses may hold prescriptive authority.

~~(b) Psychiatric-mental health NPs and psychiatric CNSs with unencumbered licenses may hold prescriptive authority.~~

(2) remains the same.

(3) The board notifies the Board of Pharmacy ~~will be notified~~ in a timely manner ~~by the board~~ when the status of an APRN's prescriptive authority changes.

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

24.159.1462 ADVANCED PRACTICE NURSING COMMITTEE (1) ~~There is an advanced practice nursing committee.~~ The APRN committee of the board is composed of at least three board members ~~of the board~~, and includes at least one APRN ~~and two of whom shall be RNs~~.

(2) The committee or its designee ~~will review~~ reviews and ~~approve~~ approves all ~~complete, typed, or word processed~~ applications from individuals seeking advanced practice licensure and/or prescriptive authority. ~~The committee will recommend action to the full board. The application must describe the individual's proposed:~~

~~(a) referral process;~~

~~(b) scope of practice;~~

~~(c) method of documentation;~~

~~(d) method of quality assurance; and~~

~~(e) modifications, if any, with regards to advanced practice and/or prescriptive authority.~~

(3) The committee or its designee ~~will review all nonroutine, complete, typed, or word processed applications for advanced practice licensure and will~~ may recommend action ~~to~~ by the full board on nonroutine applications.

(4) The APRN committee or its designee perform random audits of continuing education requirements for APRNs during each two-year renewal period. Audits involve 10 percent of licensees in each APRN category of NP, CNM, CRNA, and CNS.

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 and require at least one APRN on the committee to comply with board makeup following the 2007 Legislature. To increase board and staff efficiency, the board is amending this rule

to allow the committee or a designee to review and approve all APRN and prescriptive authority applications. Currently, the committee reviews applications, but the board makes the final decisions following committee recommendation. The board is implementing a random audit of 10 percent of APRN licensees to ensure that APRNs are meeting the mandatory CE requirements and is adding (4) to specify that the committee or its designee will perform the audits.

24.159.1463 INITIAL APPLICATION ~~REQUIREMENTS~~ FOR PRESCRIPTIVE AUTHORITY (1) The ~~advanced practice registered nurse~~ APRN shall submit a completed application for prescriptive authority ~~provided by the board,~~ and a nonrefundable fee as specified in ARM 24.159.401. The application must include:

(a) evidence of successful completion of a graduate level course that provides a minimum of the equivalent of three academic semester credit hours (equaling a minimum of 45 contact hours) from an accredited program in pharmacology, pharmacotherapeutics, and the clinical management of drug therapy related to the applicant's area of specialty. The academic credits must be obtained within a two-year ~~minimum of 15 education hours in pharmacology and/or the clinical management of drug therapy from an accredited body which have been obtained within a three-year~~ period immediately prior to the date the application is received at the board office and must meet the following requirements:

(i) no ~~No~~ more than ~~two~~ six of the 45 contact hours may concern the study of herbal or complementary therapies~~.~~;

(ii) a minimum of 18 ~~Six~~ of the ~~15 education~~ 45 contact hours must have been obtained within one year immediately prior to the date ~~the~~ of application ~~is received at the board office.~~; and

(iii) a minimum of one-third ~~One-third~~ of all ~~education~~ contact hours must be face-to-face ~~meetings~~ or ~~interaction;~~ interactive instruction.

(b) evidence of the course content and clinical preceptorship;

~~(b)~~(c) a copy of the ~~original~~ current certification ~~document~~ from the ~~advanced practice registered nurse's~~ APRN's national certifying body;

~~(c)~~(d) a description of the proposed practice sites and typical caseload; and

~~(d) a description of the method of referral and documentation in client records; and~~

(e) an updated ~~a description of the method of~~ quality assurance plan, if needed, as required by ~~used to evaluate the advanced practice registered nurse, in accordance with~~ ARM 24.159.1466.

(2) If an applicant fails to complete the requirements for application within one year of submission of an application, the applicant shall submit a new application and fee. ~~The committee will make a recommendation only with respect to completed, typed, or word processed applications.~~

(3) The board may deny the application if the applicant has a license encumbered by disciplinary action ~~which is encumbered~~.

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 incorporate national standards for calculating academic instruction and CE in contact hours as defined in ARM 24.159.301. The amendment converts education hours to contact hours and does not increase the required pharmacologic instruction. The board concluded that using contact hours throughout the rules will standardize measurement and simplify the conversion of semester and quarter credits. The board is reducing the time in which an applicant can obtain the pharmacologic instruction from three to two years preceding application to align with the two year APRN licensure renewal period. Subsection (1)(b) is added to align the rules with existing application requirements and board processes.

24.159.1464 PRESCRIBING PRACTICES (1) Prescriptions ~~will~~ must comply with all applicable state and federal laws.

(2) All written prescriptions ~~will~~ must include the following information:

(a) name, title, address, and phone number of the ~~advanced practice registered nurse~~ APRN who is prescribing;

(b) through (d) remain the same.

~~(e) number of refills;~~

~~(f) signature of prescriber on written prescription; and~~

~~(g)~~(e) Drug Enforcement Administration (DEA) number of the prescriber on all scheduled drugs~~.~~; and

(f) all requirements of state and federal regulations regarding prescriptions.

(3) An APRN with prescriptive authority may prescribe drugs only when a valid prescriber-patient relationship exists. Records of all prescriptions ~~will~~ must be documented in client records.

(4) ~~The advanced practice registered nurse~~ An APRN with prescriptive authority ~~who wishes to prescribe Schedule II-V drugs will~~ shall comply with federal ~~Drug Enforcement Administration~~ DEA requirements ~~prior to prescribing~~ for controlled substances and shall file~~.~~

~~(5) The advanced practice registered nurse will immediately file any and all of the nurse's~~ DEA registrations and numbers with the board.

(5) An APRN with prescriptive authority may not prescribe controlled substances for self or members of the APRN's immediate family.

~~(6) The board will maintain current records of all advanced practice registered nurses with DEA registration and numbers.~~

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

~~(8)~~(7) An ~~advanced practice registered nurse~~ APRN with prescriptive authority ~~will~~ may not delegate the prescribing or dispensing of drugs to any other person.

~~(9) An APRN with prescriptive authority who also possesses inpatient care privileges shall practice pursuant to a written agreement between the agency and the APRN which is consistent with the rules, regulations, and guidelines set forth in 37-2-104 and 37-8-202, MCA, and ARM 24.159.1461 through 24.159.1468, and 24.159.1470, 24.159.1475, and 24.159.1480.~~

~~(10) An APRN with prescriptive authority from the board will comply with the requirements of 37-2-104, MCA.~~

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 delete redundant provisions that are adequately addressed in state and federal statutes regarding prescribing. The board is adding (3) to emphasize that a prescriptive authority APRN may only prescribe within a valid prescriber-patient relationship since an evaluation is part of the nursing process and it is not standard practice to prescribe to someone the prescriber has not assessed. The board is incorporating (1) from ARM 24.159.1465, proposed to be repealed, as (5) of this rule, and is striking (6) because record maintenance is a board administrative procedure.

24.159.1466 QUALITY ASSURANCE OF ~~ADVANCED PRACTICE REGISTERED NURSE~~ APRN PRACTICE (1) ~~An advanced practice registered nurse performing direct patient care shall~~ Within one month of initiating an APRN practice involving direct patient care the APRN shall submit a ~~method of~~ quality assurance plan to the board. ~~for evaluation of the advanced practice registered nurse's practice. The quality assurance method must be approved by the board prior to licensure.~~

(2) ~~The~~ A quality assurance plan includes ~~method must include~~ the following elements:

(a) location of the APRN's practice site(s);

~~(a)~~(b) identification of the APRN's peer-reviewer or peer review organization. Peer review must occur on a quarterly basis and include review of 15 charts or 5 percent of all charts handled by the APRN ~~advanced practice registered nurse~~, whichever is ~~less,~~ fewer. ~~must be reviewed quarterly. The charts being reviewed must be evaluated by a peer review, by a physician of~~ The peer-reviewer must work in the same practice specialty as the APRN and must~~, or by others as approved by the board. Each evaluator shall~~ hold an unencumbered license. If the APRN has prescriptive authority, the peer-reviewer must also have prescriptive authority;

~~(b)~~(c) ~~use of~~ standards of practice set by the APRN's national professional organization, which the peer-reviewer will use to ~~which apply to the advanced practice registered nurse's~~ evaluate the APRN's ~~area of~~ practice;

~~(c) concurrent or retrospective review of the practice.~~

~~(d) use of preestablished patient outcome criteria specific to the APRN's specific patient population; and~~

(d) criteria for client referrals, patient outcomes, and chart documentation set by the APRN's national professional organization that the peer-reviewer will use to evaluate the APRN's practice; and

~~(e) written evaluation of review with steps for corrective action if indicated and follow-up.~~

(e) description of the method the peer-reviewer will use to address corrective action, if indicated, and to ensure follow-up evaluation.

(3) By December 31 of each license renewal year, the APRN shall submit a quality assurance report to the board on the form provided by the department. The biennial quality assurance report shall:

(a) provide verification that each quarterly peer review has occurred;

(b) describe the corrective action taken by the APRN to address each identified practice deficiency; and

(c) ~~An advanced practice registered nurse shall immediately file with the board~~ inform the board of any ~~proposed~~ change in the location of the APRN's practice site(s), the identity of the peer-reviewer, or the quality assurance criteria established by the national professional organization in the APRN's specialty area of practice. ~~method. Any change is subject to prior approval by the board.~~

~~(4) Proof of quality assurance reviews must be maintained by the licensee for five years.~~

AUTH: 37-1-131, 37-8-202, MCA
IMP: 37-1-131, 37-8-202, 37-8-409, MCA

REASON: The board is amending this rule to require that newly licensed APRNs submit quality assurance plans to the board within one month of licensure. The board determined that it is not feasible to require plan submission and board approval prior to licensure and it is better to allow the APRN some time in practice. For consistency among independent providers and because APRNs have business practices, the board is adding practice location as part of the quality assurance plan.

It is reasonably necessary to amend the rules throughout to clarify that the board will hold each APRN to the standards and scope of practice as set by a board approved national professional organization for the APRN's specialty area of practice. The board is amending this rule to incorporate and delineate the quality assurance criteria for use by peer reviewers as established and updated by these national professional organizations. The board determined that requiring APRNs to immediately notify the board of changes in a quality assurance plan is unnecessarily onerous and is amending the rule to instead require that APRNs submit a quality assurance report, including any plan changes, biennially at renewal. The board is striking (4) to no longer require that APRNs maintain proof of quality assurance reviews but will instead require APRNs to verify that peer review occurred.

24.159.1467 SUSPENSION OR REVOCATION OF PRESCRIPTIVE AUTHORITY (1) The board may suspend or revoke ~~impose discipline up to and including termination of an advanced practice registered nurse's~~ an APRN's prescriptive authority when one or more of the following ~~criteria apply~~ occur:

(a) the APRN ~~advanced practice registered nurse~~ has not met the requirements for renewal of prescriptive authority ~~in accordance with~~ set by ARM 24.159.1461 through 24.159.1464 and 24.159.1466 through 24.159.1468;

(b) the APRN ~~advanced practice registered nurse~~ has not met requirements necessary to maintain APRN licensure; ~~advanced practice registered nurse recognition;~~

(c) the APRN has violated rules pertaining to prescriptive authority contained in this subchapter; or ~~advanced practice registered nurse has not complied with the requirements for referral or quality assurance methods;~~

(d) the APRN ~~has:~~

~~(i) prescribed outside the APRNs scope of practice;~~

~~(ii) prescribed for other than therapeutic purposes; or~~

~~(iii) otherwise violated the provisions of the prescriptive authority rules contained in ARM 24.159.1461 through 24.159.1468; or~~

~~(e) the APRN~~ has violated ~~any~~ state or federal law or regulations applicable to prescriptions.

(2) ~~An advanced practice registered nurse~~ The APRN whose prescriptive authority has been suspended or revoked ~~terminated will~~ may not prescribe medications until the APRN ~~advanced practice registered nurse~~ has received written notice from the board that ~~the nurse's~~ prescriptive authority has been reinstated.

AUTH: 37-1-131, 37-1-136, 37-8-202, MCA
IMP: 37-1-131, 37-1-136, 37-8-202, MCA

24.159.1468 PRESCRIPTIVE AUTHORITY RENEWAL ~~REQUIREMENTS~~

(1) The term of an APRN's prescriptive authority is concurrent with licensure and ends every two years on the date set by ARM 24.101.413.

(2) To renew prescriptive authority, the APRN ~~will~~ shall submit ~~to the Board of Nursing~~:

(a) a completed prescriptive authority renewal application and a nonrefundable fee;

(b) ~~documentation~~ affirmation of a minimum of ten contact hours of accredited ~~pharmacological continuing~~ education in pharmacology, pharmacotherapeutics, and/or clinical management of drug therapy completed during the ~~two-year period~~ two years immediately preceding the ~~renewal application~~ effective date of the prescriptive authority renewal period. ~~Continuing education will be from:~~ Contact hours for prescriptive authority renewal must:

(i) ~~study~~ be provided by advanced ~~formal~~ academic education~~;~~ or

~~(ii) continuing education seminars or~~ educational programs approved by ~~certifying bodies~~ an accrediting organization; ~~and~~

(ii) include a minimum of four contact hours of face-to-face or interactive instruction; and

(iii) the majority of the ~~course work~~ contact hours must concern the study of pharmaceutical medications and not herbal or complementary therapies~~; and~~.

~~(c) proof of a minimum of ten contact hours of continuing education in pharmacology or pharmacology management is required during the two-year period immediately preceding the effective date of the prescriptive authority renewal. A minimum of four hours must be face-to-face interaction. The majority of the course work must concern the study of pharmaceutical medications and not herbal or complementary therapies.~~

(3) ~~These continuing education units~~ The prescriptive authority contact hours are in addition to ~~those~~ contact hours required to renew the general APRN license.

(4) ~~If~~ When an APRN fails to renew prescriptive authority prior to the renewal date of that authority, the APRN's prescriptive authority will ~~end~~ lapse and expire after 45 days. The APRN whose prescriptive authority has expired may not prescribe until ~~renewal is completed and~~ the board has reinstated the ~~APRN~~ APRN's ~~has received written notice that the~~ prescriptive authority ~~has been reinstated~~.

AUTH: 37-1-131, ~~37-1-141,~~ 37-8-202, MCA

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

REASON: It is reasonable and necessary to amend this rule to more clearly delineate the continuing education requirements for renewal of APRN prescriptive authority. The board determined that submitting CE documentation at renewal is an unnecessary burden on applicants and instead will require that applicants affirm CE completion. The board is amending this rule to utilize "contact hours" as defined in ARM 24.159.301 and to explain the process of expired and reinstated prescriptive authority per 37-1-141, MCA.

24.159.1470 NURSE PRACTITIONER PRACTICE (1) Nurse practitioner (NP) practice means the independent and/or collaborative management of primary and/or acute health care of individuals, families, and communities including:

(a) assessing the health status of individuals and families using methods appropriate to the client population and area of practice such as~~:~~

~~(i)~~ health history taking~~;~~,

~~(ii)~~ physical examination~~;~~, and

~~(iii)~~ assessing developmental health problems~~;~~.

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

(iv) working with clients to promote their understanding of and compliance with therapeutic ~~regimes;~~ regimens.

(c) remains the same.

(d) ~~recognizing when to refer~~ referring clients to a physician or other health care provider, when appropriate;

(e) and (f) remain the same.

(2) Every licensed NP shall abide by the scope and standards of practice established by a NP national professional organization as identified by the NP.

AUTH: 37-1-131, 37-8-202, MCA
IMP: 37-1-131, 37-8-202, 37-8-409, MCA

REASON: To comply with proposed amendments to ARM 24.159.1405, the board is amending ARM 24.159.1470, 24.159.1475, 24.159.1480, 24.159.1485, and 24.159.1490. The amendments clarify that the board will hold each APRN to the scope and standards of practice as established and updated by a board approved national professional organization for the APRN's specialty area of practice, as identified to the board by the APRN.

24.159.1475 CERTIFIED NURSE MIDWIFERY PRACTICE (1) ~~Nurse~~ Certified nurse midwifery (CNM) practice means the independent and/or collaborative management of care of essentially normal newborns, providing perinatal and general women's healthcare ~~and women, antepartally, intrapartally, postpartally, and/or gynecologically. This occurs~~ within a health care system that provides for medical consultation, collaborative management, and referral.

(2) ~~Effective December 31, 2004, all licensed certified nurse midwives shall be enrolled in either the certification maintenance program or the continuing competency assessment program through the American College of Nurse Midwives.~~

~~Contact information for the American College of Nurse Midwives may be obtained from the Montana Board of Nursing office at 301 South Park Avenue, P.O. Box 200513, Helena, MT 59620-0513, telephone (406) 841-2340.~~ Every licensed CNM shall abide by the scope and standards of practice established by a CNM national professional organization as identified by the CNM.

AUTH: 37-1-131, 37-8-202, MCA
IMP: 37-1-131, 37-8-202, 37-8-409, MCA

REASON: It is reasonably necessary to add "and/or collaborative" for consistency among the practice descriptions of APRN specialties. The board is striking the language from (2) as the board will instead maintain the list of board approved certifying bodies on the board's web site.

24.159.1480 CERTIFIED REGISTERED NURSE ANESTHETIST PRACTICE

(1) ~~Nurse~~ Certified registered nurse anesthetist (CRNA) practice is the independent and/or collaborative performance of or the assistance in any act involving the determination, preparation, administration, or monitoring of any drug used in the administration of anesthesia or related services for surgical and other therapeutic procedures ~~which~~ that require the presence of persons educated in the administration of anesthetics.

(2) ~~A nurse anesthetist is authorized to perform procedures delineated in the American Association of Nurse Anesthetists Guidelines for Nurse Anesthesia Practice. Copies of the guidelines may be obtained from the American Association of Nurse Anesthetists, www.aana.com~~ Every licensed CRNA shall abide by the scope and standards of practice established by a CRNA national professional organization as identified by the CRNA.

AUTH: 37-1-131, 37-8-202, MCA
IMP: 37-1-131, 37-8-202, 37-8-409, MCA

24.159.1485 CLINICAL NURSE SPECIALIST PRACTICE (1) Clinical nurse specialist (CNS) practice means the independent and/or collaborative delivery and management of expert level nursing care to individuals or groups, including the ability to:

(a) through (c) remain the same.

(d) implement therapeutic interventions based on the clinical nurse specialist's area(s) of expertise, including~~,~~ but not limited to:

(i) through (v) remain the same.

(vi) counseling and/or teaching~~;~~.

(e) through (j) remain the same.

(2) Every licensed CNS shall abide by the scope and standards of practice established by a CNS national professional organization as identified by the CNS.

