ISSUE NO. 21

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 The Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 2.5.502 and adoption of New Rule I pertaining to contract security	)))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT AND ADOPTION

TO: All Concerned Persons

1. On November 26, 2008, at 11:00 a.m., a public hearing will be held in Room 165 of the Mitchell Building, 125 North Sanders, Helena, Montana, to consider the proposed amendment and adoption of the above-stated rules.

2. The Department of Administration will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the State Procurement Bureau no later than 5:00 p.m. on November 17, 2008, to advise us of the nature of the accommodation that you need. Please contact Gretchen Bingman, State Procurement Bureau, P.O. Box 200135, 125 North Roberts, Helena, MT 59620-0135; telephone (406) 444-7210; Montana Relay Service 711; facsimile (406) 444-2529; e-mail to gbingman@mt.gov.

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

2.5.502 BID, PROPOSAL, AND CONTRACT PERFORMANCE SECURITY

(1) and (2) remain the same.

(3) Facsimile, electronic, or photocopy copies of bid or contract security are not acceptable.

(4) through (7)(g) remain the same.

(8) ~~All contract performance security, except bonds, will be returned to the successful bidder or offeror upon completion of the contract, or at the discretion of the procurement official as documented to assure contract completion, or warranty period as declared within the contract.~~ The division shall timely return to the contractor all contract performance security, except bonds, following the division's receipt of the notice described in [NEW RULE I].

AUTH: 18-4-221, 18-4-312, MCA
IMP: 18-1-201, 18-4-312, MCA

4. The proposed new rule provides as follows:

NEW RULE I COMPLETION NOTIFICATION FOR CONTRACTS WITH PERFORMANCE SECURITY (1) Within 30 days of the expiration of a contract requiring contract security, the contracting agency shall provide written notification stating that:

(a) the contract has been successfully performed and, if a warranty period is specified in the contract, that no claims are pending under the warranty; and

(b) the agency waives all rights and claims to the contract security.

(2) If the contract was established through the State Procurement Bureau, the notification shall be provided to the division. If the contract was established within an agency's delegated authority, the notification shall be provided to the agency's contracting office.

AUTH: 18-4-221, 18-4-312, MCA
IMP: 18-4-312, MCA

STATEMENT OF REASONABLE NECESSITY: Contract performance security is required for certain contracts entered into by the state of Montana. For contracts established through the State Procurement Bureau (SPB) for other state agencies, such security is held by SPB until completion of the contract. A recent audit of SPB records identified two instances in which contract performance security was held too long beyond the expiration of the contracts. It is necessary for the department to obligate agencies that require performance security in a contract to notify SPB of the successful completion of such a contract so that the security being held can be returned to the contractor in a timely manner. In addition, if an agency, under its delegated authority, requires contract performance security, the same notification of contract completion must be given to its respective contracting office for the same reason.

The amendment of ARM 2.5.502 and the adoption of NEW RULE I are necessary to clarify under what conditions contract security will be returned to a contractor, and how and when agencies must notify the Department of Administration that such return is permissible.

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 Gretchen Bingman, State Procurement Bureau, P.O. Box 200135, 125 North Roberts, Helena, MT 59620-0135; telephone (406) 444-7210; facsimile (406) 444-2529; e-mail to gbingman@mt.gov, and must be received no later than 5:00 p.m., December 5, 2008.

6. Brad Sanders, Bureau Chief, State Procurement Bureau, 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 if a discrepancy exists 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 State Procurement Bureau maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this office. Persons who wish to have their name added to the mailing list shall make a written request that includes the name and mailing address or e-mail address of the person to receive notices and specifies that the person wishes to receive notices regarding State Procurement Bureau and/or Property and Supply Bureau rulemaking actions. Such written requests may be mailed or delivered to Gretchen Bingman, State Procurement Bureau, P.O. Box 200135, 125 North Roberts, Helena, MT 59620-0135; faxed to the office at (406) 444-2529; e-mailed to gbingman@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, do not apply.

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

By: /s/ Michael P. Manion
Michael P. Manion, Rule Reviewer
Department of Administration

Certified to the Secretary of State October 27, 2008.

BEFORE THE TEACHERS' RETIREMENT BOARD
OF THE STATE OF MONTANA

In the matter of the adoption of the New Rules I through IX and amendment of ARM 2.44.301A, 2.44.522, and 2.44.523 pertaining to the administration of the Teachers' Retirement System of the State of Montana	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION AND AMENDMENT

TO: All Concerned Persons

1. On December 1, 2008, at 9:00 a.m., the Teachers' Retirement Board of the State of Montana will hold a public hearing in the Board Room of the Teachers' Retirement System Building at 1500 E. 6th Avenue, Helena, Montana, to consider the proposed adoption and amendment of the above-stated rules.

2. The Teachers' Retirement Board will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the board no later than 1:00 p.m., November 17, 2008, to advise us of the nature of the accommodation that you need. Please contact David L. Senn, Teachers' Retirement System, 1500 E. 6th Avenue, P.O. Box 200139, Helena, Montana 59620-0139; telephone (406) 444-3134; fax (406) 444-2641; or e-mail dsenn@mt.gov.

3. The proposed new rules provide as follows:

NEW RULE I LIMITATION ON AFTER-TAX PURCHASE OF PERMISSIVE SERVICE CREDIT (1) The Teachers' Retirement System can accept after-tax contributions from a member during a limitation year only if:

(a) the voluntary additional contribution to be made by the member does not exceed the amount determined by the Teachers' Retirement System to be necessary to fund the benefit attributable to such service credit; and

(b) the requirements of Internal Revenue Code (IRC) section 415(b) are met (without regard to any reductions for early retirement age), determined by treating the accrued benefit derived from all such contributions as an annual benefit for purposes of IRC section 415(b); or

(c) the requirements of IRC section 415(c)(1)(A) are met (without regard to the compensation limit), determined by treating all such contributions as annual additions for purposes of IRC section 415(c).

(2) After-tax member contributions cannot be accepted if:

(a) the member is purchasing more than five years of nonqualified service credit; or

(b) any nonqualified service credit is taken into account under this rule before the member has at least five years of participation under the retirement system.

AUTH: 19-20-201, MCA
IMP: 19-20-106, MCA

NEW RULE II LIMITATION ON ANNUAL BENEFIT (1) For purposes of this rule, all defined benefit plans of the employer, whether or not terminated, are to be treated as a single defined benefit plan.

(2) For purposes of applying the limits under Internal Revenue Code (IRC) section 415(b), in no event shall a member's annual benefit payable under the Teachers' Retirement System in any limitation year be greater than the limit applicable at the annuity starting date, as increased in subsequent years pursuant to IRC section 415(d) and the regulations thereunder.

(3) If the form of benefit is not a straight life or a qualified joint and survivor annuity, then (2) is applied by either reducing:

(a) the limit in IRC section 415(b) applicable at the annuity starting date; or

(b) adjusting the form of benefit to an actuarially equivalent straight life annuity benefit determined using the assumptions required by the Treasury Regulation under IRC section 415, and the applicable mortality table described in Treasury Regulations section 1.417(e)-1(d)(2) (the mortality table specified in Revenue Ruling 2001-62).

AUTH: 19-20-201, MCA
IMP: 19-20-106, MCA

NEW RULE III VESTING IN MEMBER CONTRIBUTIONS (1) A member shall be 100% vested in his or her accumulated contributions at all times.

AUTH: 19-20-201, MCA
IMP: 19-20-106, MCA

NEW RULE IV GOOD FAITH COMPLIANCE WITH INTERNAL REVENUE CODE (1) The Teachers' Retirement System will pay all benefits in accordance with a good faith interpretation of the requirements of IRC section 401(a)(9) and the regulations thereunder as applicable to a governmental plan, within the meaning of IRC section 414(d).

AUTH: 19-20-201, MCA
IMP: 19-20-106, MCA

NEW RULE V TIMING OF DISTRIBUTION (1) A member's entire benefit must be distributed:

(a) over the member's life or the lives of the member and a designated beneficiary; or

(b) over a period not extending beyond the life expectancy of the member or of the member and a designated beneficiary.

(2) If a member dies after the required distribution of benefits has begun, the remaining portion of the member's benefit must be distributed at least as rapidly as under the method of distribution before the member's death.

(3) If a member dies before the required distribution of the member's benefits has begun, the member's entire benefit must be:

(a) distributed (in accordance with federal regulations) over the life or life expectancy of the designated beneficiary, with the distributions beginning no later than December 31 of the calendar year following the calendar year of the member's death; or

(b) distributed within five years of the member's death.

AUTH: 19-20-201, MCA
IMP: 19-20-106, MCA

NEW RULE VI LIMITATION ON AMOUNT OF ANNUITY DISTRIBUTION TO BENEFICIARY (1) The amount of an annuity paid to a member's beneficiary may not exceed the maximum determined under the incidental death benefit requirement in IRC section 401(a)(9)(G).

(2) Effective for any annuity commencing on or after July 1, 2008, the amount of annuity paid to a member's beneficiary may not exceed the minimum distribution incidental benefit rule under Treasury Regulation section 1.401(a)(9)-6, Q&A-2.

AUTH: 19-20-201, MCA
IMP: 19-20-106, MCA

NEW RULE VII DEATH AND DISABILITY BENEFITS LIMITED BY INCIDENTAL BENEFIT RULE (1) The death and disability benefits distributed by the Teachers' Retirement System will be limited by the incidental benefit rule set forth in IRC section 401(a)(9)(G) and Treasury Regulation section 1.401-1(b)(1)(i).

(2) The total death or disability benefits payable may not exceed 25% of the cost for all of the members' benefits received from the Teachers' Retirement System.

AUTH: 19-20-201, MCA
IMP: 19-20-106, MCA

NEW RULE VIII GOOD FAITH CONTINUATION OF DISTRIBUTION OPTIONS (1) Notwithstanding any other provision of this chapter or the Treasury Regulations, benefit distribution options may continue so long as the option satisfies IRC section 401(a)(9) based on a reasonable and good faith interpretation of that section.

AUTH: 19-20-201, MCA
IMP: 19-20-106, MCA

NEW RULE IX DISTRIBUTION BY DIRECT ROLLOVER (1) A participant may elect to have any portion of an eligible rollover distribution made as a direct rollover.

(2) An "eligible rollover distribution" means any allowed distribution of all or any portion of the accumulated contributions of a member to an eligible retirement plan to the credit of a participant, except that an eligible rollover distribution does not

include:

(a) any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or the life expectancy) of the participant or the joint lives (or joint life expectancies) of the participant and the participant's designated beneficiary, or for a specified period of ten years or more;

(b) any distribution to the extent such distribution is required under IRC 401(a)(9);

(c) the portion of any distribution that is not includible in gross income; and

(d) any other distribution that is reasonably expected to total less than $200 during the year.

(3) Effective January 1, 2002, a portion of a distribution will not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions that are not includible in gross income; however, such portion may be transferred only:

(a) to an individual retirement account or annuity described in IRC section 408(a) or (b);

(b) to a qualified defined contribution plan described in IRC section 401(a);

(c) on or after January 1, 2007, to a qualified defined benefit plan described in IRC section 401(a); or

(d) on or after January 1, 2007, to an annuity contract described in IRC section 403(b) that agrees to separately account for amounts so transferred (and earnings thereon), including separately accounting for the portion of the distribution that is includible in gross income and the portion of the distribution that is not so includible.

(4) Effective January 1, 2002, the definition of eligible rollover distribution also includes a distribution to a surviving spouse, or to a spouse or former spouse who is an alternate payee under a FLO, as defined in IRC section 414(p).

(5) A participant who is a nonspouse beneficiary may rollover a distribution only to an individual retirement account or individual retirement annuity established for the purpose of receiving the distribution. The account or annuity will be treated as an inherited individual retirement account or annuity.

AUTH: 19-20-201, MCA
IMP: 19-20-106, MCA

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

2.44.301A DEFINITIONS For the purpose of this chapter, the following definitions apply:

(1) "Alternate payee" means an alternate payee as defined in 19-20-305, MCA.

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

(4) "Direct rollover" means a distribution made by the Teachers' Retirement System directly to an eligible retirement plan specified by the participant.

(5) "Eligible retirement plan" means any of the following that accepts a participant's eligible rollover distribution:

(a) an individual retirement account described in Internal Revenue Code (IRC) section 408(a);

(b) an individual retirement annuity described in IRC section 408(b);

(c) an annuity plan described in IRC section 403(a);

(d) a qualified trust described in section 401(a);

(e) effective January 1, 2002, an annuity contract described in IRC section 403(b);

(f) effective January 1, 2002, a plan eligible under IRC section 457(b) that is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or a political subdivision of a state that agrees to separately account for amounts transferred into that plan from a plan under this chapter; or

(g) effective January 1, 2008, a Roth Individual Retirement Account (IRA) described in IRC section 408A.

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

(7) "Family law order (FLO)" means a family law order as defined in 19-20-305, MCA.

(8) "Nonqualified service credit" means permissive service credit other than for services as defined in IRC section 415(n)(3)(C).

(4) through (4)(f) remain the same, but are renumbered (9) through (9)(f).

(10) "Participant" means a person who has or is eligible to receive a distribution from the Teachers' Retirement System including:

(a) a member or former member;

(b) a member's or former member's surviving spouse;

(c) a member's or former member's spouse or former spouse who is the alternate payee under a FLO that qualifies as a domestic relations order as defined in IRC section 414(p); and

(d) effective January 1, 2007, a nonspouse who is a designated beneficiary as defined in IRC section 401(a)(9)(E).

(5) through (7) remain the same, but are renumbered (11) through (13).

AUTH: 19-4-201, 19-20-201, MCA;
IMP: 19-20-101, 19-20-106, 19-20-204, 19-20-302, MCA

2.44.522 FAMILY LAW ORDER - CONTENTS AND DURATION (1) and (2) remain the same.

(3) If benefits are payable pursuant to a FLO that meets the requirements of a domestic relations order as defined in IRC section 414(p), the applicable provisions of IRC section 414(p) will be followed by the Teachers' Retirement System in giving effect to the FLO.

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

AUTH: 19-20-201, MCA
IMP: 19-20-106, 19-20-305, MCA

2.44.523 FAMILY LAW ORDERS - APPROVAL AND IMPLEMENTATION

(1) through (8) remain the same.

(9) The Teachers' Retirement System may establish separate benefits for a member and an alternate payee.

AUTH: 19-20-201, MCA
IMP: 19-20-106, 19-20-305, MCA

STATEMENT OF REASONABLE NECESSITY: The additional and amended definitions set forth in ARM 2.44.301A are necessary to define terms used in existing, added, and amended provisions of the administrative rules pertaining to the Teachers' Retirement System in order to clarify those substantive provisions.

All other new rules and amendments set forth in this Notice are reasonably necessary to ongoing administration of the Teachers' Retirement System because the Internal Revenue Service requires that all of these provisions be included as provisions in the "plan documents" of a public pension plan in order for the public pension plan to maintain its status with the Internal Revenue Service as a qualified plan. All of the standards set forth in this notice are standards that the Teachers' Retirement System has been required to and has complied with up to this time, but are promulgated as rules now to meet new Internal Revenue Service requirements that certain standards be set forth in a pension plan's plan documents.

By virtue of the fact that public pension plans are established by legislative mandate, public pension systems do not typically generate and distribute "plan documents" that describe the benefits and obligations of the plan and its members. Rather, the plan documents of a public pension plan are comprised of the applicable statutes, administrative rules, and other standards that legally govern the public pension plan, so modification of the Teachers' Retirement System's plan documents means modification of the statutes and/or administrative rules governing the retirement system.

Failure to comply with the Internal Revenue Service's plan document requirements could result in the Teachers' Retirement System's plan losing its status as a qualified plan. Loss of status as a qualified plan would mean that the plan and contributing employers and employees would lose the favorable tax treatments applicable to contributions to and benefits from a qualified plan, including but not limited to pretax treatment of contributions.

