

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 14

The Montana Administrative Register (MAR or Register), a twice-monthly publication, has three sections. The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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 Adoption 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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BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the amendment of ARM) NOTICE OF PROPOSED
2.2.101 pertaining to the Department of) AMENDMENT
Administration's Procedural Rules)
) NO PUBLIC HEARING
) CONTEMPLATED

TO: All Concerned Persons

1. On September 14, 2009, the Department of Administration proposes to amend the above-stated rule.

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 department no later than 5:00 p.m., August 14, 2009, to advise us of the nature of the accommodation that you need. Please contact Shannon Lewis, Department of Administration, 125 N. Roberts, Room 155, P.O. Box 200101, Helena, Montana 59620-0101, telephone (406) 444-2032, fax (406) 444-6194, or e-mail slewis@mt.gov.

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

2.2.101 MODEL PROCEDURAL RULES (1) The Department of Administration adopts and incorporates by reference the following model rules, which may be found at <http://sos.mt.gov/>:

(a) the Attorney General's model procedural rules, ARM 1.3.101, 1.3.102, and 1.3.201, 1.3.202, 1.3.210 through 1.3.224, and 1.3.226 through 1.3.233, including the appendix of sample forms in effect [effective date of amendment]. These rules provide model rules of practice for contested case hearings and declaratory rulings; and

(b) the Secretary of State's model rules ARM 1.3.301, 1.3.302, 1.3.304, 1.3.305, 1.3.307 through 1.3.309, and 1.3.311 through 1.3.313 in effect [effective date of amendment]. These rules define model requirements for rulemaking under the Montana Administrative Procedure Act. ~~one through 28 and all subsequent amendments to the model procedural rules, and incorporates herein those rules by reference.~~

AUTH: 2-4-201, MCA
IMP: 2-4-201, MCA

STATEMENT OF REASONABLE NECESSITY: The department is proposing to amend the above-stated rule to reflect recent updates to the Attorney General and Secretary of State's Model Rules so that the current model rules are reflected in the

rule.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action either orally or in writing, no later than 5:00 p.m. on August 31, 2009, to Shannon Lewis, Department of Administration, 125 N. Roberts, Room 155, P.O. Box 200101, Helena, Montana 59620-0101; telephone (406) 444-2032; fax (406) 444-6194; or e-mail slewis@mt.gov.

5. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to Shannon Lewis at the above address no later than 5:00 p.m., August 31, 2009.

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

7. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this department. 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 4 above or may be made by completing a request form at any rules hearing held by the Department of Administration.

8. An electronic copy of this proposal notice is available through the Department of Administration's web site at <http://doa.mt.gov/administrativerules.asp>. The Department of Administration 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 electronic version of the notice, only the official printed text will be considered. In addition, although the Department of Administration 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 contact 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 July 20, 2009.

BEFORE THE TEACHERS' RETIREMENT SYSTEM
OF THE STATE OF MONTANA

In the matter of the adoption of New Rule I pertaining to the determination of incentives and bonuses as part of a series of annual payments and included in earned compensation) NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION

TO: All Concerned Persons

1. On September 11, 2009, at 9:00 a.m., the Teachers' Retirement System of the State of Montana will hold a public hearing in the Board Room of the Teachers' Retirement System of the State of Montana building, 1500 E. Sixth Avenue, Helena, Montana, to consider the proposed adoption of the above-stated rule.

2. The Teachers' Retirement System 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 Teachers' Retirement System no later than 5:00 p.m. on September 4, 2009, to advise us of the nature of the accommodation that you need. Please contact Jenny Stark, Teachers' Retirement System of the State of Montana, 1500 E. Sixth Avenue, P.O. Box 200139, Helena, Montana, 59620-0139; telephone (406) 444-3754; fax (406) 444-2641; TDD (406) 444-1421; or e-mail jstark@mt.gov.

3. The proposed new rule provides as follows:

NEW RULE I DETERMINATION OF INCENTIVES AND BONUSES AS PART OF A SERIES OF ANNUAL PAYMENTS AND INCLUDED IN EARNED COMPENSATION

(1) An incentive or bonus payment paid to a member is part of a series of annual payments, and therefore included in earned compensation, only if:

- (a) the incentive or bonus has been paid to the member for at least five consecutive years;
- (b) the employer publishes, in some official manner (in board minutes, in a collective bargaining agreement, in employment contracts, etc.):
 - (i) its intent to make the incentive or bonus payments;
 - (ii) who will receive the incentive or bonus payments;
 - (iii) the criteria for determining the award and amount of the incentive and bonus payments with respect to all employees and certification classes to receive the payments;
 - (iv) the anticipated duration of the incentive or bonus payments;
 - (v) the specific annual amount of the incentive or bonus payment or the specific percentage of annual base contract salary by which the incentive or bonus payment will be calculated;
 - (vi) how the incentive or bonus payments will be made (annually, monthly, etc.); and
 - (vii) the date by which the payment will be made.

(c) the incentive or bonus payment amount in each year is the same or is subject to fluctuation only if the payment is determined as a percentage of annual base contract salary, in which case, the percentage increase in annual base contract salary is the same in each year for all employees of the certification class (teacher, administrator, or superintendent);

(d) continuation of the incentive or bonus payment is relatively certain and not subject to budgetary discretion, revenue stream factors, or award or payment criteria that puts the payment at any greater risk of nonpayment than the base salary; and

(e) eligibility criteria and payment calculation methodologies do not weight the award of or amount of incentive or bonus payments in a manner that disproportionately increases compensation to employees based on years of service or age, including that:

(i) if an incentive or bonus is paid to one employee of a certification class, the incentive or bonus must be paid to every member of that certification class; and

(ii) the amount of the incentive or bonus paid to each employee of a certification class must be the same, except that the incentive or bonus payment amount paid to each member of the certification class may be calculated as a percentage of each employee's annual base contract salary, in which case, the percentage of annual base contract salary to be calculated must be the same for all employees of the certification class.

(2) If incentive or bonus payments that are otherwise part of a series of annual payments have not been paid to a member for at least five consecutive years at the time the member retires, any amounts reported in the three-year period that constitutes a member's average final compensation will be included in average final compensation as termination pay Option 2 as provided under 19-20-716, MCA.

(3) An employer who wants incentive and bonus payments that are part of a series of annual payments included as part of the earned compensation of its employee(s) must submit the published information described in (1)(b) to the Teachers' Retirement System for review prior to submitting contributions for those compensation amounts.

(4) Bonus and incentive payments that are part of a series of annual payments are subject to the 110% cap set forth in 19-20-715, MCA.

AUTH: 19-20-201, MCA

IMP: 19-20-101, 19-20-102, MCA

STATEMENT OF REASONABLE NECESSITY: The adoption of this rule is reasonably necessary to describe the circumstances under which a bonus or incentive payment will be deemed to be part of a series of annual payments, and therefore, will be included in the definition of earned compensation (see 19-20-101(6)(e), MCA) for purposes of calculation of retirement benefits. In general, pursuant to 19-20-101, MCA, bonus and incentive payments are not included as earned compensation. This standard exists to prevent "salary spiking" - the payment of nontypical amounts of money by employers to retirement system members at times and in manners that have the effect of inflating the member's average final compensation for purposes of calculating the member's retirement

benefit without sufficient contribution to the retirement system to pay for the enhanced benefit. While bonus and incentive payments that are made as part of a series of annual payments may be included in earned compensation, it is necessary for the retirement system to describe the circumstances under which bonuses and incentives will be deemed to have been made as part of a series of annual payments in order to ensure that all employers and members are aware of the applicable standards, that all similarly situated members are being treated in the same manner, that each member of the retirement system is provided equitable benefits based on the member's normal service and salary, that the deleterious effect on the retirement system arising from isolated salary increases is avoided, and that the retirement system continues to be operated in an actuarially sound manner.

4. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to David L. Senn, Teachers' Retirement System of the State of Montana, 1500 E. Sixth Avenue, P.O. Box 200139, Helena, Montana, 59620-0139; telephone (406) 444-3376; fax (406) 444-2641; or e-mail dsenn@mt.gov, and must be received no later than 5:00 p.m., September 11, 2009.

5. David L. Senn, Teachers' Retirement System of the State of Montana, has been designated to preside over and conduct this hearing.

6. The Teachers' Retirement System of the State of Montana 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 4 above or may be made by completing a request form at any rules hearing held by the Teachers' Retirement System of the State of Montana.

7. An electronic copy of this proposal notice is available through the Secretary of State's web site at <http://sos.mt.gov/ARM/Register>. The Secretary of State strives to make the electronic copy of the notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that 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 Secretary of State works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

8. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. Senator Dave Lewis was the primary sponsor of House Bill 91 (2001) which inserted subpart 19-20-101(6)(e)(iii), MCA, excepting bonus and incentive payments from earned compensation unless such payments are part of a series of

annual payments. Senator Lewis was contacted in writing via e-mail from David L. Senn on June 30, 2009, of the retirement system's intent to engage in rulemaking, which written notice to the primary sponsor included a draft copy of this proposed rule notice.

By /s/ Denise Pizzini
Denise Pizzini
Rule Reviewer

By /s/ David L. Senn
David L. Senn
Executive Director
Teachers' Retirement System of the
State of Montana

Certified to the Secretary of State July 17, 2009.

BEFORE THE BOARD OF COUNTY PRINTING
OF THE STATE OF MONTANA

In the matter of the amendment of ARM) NOTICE OF PROPOSED
2.67.201 and 2.67.303 and repeal of) AMENDMENT AND REPEAL
ARM 2.67.301 and 2.67.302 pertaining)
to the Board of County Printing) NO PUBLIC HEARING
) CONTEMPLATED

TO: All Concerned Persons

1. On September 14, 2009, the Board of County Printing proposes to amend and repeal the above-stated rules.

2. The Board of County Printing 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 Friday, August 14, 2009 by 5:00 p.m., to advise us of the nature of the accommodation that you need. Please contact Shannon Lewis, Department of Administration, 125 N. Roberts, Room 155, P.O. Box 200101, Helena, Montana 59620-0101; telephone (406) 444-2032; fax (406) 444-6194; or e-mail slewis@mt.gov.

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

2.67.201 INCORPORATION OF MODEL RULES (1) The Board of County Printing ~~has adopted~~ adopts and incorporates by reference the Secretary of State's model rules ARM 1.3.301, 1.3.302, 1.3.304, 1.3.305, 1.3.307 through 1.3.309, and 1.3.311 through 1.3.313 in effect [effective date of amendment]. These rules define model requirements for rulemaking under the Montana Administrative Procedure Act. The rules may be found at <http://sos.mt.gov/>. ~~attorney general's model procedural rules, Model Rule 1 through Model Rule 28 and all subsequent amendments to the model procedural rules and incorporate herein those rules by reference.~~

AUTH: 2-4-201, MCA
IMP: ~~7-5-2404~~, 2-4-201, MCA

2.67.303 OFFICIAL PUBLICATIONS AND LEGAL ADVERTISING
MAXIMUM PRICES AND PRINTING STANDARDS (1) Rates for county legal advertising shall not be more than ~~\$9~~ \$11 for the first folio insertion and not more than ~~\$7~~ \$9 for each subsequent insertion.