AUTH: 37-1-131, 37-8-202, MCA
IMP: 37-1-131, 37-8-202, 37-8-409, MCA

REASON: It is reasonably necessary to add "or" to (1) for consistency among the practice descriptions of APRN specialties.

24.159.1490 PSYCHIATRIC-MENTAL HEALTH PRACTITIONER PRACTICE (1) remains the same.

(a) assessing the mental health status of individuals and families using methods appropriate to the client population and area of practice~~,~~ including:

(i) and (ii) remain the same.

(iii) assessing developmental health problems~~;~~.

(b) through (j) remain the same.

(2) Every licensed psychiatric NP and CNS shall abide by the scope and standards of practice established by a national professional organization as identified by the NP or CNS.

AUTH: 37-1-131, 37-8-202, MCA
IMP: 37-1-131, 37-8-202, 37-8-409, MCA

5. The proposed new rule provides as follows:

NEW RULE I CONTINUING EDUCATION REQUIREMENTS (1) All Montana licensed APRNs must complete 40 contact hours of continuing education during each two-year license renewal period. The APRN who practices in a specialty setting must complete the majority of the required contact hours in the area of the individual's specialized certification.

(2) The board may prorate the requirement for continuing education contact hours upon the written request of an APRN who practices in Montana for a period of less than two years.

AUTH: 37-1-131, 37-1-319, 37-8-202, MCA
IMP: 37-1-131, 37-1-141, 37-8-202, MCA

REASON: The board is adopting this new rule to separately set forth the APRN CE requirements and move (4) from ARM 24.159.1427. This rule still requires that APRNs obtain 40 CE hours every two years, but permits greater flexibility in getting the CE and allows prorating the requirement with less than two years of practice.

6. The rules proposed to be repealed are as follows:

24.159.1401 DEFINITIONS found at ARM page 24-16651.

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

REASON: The board is repealing this rule and adding APRN definitions to ARM 24.159.301, the general definitions rule, for ease of use and to lessen confusion.

24.159.1415 GENERAL REQUIREMENTS FOR LICENSURE found at ARM page 24-16665.

AUTH: 37-8-202, MCA
IMP: 37-8-406, 37-8-416, MCA

REASON: The board is repealing this rule because it applies to RNs not APRNs and the provisions are adequately set forth in ARM 24.159.1222.

24.159.1417 LICENSURE BY EXAMINATION REQUIREMENTS found at ARM page 24-16666.

AUTH: 37-8-202, MCA
IMP: 37-1-131, 37-8-406, 37-8-416, MCA

REASON: It is reasonably necessary to repeal this rule since it was drawn from the RN licensure rules and was incorrectly incorporated as an APRN rule. Initial APRN licensure requirements are set forth at ARM 24.159.1412.

24.159.1426 PREPARATION OF LICENSES found at ARM page 24-16671.

AUTH: 37-1-131, 37-8-202, MCA
IMP: 37-1-101, 37-8-202, 37-8-401, MCA

REASON: The board is repealing this rule because on-line licensing and renewal, in place for several years, precludes board officers from personally signing licenses.

24.159.1442 LICENSEE PROBATION OR REPRIMAND OF A LICENSEE found at ARM page 24-16677.

AUTH: 37-1-136, 37-8-202, MCA
IMP: 37-1-136, 37-1-137, 37-1-316, MCA

REASON: It is reasonable and necessary to repeal this rule as redundant as the disciplinary authority is adequately set forth in 37-1-312 and 37-1-316, MCA.

24.159.1465 SPECIAL LIMITATIONS RELATED TO THE PRESCRIBING OF CONTROLLED SUBSTANCES found at ARM page 24-16689.

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

REASON: The board is repealing this rule to avoid needlessly restating federal law.

7. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to 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., June 9, 2008.

8. 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.

9. 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.

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

11. Pat Bik, attorney, has been designated to preside over and conduct this hearing.

BOARD OF NURSING
SUSAN RAPH, RN, 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 April 28, 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 36.25.301, 36.25.303, 36.25.304, 36.25.310, 36.25.315, and 36.25.321 regarding coal leasing rules	)))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

To: All Concerned Persons

1. On May 28, 2008, at 1:00 p.m. the Department of Natural Resources and Conservation will hold a public hearing in the third floor DNRC Director's Conference Room, 1625 11th Avenue, Helena, Montana, to consider the amendment 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 May 21, 2008, to advise us of the nature of the accommodation that you need. Please contact Monte Mason, 1625 11th Avenue, Helena, MT 59620; telephone (406) 444-3843; fax (406) 444-2684; or e-mail mmason@mt.gov.

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

36.25.301 DEFINITIONS (1) When used herein, unless a different meaning clearly appears from the context:

(a) through (e) remain the same.

~~(f) "Foreign interests" means states of governmental subdivisions of states foreign to the United States, other than Canada or Mexico; business entities organized under the laws of any state foreign to the United States, other than Canada or Mexico; and persons who are citizens of any state foreign to the United States, other than Canada or Mexico;~~

(f) "Interests foreign to the United States" means countries, states, or governmental subdivisions other than those within the United States of America;

(g) through (k) remain the same.

(l) "Value" means the contract sales price as defined in 15-35-102, MCA.

AUTH: 77-3-303, MCA
IMP: 77-3-303, 77-3-305, MCA

REASONABLE NECESSITY: The amended definition of "interests foreign" is reasonably necessary so as to keep the term consistent with the provision of section 77-3-305, MCA. Section 77-3-305, MCA, allows foreign citizens and business

entities to acquire state coal leases, provided that their country of origin allows reciprocal privileges to U.S. citizens.

36.25.303 WHO MAY LEASE FOR COAL -- QUALIFIED LESSEES

(1) Any person~~,~~ qualified under the constitution and laws of the state of Montana~~, except corporations, the majority of the stock of which is controlled by foreign interests,~~ may lease state lands for coal purposes provided that:

(a) and (b) remain the same.

(c) the applicant, if a natural person, has reached the age of 18 years~~.~~ ; and

(d) no citizen of a foreign country is eligible to obtain and hold a state coal lease unless the citizen's country provides for similar or like privileges to citizens of the United States. Likewise, no partnership, corporation, association, or other legal entity controlled by interests foreign to the United States is eligible to obtain and hold a state coal lease unless the entity's country provides for similar or like privileges to citizens of the United States.

(2) remains the same.

AUTH: 77-3-303, MCA
IMP: 77-3-303, 77-3-305, MCA

REASONABLE NECESSITY: The amendment to the definition of "qualified lessees" is reasonably necessary so as to be consistent with the provisions of section 77-3-305, MCA, which allows foreign citizens and business entities to acquire state coal leases, provided that their country of origin allows reciprocal privileges to U.S. citizens.

36.25.304 PROCEDURES FOR ISSUE OF LEASE

(1) through (3) remain the same.

(4) An application to have a tract offered for lease may be made at any time during the year on a form provided by the department~~.~~ :

(a) ~~Such~~ such application shall contain the information called for therein, including an adequate and sufficient description of the lands sought to be leased~~.~~ ; and

(b) ~~Such~~ such application shall be accompanied by a ~~$10.00~~ $50.00 application fee. Applications not accompanied by the application fee will not be considered.

(5) remains the same.

(6) When sufficient applications have been received to warrant a sale, or at the director's discretion, a lease sale will be announced.

(a) Notice of a lease sale shall be posted on the department's web site and published ~~given by publication~~ in a trade journal of general circulation in the coal mining industry or in the major newspapers of general circulation within Montana each week for four weeks preceding the date of sale. The notice shall identify the country or countries within which ~~contain a list of the~~ tracts are being offered for lease, state the date of the lease sale, provide instructions on how to obtain detailed information from the department on the specific tracts to be offered, and ~~describe~~ the

bidding requirements and procedures ~~and contain other information as is appropriate~~.

(b) The department shall maintain a master mailing list of prospective coal lessees who request, in writing, that their names be placed on such list; and concurrently with the publication of the notice of sale in the newspapers or trade journal, the board shall mail or e-mail to each addressee on the master mailing list a copy of the notice of sale. However, such mailing shall not be deemed a legal prerequisite to a valid sale. Furthermore, the board shall have no liability to any person who may be inadvertently omitted in the mailing of such additional notices.

(c) through (7) remain the same.

(8) Subject to the board's right to reject any and all bids:

(a) ~~When~~ when bidding is on a cash bonus basis, the lease will be awarded to the qualified applicant who submits a bid of the highest cash amount per acre;

(b) ~~When~~ when bidding is on a percentage of royalty basis, the lease will be awarded to the qualified bidder who submits a bid of the largest percentage of royalty to be paid. No bid of less than ~~10%~~ ten percent of the f.o.b. price of the coal prepared for shipment excluding that amount charged by the seller to pay taxes on production will be accepted; and

(c) ~~When~~ when bidding is on a cash bonus and percentage of royalty basis the board will determine which bid is to the best advantage of the state and award the lease accordingly.

(9) through (12) remain the same.

AUTH: 77-3-303, MCA
IMP: 77-3-303, 77-3-312, MCA

REASONABLE NECESSITY: The amendment to the coal lease sale notification process is reasonably necessary to update the process to allow notification via e-mail and the department's web site, and to update the coal lease application fee so as to conform the rule to provisions of ARM 36.2.1003(11). The amendment to ARM 36.2.1003(11), which increased the application fee from $10 to $50, became effective November 1, 1985, and has been applied since that date.

36.25.310 ROYALTIES

(1) remains the same.

(2) The fair market value of the coal shall be determined by the board in accordance with ~~15-35-109~~ 77-3-312 and 77-3-316(4), MCA. ~~This statute, in conjunction with 15-35-102(1) , MCA, requires that the value of the coal for royalty purposes shall be either the price of the coal extracted and prepared for shipment f.o.b. mine, excluding that amount charged by the seller to pay taxes paid on production, or a price imputed by the department of revenue under 15-35-107, MCA, which authorizes the department of revenue to impute a value to the coal which approximates market value f.o.b. mine, under certain conditions including utilization of the coal by the operator and sales under a contract which is not an arm's length agreement.~~

(3) On or before the last day of each month, every holder of a producing coal lease shall make a report to the department~~,~~ on a form the department prescribes,

showing the number of tons mined during the preceding calendar month, the price obtained therefore at the mine, the total amount of all sales, and any additional information required by the department. The report shall be signed by the lessee or some responsible person having knowledge of the facts reported and be accompanied by payment of the royalty due the state for the preceding month as shown by the report.

(4) remains the same.

AUTH: 77-3-303, MCA
IMP: 77-3-312, 77-3-316, 77-3-317, MCA

REASONABLE NECESSITY: The amendment to coal royalty valuation is reasonably necessary as to delete references to repealed statutes and to conform the rule to the provisions of sections 77-3-312, 77-3-316, and 77-3-317, MCA.

36.25.315 FORFEITURE, CANCELLATION, AND TERMINATION OF LEASES

(1) remains the same.

~~(2) Upon a finding at a hearing held in accordance with the Montana Administrative Procedure Act, that a lessee has contracted with any foreign interest for the sale of coal, the lease shall automatically terminate.~~

AUTH: 77-3-303, MCA
IMP: 77-3-303, MCA

REASONABLE NECESSITY: The amendment to ARM 36.25.315(2) is reasonably necessary so as to eliminate forfeiture of the lease solely due to a sale of coal to any foreign purchaser.

36.25.321 FEES (1) The department shall assess the following fees:

~~(1)~~ (a) ~~for~~ application for coal lease - ~~$10.00~~ $50.00;

~~(2)~~ (b) ~~for~~ issuance of each coal lease - $25.00; and

~~(3)~~ (c) ~~for~~ filing each assignment affecting a coal lease, or interest therein, of whatever nature - $10.00~~;~~ .

~~(4) for royalties on coal mined for private use not exceeding 30 tons of 2,000 pounds - $5.00.~~

AUTH: 77-3-303, MCA
IMP: 77-3-303, MCA

REASONABLE NECESSITY: The amendment to ARM 36.25.321 is reasonably necessary so as to eliminate coal leases for minor private use and to update the application fee so as to conform to the provisions of ARM 36.2.1003(11). The amendment to ARM 36.2.1003(11), which increased the application fee from $10 to $50, became effective November 1, 1985, and has been applied since that date.

4. Concerned persons may submit their data, views, or arguments concerning the proposed amendment either orally or in writing at the public hearing. Written data, views, or arguments may also be submitted to Monte Mason, 1625 11th Avenue, Helena, MT 59620; telephone (406) 444-3843; e-mail mmason@mt.gov. Comments must be received no later than 5:00 p.m. June 5, 2008.

5. Monte Mason, Department of Natural Resources and Conservation, has been designated to preside over and conduct the hearing.

6. An electronic copy of this Notice of Proposed Amendment 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 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.

7. The agency maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request which includes the name, 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 (4) above or may be made by completing a request form at any rules hearing held by the department.

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

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 April 28, 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 XIII and the amendment of ARM 37.106.1946 pertaining to crisis stabilization facilities	))))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION AND AMENDMENT

TO: All Interested Persons

1. On May 30, 2008, at 11:00 a.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 and amendment 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 May 19, 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 rules as proposed to be adopted provide as follows:

RULE I APPLICATION OF OTHER RULES (1) In addition to the requirements established in this subchapter, each mental health center providing a secured inpatient crisis stabilization program shall comply with all the requirements established in ARM 37.106.1945 and 37.106.1946.

(2) To the extent that other licensure rules in ARM Title 37, chapter 106, subchapter 3 conflict with the terms of this subchapter, the terms of this subchapter will apply to secured crisis stabilization facilities.

AUTH: 50-5-103, MCA
IMP: 50-5-201, MCA

RULE II SCOPE OF THIS RULE (1) This rule is intended to apply to all state licensed mental health centers or hospitals providing a secured crisis stabilization service as part of the crisis service continuum.

AUTH: 50-5-103, MCA
IMP: 50-5-201, MCA

RULE III DEFINITIONS In addition to the definitions in 50-5-101, MCA, the following definitions apply to this subchapter:

(1) "Inpatient crisis stabilization program" means 24-hour supervised treatment for adults with a mental illness for the purpose of reducing the severity of an individual's mental illness symptoms.

(2) "Secured crisis stabilization facility (SCSF)" means a secure in-patient facility operated by a licensed hospital or a licensed mental health center that provides evaluation, intervention, and referral for individuals experiencing a crisis due to serious mental illness or a serious mental illness with a co-occurring substance use disorder. The facility may only provide secured services to a client when a detention exists as defined in 53-21-129, MCA.

AUTH: 50-5-103, MCA
IMP: 50-5-201, MCA

RULE IV ADMISSIONS PROCEDURES (1) The facility will develop and implement a written policy outlining the admission criteria for placing a client into the secured service.

AUTH: 50-5-103, MCA
IMP: 50-5-201, MCA

RULE V DISCHARGE PROCEDURES (1) The facility shall develop and implement discharge and transfer criteria for discharging a client from the secured setting. At the end of the detention the facility must:

(a) discharge the patient;
(b) refer the patient to a licensed nonsecured inpatient stabilization program;
(c) refer the patient to outpatient treatment; or
(d) transfer the client to an appropriate level of acute in-patient treatment.

AUTH: 50-5-103, MCA
IMP: 50-5-201, 50-5-202, MCA

RULE VI CONSTRUCTION REQUIREMENTS (1) Prior to construction, floor plans for the secured in-patient crisis stabilization facility must be submitted to the Licensure Bureau of the Department of Public Health and Human Services for review, comment, and approval.

(a) Prior to occupancy, the facility shall undergo an onsite inspection and receive the written approval of all authorities having jurisdiction.

(2) A SCSF is considered a separate mental health unit requiring a staff station located within the secured unit.

(a) The unit shall be staffed at all times patients are placed in the secured unit.

(3) The SCSF staff station (at a minimum) will provide the following:

(a) provisions for charting;
(b) provisions for hand washing;
(c) provisions for secured medication storage and preparation; and
(d) telephone access.

(4) The SCSF will provide a nourishment station as required in 2001 Edition

of the Guidelines for the Design and Construction of Hospitals and Health Care Facilities, Section 8.2.C9, For serving nourishments between meals. A copy of this publication can be obtained from the Department of Public Health and Human Services, Quality Assurance Division, Licensure Bureau, 2401 Colonial Drive, P.O. Box 202953, Helena MT 59620-2953.

(5) A nourishment station will contain the following:

(a) a work counter;

(b) refrigerator;

(c) storage cabinets;

(d) a sink;

(e) space for trays and dishes used for nonscheduled meal service;

(f) hand washing facilities in or immediately accessible; and

(g) ice for patient consumption will be provided by icemaker-dispenser units or periodically set up individually during the day.

(6) A dining/activities/day space within the unit must be provided at a ratio of 35 square feet per resident, with at least 14 square feet dedicated to dining space.

(7) Patient rooms will be at a ratio of 100 square feet for single bedrooms. The room square footage does not include bathrooms, door swings, alcoves, or vestibules. No more than one patient shall reside in a single room in a secured unit.

AUTH: 50-5-103, MCA
IMP: 50-5-201, MCA

RULE VII PATIENT TOILETS AND BATHING (1) There will be at least one toilet available for every four patients in the facility.

(2) There will be at least one bathing unit for every six patients in the facility. A shower or tub is not required if the facility utilizes a central bathing unit for every six patients.

(3) All doors to toilet rooms or bathing units must swing out or slide into the wall and shall be unlockable from the outside.

(4) Toilet rooms and bathing facilities may be under key control by staff.

AUTH: 50-5-103, MCA
IMP: 50-5-201, MCA

RULE VIII SPECIAL LOCKING ARRANGEMENTS (1) The facility must follow the provisions of the 2000 Edition of the NFPA 101, Life Safety Code, (LSC). A copy of this publication can be obtained from the Department of Public Health and Human Services, Quality Assurance Division, Licensure Bureau, 2401 Colonial Drive, P.O. Box 202953, Helena MT 59620-2953.

(2) The 2000 Edition of the NFPA 101, Life Safety Code, (LSC), has the following requirements for special locking arrangements for a secured SCSF unit. LSC 5-2.1.6.1 states:

(a) In buildings protected throughout by an approved supervised automatic fire detection system or approved supervised automatic sprinkler system and when permitted by chapters 8 through 30, doors in low or ordinary hazard areas, as defined by LSC 4-2.2, may be equipped with approved, listed, locking devices which

shall:

(i) unlock upon actuation of an approved supervised automatic fire detection system or approved supervised automatic sprinkler system installed in accordance with LSC 7-6 or 7-7; and

(ii) unlock upon loss of power controlling the lock or locking mechanism; and

(iii) initiate an irreversible process which will release the lock within 15 seconds whenever a force of not more than 15 pounds (67N) is continuously applied, for a period of not more than three seconds to the release device required in LSC 5-2.1.5.3. Relocking of such doors shall be by manual means only. Operation of the release device shall activate a signal in the vicinity of the door for assuring those attempting to exit that the system is functional. Exception to this subsection: The authority having jurisdiction may approve a delay not to exceed 30 seconds provided that reasonable life safety is assured pursuant to LSC 5-2.1.6.2. A sign shall be provided on the door adjacent to the release device which reads:

PUSH UNTIL ALARM SOUNDS
DOOR CAN BE OPENED IN 15 SECONDS

(A) Sign letters shall be at least one inch (2.5cm) high and one eighth inch (0.3cm) wide stroke.