5. Concerned persons may submit their data, views, or arguments concerning the proposed actions either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: David L. Senn, Executive Director, Teachers' Retirement System, 1500 E. 6th Avenue, P.O. Box 200139, Helena, Montana 59620-0139; telephone (406) 444-3134; fax (406) 444-2641; or e-mail dsenn@mt.gov and must be received no later than 5:00 p.m. on December 4, 2008.

6. David L. Senn, Executive Director of the Teachers' Retirement System, has been designated to preside over and conduct this hearing.

7. The board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Such written request may be mailed or delivered to the contact person in 5 above or may be made by completing a request form at any rules hearing held by the board.

8. An electronic copy of this Proposal Notice is available through the Teachers' Retirement System's web site at www.trs.mt.gov. The Teachers' Retirement System 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 if a discrepancy exists 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 Teachers' Retirement System 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, do not apply.

By: /s/ David L. Senn
David L. Senn
Executive Director
Teachers' Retirement System

By: /s/ Denise Pizzini
Denise Pizzini, Rule Reviewer
Teachers' Retirement System

Certified to the Secretary of State October 27, 2008.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the proposed adoption of NEW RULE I regarding waiver of in-state office requirement	)))))	NOTICE OF PROPOSED ADOPTION NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On December 8, 2008, the Division of Banking and Financial Institutions proposes to adopt the above-stated rule.

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 rulemaking process 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 December 1, 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, MT 59620-0546; telephone (406) 841-2928; TDD (406) 444-1421; facsimile (406) 841-2930; e-mail to cromano@mt.gov.

3. The proposed new rule provides as follows:

NEW RULE I WAIVER OF IN-STATE OFFICE REQUIREMENT (1) The requirement of keeping escrow funds, trust funds, or reserves in accounts in a financial institution having an office in this state is waived.

AUTH: 32-10-309, 32-10-502, MCA
IMP: 32-10-309, MCA

STATEMENT OF REASONABLE NECESSITY: Several applicants for a mortgage lender license have contacted the department requesting a waiver of the requirement of keeping escrow funds, trust funds, or reserves in accounts in a financial institution having an office in this state. For the most part, these applicants are large nationwide lenders that already have escrow funds, trust funds, or reserves in one or more accounts held at a federally insured financial institution. However, the federally insured financial institution does not have an office in this state. Since 32-10-310, MCA, requires each licensee to maintain at its principal place of business all books, accounts, records, and documents necessary to determine the licensee's compliance with the Montana Residential Mortgage Lender Licensing Act, there is no reason to require that the accounts be held at a bank with an office in this state. Therefore, the department has decided to exercise its option under 32-10-309(5), MCA, to waive the in-state office requirement.

4. Concerned persons may present their data, views, or arguments concerning the proposed adoption in writing to Kelly O'Sullivan, Legal Counsel, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, MT 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., December 5, 2008.

5. If persons who are directly affected by the proposed adoption wish to present their data, views, or arguments orally or in writing at a public hearing, they must make a written request for a hearing and submit the request along with any comments they have to Kelly O'Sullivan, Legal Counsel, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, MT 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., December 5, 2008.

6. If the Division of Banking and Financial Institutions receives requests for a public hearing on the proposed adoption from either 10% or 25, whichever is less, of those who are directly affected by the proposed adoption, from the appropriate administrative rule review committee of the Legislature, from a governmental agency or subdivision, or from an association having no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be five based on the number of residential mortgage lender licensees as of publication of this notice.

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 if a discrepancy exists 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 that 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, MT 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. Representative Walter McNutt, the primary bill sponsor of HB 69

(2007), which became the Montana Residential Mortgage Lender Licensing Act, was notified on July 27, 2007, by U.S. mail.

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

By: /s/ Michael P. Manion
Michael P. Manion, Rule Reviewer
Department of Administration

Certified to the Secretary of State October 27, 2008.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the proposed amendment of ARM 2.59.401 regarding credit union supervisory and examination fees	)))))	NOTICE OF PROPOSED AMENDMENT NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On December 8, 2008, the Division of Banking and Financial Institutions proposes to amend the above-stated rule.

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 rulemaking process 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 December 1, 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, MT 59620-0546; telephone (406) 841-2928; TDD (406) 444-1421; facsimile (406) 841-2930; e-mail to cromano@mt.gov.

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

2.59.401 CREDIT UNIONS - SUPERVISORY AND EXAMINATION FEES

(1) A credit union means any credit union other than a corporate credit union.

(2) A corporate credit union is a credit union formed primarily for the purpose of serving other credit unions.

(3) ~~(1)~~ The following annual supervisory fees for both credit unions and corporate credit unions ~~will be assessed upon the December 31 total assets of each year and~~ become due and payable on or before February 15 of the next succeeding year.

(a) Credit unions will be assessed based upon the December 31 total assets of each year.

(b) Corporate credit unions will be assessed based upon the average of the quarterly total assets as reported on the March 31, June 30, September 30, and December 31 National Credit Union Administration Form 5310 report.

Total Assets	Fee
$2,500,000 or less	0.00030 x total assets
Over $2,500,000, but not over $10,000,000	$750 plus 0.000225 x total assets in excess of $2,500,000

Over $10,000,000, but not over $50,000,000	$2,437.50 plus 0.0001425 x total assets in excess of $10,000,000
Over $50,000,000, but not over $100,000,000	$8,137.50 plus 0.00008250 x total assets in excess of $50,000,000
Over $100,000,000, but not over $250,000,000	$12,262.50 plus 0.00007850 x total assets in excess of $100,000,000
Over 250,000,000	$24,037.50 plus 0.00007500 x total assets in excess of $250,000,000

(2) through (5) remain the same, but are renumbered (4) through (7).

AUTH: 32-3-201, MCA
IMP: 32-3-201, MCA

STATEMENT OF REASONABLE NECESSITY: Corporate credit union assets vary quickly and substantially throughout the year. The total assets of a corporate credit union often increase at year end to a level far greater than levels at any other time during the year, but this increase is usually temporary. Basing an annual assessment only on year-end assets can unfairly penalize a corporate credit union for this short term increase in assets. The department is seeking to charge an equitable assessment by basing the assessment on the average total assets throughout the year. The National Credit Union Form 5310 provides a readily available method for monitoring the assets of a corporate credit union.

The proposed amendment to ARM 2.59.401 will affect the annual supervisory fee remitted to the department by Treasure State Corporate Credit Union (Treasure State), which is the only state-chartered corporate credit union. It is impossible for the department to estimate this fiscal impact because it cannot predict the asset size of Treasure State. The asset size of Treasure State is subject to great fluctuation because it serves as a depository and lender to other credit unions. On any given day other credit unions may deposit, withdraw, or borrow funds from Treasure State.

4. Concerned persons may present their data, views, or arguments concerning the proposed amendment in writing to Kelly O'Sullivan, Legal Counsel, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, MT 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., December 5, 2008.

5. If persons who are directly affected by the proposed amendment wish to present their data, views, or arguments orally or in writing at a public hearing, they must make a written request for a hearing and submit the request along with any comments they have to Kelly O'Sullivan, Legal Counsel, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, MT 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., December 5, 2008.

6. If the Division of Banking and Financial Institutions receives requests for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of those who are directly affected by the proposed amendment, from the appropriate administrative rule review committee of the Legislature, from a governmental agency or subdivision, or from an association having no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be one based on the number of state-chartered credit unions as of publication of this notice.

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 if a discrepancy exists 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 that 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, MT 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, do not apply.

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

By: /s/ Michael P. Manion
Michael P. Manion, Rule Reviewer
Department of Administration

Certified to the Secretary of State October 27, 2008.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the proposed amendment of ARM 24.29.1533 and 24.29.1538 related to the workers' compensation medical fee schedule for nonfacilities	))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On December 1, 2008, at 3:00 p.m., the Department of Labor and Industry (department) will hold a public hearing to be held in the first floor conference room (room 104) of the Walt Sullivan Building, 1327 Lockey Street, 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 public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m., on November 24, 2008, to advise us of the nature of the accommodation that you need. Please contact the Workers' Compensation Regulations Bureau, Employment Relations Division, Department of Labor and Industry, Attn: Jeanne Johns, P.O. Box 8011, Helena, MT 59624-8011; telephone (406) 444-7710; fax (406) 444-3465; TDD (406) 444-5549; or e-mail jjohns@mt.gov.

3. GENERAL STATEMENT OF REASONABLE NECESSITY: Section 39-71-704(2)(a), MCA, requires the Department of Labor and Industry to annually establish a schedule of fees for medical services provided to injured workers. In addition, 39-71-704(2)(b)(i), MCA, sets a cap on the conversion factors the department may set for reimbursement rates at nonfacilities. Further, ARM 24.29.1538(5)(b) requires the department to annually set the new conversion factors at 110 percent of the surveyed average of the top five insurers or third party administrators providing group health coverage in Montana. The proposed amendments comply with these requirements and establish conversion factors for services provided by an individual provider at a nonfacility or a facility.

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

24.29.1533 NONFACILITY FEE SCHEDULE FOR SERVICES PROVIDED ON OR AFTER JANUARY 1, 2008 (1) The department adopts the fee schedule provided by this rule to determine the reimbursement amounts for medical services provided by an individual provider at a nonfacility or facility furnished on or after January 1, 2008. An insurer is not obligated to pay more than the fee provided by the fee schedule for a service provided within the state of Montana. The fee schedule is comprised of the following elements:

(a) remains the same.

(b) the RVU given in the ~~2007~~ 2008 edition of the RBRVS, which is incorporated by reference, unless a relative value is otherwise specified in these rules.

(i) The 2007 edition of the RBRVS applies to services provided from January 1, 2008, through December 31, 2008;

(c) the publication "Montana Workers' Compensation Nonfacility Fee Schedule Instruction Set for ~~2008~~ 2009", ~~September 2007 edition,~~ which is incorporated by reference.

(i) The "Montana Workers' Compensation Nonfacility Fee Schedule Instruction Set for 2008", September 2007 edition, applies to services provided from January 1, 2008, through December 31, 2008;

(d) through (12) remain the same.

AUTH: 39-71-203, MCA
IMP: 39-71-704, MCA

REASON: There is reasonable necessity to amend ARM 24.29.1533 to update the rule to use the current publication of the RBRVS. It is also reasonably necessary to add that the 2007 edition of the RBRVS will continue to apply to claims from the 2008 time period, even though the edition is proposed to be updated to 2008 for the coming year. There is also reasonable necessity to provide for a 2009 edition of the instruction set, and to specify that the 2008 instruction set will apply to services provided during calendar year 2008.

24.29.1538 CONVERSION FACTORS FOR SERVICES PROVIDED ON OR AFTER JANUARY 1, 2008 -- METHODOLOGY (1) remains the same.

(2) The conversion factors are established annually by the department pursuant to 39-71-704, MCA. The conversion factor for goods and services, other than anesthesia services:

(a) provided ~~on or after~~ from January 1, 2008, through December 31, 2008, is $63.45; and

(b) provided on or after January 1, 2009, is $65.28.

(3) The conversion factors are established annually by the department pursuant to 39-71-704, MCA. The conversion factor for anesthesia services:

(a) provided ~~on or after~~ from January 1, 2008, through December 31, 2008, is $57.20; and

(b) provided on or after January 1, 2009, is $61.98.

(4) and (5) remain the same.

AUTH: 39-71-203, MCA
IMP: 39-71-704, MCA

REASON: There is reasonable necessity to amend ARM 24.29.1538 to annually update the conversion factors used in determining the reimbursement amount payable to medical providers, as required by 39-71-704(2)(a), MCA. Section 39-71-704(2)(b), MCA, bases the annual calculation of the conversion factors at a rate not higher than 10 percent above the average of the conversion factors used by

the top five insurers or third-party administrators providing disability insurance who use the RBRVS system. The conversion factors proposed are calculated in compliance with the statute. There is reasonable necessity to actually establish the dollar amount of the conversion factors that will be applied beginning January 1, 2009. The department notes that the system establishing two nonfacility conversion factors, one for anesthesia services and another for all goods and services other than anesthesia services, is dictated by the design of the RBRVS system.

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: Jeanne Johns, Workers' Compensation Regulation Section Supervisor, Workers' Compensation Regulation Bureau, Employment Relations Division, Department of Labor and Industry, P.O. Box 8011, Helena, MT 59624-8011; by facsimile to (406) 444-7710; or by e-mail to jjohns@mt.gov, and must be received no later than 5:00 p.m., December 5, 2008.

6. An electronic copy of this Notice of Public Hearing is available through the department's web site at http://dli.mt.gov/events/calendar.asp, under the Calendar of Events, Administrative Rules Hearings Section. The department strives to make the electronic copy of this Notice of Public Hearing conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the department strives to keep its 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 a person's difficulties in sending an e-mail do not excuse late submission of comments.

7. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and e-mail or mailing address of the person to receive notices, and specifies the particular subject matter or matters regarding which the person wishes to receive notices. Such written request may be mailed or delivered to the Department of Labor and Industry, attention: Mark Cadwallader, 1327 Lockey Avenue, P.O. Box 1728, Helena, Montana 59624-1728, faxed to the department at (406) 444-1394, e-mailed to mcadwallader@mt.gov, or may be made by completing a request form at any rules hearing held by the agency.

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

9. The department's Hearings Bureau has been designated to preside over and conduct this hearing.

/s/ MARK CADWALLADER
Mark Cadwallader
Alternate Rule Reviewer

/s/ KEITH KELLY
Keith Kelly, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State October 27, 2008

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

In the matter of the amendment of ARM 37.81.304 pertaining to Pharmacy Access Prescription Drug Benefit Program (Big Sky Rx)	))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On November 26, 2008, at 11:00 a.m., the Department of Public Health and Human Services will hold a public hearing in the Wilderness Room of the Colonial Building, at 2401 Colonial Drive, Helena, Montana, to consider the proposed amendment of the above-stated rule.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Department of Public Health and Human Services no later than 5:00 p.m. on November 17, 2008, to advise us of the nature of the accommodation that you need. Please contact Rhonda Lesofski, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena MT 59604-4210; telephone (406) 444-4094; fax (406) 444-1970; or e-mail dphhslegal@mt.gov.

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

37.81.304 AMOUNT OF THE BIG SKY RX BENEFIT (1) An applicant eligible for the Big Sky Rx PDP premium assistance may receive a benefit not to exceed ~~$33.11~~ $33.19 per month. The benefit amount will not exceed ~~$33.11~~ $33.19 regardless of the cost of the premium for the PDP the individual chooses.

(a) If a portion of the applicant's PDP premium is paid through the Extra Help Program, the Big Sky Rx Program will pay the applicant's portion of the PDP premium up to ~~$33.11~~ $33.19 per month.

(b) remains the same.

(c) All expenditures are contingent on legislative appropriation. The amount of the monthly benefit, ~~$33.11~~ $33.19, extends the Social Security Extra Help benefit amount to Montana residents with income up to 200% FPL. The department's total expenditure for the program will be based on appropriation and the number of enrolled applicants.

AUTH: 53-2-201, 53-6-1004, MCA
IMP: 53-2-201, 53-6-1001, 53-6-1004, 53-6-1005, MCA

4. The Department of Public Health and Human Services (the department) is proposing amendments to ARM 37.81.304, pertaining to the Big Sky Rx maximum benefit amount. The Big Sky Rx Program is a Medicare part D prescription drug plan subsidy for low-income individuals. The proposed rule changes are necessary to match the maximum monthly benefit amount under Big Sky Rx to the maximum low-income subsidy available from the federal government through its Extra Help Program. The proposed rule would increase the maximum benefit from $33.11 a month to a maximum of $33.19 a month.