~~(2) Subsection (1) will become effective on July 1, 2000.~~

~~(3) (2) That for the purpose of establishing a~~ The following is the basis of folio measurement, rule and figure work shall be determined as containing two or more sets of figures in the same line, for the computation of folios in the various sizes of

type when set in one standard newspaper column width of approximately two inches, ~~when set in the following mentioned type sizes, shall constitute a folio:~~

- ~~(a) 12 lines of solid six-point type, or 100 words;~~
- ~~(b) 14 lines of solid seven-point type, or 100 words;~~
- ~~(c) 15 lines of solid eight-point type, or 100 words;~~
- ~~(d) 17 lines of solid nine-point type, or 100 words;~~
- ~~(e) 18 lines of solid ten-point, type; or~~
- ~~(f) 100 words.~~

(4) and (5) remain the same, but are renumbered (3) and (4).

~~(6) (5) For the purpose of determining the different sizes of type herein before mentioned, †The following point system measurements as universally used by the graphic arts industries shall be used prevail:.~~ For Computing 72 points to a linear column inch, there shall be:

- ~~(a) 12 lines of solid six-point type;~~
- ~~(b) 10.285 lines of solid seven-point type;~~
- ~~(c) nine lines of solid eight-point type;~~
- ~~(d) eight lines of solid nine-point type;~~
- ~~(e) 7.2 lines of solid ten-point type to each column inch.~~

AUTH: 7-5-2404, 18-7-404, MCA

IMP: 7-5-2411, 18-7-411, MCA

4. The board proposes to repeal the following rules:

2.67.301 POWERS AND DUTIES OF BOARD is found on page 2-6917 of the Administrative Rules of Montana.

AUTH: 7-5-2404, 18-7-404, MCA

IMP: 7-5-2404, 18-7-404, MCA

2.67.302 COUNTY COMMISSIONERS TO CONTRACT FOR COUNTY LEGAL ADVERTISING is found on page 2-6917 of the Administrative Rules of Montana.

AUTH: 7-5-2405, 18-7-405, MCA

IMP: 7-5-2411, 18-7-411, MCA

STATEMENT OF REASONABLE NECESSITY: The board is proposing to amend and repeal the above-stated rules to reflect the current rates for county legal advertising, repeal rules that unnecessarily repeat statute, and correct outdated language and format. The board voted to raise the current rates for county legal advertising during a board meeting held on May 9, 2008 after hearing testimony from the Montana Newspaper Association and the Montana Association of Counties stating that the rate increase is justified. The rate increase will affect all Montana Counties and there is not a reasonable way to establish the fiscal impact on counties because the impact is based on the number of advertisements a county places in any year.

5. Concerned persons may submit their data, views, or arguments concerning the proposed action either orally or in writing, no later than 5:00 p.m. on August 31, 2009, to: Shannon Lewis, Department of Administration, 125 N. Roberts, Room 155, P.O. Box 200101, Helena, Montana 59620-0101; telephone (406) 444-2032; fax (406) 444-6194; or e-mail slewis@mt.gov.

6. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to Shannon Lewis at the above address no later than 5:00 p.m., August 31, 2009.

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

8. The board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this board. Persons who wish to have their name added to the list shall make a written request that includes the name 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 or the Department of Administration.

9. An electronic copy of this proposal notice is available through the Board of County Printing's web site at <http://countyprinting.mt.gov>. The Board of County Printing 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 Board of County Printing 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 contact requirements of 2-4-302, MCA, apply and have been fulfilled. The rules in this notice are the first rules to implement HB 67 (2009). Notification was sent to the sponsor of HB 67 by an e-mail dated July 8, 2009, that the board was beginning work on revising the content of the above-stated rules. The bill sponsor was provided a copy of this notice on July 16, 2009.

By: /s/ Milton Wester
Milton Wester, Chair
Board of County Printing

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

Certified to the Secretary of State July 20, 2009.

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

In the matter of the amendment of	)	NOTICE OF PUBLIC HEARING ON
ARM 6.6.2801, 6.6.2803, 6.6.2804,	)	PROPOSED AMENDMENT,
6.6.2808, and 6.6.2809, the repeal	)	REPEAL, AND ADOPTION
of ARM 6.6.2802, 6.6.2805,)	
6.6.2806, and 6.6.2807, and the)	
adoption of NEW RULE I pertaining)	
to Surplus Lines Insurance)	
Transactions)	

TO: All Concerned Persons

1. On August 21, 2009, at 10:00 a.m., the Commissioner of Insurance, Office of the State Auditor, Monica Lindeen, will hold a public hearing in the 2nd floor conference room of the State Auditor's Office, 840 Helena Ave., Helena, Montana, to consider the proposed amendment, adoption, and repeal of the above-stated rules.

2. The Commissioner of Insurance, Office of the State Auditor, Monica Lindeen, 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., August 14, 2009, to advise us of the nature of the accommodation that you need. Please contact Darla Sautter, State Auditor's Office, 840 Helena Avenue, Helena, Montana, 59601; telephone (406) 444-2726; TDD (406) 444-3246; fax (406) 444-3497; or e-mail dsautter@mt.gov.

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

6.6.2801 PURPOSE AND SCOPE (1) remains the same.

~~(2) These rules provide for the establishment of and compulsory membership in a surplus lines advisory organization, hereinafter called the association, to process surplus lines insurance transactions; collect a stamping fee; maintain records for inspection by the commissioner; compile and disseminate lists of eligible surplus lines insurers and surplus lines coverages; and encourage compliance by surplus lines insurance producers with laws and rules concerning surplus lines insurance.~~

AUTH: 33-1-313, 33-2-316, MCA

IMP: 33-2-301, 33-2-302, 33-2-303, 33-2-304, 33-2-305, 33-2-306, 33-2-307, 33-2-308, 33-2-309, 33-2-310, 33-2-311, 33-2-312, 33-2-313, 33-2-314, 33-2-315, 33-2-316, 33-2-317, 33-2-321, through 33-2-326, MCA

6.6.2803 FILING OF SUBMISSIONS, EXAMINATION OF SUBMISSIONS AND RECORDS RETAINED (1) ~~The association is to examine each submission~~

~~from licensed Montana surplus lines producers to assure accuracy.~~

~~(2) With the exception of the annual statement required by 33-2-310, MCA, every Every Montana licensed surplus lines producer shall submit to the association department all information required to be filed by 33-2-301, et seq., MCA, and these rules, or those sections of the operating manual compiled by the association which have been approved by the commissioner and distributed in compliance with ARM 6.6.2807. Such submissions shall be made by surplus lines insurance producers in the manner prescribed by the approved sections of the operating manual.~~

~~(2) Surplus lines submissions to the department shall be made by Montana-licensed surplus lines producers and shall be made in a manner and form approved by the commissioner. There is a standardized submission form available from the department. Submissions may be made by:~~

~~(a) sending paper submissions to the department; or~~

~~(b) electronically filing submissions via the surplus lines business portal via the department's web site.~~

~~(3) All such surplus lines submissions are to must be made by licensed Montana surplus lines producers to the association department on forms approved by the commissioner, and shall be submitted to the association within 30-working 60 calendar days of the effective date of the policy.~~

~~(4) Licensed Montana surplus lines producers shall submit the annual statement required by 33-2-310, MCA, and the premium tax required by 33-2-311, MCA, directly to the commissioner. All surplus lines submissions must be complete. Incomplete submissions will not be accepted by the department, and will be returned for correction and resubmission within the foregoing 60 calendar day deadline from the effective date of the policy. If the 60 calendar day deadline has passed when the incomplete submission is returned, the surplus lines insurance producer shall resubmit the corrected submission form within ten calendar days from the date the department rejected the incomplete submission.~~

~~(5) For electronically filed submissions, the producing insurance producer shall keep a true and correct copy of the paper submission form affidavit with the original signatures of the producing insurance producer and the notary regarding the diligent search and the information provided to the insured under 33-2-310, MCA. The producing insurance producer shall provide a true and correct copy of the notarized submission form affidavit to the surplus lines insurance producer. These records shall be retained by the producing insurance producer and the surplus lines insurance producer for five years after the issuance of the surplus lines insurance policy to which they relate and shall be subject to inspection by the department in accord with 33-2-310, MCA.~~

~~(6) Surplus lines insurance producers shall retain records of, and supporting documentation for, all inspection fees charged to insureds under 33-2-206, MCA, and any assessment, membership, or similar fee or charge to insureds to obtain surplus lines insurance if such assessment, membership, or similar fee or charge was payable separately by the insured in consideration of the policy.~~

AUTH: 33-1-313, 33-2-316, MCA

IMP: 33-2-301, 33-2-302, 33-2-303, 33-2-305, 33-2-306, 33-2-307, 33-2-308, 33-2-310, 33-2-311, 33-2-312, 33-2-313, 33-2-316, 33-2-321, through 33-2-326,

MCA

6.6.2804 COLLECTION OF STAMPING FEE (1) Pursuant to 33-2-321(5), MCA, the ~~association~~ department shall, ~~with the approval of the commissioner,~~ collect a stamping fee equalling ~~one percent of~~ on the base premium, including any monied endorsement, payable for each surplus lines insurance policy transacted ~~by its members~~ in the state.

(2) The stamping fee is equal to:

(a) one percent of the base premium for paper (hard copy) submissions; and

(b) one-half percent of the base premium for electronically filed submissions via the surplus lines business portal via the department's web site:

(i) subsection (2)(b) will be effective January 1, 2010. Before January 1, 2010, any electronically filed submissions via the surplus lines business portal via the department's web site will be assessed a stamping fee of one percent of the base premium.

(3) Such stamping fee shall be earned in full as soon as any portion of the premium payable for the underlying policy is earned. The commissioner may, by rule, reduce the percentage amount of the stamping fee whenever such reduction will not impair the association's ability to pay its expenses set the stamping fee commensurate with the department's expenses for implementing the surplus lines insurance law, 33-2-301, et seq., MCA.

~~(2)(4)~~ Because such stamping fee does not constitute "consideration for insurance" within the meaning of 33-15-102, MCA, and thus does not constitute part of the premium for surplus lines insurance, a surplus lines insurance producer may collect such stamping fee from the insured in addition to the premium payable in consideration for the insurance contract. Nothing in this ~~section~~ rule shall operate to exclude any other assessment, membership, ~~policy, survey,~~ inspection, ~~service~~ or similar fee or charge from the definition of "premium" contained in 33-15-102, MCA.