(3) The department shall grant an SCSF exception to the LSC code - Special Locking Arrangements, based on an equivalency for the automatically releasing, panic hardware required by LSC 5-2.1.6.1. All of the following conditions shall apply to granting the exception:

(a) the use of mechanical locks, such as dead bolt, is not permitted. All locks used must be electromagnetically controlled;

(b) all secured doors in the unit must have a manual electronic key pad which must release the door after entry of the proper code sequence;

(c) all locks on all secured doors must automatically release upon any of the following conditions:

(i) the actuation of the approved supervised automatic fire alarm system;

(ii) the actuation of an approved supervised automatic sprinkler system;

(iii) loss of the public utility power controlling locks; and

(iv) a staff accessible switch at the staff station which is capable of releasing all doors.

AUTH: 50-5-103, MCA
IMP: 50-5-103, MCA

RULE IX SECLUSION AND RESTRAINT (1) A SCSF must be capable of providing restraint or seclusion and must ensure that the restraint or seclusion is performed in compliance with 42 CFR 482.13(f)(1) through (6). The department adopts and incorporates by reference 42 CFR 482.13(f)(1) through (6) (July 2, 1999), which contains standards for use of seclusion and restraint for behavioral management.

(2) Restraint and seclusion must be performed in a manner that is safe, proportionate, and appropriate to the severity of the behavior, the patient's size,

gender, physical, medical, and psychiatric condition and personal history.

(3) Seclusion or restraint may only be used in emergency situations needed to ensure the physical safety of the individual patient, other patients, or staff of the facility and when less restrictive measures have been found to be ineffective to protect the resident or others from harm.

(4) Seclusion and restraint procedures must be implemented in the least restrictive manner possible in accordance with a written modification to the patient's health care/treatment plan and discontinued when the behaviors that necessitated the restraint or seclusion are no longer in evidence.

(5) "Whenever needed" or "prescribed as needed" standing orders for use of seclusion or restraint are prohibited.

(6) A physician or other authorized health care provider must authorize use of the restraint or seclusion within one hour of initiating the restraint or seclusion.

(7) Each order of restraint or seclusion is limited in length of time to 24 hours.

(8) A SCSF will have a minimum one "comfort/safe" room for use for patient seclusion as prescribed by the facility's policy and procedures, and in accordance with applicable state and federal standards.

AUTH: 50-5-103, MCA
IMP: 50-5-103, MCA

RULE X STAFF QUALIFICATIONS AND ORGANIZATIONAL STRUCTURE

(1) Each SCSF shall employ or contract with a site based administrator who has daily overall management responsibility for the operation of the SCSF. The administrator of the mental health center or hospital if they are site based to the secured crisis stabilization or, if the SCSF is part of a hospital per [RULE III(2)] may assume this responsibility.

(2) Each SCSF facility shall employ or contract with a program supervisor knowledgeable about the service and support needs of individuals with co-occurring mental illness and intoxication/addiction disorders who may be experiencing a crisis. The program supervisor must be site based.

(3) Each SCSF shall employ or contract with a licensed health care professional as defined in 50-5-101(34), MCA, for all hours of operation. The licensed health care professional may be the program supervisor.

AUTH: 50-5-103, MCA
IMP: 50-5-103, MCA

RULE XI SECURED CRISIS STABILIZATION FACILITY: CLIENT ASSESSMENTS (1) Each SCSF shall employ or contract with licensed mental health professionals to conduct clinical intake assessments which may be abbreviated assessments focusing on the crisis issues and safety.

(a) Abbreviated intake assessments must be conducted by a licensed mental health professional trained in clinical assessments including chemical dependency screening. The clinical intake assessment must include sufficient detail to individualize crisis plan goals and objectives.

(2) Based on the client's clinical needs, each SCSF will refer any necessary

additional assessments to appropriate and qualified providers. Additional assessments may include, but are not limited to:

(a) physical;
(b) psychological;
(c) emotional;
(d) behavioral;
(e) psychosocial;
(f) recreational;
(g) vocational;
(h) psychiatric; and
(i) chemical dependency evaluations.

(3) Each SCSF shall maintain a current list of providers who accept referrals for assessments and services not provided by the facility.

AUTH: 50-5-103, MCA
IMP: 50-5-103, MCA

RULE XII SECURED CRISIS STABILIZATION FACILITY: CLIENT DISCHARGE (1) Each SCSF shall prepare a discharge summary for each client no longer receiving services. The discharge summary must include:

(a) the reason for discharge;
(b) a summary of the services provided by the SCSF including recommendations for aftercare services and referrals to the other services, if applicable;
(c) an evaluation of the client's progress as measured by the treatment plan and the impact of the services provided by the facility; and
(d) the signature of the staff member who prepared the report and the date of preparation.

(2) Discharge summary reports must be filed in the clinical record within one week of the date of the client's formal discharge from services.

AUTH: 50-5-103, MCA
IMP: 50-5-103, MCA

RULE XIII SECURED CRISIS STABILIZATION FACILITY: EMERGENCY PROCEDURES (1) Each SCSF shall develop a written plan for emergency procedures. At a minimum, the plan must include:

(a) emergency evacuation procedures to be followed in the case of fire or other emergency;
(b) procedures for contacting emergency service responders; and
(c) the names and phone numbers for contacting other crisis response facility staff in emergency situations.

(2) Telephone numbers of the hospital, police department, ambulance, and poison control center must be posted by each telephone.

AUTH: 50-5-103, MCA
IMP: 50-5-103, MCA

4. The rule as proposed to be amended provides as follows. New matter is underlined. Matter to be deleted is interlined.

37.106.1946 MENTAL HEALTH CENTER: INPATIENT CRISIS STABILIZATION PROGRAM (1) In addition to the requirements established in this subchapter, each mental health center providing an inpatient crisis stabilization program shall comply with the requirements established in this rule.

(2) The facility must be annually inspected for compliance with fire codes by the state fire marshal or the marshal's designee. The facility shall maintain a record of such inspection for at least one year following the date of the inspection.

(3) The inpatient crisis stabilization program shall:

(a) employ or contract with a program supervisor knowledgeable about the service and support needs of individuals with mental illness experiencing a crisis. The program supervisor or a licensed mental health professional must be site based;

(b) require staff working in the crisis stabilization program:

(i) be 18 years of age;

(ii) possess a high school diploma or GED; and

(iii) be capable of implementing each resident's treatment plan~~.~~;

(c) ensure that the program supervisor and all staff each have a minimum of six contact hours of annual training relating to the service and support needs of individuals with mental illness experiencing a crisis;

(d) orient staff prior to assuming the duties of the position on:

(i) the types of mental illness and treatment approaches;

(ii) suicide risk assessment and prevention procedures; and

(iii) program policies and procedures, including emergency procedures;

(e) orient staff within eight weeks from assuming the duties of the position on:

(i) therapeutic communications;

(ii) the legal responsibilities of mental health service providers;

(iii) mental health laws of Montana regarding the rights of consumers;

(iv) other services provided by the mental health center; and

(v) infection control and prevention of transmission of blood borne pathogens;

(f) maintain written program policies and procedures at the facility;

(g) train staff in the ~~Heimlich maneuver~~ abdominal thrust maneuver and ensure staff maintain current certification in cardiopulmonary resuscitation (CPR);

(h) maintain 24 hour awake staff;

(i) maintain a staff-to-patient ratio dictated by resident need. A procedure must be established to increase or decrease staff coverage as indicated by resident need;

(j) establish admission criteria which assess the individual's needs and the appropriateness of the services to meet those needs. At a minimum, admission criteria must require that the person:

(i) be at least 18 years of age;

(ii) be medically stable (with the exception of the person's mental illness);

(iii) ~~be drug and alcohol free to the extent it does not significantly impair the individual's ability to meet the other admission criteria;~~ be willing to enter the

program, follow program rules, and accept recommended treatment;

~~(iv) be willing to enter the program, follow program rules, and accept recommended treatment;~~

~~(v)~~ (iv) be willing to sign a no-harm contract, if clinically indicated;

~~(vi)~~ (v) not require physical or mechanical restraint;

~~(vii)~~ (vi) be in need of frequent observation on a 24 hour basis;

(k) establish written policies and procedures:

(i) for completing a medical screening and establishing medical stabilization, prior to admission;

(ii) to be followed should residents, considered to be at risk for harming themselves or others, attempt to leave the facility without discharge authorization from the licensed mental health professional responsible for their treatment; and

(iii) for the secure storage of toxic household chemicals and sharp household items such as utensils and tools;

(l) when clinically appropriate, provide each resident upon admission, or as soon as possible thereafter:

(i) a written statement of resident rights which, at a minimum, include the applicable patient rights in 53-21-142, MCA;

(ii) a copy of the mental health center grievance procedure; and

(iii) the written rules of conduct including the consequences for violating the rules;

(m) ensure hospital care is available through a transfer agreement for residents in need of hospitalization;

(n) maintain progress notes for each resident. The progress notes must be entered at least daily into the resident's clinical record. The progress notes must describe the resident's physical condition, mental status, and involvement in treatment services; and

(o) make referrals for services that would help prevent or diminish future crises at the time of the resident's discharge. Referrals may be made for the resident to receive additional treatment or training or assistance such as securing housing.

(4) The program supervisor and program staff must be trained in the therapeutic de-escalation of crisis situations to ensure the protection and safety of the residents and staff. The training must include the use of physical and nonphysical methods of managing residents and must be updated, at least annually, to ensure that necessary skills are maintained.

AUTH: 50-5-103, MCA
IMP: 50-5-103, 50-5-204, MCA

5. The proposed amendments describe a level of care that addresses the need to respond to mental health crisis within the community. The proposed new rules describe the minimum standards for a secured crisis stabilization facility that will provide secured care for individuals experiencing a crisis due to serious mental illness and/or a co-occurring substance use disorder. A secured crisis stabilization facility is intended to provide, when medically appropriate, a safe alternative to acute inpatient or hospital care through evaluation, assessment, intervention, and referral.

A secured crisis stabilization facility will be licensed by the Department of Public Health and Human Services and will employ or contract with an administrator who shall maintain overall daily responsibility for the facility's operations, a medical director who shall advise staff on clinical matters, and a program supervisor who is a licensed mental health professional knowledgeable about the service and support needs of individuals with co-occurring mental illness and substance use disorders. The secured crisis stabilization facility will ensure that acute inpatient care is available through a referral agreement for residents in need of more intensive care or medical treatment.

The proposed amendments identify requirements for policies and procedures, clinical records, client assessments, client discharge, management of inappropriate client behavior, and quality assessment. Finally, the proposed amendments establish the minimum requirements for the physical environment, personnel records, and staffing operations.

The secured crisis stabilization facility level of care is not currently included as an available alternative within either the public mental health or chemical dependency system in Montana. Individuals who will be served in this type of facility are now seen in a hospital emergency room at considerable public expense. For those who do not require acute inpatient care, the crisis stabilization facility provides a safe, less expensive alternative for patient assessment of clinical needs and referral to the appropriate available resources in the community.

6. Interested persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to 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 June 6, 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 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/ Lisa Amille Swanson
Rule Reviewer

/s/ Joan Miles
Director, Public Health and Human Services

Certified to the Secretary of State April 28, 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 IV and the amendment of ARM 37.82.101 pertaining to Medicaid eligibility	))))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION AND AMENDMENT

TO: All Interested Persons

1. On June 2, 2008, at 11:00 a.m., the Department of Public Health and Human Services will hold a public hearing in the Sapphire Room, 2401 Colonial Drive, Helena, Montana, to consider the proposed adoption and amendment 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 May 27, 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 RESOURCE EXCLUSIONS: FAMILY MEDICAID FOR NONINSTITUTIONALIZED CATEGORICALLY NEEDY CHILDREN AND FAMILIES

(1) In determining eligibility for noninstitutionalized categorically needy children and families under the family Medicaid coverage groups in regard to the factor of resources, no exclusions will be applied to any property that is not owned by a member of the filing or assistance unit. No exclusion will be applied to any property that is owned or held by any entity, including but not limited to a trust or corporation, limited liability company, or any other legal entity, instrument, device, or arrangement of any kind, under which a member of the filing or assistance unit does not own the property.

AUTH: 53-6-113, MCA
IMP: 53-6-131, MCA

RULE II RESOURCE EXCLUSIONS: AGED, BLIND, AND DISABLED MEDICAID FOR NONINSTITUTIONALIZED INDIVIDUALS AND COUPLES (1) In determining eligibility for noninstitutionalized categorically needy individuals and couples under the aged, blind, and disabled Medicaid coverage groups in regard to the factor of resources, no exclusions will be applied to any property that is not

owned by a member of the filing or assistance unit. No exclusion will be applied to any property that is owned or held by any entity, including but not limited to a trust or corporation, limited liability company, or any other legal entity, instrument, device, or arrangement of any kind, under which a member of the filing or assistance unit does not own the property.

AUTH: 53-6-113, MCA
IMP: 53-6-131, MCA

RULE III RESOURCE EXCLUSIONS: MEDICALLY NEEDY COVERAGE FOR NONINSTITUTIONALIZED INDIVIDUALS, COUPLES, AND FAMILIES (1) In determining eligibility for noninstitutionalized medically needy individuals, couples, and families under the family Medicaid and aged, blind, and disabled Medicaid coverage groups in regard to the factor of resources, no exclusions will be applied to any property that is not owned by a member of the filing or assistance unit. No exclusion will be applied to any property that is owned or held by any entity, including but not limited to a trust or corporation, limited liability company, or any other legal entity, instrument, device, or arrangement of any kind, under which a member of the filing or assistance unit does not own the property.

AUTH: 53-6-113, MCA
IMP: 53-6-131, MCA

RULE IV RESOURCE EXCLUSIONS: FAMILY MEDICAID AND AGED, BLIND, AND DISABLED MEDICAID FOR INSTITUTIONALIZED CATEGORICALLY NEEDY AND MEDICALLY NEEDY INDIVIDUALS, COUPLES, AND FAMILIES

(1) In determining eligibility for categorically needy and medically needy institutionalized individuals, couples, and families under the family Medicaid and aged, blind, and disabled Medicaid coverage groups in regard to the factor of resources, no exclusions will be applied to any property that is not owned by a member of the filing or assistance unit. No exclusion will be applied to any property that is owned or held by any entity, including but not limited to a trust or corporation, limited liability company, or any other legal entity, instrument, device, or arrangement of any kind, under which a member of the filing or assistance unit does not own the property.

AUTH: 53-6-113, MCA
IMP: 53-6-131, MCA

4. The rule as proposed to be amended provides as follows. New matter is underlined. Matter to be deleted is interlined.

37.82.101 MEDICAL ASSISTANCE, PURPOSE, AND INCORPORATION OF POLICY MANUALS (1) remains the same.

(2) The department adopts and incorporates by reference the state policy manuals, namely the Family Medicaid Manual and the Aged Blind Disabled (ABD)

Medicaid Manual governing the administration of the Medicaid program dated ~~January~~ July 1, 2008. The Family Medicaid Manual, the ABD Medicaid Manual, and the proposed manual updates are available for public viewing at each local Office of Public Assistance or at the Department of Public Health and Human Services, Human and Community Services Division, 111 N. Jackson Street, Fifth Floor, P.O. Box 202925, Helena, MT 59601-2925. The proposed manual updates are also available on the department's web site at www.dphhs.mt.gov/legalresources/proposedmanualchange.shtml.

AUTH: 53-2-201, 53-6-113, MCA
IMP: 53-6-101, 53-6-131, 53-6-141, MCA

5. The Montana Medicaid program is a joint federal-state program that pays medical expenses for eligible individuals who have limited income and resources. To qualify for the Montana Medicaid program an individual must meet the eligibility requirements set forth in the Administrative Rules of Montana (ARM), Title 37, chapter 82. Additionally, the Family Medicaid and the Aged, Blind, and Disabled (ABD) Medicaid manuals set forth information about the eligibility requirements for Medicaid that is more detailed than that in the administrative rules. These policy manuals are published by the department primarily to provide guidance to employees of the local offices of public assistance who determine Medicaid eligibility.

ARM 37.82.101 adopts and incorporates by reference the Medicaid policy manuals. By incorporating these manuals into the administrative rules, the department gives interested parties and the public general notice and an opportunity to comment on policies governing Medicaid eligibility. Additionally, as a result of the incorporation of the manuals into the administrative rules, the policies contained in the Family Medicaid manual and the ABD Medicaid manual have the force of law in case of litigation between the department and a Medicaid applicant or recipient concerning the applicant or recipient's Medicaid eligibility.

ARM 37.82.101 currently adopts and incorporates by reference the Medicaid policy manuals effective January 1, 2008. The department proposes to make some revisions to these manuals that will take effect on July 1, 2008. The amendment of ARM 37.82.101 is therefore necessary in order to incorporate into the Administrative Rules of Montana the revised versions of the policy manuals and to permit all interested parties to comment on the department's policies and to offer suggested changes. It is estimated that changes to the Family and ABD Medicaid Manuals could affect 77,438 Medicaid recipients. Manuals and draft manual material are available for review in each local office of public assistance and on the department's web site at www.dphhs.mt.gov. Below is a brief description of the changes being made to the Family Medicaid manual and the ABD Medicaid manual, section by section, along with an explanation of the reasons why these changes are necessary.

The department also proposes to adopt Rules I, II, III, and IV to clarify the existing policy of the Public Assistance Bureau that in determining eligibility, exclusions may

not be applied to any property a filing or assistance unit does not own, and to foreclose any mistaken belief or argument that filing or assistance units may apply exclusions to property they do not own if that property is owned by or held pursuant to some legal entities, instruments, or devices, and not others. In addition to adopting Rules I, II, III, and IV to state specifically that exclusions in eligibility determinations will not apply to property a filing or assistance unit does not own, it is also necessary to revise Sections 400, 401-1, 402-1, 402-3, and 503-1 in both the Family Medicaid manual and the ABD Medicaid manual to clarify this policy, as described below.

No fiscal impact is anticipated from these changes, unless specifically noted below.