Description of proposed rules changes

The department is proposing amendments to ARM 37.81.304 pertaining to the amount of the Big Sky Rx benefit to slightly increase the maximum monthly benefit available to Big Sky Rx enrollees. The proposed amendments would change the present assistance amount of $33.11 to $33.19 per month.

The Big Sky Rx Program is a premium subsidy program operated pursuant to Medicare Part D of the Social Security Act and Montana law. According to the applicable federal regulation, 42 CFR section 423.780, full low-income subsidy individuals are entitled to a premium subsidy equal to 100% of the lesser of the plan's premium for basic coverage or the regional low-income premium subsidy amount. The Centers for Medicare and Medicaid Services (CMS) are charged with calculating the regional low-income premium subsidy. The 2009 low-income premium subsidy amount for Montana is $33.19.

A copy of the regional low-income premium subsidy amounts can be viewed on the Department of Public Health and Human Services web site at www.dphhs.mt.gov/legalresources/ruleproposals/index.shtm.

To obtain a printed copy of the Part D low-income subsidy amounts for 2009, please contact the department at Department of Public Health and Human Services, Health Resources Division, Acute Services Bureau, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

Alternative considered

The department considered and rejected the alternative to the proposed amendments - that would be to make no changes to the existing maximum benefit amount. This would have resulted in a maximum benefit amount lower than that available through the Extra Help Program. Consequently, some low-income Montanans would experience greater out-of-pocket expenses for Part D prescription drug coverage or would have to seek a Part D plan with a lower premium. The result would be contrary to the purpose of the low-income Medicare Part D program.

Fiscal Effects

The department estimates the annual financial effect of a monthly increase of $0.08 in benefit payments for those consumers receiving full premium assistance from Big Sky Rx to be $5,760 based on 6,469 consumers enrolled in Big Sky Rx as of August 1, 2008. Big Sky Rx is funded by state special revenue only. No federal funds are involved.

Number of persons affected

The number of persons affected by the proposed amendments would be about 6,469 based on those enrolled in Big Sky Rx as of August 1, 2008.

5. The department intends to apply the proposed amendments January 1, 2009.

6. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Rhonda Lesofski, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena MT 59604-4210; telephone (406) 444-5622; fax (406) 444-1970; or e-mail dphhslegal@mt.gov, and must be received no later than 5:00 p.m., December 4, 2008.

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

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

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

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

/s/ John Koch
Rule Reviewer

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

Certified to the Secretary of State October 27, 2008.

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

In the matter of the amendment of ARM 37.86.1801, 37.86.1802, and 37.86.1807 pertaining to durable medical equipment (DME)	))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On November 26, 2008, at 10:00 a.m., the Department of Public Health and Human Services will hold a public hearing in the auditorium of the Department of Public Health and Human Services Building, 111 North Sanders, Helena, Montana, to consider the proposed 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 or need an alternative accessible format of this notice. If you require an accommodation, contact Department of Public Health and Human Services no later than 5:00 p.m. on November 17, 2008, to advise us of the nature of the accommodation that you need. Please contact Rhonda Lesofski, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena MT 59604-4210; telephone (406) 444-4094; fax (406) 444-1970; or e-mail dphhslegal@mt.gov.

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

37.86.1801 PROSTHETIC DEVICES, DURABLE MEDICAL EQUIPMENT, AND MEDICAL SUPPLIES, DEFINITIONS (1) "Durable medical equipment and supplies" means the most economical ~~and medically necessary~~ equipment or supplies that are medically necessary to treat a health problem or a physical condition. The equipment or supplies must be appropriate for use in a patient's home, residence, school, or workplace. Equipment or supplies that are useful or convenient, but are not medically necessary to treat an illness or injury do not qualify for Medicaid coverage. ~~as outlined in ARM 37.86.1802(4) including, but not limited to, wheelchairs, walkers, canes, crutches, hospital beds, oxygen equipment, and sickroom equipment.~~

~~(2) "Medical supplies" means disposable or nonreusable medical supplies, including, but not limited to, splints, bandages, and oxygen.~~

(3) through (5)(b) remain the same but are renumbered (2) through (4)(b).

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

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

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

(a) The prescription must indicate the diagnosis, the medical necessity, and projected length of need for prosthetic devices, durable medical equipment, and medical supplies. The original prescription must be retained in accordance with the requirements of ARM 37.85.414. Prescriptions may be transmitted by an authorized provider to the durable medical equipment provider by electronic means or pursuant to an oral prescription made by an individual practitioner and promptly reduced to hard copy by the durable medical equipment provider containing all information required. Prescriptions for durable medical equipment, prosthetics, and orthotics (DMEPOS) shall follow the Medicare ~~guidelines~~ criteria outlined in chapters 3 and 4 of the Region D Medicare Supplier Manual (~~July 1, 2007~~ January 1, 2009), which is adopted and incorporated by reference. A copy of the Region D Medicare Supplier Manual may be obtained from the Department of Public Health and Human Services, Health Resources Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951. For items requiring prior authorization the provider must include a copy of the prescription when submitting the prior authorization request.

(i) Prescriptions for oxygen shall include the liter flow per minute, the hours of use per day, and the recipient's PO2 or oxygen saturation blood test(s) results.

(b) Subject to the provisions of (3), medical necessity for oxygen is determined in accordance with the Medicare criteria outlined in the Medicare Durable Medical Equipment Regional Carrier (DMERC) Region D Supplier Manual, (~~July 1, 2007~~ January 1, 2009), Local Coverage Determination (LCD) and policy articles (~~July 1, 2007~~ January 1, 2009), and National Coverage Determination (NCD) (~~July 1, 2007~~ January 1, 2009), which are adopted and incorporated by reference. A copy of the Medicare criteria may be obtained from the Department of Public Health and Human Services, Health Resources Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

(c) through (7) remain the same.

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

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

(2) Prosthetic devices, durable medical equipment, and medical supplies shall be reimbursed in accordance with the department's Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS) Fee Schedule, effective January ~~2008~~ 2009, which is adopted and incorporated by reference. A copy of the department's fee schedule is posted at the Montana Medicaid provider web site at http://medicaidprovider.hhs.mt.gov. A copy of the department's Prosthetic Devices, Durable Medical Equipment, and Medical Supplies Fee Schedule may also be

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

(3) through (4) remain the same.

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

4. The Department of Public Health and Human Services (the department), Health Resource Division administers the Montana Medicaid program, which provides medical assistance to qualified low income and disabled residents of Montana. The state of Montana and the federal government jointly fund the program. The Montana Medicaid program pays enrolled providers for services to eligible individuals. Prosthetic devices, durable medical equipment (DME), and medical supplies are covered services under Medicaid.

These rule changes are necessary to remove ambiguity from the definition of DME and supplies and update the year referenced for federal material to adopt by reference current federal laws, regulations, criteria, and manuals.

ARM 37.86.1801

The definition of DME and supplies is amended to remove a list of items in the definition that were examples only and were not useful to define the terms. The new language is not a change of policy regarding coverage of DME or supplies. The language accurately states what Montana Medicaid pays for as DME and supplies. Medicaid only pays for equipment and supplies that are necessary to treat illnesses and medical conditions. Also, Medicaid only pays for the least expensive item or supply. Equipment may be useful or convenient for a Medicaid recipient or the caregiver but, unless it is also medically necessary, Medicaid does not pay for it.

ARM 37.86.1802 and 37.86.1807

Montana Medicaid incorporates by reference federal statute, regulations, criteria guidelines, materials, and manuals to administer the state program. These rule changes update the reference dates of this federal material to incorporate the most recent information.

Fiscal Effects

These rule amendments will have a state fiscal year budget impact of approximately $400 in general funds and $1,000 in federal funds.

Persons and entities affected

The amendments impact approximately 637 providers and 77,000 Medicaid recipients. DPHHS considered the alternative of not amending the rules to adopt the

current manuals and using prior year reference material instead. This alternative was rejected because providers, recipients, and program administrators prefer to use current DME information.

5. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Rhonda Lesofski, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena MT 59604-4210; telephone (406) 444-4094; fax (406) 444-1970; or e-mail dphhslegal@mt.gov, and must be received no later than 5:00 p.m., December 4, 2008.

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

7. 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 contact person in 5 above 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, do not apply.

10. The department intends for the proposed amendment of these rules to be effective January 1, 2009.

/s/ Geralyn Driscoll
Rule Reviewer

/s/ Russell E. Cater for
Joan Miles, Director
Public Health and Human Services

Certified to the Secretary of State October 27, 2008.

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

In the matter of the adoption of New Rule I and the amendment of ARM 37.5.117, 37.5.304, 37.5.325, 37.86.1101, and 37.86.1102 pertaining to establishing hearings for disputes related to the Medicaid Drug Rebate program	)))))))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION AND AMENDMENT

TO: All Concerned Persons

1. On November 26, 2008, at 10:30 a.m., the Department of Public Health and Human Services will hold a public hearing in the auditorium of the Department of Public Health and Human Services Building, 111 North Sanders, 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 or need an alternative accessible format of this notice. If you require an accommodation, contact Department of Public Health and Human Services no later than 5:00 p.m. on November 17, 2008, to advise us of the nature of the accommodation that you need. Please contact Rhonda Lesofski, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena MT 59604-4210; telephone (406) 444-4094; fax (406) 444-1970; or e-mail dphhslegal@mt.gov.

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

RULE I OPPORTUNITY FOR HEARING (1) In any quarter in which a discrepancy in Medicaid utilization information is discovered by the manufacturer, which the manufacturer and the department are unable to resolve, the manufacturer will provide written notice of the discrepancy, by NDC number, to the department prior to the due date specified in ARM 37.86.1102.

(2) If the manufacturer asserts the department's Medicaid utilization information is erroneous, the manufacturer shall pay the department that portion of the rebate amount that is not disputed by the required due date in ARM 37.86.1102. The balance due, if any, plus a reasonable rate of interest as set forth in 42 USC 1396b(d)(5)(2008), will be paid or credited by the manufacturer or the department by the due date of the next quarterly payment in ARM 37.86.1102(8) after resolution of the dispute.

(3) Adjustments to rebate payments shall be made if information indicates that either Medicaid utilization information, Average Manufacturer Price (AMP), or Best Price were greater or less than the amount previously specified.

(4) The department and the manufacturer will use their best efforts to resolve the discrepancy within 60 days of receipt of disputes noted by the manufacturer in ARM 37.86.1102. In the event that the department and the manufacturer are not able to resolve a discrepancy within 60 days, the department shall make available to the manufacturer the department's hearing mechanism as set forth in Title 37, chapter 5, subchapter 3.

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

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

37.5.117 CERTAIN TITLE 50 PROGRAMS AND OTHER PROGRAMS FOR WHICH NO PROCEDURE IS OTHERWISE SPECIFIED: APPLICABLE HEARING PROCEDURES (1) Hearings under the programs specified in ~~(1)(a) through (1)(u)~~ this rule are available to the extent specifically provided by law, including the Montana Code Annotated and department rules. The provisions of ARM 37.5.311 and 37.5.318 do not apply to such hearings. Such hearings shall be conducted in accordance with the Montana Administrative Procedure Act and ARM 37.5.304, 37.5.307, 37.5.313, 37.5.316, 37.5.322, 37.5.325, 37.5.328, 37.5.331, 37.5.334, and 37.5.337.

(a) through (s) remain the same.

(t) denial or other determinations of the amount, duration, or continuation of an adoption subsidy under ARM Title 37, chapter 52, subchapter 2; ~~and~~

(u) requests for review of determinations by the department regarding pharmaceutical manufacturer's rebate agreements pursuant to ARM 37.86.1102; and

~~(u)~~ (v) any department program with respect to which a right to hearing is specifically granted by law, including department rule, but for which a hearing process is not otherwise provided by department rule.

AUTH: 50-1-202, 53-2-201, 53-6-113, MCA
IMP: 41-3-1103, 41-3-1142, 42-10-104, 50-1-202, 50-4-612, 50-5-103, 50-6-103, 50-6-402, 50-15-102, 50-15-103, 50-15-121, 50-15-122, 50-31-104, 50-52-102, 50-53-103, 52-2-111, 53-2-201, 53-4-1004, 53-6-101, 53-6-111, 53-6-113, 53-6-402, 53-20-305, 53-24-208, MCA

37.5.304 DEFINITIONS For purposes of this subchapter, unless the context requires otherwise, the following definitions apply:

(1) "Adverse action" means:

(a) through (d) remain the same.

(e) an action by the department to deny, terminate, or fail to renew certification or a provider agreement for the Medicaid program to any nursing facility or intermediate care facility for the mentally retarded;

(f) an action by the department to deny, suspend, reduce, revoke, or terminate licensure, registration, certification, or enrollment of a provider or to fail to

renew certification, enrollment, licensure, or the registration certificate of a provider who has applied for renewal;

(g) through (l) remain the same.

(m) an action by the department denying or reducing a special needs adjustment as provided in ARM 37.80.205; ~~or~~

(n) a department's substantiation determination of a report of child abuse, neglect, or exploitation under ARM Title 37, chapter 47, subchapter 6~~.~~; or

(o) a determination by the department regarding a pharmaceutical manufacturer's rebate due under ARM Title 37, chapter 86, subchapter 11.

(2) through (12)(d) remain the same.

AUTH: 2-4-201, 41-3-208, 41-3-1142, 52-2-111, 52-2-112, 52-2-403, 52-2-704, 52-3-304, 52-3-804, 53-2-201, 53-2-606, 53-2-803, 53-3-102, 53-3-107, 53-4-111, 53-4-212, 53-4-403, 53-4-503, 53-5-304, 53-5-504, 53-6-111, 53-6-113, 53-7-102, 53-20-305, MCA
IMP: 2-4-201, 41-3-202, 41-3-208, 41-3-1103, 52-2-704, 52-2-726, 53-2-201, 53-2-306, 53-2-606, 53-2-801, 53-3-107, 53-4-112, 53-4-404, 53-4-503, 53-4-513, 53-5-304, 53-6-101, 53-6-111, 53-6-113, 53-20-305, MCA

37.5.325 HEARING PROCEDURE (1) through (2) remain the same.

(3) Hearings for medical assistance providers and for pharmaceutical manufacturers under Title 37, chapter 86, subchapter 11, shall be held at Helena, Montana and shall be in person except that the hearing may be conducted by telephone as mutually agreed by the parties. The department may designate the place of hearing either by notifying the Office of Fair Hearings in writing that hearings in a particular program will generally be held in a particular place or by designating the place of hearing on a case by case basis.

(4) The hearing officer shall notify the claimant or provider or his authorized representative by certified mail at least ten days in advance of the time and place of the hearing. The claimant or provider may waive in writing the right to ten days notice.

(a) The notice of hearing shall include:

(i) through (iii) remain the same.

(iv) an explanation of claimant's or provider's rights as enumerated in ~~(5) of~~ this rule; and

(v) remains the same.

(5) The claimant or provider shall have adequate opportunity:

(a) to examine the contents of his case file, except for those portions which the claimant is precluded from examining by state or federal law or regulation or directive of a medical professional, and all documents, and records to be used by the department at the hearing at a reasonable time prior to the hearing as well as during the hearing. Portions of the case file, documents, and records that the claimant is not allowed to examine are not admissible as evidence at the hearing;

(b) through (f) remain the same.

(6) Discovery shall be available to the parties. The department ~~hereby~~ adopts and incorporates by reference the Attorney General's Model Rule ~~13 found in~~ ARM 1.3.217 which sets forth the procedures for discovery in contested cases. A

copy of the model rule may be obtained by contacting either the Attorney General's Office, 215 North Sanders, P.O. Box 201401, Helena, MT 59620-1401 or Department of Public Health and Human Services, Office of Legal Affairs, 111 N. Sanders, P.O. Box 4210, Helena, MT 59604-4210.