~~(3)(5)~~ Both the base premium and the stamping fee of every policy of surplus lines insurance transacted in this state shall appear on the policy's declarations page and be clearly labelled disclosed as such.

(6) For paper (hard copy) submissions, the stamping fee information on the declarations page of the surplus lines insurance policy will disclose that the stamping fee would be less, and the percentage of the base premium to calculate the stamping fee, if the submission were filed electronically:

(i) section (6) will be effective January 1, 2010.

(7) For the purposes of collecting this stamping fee only, any ~~inspection fees or placement fees~~ assessment, membership, inspection, or similar fee or charge payable separately by the insured in consideration of the policy shall be excluded from calculations of the base premium. Designation of a base premium for purposes of calculating the stamping fee shall not operate to exclude from the definition of "premium" contained in 33-15-102, MCA, any ~~assessment, or membership, policy, survey,~~ inspection, ~~service~~ or similar fee or charge in consideration of that surplus lines insurance policy.

~~(4)(8)~~ The ~~association must~~ department shall collect a penalty from any surplus lines insurance producer who does not pay the stamping fees ~~on each transaction within 30 days after the date on which the association bills the surplus~~

~~lines insurance producer for the stamping fee by April 1 for all transactions during the preceding year. Such penalty shall equal 25 percent of the amount initially overdue on each transaction plus 1.5 percent per month of the accumulated amount overdue on each transaction from the time of delinquency until the stamping fees are paid in full.~~

AUTH: 33-1-313, 33-2-316, MCA

IMP: 33-2-301, 33-2-302, 33-2-303, 33-2-305, 33-2-306, 33-2-307, 33-2-308, 33-2-310, 33-2-311, 33-2-312, 33-2-313, 33-2-316, 33-2-321, through 33-2-326,
MCA

6.6.2808 ELIGIBLE SURPLUS LINES INSURERS PUBLICATION AND DISTRIBUTION OF LIST (1) ~~The association shall publish and distribute to its members at~~ At least semiannually, the department shall make available a complete current list of eligible surplus lines insurers provided approved by the commissioner.

~~(2) The association shall publish and distribute to its members at least semiannually a complete current list, provided by the commissioner pursuant to ARM 6.6.2809 below, of the kinds of insurance which cannot be obtained from authorized insurers.~~

~~(3) The association shall produce for each of its members, in a form approved by the commissioner, an annual report complying with the requirements of 33-2-310(2), MCA, for a surplus lines insurance producer's annual statement. The association shall mail such annual reports to its members prior to March 1 of each year, for their review and submission to the commissioner. Nothing in this section or in the annual report prepared by the association shall relieve a surplus lines insurance producer from the duties imposed by 33-2-310, MCA, and 33-2-311, MCA.~~

AUTH: 33-1-313, 33-2-316, MCA

IMP: 33-2-301, 33-2-302, 33-2-303, 33-2-305, 33-2-306, 33-2-307, 33-2-308, 33-2-310, 33-2-311, 33-2-312, 33-2-313, 33-2-316, 33-2-321, through 33-2-326,
MCA

6.6.2809 APPROVED RISK LIST -- OF KINDS OF INSURANCE PRESUMED UNOBTAINABLE FROM AUTHORIZED INSURERS (1) At least semiannually, the commissioner shall make available a list of the kinds of insurance which are presumed to be unobtainable from authorized insurers, known as the approved risk list.

~~(2) The commissioner, in consultation with and the surplus lines insurance producer association domiciled in Montana, shall jointly appoint a five-member committee to compile a proposed approved risk list of the kinds of insurance which cannot be obtained from authorized insurers for consideration by the commissioner. Such The committee shall meet at least semiannually and shall consist of four Montana-licensed surplus lines insurance producers and one staff member of the department of insurance, each serving until replaced by the commissioner.~~

~~(2)(3) The committee shall meet at least semiannually, in person or by teleconference, and shall make reasonable efforts to verify that the kinds of insurance risks included on its proposed approved risk list cannot be obtained from~~

authorized insurers, and the commissioner may add or delete kinds of insurance from the list submitted by the committee for his approval.

(3)(4) The committee shall submit a new proposed approved risk list to the commissioner for her approval on or before December 1 and June 1 of each year, and once approved the list shall be effective for the immediately following period January 1 through June 30, or July 1 through December 31, respectively. At the commissioner's request, the committee shall submit a new proposed approved risk list in addition to the regularly scheduled semiannual lists, and once approved such additional list shall be effective for the remainder of the period January 1 through June 30, or July 1 through December 31, within which it was approved. The commissioner may add or delete risks from the proposed approved risk list submitted by the committee. Unless the commissioner expressly disapproves or alters the proposed approved risk list within 30 days after its submission, it shall be deemed approved.

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

AUTH: 33-1-313, 33-2-316, MCA

IMP: 33-2-301, 33-2-302, 33-2-303, 33-2-305, 33-2-306, 33-2-308, 33-2-310, 33-2-311, 33-2-312, 33-2-313, 33-2-316, 33-2-321, through 33-2-326, MCA

4. The department proposes to repeal the following rules:

6.6.2802 DELEGATION OF AUTHORITY, is found at page 6-257 of the Administrative Rules of Montana.

AUTH: 33-1-313, 33-2-316, MCA

IMP: 33-2-301 through 33-2-326, MCA

6.6.2805 ORGANIZATION AND DUTIES OF SURPLUS LINES ADVISORY ORGANIZATION, is found at page 6-257.1 of the Administrative Rules of Montana.

AUTH: 33-1-313, 33-2-316, MCA

IMP: 33-2-301 through 33-2-326, MCA

6.6.2806 OPERATING EXPENSES, is found at page 6-257.2 of the Administrative Rules of Montana.

AUTH: 33-1-313, 33-2-316, MCA

IMP: 33-2-301 through 33-2-326, MCA

6.6.2807 MEMBERSHIP IN SURPLUS LINES ADVISORY ORGANIZATION, is found at page 6-257.2 of the Administrative Rules of Montana.

AUTH: 33-1-313, 33-2-316, MCA

IMP: 33-2-301 through 33-2-326, MCA

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

NEW RULE I ANNUAL STATEMENT (1) The department shall produce for each surplus lines insurance producer, in a form approved by the commissioner, an annual report complying with the requirements of 33-2-310(2), MCA, for a surplus lines insurance producer's annual statement. The department shall distribute such annual reports to surplus lines insurance producers prior to March 1 of each year for their review and submission to the commissioner. Nothing in this section or in the annual report prepared by the department shall relieve a surplus lines insurance producer from the duties imposed by 33-2-310, MCA, and 33-2-311, MCA.

AUTH: 33-1-313, 33-2-316, MCA

IMP: 33-2-301, 33-2-302, 33-2-303, 33-2-305, 33-2-306, 33-2-307, 33-2-308, 33-2-310, 33-2-311, 33-2-312, 33-2-313, 33-2-315, 33-2-316, 33-2-321, MCA

6. STATEMENT OF REASONABLE NECESSITY: The Commissioner of Securities and Insurance - Office of the State Auditor, Monica J. Lindeen, has determined the department will be resuming the surplus lines insurance stamping office functions under the surplus lines insurance law at 33-2-301, et seq., MCA. The department will be directly reviewing and processing surplus lines insurance submissions, determining applicable stamping fees, and sending surplus lines insurance producer annual statements for premium taxes and stamping fees owed.

The department's direct review and processing of surplus lines insurance submission forms and planned implementation of an electronic filing system for surplus lines insurance submission forms with the department should increase efficiency for surplus lines insurance producers in filing. Additionally, direct review and processing of submissions will help the department to better regulate the surplus lines industry, be more responsive to any problems, and to more efficiently and accurately assess and collect surplus lines insurance premium taxes and any applicable penalties.

The Commissioner also considered the growing movement, supported by the insurance industry, to standardize regulation of multi-state surplus lines insurance policies including the effect of possible federal legislation, such as the Nonadmitted and Reinsurance Reform Act of 2009, S. 1363, 111th Congress, 1st Sess. (2009), and the nearly identical version in the House of Representatives, H.R. 2571, 111th Congress, 1st Sess. (2009). (In 2007, a similar bill was introduced in the Senate, but no action was taken prior to the end of the 110th Congress, requiring that the bill be reintroduced in the 111th Congress.) Also, possible interstate agreements, such as Surplus Lines Insurance Multi-State Compliance Compact (SLIMPACT), are being developed to meet the requirements of the Nonadmitted and Reinsurance Reform Act of 2009.

Generally, these efforts to standardize multi-state surplus lines insurance policies would require surplus lines insurance regulatory and tax filings in only one state – either the home state of the insured, or the home state of the surplus lines insurance producer – which is expected to decrease the filings made and the

stamping fees and premium taxes collected in Montana. The surplus lines insurance stamping fees fund the surplus lines insurance stamping office functions in Montana. The department anticipates that standardized regulation of multi-state surplus lines policies will come to fruition, resulting in decreased filings and revenue in Montana, and ultimately necessitating the department's resumption of the stamping office functions. By resuming the stamping office functions and implementing an electronic filing system, the department should be well-positioned for the future.

Accordingly, rules delegating authority to the surplus lines advisory organization to operate the surplus lines stamping office and pertaining to the operations of the stamping office must be repealed or amended to reflect the department's resumption of the stamping office functions.

With regard to ARM 6.6.2801, the department proposes to delete (2) regarding the surplus lines advisory organization, or association, the compulsory membership in the association, and the obligations of the association in operating the surplus lines stamping office. Resumption of the stamping office functions by the department makes it reasonably necessary to delete (2).

The department proposes repealing ARM 6.6.2802, 6.6.2805, 6.6.2806, and 6.6.2807. ARM 6.6.2802 delegated authority to the surplus lines advisory organization, or association, to operate the surplus lines insurance stamping office. ARM 6.6.2805 required the association to obtain the commissioner's approval of its articles, by-laws, and procedures and concerned the association's obligations in operating the stamping office. ARM 6.6.2806 pertained to the association's expenses for operating the stamping office. ARM 6.6.2807 required all surplus lines insurance producers to be members in the association, but prohibited the association from charging any membership fees. ARM 6.6.2807 also required the association to develop an operating manual and stamp and, after approval by the commissioner, distribute these to all surplus lines insurance producers and to make a current membership list available. Resumption of the stamping office functions by the department makes it reasonably necessary to repeal these rules.

The department proposes amending ARM 6.6.2803 to address the filing of surplus lines insurance submissions with the department, the department's examination of the submissions, and the records to be retained by surplus lines insurance producers and producing insurance producers. The department anticipates implementing an electronic filing system for surplus lines insurance submissions via the surplus lines business portal via the department's web site.

Surplus lines insurance producers are responsible for correctly completing and timely filing surplus lines insurance submissions. It is reasonably necessary to amend ARM 6.6.2803 to require that submissions be filed with the department and to reflect that paper and electronic submissions may be made.