The following is an explanation of changes being made to the ABD and Family Medicaid manuals:

ABD Medicaid Manual

MA 008 Life Expectancy Table This section contains a life expectancy table that shows how much longer, on average, a male or female of a particular age can be expected to live. This table is used when it is necessary to know the life expectancy of a Medicaid applicant or recipient to determine eligibility. For example, the table is used to determine if an annuity is actuarially sound, that is, whether the applicant or recipient can be expected to live long enough to receive payments equal to the amount paid for the annuity. If, using the life expectancy tables, an annuity is found not to be actuarially sound, the purchase of the annuity may be treated as an uncompensated transfer of assets. This section is being updated to replace the current table with a more accurate table, as the current table has not been updated in at least ten years and shows only life expectancy at ten year intervals for persons aged 0 through 60 years and 90 through 110 years. The new table dated April 6, 2006 is used by the Social Security Administration and includes life expectancies for all ages in annual increments for ages 0 through 119.

MA 400 Resources Overview This section sets forth general policies for evaluating resources of applicant and recipients. The general rule is that all resources are countable unless specifically excluded by a regulation, rule, or manual provision. This section is now being amended to add a provision that no exclusions will be applied to property a filing or assistance unit does not own and specifying that this includes but is not limited to property which is owned by or held in any kind of trust, corporation, partnership, limited liability company, or other legal entity, instrument, device, or arrangement. The policy of limiting exclusions to property owned by the filing or assistance unit is a logical and simple "bright line" test for determining when exclusions apply that will be easy for eligibility specialists to administer and thus will prevent errors and inconsistent application of exclusions. The manuals do not currently state that exclusions cannot apply to property that a member of the household does not own because the department considered this to be self evident. It is now necessary to add a provision stating this policy because it has been suggested in the course of litigation that exclusions can be applied to property held

in trust for the benefit of a household member or to other property not owned by a household member. This provision clarifies rather than changes existing policy, although the current version of the ABD Medicaid manual may have inadvertently suggested that exclusions could be applied to property owned by limited liability companies. The department proposes to make changes to Sections 402-1 and MA 503-1 to eliminate the erroneous implication that exclusions may apply to property owned by limited liability companies and partnerships, which has never been the department's intention.

MA 401-1 Resources Ownership/Accessibility/Equity Value This section discusses, among other things, policies for determining ownership and accessibility of property and briefly addresses property exclusions. A provision is being added stating that no exclusions will be applied to property a filing or assistance unit does not own and specifying that this includes but is not limited to property which is owned by or held in any kind of trust, corporation, partnership, limited liability company, or other legal entity, instrument, device, or arrangement. As discussed above, this provision clarifies rather than changes existing policy. The manuals do not currently state that exclusions cannot apply to property that a member of the household does not own because the department considered this to be self evident. It is now necessary to add a provision stating this policy because it has been suggested in the course of litigation that exclusions can be applied to property held in trust for the benefit of a household member or to other property not owned by a household member.

MA 402-1 Resources Countable & Excluded This section sets forth the policies used to decide whether property is excluded or counted in determining eligibility. A provision is being added stating that no exclusions will be applied to property a filing or assistance unit does not own and specifying that this includes but is not limited to property which is owned by or held in any kind of trust, corporation, partnership, limited liability company, or other legal entity, instrument, device, or arrangement. This is a logical and simple "bright line" test for determining when exclusions apply that will be easy for eligibility specialists to administer and thus will prevent errors and inconsistent application of exclusions. As discussed above, this provision is necessary to clarify existing policy. The manuals do not currently state that exclusions cannot apply to property that a member of the household does not own because the department considered this to be self evident. It is now necessary to add a provision stating this policy because it has been suggested in the course of litigation that exclusions can be applied to property held in trust for the benefit of a household member or to other property not owned by a household member. Additionally, in the discussion of property essential to self support in this section the department proposes to add language to clarify that resource exclusions do not apply to property owned by limited liability companies, since it has never been the department's intention to apply exclusions to such property.

MA 402-3 Resources, Trust Funds This section currently provides that a revocable trust is an accessible resource when determining Medicaid eligibility. It further provides that a trust created on or after August 11, 1993 is a countable resource if the trust provides that the trust funds are available under any circumstances, but it

does not specify that this applies regardless of whether the trust is revocable or irrevocable. This section is therefore being amended to clarify that, regardless of whether the trust is stated to be revocable or irrevocable, a trust created on or after August 11, 1993 is a countable resource if there are any circumstances under which the trust funds are available. This merely clarifies the policy regarding treatment of trusts set forth in the federal Medicaid statute, 42 USC 1396p(d) and does not represent a change in policy.

Additionally, the examples in this section currently address only accessibility of trust to the beneficiary. Language is being added to clarify that some trusts may be countable to either the beneficiary or the trustor, or both. For example, if a grandmother sets up a revocable trust for her granddaughter, the trust principal may or may not be a countable resource to the granddaughter who is a Medicaid applicant depending on the terms of the trust, and the principal will be a countable resource to the grandmother if she applies for Medicaid because she can obtain the trust funds for her own use by revoking the trust.

Also, this section is being amended to provide that trust income that can be distributed but is instead retained in the trust becomes a countable resource to the beneficiary and/or trustee when retained by the trust. This policy is outlined in 42 USC 1396p(d)(3)(B)(i) but is not currently included in this section.

Statements regarding money withdrawn from a trust being countable income were amended to make it clear that this rule applies only to money withdrawn from inaccessible or excluded trusts, since money withdrawn from an accessible or countable trust would simply be changing the form of the resource from trust assets to cash/savings, etc.

Section 402-3 currently contains a subsection entitled "Self-Sufficiency Trusts of Montana" that discusses the treatment of "pooled trusts" as defined in 42 USC 1396p(d)(4(B). Pursuant to Section 1396p(d)(4(B) the Montana Legislature created a nonprofit organization known as the Self-Sufficiency Trust of Montana which administers a pooled trust in Montana for individuals with disabilities. At the time the subsection on pooled trusts was written, the department was not aware of any other entities administering pooled trusts for individuals with disabilities in Montana. It is now necessary to change the name of this subsection to "Pooled Trusts" rather than "Self-Sufficiency Trusts of Montana" because several out-of-state entities may soon be administering different versions of pooled trusts in the state.

The subsection on the exclusion for burial trusts is being amended to state that an individual may not receive exclusion for a burial trust and a prepaid irrevocable funeral agreement at the same time. If a person has a prepaid irrevocable funeral agreement and a burial trust, the burial trust will be a countable asset. This change is being made to close a loophole that would have allowed people to create both prepaid funeral contracts and burial trusts and using the prepaid funeral contract to finance burial while allowing the burial trust holdings to pass to heirs. It is preferable for the prepaid funeral contract to continue to be excluded rather than the burial

trust, because a prepaid funeral contract has no value limit for exemption. A typographical error regarding burial trusts is also being corrected. This subsection currently provides that the exclusion for burial trusts is limited to $5,000 but also states erroneously in another place that the limit is $10,000. It has always been the department's policy to exclude only $5,000 in a burial trust. This correction is being made to clarify that the limit is $5,000, not $10,000.

MA 404-6 Pursuing Claims on Property and Estates This section, which is currently designated as "Resources of a Deceased Community Spouse," is being renamed to more accurately describe the content of this section. It is also being moved to the part of the manual addressing resources and renumbered as Section MA 404-6 rather than Section MA 906-1. Section MA 906-1 currently states that an institutionalized spouse must claim the elective share provided in Montana probate law if the institutionalized spouse's husband or wife predeceases the institutionalized spouse and wills part or all of his or her property to someone other than the institutionalized spouse. It has been brought to the department's attention that this section as currently written suggests that this requirement applies only to Medicaid recipients who are institutionalized and suggests that the only type of claim the Medicaid recipient is required to assert is the right to an elective share. Additionally, it does not specify that individuals applying for Medicaid as well as individuals already receiving Medicaid are required to assert claims. This section was never intended to limit the duty to assert claims to property in this way.

The department therefore proposes to amend this section to state the policy it originally intended to implement. As amended this section will state that all individuals who are either applying for or receiving Medicaid nursing home/institutional benefits or Home and Community Based Waiver (Waiver) benefits are required to assert not only a claim to an elective share where applicable but also to assert any legal claims necessary to obtain assets or income to which the individual may be entitled, which includes but is not limited to the elective share of a surviving spouse and a homestead or family allowance. This section is further being amended to state specifically that failure or refusal to assert such legal claims will be considered an uncompensated transfer of assets. This policy is based on the provisions regarding uncompensated transfers of assets in 42 USC 1396p(c) and the definition of assets in 42 USC 1396p(e)(1), which defines the term "assets" to include any income or assets which the individual is entitled to but does not receive because of an action by the individual. The Centers for Medicare and Medicaid Services, the federal agency that administers the Medicaid program, considers a failure to act to be an action within the meaning of 42 USC 1396p(e)(1). See The State Medicaid Manual published by CMS, Section 3257, Subsec. B, examples. See also Tannler v. State Dep't. of Health and Social Services, 211 Wis.2d 179, 564 N.W.2d 735, 1997 Wisc. LEXIS 82 (Wisc. Sup. Ct. 1997). Thus, an applicant or recipient's failure to assert a claim to an elective share or assert a claim to any property the applicant or recipient is entitled to receive constitutes an uncompensated transfer of assets.

MA 503-1 Self Employment Income This section defines what constitutes self employment and discusses the treatment of self employment income and resources related to self employment. It discusses corporations and limited liability companies but currently does not address the exclusion of resources owned by a corporation, limited liability company, or partnership. The department proposes to add provisions that resources owned by a corporation, limited liability company, or partnership cannot be excluded as necessary for self employment by virtue of the fact that no exclusions will be applied to property a filing or assistance unit does not own. The manuals do not currently state that exclusions cannot apply to property that a member of the household does not own because the department considered this to be self evident. It is now necessary to add a provision stating this policy because it has been suggested in the course of litigation that exclusions can be applied to property owned by a corporation or other business entity rather than by a household member. This is a logical and simple "bright line" test for determining when exclusions apply that will be easy for eligibility specialists to administer and thus will prevent errors and inconsistent application of exclusions.

This provision clarifies rather than changes existing policy, although the current version of the ABD Medicaid manual inadvertently suggested that exclusions could be applied to limited liability companies. The department proposes to amend MA 503-1 to eliminate the erroneous implication that exclusions could be applied to property owned by limited liability companies and partnerships, which has never been the department's intention.

Additionally, Section MA 503-1 lists some types of business entities or structures which may constitute self employment, such as sole proprietorships and independent contractor. This list of self employment structures currently includes partnerships. The department now proposes to remove partnerships from the list of self employment structures and to provide that partnerships will be treated like corporations and limited liability companies rather than as self employment enterprises. These changes are necessary because an individual who works for a partnership is employed by the partnership, a business entity, not by himself or herself, and hence partnerships should not have been listed as a type of self employment structure. The department has determined that partnerships are more similar to corporations and limited liability companies than they are to sole proprietorships, and thus they should not be treated as self employment enterprises.

MA 402-3 Trust Funds This section currently provides that a revocable trust is an accessible resource when determining Medicaid eligibility. It further provides that a trust created on or after August 11, 1993 is a countable resource if the trust provides that the trust funds are available under any circumstances, but it does not specify that this applies regardless of whether the trust is revocable or irrevocable. This section is therefore being amended to clarify that, regardless of whether the trust is stated to be revocable or irrevocable, a trust created on or after August 11, 1993 is a countable resource if there are any circumstances under which the trust funds are available. This merely clarifies the policy regarding treatment of trusts set forth in the federal Medicaid statute, 42 USC 1396p(d), and does not represent a change in

policy.

Additionally, the examples in this section currently address only accessibility of trust to the beneficiary. Language is being added to clarify that some trusts may be countable to either the beneficiary or the trustor, or both. For example, if a grandmother sets up a revocable trust for her granddaughter, the trust principal may or may not be a countable resource to the granddaughter who is a Medicaid applicant depending on the terms of the trust. Additionally, the principal will be a countable resource to the grandmother if she applies for Medicaid because she can obtain the trust funds for her own use by revoking the trust.

Also, this section is being amended to provide that trust income that can be distributed but is instead retained in the trust becomes a countable resource to the beneficiary and/or trustee when retained by the trust. This policy is outlined in 42 USC 1396p(d)(3)(B)(i) but is not currently included in this section.

Statements regarding money withdrawn from a trust being countable income were amended to make it clear that this rule applies only to money withdrawn from inaccessible or excluded trusts, since money withdrawn from an accessible or countable trust would simply be changing the form of the resource from trust assets to cash/savings, etc.

MA 703-1 Medical Expense Option This section is being amended to specify that institutional medical expenses incurred while a patient is ineligible for institutional Medicaid coverage due to the application of an uncompensated asset transfer penalty period may not be used to offset an incurment nor used as an incurred medical expense to offset income in an institutional post-eligibility treatment of income determination. The Centers for Medicare and Medicaid Services recommended that state Medicaid agencies implement this policy after enactment of the Deficit Reduction Act of 2005, in a Regional Medicaid Letter dated April 17, 2006.

MA 903-1 Resource Assessments (for Residential Medical Institutions) The federal Medicaid statute at 42 USC 1396r-5 prescribes special rules for the treatment of income and resources in making the initial determination of Medicaid eligibility for married individuals who reside in a nursing home or other medical institution. Section 1396r-5(c)(1) provides that a resource assessment must be conducted listing all resources owned by the institutionalized individual, known as the institutionalized spouse, and by the institutionalized spouse's husband or wife, known as the community spouse. A share of the couple's combined countable resources is then allocated to the community spouse to provide for the community spouse's needs. This share is known as the community spouse resource maintenance allowance and is not counted in determining whether the institutionalized spouse's resources are below the $2,000 resource limit for eligibility. Section MA 903-1 sets forth the procedures and policies for conducting the resource assessment and determining what amount of resources is allocated to the community spouse.

Resources that are owned individually by either the institutionalized spouse or community spouse or jointly by the institutionalized spouse and community spouse are counted in determining their combined countable resources, as provided in 42 USC 1396r-5(c)(1) and (2). After the institutionalized spouse has been determined eligible for Medicaid the institutionalized spouse has 90 days to transfer his or her interest in any property that was allocated to the community spouse as part of the community spouse resource maintenance allowance to the community spouse. Section 903-1 currently states that if any resources owned by the institutionalized spouse that are part of the community spouse resource maintenance allowance are not transferred out of the institutionalized spouse's name within 90 days, one-half of the couple's combined resources would then be counted as resources of the institutionalized spouse. The requirement automatically to count one-half of their combined countable resources as available to the institutionalized spouse regardless of how much of the property is owned by the institutionalized spouse conflicts with the federal Medicaid statute, 42 USC 1396r-5(c)(4), which mandates that the institutionalized spouse be treated as an individual, not as part of a couple, after Medicaid eligibility has been determined. Under the federal statute, only resources owned by the institutionalized spouse, not half of the combined resources of the institutionalized spouse and the community spouse, should be counted after the institutionalized spouse has initially been determined eligible. It is therefore necessary to revise MA 903-1 to conform with federal law by changing it to say that after the 90 day period for transfer of ownership has passed only the countable resources owned by the institutionalized spouse will be counted instead of one-half the couple's combined countable resources being counted regardless of ownership.

MA 1001-1 Resource Assessments (for Home & Community-Based Services/Waiver) As discussed in regard to Section MA 903-1 *Resource Assessments (for Residential Medical Institutions)*, above, 42 USC 1396r-5 prescribes special rules for the treatment of income and resources in making the initial determination of Medicaid eligibility for married individuals who reside in a nursing home or other medical institution. The provisions of 42 USC1396r-5 apply also to married individuals who apply for or are receiving the Home and Community Based Waiver benefits instead of living in a nursing home or medical institution. Thus, a resource assessment must be conducted and a share of the couple's combined countable resources will be allocated to the spouse who is not receiving Waiver benefits (the nonwaiver spouse). Section MA 1001-1 sets forth the procedures and policies for conducting the resource assessment and determining what amount of resources is allocated to the nonwaiver spouse.

After the waiver spouse has been determined eligible for Medicaid the waiver spouse has 90 days to transfer his or her interest in any property that was allocated to the nonwaiver spouse as part of the resource maintenance allowance to the nonwaiver spouse. Section 1001-1 currently states that if any resources owned by the waiver spouse that are part of the resource maintenance allowance are not transferred out of the waiver spouse's name within 90 days, one-half of the couple's combined resources will then be counted as resources of the waiver spouse.

The requirement automatically to count one-half of their combined countable resources as available to the waiver spouse regardless of how much of the property is owned by the waiver spouse conflicts with the federal Medicaid statute, 42 USC 1396r-5(c)(4), which mandates that the waiver spouse be treated as an individual, not as part of a couple, after Medicaid eligibility has been determined. Under the federal statute, only resources owned by the waiver spouse, not half of the combined resources of the waiver spouse and the community spouse, should be counted after the waiver spouse has initially been determined eligible. It is therefore necessary to revise Section MA 1001-1 to conform with federal law by changing it to say that after the 90 day period for transfer of ownership has passed only the countable resources owned by the waiver spouse will be counted instead of one-half the couple's combined countable resources being counted regardless of ownership.

Family Medicaid Manual

FMA 400 Resources Overview This section sets forth general policies for evaluating resources of applicant and recipients. The general rule is that all resources are countable unless specifically excluded by a regulation, rule, or manual provision. This section is now being amended to add a provision that no exclusions will be applied to property a filing or assistance unit does not own and specifying that this includes but is not limited to property which is owned by or held in any kind of trust, corporation, partnership, limited liability company, or other legal entity, instrument, device, or arrangement. The policy of limiting exclusions to property owned by the filing or assistance unit is a logical and simple "bright line" test for determining when exclusions apply that will be easy for eligibility specialists to administer and thus will prevent errors and inconsistent application of exclusions. The manuals do not currently state that exclusions cannot apply to property that a member of the household does not own because the department considered this to be self evident. It is now necessary to add a provision stating this policy because it has been suggested in the course of litigation that exclusions can be applied to property held in trust for the benefit of a household member or to other property not owned by a household member. This provision clarifies rather than changes existing policy, although the current version of the ABD Medicaid manual may have inadvertently suggested that exclusions could be applied to property owned by limited liability companies. The department proposes to make changes to Sections 402-1 and MA 503-1 to eliminate the erroneous implication that exclusions may apply to property owned by limited liability companies and partnerships, which has never been the department's intention.

FMA 401-1 Resources Ownership/Accessibility/Equity Value This section discusses, among other things, policies for determining ownership and accessibility of property and briefly addresses property exclusions. A provision is being added stating that no exclusions will be applied to property a filing or assistance unit does not own and specifying that this includes but is not limited to property which is owned by or held in any kind of trust, corporation, partnership, limited liability company, or other legal entity, instrument, device, or arrangement. As discussed above, this provision

clarifies rather than changes existing policy. The manuals do not currently state that exclusions cannot apply to property that a member of the household does not own because the department considered this to be self evident. It is now necessary to add a provision stating this policy because it has been suggested in the course of litigation that exclusions can be applied to property held in trust for the benefit of a household member or to other property not owned by a household member.