AUTH: 2-4-201, 53-2-201, 53-2-206, 53-4-212, 53-6-113, 53-7-102, MCA
IMP: 2-4-602, 53-2-201, 53-6-101, MCA

37.86.1101 OUTPATIENT DRUGS, DEFINITIONS (1) "Average manufacturer price (AMP)" means, with respect to a covered outpatient drug of a manufacturer for a rebate period, the average price paid to the manufacturer for the drug in the United States by wholesalers for drugs distributed to the retail pharmacy class of trade. The AMP is determined without regard to customary prompt pay discounts extended to wholesalers.

(2) "Best price" means with respect to a single source drug or innovator multiple source drug of a manufacturer (including the lowest price available to any entity for any such drug of a manufacturer that is sold under an approved new drug application) the lowest price available from the manufacturer during the rebate period to any wholesaler, retailer, provider, health maintenance organization, nonprofit entity, or governmental entity within the United States.

~~(1)~~ (3) "Estimated acquisition cost (EAC)" means the cost of drugs for which no maximum allowable cost (MAC) price has been determined. The EAC is the department's best estimate of what price providers are generally paying in the state for a drug in the package size providers buy most frequently. The EAC for a drug is:

(a) and (b) remain the same.

(c) the department may set an allowable acquisition cost for specified drugs or drug categories when the department determines that acquisition cost is lower than ~~(1)(a)~~ (3)(a) or (b) based on data provided by the drug pricing file contractor.

(2) through (5) remain the same but are renumbered (4) through (7).

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

37.86.1102 OUTPATIENT DRUGS, REQUIREMENTS (1) and (2) remain the same.

(3) The department will only participate in the payment of legend and over the counter drugs listed on the department drug formulary, as determined by the Medicaid Drug Formulary Committee established by the department. The formulary committee is the Drug Use Review Board, established and operating in accordance with 42 USC 1396r-8 ~~(2004)~~ (2008), which governs Medicaid drug programs. The drug formulary includes a preferred drug list (PDL) of selected drugs that have a significant clinical benefit over other agents in the same therapeutic class and also represents good value to the department based on total cost. Prescribers must prescribe from the preferred drug list if medically appropriate.

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

(6) The department will not participate in the payment of a prescription drug:

(a) remains the same.

(b) that is not subject to a rebate agreement between the manufacturer and the secretary of HHS as required by 42 USC 1396r-8 ~~(2004)~~ (2008); and

(c) that does not meet prior authorization criteria as determined by the Medicaid Drug Formulary Committee, established and operating in accordance with 42 USC 1396r-8 ~~(2004)~~ (2008), without the existence of a prior authorization request approved by the department or its designated representative. A list of drugs subject to prior authorization, known as the prior authorization drug list, will be provided to interested Medicaid providers.

(7) The drug formulary, PDL, and the prior authorization drug list will be updated by the department on a monthly basis, on the last day of each month. A copy of the most current listings may be obtained from the department web site at ~~www.dphhs.state.mt.us~~ www.dphhs.mt.gov, or by writing to the Department of Public Health and Human Services, Health Resources Division, Acute Services Bureau, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

(8) ~~The department hereby adopts and incorporates by reference 42 USC 1396r-8 (2004) as a part of these rules. This section of the federal law sets forth the requirements that must be met by the department, drug manufacturers, and providers in order to receive reimbursement for outpatient drugs that have been dispensed. This statute describes rebate agreements, covered drugs, prior authorization, reimbursement limits, and drug use review programs. A copy of 42 USC 1396r-8 (2004) can be obtained by writing to the Department of Public Health and Human Services, Health Resources Division, Acute Services Bureau, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.~~ The department has a drug rebate program administered in accordance with 42 USC 1396r-8 (2008) and CMS state releases, CMS drug manufacturer releases, and the National Drug Rebate Agreement in effect in 2008, which the department adopts and incorporates by reference. A copy of all documents incorporated by reference in this rule may be obtained from the department web site at www.dphhs.mt.gov, or by writing to the Department of Public Health and Human Services, Health Resources Division, Acute Services Bureau, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

(a) Pharmaceutical manufacturers, hereafter referred to as the manufacturer, will make rebate payments to the department for each calendar quarter within 30 days after receiving from the department the Medicaid utilization information defined in their federal rebate agreement. The manufacturer is responsible for timely payment of the rebate within 30 days of receiving, at a minimum, information on the number of units paid, by NDC number.

(b) 42 USC 1396r-8 (2008) states the requirements that must be met by the department, drug manufacturers, and providers to receive reimbursement for outpatient drugs that have been dispensed. This statute describes rebate agreements, covered drugs, prior authorization, reimbursement limits, and drug use review programs.

(9) through (10)(f) remain the same.

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

5. The Department of Public Health and Human Services, Health Resource Division (the department) administers the Montana Medicaid program, which provides medical assistance to qualified low income and disabled residents of Montana. The program includes a pharmacy benefit. The state of Montana and the federal government jointly fund the Montana Medicaid program, including the pharmacy benefit. Section 53-6-113(2), MCA, requires the department to provide Medicaid services in a cost effective manner. The department and the federal government attempt to control pharmaceutical costs in a number of ways, including requiring rebates from drug manufacturers.

The Drug Rebate program is administered by the department in compliance with 42 USC1396r-8 and the Center for Medicare and Medicaid Services' (CMS) state releases, and drug manufacturer releases, and the national drug rebate agreement.

The Montana Medicaid program is subject to federal review by the federal Department of Health and Human Services (HHS), Office of Inspector General (OIG). During a recent OIG review of the Medicaid drug rebate program the federal government required that the department provide an administrative hearing process for pharmaceutical manufacturers. The HHS OIG report states: "Furthermore, we also continue to recommend that the state agency develop and follow policies and procedures that include: actively pursuing disputed drug rebates including utilization of the state agency's hearing mechanism."

The department accepts the OIG recommendation and these proposed rule changes are reasonably necessary to implement those recommendations.

RULE I

This rule is being proposed to provide an informal and formal process for pharmaceutical manufacturers to dispute Medicaid utilization information used to calculate the rebate amounts due from a manufacturer to the Medicaid program. The department has successfully resolved disputes related to the drug rebate program since 1991 but a formal procedure is necessary to comply with federal guidelines.

ARM 37.5.117

This rule lists the programs that the department administers that do not have a specific, statutorily mandated opportunity for a hearing but a hearing is available to the extent provided by law or rule. The rule is being amended to list hearings for pharmaceutical manufacturers for disputes arising under ARM 37.86.1102 as a hearing available pursuant to department rule.

ARM 37.5.304

State law or department rule provides the opportunity for hearing on a broad variety of programs administered by the department. This rule defines terms used in the department's procedural rules implementing procedures for these hearings. The term "adverse action" is used to describe a number of department actions that may be appealed. This rule is being amended to include a determination by the department regarding a pharmaceutical manufacturer's rebate in the list of department adverse action that may be appealed. This amendment has the effect of establishing the procedures applicable to a hearing on disputes related to Medicaid drug rebates.

ARM 37.5.325

This rule establishes where hearings may be held and states notice requirements. The typical hearing on an adverse action of the department is held in the county seat of the claimant's residence. Drug rebate disputes would involve pharmaceutical manufacturers that do not have a county of residence in Montana. This rule is being amended to provide that hearings on drug rebate matters would be held in Helena, Montana.

ARM 37.86.1101

Definitions of the terms "Average Manufacturer price" and "Best Price" are added to this definition rule. There is no change in how the department defines these terms. It is adding the definitions for reader clarity.

ARM 37.86.1102

The Medicaid drug coverage benefit includes a formulary drug rebate program established by federal law in 1991. (The Omnibus Budget Reconciliation Act of 1990.) Drug manufacturers who want their drugs covered under state Medicaid programs must have a national rebate agreement with the federal Department of Health and Human Services (HHS). The drug rebate program is administered by HHS' Centers for Medicare and Medicaid Services.

ARM 37.86.1102 was adopted to implement provisions of the Montana Medicaid drug coverage benefit for Medicaid recipients. The department administers the benefit, in part, by adopting by reference federal guidance and requirements related to covered drugs, a drug formulary, a drug use review board, prior authorization, and a rebate program. This rule is being amended to adopt by reference current federal material.

Alternative considered

The department considered the merits of HHS' OIG audit recommendations and considered the alternative of taking no action.

Fiscal Effects

This rule amendment will cost the department $0.

Persons and entities affected

This rule impacts zero providers and 500 pharmaceutical manufacturers.

6. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Rhonda Lesofski, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena MT 59604-4210; telephone (406) 444-4094; fax (406) 444-1970; or e-mail dphhslegal@mt.gov, and must be received no later than 5:00 p.m., December 4, 2008.

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

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

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

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

11. The department intends for the proposed adoption and amendment of these rules to be effective January 1, 2009.

/s/ Geralyn Driscoll
Rule Reviewer

/s/ Russell E. Cater for
Joan Miles, Director
Public Health and Human Services

Certified to the Secretary of State October 27, 2008.

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

In the matter of the 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 AMENDMENT, ADOPTION, AND REPEAL

TO: All Concerned Persons

1. On May 8, 2008, the Board of Nursing (board) published MAR Notice No. 24-159-71 regarding the proposed amendment, adoption, and repeal of the above-stated rules, at page 875 of the 2008 Montana Administrative Register, issue no. 9.

2. On May 30, 2008, a public hearing was held on the proposed amendment, adoption, and repeal of the above-stated rules in Helena. Several comments were received by the June 9, 2008, deadline.

3. The board has thoroughly considered the comments and testimony received. A summary of the comments received and the board's responses are as follows:

COMMENT 1: Numerous commenters stated that because the board lacks statutory authority to define the APRN scope of practice, the board also lacks authority to delegate the establishment of the APRN's scope of practice to any national professional organization for APRN specialties. Commenters recommended the board delete all references to scope of practice in the proposed rule amendments.

RESPONSE 1: The board agrees that the Montana Legislature is the entity with the authority to establish scope of practice for all nurses in Montana. To acknowledge both the limitations of the board's empowerment and the actual role of national professional organizations, the board decided to remove all references to scope of practice in the proposed rule amendments and charge APRNs to look to their national professional organizations for practice standards and guidelines. The board

is amending ARM 24.159.1405, 24.159.1470, 24.159.1475, 24.159.1480, 24.159.1485, and 24.159.1490 accordingly.

COMMENT 2: Several commenters suggested that because each APRN is qualified in a specialized area of practice, the requirement in ARM 24.159.1405 that the APRN "possess the knowledge, judgment, and skill to safely and competently perform *any* APRN function" holds APRNs to an irrationally comprehensive level of performance and also exposes APRNs to considerable legal liability.

RESPONSE 2: The board concurs with the comments and determined that replacing "any" with "an" will limit the requirements of APRN competence to the performance of those functions within the APRN's specialty. The board is amending ARM 24.159.1405 accordingly.

COMMENT 3: Numerous commenters objected to the new requirement that the graduate APRN working with a temporary permit must be "directly supervised" by a consultant. Commenters pointed out that APRN independent and/or collaborative practice successfully withstood the scrutiny of the Montana Supreme Court in the case of *Montana Society of Anesthesiologists v. Montana Board of Nursing*, 2007 MT 290, 339 Mont. 472, 171 P.3d 704. Commenters claimed that rural hospitals would be unable to hire graduate registered nurse anesthetists (RNAs) under the proposed rule amendment because the consultants for most RNAs are CRNAs. Commenters stated that the practice of most physicians does not encompass anesthesiology and general practitioners repeatedly have stated that they will not supervise RNAs. In rural hospitals, the consultant CRNA may not be on staff at the facility where the graduate RNA works or may be engaged in a concurrent procedure, although available by telephone or pager at all times. Most commenters advocated the removal of any requirements for supervision of the graduate APRN, but alternative suggestions included describing the graduate APRN's oversight as "close collaboration" or "close consultation." Other commenters suggested that the board allow local credentials committees or medical staff to establish the necessary level of oversight of the graduate APRN.

RESPONSE 3: The board concurs that the direct supervision requirement for the graduate APRN may be overly burdensome for the consultant. The board notes that there is no evidence suggesting that the present level of oversight provided by consultants poses a safety issue for Montana citizens. The rule currently requires that the consultant be "available to the graduate APRN at all times" and does not mandate direct supervision. The consultant may be either immediately available via telephone or present in the facility. The board is therefore amending ARM 24.159.1411 accordingly to delete the direct supervision requirement.

COMMENT 4: A commenter asserted that consultants for graduate APRNs should be required to hold a Montana license because to properly supervise, a consultant needs to be aware of limitations to APRN practice and applicable Montana statutes and rules. When a consultant is subject to discipline, the board may act swiftly to see that the Montana-licensed consultant is replaced. The commenter suggested

that the board establish a separate rule to address consultants working in the federal, military, and Indian Health Service systems.

RESPONSE 4: The board anticipates and intends that all consultants, except those working in the federal, military, and Indian Health Service systems, will possess Montana licenses, which is a prerequisite to working in a Montana health care facility. However, the board agrees that amending the rule to restate the Montana licensure requirement and make specific reference to the licensure exemption statute for those working in a federal enclave will clarify the issues. The board is amending ARM 24.159.1411 accordingly.

COMMENT 5: One commenter urged that reference in ARM 24.159.1413 to national certification be followed with "by board approved certifying bodies" to bring congruence with the definition of "certifying body" in ARM 24.159.301. The commenter stated that not all certifying bodies have board approval and not all national certifications are at the advanced practice level. Another commenter objected to the board maintaining a list of board approved national certifying bodies on its web site and in the board office and instead suggested the board include this list in the administrative rules. The commenter also suggested that the board specifically approve APRN certifying examinations.

RESPONSE 5: The board defines "certifying body" in ARM 24.159.301 as "a national certifying organization that has been approved by the board to use psychometrically sound and legally defensible examinations for certification of nursing specialties." Because a national certifying body is, by definition, one that is approved by the board, the board sees no need to repeat the board approval requirement throughout the rules. The approved certifying bodies, again by definition, offer board approved examinations for certification. Therefore, it is unnecessary for the board to maintain a list of approved certification exams.

The list of board approved certifying bodies is frequently updated by the board. The decision to make available an updated list of the board approved certifying bodies on the board web site and in hard copy from the board office is a practical one. Rule amendments are expensive and time consuming and new certifying bodies are established with some frequency. The board decided to maintain the ability to respond in a timely manner to add or remove certifying bodies from the list, without incurring the four to six month delay of a rule amendment. All board decisions regarding approval of certifying bodies will occur in open, public meetings for which the public and all interested parties will receive prior notice.

COMMENT 6: One commenter stated that calling the APRN endorsement a "license" in ARM 24.159.1413 is confusing and suggested the board use the term "endorsement."

RESPONSE 6: Section 37-1-130, MCA, defines license as "permission granted under a chapter of this title to engage in or practice at a specific level in a profession or occupation, regardless of the specific term used for the permission, including permit, certificate, recognition, or registration." The board notes that all APRNs must

possess a Montana RN license in addition to the APRN licensure endorsement and that the APRN endorsement constitutes a separate license. Because all APRNs hold a minimum of two licenses, the board concluded that referring to the APRN endorsement as a separate license achieves greater clarity in the rules.

COMMENT 7: Several commenters suggested that the date of APRN certification by a national certification body, rather than the date of initial licensure, should be used in the scheme of ascending educational qualifications for APRN licensure, but offered no explanation or justification for the suggested change.

RESPONSE 7: The board discerns no reason why the date of APRN certification would be better than initial licensure date for determining the level of education required for APRN licensure in Montana. The board noted that some states do not require APRNs to be certified by a national certifying body. By contrast, the date of original APRN licensure may be universally applied to all out of state APRNs seeking Montana licensure by endorsement.

COMMENT 8: One commenter stated that the masters prepared RN who attains post-masters certification in an APRN specialty in 2008 or after will be barred from APRN licensure in Montana. The commenter argued that ample evidence demonstrates that the post-masters certificate, when coupled with appropriate didactic and preceptor hours, ensures appropriate preparation for APRN practice.