It is also reasonably necessary to amend the number of days in subsection (3) of ARM 6.6.2803 that surplus lines producers have to file submissions from 30

working days to 60 calendar days to bring more clarity to the submission deadline which should make it easier for surplus lines insurance producers to comply, and for the department to administer. (Further, in a previous review by the department, a sampling of surplus lines submission forms showed that the majority of surplus lines insurance producers do file the submission forms within 60 calendar days from the effective date of the policy.) Additionally, it is reasonably necessary to amend ARM 6.6.2803 to provide that incomplete submissions will be returned to the surplus lines insurance producer for correction and resubmission within 60 calendar days from the effective date of the policy or, if 60 days have already passed, within ten calendar days from the date the department rejected the submission.

Section 33-2-310, MCA, requires that producing insurance producers sign an affidavit attesting to their diligent search and the information provided to insureds regarding the placement of the risk in the nonadmitted market. The surplus lines insurance submission form includes this affidavit, but the electronic filing system will be interactive and will not accommodate a notarized affidavit. Therefore, in order to fulfill 33-2-310, MCA, with regard to electronically filed submissions, it is reasonably necessary to amend ARM 6.6.2803 to require producing insurance producers to retain a true and correct copy of the notarized surplus lines insurance submission form and to provide a true and correct copy of the same to the surplus lines insurance producer.

It is also reasonably necessary to amend ARM 6.6.2803 to clarify that surplus lines insurance producers must retain records of any inspection fee charged and any assessment, membership, or similar fee or charge to insureds to obtain surplus lines insurance. These records are necessary for the department to determine surplus lines insurance producer compliance with 33-2-306, MCA, regarding inspection fees, and also to determine the stamping fees and premium taxes owed.

It is reasonably necessary to amend ARM 6.6.2804 to reflect the resumption of the stamping office functions by the department and to provide that the stamping fee collected by the department be commensurate with its expenses to implement the surplus lines insurance law and carry out the surplus lines stamping office functions. The department anticipates that the electronic filing system will decrease the staff time to review and process submissions resulting in lower costs to the department making it reasonably necessary to amend the rule to provide for a lower stamping fee for electronically filed submissions.

Further, it is reasonably necessary to amend ARM 6.6.2804 to provide for annual collection of stamping fees. By collecting stamping fees annually, the department could simplify the process for both surplus lines insurance producers and the department by collecting the stamping fees at the same time it collects premiums taxes, and including both on one statement distributed to surplus lines insurance producers.

For clarity, it is reasonably necessary to amend ARM 6.6.2808 and 6.6.2809 to separate out the documents to be developed by the department, and approved by

the commissioner, into different rules regarding the information to be contained in each kind of document. The department proposes amending ARM 6.6.2808 to address only the eligible surplus lines insurers list. Section (2) of ARM 6.6.2808 would be deleted, but is substantially included in amended ARM 6.6.2809 regarding the approved risk list. Section (3) of ARM 6.6.2808 would be deleted, but is substantially included in proposed New Rule I regarding annual statements for stamping fees and premium taxes owed.

It is also reasonably necessary to amend ARM 6.6.2809 to make the Commissioner solely responsible for appointing a five-member committee to compile a proposed approved risk list for consideration because the delegation of authority to the association in ARM 6.6.2802 will be repealed. Under the amendments, the Commissioner would consult the surplus lines agents' association domiciled in Montana regarding possible appointees to the committee.

It is also reasonably necessary to promulgate New Rule I regarding the surplus lines insurance producer annual statements. New Rule I would reflect the preparation of the statements by the department instead of the association. New Rule I would also simplify the collection of the stamping fees for both surplus lines insurance producers and the department by changing from monthly to an annual collection and including both the stamping fees and the premium taxes owed on one statement distributed to surplus lines insurance producers.

7. 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 Jennifer Massman, Staff Attorney, Commissioner of Securities and Insurance, Office of the State Auditor, Monica Lindeen, 840 Helena Ave., Helena, Montana, 59601; telephone (406) 444-2040; fax (406) 444-3497; or e-mail jmassman@mt.gov, and must be received no later than 5:00 p.m., August 31, 2009.

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

9. The department maintains a list of concerned persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Such written request may be mailed or delivered to Darla Sautter, State Auditor's Office, 840 Helena Ave., Helena, Montana, 59601; telephone (406) 444-2726; fax (406) 444-3497; or e-mail dsautter@mt.gov or may be made by completing a request form at any rules hearing held by the department.

10. An electronic copy of this Proposal Notice is available through the Secretary of State's web site at <http://sos.mt.gov/ARM/Register>. The Secretary of State strives to make the electronic copy of 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.

11. The bill sponsor contact requirements of 2-4-302, MCA do not apply.

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

/s/ Robert W. Moon
Robert W. Moon
Deputy Insurance Commissioner

Certified to the Secretary of State July 20, 2009.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the adoption of New Rule I through New Rule XII, amendment of ARM 10.54.4010 through 10.54.4013, 10.54.4020 through 10.54.4023, 10.54.4030 through 10.54.4033, and 10.54.4040 through 10.54.4043, and repeal of ARM 10.54.4050 through 10.54.4053, 10.54.4060 through 10.54.4063, 10.54.4070 through 10.54.4073, and 10.54.4087 through 10.54.4098 pertaining to math content standards and performance descriptors) AMENDED NOTICE OF PUBLIC HEARING AND EXTENSION OF COMMENT PERIOD ON PROPOSED ADOPTION, AMENDMENT, AND REPEAL

TO: All Concerned Persons

1. On May 28, 2009 the Board of Public Education published MAR Notice No. 10-54-249 pertaining to the public hearing on the proposed adoption, amendment, and repeal of the above-stated rules at page 767 of the 2009 Montana Administrative Register, Issue Number 10.

2. A public hearing was held on June 22, 2009. No comments were received during the comment period. The Office of Public Instruction advised the board at its July 17, 2009 meeting that language relating to Montana American Indians had been inadvertently omitted from the suggested amendments to the above-stated rules and recommended amending the rules to ensure that the math standards include references to Montana American Indian culture. The board voted to extend the comment period for 30 days. The board will accept comments on the amendments to these rules until 5:00 p.m. on August 31, 2009.

3. The Board of Public Education 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 of Public Education no later than 5:00 p.m. on August 14, 2009 to advise us of the nature of the accommodation that you need. Please contact Steve Meloy, Executive Secretary of the Board of Public Education, P.O. Box 200601, Helena, MT 59620-0601, telephone: (406) 444-6576, FAX: (406) 444-0847, e-mail: smeloy@mt.gov.

4. The board proposes that the following rules be further amended as follows:

10.54.4010 MATHEMATICS CONTENT STANDARD 1 (1) To satisfy the requirements of mathematics content standard 1, a student, applying reasoning and

problem solving, will use number sense and operations to represent numbers in multiple ways, understand relationships among numbers and number systems, make reasonable estimates, and compute fluently within a variety of relevant cultural contexts, including those of Montana American Indians.

10.54.4011 BENCHMARK FOR MATHEMATICS CONTENT STANDARD 1 FOR END OF GRADE 4 (1) through (1)(d) remain as proposed.

(e) select and apply appropriate standard units and tools to measure length, time, and temperature within relevant scientific and cultural situations, including those of Montana American Indians.

10.54.4012 BENCHMARK FOR MATHEMATICS CONTENT STANDARD 1 FOR END OF GRADE 8 (1) through (1)(d) remain as proposed.

(e) use metric and standard units of measurement in relevant scientific and cultural situations, including those of Montana American Indians, compare and convert within systems, and use appropriate technology; and

(f) remains as proposed.

10.54.4013 BENCHMARK FOR MATHEMATICS CONTENT STANDARD 1 UPON GRADUATION (1) through (1)(d) remain as proposed.

(e) identify givens and unknowns in familiar and unfamiliar situations (e.g., finance, culture, including Montana American Indians, and nature) and describe relationships between variables.

10.54.4020 MATHEMATICS CONTENT STANDARD 2 (1) To satisfy the requirements of mathematics content standard 2, a student, applying reasoning and problem solving, will use data representation and analysis, simulations, probability statistics, and statistical methods to evaluate information and make informed decisions within a variety of relevant cultural contexts, including those of Montana American Indians.

10.54.4021 BENCHMARK FOR MATHEMATICS CONTENT STANDARD 2 FOR END OF GRADE 4 (1) and (1)(a) remain as proposed.

(b) solve problems and make decisions using data descriptors such as minimum, maximum, median, and mode within scientific and cultural contexts, including those of Montana American Indians when relevant; and

(c) describe events from multicultural contexts, including those of Montana American Indians, as likely or unlikely and discuss the degree of likelihood using words such as certain, equally likely, and impossible.

10.54.4022 BENCHMARK FOR MATHEMATICS CONTENT STANDARD 2 FOR END OF GRADE 8 (1) remains as proposed.

(a) collect data from a variety of contexts (e.g., science, history, and culture, including Montana American Indians); and organize and represent data in box plots, scatter plots, histograms, and circle graphs using technology when appropriate;

(b) interpret, analyze, and evaluate data using mean, median, range, and quartiles to identify trends and make decisions and predictions about data within

scientific and cultural contexts, including those of Montana American Indians when relevant; and

(c) create sample spaces and simulations from events found in different cultures, including Montana American Indians, determine experimental and theoretical probabilities, and use probability to make predictions.

10.54.4023 BENCHMARK FOR MATHEMATICS CONTENT STANDARD 2 UPON GRADUATION (1) through (1)(b) remain as proposed.

(c) make, evaluate, and justify decisions based on probabilities in multicultural ~~problem~~ situations, including those of Montana American Indians (e.g., finding expected value and using rules of probability);

(d) and (e) remain as proposed.

10.54.4030 MATHEMATICS CONTENT STANDARD 3 (1) To satisfy the requirements of mathematics content standard 3, a student, applying reasoning and problem solving, will understand geometric properties, spatial relationships, and transformation of shapes, and will use spatial reasoning and geometric models to analyze mathematical situations within a variety of relevant cultural contexts, including those of Montana American Indians.

10.54.4031 BENCHMARK FOR MATHEMATICS CONTENT STANDARD 3 FOR END OF GRADE 4 (1) through (1)(b) remain as proposed.

(c) use spatial reasoning to identify slides and flips of congruent figures within ~~cultural~~ artistic and artistic cultural contexts, including those of Montana American Indians;

(d) and (e) remain as proposed.

10.54.4032 BENCHMARK FOR MATHEMATICS CONTENT STANDARD 3 FOR END OF GRADE 8 (1) and (1)(a) remain as proposed.

(b) use spatial reasoning to determine congruence, similarity, and symmetry of objects in mathematics, art, science, and culture, including Montana American Indians;

(c) through (e) remain as proposed.

10.54.4033 BENCHMARK FOR MATHEMATICS CONTENT STANDARD 3 UPON GRADUATION (1) and (1)(a) remain as proposed.

(b) use spatial reasoning and geometric models to solve problems with and without technology in the contexts of art, science, and culture, including Montana American Indians;

(c) through (e) remain as proposed.