FMA 402-1 Resources Countable & Excluded This section sets forth the policies used to decide whether property is excluded or counted in determining eligibility. A provision is being added stating that no exclusions will be applied to property a filing or assistance unit does not own and specifying that this includes but is not limited to property which is owned by or held in any kind of trust, corporation, partnership, limited liability company, or other legal entity, instrument, device, or arrangement. This is a logical and simple "bright line" test for determining when exclusions apply that will be easy for eligibility specialists to administer and thus will prevent errors and inconsistent application of exclusions. As discussed above, this provision is necessary to clarify existing policy. The manuals do not currently state that exclusions cannot apply to property that a member of the household does not own because the department considered this to be self evident. It is now necessary to add a provision stating this policy because it has been suggested in the course of litigation that exclusions can be applied to property held in trust for the benefit of a household member or to other property not owned by a household member. Additionally, in the discussion of property essential to self support in this section the department proposes to add language to clarify that resource exclusions do not apply to property owned by limited liability companies, since it has never been the department's intention to apply exclusions to such property.

FMA 402-3 Trust Funds This section currently provides that a revocable trust is an accessible resource when determining Medicaid eligibility. It further provides that a trust created on or after August 11, 1993 is a countable resource if the trust provides that the trust funds are available under any circumstances, but it does not specify that this applies regardless of whether the trust is revocable or irrevocable. This section is therefore being amended to clarify that, regardless of whether the trust is stated to be revocable or irrevocable, a trust created on or after August 11, 1993 is a countable resource if there are any circumstances under which the trust funds are available. This merely clarifies the policy regarding treatment of trusts set forth in the federal Medicaid statute, 42 USC 1396p(d) and does not represent a change in policy.

Additionally, the examples in this section currently address only accessibility of trust to the beneficiary. Language is being added to clarify that some trusts may be countable to either the beneficiary or the trustor, or both. For example, if a grandmother sets up a revocable trust for her granddaughter, the trust principal may or may not be a countable resource to the granddaughter who is a Medicaid applicant depending on the terms of the trust, and the principal will be a countable resource to the grandmother if she applies for Medicaid because she can obtain the trust funds for her own use by revoking the trust.

Also, this section is being amended to provide that trust income that can be distributed but is instead retained in the trust becomes a countable resource to the beneficiary and/or trustee when retained by the trust. This policy is outlined in 42 USC 1396p(d)(3)(B)(i) but is not currently included in this section.

Statements regarding money withdrawn from a trust being countable income were amended to make it clear that this rule applies only to money withdrawn from inaccessible or excluded trusts, since money withdrawn from an accessible or countable trust would simply be changing the form of the resource from trust assets to cash/savings, etc.

Section 402-3 currently contains a subsection entitled "Self-Sufficiency Trusts of Montana" that discusses the treatment of "pooled trusts" as defined in 42 USC 1396p(d)(4(B). Pursuant to Section 1396p(d)(4(B) the Montana Legislature created a nonprofit organization known as the Self-Sufficiency Trust of Montana which administers a pooled trust in Montana for individuals with disabilities. At the time the subsection on pooled trusts was written, the department was not aware of any other entities administering pooled trusts for individuals with disabilities in Montana. It is now necessary to change the name of this subsection to "Pooled Trusts" rather than "Self-Sufficiency Trusts of Montana" because several out-of-state entities may soon be administering different versions of pooled trusts in the state.

The subsection on the exclusion for burial trusts is being amended to state that an individual may not receive exclusion for a burial trust and a prepaid irrevocable funeral agreement at the same time. If a person has a prepaid irrevocable funeral agreement and a burial trust, the burial trust will be a countable asset. This change is being made to close a loophole that would have allowed people to create both prepaid funeral contracts and burial trusts and using the prepaid funeral contract to finance burial while allowing the burial trust holdings to pass to heirs. It is preferable for the prepaid funeral contract to continue to be excluded rather than the burial trust, because a prepaid funeral contract has no value limit for exemption. A typographical error regarding burial trusts is also being corrected. This subsection currently provides that the exclusion for burial trusts is limited to $5,000 but also states erroneously in another place that the limit is $10,000. It has always been the department's policy to exclude only $5,000 in a burial trust. This correction is being made to clarify that the limit is $5,000, not $10,000.

FMA 503-1 Self Employment Income This section defines what constitutes self employment and discusses the treatment of self employment income and resources related to self employment. It discusses corporations and limited liability companies but currently does not address the exclusion of resources owned by a corporation, limited liability company, or partnership. The department proposes to add provisions that resources owned by a corporation, limited liability company, or partnership cannot be excluded as necessary for self employment by virtue of the fact that no exclusions will be applied to property a filing or assistance unit does not own. The manuals do not currently state that exclusions cannot apply to property that a

member of the household does not own because the department considered this to be self evident. It is now necessary to add a provision stating this policy because it has been suggested in the course of litigation that exclusions can be applied to property owned by a corporation or other business entity rather than by a household member. This is a logical and simple "bright line" test for determining when exclusions apply that will be easy for eligibility specialists to administer and thus will prevent errors and inconsistent application of exclusions.

This provision clarifies rather than changes existing policy, although the current version of the ABD Medicaid manual inadvertently suggested that exclusions could be applied to limited liability companies. The department proposes to amend MA 503-1 to eliminate the erroneous implication that exclusions could be applied to property owned by limited liability companies and partnerships, which has never been the department's intention.

Additionally, Section MA 503-1 lists some types of business entities or structures which may constitute self employment, such as sole proprietorships and independent contractor. This list of self employment structures currently includes partnerships. The department now proposes to remove partnerships from the list of self employment structures and to provide that partnerships will be treated like corporations and limited liability companies rather than as self employment enterprises. These changes are necessary because an individual who works for a partnership is employed by the partnership, a business entity, not by himself or herself, and hence partnerships should not have been listed as a type of self employment structure. The department has determined that partnerships are more similar to corporations and limited liability companies than they are to sole proprietorships, and thus they should not be treated as self employment enterprises.

6. The department intends the adoption and amendment to be applied effective July 1, 2008.

7. Interested persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to 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 June 5, 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.

8. 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.

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

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

/s/ Barbara Hoffmann
Rule Reviewer

/s/ Joan Miles
Director, Public Health and Human Services

Certified to the Secretary of State April 28, 2008.

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the adoption of New Rules I and II, and amendment of ARM 44.3.102, 44.3.103, 44.3.104, 44.3.105, 44.3.106, 44.3.107, 44.3.108, 44.3.109, 44.3.110, 44.3.113, 44.3.1303, 44.3.1712, 44.3.2005, 44.3.2010, 44.3.2015, 44.3.2114, 44.3.2203, 44.3.2401, 44.3.2405, 44.3.2511, 44.9.305, and 44.9.402 pertaining to elections	)	NOTICE OF PROPOSED ADOPTION AND AMENDMENT NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On June 26, 2008, the office of the Secretary of State proposes to adopt and amend the above-stated rules.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking or need an alternative accessible format of this notice. If you require an accommodation, contact the Secretary of State no later than 5:00 p.m., May 22, 2008, to advise us of the nature of the accommodation that you need. Please contact Janice Doggett, Secretary of State's Office, P.O. Box 202801, Helena, Montana 59620-2801; phone (406) 444-5375; fax (406) 444-2023; TDD (406) 444-9068; or e-mail jdoggett@mt.gov.

3. The proposed new rules provide as follows:

NEW RULE I LATE AND LATE TRANSFER REGISTRATION APPLICANTS IN MAIL BALLOT ELECTIONS (1) An individual seeking to register or transfer the elector's registration after the close of regular registration must appear in the county election office.

(2) If a late or late transfer registration applicant comes in to register in the county election office before mail ballots are mailed, a county election official must register the applicant in the statewide voter database and follow the procedures for absentee electors in 13-19-303, MCA, until noon on the day before the ballots are mailed.

(3) If a late or late transfer registration applicant comes into the county election office to register after noon on the day before the date on which the mail ballots are mailed, the applicant must fill out the form under ARM 44.9.305 and if the applicant meets all applicable requirements for being issued a ballot, an election official shall issue the elector a ballot.

(4) If a late transfer registration applicant who is registered in another county appears in the county election office in order to transfer the applicant's registration, an election official shall, if the county from which the applicant is transferring registration has already printed applicable precinct registers:

(a) subject to 13-2-304(2), MCA, register the applicant in the statewide voter database as a duplicate voter;

(b) issue the applicant a provisional ballot; and

(c) after the election, contact the county from which the applicant is transferring the applicant's registration in order to determine whether the applicant voted in the other county, and follow all other applicable requirements specified in laws and rules for provisional electors.

AUTH: 13-19-105, MCA
IMP: 13-2-304, MCA

NEW RULE II INACTIVE ELECTORS IN MAIL BALLOT ELECTIONS

(1) Inactive electors are not provided with mail ballots unless they reactivate under the following procedures:

(a) If an inactive elector requests a ballot, or mails in or brings in a voter registration card (or other document listing the elector's current residence address, including but not limited to a reactivation form) before the ballots are mailed, election officials must change the elector's status in the statewide voter registration database to "Active" and send the elector a ballot on the same date as all other mail ballots are mailed.

(b) If an inactive elector requests a ballot, or mails in or brings in a voter registration card (or other document listing the elector's current residence address, including but not limited to a reactivation form) after the day on which the ballots were mailed, election officials must change the elector's status in the statewide voter registration database to "Active" and provide the elector with a ballot in person or by mail.

(c) In neither (1)(a) or (b) is it necessary for an election official to require the elector to fill out a form under 13-19-305, MCA, since the elector, by following 13-2-222, MCA, is activating the elector's registration and is therefore automatically eligible for a ballot.

AUTH: 13-19-105, MCA
IMP: 13-2-222, MCA

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

44.3.102 ROLE OF SECRETARY OF STATE (1) through (1)(c) remain the same.

(d) grant exemptions to the requirement that a polling place shall be accessible to the elderly and ~~handicapped~~ individuals with disabilities;

(e) establish procedures to ensure that any ~~handicapped~~ individual with a disability or elderly voter assigned to an inaccessible polling place will be provided with an alternative means for casting a ballot on election day;

(f) provide public notice, calculated to reach ~~elderly and handicapped electors~~ individuals with disabilities or elderly electors in a timely manner, of the:

(i) through (iii) remain the same.

(g) ~~not later than December 31 of each even-numbered year,~~ report to the ~~Federal Election Commission~~ applicable federal agency, in a manner to be determined by the ~~commission~~ agency:

(i) through (2) remain the same.

AUTH: ~~13-1-202,~~ 13-3-205, MCA
IMP: ~~13-1-202,~~ 13-3-205, MCA

44.3.103 DEFINITIONS (1) Unless the context clearly requires otherwise, the following definitions shall apply:

(a) "Accessible" describes the combination of the various elements of the built environment as prescribed by these rules which allows unimpeded entrance to, emergence from, and use of polling place facilities by ~~handicapped and elderly voters~~ individuals with disabilities or elderly electors.

(b) through (e) remain the same.

(f) "Inaccessible" means not accessible under standards adopted pursuant to 13-3-205, MCA.

~~(f)~~(g) ~~"Handicapped"~~ "Individuals with disabilities" means:

(i) ~~those~~ individuals with impaired vision;

(ii) ~~those~~ individuals with impaired hearing~~, and~~;

(iii) ~~those~~ individuals with impaired mobility, including wheelchair users and those who are ambulatory but who are nevertheless impaired by age, disability, or disease~~.~~; and

(iv) individuals with a physical or mental impairment that substantially limits one or more major life activities, who have a history or record of such an impairment, or who are perceived by others as having such an impairment.

(g) remains the same but is renumbered (h).

(i) "Rural polling place" means a location that is expected to serve less than 200 registered electors.

AUTH: ~~13-1-202,~~ 13-3-202, MCA
IMP: ~~13-1-202,~~ 13-3-202, MCA

44.3.104 GUIDELINES FOR POLLING PLACE ACCESSIBILITY (1) To be designated as accessible to individuals with disabilities and elderly voters, the standards for a polling place approved pursuant to 13-3-205(1), MCA, prior to October 1, 2005, ~~whenever possible,~~ must be consistent with the standards for accessibility established by the American National Standards Institute and the Uniform Federal Accessibility Standards. Completed forms prescribed by the Secretary of State pursuant to ARM 44.2.102(1)(b) are the method by which an election administrator must demonstrate the compliance of each polling place with this section.

(2) remains the same.

AUTH: 13-1-202, 13-3-205, MCA
IMP: 13-1-202, 13-3-205, MCA

44.3.105 SURVEY PROCEDURE TO DETERMINE ACCESSIBILITY

(1) through (3) remain the same.

(4) A form prescribed by the Secretary of State shall be used as a checklist for each polling place surveyed. Copies of the survey shall be made available for public inspection and to the Secretary of State upon request, except as provided in (5) ~~of this rule~~.

(5) If an existing polling place fails to satisfy the criteria for accessibility and cannot be permanently or temporarily altered in a safe and reasonable manner to satisfy the criteria before the date of the election, it will ~~either~~ be~~:~~

~~(a)~~ designated "inaccessible" and shall not be used unless an exemption is granted by the Secretary of State in accordance with the provisions of ARM 44.3.106~~; or~~.

~~(b) surveyed, evaluated and certified as "technically inaccessible but usable" by a voting accessibility advisory committee, as provided in ARM 44.3.109.~~

(6) and (7) remain the same.

~~(8) A copy of an evaluation form as prescribed by the Secretary of State, signed by the members of a voting accessibility advisory committee shall be attached to the survey for a polling place designated "technically inaccessible but usable."~~

AUTH: ~~13-1-202,~~ 13-3-202, MCA
IMP: ~~13-1-202,~~ 13-3-207, MCA

44.3.106 EXEMPTION PROCEDURE (1) remains the same.

~~(2) Nothing herein shall require an election administrator to choose an accessible polling place facility located within the jurisdiction in such a manner as to require excessive travel or other hardships for the majority of the qualified electors.~~

(3) through (5) remain the same but are renumbered (2) through (4).

(5) The Secretary of State may grant an exemption pursuant to this subchapter if all potential polling places have been surveyed and it is determined that:

(a) an accessible polling place is not available and the county cannot safely or reasonably make a polling place temporarily accessible in the area involved; or

(b) the location is a rural polling place and designation of an accessible facility as a polling place will require excessive travel or impose other hardships for the majority of qualified electors in the precinct.

(6) If the Secretary of State has reason to believe such an exemption would not be in the best interest of the majority of the ~~elderly and handicapped~~ individuals with disabilities or elderly electors, he shall deny the exemption and:

(a) report to the election administrator and the county governing body his reasons for the denial~~; and~~.

~~(b) request that an accessible or "technically inaccessible but usable" polling place facility be located.~~

(7) A polling place designated as "rural" 45 days prior to an election~~,~~ shall be exempt from the on-site survey procedure provided in ARM 44.3.108.

(8) If one or more ~~disabled persons~~ individuals with disabilities or elderly electors contact the election administrator or the Secretary of State concerning a

specific exemption, the Secretary of State shall work in cooperation with the election administrator and the ~~disabled~~ individuals with disabilities or elderly person(s) in locating an available facility that is accessible or providing an acceptable alternative method of voting according to the provisions in ARM 44.3.110.

AUTH: ~~13-1-202,~~ 13-3-205, MCA
IMP: ~~13-1-202,~~ 13-3-212, MCA

44.3.107 EMERGENCY EXEMPTION (1) If a polling place designated "accessible" ~~or "inaccessible but usable"~~ becomes unavailable for reasons such as loss of lease, fire, snow, or other natural disasters less than ten days prior to an election, an emergency exists and an alternate polling place shall be selected.

(2) and (3) remain the same.

AUTH: ~~13-1-202,~~ 13-3-205, MCA
IMP: ~~13-1-202,~~ 13-3-211, MCA

44.3.108 POLLING PLACE DESIGNATION (1) As the result of an on-site survey, or current voter registration reports, a polling place shall be designated as:

(a) "accessible"; or

(b) "inaccessible"~~;~~.

~~(c) "technically inaccessible but usable"; or~~

~~(d) "rural".~~

~~(2) An "accessible" polling place is one that meets the criteria for accessibility as established by these rules.~~

~~(3) An "inaccessible" polling place is one that does not meet the criteria for accessibility and cannot be made accessible through practical, cost-effective methods.~~

~~(4) A "technically inaccessible but usable" polling place is one that does not meet all the criteria for accessibility but has been surveyed, evaluated and certified by a voting accessibility advisory committee as "usable". Such certification is cause for the Secretary of State to grant that polling place an exemption. However, the Secretary of State may issue an objection to the criteria used for the determination of "usability" for future elections.~~

~~(5) A "rural" polling place is one that serves 200 or less registered electors and is:~~

~~(a) granted an exemption from the criteria for accessibility by the Secretary of State;~~

~~(b) subject to review and redesignation 45 days prior to an election; and~~

~~(c) subject to redesignation following the 1986 election cycle.~~

~~(6) A "rural" designation shall not be construed as cause for denying elderly or handicapped electors in that polling place the right to choose to vote by an alternative method, as provided by ARM 44.3.110.~~

(2) A polling place that has been surveyed pursuant to this subchapter need not be surveyed again unless the conditions of accessibility change.

AUTH: ~~13-1-202,~~ 13-3-205, MCA

IMP: ~~13-1-202,~~ 13-3-206, 13-3-207, MCA

44.3.109 VOTING ACCESSIBILITY ADVISORY COMMITTEE (1) remains the same.

(2) Each committee shall consist of a minimum of three members, two of which shall represent an organization of elderly persons or an organization of ~~disabled persons~~ individuals with disabilities.

(3) remains the same.

~~(4) The committee has sole authority to evaluate and certify a polling place as "technically inaccessible but usable."~~

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

AUTH: ~~13-1-202,~~ 13-3-205, MCA
IMP: ~~13-1-202,~~ 13-3-205, MCA

44.3.110 ALTERNATIVE MEANS FOR CASTING BALLOT (1) The election administrator shall provide an alternative method of voting for those electors who are unable, because of ~~a physical handicap~~ disability or age, to access their regular polling place. Those methods are limited to the following:

(a) through (c) remain the same.

(i) notify the election administrator, in writing at least seven days preceding the election, of his desire to vote on election day at an accessible polling place;

(ii) through (iv) remain the same.

~~(v)~~(2) For the purposes of this ~~part~~ rule, the ballot shall be processed and counted in the same manner as an absentee ballot.

AUTH: ~~13-1-202,~~ 13-3-205, MCA
IMP: ~~13-1-202,~~ 13-3-213, MCA

44.3.113 TELECOMMUNICATIONS DEVICE FOR THE HEARING IMPAIRED (1) remains the same.

(2) ~~Election administrators shall clearly post the~~ The Secretary of State~~'s TDD number, and~~ shall advertise ~~it~~ the TDD number wherever possible~~, for 60 days prior to each election~~.