RESPONSE 8: The board agrees and acknowledges an oversight in the rules. The board is amending ARM 24.159.1414 to recognize that applicants holding a post-masters certificate from an accredited APRN program qualify for Montana APRN licensure.

COMMENT 9: A commenter urged the board to require supervisors for APRNs on probation to be licensed in Montana.

RESPONSE 9: Similar to the consultant for the graduate APRN, all supervisors for licensees on probation who are working in Montana will also be licensed in Montana, with the exception of those working in federal enclaves pursuant to 37-8-103, MCA. However, when an APRN on probation moves to another jurisdiction, the APRN's supervisor may only be licensed in the new jurisdiction and not in Montana. Therefore, the board concluded that the proposed amendment to ARM 24.159.1436 will address the full range of probationary circumstances.

COMMENT 10: Several commenters recommended the board establish an APRN advisory committee to include a representative of each APRN specialty. The commenters stated that the committee could offer invaluable service to the board on APRN education, professional standards, and current clinical practice in Montana.

RESPONSE 10: The board notes that it is the responsibility of APRN professional organizations to ensure that APRN concerns are brought to the board's attention. The board advises APRNs to add their names to the board's list of interested parties

to ensure that they receive information regarding board meeting agendas and proposed rule changes. The board urges APRNs to make use of the opportunities for public comment both in the rulemaking process and the board's public meetings.

COMMENT 11: Numerous commenters noted that most APRN educational programs take three years to complete and pharmacology courses often occur during the first year. The commenters stated that the proposed amendment to ARM 24.159.1463 requiring 45 graduate level contact hours in pharmacology, pharmacotherapeutics, and clinical management of drug therapies within two years of initial application for prescriptive authority will bar most graduate APRNs from attaining that authority. Although the total hours of pharmacology course work in many APRN programs exceeds the 45 contact hour requirement, the coursework may not occur within two years of application. The commenters suggested maintaining the current rule to allow three years to complete the course work.

RESPONSE 11: The board concurs and is amending ARM 24.159.1463 accordingly.

COMMENT 12: One commenter noted that the proposed amendments to ARM 24.159.1463 will require out of state licensed APRNs with prescriptive authority to have earned 45 hours of graduate level pharmacology course work within two years of applying for Montana licensure by endorsement. The commenter urged the board to amend the rule to allow practicing APRNs with prescriptive authority in another state to qualify for prescriptive authority in Montana without having to meet the 45 contact hour requirement.

RESPONSE 12: The board recognizes that no special provision was made in the proposed amendment for APRN endorsement candidates and the proposed amendment to ARM 24.159.1463 presents a strong disincentive for out of state APRNs with prescriptive authority to seek Montana licensure. The board notes that out of state APRNs with prescriptive authority have completed the minimum 45 graduate level contact hours of pharmacology course work earlier in their careers. The board is amending ARM 24.159.1418 to specify that these out of state APRNs with prescriptive authority may qualify for Montana prescriptive authority by meeting the APRN prescriptive authority renewal requirements of ten contact hours of accredited pharmacology education during the two years preceding application.

COMMENT 13: Several commenters stated that it is impractical for many practicing CRNAs to attain graduate level course work in a university or academic setting and requested the board adopt a special rule to address the unique circumstances of practicing CRNAs seeking prescriptive authority.

RESPONSE 13: The board acknowledges that practicing CRNAs are involved with pharmacology, pharmacotherapeutics, and clinical management of drug therapies on a daily basis in their practice as nurse anesthetists. Therefore, the board is amending ARM 24.159.1463 to allow practicing CRNAs to attain prescriptive

authority in the same way as endorsement candidates holding prescriptive authority in another state.

COMMENT 14: Numerous commenters opposed the amendment to ARM 24.159.1464 requiring for the existence of a valid prescriber-patient relationship stating that the rule merely restates state and federal law. The commenters pointed out that 37-2-104, MCA, allows the dispensing of factory prepackaged contraceptives, other than mifepristone, by an APRN employed by a family planning clinic under contract with the Montana Department of Public Health and Human Services when the dispensing is done according to either a physician's written protocol or the drug-labeling, storage, and record keeping requirements of the Montana Board of Pharmacy. The commenters stated that requiring the relationship in the board rules will present another obstacle to establishing the protocol for patient-delivered partner treatment (P-DPT) and may adversely impact public health.

RESPONSE 14: The board supports P-DPT as an effective way to improve control of sexually transmitted infections. Because the proposed language would prohibit APRNs from participating in P-DPT in any setting and because state and federal law already requires a valid prescriber-patient relationship, the board is amending ARM 24.159.1464 to delete the redundant requirement.

COMMENT 15: A commenter stated that when an APRN covers for another APRN without a valid prescriber-patient relationship with the other's patients, the proposed requirement in ARM 24.159.1464 may result in patient abandonment if the covering APRN is barred from prescribing medication refills after reviewing the patient's chart.

RESPONSE 15: The board notes that all licensed APRNs must comply with state and federal laws when prescribing medications and current board rules do not prohibit an APRN form providing coverage for another APRN. The board is amending ARM 24.159.1464 to delete the redundant requirement.

COMMENT 16: Numerous commenters requested clarification on the provision in ARM 24.159.1464 prohibiting APRNs from delegating the dispensing of drugs to any other person.

RESPONSE 16: The board notes that because the dispensing of drugs is the function of pharmacists, an APRN is not allowed to dispense drugs except in certain limited circumstances such as those set forth by the Board of Pharmacy at ARM 24.174.813. While an APRN at a properly licensed family planning clinic may not delegate the dispensing of prescribed medications, an APRN may delegate the administration of medications to another nurse as appropriate. The board further refers commenters to the July 2008 joint position statement of the Montana Boards of Pharmacy, Medical Examiners, and Nursing on "Dispensing of Outpatient Medication in Emergency Department by Licensed Nurses."

COMMENT 17: Several commenters suggested that the APRN's quality assurance plan should include specific, measurable criteria that reflect the standards of practice

and guidelines of the APRN's national professional organization, rather than just requiring the APRN to submit a copy of those standards and guidelines as part of the APRN's quality assurance plan.

RESPONSE 17: The board notes that ARM 24.159.1466 requires the APRN to include a copy of the standards of practice set by the APRN's national professional organization in the quality assurance plan, which will ensure that all APRNs are aware of the existence of these standards of practice. If an APRN chooses to establish additional measurable criteria for peer review purposes, nothing in the rule prevents this greater specificity.

COMMENT 18: Numerous commenters opposed the terms "corrective action" and "practice deficiency" as punitive and professionally disrespectful. The commenters stated that the proposed amendment to ARM 24.159.1466 requiring APRNs to describe corrective action taken sets up a mandate for overly detailed and invasive reporting.

RESPONSE 18: The board is amending ARM 24.159.1466 by substituting "areas in need of attention or improvement" for the objectionable language. The board is also amending the rule to clarify the board's intent for APRNs to verify completion of peer review rather than to require that APRNs prepare detailed biennial reports on the peer review process.

COMMENT 19: A commenter opposed deleting the requirement from ARM 24.159.1475 that all CNMs be enrolled in either the certification maintenance program or the continued competency program of their national professional organization. The commenters stated that unlike other APRN categories, the continued competency and certification programs for CNMs are voluntary at this time and public safety would be best assured by requiring CNM participation.

RESPONSE 19: The board concurs and is amending the rule accordingly.

COMMENT 20: One commenter suggested the board clearly define "comprehensive nursing assessment" and "focused nursing assessment" in rule. The commenter stated that APRNs do not undertake comprehensive assessments on all patients and may conduct focused assessments when circumstances warrant.

RESPONSE 20: The board previously added the requested definitions to ARM 24.159.301 as part of the LPN rule amendments in MAR Notice No. 24-159-70 which became effective on August 15, 2008.

4. The board has amended ARM 24.159.301, 24.159.1229, 24.159.1404, 24.159.1412, 24.159.1413, 24.159.1416, 24.159.1427, 24.159.1428, 24.159.1430, 24.159.1431, 24.159.1436, 24.159.1443, 24.159.1461, 24.159.1462, 24.159.1467, and 24.159.1468 exactly as proposed.

5. The board has repealed ARM 24.159.1401, 24.159.1415, 24.159.1417, 24.159.1426, 24.159.1442, and 24.159.1465 exactly as proposed.

6. The board has amended ARM 24.159.1405, 24.159.1411, 24.159.1414, 24.159.1418, 24.159.1463, 24.159.1464, 24.159.1466, 24.159.1470, 24.159.1475, 24.159.1480, 24.159.1485, and 24.159.1490 with the following changes, stricken matter interlined, new matter underlined:

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) remains as proposed.

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

(c) possess the knowledge, judgment, and skill to safely and competently perform ~~any~~ an APRN function;

(d) and (e) remain as proposed.

24.159.1411 TEMPORARY PERMITS FOR GRADUATE APRNS

(1) through (4) remain as proposed.

(5) The graduate APRN working with a temporary APRN permit must have a consultant. The consultant must possess an unencumbered Montana license, except as provided by 37-1-103, and be either an APRN or a physician whose practice encompasses the scope of the graduate APRN's practice. The consultant must be available to ~~and directly supervise~~ the graduate APRN at all times.

24.159.1414 EDUCATIONAL REQUIREMENTS AND QUALIFICATIONS FOR APRN (1) remains as proposed.

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

(b) through (4) remain as proposed.

24.159.1418 LICENSURE BY ENDORSEMENT (1) through (1)(b) remain as proposed.

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

(d) completed application for prescriptive authority, if applicable;

(e) verification of prescriptive authority from all jurisdictions for preceding two years, if applicable;

(f) proof of completion of a minimum of 10 contact hours of continuing education within the preceding two years that meets the requirements of ARM 24.159.1468;

~~(d)~~ (g) the required fees for APRN licensure by endorsement and prescriptive authority, if applicable, as specified by ARM 24.159.401.

(2) and (3) remain as proposed.

24.159.1463 INITIAL APPLICATION FOR PRESCRIPTIVE AUTHORITY

(1) The APRN shall submit a completed application for prescriptive authority and a nonrefundable fee as specified in ARM 24.159.401. The application for all APRNs except practicing CRNAs 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~~ three-year period immediately prior to the date the application is received at the board office and must meet the following requirements:

(i) through (e) remain as proposed.

(2) Practicing CRNAs may qualify for prescriptive authority by meeting the continuing education requirements of ARM 24.159.1418.

(2) and (3) remain as proposed but are renumbered (3) and (4).

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

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

(a) name, title, address, and phone number of the APRN who is prescribing;

(b) through (d) remain the same.

(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 must be documented in client records.

(4) through (7) remain as proposed.

24.159.1466 QUALITY ASSURANCE OF APRN PRACTICE (1) through (2)(d) remain as proposed.

(e) description of the method the peer-reviewer will use to address ~~corrective action~~ areas in need of attention or improvement, if indicated, and to ensure follow-up evaluation.

(3) and (3)(a) remain as proposed.

(b) ~~describe the corrective action taken by the APRN to address each identified practice deficiency~~ provide verification that area(s) identified by the peer reviewer as needing attention and improvement have been appropriately addressed according to the APRN's stated plan; and

(c) remains as proposed.

24.159.1470 NURSE PRACTITIONER PRACTICE (1) remains as proposed.

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

24.159.1475 CERTIFIED NURSE MIDWIFERY PRACTICE (1) remains as proposed.

(2) All licensed CNMs shall be enrolled in either the certification maintenance program or the continuing competency assessment program through the American College of Nurse Midwives.

~~(2)~~ (3) Every licensed CNM shall abide by the ~~scope and~~ practice standards and guidelines ~~of practice~~ established by a CNM national professional organization as identified by the CNM.

24.159.1480 CERTIFIED REGISTERED NURSE ANESTHETIST PRACTICE (1) remains as proposed.

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

24.159.1485 CLINICAL NURSE SPECIALIST PRACTICE (1) remains as proposed.

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

24.159.1490 PSYCHIATRIC-MENTAL HEALTH PRACTITIONER PRACTICE (1) remains as proposed.

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

7. The board has adopted New Rule I (24.159.1424), exactly as proposed.

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 October 27, 2008

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

In the matter of the adoption of New Rule I and the amendment of ARM 37.10.101, 37.10.104, and 37.10.105 pertaining to living wills	))))	NOTICE OF ADOPTION AND AMENDMENT

TO: All Concerned Persons

1. On August 14, 2008, the Department of Public Health and Human Services published MAR Notice No. 37-450 pertaining to the public hearing on the proposed adoption and amendment of the above-stated rules at page 1686 of the 2008 Montana Administrative Register, Issue Number 15.

2. The department has amended ARM 37.10.101 and 37.10.105 as proposed.

3. The department has adopted and amended the following rules as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

RULE I (37.10.108) DO-NOT-RESUSCITATE PROTOCOL (1) POLST is intended to replace Comfort One as the system used by medical professionals to identify and administer appropriate care, including DNR orders, to terminally ill patients.

(2) When issuing a DNR order for a patient with a terminal condition, medical professionals are encouraged to ~~must~~ use the POLST form and follow the DNR/POLST protocol approved by the Board of Medical Examiners and the department. The department adopts and incorporates the DNR/POLST protocol July, 2008 which can be found at www.mt.gov/dli/bsd/license/bsd_boards/med_board/licenses/med/polst.asp or upon request from the Montana Board of Medical Examiners, P.O. Box 200513, 301 S. Park, 4th Floor, Helena, MT 59620.

(3) All previously issued Comfort One identifying material, including forms, will be considered valid by health care providers.

~~(4) All previously issued DNR orders will be considered valid by health care providers.~~

AUTH: 50-10-105, MCA
IMP: 50-10-101, MCA

37.10.104 LIVING WILL PROTOCOL FOR EMS PERSONNEL (1) The living will protocol may also be designated the "POLST protocol". Providers may use POLST to implement DNR orders, or the end of life treatment decisions by a patient expressed through a living will or otherwise.

(2) For a patient who has completed a POLST or Comfort One form, emergency medical services personnel must follow the POLST protocol for providing palliative care or withholding life-sustaining procedures from a patient if a patient meets the following criteria:

(a) The identity of the patient has been clearly established and the personnel have been presented with any one of the following:

(i) a POLST form for the patient;

(ii) a Comfort One card or form for the patient; or

(iii) a written DNR order signed and dated by a ~~physician~~ provider.

(b) An unresponsive person is wearing a Comfort One necklace or bracelet ~~identifying the existence of a DNR order~~ (no further identification is necessary).

AUTH: 50-9-110, MCA
IMP: 50-9-102, 50-9-103, MCA

4. 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: The rules appear to limit POLST to patients with a terminal illness. They do not believe that is consistent with the intent of POLST and believe that a broader definition should be adopted to include individuals not having a terminal condition.

RESPONSE #1: The department disagrees. While POLST is based on a national program, the POLST form, protocol, and rules were developed in conjunction with the Board of Medical Examiners in an attempt to develop a living will protocol for Montana, and must be consistent with Montana law. These rules were adopted pursuant to the department's authority in the Montana Rights of the Terminally Ill Act to adopt a living will protocol, which is defined in statute as follows:

> "'Living will protocol' means a locally developed, communitywide method or a standardized, statewide method developed by the department and approved by the board, of providing palliative care to and withholding life-sustaining treatment from a qualified patient under 50-9-202 by emergency medical service personnel."

50-9-102(10), MCA. The department also has rulemaking authority under this chapter, reflected in 50-9-110, MCA. According to 50-9-102(13), MCA, a qualified patient only includes an individual who has been determined to have a terminal condition. "Terminal condition" is further defined as:

> "an incurable or irreversible condition that, without the administration of life-sustaining treatment, will, in the opinion of the attending physician or attending advanced practice registered nurse, result in death within a relatively short time."

50-9-102(16), MCA.