10.54.4040 MATHEMATICS CONTENT STANDARD 4 (1) To satisfy the requirements of mathematics content standard 4, a student, applying reasoning and problem solving, will use algebraic concepts and procedures to understand processes involving number, operation, and variables and will use procedures and function concepts to model the quantitative and functional relationships that describe change within a variety of relevant cultural contexts, including those of Montana

American Indians.

10.54.4041 BENCHMARK FOR MATHEMATICS CONTENT STANDARD 4 FOR END OF GRADE 4 (1) through (1)(d) remain as proposed.

(e) model problem situations with manipulatives or technology and use multiple representations such as words, pictures, tables, or graphs to draw conclusions using cultural contexts, including those of Montana American Indians when relevant.

10.54.4042 BENCHMARK FOR MATHEMATICS CONTENT STANDARD 4 FOR END OF GRADE 8 (1) through (1)(d) remain as proposed.

(e) identify and compute rate of change/slope and intercepts from equations, graphs, and tables; model and solve contextual problems involving linear proportions or direct variation using cultural contexts, including those of Montana American Indians when relevant.

10.54.4043 BENCHMARK FOR MATHEMATICS CONTENT STANDARD 4 UPON GRADUATION (1) through (1)(d) remain as proposed.

(e) given data or a problem situation, select and use an appropriate function model to analyze results or make a prediction with and without technology using cultural contexts, including those of Montana American Indians when relevant.

5. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to: Steve Meloy, Executive Secretary of the Board of Public Education, P.O. Box 200601, Helena, MT 59620-0601, telephone: (406) 444-6576, FAX: (406) 444-0847, e-mail: smeloy@mt.gov and must be received no later than 5:00 p.m., August 31, 2009. Persons who testified at the initial hearing, or who submitted comments during the initial comment period, need not testify again or resubmit their comments. Any such previous testimony and comments will be included in the rulemaking record.

Steve Meloy
Rule Reviewer

Patty Myers
Chairperson
Board of Public Education

Certified to the Secretary of State July 20, 2009.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the adoption of New) NOTICE OF PUBLIC HEARING ON
Rule I pertaining to sign language) PROPOSED ADOPTION
interpreters)

TO: All Concerned Persons

1. On September 3, 2009, at 9:30 a.m., the Board of Public Education will hold a public hearing in the conference room of the Office of Public Instruction Building, at 1201 11th Avenue, Helena, Montana, to consider the proposed adoption of the above-stated rule.

2. The Board of Public Education 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 of Public Education no later than 5:00 p.m. on August 27, 2009, to advise us of the nature of the accommodation that you need. Please contact Steve Meloy, P.O. Box 200601, Helena, Montana, 59620-0601, telephone (406) 444-6576; fax (406) 444-0847; or e-mail smeloy@mt.gov.

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

NEW RULE I ASSIGNMENT OF PERSONS PROVIDING SIGN LANGUAGE
INTERPRETING FOR STUDENTS WHO ARE DEAF OR HARD OF HEARING

(1) Effective July 1, 2011, and notwithstanding (3), no licensed or classified employee of any school district, cooperative, or contracted service provider shall be regularly assigned to provide educational sign language interpreting for a student(s) unless the employee has demonstrated skills and knowledge, at a 3.5 level or higher, on the Educational Interpreter Performance Assessment (EIPA) and passed the written portion of the Educational Interpreter Performance Assessment.

(2) Substitute employees of any school district, cooperative, or contracted service provider temporarily assigned to provide educational sign language interpreting for a student(s) for a period longer than 35 consecutive teaching days shall meet the standard in (1).

(3) An employee who has not met the qualifications in (1), but who has demonstrated a competency level of 2.5 or higher on the EIPA and passed the written portion of the Educational Interpreter Performance Assessment, may be assigned to provide educational sign language interpreting services. Such individuals shall have three years, from date of initial assignment, or the effective date of this rule, to demonstrate competency as described in (1).

(4) The employing entity (school district, cooperative, or contracting service provider) is responsible for providing appropriate assignment of personnel (directly and/or use of appropriate technologies).

(5) Employees who have met the requirements in (1) and who seek to remain eligible to work as educational sign language interpreters are responsible for

documenting a completion of 12 hours of professional development and/or renewal units per calendar year related to the improvement of educational interpreting, performance, and knowledge skills. Such individuals will provide documentation of completion to their employing school district, cooperative, or contracting agency.

(6) For purposes of (5), approved providers of continuing educational opportunities shall include any entity approved by the Montana Office of Public Instruction or the Montana Board of Public Education.

AUTH: 20-2-121, MCA

IMP: 20-2-121, MCA

REASON: The proposed rule to establish standards for sign language interpreters who work in Montana schools originated from citizen initiative and legislative interest as expressed in hearings on House Bill 354 of the 2007 Montana Legislature. Though House Bill 354 was not adopted by the 2007 Legislature, the Board of Public Education decided to proactively pursue acceptable language within its own rule making authority to establish standards for sign language interpreters who work in Montana Schools.

4. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Steve Meloy, Board of Public Education, P.O. Box 200601, Helena, MT 59620-0601; telephone (406) 444-6576; fax (406) 444-0847; or e-mail smeloy@mt.gov, and must be received no later than 5:00 p.m., September 3, 2009.

5. Steve Meloy, Executive Secretary of the Board of Public Education has been designated to preside over and conduct this hearing.

6. The board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by 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 4 above or may be made by completing a request form at any rules hearing held by the board.

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

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

/s/ Steve Meloy
Steve Meloy
Rule Reviewer

/s/ Patty Myers
Patty Myers
Chairperson
Board of Public Education

Certified to the Secretary of State July 20, 2009.

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

In the matter of the adoption of NEW	)	NOTICE OF PROPOSED ADOPTION
RULES I through III and amendment of	)	AND AMENDMENT
ARM 12.11.6601, 12.11.6603, and)	
12.11.6605 regarding emergency	)	NO PUBLIC HEARING
closures of department lands and	)	CONTEMPLATED
public waters)	

TO: All Concerned Persons

1. On September 24, 2009, the Fish, Wildlife and Parks Commission (commission) proposes to adopt and amend the above-stated rules.

2. The commission will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, please contact the commission no later than August 21, 2009, to advise us of the nature of the accommodation that you need. Please contact Stella Cureton, Fish, Wildlife and Parks, P.O. Box 200701, Helena, MT 59620-0701; telephone (406) 444-4594; fax (406) 444-7456; e-mail scureton@mt.gov.

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

NEW RULE I DEPARTMENT'S AUTHORITY TO CLOSE DESIGNATED RECREATION AREAS DUE TO EMERGENCY (1) The commission authorizes the department to adopt temporary emergency rules to close designated recreation areas to public use as provided in NEW RULE II.

(2) Public use of the designated recreation area means any public occupation of the land.

(3) The commission authorizes the department to reopen designated recreation areas closed by temporary emergency rule as provided in NEW RULE II.

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

IMP: 2-4-303, 23-1-106, 87-1-303, MCA

NEW RULE II EMERGENCY DESIGNATED RECREATION AREA CLOSURE CRITERIA (1) The department may, pursuant to NEW RULE I, adopt temporary emergency rules under the following criteria.

(a) The department receives written request for closure of designated recreation area from the interagency fire management team or similar authority that provides the description of where to implement the fire closure.

(b) The department determines that firefighting efforts on or near the designated recreation area creates imminent peril to the public health, safety, or welfare.

(c) The department determines that dangerous conditions exist on or near

the designated recreation area that creates imminent peril to public health, safety, or welfare.

(2) The department may reopen the designated recreation area by repealing a temporary emergency rule when it determines that firefighting efforts or dangerous conditions on or near the area have subsided to the extent that imminent peril to the public health, safety, and welfare no longer exists.

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

IMP: 2-4-303, 23-1-106, 87-1-303, MCA

NEW RULE III NOTIFICATION OF EMERGENCY DESIGNATED RECREATION CLOSURE AREAS (1) Prior to or simultaneously with the effective date of the closure the department shall:

- (a) notify the commission;
- (b) post notice of the closure on the agency web site;
- (c) post notice of the closure within and near the affected area; and
- (d) send press releases regarding the closure to newspapers and media outlets having general distribution in the affected area.

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

IMP: 2-4-303, 23-1-106, 87-1-303, MCA

REASONABLE NECESSITY: Title 87 of the Montana Code Annotated (MCA) generally governs the powers, duties, and activities of the Department of Fish, Wildlife and Parks, and the Fish, Wildlife and Parks Commission. 87-1-301(1)(c), MCA makes clear that the commission "shall establish the rules of the department governing the use of lands owned or controlled by the department and waters under the jurisdiction of the department." However, Part I of Title 23, which governs the conservation and management of state parks provides: "The department may make rules governing the use, occupancy, and protection of the lands and property under its control." 23-1-106(1), MCA. Thus, there is parallel authority in the law authorizing the department to make rules governing its own land vis-à-vis that of the commission. Administrative rules have been promulgated under Title 23, MCA that regulate the use of all lands under the control, administration, and jurisdiction of the department. Such areas are labeled "designated recreation areas." The commission, in recognition of the overlapping or parallel authority, proposes new rules that mirrors the language of the water closure rules for the use of land owned or controlled by the department and clarifies the department's authority to close designated recreation areas in the event of an emergency that poses an immediate threat to public health, safety, or welfare.

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

12.11.6601 DEPARTMENT'S AUTHORITY TO CLOSE PUBLIC WATERS DUE TO FIRE EMERGENCY (1) The commission authorizes the department to adopt temporary emergency rules to close public waters to public use as provided in

ARM 12.11.6603.

(2) Public use of the water means boating, floating, swimming, fishing, and any other public occupation of the waters.

(3) The commission authorizes the department to reopen public waters closed by temporary emergency rule as provided in ARM 12.11.6603.

AUTH: 87-1-303, MCA

IMP: 2-4-303, 87-1-303, MCA

12.11.6603 FIRE EMERGENCY PUBLIC WATER CLOSURE CRITERIA (1)

The department may, pursuant to ARM 12.11.6601, adopt temporary emergency rules under the following criteria.

(a) The department receives written request for closure of public waters from the interagency fire management team or similar authority that provides the description of where to implement the fire closure.

(b) The department determines that firefighting efforts on or near the water creates imminent peril to the public health, safety, or welfare.

(c) The department determines that dangerous conditions exist on or near the water that creates imminent peril to public health, safety, or welfare.

(2) The department may reopen the waters by repealing a temporary emergency rule when it determines that firefighting efforts or dangerous conditions on or near the water have subsided to the extent that imminent peril to the public health, safety, and welfare no longer exists.