AUTH: ~~13-1-202,~~ 13-3-205, MCA
IMP: ~~13-1-202,~~ 13-3-205, MCA

44.3.1303 FORMAT OF VOTER INFORMATION PAMPHLET ARGUMENTS AND REBUTTALS (1) and (1)(a) remain the same.

(b) Use of graphics, tables, or graphs is prohibited.

(c) remains the same.

(d) Bold, italics, and underlined words are acceptable.

(e) and (f) remain the same.

(g) Arguments submitted for publication in the VIP must be limited to 500 words; arguments in excess of this limit will only be printed through the 500th word. Rebuttals submitted for publication in the VIP must be limited to 250 words; rebuttals

in excess of this limit will only be printed through the 250th word. ~~Errors in typing or grammar will not be corrected or edited.~~

AUTH: 13-27-401, MCA
IMP: 13-27-406, 13-27-407, MCA

44.3.1712 PERFORMANCE CERTIFICATION OF VOTING SYSTEMS PRIOR TO ELECTION (1) No more than 30 days prior to an election in which a voting system is used, the election administrator shall publicly test and certify that the system is performing properly.

(2) The Secretary of State shall ensure that at least 10% of all voting systems in the state, including each model of each type of voting system, have been randomly tested and certified at least once every calendar year. This rule shall be implemented through review by the Secretary of State of its prescribed voting system testing and certification forms completed by the county.

AUTH: 13-17-211, MCA
IMP: 13-17-212, MCA

44.3.2005 VOTER REGISTRATION CARD INFORMATION REQUIREMENTS (1) through (3) remain the same.

(4) If an applicant does not provide all required information and the election administrator is unable to obtain that information, except for the information in (2) on the form prescribed by the Secretary of State, the applicant shall be registered as "pending - incomplete" in the statewide voter registration database~~. The applicant shall not be registered unless and~~ until the required information is provided.

AUTH: 13-2-109, MCA
IMP: 13-2-110, MCA

44.3.2010 APPLICANTS INELIGIBLE DUE TO AGE OR RESIDENCE REQUIREMENTS (1) An applicant for voter registration who is not eligible to register because of residence or age requirements, but who will be eligible on or before election day, may apply for voter registration pursuant to 13-2-110, MCA. An election official shall register the applicant as an active elector. The statewide voter registration database shall not include in the register the name of any individual who will not be at least 18 years of age on or before election day.

AUTH: 13-2-109, MCA
IMP: 13-2-110, 13-2-205, MCA

44.3.2015 LATE REGISTRATION PROCEDURES (1) through (4) remain the same.

(5) If a late transfer registration applicant who is registered in another county appears in the county election office in order to transfer the applicant's registration, an election official shall, if the county from which the applicant is transferring registration has already printed applicable precinct registers:

(a) subject to 13-2-304(2), MCA, register the applicant in the statewide voter database as a duplicate voter;

(b) issue the applicant a provisional ballot; and

(c) after the election, contact the county from which the applicant is transferring the applicant's registration in order to determine whether the applicant voted in the other county, and follow all other applicable requirements specified in laws and rules for provisional electors.

AUTH: 13-2-108, MCA
IMP: 13-2-304, 13-2-514, MCA

44.3.2114 PROVISIONAL VOTING PROCEDURES ON ELECTION DAY AFTER THE CLOSE OF POLLS - THE SIXTH DAY AFTER ELECTION DAY

(1) through (3) remain the same.

(4) The election administrator may open a package containing a precinct register to resolve questions concerning provisional ballots.

(4) through (7)(b) remain the same but are renumbered (5) through (8)(b).

(c) remove the provisional ballot secrecy envelope, which must be opened to remove the provisional ballot, and which must then be grouped with other ballots in a manner that allows for the secrecy of the ballot to the greatest extent possible, and counted as any other ballot under ~~(8)~~(9); and

(d) remains the same.

(8) through (10) remain the same but are renumbered (9) through (11).

AUTH: 13-13-603, MCA
IMP: 13-15-107, 13-15-301, MCA

44.3.2203 FORM OF ABSENTEE BALLOT APPLICATION AND ABSENTEE BALLOT TRANSMISSION TO ELECTION ADMINISTRATOR (1) through (5) remain the same.

(6) The election administrator shall mail an address confirmation form, prescribed by the Secretary of State~~, at least 75 days before the election to each elector who has requested an absentee ballot for subsequent elections.~~ in January and July of each year to each elector who has requested an absentee ballot for subsequent elections. The address confirmation form mailed in January is for elections to be held between February 1 following the mailing through July of the same year, and the address confirmation form mailed in July is for elections to be held between August 1 following the mailing through January of the succeeding year. The form shall, in bold print, indicate that the elector may update the elector's mailing address using the form. The elector or elector's agent shall sign the form, indicate the address to which the absentee ballot should be sent, and return the form to the election administrator. If the form is not completed and returned, the election administrator shall remove the elector from the register of electors who have requested an absentee ballot for subsequent elections.

(7) and (8) remain the same.

AUTH: 13-13-212, MCA

IMP: 13-13-211, 13-13-212, 13-13-213, MCA

44.3.2401 BALLOT FORM AND UNIFORMITY (1) through (5) remain the same.

(6) Consistent with 13-13-205, MCA:

(a) The election administrator shall ensure that ~~paper~~ ballots are printed ~~and available for absentee voting~~ at least:

(i) 30 days prior to an election for those elections held in compliance with 13-1-107(1), MCA;

(ii) 20 days prior to an election for those elections held in compliance with 13-1-104(2) and (3) and 13-1-107(2), MCA; ~~and~~

(b) 45 days prior to an election held in conjunction with a federal general election in compliance with 13-1-104(1), MCA~~.~~;

(c) A ballot may not be provided to an elector for absentee voting sooner than 30 days before an election, except that an absentee ballot requested pursuant to Title 13, chapter 21, MCA, may be sent to the elector as soon as the ballot is printed; and

~~(c)~~(d) If paper ballots are sent more than 30 days before an election, the election administrator shall include a notice that the voter information pamphlet, when required to be distributed, will be provided pursuant to 13-27-410, MCA.

AUTH: 13-12-202, MCA
IMP: 13-12-202, MCA

44.3.2405 DETERMINING A VALID VOTE ON A FEDERAL WRITE-IN ABSENTEE BALLOT (1) A United States elector voting a federal write-in absentee ballot for a federal general election may designate a candidate by writing in the name of the candidate or by writing in the name of the political party for which the elector is voting. A written designation of the political party must be counted as a vote for the candidate of that party. A vote may not be voided for reasons of misspellings, abbreviations, or other minor variations of the candidate's name.

(2) Except as provided in (2)(a), a United States elector may vote in any election for a public office other than for a federal office by using the addendum provided in the federal write-in absentee ballot and writing in the title of the office and the name of the candidate for whom the elector is voting.

(a) If the elector is voting in a primary election, the elector shall identify the elector's political party affiliation as provided for in the appropriate section of the ballot. A vote cast by writing in the name of a candidate who is not affiliated with the elector's identified party is void and may not be counted.

AUTH: ~~13-15-206,~~ 13-21-103, MCA
IMP: 13-21-205, MCA

44.3.2511 ELECTRONIC TRANSMISSION OF VOTING MATERIALS

(1) County election administrators shall allow United States electors to receive and transmit election materials electronically, as long as the security of transmission and identity of each elector is confirmed and facilities are available to

maintain the accuracy, integrity, and secrecy of the ballot process. The procedures in this subchapter shall be followed, wherever applicable, in regard to the receipt and transmission of election materials electronically:

(a) remains the same.

(b) Upon request for electronic transmission of a ballot, an election administrator who has received a valid application from a United States elector shall, subject to (1), send by electronic transmission a ballot, instructions to the elector, and a notice that the elector's ballot will not be secret in that it will be received by the election administrator and the elector's votes will be transcribed to the original ballot by a panel of no less than two election judges. The original instructions and original ballot shall be retained in a secure absentee envelope.

(c) through (j) remain the same.

(2) Nothing in this rule shall prohibit a county election official from participating in any secure program for facilitating voting by United States electors which is sponsored by an agency of the federal government.

AUTH: 13-21-104, MCA
IMP: ~~13-21-104,~~ 13-21-207, MCA

44.9.305 REPLACEMENT BALLOTS (1) through (3) remain the same.

(4) Replacement ballots subsequently voted and returned by an elector shall be processed according to the established procedures. Particular care shall be taken to ~~insure~~ ensure that no more than one ballot is validated from any elector and any attempt to vote more than once shall be reported as required by the Act.

AUTH: 13-19-105, MCA
IMP: 13-19-305, MCA

44.9.402 RETURN/VERIFICATION ENVELOPE (1) remains the same.

(2) The face of the envelope should have the address of the election administrator both as return address and, in larger type, as mailing address. The words "POSTMASTER: OFFICIAL BALLOT - DO NOT DELAY" and "RETURN SERVICE REQUESTED", to ensure the nonforwardability of the mail ballots, should also appear.

(3) through (5) remain the same.

(a)

Voter's Affidavit

"I, the undersigned, hereby swear/affirm that I am registered to vote in Montana or that I am entitled to vote in this election because of special provisions; that I have not voted another ballot; that I have completed this ballot in secret; and that the address listed on this envelope is my correct address (or if it is not, my correct mailing address is: _____). I understand that attempting to vote more than once is a violation of Montana election laws. I further understand that failure to complete the information below will invalidate my ballot."

(Signature of Elector) (Today's Date)

or

(b) remains the same.

AUTH: 13-1-202, 13-19-105, MCA
IMP: 13-19-105, MCA

5. Reasonable Necessity: These rules are being proposed and amended pursuant to legislation enacted during the 2007 legislative session. The main purpose of these rules is to ensure the full implementation of updates to election laws that were passed during the legislative session and to specify procedures that are not enumerated in the applicable laws, but which are necessary for the integrity and fairness of elections. The specific laws included House Bill 520, House Bill 570, Senate Bill 443, and Senate Bill 502. The rules attempt to continue to ensure that every eligible Montanan is able to exercise his or her right to vote, while at the same time protecting the integrity of the election process. The rules will now be up-to-date with statutes already in effect.

6. Concerned persons may submit their data, views, or arguments concerning the proposed actions in writing to: Janice Doggett, Secretary of State's Office, P.O. Box 202801, Helena, MT 59620-2801; phone (406) 444-5375; fax (406) 444-2023; or e-mail jdoggett@mt.gov, and must be received no later than 5:00 p.m., June 5, 2008.

7. If persons who are directly affected by the proposed actions wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to Janice Doggett, Secretary of State's Office, P.O. Box 202801, Helena, MT 59620-2801, or by e-mailing jdoggett@mt.gov, and must be received no later than 5:00 p.m., June 5, 2008.

8. If the agency receives requests for a public hearing on the proposed actions from either 10% or 25, whichever is less, of the persons directly affected by the proposed actions; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 62,235 persons based on the number of registered voters in Montana.

9. The Secretary of State 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 administrative rules, corporations, elections, notaries, records, Uniform Commercial Code, or a combination thereof. 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 Secretary of State's Office, Administrative Rules Bureau, 1236 Sixth Avenue, P.O. Box 202801, Helena, MT 59620-2801, faxed to the office at (406) 444-4263, e-mailed to jabranscum@mt.gov, or may be made by completing a request form at any rules hearing held by the Secretary of State's Office.

10. 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. 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.

11. These rule actions will be applied retroactively to June 2, 2008, to apply to the June 3 primary elections.

12. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsors were notified by U.S. mail and e-mail on April 22, 2008.

SECRETARY OF STATE

/s/ W. Ralph Peck, Chief Deputy for
Brad Johnson
Secretary of State

/s/ Janice Doggett
Rule Reviewer

Certified April 28, 2008.

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 4.2.101 and 4.2.102 relating to model procedural rules, 4.9.201 relating to the wheat and barley procedural rule, 4.12.1502 relating to the public participation rule in the mint program, and adoption of New Rule I relating to hail insurance program public participation	))))))))	NOTICE OF AMENDMENT AND ADOPTION

TO: All Concerned Persons

1. On March 13, 2008, the Montana Department of Agriculture published MAR Notice No. 4-14-172 relating to a public hearing on the proposed amendment and adoption of the above-stated rules at page 433 of the 2008 Montana Administrative Register, Issue Number 5.

2. The agency has amended ARM 4.2.101, 4.2.102, 4.9.201, 4.12.1502, and adopted New Rule 4.4.202 exactly as proposed.

3. No comments or testimony were received.

DEPARTMENT OF AGRICULTURE

/s/ Ron de Yong
Ron de Yong, Director

/s/ Cort Jensen
Cort Jensen, Rule Reviewer

Certified to the Secretary of State, April 28, 2008.

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

In the matter of the adoption of NEW RULES I through IV pertaining to Debt Collections	)))	NOTICE OF ADOPTION

TO: All Concerned Persons

1. On March 27, 2008, the State Auditor and Commissioner of Insurance published MAR Notice No. 6-172 regarding the public hearing on the proposed adoption of the above-stated rules at page 509 of the 2008 Montana Administrative Register, issue number 6.

2. On April 17, 2008, the State Auditor and Commissioner of Insurance held a public hearing to consider the proposed adoption of the above-stated rules.

3. The State Auditor and Commissioner of Insurance has adopted NEW RULE I (ARM 6.6.4401) PURPOSE AND SCOPE, NEW RULE II (ARM 6.6.4402) DEFINITIONS, NEW RULE III (ARM 6.6.4403) REFERRAL FOR RECOVERY AND OFFSET, and NEW RULE IV (ARM 6.6.4404) UNCOLLECTIBLE DEBT, exactly as proposed.

4. No comments were heard at the hearing, and no written comments were received before the comment deadline.

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

/s/ Janice S. VanRiper
Janice S. VanRiper
Deputy State Auditor

Certified to the Secretary of State April 28, 2008.

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

In the matter of the amendment of ARM 6.6.5221 regarding Small Business Health Insurance Purchasing Pool and Tax Credits	))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On March 13, 2008, the department published MAR Notice No. 6-174 regarding a notice of proposed amendment of the above-stated rule at page 436, 2008 Montana Administrative Register, Issue No. 5.

2. The department has amended ARM 6.6.5221 exactly as proposed.

3. No comments or testimony were received.

4. This amendment will be applied retroactively to May 1, 2008.

/s/ Carol Roy
Carol Roy
Rule Reviewer

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

Certified to Secretary of State April 28, 2008.

BEFORE THE HARD-ROCK MINING IMPACT BOARD
DEPARTMENT OF COMMERCE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 8.104.101, 8.104.201, 8.104.202, 8.104.211, 8.104.214, and 8.104.218 pertaining to the organization and procedural rules of the Hard-Rock Mining Impact Board	))))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On January 31, 2008, the Department of Commerce published MAR Notice No. 8-104-66 pertaining to the proposed amendment of the above-stated rules at page 81 of the 2008 Montana Administrative Register, Issue Number 2.

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

3. No comments or testimony were received.

/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 April 28, 2008.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
AND THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 17.30.502, 17.30.619, 17.30.641, 17.30.646, 17.30.702, 17.30.1001, 17.30.1007, 17.36.345, 17.55.102, 17.56.507, and 17.56.608, pertaining to Department Circular DEQ-7	)	NOTICE OF AMENDMENT (WATER QUALITY) (SUBDIVISIONS) (CECRA) (UNDERGROUND STORAGE TANKS)

TO: All Concerned Persons

1. On December 20, 2007, the Board of Environmental Review and the Department of Environmental Quality published MAR Notice No. 17-265 regarding a notice of public hearing on the proposed amendment of the above-stated rules at page 2035, 2007 Montana Administrative Register, issue number 24.

2. The board and department have amended the rules exactly as proposed.

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

COMMENT NO. 1: The Montana Department of Agriculture recommended modifying the way several pesticides and their metabolites are listed so that they are considered cumulatively rather than separately from the parent compounds. The Department of Agriculture wanted the department Circular DEQ-7 to reflect that, if a pesticide and its metabolites are detected in a water sample, the sum of the concentrations should be used to measure compliance with the standard. The original changes to the department Circular DEQ-7 made it appear that there are separate standards for the parent compound and for the metabolites.

The list of pesticides that should be considered cumulative are: atrazine and its chlorinated metabolites (deethyl atrazine, deisopropyl atrazine, and deethyl deisopropyl atrazine); acetochlor and its metabolites (acetochlor ESA and acetochlor OA); alachlor and its metabolites (alachlor ESA and alachlor OA); imazamethabenz methyl ester and its acid metabolite; metolachlor and its metabolites (metolachlor ESA and metolachlor OA); and pinoxaden (NOA 407855) and its metabolites (pinoxaden NOA 407854 and pinoxaden NOA 447204).

RESPONSE: The board and department agree with the comments and have made the changes to the department Circular DEQ-7. The individual metabolites were removed from the charts and footnotes were added to each pesticide for the associated metabolites. The footnotes were added to the end of the department Circular DEQ-7 and are similar to the language provided for the pesticide tralkoxydim. Each footnote for the parent compound will read: "The sum of the concentrations of "pesticide name" and its breakdown products (metabolite names) shall not exceed the standards listed."

Reviewed by:

BOARD OF ENVIRONMENTAL REVIEW

/s/ James M. Madden
JAMES M. MADDEN
Rule Reviewer

By: */s/ Joseph W. Russell*
JOSEPH W. RUSSELL, M.P.H.
Chairman

DEPARTMENT OF ENVIRONMENTAL QUALITY

By: */s/ Richard H. Opper*
RICHARD H. OPPER

Certified to the Secretary of State, April 28, 2008.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 17.30.610 pertaining to surface water quality	)))	NOTICE OF AMENDMENT (WATER QUALITY)

TO: All Concerned Persons

1. On December 20, 2007, the Board of Environmental Review published MAR Notice No. 17-266 regarding a notice of public hearing on the proposed amendment of the above-stated rule at page 2043, 2007 Montana Administrative Register, issue number 24.

2. The board has amended the rule exactly as proposed.

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

COMMENT NO. 1: A total of ten proponents spoke in favor of reclassifying the portion of the Dry Fork of the Marias River from Highway 91 to I-15. There were no opponents of the classification change.

RESPONSE: The board acknowledges the comments.

Reviewed by: BOARD OF ENVIRONMENTAL REVIEW

/s/ James M. Madden
JAMES M. MADDEN
Rule Reviewer

By: */s/ Joseph W. Russell*
JOSEPH W. RUSSELL, M.P.H.
Chairman

Certified to the Secretary of State, April 28, 2008.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of ARM 24.101.413 renewals and 24.154.401 fees	) NOTICE OF AMENDMENT)) (Licensed Addiction Counselors)

TO: All Concerned Persons

1. On March 13, 2008, the Department of Labor and Industry (department) published MAR Notice No. 24-154-7 regarding the proposed amendment of the above-stated rules, at page 444 of the 2008 Montana Administrative Register, issue no. 5.