Whether an individual is a qualified patient is largely within the discretion of the provider. However, POLST is being adopted as the "living will protocol" under this statute, and the department is limited to the statutory definitions. It is not within the department's authority to adopt rules that would include individuals who do not meet the definition of "qualified patients". Any broader definition would require a statutory change. Individuals who do not qualify to use a POLST form because they do not fall within the definitions of the statute are still able to convey their wishes for end of life treatment with living wills.

COMMENT #2: ARM 37.10.101 appears to change the definition of "Comfort One" to address only those individuals who are terminally ill.

RESPONSE #2: The department disagrees. A careful review of the original definition of Comfort One reveals that it always applied to patients with a terminal illness. The definition previously read:

> "'Comfort one' means a comprehensive, statewide program of identifying, providing palliative care, and withholding resuscitative measures to terminally ill patients who have declared living wills or for whom a physician has issued a do-not-resuscitate order."

The words "who have declared living wills or" were removed to reflect that while the POLST form and protocol cover other end of life wishes, Comfort One is limited to patients with a DNR order. Comfort One was always directed at "terminally ill" patients as required by statute and explained in the department's response to comment #1.

COMMENT #3: The new language requires a physician to use the POLST form to issue a DNR order for a patient, and, in turn, limits the issuance of DNR orders to patients in a terminal condition.

RESPONSE #3: The department concurs. It was not the intent to limit a physician's ability to order a DNR to using the POLST form. In order to provide clarity, the department is removing (4) and changing the language as follows:

(2) When issuing a DNR order for a patient with a terminal condition, medical professionals are encouraged to use the POLST form and follow the DNR/POLST protocol approved by the Board of Medical Examiners and the department.

COMMENT #4: Concern was expressed that the POLST document obscures the right to refuse treatment by implying that a terminal illness is required.

RESPONSE #4: As noted in the department's response to comment #3, the language has been changed to allow physicians to issue DNR orders as before, indicating that POLST is the preferred method for an individual with a terminal

condition. While these rules are limited to qualified patients as defined in statute, individuals maintain the right to refuse treatment, and a provider is still able to issue DNR orders as before.

COMMENT #5: ARM 37.10.104(2)(a)(iii) is unnecessary and confusing.

RESPONSE #5: The department does not concur with this suggestion. It is necessary to allow physicians to issue DNR orders independently of POLST, as explained in the response to comment #3. While dealing with such written orders could be an additional challenge in the prehospital setting, eliminating (2)(a)(iii) would not allow emergency responders to act upon other written orders which will continue to be used in medical practice or to act upon verbal DNR orders if requested in a prehospital setting. The department feels that medical professionals will utilize POLST/Comfort One as much as possible and that use of written DNRs in the field setting will not occur in most instances.

COMMMENT #6: The proposed language, "identifying the existence of a DNR order" in ARM 37.10.104(2)(b) is confusing.

RESPONSE #6: The department concurs. Under ARM 37.10.101(4), the definition clarifies that the Comfort One bracelet or necklace can only be issued to patients that have the current Comfort One form or have been identified as DNR patients on the POLST form. As such, under the context of ARM 37.10.104(2)(b), Comfort One bracelets and necklaces by definition identify that the patient has a DNR. The proposed language will be removed.

COMMENT #7: The term "physician" is used in ARM 37.10.104(2)(a)(iii), where in other places in the rules it has been replaced with "provider".

RESPONSE #7: The department concurs and will replace the word "physician" with the word "provider" in this subsection of the rule.

/s/ Shannon McDonald
Rule Reviewer

/s/ Russell E. Cater for
Joan Miles, Director
Public Health and Human Services

Certified to the Secretary of State October 27, 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, the amendment of ARM 37.86.2207, 37.86.2219, and 37.86.2221, and the repeal of ARM 37.88.1101 through 37.88.1137 pertaining to Medicaid and MHSP reimbursement for youth mental health services	)))))))	NOTICE OF ADOPTION, AMENDMENT, AND REPEAL

TO: All Concerned Persons

1. On July 31, 2008, the Department of Public Health and Human Services published MAR Notice No. 37-448 pertaining to the public hearing on the proposed adoption, amendment, and repeal of the above-stated rules at page 1536 of the 2008 Montana Administrative Register, Issue Number 14.

2. The department has adopted New Rule I (37.87.1201), Rule II (37.87.1202), Rule IV (37.87.1225), Rule V (37.87.1216), and Rule VI (37.87.1203) as proposed. The department has amended ARM 37.86.2219 and 37.86.2221 and repealed ARM 37.88.1101 through 37.88.1137 as proposed.

3. The department has adopted the following rules as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

RULE III (37.87.1206) PSYCHIATRIC RESIDENTIAL TREATMENT FACILITY SERVICES, PARTICIPATION REQUIREMENTS (1) remains as proposed.

(2) PRTF providers, as a condition of participation in the Montana Medicaid program, must comply with the following requirements:

(a) through (d) remain as proposed.

(e) accept, as payment in full for all operating and property costs, the amounts paid in accordance with the reimbursement method set forth in ~~these rules~~ this rule and ARM 37.87.1201, 37.87.1202, 37.87.1203, 37.87.1207, 37.87.1214, 37.87.1215, 37.87.1216, 37.87.1217, 37.87.1222, 37.87.1223, 37.87.1224, and 37.87.1225;

(f) through (j) remain as proposed.

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

RULE VII (37.87.1217) PSYCHIATRIC RESIDENTIAL TREATMENT FACILITY SERVICES, TREATMENT REQUIREMENTS (1) and (2) remain as proposed.

(3) The PRTF plan of care must be comprehensive and address all psychiatric, medical, psychological, social, behavioral, developmental, and chemical dependency treatment needs.

(4) remains as proposed.

(5) ~~PRTF services include, at a minimum, a seven day supply of medication and a prescription for, at a minimum, a 30 day supply of medication on discharge from the facility.~~ PRTF services include, at a minimum, discharge planning to ensure the youth has medication or a prescription for medication to last through the first outpatient visit in the community with a prescribing provider. Prior to discharge, the PRTF must identify a prescribing provider in the community and schedule an outpatient visit. Documentation of the medication plan and arrangements for the outpatient visit must be included in the youth's medical record. If medication has been used during the youth's PRTF treatment but is not needed upon discharge, the reason the medication is being discontinued must be documented in the youth's medical record.

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

RULE VIII (37.87.1207) HOSPITAL-BASED PSYCHIATRIC RESIDENTIAL TREATMENT FACILITY SERVICES, REQUIREMENTS (1) A hospital-based PRTF must ~~be paid as specified in ARM 37.86.2904, 37.86.2905, 37.86.2907, 37.86.2910, 37.86.2912, 37.86.2916, 37.86.2918, 37.86.2920, 37.86.2925, 37.86.2928, 37.86.2931, 37.86.2935, and 37.86.2940. It must also~~ meet the following requirements:

(a) through (f) remain as proposed.

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

RULE IX (37.87.1222) PSYCHIATRIC RESIDENTIAL TREATMENT FACILITY SERVICES, INTERIM RATE AND COST SETTLEMENT PROCESS

(1) through (1)(c) remain as proposed.

(2) The ancillary rate in (1)(c) will be adjusted retrospectively when:

(a) remains as proposed.

(b) ancillary costs in the facility-specific aggregate for all discharges, for Montana Medicaid paid youth, in a state fiscal year exceed or are less than 5% of the reimbursement that the facility received as an interim rate. If the costs exceed the aggregate by more than 5%:

(i) through (iii) remain as proposed.

(3) The psychiatric service rate is an all-inclusive bundled per diem rate, and includes:

(a) and (b) remain as proposed.

(c) lab and pharmacy costs ~~related to the youth's psychiatric condition~~ with the exception noted in (4)(r) pharmacy for post-discharge medication.

(4) Ancillary services are provided by or include the following:

(a) through (m) remain as proposed.

(n) MRI, or other diagnostic services;

(n) through (p) remain as proposed but are renumbered (o) through (q).

(r) pharmacy for post-discharge medication;

(q) through (v) remain as proposed but are renumbered (s) through (x).

~~(w)~~ (y) targeted case management; and

~~(x) at a minimum, a seven day supply of medication on discharge; and~~

~~(y)~~ (z) any other Medicaid service provided to the youth receiving PRTF in-patient care not related to the youth's psychiatric condition may be considered an ancillary service.

(5) If a youth receiving in-patient care in a PRTF has ~~a~~ an unusually expensive medical condition that requires a higher ancillary rate, prior to the cost settlement process, the PRTF may request interim reimbursement for the ancillary care. The department at its discretion may grant the youth specific request if the PRTF:

(a) remains as proposed.

(b) interim payments must be requested ~~in the quarter of the state fiscal year in which the expense was incurred~~ within 90 days of the date of service and will be taken into consideration during the ancillary cost settlement process described in (2). Payment of these claims will be made by the department within 90 days from the date all requirements for payment are met.

(6) through (9) remain as proposed.

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

RULE X (37.87.1223) PSYCHIATRIC RESIDENTIAL TREATMENT FACILITY SERVICES, REIMBURSEMENT (1) For PRTF services provided on or after ~~October 1, 2008~~ January 1, 2009, the Montana Medicaid program will pay a provider for each patient day as provided in these rules.

(a) through (3)(b) remain as proposed.

(4) Out-of-state PRTF providers who are not hospital based will be reimbursed 50% of their usual and customary charges. Reimbursement will include all Medicaid covered psychiatric, medical, and ancillary~~, and chemical dependency~~ services. Medical services are included as ancillary services. Ancillary services are defined in ARM 37.87.1222.

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

RULE XI (37.87.1224) PSYCHIATRIC RESIDENTIAL TREATMENT FACILITY SERVICES, CONTINUITY OF CARE PAYMENT (1) Hospital-based psychiatric residential treatment facilities as defined in ~~[RULE VIII]~~ ARM 37.87.1207 qualify for a continuity of care payment.

(a) through (2) remain as proposed.

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

RULE XII (37.87.1214) PSYCHIATRIC RESIDENTIAL TREATMENT FACILITY SERVICES, CHEMICAL DEPENDENCY ASSESSMENT AND TREATMENT (1) PRTF services may include chemical dependency (CD) assessment and treatment according to the American Society of Addictions Medicine PPC-2R Manual (Second Edition, Revised April 2001) for youth with a primary SED diagnosis who have a co-occurring CD diagnosis.

(2) through (4) remain as proposed.

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

RULE XIII (37.87.1215) PSYCHIATRIC RESIDENTIAL TREATMENT FACILITY SERVICES, ASSESSMENT SERVICES (1) PRTF assessment services are provided by in-state facilities and must comply with the requirements of this subchapter and the applicable federal regulations for PRTF services.

(2) through (6) remain as proposed.

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

4. The department has amended the following rule as proposed with the following changes from the original proposal, new matter underlined, deleted matter interlined:

37.86.2207 EARLY AND PERIODIC SCREENING, DIAGNOSTIC, AND TREATMENT SERVICES (EPSDT), REIMBURSEMENT (1) through (4)(b) remain as proposed.

(5) Each provider of therapeutic youth group home services will report allowable costs for SFY 2008 that starts July 1, 2007 using auditable data, standardized forms, instructions, definitions, and timelines supplied by the department.

(a) remains as proposed.

(b) Reports of allowable costs for SFY 2008 must be received by the department before ~~October 1~~ October 20, 2008.

(6) through (11) remain as proposed.

(12) The department will not reimburse providers for two services that duplicate one another on the same day. The department adopts and incorporates by reference the Medicaid Mental Health Plan and Mental Health Services Plan for ~~y~~Youth Services Excluded from Simultaneous Reimbursement ~~dated October 1, 2008~~ effective January 1, 2009. A copy of the Services Excluded from Simultaneous Reimbursement is posted on the internet at the department's web site at www.dphhs.mt.gov/mentalhealth/children/childrensmentalhealthservicesmatrix.pdf or

may be obtained by writing the Department of Public Health and Human Services, Health Resources Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

(13) remains as proposed.

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

5. 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: What is the effective date of the rule changes?

RESPONSE #1: The repeal of ARM 37.88.1101 through 37.88.1137 and adoption of Rules I through XIII (37.87.1201, 37.87.1202, 37.87.1203, 37.87.1206, 37.87.1207, 37.87.1214, 37.87.1215, 37.87.1216, 37.87.1217, 37.87.1222, 37.87.1223, 37.87.1224, and 37.87.1225) will be effective January 1, 2009, rather than October 1, 2008 as proposed. Work on the automated claims payment system at the Medicaid fiscal intermediary will not be completed before that date.

The amendment to ARM 37.86.2207(5)(b) will be applied retroactively, effective October 20, 2008, rather than October 1, 2008 as proposed, regarding the cost report due date for therapeutic youth group homes.

The effective date of the new "Medicaid Mental Health Plan and Mental Health Services Plan for Youth Services Excluded from Simultaneous Reimbursement" in ARM 37.86.2207(12) will be January 1, 2009, rather than October 1, 2008 as proposed. Clinical management guidelines for community-based psychiatric rehabilitation and support services when prior authorized with day treatment and partial hospital services will not be developed and published until then.

The proposed change on the chart for prior authorization for outpatient therapy services provided on the same day as therapeutic youth group home services will be removed. The department will reconsider the rules for prior authorization of outpatient therapy services provided on the same day as therapeutic youth group home services when the therapeutic youth group home rules are updated.

Amendments to ARM 37.86.2207, except as otherwise stated in this notice, will be effective January 1, 2009. The amendments ARM 37.86.2219 and 37.86.2221 will be effective January 1, 2009. As of that date, the signature of an intensive case manager will no longer be required on the certificate of need for therapeutic youth group home and therapeutic family care services.

COMMENT #2: In Rule II(6) (37.87.1202) "other than a hospital" would be added to the definition of a psychiatric residential treatment facility (PRTF). Some psychiatric residential treatment facilities are also licensed as hospitals. This language could

make the hospital-based psychiatric residential treatment facilities ineligible for a continuity of care payment, as provided for in Rule XI (37.87.1224). We recommend the department delete "other than a hospital" from the definition.

RESPONSE #2: The department disagrees. The proposed language parallels federal regulations describing a PRTF. The department will not pay hospital or psychiatric hospital distinct part units under these PRTF rules. The department notes that the commentor's facility is also licensed as a PRTF and maintains separate beds for PRTF residents. That part of the facility will be paid as a PRTF and will be eligible to receive a continuity of care payment.

COMMENT #3: Rule III(2)(e) (37.87.1206) is not clear as to the reimbursement method applicable to PRTF providers. We recommend the phrase: "pursuant to the methodology set forth in Rule IX (37.87.1222)" be substituted for: "in accordance with the reimbursement method set forth in these rules".

RESPONSE #3: Other rules in addition to Rule IX (37.87.1222) address reimbursement methods for PRTF providers. Therefore, Rule III(2)(e) (37.87.1206) has been clarified to read "accept, as payment in full for all operating and property costs, the amounts paid in accordance with the reimbursement methods set forth in Rules I through XIII (37.87.1201, 37.87.1202, 37.87.1203, 37.87.1206, 37.87.1207, 37.87.1214, 37.87.1215, 37.87.1216, 37.87.1217, 37.87.1222, 37.87.1223, 37.87.1224, and 37.87.1225)".

COMMENT #4: Are the "social behavioral" needs listed in Rule VII(3) (37.87.1217) one category or two?

RESPONSE #4: Social and behavioral needs are separate categories. Rule VII(3) (37.87.1217) was clarified by inserting a comma between "social" and "behavioral".

COMMENT #5: Rule VII(5) (37.87.1217) would require, at a minimum, a seven day supply of medication and a prescription for a 30-day supply on discharge. What if post-discharge medication is not medically necessary, as determined by the treating physician or advanced practice registered nurse?