AUTH: 87-1-303, MCA

IMP: 2-4-303, 87-1-303, MCA

12.11.6605 NOTIFICATION OF FIRE EMERGENCY PUBLIC WATER CLOSURE AREAS (1) Prior to or simultaneously with the effective date of the fire closure the department shall:

(a) notify the commission;

(b) post notice of the fire closure on the agency web site;

(c) post notice of the fire closure within and near the affected area; and

(d) send press releases regarding the fire closure to newspapers and media outlets having general distribution in the affected watershed or water body.

AUTH: 87-1-303, MCA

IMP: 2-4-303, 87-1-303, MCA

REASONABLE NECESSITY: In 2008, the commission adopted rules to address closures of water to public use due to fire emergency. In the past year emergency water closures have been adopted due to other environmental dangers that posed imminent peril to the public health, safety, and welfare. On March 27, 2008, the commission adopted an emergency rule to close a portion of the Smith River due to an ice jam that caused the river to be impassable to recreationists. On June 20, 2008, the commission adopted an emergency rule to close a portion of the Yellowstone River due to a bridge being in danger of collapsing. On May 27, 2009

the commission adopted two temporary emergency rules. A portion of Belt Creek was closed due to a log jam that caused the river to be impassable and Vigilante Kids' Fishing Pond and picnic area was closed due to a dam upstream of the pond is in a state of imminent failure.

The commission recognizes that under certain circumstances, there is an immediate need to adopt temporary emergency rules that allow the department to consider environmental factors other than fires. Presently, in order to close public water for reasons other than fire a quorum of commissioners must adopt the emergency closure. The commission's concern is that, during an emergency, the department may not be able to contact a quorum of commissioners. Adoption of an emergency rule would be delayed until enough commissioners could be contacted. If this circumstance occurred the public could be endangered. Since it is unlikely that the commission would refuse to adopt a temporary emergency rule when the public health, safety, and welfare is jeopardized, the commission believes it is logical and necessary to delegate its authority to the Director of the Department of Fish, Wildlife and Parks to adopt emergency rules closing public waters when environmental dangers exist.

5. Concerned persons may submit their data, views, or arguments concerning the proposed actions in writing to: Jessica Fitzpatrick, Department of Fish, Wildlife and Parks, P.O. Box 200701, Helena, Montana, 59620-0701; fax (406) 444-7456; or e-mail jfitzpatrick@mt.gov, and must be received no later than August 28, 2009.

6. If persons who are directly affected by the proposed actions wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments they have to Jessica Fitzpatrick at the above address. A written request for a hearing must be received no later than August 28, 2009.

7. If the commission receives requests for a public hearing on the proposed actions from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be greater than 25 people based on the fact that every Montana citizen has access to public waters that could be closed in a fire emergency.

8. The Department of Fish, Wildlife and Parks maintains a list of interested persons who wish to receive notice of rulemaking actions proposed by the commission or department. Persons who wish to have their name added to the list shall make written request, which includes the name and mailing address of the person to receive the notice and specifies the subject or subjects about which the person wishes to receive notice. Such written request may be mailed or delivered to

Fish, Wildlife and Parks, Legal Unit, P.O. Box 200701, 1420 East Sixth Avenue, Helena, MT 59620-0701, faxed to the office at (406) 444-7456, or may be made by completing the request form at any rules hearing held by the commission or department.

9. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

/s/ Shane Colton

Shane Colton, Chairman
Fish, Wildlife and Parks Commission

/s/ William A. Schenk

William A. Schenk
Rule Reviewer

Certified to the Secretary of State July 20, 2009.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the adoption of NEW) NOTICE OF PUBLIC HEARING ON
RULES I through XIII regarding) PROPOSED ADOPTION
workers' compensation claims)
examiner certification)

TO: All Concerned Persons

1. On August 21, 2009, at 10:00 a.m., the Department of Labor and Industry (department) will hold a public hearing to be held in the first floor conference room (room 104), 1327 Lockett Avenue, Walt Sullivan Building, Helena, MT to consider the proposed adoption 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 August 14, 2009, to advise us of the nature of the accommodation that you need. Please contact the Employment Relations Division, Department of Labor and Industry, Attn: Diana Ferriter, P.O. Box 8011, Helena, MT 59604-8011; telephone (406) 444-1574; fax (406) 444-4140; TDD (406) 444-0532; or e-mail diferriter@mt.gov.

3. GENERAL STATEMENT OF REASONABLE NECESSITY: There is reasonable necessity to adopt rules to implement Chapter 125, section 2, Laws of 2009, put into place by the 2009 Legislature. Chap. 125, section 2, L. of 2009 provides that the Montana Department of Labor and Industry shall adopt rules for the voluntary certification of workers' compensation claims examiners and adopt a fee for the certification program in rules.

4. The proposed new rules provide as follows:

NEW RULE I PURPOSE OF RULES (1) The purpose of these rules is to establish standards for the voluntary certification of workers' compensation claims examiners handling workers' compensation claims in the State of Montana, providing for minimum qualifications, examination, two-year certification and renewal, continuing education requirements, and a waiver of examination requirements.

AUTH: 39-71-105, MCA; Chap. 125, section 2, L. of 2009

IMP: 39-71-105, MCA; Chap. 125, section 2, L. of 2009

REASON: There is reasonable necessity to adopt a general purpose statement to implement Chap. 125, section 2, L. of 2009.

NEW RULE II DEFINITIONS For purposes of this subchapter, the following definitions apply:

(1) "Approved continuing education course" or "course" means any course, seminar, or program of instruction that has been approved by the department for presentation as part of the continuing education requirements for claims examiner certification and that relates to the state workers' compensation system or to interactions among injured workers, medical providers, and employers.

(2) "Certificate of completion" means a document issued by the sponsoring organization to the claims examiner signifying satisfactory completion of a course and reflecting credit hours earned by the claims examiner.

(3) "Claims examiner" means a claims examiner as defined under 39-71-116, MCA.

(4) "Classroom setting" means a course format in which a body of students meets to study the same course materials under the direction of the same approved instructor.

(5) "Credit hours" means the value assigned to a course by the department, upon review and approval of course materials and content outline.

(6) "Instructor" means an individual who meets the requirements set forth in [New Rule XI], is identified by a sponsoring organization in a course submission, participates in course presentations, activities and discussions, and who may monitor the attendance and conduct of course participants, or administer examinations.

(7) "Proctor" means a person who monitors the attendance, conduct, and the examination process for course participants, but who does not participate in course presentations, activities or discussions, or complete any required examinations.

(8) "Remote training" means a course format in which a body of students attend a training session using a web meeting tool and/or conference telephone service with a method approved by the department to ensure full participation of each student.

(9) "Self-study" means those independent study methods taught outside the classroom setting through approved text, audiotape materials, videotape materials or another method of information exchange.

(10) "Significant change" means a change in two or more of the following course elements:

- (a) course goals or objectives;
- (b) major course topic(s);
- (c) course length;
- (d) syllabus or course outline;
- (e) teaching method; or
- (f) examination method.

(11) "Sponsoring organization" means any group(s) or organization(s) and their agent(s) that submit courses for department review and offer or provide approved courses for continuing education credit to allow claims examiner certification and are responsible for those course offerings.

AUTH: 39-71-105, MCA; Chap. 125, section 2, L. of 2009

IMP: 39-71-105, MCA; Chap. 125, section 2, L. of 2009

REASON: There is reasonable necessity to adopt definitions to implement the new rules pursuant to Chap. 125, section 2, L. of 2009.

NEW RULE III APPLICABILITY OF RULES (1) These rules apply to voluntary certification of workers' compensation claims examiners on or after the effective date of these rules.

(2) Initial certification remains in effect for two years.

(3) A claims examiner's certification period will be renewed for two years upon application and verification that the claims examiner meets the continuing education requirements under the rules in effect on the date renewal is due.

AUTH: 39-71-105, MCA; Chap. 125, section 2, L. of 2009

IMP: 39-71-105, MCA; Chap. 125, section 2, L. of 2009

REASON: There is reasonable necessity to adopt a rule to indicate the length of time certification lasts.

NEW RULE IV CERTIFICATION OF CLAIMS EXAMINERS (1) Claims examiners must be certified by the department upon the following:

(a) completion of the application form provided by the department;

(b) meeting the minimum qualifications for certification in (2);

(c) payment of the required fees; and

(d) satisfactory completion of either an examination or meeting the waiver requirements as provided in [New Rule VI].

(2) To meet the minimum qualifications, the applicant for certification shall be:

(a) at least 18 years of age; and

(b) have a high school diploma or equivalent certificate.

(3) Certification will be for a two-year period. The certification date shall be the date of the successfully completed examination or the date the department issues a certification to an applicant that meets the examination waiver requirements.

AUTH: 39-71-105, MCA; Chap. 125, section 2, L. of 2009

IMP: 39-71-105, MCA; Chap. 125, section 2, L. of 2009

REASON: There is reasonable necessity to adopt a rule to state the minimum qualifications for voluntary certification.

NEW RULE V EXAMINATION FOR CLAIMS EXAMINERS (1) Each applicant for certification as a workers' compensation claims examiner shall, prior to the issuance of such certification, personally take and pass an examination given by the department or a department-approved agent as a test of qualifications and competency, except as provided by a waiver in [New Rule VI].

(2) Satisfactory completion of an examination demonstrates the individual's:

(a) familiarity with Montana's workers' compensation statutes;

(b) ability to navigate the administrative rules found in this chapter;

(c) knowledge of workers' compensation definitions and concepts including for example, course and scope, coverage, liability, subrogation, claims for benefits, compensation and medical benefits, settlements, subsequent injury fund, vocational rehabilitation, mediation, and due process.

(3) Any person taking an examination may use a copy of Title 39, Chapter 71, MCA, during the test procedure.

(4) A passing score on an examination shall be 80 percent or greater.

(a) An applicant for claims examiner certification may retake an examination as many times as necessary to pass the examination with a score of 80 percent or greater. The examination fee must be paid for each examination taken.

(5) Any examination completed through dishonest or fraudulent means shall be considered invalid.

AUTH: 39-71-105, MCA; Chap. 125, section 2, L. of 2009

IMP: 39-71-105, MCA; Chap. 125, section 2, L. of 2009

REASON: There is reasonable necessity to adopt a rule requiring an examination.

NEW RULE VI WAIVER OF EXAMINATION (1) Claims examiners may be certified by the department upon providing satisfactory evidence of meeting the following waiver requirements:

(a) evidence that the claims examiner has been actively engaged as a Montana claims examiner working on workers' compensation claims for five of the seven years immediately preceding the application for certification.

(b) the waiver may only be given if application and payment of the applicable fee is received within the first 12 months after the department has adopted the initial rules.

AUTH: 39-71-105, MCA; Chap. 125, section 2, L. of 2009

IMP: 39-71-105, MCA; Chap. 125, section 2, L. of 2009

REASON: There is reasonable necessity to adopt a rule to indicate when a person is eligible for waiver of the certification examination.