2. On April 3, 2008, a public hearing was held on the proposed amendment of the above-stated rules in Helena. Several comments were received by the April 11, 2008, deadline.

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

COMMENT 1: Several commenters opposed the increase in the license renewal fee, stating that the increase is exorbitant and the department should take into consideration the relatively low pay of licensed addiction counselors.

RESPONSE 1: The department is statutorily required to set and maintain fees that are commensurate with the associated program costs to adequately fund the licensure and regulation of licensed addiction counselors. The department cannot set fees according to inflation, cost of living, or the current salaries of licensees, but will continue to monitor program expenses to ensure fiscal responsibility.

COMMENT 2: Several commenters opined that the department failed to include details in the notice of proposed amendment to show cause for the fee increase.

RESPONSE 2: The department calculated projected costs for FY09 forward based on the program's actual costs in FY07 and FY08. These costs along with the removal of approximately one-half the program's funding by the Department of Public Health and Human Services were the determining factors in setting the fee increase.

The department is required biennially to provide detailed information to the Montana Legislature on current and projected licensee numbers and program revenues, expenses, activities, goals, objectives, and complaints. The department also reviews a current financial report, including the program's fiscal year income and expenditures to date, when considering the adequacy of program fees. This fiscal information is available from the department and is open to public inspection and scrutiny.

COMMENT 3: Commenters asserted that the two weeks' notice provided by the department was insufficient in which to prepare a rebuttal to the proposed changes.

RESPONSE 3: All executive branch agencies are statutorily required to provide the public at least 20 days' notice of a rulemaking hearing and at least 28 days from the date of the original notice in which to submit comments. The department has fully complied with all the requirements of the Montana Administrative Procedure Act per 2-4-302, MCA.

COMMENT 4: Commenters opposed the change from a biennial to annual renewal period because it will be more difficult for licensees to obtain the required continuing education in one year.

RESPONSE 4: The department determined that a biennial renewal was not fiscally feasible and is changing to an annual renewal to comply with the Department of Administration's fiscal guidelines, to which the Department of Labor and Industry is required to adhere. At this time, the department has not proposed to amend the rules regarding continuing education requirements.

COMMENT 5: One commenter suggested the department create another level of licensure for administrative personnel who don't generate revenue with the LAC license.

RESPONSE 5: Additional types or levels of licensure can only be created in statute by the Montana Legislature. The department is unable to address the suggestion as the comment is outside the scope of this rulemaking notice.

COMMENT 6: Several commenters opposed the deletion of the oral examination requirement without a concurrent increase in the requisite supervised counseling experience to 2000 hours.

RESPONSE 6: The department is deleting the fee to comply with the 2005 legislative amendment that removed the oral exam requirement. The department has not proposed any change to the experience requirement and is unable to address the comment as it is outside the scope of this rulemaking notice.

4. The department has amended ARM 24.101.413 and 24.154.401 exactly as proposed.

/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 April 28, 2008

BEFORE THE BOARD OF PRIVATE SECURITY
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of ARM 24.182.401 fees and 24.182.503 experience requirements	)))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On January 31, 2008, the Board of Private Security (board) published MAR Notice No. 24-182-31 regarding the amendment of the above-stated rules, at page 89 of the 2008 Montana Administrative Register, issue no. 2.

2. On February 21, 2008, a public hearing was held on the proposed amendment of the above-stated rules in Helena. Several comments were received by the February 29, 2008, deadline.

3. The board has thoroughly considered the comments and testimony received. A summary of the comments received and the board responses are as follows:

COMMENT 1: One commenter opposed the changes made to the board's statutes during the 2007 legislative session. The commenter stated that the legislation was poorly written and strips private investigators of the ability to investigate fires without getting a second type of license. The commenter opposes any fees until the legislation is straightened out.

RESPONSE 1: The board appreciates all comments made, but notes that this comment is directed toward statutory change and is beyond the scope of this rulemaking process. Under current statutes, the board is obligated to license, regulate, and charge licensure fees for fire investigators.

COMMENT 2: Two commenters stated that not all firefighters receive adequate or any training in fire investigation. The commenters suggested removing firefighter experience from the rule or specifying a minimum amount of fire investigation training for firefighter experience to count toward the requirements of ARM 24.182.503(4).

RESPONSE 2: The board agrees with the comments and is amending the rule accordingly.

COMMENT 3: One commenter questioned the meaning of "fire detective" in ARM 24.182.503(4). The commenter stated he had never heard the term throughout numerous years of fire investigation.

RESPONSE 3: The board agrees with the comment and is striking the term from the rule.

4. The board has amended ARM 24.182.401 exactly as proposed.

5. The board has amended ARM 24.182.503 with the following changes, stricken matter interlined, new matter underlined:

24.182.503 EXPERIENCE REQUIREMENTS (1) through (4)(a)(ii) remain as proposed.

(iii) having been a fire investigator~~, fire detective, firefighter,~~ or held a similar position acceptable to the board with a city, county, or state government or with the United States government.

(b) through (7) remain as proposed.

BOARD OF PRIVATE SECURITY
LINDA SANEM, PI, 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 April 28, 2008

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

In the matter of the amendment of ARM 37.30.405 pertaining to Vocational Rehabilitation Program payment for services	))))	NOTICE OF AMENDMENT

TO: All Interested Persons

1. On February 28, 2008, the Department of Public Health and Human Services published MAR Notice No. 37-430 pertaining to the public hearing on the proposed amendment of the above-stated rule, at page 369 of the 2008 Montana Administrative Register, issue number 4.

2. The department has amended ARM 37.30.405 as proposed.

3. No comments or testimony were received.

/s/ Cary Lund
Rule Reviewer

/s/ Joan Miles
Director, Public Health and
Human Services

Certified to the Secretary of State April 28, 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 IX, the amendment of ARM 37.81.104, 37.81.301, 37.81.304, 37.81.307, 37.81.310, 37.81.318, 37.81.322, 37.81.338, 37.81.346, and the repeal of ARM 37.81.9004, 37.81.9005, 37.81.9006, 37.81.9009, and 37.81.9010 pertaining to the Pharmacy Access Prescription Drug Benefit Program (Big Sky Rx)	))))))))))	NOTICE OF ADOPTION, AMENDMENT, AND REPEAL

TO: All Interested Persons

1. On March 13, 2008, the Department of Public Health and Human Services published MAR Notice No. 37-433 pertaining to the public hearing on the proposed adoption, amendment, and repeal of the above-stated rules, at page 457 of the 2008 Montana Administrative Register, issue number 5.

2. The department has adopted New Rule I (37.81.1001), Rule III, (37.81.1005), Rule IV (37.81.1008), Rule V (37.81.1009), Rule VI (37.81.1012), Rule VII (37.81.1013), Rule VIII (37.81.1020), and Rule IX (37.81.1018) as proposed.

3. The department has amended ARM 37.81.104, 37.81.301, 37.81.304, 37.81.307, 37.81.310, 37.81.318, 37.81.322, and 37.81.338, and repealed ARM 37.81.9004, 37.81.9005, 37.81.9006, 37.81.9009, and 37.81.9010 as proposed.

4. The department has adopted the following rule as proposed with the following changes from the original proposal. Matter to be added is underlined. Matter to be deleted is interlined.

RULE II (ARM 37.81.1002) RULE DEFINITIONS In addition to the definitions in 53-6-1001, MCA, the following definitions apply to this chapter:

(1) and (2) remain as proposed.

(3) "Chronic disease" means a condition or disease of long duration and generally slow progression that requires long term drug treatment such as cardiovascular disease, chronic respiratory disease, diabetes mellitus, ~~and geriatric issues~~ arthritis, epilepsy, cancer, osteoporosis, depression, anxiety, bipolar disorder, or schizophrenia.

(4) through (13) remain as proposed.

AUTH: 53-2-201, 53-6-1006, MCA
IMP: 53-2-201, 53-6-1006, MCA

5. The department has amended 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.

37.81.346 BIG SKY RX PDP MEMORANDUM OF UNDERSTANDING (MOU) AND BUSINESS ASSOCIATES AGREEMENT (BAA) (1) An insurer receiving direct payment of all or part of a PDP premium from the state on behalf of an enrollee must enter into a Memorandum of Understanding (MOU) ~~and~~ or Business Associates Agreement (BAA) with the department.

AUTH: 53-2-201, 53-6-1004, MCA
IMP: 53-2-201, 53-6-1001, 53-6-1004, 53-6-1005, MCA

6. Due to a typographical error, the department is amending ARM 37.81.346 to change the word "and" to "or" in the requirement for an insurer receiving a PDP payment to enter into a contract with the department. Either a Memorandum of Understanding or a Business Associates Agreement will be sufficient to satisfy the requirement.

7. The department has thoroughly considered all commentary received. The comments received and the department's response to each follow:

COMMENT #1: The way the definition of "chronic disease" is written could be interpreted to limit the diseases specified by the definition (cardiovascular disease, chronic respiratory disease, diabetes, geriatric issues). These diseases could be included as examples, but PharmAssist benefits should not be limited to those. There are many other diseases or conditions that qualify as chronic and require long-term drug treatment. Patients with these diseases or conditions would benefit from a PharmAssist consultation. Additional examples might include arthritis, epilepsy, cancer, osteoporosis, and mental illnesses (depression, anxiety, bipolar disorder, and schizophrenia). The use of the term "geriatric issues" is ambiguous and may benefit from a clearer definition.

RESPONSE: The department agrees with the commentor. The original intent was not to limit "chronic disease" to the diseases in the definition but to give examples. Therefore, the department will adjust the rule language to clearly state that the listed disease states are just examples of what could be considered a "chronic disease".

8. The department intends these rules to be applied retroactively to July 1, 2007. There is no detrimental effect caused by applying these rules retroactively.

/s/ John Koch
Rule Reviewer

/s/ Joan Miles
Director, Public Health and Human Services

Certified to the Secretary of State April 28, 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 and II pertaining to general Medicaid services, physician administered drugs	))))	NOTICE OF ADOPTION

TO: All Interested Persons

1. On February 28, 2008, the Department of Public Health and Human Services published MAR Notice No. 37-432 pertaining to the public hearing on the proposed adoption of the above-stated rules, at page 376 of the 2008 Montana Administrative Register, issue number 4.

2. The department has adopted New Rules I (37.85.903) and II (37.85.905) as proposed.

3. The department has thoroughly considered all commentary received. The comments received and the department's response to each follow:

COMMENT #1: One commentor opposed the adoption of new Rule I (ARM 37.85.903) and Rule II (ARM 37.85.905), requiring reporting of National Drug Codes (NDCs) on all physician administered drugs. The commentor complained about the high cost of implementation for its urban hospitals and clinics. In addition, the commentor stated it believes the cost to implement the billing changes, and maintain data bases and record-keeping processes outweighs any program savings to Medicaid. The commentor requests that the department suspend the proposed rule indefinitely until such time as [true] savings can be evaluated.

RESPONSE: The department does not have authority to suspend implementation of the Deficit Reduction Act of 2005 (DRA), Public Law No. 109-171 pertaining to Medicaid reimbursement for prescription drugs. Section 6002 of the DRA amends section 1903(i)(10) of the Social Security Act (the Act) by prohibiting Medicaid Federal Financial Participation (FFP) for physician administered drugs unless states submit the utilization data described in section 1927(a) of the Act. It also amends section 1927 of the Act to require the submission of utilization data for physician administered drugs. Under DRA, implementation was to have been effective January 1, 2008. The department requested additional time to implement the DRA requirements and the Centers for Medicare and Medicaid Services (CMS), the federal agency overseeing state Medicaid programs, only granted a delay until April 1, 2008.

COMMENT #2: Another commentor opposed adoption of new Rule I (ARM 37.85.903) and Rule II (ARM 37.85.905) due to the high cost of implementation for their rural hospitals and clinics. The commentor requested that the department

postpone implementation of the requirements for at least two years to allow the provider time for their electronic medical records system to become fully operational.

RESPONSE: The department does not have authority to postpone implementation of the Medicaid prescription drug requirements of the DRA. States are not required to participate in the Medicaid program, but if they do they must comply with the requirements of the Medicaid Act and its regulations. The department anticipates rebates of approximately $81,396 for state fiscal year (SFY) 2008 and approximately $325,584 for SFY 2009 with state shares of $25,615 and $79,777 respectively. Failure to comply would not only result in loss of the state's share of rebates but would also result in the loss of FFP for physician administered drugs. The department cannot afford the loss of FFP for failure to comply. In addition, collections of rebates will far outweigh the initial setup and maintenance costs in the long run. For a further explanation, please see the response to comment #1.

4. The department intends to apply the proposed new rules retroactively to April 1, 2008. Since the billing requirements are simply administrative, there will be no detrimental effects.

/s/ John Koch
Rule Reviewer

/s/ Joan Miles
Director, Public Health and Human Services

Certified to the Secretary of State April 28, 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 AMENDMENT

TO: All Interested Persons

1. On February 14, 2008, the Department of Public Health and Human Services published MAR Notice No. 37-428 pertaining to the proposed amendment of the above-stated rule, at page 301 of the 2008 Montana Administrative Register, issue number 3.

2. The department has amended ARM 37.108.507 as proposed.

3. No comments or testimony were received.

/s/ Lisa Amille Swanson
Rule Reviewer

/s/ Joan Miles
Director, Public Health and Human Services

Certified to the Secretary of State April 28, 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 IX pertaining to awarding grants to carry out the purposes of the Montana Community Health Center Support Act	)))))	NOTICE OF ADOPTION

TO: All Interested Persons

1. On December 6, 2007, the Department of Public Health and Human Services published MAR Notice No. 37-423 pertaining to the public hearing on the proposed adoption of the above-stated rules, at page 1990 of the 2007 Montana Administrative Register, issue number 23.

2. The department has adopted New Rule I (ARM 37.109.101), and Rule VII (ARM 37.109.113) as proposed.

3. The department has adopted the following rules as proposed with the following changes from the original proposal. Matter to be added is underlined. Matter to be deleted is interlined.

RULE II (37.109.103) DEFINITIONS (1) "Advisory group" means the nine member group appointed as provided in 50-4-810, MCA~~, that recommends to the department the protocols and priorities among goals it considers appropriate for funding~~.

(2) remains as proposed.

(3) "Bureau of Primary Health Care (BPHC)" means the bureau within the Health Resources and Services Administration (HRSA) of the ~~federal~~ United States Department of Health and Human Services that oversees the determination of Community Health Center (CHC) status and makes a recommendation regarding federally qualified health center (FQHC) and FQHC look-alike status. A health care center that wants Section 330 grant money ~~of~~ from the PHSA must apply to the BPHC as provided in 42 CFR 51c (2007)~~, et seq~~.

(4) remains as proposed.

(5) "Centers for Medicare and Medicaid Services (CMS)" is the division of the ~~federal~~ United States Department of Health and Human Services that confers FQHC and FQHC look-alike status and implements FQHC reimbursement policy.

(6) "Community health center (CHC)" means a health care center that meets the requirements of 42 USC 254b (2007) and 42 CFR 51c (2007)~~, et seq.~~ and is receiving federal Section 330 grant money under the PHSA.

(7) "Comprehensive primary health care services" means ~~the basic, entry-level health care that is generally provided in an outpatient setting, at a minimum providing or arranging for the provision of all of the following~~:

~~(a) diagnosis, treatment, consultation, referral, and other services rendered~~

~~by a licensed physician or other qualified personnel;~~

~~(b) diagnostic laboratory and radiological services;~~

~~(c) preventive health services, including medical social services, nutritional assessment, and referral, preventive health education, children's eye and ear examinations, well child care (including periodic screening), prenatal and postpartum care, cancer screening, immunization, and voluntary family planning service;~~

~~(d) emergency medical services;~~

~~(e) transportation services as needed for adequate patient care;~~

~~(f) dental services provided by a licensed dentist or other qualified personnel;~~

~~(g) mental health and substance abuse services;~~

~~(h) vision services;~~

~~(i) pharmaceutical services;~~

~~(j) therapeutic radiological services;~~

~~(k) public health services (including nutrition education and social services);~~

~~(l) ambulatory surgical services; and~~

~~(m) services, including the services of outreach workers (including those fluent in languages other than English), which promote and facilitate the optimal use of health services (42 CFR 51c102(h) and 51c102(j)).~~

(a) basic health services which, for the purposes of this subchapter, shall consist of:

(i) health services related to family medicine, internal medicine, pediatrics, obstetrics, or gynecology that are furnished by physicians and where appropriate, physician assistants, nurse practitioners, and nurse midwives;

(ii) diagnostic laboratory and radiologic services;

(iii) preventive health services, including:

(A) prenatal and perinatal services;

(B) appropriate cancer screening;

(C) well-child services;

(D) immunizations against vaccine-preventable diseases;

(E) screenings for elevated blood lead levels, communicable diseases, and cholesterol;

(F) pediatric eye, ear, and dental screenings to determine the need for vision and hearing correction and dental care;

(G) voluntary family planning services;

(H) preventive dental services;

(iv) emergency medical services; and

(v) pharmaceutical services as may be appropriate for particular centers;

(b) referrals to providers of medical services (including specialty referral when medically indicated) and other health-related services (including substance abuse and mental health services);

(c) patient case management services (including counseling, referral, and follow-up services) and other services designed to assist health center patients in establishing eligibility for and gaining access to federal, state, and local programs that provide or financially support the provision of medical, social, housing, educational, or other related services;

(d) services that enable individuals to use the services of the health center (including outreach and transportation services and, if a substantial number of the

individuals in the population served by a center are of limited English-speaking ability, the services of appropriate personnel fluent in the language spoken by a predominant number of such individuals); and

(e) education of patients and the general population served by the health center regarding the availability and proper use of health services.

(8) remains as proposed.

(9) "Department committee" means employees of the department and other persons appointed by the department director to participate in the screening and grant awards determination in this rule.

(10) remains as proposed.

(11) "Federally qualified health center" means a facility that meets the definition of 42 USC 1396d(l)(2)(B) (2007). A FQHC is entitled to receive enhanced Medicaid and Medicare reimbursement. Federally qualified ~~C~~community health centers, federally qualified health center look-alikes, and certain tribal and urban Indian entities are FQHCs. ~~Federally qualified health centers are also referred to as federally Qualified community health centers in Montana statute.~~

(12) remains as proposed.

(13) "Medically underserved area or population (MUA/MUP)" means an area or population designated by the Secretary of the United States Department of Health and Human Services as having a shortage of primary health services. Designation information may be obtained from the primary care office within the ~~department~~ United States Department of Health and Human Services.

(14) through (18) remain as proposed.