RESPONSE #5: The department believes if medication is an important component in the treatment of a youth's condition in a PRTF, it is important on discharge and should be addressed in discharge planning. The time it takes to schedule an appointment with a prescribing professional in the community varies from community to community. The intent of the proposed rule was for a youth discharged from a PRTF to have enough medication or a prescription for treatment of their condition until they are able to have an appointment with a community prescribing provider. Rule VII(5) (37.87.1217) was changed to read: "PRTF services include, at a minimum, discharge planning to ensure the youth has medication or a prescription for medication until the first community outpatient visit with a prescribing provider. Prior to discharge, the PRTF must identify a prescribing provider in the community and schedule an out-patient visit. Documentation of the discharge medication plan

and arrangements for the outpatient visit must be documented in the youth's medical record. If medication has been used during the youth's PRTF treatment but is not needed upon discharge, the reason the medication is being discontinued must be documented in the youth's medical record."

The pharmacy costs for medication provided to the youth for post discharge use is considered an ancillary expense in Rule IX(4)(r) (37.87.1222). The language and number will be changed to read: "(4)(r) pharmacy for post-discharge medication;".

COMMENT #6: The terms "interim rate", "bundled rate", "and ancillary services" are somewhat confusing as to what the department intends. Please clarify.

RESPONSE #6: The term "interim rate" as used in Rule IX(1) (37.87.1222) is comprised of (a) the psychiatric service rate which is found on the fee schedule, this rate is currently $303.76, plus (b) the direct care wage, plus (c) the facility-specific ancillary add-on rate. A portion of this interim rate, the facility-specific add-on rate referenced in (c), is subject to cost settlement. The term "bundled rate" provided for in Rule IX(3) (37.87.1222) is the psychiatric service rate. Services included in the psychiatric service rate are listed in Rule IX(3) (37.87.1222). The ancillary service rate is a component of the interim rate. Ancillary services are listed in Rule IX(4) (37.87.1222).

COMMENT #7: The out-of-state PRTFs should have to submit the same cost reports as the in-state PRTFs and be reimbursed their actual operating expenses. The methodology the department uses is unfair to in-state providers.

RESPONSE #7: The department disagrees. Out-of-state PRTFs will not be eligible for cost settlement of their ancillary expenses like in-state PRTFs. Out-of-state PRTFs will be reimbursed 50% of their usual and customary charges for psychiatric, medical, and ancillary services. Reimbursement outside their bundled rate will not be available to them. The department has determined this is a fair reimbursement methodology. Montana Medicaid uses out-of-state PRTFs only when a youth cannot be served by an in-state PRTF. The department's goal is to treat youth needing PRTF services in Montana whenever possible.

COMMENT #8: We recommend that the department amend Rule IX (37.87.1222) to set the cost settlement period as October 1, 2008 through June 30, 2009. An adjusted rate should then be set, based on the cost reports of each facility. The PRTF providers are concerned about the possible impact of cost settlement on the Medicaid budget.

RESPONSE #8: The department partially agrees. Under the final rule, the department will begin paying a per diem PRTF rate plus a facility specific ancillary rate starting January 1, 2009. Ancillary expenses will be cost-settled at the end of each state fiscal year ending June 30. A new facility-specific rate will be set based on the results of a cost settlement process.

If the recommendation is to add a specific time to complete the cost settlement procedure, the department disagrees. The time it takes to complete the cost settlement is highly dependant on the quality of the data submitted by each facility. The department will work with the facilities prior to the submission of cost data.

The department thanks the providers for their concern about the Medicaid budget. Cost settlement will be made at the cost-sharing rate in effect for all Medicaid services. Financial reports based on paid claims for ancillary and medical expenses are the best way to predict the facility-specific add-on rate referenced in Rule IX(1)(c) (37.87.1222). PRTFs can assist the department by negotiating the lowest possible rate from providers of medical and ancillary services.

COMMENT #9: The department should include the direct care wage adjustment to the base rate provided for in Rule IX(1)(b) (37.87.1222).

RESPONSE #9: The department has not determined how to include the direct care wage in the PRTF base rate. The department is considering alternatives, such as including the direct care wage in the facility-specific add-on ancillary rate since some in-state PRTFs treat more Montana Medicaid youth than others. The PRTF direct care wage will be addressed in future rules.

COMMENT #10: We are concerned about the fiscal reports provided several months ago for ancillary and medical claims paid in federal fiscal year (FFY) 2007, while Medicaid youth were in our PRTF facility. The reports do not accurately reflect billed ancillary charges and we encourage the department to use more current data and consider our usual and customary service fee. We recommend the department complete a new study of physician salaries and incorporate the results into the rate.

RESPONSE #10: The department believes FFY 2007 financial reports are valid. Current data may be less accurate because of national provider identifier (NPI) implementation problems. The department agrees the financial reports do not reflect billed versus paid claim amounts. If a provider's ancillary expenses are more than 105% above the facility's expenses previously reported, the department will reimburse the provider their actual expenses. Physician expenses are considered "ancillary" under Rule IX(4) (37.87.1222). Physician expenses will be included in the cost report the department receives for cost settlement purposes under that rule.

COMMENT #11: In FFY 2007, one PRTF was owned by another company and had a moratorium placed on its admissions. The number of youth in the facility at the time will adversely impact their current reimbursement rate. How will the department take such circumstances into consideration?

RESPONSE #11: If the aggregate ancillary costs for this PRTF for FFY 2007 was, for example, $10,000, the department will divide that amount by the number of Medicaid bed days billed for that period to determine the facility-specific add-on rate. If the bed days were, for example, 1,000, the daily facility-specific add-on rate would be $10 a bed day. In FFY 2008, if the aggregate ancillary costs for the facility were

$5,000, for example, and the Medicaid bed days were less than in FFY 2007 because of fewer youth in the facility, for example 500, the FFY 2009 facility-specific add-on rate would still be $10 a bed day. The department is computing the PRTF rates assuming there will be a direct correlation between the lower number of Medicaid youth served and ancillary costs in FFY 2007. Applied to SFY 2009 expenses, if the facility exceeds 105% of the aggregate ancillary costs for FFY 2007 the department will reimburse the facility up to actual costs.

COMMENT #12: Rule IX(2)(b) (37.87.1222) states the department will reimburse the facility for costs that exceed 105% of the aggregate. Will the department reimburse the provider for each dollar over 105%?

RESPONSE #12: The department will reimburse a provider dollar for dollar over 105% of the aggregate ancillary expenses. Providers will reimburse the department dollar for dollar under 95% of the aggregate.

COMMENT #13: Does the ancillary rate include staff assigned to escort a youth to an emergency room and other federally allowable costs?

RESPONSE #13: It is not clear what is meant by other federally allowable costs. Outpatient hospital claims for emergency room services are paid to the hospital and do not include PRTF staff. Billing separately for PRTF staff who escort a PRTF youth to the emergency room is not allowed and is included in the PRTF bundled psychiatric reimbursement rate in Rule IX(1)(a) (37.87.1222).

COMMENT #14: Does the ancillary rate include case management?

RESPONSE #14: A moratorium has been placed on the CMS regulation that would limit the amount of Targeted Case Management Services (TCM) a youth may receive while in a PRTF. At the same time, CMS is requiring states to bundle the reimbursement rate for all services a youth receives while in a PRTF. The department has requested clarification from CMS on this question but has not received a response. TCM is currently included in the list of ancillary services. In-state PRTFs will be paid the facility-specific ancillary rate based on our review of the regulations. Out-of-state PRTFs will be paid 50% of their usual and customary rate including TCM services as outlined in Rule X(4) (37.87.1223).

COMMENT #15: It is our understanding the "cost per bed day for RTC (residential treatment center) only" reflects the current rate approved by the Legislature, $303.76, and will be the base rate from which an add-on rate will begin. What will be the starting rate October 1, 2008?

RESPONSE #15: The "psychiatric service" or base rate provided in the department's Medicaid Mental Health Fee Schedule per Rule IX(1)(a) (37.87.1222) is $303.76. The facility-specific add-on ancillary rate in Rule IX(1)(c) (37.87.1222) will be added to the $303.76 rate.

The repeal of ARM 37.88.1101 through 37.88.1137 and adoption of Rules I through XIII (37.87.1201, 37.87.1202, 37.87.1203, 37.87.1206, 37.87.1207, 37.87.1214, 37.87.1215, 37.87.1216, 37.87.1217, 37.87.1222, 37.87.1223, 37.87.1224, and 37.87.1225) will be effective January 1, 2009, rather than October 1, 2008 as originally proposed. For more information, please see the response to comment #1.

COMMENT #16: When physician and psychiatrist services are considered ancillary services (see Rule IX(4) (37.87.1222)), what cost should be charged - the physician or psychiatrist's salary, the Medicaid reimbursement rate, or their usual and customary charges?

RESPONSE #16: PRTF-based physicians will be cost-settled to the amount they would have received from Medicaid under the Reimbursement and Modifier Requirements in ARM 37.86.105 and the RBRVS Reimbursement in ARM 37.85.212. "PRTF-based" means a physician or psychiatrist employed by or under contract with the PRTF. Non-PRTF-based physicians will be cost-settled to the actual allowable cost of the purchased service.

COMMENT #17: We understand ancillary charges must be billed in the quarter in which costs were incurred. We recommend changing Rule IX(5)(b) (37.87.1222) to "within 90 days of the date of service". As proposed, interim payments must be requested "in the quarter of the state fiscal year" in which expenses are incurred. Some expenses may be incurred at the end of a fiscal quarter and may be difficult to interim bill for in the same quarter.

RESPONSE #17: The department agrees with the proposed language and has changed Rule IX (37.87.1222) accordingly. Please note however, most ancillary expenses will be covered in the facility-specific add-on rate in Rule IX(1)(c) (37.87.1222). Rule IX(5) (37.87.1222) allows providers treating a youth with a medical condition that requires a higher ancillary rate to request an interim payment prior to the cost settlement process, at the department's discretion. The interim payment process will be used for unusually expensive youth.

COMMENT #18: Rule IX(9) (37.87.1222) should specify who the "designee" for receiving notice of discharge is. The $100 fine for not sending timely notification of discharges is excessive.

RESPONSE #18: The department will develop a PRTF discharge notification process that will specify who the designee is. The department does not believe this process needs to be in rule. The rule indicates a $100 fine may be imposed if providers do not notify the department of discharges timely. The department notes discharge notifications have consistently not been received. The fine should give providers an incentive to give timely notification. This notification is critical for youth to receive needed services upon discharge. The rule and fine remain as proposed.

COMMENT #19: Requiring chemical dependency services be provided by a licensed addiction counselor (LAC) may place a burden on the PRTFs as such

professionals are hard to recruit and retain. The cost needs to be added to the base rate.

RESPONSE #19: The department believes chemical dependency services are important in this level of care for youth with a co-occurring chemical dependency diagnosis. The department has revised Rule XII (37.87.1214) to make chemical dependency services optional. LAC services are defined as ancillary in Rule IX(4) (37.87.1222) and may be cost-settled at the end of the state fiscal year.

COMMENT #20: In Rule XIII(2)(b) (37.87.1215) we recommend 14 days be changed to 30 days. Fourteen days is not long enough to complete the testing needed to determine the impact of a medication adjustment.

RESPONSE #20: The department disagrees. If the stay extends beyond 14 days the regular PRTF rate will apply.

COMMENT #21: We recommend the department remove (5)(a) of Rule XIII (37.87.1215) entirely. Providers cannot assure youth who receive assessment services are not going to require additional treatment soon after discharge.

RESPONSE #21: In adding short term assessment services to the PRTF rule, the department acknowledges some youth need to be reassessed for a number of reasons. If a youth is readmitted within 30 days to a PRTF, the department may review and should be allowed to recover the 15% higher reimbursement rate for the assessment services. Assessment services are already a requirement for youth admitted to a PRTF, with the exception of Rule XIII(3)(d) (37.87.1215) for a chemical dependency assessment. The short term nature of the admission may not allow the PRTF to recoup expenses during a short stay. The department acknowledges many factors may contribute to a readmission to a PRTF within 30 days of receiving assessment services. Rule XIII (37.87.1215) uses permissive language, "may" with regard to recovering the higher assessment service rate versus the regular PRTF reimbursement rate.

COMMENT #22: We believe structural errors were made in separating residential treatment facility and in-patient psychiatric hospital rules. Both are considered in-patient psychiatric services in the repeal of ARM 37.88.1101 through 37.88.1137 and the adoption of new Rules I through XIII (37.87.1201, 37.87.1202, 37.87.1203, 37.87.1206, 37.87.1207, 37.87.1214, 37.87.1215, 37.87.1216, 37.87.1217, 37.87.1222, 37.87.1223, 37.87.1224, and 37.87.1225). In particular, ARM 37.88.1102(5) and (6), 37.88.1105(2)(g), 37.88.1119, 37.88.1121(1), and 37.88.1125, and would endanger continuity of care payments for hospital-based residential treatment facilities.

RESPONSE #22: The department's intent in repealing ARM 37.88.1101 through 37.88.1137 and the adoption of new Rules I through XIII (37.87.1201, 37.87.1202, 37.87.1203, 37.87.1206, 37.87.1207, 37.87.1214, 37.87.1215, 37.87.1216, 37.87.1217, 37.87.1222, 37.87.1223, 37.87.1224, and 37.87.1225) is to move the

residential treatment facility or PRTF rules to a new children's mental health ARM chapter and separate the psychiatric hospital rules from the PRTF rules so providers and recipients can find them more easily. The intent was not to repeal the continuity of care payment for hospitals or hospital-based PRTFs. The department does not believe these changes affect the continuity of care payment.

COMMENT #23: ARM 37.86.2801(3)(a) does not apply to freestanding psychiatric hospitals for persons under age 21.

Repealing ARM 37.88.1102(5) and (6) would eliminate the definition of an in-patient hospital psychiatric facility, its devotion to the provision of care to persons under the age of 21, and the requirement that it be licensed as a hospital.

RESPONSE #23: The adoption of MAR Notice No. 37-445 on in-patient hospital rules published by the Secretary of State on September 11, 2008, issue number 17, page 1983, added "acute care psychiatric hospital" in ARM 37.86.2801(3)(a) to the list of hospitals that may provide in-patient psychiatric services.

It also added the definition of acute care psychiatric hospital to ARM 37.86.2901(1) which "means a psychiatric facility accredited by the Joint Commission on Accreditation of Health Care Organizations that is devoted to the provision of in-patient psychiatric care for persons under the age of 21. . . ".

COMMENT #24: Repealing ARM 37.88.1105(2)(g) would eliminate psychiatric hospital requirements in 42 CFR 482.1 through 482.62, section 1861(f) of the Social Security Act, and accreditation standards recognized by the U.S. Department of Health and Human Services.

RESPONSE #24: The department agrees in part. The adoption of MAR Notice No. 37-445 on in-patient hospital rules published by the Secretary of State on September 11, 2008, issue number 17, page 1983, added ARM 37.86.2902(7): "Acute care psychiatric hospitals must comply with 42 CFR 440.160, 42 CFR 441 subpart D, and the applicable portions of 42 CFR 482." The federal regulations implement the Social Security Act and contain specific psychiatric hospital requirements. The department believes referencing the Act separately is not necessary.

COMMENT #25: Repealing ARM 37.88.1119 would eliminate the psychiatric hospital requirements to keep the stay brief and to discharge the youth to the least restrictive setting at the earliest possible time and to require the psychiatric condition pose a significant danger to self, others, or the public.

RESPONSE #25: The department disagrees and believes these requirements are addressed elsewhere in state and federal regulations. The adoption of MAR Notice No. 37-445 on in-patient hospital rules published by the Secretary of State on September 11, 2008, issue number 17, page 1983, added ARM 37.86.2902(7) that incorporated 42 CFR 441.154, which defines active treatment as achieving the recipient's discharge from in-patient status at the earliest possible time. ARM

37.82.102(18) defines a "medically necessary service" as services being provided in the least expensive level of care to treat the individual's condition. Danger to self or others is addressed in the First Health Manual regarding the clinical management guidelines for hospital level of care.