NEW RULE VII CONTINUING EDUCATION REQUIREMENTS FOR RENEWAL (1) Certification shall be renewed upon:

(a) payment of the applicable fee;

(b) completion of the renewal form provided by the department at any time during the certification period, but no later than the expiration of the renewal date;

(c) verification of completion of 24 hours of approved continuing education courses during the current certification period, to include at least:

(i) four hours of training on workers' compensation statutes, administrative rules, and case law since the last certification; and

(ii) one hour of training on appropriate and ethical communication; and

(iii) other approved continuing education courses which may include but are not limited to mediation/negotiation; medical terminology; human anatomy; interpreting medical records; injured worker's rights and responsibilities; insurers'

rights and responsibilities; prevention of injuries; stay-at-work/return-to-work training; and medical fee schedule reimbursements.

(2) The department may accept workers' compensation continuing education courses approved by the Office of Public Instruction, the state bar of Montana or the Montana Insurance Commissioner for the adjuster license requirements toward 50 percent of the 24 hours of approved courses required for the claims examiner certification renewal.

(3) No more than six hours of approved continuing education courses may be carried over to the next certification period. The request for approved continuing education courses to be carried over must be submitted with the renewal application for which the courses were taken.

AUTH: 39-71-105, MCA; Chap. 125, section 2, L. of 2009

IMP: 39-71-105, MCA; Chap. 125, section 2, L. of 2009

REASON: There is reasonable necessity to adopt rules detailing continuing education requirements.

NEW RULE VIII LAPSE IN CERTIFICATION (1) If a certification has lapsed past the renewal date, but application for renewal is received within 12 months from the renewal date, the claims examiner must pay the application fee and provide evidence of sufficient continuing education credits received during the lapsed period.

(2) If a certification has lapsed greater than 12 months from the renewal date, the claims examiner must submit an application for certification; pay the fee; and successfully pass examination. The continuing education credit requirement for renewal starts over with the new certification period.

AUTH: 39-71-105, MCA; Chap. 125, section 2, L. of 2009

IMP: 39-71-105, MCA; Chap. 125, section 2, L. of 2009

REASON: There is reasonable necessity to adopt a rule indicating applicable procedures in the event a certification lapses.

NEW RULE IX REVIEW AND APPROVAL OF CONTINUING EDUCATION COURSES BY DEPARTMENT (1) Any sponsoring organization that requests continuing education credits be approved by the department for training must complete and submit a request on a form provided by the department.

(2) The department shall review the course submission and determine the number of credit hours to be awarded for completion of the course.

(3) "Hour" as used in this subchapter, means 50 minutes of instruction.

(4) Courses subject to an award of continuing education credits may include but are not limited to:

- (a) classroom setting or seminars;
- (b) self-study, electronic media;
- (c) correspondence course;
- (d) computer-based training; or
- (e) remote training.

AUTH: 39-71-105, MCA; Chap. 125, section 2, L. of 2009

IMP: 39-71-105, MCA; Chap. 125, section 2, L. of 2009

REASON: There is reasonable necessity to adopt a rule indicating the process for course approval.

NEW RULE X COURSE SUBMISSIONS (1) The following standards, by which acceptability of submitted courses are evaluated, must all be certified by the sponsoring organization:

- (a) the practical and academic experience of each faculty member is sufficient to teach the subject assigned;
- (b) the course enhances the ability of a claims examiner to provide claims handling services to the public effectively;
- (c) the subject matter relates to professional ethics, where practicable.

(2) Submissions for approval of courses must include at least the following information:

- (a) the name of the sponsoring organization;
- (b) the title of the course;
- (c) the proposed date(s) of offering;
- (d) course goals and objectives;
- (e) major course topic(s);
- (f) course length;
- (g) a list of other states, if any, that have approved the course and the credits granted the course in those states;
- (h) a syllabus or course outline;
- (i) a summary of each course outline element;
- (j) method of instruction, such as classroom, self-study, videotape, audiotape, teleconference, etc.;
- (k) method of administering examinations, if any;
- (l) method of attendance verification;
- (m) method of student record maintenance;
- (n) instructors, if any;
- (o) a designated contact person;
- (p) a written explanation of examination security measures and examination administration methods; and
- (q) written notification of additional dates of course offering to the department three days in advance of presentation of any course.

(3) Requests for approval of courses must be received by the department no less than 30 days prior to the anticipated starting date of the course.

(4) Approved accredited university or college courses will be allowed 15 continuing education credits for each semester credit and ten continuing education credits for each quarter credit.

(5) Charges for courses must be clearly disclosed to students before enrollment:

- (a) if a course is canceled for any reason, all charges are refundable in full, unless the refund policy is clearly defined in the enrollment application;

(b) in all instances, the charges must be refunded within 45 days of cancellation;

(c) in the event that a continuing education provider postpones a course for any reason, the provider must give the students a choice of attending a course at a later date or having their charges refunded in full. The provider must refund the charges within 45 days of the postponement unless the student notifies the provider that the student has chosen to attend a later course;

(d) a sponsoring organization may have a refund policy addressing a student's cancellation or failure to complete a course, as long as that policy is made clear to potential students.

(6) A sponsoring organization must provide proof of course completion to each course participant who successfully completes the approved course of study within one month of course completion or prior to the end of the calendar year during which the participant completed the course. The department may grant the sponsoring organizations up to two months to provide such proof of course completion, if the sponsoring organization notifies the course participants in writing, in advance of the course.

(7) Sponsoring organizations who add qualified course instructors after a course is approved must submit the names of those instructors to the department at least three days prior to the course offering.

(8) Course approval is for a period of two years following the course approval date.

(9) Sponsoring organizations must resubmit courses for new review and certification whenever significant changes in course content are made.

(10) The minimum number of credits that the department may award is one credit.

(11) No course may be advertised as having been approved for credit by the department until the sponsoring organization receives written approval from the department.

AUTH: 39-71-105, MCA; Chap. 125, section 2, L. of 2009

IMP: 39-71-105, MCA; Chap. 125, section 2, L. of 2009

REASON: There is reasonable necessity to adopt a rule indicating requirements for course approval.

NEW RULE XI QUALIFICATIONS FOR INSTRUCTORS (1) Instructors must meet the following qualifications for the department to approve the course:

(a) a high school diploma or equivalent certificate;

(b) experience in at least one of the following:

(i) three or more years of managerial, supervisory, technical, or teaching experience as a subject matter expert;

(ii) appropriate national designations; or

(iii) approval on an exception basis by the department.

(2) An instructor may be disqualified if that person has:

(a) intentionally falsified documents filed with the department; or

(b) intentionally misrepresented course approval, credit hour assignment, curriculum, or course content to students or prospective students.

(3) Certified claims examiners teaching or lecturing approved courses will be credited with two times the number of approved credit hours of courses they instruct.

(4) Proctors will not earn continuing education credit for their services.

AUTH: 39-71-105, MCA; Chap. 125, section 2, L. of 2009

IMP: 39-71-105, MCA; Chap. 125, section 2, L. of 2009

REASON: There is reasonable necessity to adopt minimum qualifications for course instructors.

NEW RULE XII FEES FOR CERTIFICATION, EXAMINATION, RENEWAL, AND COURSE SUBMISSION (1) The fees for processing an initial two-year certification shall be \$100 per applicant payable at the time of the application.

(2) Each examination fee will not exceed \$75 payable prior to the examination.

(3) The certification renewal fee shall be \$75 per applicant payable at the time of renewal. If there is a lapse in certification, the fee for renewal will be \$100 payable at the time of the application.

(4) The fee for course submissions shall be \$75 per application.

AUTH: 39-71-105, MCA; Chap. 125, section 2, L. of 2009

IMP: 39-71-105, MCA; Chap. 125, section 2, L. of 2009

REASON: There is reasonable necessity to adopt fees for certification, examination, renewal, and course submission. The department estimates that approximately 100 persons will apply to become certified workers' compensation claims examiners during the first two years of the certification program. The department estimates that during the first two years of the program, 50 applicants will take the examination, while the remainder will be certified without examination, as allowed by statute. The department estimates that the aggregate application and examination fees that will be collected during the initial two year period will be approximately \$13,750. In addition, the department estimates that during the first two years of the program, approximately 10 persons or entities will submit 25 courses for approval (new examiner course and renewal course approvals), generating fees of \$1,875. The total fees expected to be generated by the proposed rule (for the initial two year period) is estimated at \$15,625, to be paid by 110 persons. All of the proposed fees are new fees, implementing the new statutory program. As required by Chap. 125, section 2, subsection (8), L. of 2009, the fees are set at a level projected to be commensurate with cost.

NEW RULE XIII MAINTENANCE OF CERTIFICATION DOCUMENTATION

(1) The department may maintain the records required by [Chap. 125, section 2, L. of 2009], in an electronic format.

AUTH: 39-71-105, MCA; Chap. 125, section 2, L. of 2009

IMP: 39-71-105, MCA; Chap. 125, section 2, L. of 2009

REASON: There is reasonable necessity to adopt a rule to indicate the department will be maintaining the records in electronic format.

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: Employment Relations Division, Department of Labor and Industry, Attn: Diana Ferriter, P.O. Box 8011, Helena, MT 59604-8011; fax (406) 444-4140; TDD (406) 444-0532; or e-mailed to diferriter@mt.gov, and must be received no later than 5:00 p.m., August 28, 2009.

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 that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program or areas of law the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the Department of 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, apply and have been fulfilled. The bill sponsor was contacted by telephone and in writing by regular mail on May 4, 2009 and throughout the drafting process pursuant to the requirements of Chapter No. 21 passed during the 2009 legislative session.

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

/s/ VIVIAN V. HAMMILL
Vivian V. Hammill
Alternate Rule Reviewer

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

Certified to the Secretary of State July 20, 2009

BEFORE THE BOARD OF REAL ESTATE APPRAISERS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 24.207.401 fees and) PROPOSED AMENDMENT
24.207.402 USPAP)

TO: All Concerned Persons

1. On August 20, 2009, at 9:00 a.m., a public hearing will be held in room 439, 301 South Park Avenue, Helena, Montana to consider the proposed amendment of the above-stated rules.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Real Estate Appraisers (board) no later than 5:00 p.m., on August 14, 2009, to advise us of the nature of the accommodation that you need. Please contact Barb McAlmond, Board of Real Estate Appraisers, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2325; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2323; e-mail dlibsrea@mt.gov.

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

<u>24.207.401 FEES</u> (1) remains the same.	
(a) original license application	\$400 <u>\$475</u>
(b) address change or change of business	15 <u>\$45</u>
(c) remains the same.	
(d) course approval per course payable by course provider	200 <u>\$300</u>
(e) course renewal approval per course	100 <u>\$300</u>
(f) upgrade or downgrade fee	175 <u>\$300</u>
(g) remains the same.	
(h) inactive license fee	100 <u>\$225</u>
(i) remains the same.	
(j) license or certification renewal fee	375 <u>\$475</u>
(k) original trainee license	300 <u>\$400</u>
(l) trainee renewal fee	300 <u>\$400</u>
(m) remains the same.	