AUTH: 50-4-804, MCA
IMP: 50-4-801, MCA

RULE III (37.109.105) ~~PROTOCOLS AND~~ PRIORITIES AMONG GOALS

(1) The advisory group appointed pursuant to 50-4-810, MCA, shall advise the department committee, in writing, of its recommendations for the ~~protocols and~~ priorities related to awarding state grant(s) from among the following goals:

(a) remains as proposed.

(b) create and support new access satellites in new locations for comprehensive primary health care services by existing CHCs ~~in new locations~~;

(c) through (e) remain as proposed.

(2) Final decision ~~of the protocols and priorities~~ will be made by the department committee. If the department committee does not follow the recommendations of the advisory group~~, it must comply with the requirements of 50-4-811, MCA~~ it will provide its reasons for not doing so in writing to the advisory group.

AUTH: 50-4-804, MCA
IMP: 50-4-805, MCA

RULE IV (37.109.107) ELIGIBILITY FOR GRANT (1) To be eligible for consideration for a state grant an applicant must submit a proposal and meet the requirements listed in (1)(a) through (f) and (2). The applicant for:

(a) "capital expenditure" must be ~~to~~ an existing FQHC. Capital expenditure grants are for the purchase of equipment or renovation of clinic facilities. Capital expenditure applications must demonstrate that additional services will be made available and/or increase patient capacity per department guidelines for capital expenditure applications;

(b) through (f) remain as proposed.

(2) The applicant for new access points ~~and new satellite access sites~~ must be able to meet all the requirements of 42 CFR 51c (2007)~~, et seq.~~ and provide evidence that the following requirements of 42 CFR 51c (2007) will be met:

(a) The successful applicant ~~will~~ must have a governing board with at least nine but not more than 25 members, a majority of whom are individuals served or who will be served by the health center and are representative of the health center's patient demographics. No more than one-half of the remaining members of the governing board may be individuals who derive more than ten percent of their annual income from the health care industry. The remaining members of the governing board shall be representative of the area which the center serves.

(b) The successful applicant ~~will~~ must have a sliding schedule of fees that is linked to the patient's ability to pay for patients with incomes up to 200% of the federal poverty level.

(c) The successful applicant ~~will be serving~~ must serve a significant portion of a population located in a medically underserved area (MUA) or designated as a medically underserved population (MUP). If the area is not currently federally designated, in whole or in part, as a MUA or MUP, the applicant must provide documentation that the request has been submitted.

(d) The successful applicant ~~will serve all patients~~ must provide access to services in the targeted service area or population without discrimination.

(3) The applicant for new satellite access sites, service expansion, expanded medical capacity, or capital expenditure must meet the requirements of 42 CFR 51c (2007)~~, et seq.~~ and provide evidence that the following requirements of 42 CFR 51c (2007) have been met:

(a) The successful applicant must have, or intend to have, a governing board with at least nine but not more than 25 members, a majority of whom are individuals served, or will be served, by the health center and are representative of the health center's patient demographics. No more than one-half of the remaining members of the governing board may be individuals who derive more than ten percent of their annual income from the health care industry. The remaining members of the governing board shall be representative of the area which the center serves.

(b) The successful applicant must have a sliding schedule of fees that is linked to the patient's ability to pay for patients with incomes up to 200% of the federal poverty level.

(c) The successful applicant must ~~be serving~~ serve a significant portion of a population located in a medically underserved area (MUA) or designated as a medically underserved population (MUP).

(d) The successful applicant must ~~serve all patients~~ provide access to services in the targeted services area or population without discrimination.

AUTH: 50-4-804, MCA

IMP: 50-4-802, 50-4-805, MCA

RULE V (37.109.109) REQUESTS FOR PROPOSALS FOR MONTANA COMMUNITY HEALTH CENTER SUPPORT ACT GRANTS (1) and (2) remain as proposed.

(3) In addition ~~a new access point or new satellite~~ the RFP may require that the ~~access~~ application ~~must~~ include:

(a) through (c) remain as proposed.

(d) its expanded medical capacity application which it has submitted or will submit to the Secretary of HHS; ~~and~~ or

(e) its capital expenditure application which it will submit to the department.

(4) The applicant ~~should~~ may refer to the United States Department of Health and Human Services, HRSA-08-077 dated September 28, 2007; or the United States Department of Health and Human Services, Policy Information Notice (PIN) 2003-03 dated February 12, 2003; or the United States Department of Health and Human Services, Policy Information Notice (PIN) 2006-09 dated February 8, 2006; or department guidelines for capital expenditure applications; whichever is most appropriate for additional information ~~requirements~~.

AUTH: 50-4-804, MCA
IMP: 50-4-802, 50-4-805, 50-4-806, MCA

RULE VI (37.109.111) CRITERIA FOR AWARDING GRANTS

(1) Proposals will be evaluated by the department committee using ~~criteria developed by the advisory group and the criteria~~ the priorities developed by the advisory group pursuant to ARM 37.109.105 and the criteria by category of application as located at the United States Department of Health and Human Services, HRSA-08-077 dated September 28, 2007; or the United States Department of Health and Human Services, Policy Information Notice (PIN) 2003-03 dated February 12, 2003; or the United States Department of Health and Human Services, Policy Information Notice (PIN) 2006-09 dated February 8, 2006, or department guidelines for capital expenditure applications.

(2) ~~In addition to the criteria listed above, the~~ The advisory group may develop additional criteria related specifically to Montana and its unique circumstances. ~~Additional c~~Criteria to be considered may include, but ~~is~~ are not limited to: high need areas~~;~~, impact~~;~~, federal funding opportunities, readiness, collaborations, and cost per client served. ~~Any criterion used in addition to the criteria in the previous paragraph shall be listed in the request for proposal.~~

~~(3) The advisory group may elect to develop weighting criteria related specifically to Montana and its unique circumstances. Weighting criteria does not have to conform to the weights assigned in the United States Department of Health and Human Services, HRSA-08-077 dated September 28, 2007; or the United States Department of Health and Human Services, Policy Information Notice (PIN) 2003-03 dated February 12, 2003; or the United States Department of Health and Human Services, Policy Information Notice (PIN) 2006-09 dated February 8, 2006; or department guidelines for capital expenditure applications. The advisory group will determine state-specific scoring methodology for the criteria identified above,~~

~~and also identify any preferences.~~

~~(4)~~ (3) All criteria shall be listed in the request for proposal. If the department committee does not follow the recommendations of the advisory group, it must comply with the requirements of 50-4-811, MCA.

(4) In the event that funding is available after the initial award process has been completed, the department shall have the option of making awards to the next highest rated applicant(s) without requiring a new RFP process.

AUTH: 50-4-804, MCA
IMP: 50-4-802, 50-4-805, 50-4-806, MCA

RULE VIII (37.109.115) REVIEW OF PROPOSALS ~~BY DEPARTMENT COMMITTEE~~

(1) remains as proposed.

(2) The advisory group will have an opportunity to define its role in the evaluation process in accordance with Montana Department of Administration requirements regarding requests for proposals.

AUTH: 50-4-804, MCA
IMP: 50-4-805, 50-4-806, MCA

RULE IX (37.109.117) AWARD AND ADMINISTRATION OF GRANT

(1) Final grant awards determination, along with a prioritized listing arranged by highest score of applicants will be made by the department committee. The department committee shall advise the advisory group, in writing, of its determination of grant award(s) to applicant(s) along with the prioritized listing of additional eligible applicants ~~will be made by the department committee. The department committee shall advise the advisory group, in writing, of its determination of grant awards to applicant(s)~~. If the department committee does not follow the recommendation(s) of the advisory group, ~~it must comply with the requirements of 50-4-811, MCA~~ the department committee will provide its reasons for not doing so in writing to the advisory committee.

(2) ~~Applicants~~ Successful applicants, also referred to as "grantees", that are to be awarded grants by the department will negotiate a contract with the department. Grant amounts will be awarded prior to the end of the state fiscal year.

(3) remains as proposed.

(4) The contract may be terminated for nonperformance or underperformance on the part of the ~~applicant~~ grantee. The department committee may make a determination of nonperformance or underperformance based on the ~~applicants'~~ grantee's demonstrated work toward accomplishing the objectives of their request for proposal. The ~~applicant~~ grantee will be notified by the department committee of ~~their~~ its determination of nonperformance or underperformance. The ~~applicant~~ grantee will be afforded an opportunity to remedy the nonperformance or underperformance. The department committee may make a determination of continuing nonperformance or underperformance based on the ~~applicants'~~ grantee's demonstrated work toward accomplishing the objectives of their request for proposal. The grantee ~~applicant~~ will have the right to ~~request a hearing~~ seek all

contractual and judicial remedies available if aggrieved by the determination of continuing nonperformance or underperformance of the department committee. ~~Hearing rights under this rule will be detailed in the department committee's determination of continuing nonperformance or underperformance.~~

(5) remains as proposed.

(6) Grant award monies will cease once federal monies are received by the successful applicant for the same purpose as this grant award.

(7) remains as proposed.

(8) Benchmarks and other reporting tools may be used by the department to determine a grantee's performance ~~on the part of applicants that obtain grant awards~~.

(9) remains as proposed.

AUTH: 50-4-804, MCA
IMP: 50-4-802, 50-4-805, 50-4-806, MCA

4. The department has changed references to the "federal Department of Health and Human Services" to the "United States Department of Health and Human Services" for uniformity and accuracy. This is not a substantive change. Department staff edited the following proposed rules to accurately state the rules' intent and to implement statute. Rule II(1) (ARM 37.109.103), Rule II(3) (ARM 37.109.103), Rule II(6) (ARM 37.109.103), Rule II(9) (ARM 37.109.103), Rule IV(2) (ARM 37.109.107), Rule IV(3) (ARM 37.109.107), and Rule VI(3) (ARM 37.109.111). These edits are not substantive changes. The edits make the adopted rules consistent with the revisions made to other proposed rules based on comments received and accepted. The cite to 42 CFR 51 was corrected to 42 CFR 51c and the phrase "successful applicant" was added where applicable to distinguish between requirements for applicants generally and requirements for applicants who were awarded state grants.

Rule IX (ARM 37.109.117) is corrected to accurately state that if the department determines a grantee is not performing or underperforming, it will have the right to seek all contractual and judicial remedies. Administrative hearings are not required for issues related to contract performance and an aggrieved grantee should not be required to exhaust unnecessary administrative remedies before proceeding to district court.

5. The department has thoroughly considered all commentary received. The comments received and the department's response to each follow:

COMMENT #1: Proposed Rule II(3) (ARM 37.109.103). The proposed definition of "Bureau of Primary Health Care" refers to "A health center that wants Section 330 grant money of the PHA…." This should refer to "A health center that wants Section 330 grant money from the PHSA…." "PHSA" is the acronym for Public Health Service Act defined in Rule II(2) (ARM 37.109.103).

RESPONSE: The department has investigated the matter and the errors noted by

the commentor only appear in the copy of the notice as shown on the Department of Public Health and Human Services web site and may have also been reflected on the copy mailed to interested parties. The errors noted by the commentor are an internal clerical error after the notice had been submitted for publication. The language appears correctly in the official version published by the Secretary of State's office in the Montana Administrative Register and as published on their web site. As noted on the Department of Public Health and Human Services web site index page for the administrative rules (http://www.dphhs.mt.gov/legalresources/administrativerules/index.shtml), there is a possibility that the content on the web site may vary from the official version and that a copy of the official ARM in official format can be obtained from the Secretary of State's office. The department apologizes for the error and any confusion it may have caused. However, since the official version is correct, there is no need to make the changes suggested by the commentor.

COMMENT #2: Proposed Rule II(7) (ARM 37.109.103). The "Comprehensive primary health care services" definition should be consistent with the definition of required primary health care services in 42 USC 254b(b)(1) (2007). The list included in the proposed rule inadvertently included services that are considered "supplemental health services" and not required mandatory primary health care services. The new list language is from 42 USC 254b(b) (2007), which is the list of primary care services utilized in the current federal New Access Point Grant Guidance. The supplemental health services may be appropriate for particular centers to adequately support primary health services, but should not be required of all health centers.

RESPONSE: The department agrees and has changed the definition to reflect this.

COMMENT #3: The definition in proposed Rule II(11) (ARM 37.109.103). "Federally qualified health center" stated "Federally qualified health centers are also referred to as federally qualified community health centers in Montana statute." Federally qualified community health centers refer to community health centers but not the FQHC-lookalikes or tribal and urban Indian clinics which are other entities considered to be FQHCs.

RESPONSE: The department agrees. Montana statute defines the term "Federally qualified community health center" at 50-4-803(4), MCA. The reference to the term in Rule II(11) (ARM 37.109.103) is unnecessary and is deleted.

COMMENT #4: In proposed Rule III(1)(b), (ARM 37.109.105) "in new locations" is mentioned twice in the sentence so the "in new locations" at the end of (1)(b) can be deleted. The reference to 50-4-811, MCA is vague.

RESPONSE: The department agrees. The phrase "in new locations" is removed from the end of Rule III(1)(b) (ARM 37.109.105). The department also removed the term "protocols" and the reference to 50-4-811, MCA for clarity. The rule now states that the department committee will provide the advisory group with a written explanation if it does not follow the advisory group's recommendations.

COMMENT #5: In proposed Rule IV(1)(a) (ARM 37.109.107) delete "to" after "must be" to read "The applicant for: (a) "capital expenditure" must be an existing FQHC."

RESPONSE: The department agrees and has changed the rule accordingly.

COMMENT #6: Proposed Rule IV(3) (ARM 37.109.107) could be combined with (2) as the requirements are the same.

RESPONSE: Changes have been made to re-group application requirements to more accurately reflect the requirements of the various types of applications. However, this was a discussion point with the advisory group who wanted the two subsections to remain.

COMMENT #7: In proposed Rule V(3) (ARM 37.109.109) the department has utilized, as much as possible, the same grant application requirements and format as required by HRSA for new access points, new satellites, medical capacity, and service expansion grants, so there is no need to also include copies of the applications sent to the Secretary of HHS. Instead, the Montana Primary Care Association suggests rewording this section to read that the RFP requirements will closely correspond to the federal grant requirements and format for new access points or satellites, medical capacity, or service expansion grants. The federal application could be utilized "in lieu" of the state's but may cause some problems in utilizing federal forms versus the state modified forms. Section (3) as currently written, requires new access point or new satellite applications to submit not only new access point applications and FQHC look-alike applications, but also service expansion, expanded medical capacity and capital expenditure applications. So at a minimum, this section needs to be reworked so that the type of application is matched to the correct funding category and application process.

RESPONSE: The department agrees and has made the suggested changes.

COMMENT #8: Commentor suggests that in proposed Rule VI (ARM 37.109.111) pertaining to criteria for awarding grants, the department delete "developed by the advisory group and the criteria" because criteria developed by the advisory group are discussed in (2). The default criteria are the HHS criteria which should be given prominence. The commentor also proposed omitting Rule VI(3) (ARM 37.109.111) regarding the advisory group developing weighted criteria.

RESPONSE: The department agrees and has made the suggested change.

COMMENT #9: A commentor proposed the addition of Rule VI(4) (ARM 37.109.111). "(4) In the event that funding is available after the initial award process has been completed, such as in the case that the state-funded grantee receives federal funding for the same purpose, the department shall have the option of making awards to the next highest rated applicant(s) without requiring a new RFP process." The rules should specifically allow the department to create a list of

acceptable grant proposals, and list them in priority order for funding, to create an avenue to fund a second grantee from the list if the first grantee is funded. For example, let us say that Health Care Provider "A" has the top proposal, and gets funded by the state for a new access point. If Health Care Provider "A" should be successful in getting federal funding a few months later, and no longer needs state funds, the department should be able to go back to the list of proposals and simply take number 2 on the list (if that grant proposal was scored at an acceptable level) to award a grant that will use the available state money. If the state needs to go through another whole grant/RFP cycle, you can imagine the time delay, the hassle for communities, and so on. Simply being able to go down the list would be far more efficient and productive.

RESPONSE: The department agrees and has changed the rule accordingly.

COMMENT #10: In Rule VIII (ARM 37.109.115) Review of Proposals by Department Committee. The rules do not currently describe any role of the advisory group in the award process even though HB 406 in section (7), (now 50-4-811, MCA) states:

"Advisory Group -purpose and role. (1) The purpose of the advisory group is to oversee the grant award process developed by the department; and

(2) The advisory group will recommend to the department the projects that it considers appropriate for the funding in accordance with the requirements of sections (4) and (5). The advisory group's recommendations are not binding on the department, but when a recommendation is not followed by the department, the department shall provide the reasons to the advisory group."

It is understood that involvement of the advisory group must be carefully crafted to comply with the Montana Department of Administration evaluation requirements of the RFP process. Some suggested language on the advisory board's role might be:

"The advisory group will have an opportunity to define its role in the evaluation process in accordance with Montana Department of Administration requirements. For example, the advisory group could choose to have the department committee complete the objective review process without its active involvement or the advisory group might determine another mechanism along with evaluation criteria to actively involve board's participation in the final awards determination."

RESPONSE: The department agrees. "The advisory group will have an opportunity to define its role in the evaluation process in accordance with Montana Department of Administration requirements regarding requests for proposals." will be added as Rule VIII(2) (ARM 37.109.115). In addition the title will be changed to "REVIEW OF PROPOSALS ~~BY DEPARTMENT COMMITTEE~~".

COMMENT #11: In Rule IX(1) (ARM 37.109.117) Award and Administration of Grant, section (1), revise the current language to allow for the use of a "prioritized list" of applications that would eligible for funding as a component as suggested for

Rule VI(5). "(1) Final grant awards determination, along with a prioritized listing, arranged by highest score, of applicants will be made by the department committee. The department committee shall advise the advisory group, in writing, of its determination of grant award(s) to applicant(s) along with the prioritized listing of additional eligible applicants."

RESPONSE: The department agrees. RULE IX(1) (ARM 37.109.117) will be amended so that the first two sentences are removed and the following two sentences are inserted in its place: "(1) Final grant awards determination, along with a prioritized listing, arranged by highest score**,** of applicants will be made by the department committee. The department committee shall advise the advisory group, in writing, of its determination of grant award(s) to applicant(s) along with the prioritized listing of additional eligible applicants."

COMMENT #12: Concern had been expressed that some of the titles of the documents referenced within this administrative rule proposal may need to be amended due to the issuance of a RFP after the ARM hearing.

RESPONSE: The RFP has been issued and reviewed. Further amendments to the proposed rule are not needed due to issuance of the RFP.

/s/ Geralyn Driscoll
Rule Reviewer

/s/ Joan Miles
Director, Public Health and Human Services

Certified to the Secretary of State April 28, 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 December 31, 2007. This table includes those rules adopted during the period January 1, 2008, through March 31, 2008, 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 December 31, 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 2007 and 2008 Montana Administrative Register.

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