COMMENT #26: Repealing ARM 37.88.1125 would eliminate psychiatric hospital reimbursement for a DRG perspective payment system, capital-related costs, cost or day outliers, catastrophic case payments, disproportionate share payments, adjustor payments, and excludes the payment of a DRG rate and medical education costs, certified nurse anesthetist costs, and other costs.

RESPONSE #26: The requirements in ARM 37.88.1125 are covered in ARM 37.86.2801, "All Hospital Reimbursement, General". In-patient psychiatric hospital rule provisions previously in ARM 37.88.1125 are covered as an "acute care psychiatric hospital" in ARM 37.86.2801(3)(a) as amended in MAR Notice No. 37-445, published by the Secretary of State on September 11, 2008, issue number 17, page 1983.

The other reimbursement requirements from ARM 37.88.1125 are covered in ARM 37.86.2905, General Reimbursement; ARM 37.86.2907, DRG Payment Rate Determination; ARM 37.86.2910, Qualified Rate Adjustment Payment; ARM 37.86.2912, Capital-related Costs; ARM 37.86.2914, Medical Education Costs; ARM 37.86.2916, Cost-outliers; ARM 37.86.2918, Readmissions and Transfers; ARM 37.86.2920, Hospital Residents; ARM 37.86.2925, Disproportionate Share Hospital (DSH) Payments; and ARM 37.86.2928, Hospital Reimbursement Adjustor.

COMMENT #27: In paragraph 6, on page 1549, of published proposed MAR Notice No. 37-448, the department states the definition of in-patient psychiatric acute hospital is found in ARM 37.86.2901 and the reimbursement requirements are found in ARM 37.86.2801 and 37.86.2905. ARM 37.86.2901(15)(d) references the ARMs in Title 37, chapter 88, subchapter 11 that are being repealed in this notice.

RESPONSE #27: The department agrees; this was an oversight. Rule 37.86.2901(15)(d) in adoption notice MAR Notice No. 37-445 published by the Secretary of State on September 11, 2008, issue number 17 at page 1983 was renumbered (19)(d). This rule makes a distinction between an in-patient hospital and a PRTF. ARM 37.86.2901(19)(d) is referring to in-patient psychiatric hospital services and should reference Title 37, chapter 86, subchapters 28 and 29. This change will be made. The department will correct the reference in a future rule amendment.

COMMENT #28: Rule VIII(1) (37.87.1207) regarding the reimbursement for hospital-based psychiatric residential treatment facilities does not fit in this rule. Hospital-based PRTFs are paid in the same manner as a nonhospital-based PRTF. Thus, referencing the in-patient hospital reimbursement rule is not appropriate.

RESPONSE #28: The department agrees and has deleted the proposed language in Rule VIII(1) (37.87.1207) that pertains specifically to these facilities. The rest of Rule VIII(1) and its subsection remain as proposed.

COMMENT #29: Rule IX(2)(b) (37.87.1222) is somewhat confusing. Can the aggregate of ancillary costs be determined on all facilities versus one specific facility?

RESPONSE #29: The intent is to make the aggregate and ancillary costs facility-specific. The department added "facility-specific" and "for Montana Medicaid paid youth" to Rule IX(2)(b) (37.87.1222) for clarity.

COMMENT #30: The rationale for Rule IX(3)(c) (37.87.1222) regarding lab and pharmacy services for treatment of the youth's psychiatric condition states they are bundled in the psychiatric service rate. Is the department's intent to move lab and pharmacy to the list of ancillary services?

RESPONSE #30: Lab and pharmacy have traditionally been covered under the daily per diem rate. The rule rationale incorrectly identified some of these as ancillary costs, although the rule itself did not list lab and pharmacy as ancillary costs. Lab costs are included in the list of services that make up the psychiatric service rate in Rule IX(3) (37.87.1222). Pharmacy will not be considered ancillary except medication supplied for post-discharge use in Rule IX(4) (37.87.1222).

COMMENT #31: Are diagnostic fees included in the bundled rate for PRTF services?

RESPONSE #31: The specific intent of the question is unclear. Diagnostic services provided by a psychiatrist for completing psychiatric evaluations are considered physician services under the definition of ancillary services listed in Rule IX(4) (37.87.1222). "Diagnostic services such as an MRI" to rule out medical versus psychiatric conditions will be considered a medical service and will be added to the list of ancillary services in Rule IX(4) (37.87.1222). Evaluations completed by social workers, counselors, and psychologists are part of the bundled psychiatric service rate in Rule IX(3) (37.87.1222).

COMMENT #32: We thought after providers met with department staff in April 2008 there was consensus to do a cost study for PRTFs. Providers also thought a cost study is a federal mandate under CFR Title 42, part 441, subpart d (2008).

RESPONSE #32: Providers volunteered to submit cost reports to the department in preliminary meetings about the proposed rule changes. The department did not propose cost settling the base or bundled psychiatric service rate. The CFR referenced does not mandate a cost report or cost settlement process, but the department believes it is the most equitable method of reimbursement.

COMMENT #33: We are concerned about recipients who present with the need for medical treatment while on a leave of absence from our PRTF. How will other providers perceive the payment source as a nonpresent entity? This could create a hardship for families and potentially jeopardize necessary care.

RESPONSE #33: The department and PRTFs will need to inform families and other providers about the PRTF bundled rate and that the PRTF is responsible for payment of any services a youth receives while in a PRTF, or on a therapeutic home visit. If the youth is discharged from a PRTF, the provider of ancillary services can bill Medicaid directly. A notice will be posted to this effect on the Medicaid web site at www.mtmedicaid.org prior to January 1, 2009 when the rules become effective. If providers have questions about this requirement, they may contact the PRTF Clinical Program Manager, Diane White, at the Children's Mental Health Bureau, (406) 444-1535. PRTF providers may consider sending instructions with the youth on how to bill the PRTF for services they receive while are on a therapeutic home visit.

6. Rules I through XIII (37.87.1201, 37.87.1202, 37.87.1203, 37.87.1206, 37.87.1207, 37.87.1214, 37.87.1215, 37.87.1216, 37.87.1217, 37.87.1222, 37.87.1223, 37.87.1224, and 37.87.1225), ARM 37.86.2207, 37.86.2219, and 37.86.2221, will be effective January 1, 2009 rather than October 1, 2008 as proposed. The amendment to ARM 37.86.2207(5)(b) will be applied retroactively to October 20, 2008 rather than October 1, 2008 as proposed. All other amendments to ARM 37.86.2207 will be effective January 1, 2009. There will be no harmful effects resulting from the retroactive application.

/s/ John Koch
Rule Reviewer

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

Certified to the Secretary of State October 27, 2008.

VOLUME NO. 52 OPINION NO. 7

ATTORNEYS GENERAL - 42 Op. Att'y Gen. No. 114 (1988) is overruled to the extent it holds that police officers and firefighters injured in the line of duty and receiving salary benefits under Mont. Code Ann. §§ 7-32-4132 and 7-33-4133 through the usual payroll system in the same manner as if still on their regular duties do not accrue vacation and sick leave credit under Mont. Code Ann. §§ 2-18-611, 2-18-618;
CITIES AND TOWNS - Police officers and firefighters injured in the line of duty and receiving salary benefits under Mont. Code Ann. §§ 7-32-4132 and 7-33-4133 through the usual payroll system in the same manner as if still on their regular duties accrue vacation and sick leave credit under Mont. Code Ann. §§ 2-18-611, 2-18-618;
EMPLOYEES, PUBLIC - Police officers and firefighters injured in the line of duty and receiving salary benefits under Mont. Code Ann. §§ 7-32-4132 and 7-33-4133 through the usual payroll system in the same manner as if still on their regular duties accrue vacation and sick leave credit under Mont. Code Ann. §§ 2-18-611, 2-18-618;
FIRE DEPARTMENTS - Police officers and firefighters injured in the line of duty and receiving salary benefits under Mont. Code Ann. §§ 7-32-4132 and 7-33-4133 through the usual payroll system in the same manner as if still on their regular duties accrue vacation and sick leave credit under Mont. Code Ann. §§ 2-18-611, 2-18-618;
MUNICIPAL GOVERNMENT - Police officers and firefighters injured in the line of duty and receiving salary benefits under Mont. Code Ann. §§ 7-32-4132 and 7-33-4133 through the usual payroll system in the same manner as if still on their regular duties accrue vacation and sick leave credit under Mont. Code Ann. §§ 2-18-611, 2-18-618;
POLICE DEPARTMENTS - Police officers and firefighters injured in the line of duty and receiving salary benefits under Mont. Code Ann. §§ 7-32-4132 and 7-33-4133 through the usual payroll system in the same manner as if still on their regular duties accrue vacation and sick leave credit under Mont. Code Ann. §§ 2-18-611, 2-18-618;
VACATION AND SICK LEAVE - Police officers and firefighters injured in the line of duty and receiving salary benefits under Mont. Code Ann. §§ 7-32-4132 and 7-33-4133 through the usual payroll system in the same manner as if still on their regular duties accrue vacation and sick leave credit under Mont. Code Ann. §§ 2-18-611, 2-18-618;
ADMINISTRATIVE RULES OF MONTANA - Section 2.21.221;
MONTANA CODE ANNOTATED - Sections 2-18-611, (2), (3), (4), (5), (6), -612(2)(a)(i), -618, 7-32-4132, (1), (2), 7-33-4133, (1), (2);
OPINIONS OF THE ATTORNEY GENERAL - 37 Op. Att'y Gen. No. 156 (1978), 42 Op. Att'y Gen. No. 114 (1988).

HELD: 1. Police officers and firefighters injured in the line of duty and receiving salary benefits under Mont. Code Ann. §§ 7-32-4132 and 7-33-4133 through the usual payroll system in the same manner as if still on their regular duties accrue vacation and sick leave credit under Mont. Code Ann. §§ 2-18-611, 2-18-618.

2. 42 Op. Att'y Gen. No. 114 (1988) is overruled to the extent it holds that police officers and firefighters injured in the line of duty and receiving salary benefits under Mont. Code Ann. §§ 7-32-4132 and 7-33-4133 through the usual payroll system in the same manner as if still on their regular duties do not accrue vacation and sick leave credit under Mont. Code Ann. §§ 2-18-611, 2-18-618.

October 22, 2008

Mr. Jim Nugent
Missoula City Attorney
435 Ryman
Missoula, MT 59802

Dear Mr. Nugent:

You have requested an opinion from the Attorney General on the question of whether police officers and firefighters receiving payments under Mont. Code Ann. § 7-32-4132 earn vacation and sick leave credits during the period in which they receive payments. With respect to police officers, Attorney General Greely held in 42 Op. Att'y Gen. No. 114 (1988) that such benefits are not payable. For the following reasons, I disagree with that conclusion, and overrule that opinion.

With respect to police officers, Mont. Code Ann. § 7-32-4132 provides:

> (1) A member of a municipal law enforcement agency of a municipality contracting for retirement coverage pursuant to 19-9-207 who is injured in the performance of the member's duties and who requires medical or other remedial treatment for injuries that render the member unable to perform the member's duties must be paid by the municipality the difference between the member's net salary, following adjustments for income taxes and pension contributions, and the amount received from workers' compensation until the disability has ceased, as determined by workers' compensation, or for a period not to exceed 1 year, whichever occurs first.
>
> (2) To qualify for the partial salary payment provided for in subsection (1), the member of the law enforcement agency must be unable to perform the member's duties as a result of the injury.

Similarly, with respect to firefighters, Mont. Code Ann. § 7-33-4133 provides:

> (1) A member of a fire department of a first-class or second-class municipality who is injured in the performance of duty must be paid by the municipality the difference between the member's net

> salary, following adjustments for income taxes and pension contributions, and the amount received from workers' compensation until the disability has ceased, as determined by workers' compensation, or for a period not to exceed 1 year, whichever occurs first.
>
> (2) To qualify for the partial salary payment provided for in subsection (1), the firefighter must require medical or other remedial treatment and must be incapable of performing the firefighter's duties as a result of the injury.

In 42 Op. Att'y Gen. No. 114 (1988), Attorney General Greely noted that no specific language in Mont. Code Ann. § 7-32-4132 addressed the issue of accrual of leave. He then found that the general rules for accrual of leave apply in absence of specific statutory language. The vacation leave statutes require that the employee be "in a pay status" to be entitled to accrue benefits. Mont. Code Ann. §§ 2-18-612(2)(a)(i). The opinion concludes, without extensive analysis, that police officers receiving payments under Mont. Code Ann. § 7-32-4132 are not "in a pay status" and therefore are not entitled to accrue vacation and sick leave.

I disagree with the conclusion that police officers are not "in a pay status" when they receive payments under §§ 7-32-4132 and 7-33-4133. Under the statutes, the officers and firefighters are receiving payments in the amount of their annual salary, see 37 Op. Att'y Gen. No. 156 (1978), with deductions taken for the cost of retirement benefits, see, e.g., § 7-32-4132 (member must receive "the difference between the member's net salary, following adjustments for income taxes and pension contributions," and workers' compensation benefits.) (emphasis added). The officers (and firefighters) remain on the city payroll and receive their payments through the normal payroll process.

The term "pay status" has no statutory definition. Montana Code Annotated § 2-18-611 deals with accrual of annual leave for employees, and makes specific provision in subsections (2)-(6) for the accrual of credits for seasonal workers, part-time workers, and temporary workers, and excludes benefits for short term workers and employees on leave without pay. It makes no mention of excluding city employees covered by Mont. Code Ann. §§ 7-32-4132 and 7-33-4133. Additionally, Mont. Admin. R. § 2.21.221 provides: "Hours in a pay status at the regular rate will be used to calculate leave accrual. ***" The statutes for both police officers and firefighters require that they be paid their "net salary," i.e., at their regular rate.

Montana Code Annotated § 2-18-618 does not refer specifically to firefighters "in a pay status," but the result should be the same. Both Mont. Code Ann. §§ 2-18-611 and 2-18-618 exclude benefits for employees on leave without pay status, but contain no other specific exclusions. It is not logical to conclude that the Legislature would decide to extend benefits to one group of employees and deny them to another when the only specific exclusion--for employees in leave without pay status--is the same for both groups.

The Legislature provided these benefits in an effort to keep officers and firefighters injured in the line of duty financially whole until they could return to duty or one year elapsed. It is my opinion that these officers and firefighters are entitled by statute to accrue sick and vacation credit for the time they are "in pay status," i.e., not on leave without pay, and receiving these benefits under Mont. Code Ann. §§ 7-32-4132 and 7-33-4133. To the extent that 42 Op. Att'y Gen. No. 114 (1988) holds to the contrary it is overruled. I express no opinion here regarding any officers receiving similar benefits who are in leave without pay status or otherwise not receiving payments through the usual payroll system.

THEREFORE IT IS MY OPINION:

1. Police officers and firefighters injured in the line of duty and receiving salary benefits under Mont. Code Ann. §§ 7-32-4132 and 7-33-4133 through the usual payroll system in the same manner as if still on their regular duties accrue vacation and sick leave credit under Mont. Code Ann. §§ 2-18-611, 2-18-618.

2. 42 Op. Att'y Gen. No. 114 (1988) is overruled to the extent it holds that police officers and firefighters injured in the line of duty and receiving salary benefits under Mont. Code Ann. §§ 7-32-4132 and 7-33-4133 through the usual payroll system in the same manner as if still on their regular duties do not accrue vacation and sick leave credit under Mont. Code Ann. §§ 2-18-611, 2-18-618.

Very truly yours,

/s/ Mike McGrath
MIKE MCGRATH
Attorney General

mm/cdt/jym

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 June 30, 2008. This table includes those rules adopted during the period July 1, 2008, through September 30, 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 June 30, 2008, 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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