AUTH: 37-1-131, 37-1-134, 37-54-105, MCA

IMP: 37-1-131, 37-1-134, 37-1-141, 37-54-105, 37-54-112, ~~37-54-202~~, 37-54-212, 37-54-302, 37-54-310, MCA

REASON: The board determined it is reasonably necessary to amend the fees as proposed to comply with the provisions of 37-1-134, MCA, and to keep the board's fees commensurate with program costs. The department, in providing administrative services to the board, has determined that the fees must be increased as proposed to cover appropriated expenditures. The board estimates that approximately 593 persons will be affected by the proposed fee changes and will result in additional annual revenue of \$60,625. The board is amending the implementation cites to accurately reflect all statutes implemented through this rule.

24.207.402 ADOPTION OF USPAP BY REFERENCE (1) Upon review of the publication known as Uniform Standards of Professional Appraisal Practice (USPAP), published by The Appraisal Foundation, the board adopts and incorporates by reference the ~~2008~~ 2010 edition of USPAP. The board adopts and incorporates by reference the advisory opinions listed as an addendum to the USPAP publication, for the purpose of explaining and interpreting professional appraisal practice standards as required by 37-54-105, MCA.

(2) Upon review of the publication known as USPAP Frequently Asked Questions (USPAP FAQ), published by The Appraisal Foundation, the board adopts and incorporates by reference the ~~2008~~ 2010 edition of USPAP FAQ, for the purpose of explaining and interpreting the standards as provided by 37-54-105, MCA.

(3) remains the same.

AUTH: 37-54-105, MCA

IMP: 37-54-105, 37-54-403, MCA

REASON: The board is amending this rule to update references to the most current versions of the professional standards and the frequently asked questions publication of the Appraisal Standards Board of The Appraisal Foundation, as required by 37-54-403, MCA.

4. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Board of Real Estate Appraisers, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2323, or by e-mail to dlibsrea@mt.gov, and must be received no later than 5:00 p.m., August 28, 2009.

5. An electronic copy of this Notice of Public Hearing is available through the department and board's site on the World Wide Web at www.realestateappraiser.mt.gov. The department strives to make the electronic copy of this Notice conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during

some periods, due to system maintenance or technical problems, and that technical difficulties in accessing or posting to the e-mail address do not excuse late submission of comments.

6. The board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this board. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies the person wishes to receive notices regarding all board administrative rulemaking proceedings or other administrative proceedings. The request must indicate whether e-mail or standard mail is preferred. Such written request may be sent or delivered to the Board of Real Estate Appraisers, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, faxed to the office at (406) 841-2323, e-mailed to dlibsrea@mt.gov, or made by completing a request form at any rules hearing held by the agency.

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

8. Barb McAlmond, program manager, has been designated to preside over and conduct this hearing.

BOARD OF REAL ESTATE APPRAISERS
KRAIG KOSENA, CHAIRPERSON

/s/ DARCEE L. MOE
Darcee L. Moe
Alternate Rule Reviewer

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

Certified to the Secretary of State July 20, 2009

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

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 37.36.101, 37.36.201,) PROPOSED AMENDMENT
37.36.202, 37.36.206, and 37.36.604)
pertaining to the Montana)
Telecommunications Access Program)
(MTAP))

TO: All Concerned Persons

1. On August 19, 2009, at 1:30 p.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 August 10, 2009, 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, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

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

37.36.101 DEFINITIONS For purposes of this chapter, the following definitions apply:

(1) "Appropriate communication device" means the communication device which most efficiently allows access to ~~the telephone~~ an ordinary telecommunications system by a person with a ~~telephone~~ telecommunications usage disability.

(2) remains the same.

(3) "Deaf" means having ~~hearing in both ears which is impaired to the degree that the person is unable to understand speech on the telephone without the use of specialized telecommunications equipment~~ a full or partial decrease in the ability to detect or understand sounds or discriminate speech.

(4) "Deaf-blind" means:

(a) being deaf, severely hearing ~~impaired~~ disabled or hard of hearing; and

(b) being blind or visually ~~impaired~~ disabled; and

(c) requiring the use of specialized telecommunications equipment to communicate effectively ~~on the telephone~~ using an ordinary telecommunications system.

~~(5) "Department" means the Department of Public Health and Human Services.~~

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

~~(6) "End user connection" means a customer's connection to a service provider's network.~~

(7) "Family" means the person with a ~~telephone~~ telecommunications usage disability and the relatives with whom the person resides as specified in (7)(a) through (7)(d), except that if the person with a ~~telephone~~ telecommunications usage disability is a foster child, "family" means the foster child only and does not include the persons with whom the foster child resides, whether related or unrelated to the child. Relatives of the person with a ~~telephone~~ telecommunications usage disability included in the household when the person is not a foster child are:

(a) remains the same.

(b) the mother and/or father, if the person with a ~~telephone~~ telecommunications usage disability is a minor child. This includes biological parents and parents by adoption and, at the option of the person with a telephone usage disability, may include stepparents;

(c) minor children. This includes biological children and children by adoption and, at the option of the person with a ~~telephone~~ telecommunications usage disability, may include stepchildren; and

(d) minor siblings, but only if the person with a ~~telephone~~ telecommunications usage disability is a minor. This includes half-siblings and, at the option of the person with a ~~telephone~~ telecommunications usage disability, may include stepsiblings.

(8) "Family income" means the combined income of all members of the family of the person with the ~~telephone~~ telecommunications usage disability.

(9) "Hard of hearing" means having a hearing loss to the extent that the person requires specialized telecommunications equipment to communicate effectively ~~on the telephone~~ using an ordinary telecommunications system.

(10) remains the same.

~~(11) "Local exchange company" means a telecommunications company which provides telephone access lines or wireless service to members of the public who are its customers.~~

(12) remains the same but is renumbered (11).

~~(13) (12) "Mobility impaired disabled" means having reduced function of the arms and hands, making activities related to moving, turning or pressing objects difficult or impossible. The term includes difficulty in using a wide range of telecommunications equipment.~~

~~(14) (13) "Person with a telephone telecommunications usage disability" means an individual who is deaf, deaf-blind, hard-of-hearing, speech impaired disabled, or mobility impaired disabled and is in need of specialized telecommunications equipment.~~

(15) remains the same but is renumbered (14).

~~(16) "Provider" means a telecommunications company which provides telephone access lines or wireless service to members of the public; a local exchange company.~~

(15) "Service provider" means an entity that offers services to subscribers in Montana to allow two or more persons in different locations to communicate orally, without regard to the technology or medium the entity uses to provide the telecommunications service and access to the telecommunications relay service. The term includes providers of telecommunications service including but not limited to providers of internet protocol-enabled voice communications service.

~~(17) (16) "Specialized telecommunications equipment" means any telecommunications device which enables or assists a person with a telephone telecommunications usage disability to communicate with others by means of the conventional telephone network public switched telephone network or internet protocol-enabled voice communications service. The term includes but is not limited to telecommunications devices, puff-blow devices, electronic artificial larynx devices, amplified handsets, telebraille, and equipment for the mobility impaired disabled.~~

~~(18) (17) "Speech impaired disabled" means having a speech impediment which renders speech on an ordinary telephone telecommunications system unclear and susceptible to misunderstanding.~~

~~(19) "Telephone access line" means the telephone exchange access line or channel or wireless service that provides the customer of a local exchange company with access to the telecommunications network to effect the transfer of information.~~

(18) "Subscriber" means an end user who receives telecommunications network access from a service provider.

(19) "Telecommunications" means the transmission, between or among points specified by the user, of information of the user's choosing without a change in the form or content of the information upon receipt.

AUTH: 53-19-305, 53-19-307, MCA

IMP: 53-19-305, 53-19-307, MCA

37.36.201 ASSESSMENT (1) A charge fee of 10 ten cents per month shall be assessed on each telephone access line end user connection provided and billed and against any prepaid options by a service provider.

(a) A service provider that periodically bills subscribers for services shall bill subscribers for the fee.

(b) In the case of subscribers who are not billed periodically, including but not limited to subscribers who purchase prepaid wireless telecommunication services for a flat fee, the service provider shall collect the fee using one of the following methods:

(i) by including in the price of the service a fee of ten cents for each 30-day period during which the subscriber is authorized to use the services;

(ii) by collecting the fee on a monthly basis from each subscriber whose account balance is equal to or greater than the fee; or

(iii) by collecting the fee of ten cents per month times the number of prepaid subscribers. The service provider shall calculate the number of prepaid subscribers

by dividing total intrastate monthly revenue by the average revenue for each prepaid subscriber of the wireless industry.

(2) Subscribers are not required to pay the assessment in the month they are connected to the local exchange company first receive access to the telecommunications network but must pay the assessment in the month they are disconnected their access terminates.

AUTH: 53-19-305, 53-19-307, MCA

IMP: 53-19-311, MCA

37.36.202 EXEMPTIONS (1) The following are exempt from the assessment provided in ARM 37.36.201:

(a) remains the same.

(b) Indian tribes, with regard to access-lines end user connections on the tribe's reservation only;

(c) enrolled members of Indian tribes, with regard to access-lines end user connections on a reservation only;

(d) through (2) remain the same.

AUTH: 53-19-307, MCA

IMP: 53-19-305, 53-19-311, MCA

37.36.206 REPORTING REQUIREMENTS (1) Each service provider must complete and file with the Department of Revenue a quarterly reporting form on or before the last day of the month following the end of each calendar quarter.

(2) The quarterly reporting form must provide the following information:

(a) and (b) remain the same.

(c) total number of exempt and nonexempt access-lines end user connections for the calendar quarter;

(d) number of nonexempt access-lines end user connections for the quarter;

(e) amount of fee computed by multiplying the total number of nonexempt access-lines end user connections times ten cents per month of service during the quarter;

(f) through (i) remain the same.

AUTH: 53-19-305, 53-19-307, MCA

IMP: 53-19-305, 53-19-311, MCA

37.36.604 FINANCIAL ELIGIBILITY CRITERIA (1) Individuals whose annual family income during the 12 months immediately preceding the month of application is less than 250% of the ~~2006~~ 2009 poverty guidelines published by the U.S. Department of Health and Human Services (HHS) are eligible for a loan of specialized telecommunications equipment based on income. 250% of the HHS ~~2006~~ 2009 annual poverty guidelines for families of various sizes are shown in (2).

(2) 250% of the annual poverty guidelines is as follows:

FAMILY SIZE	250% OF ANNUAL POVERTY GUIDELINE
One	\$24,500 <u>\$27,075</u>
Two	33,000 <u>36,425</u>
Three	41,500 <u>45,775</u>
Four	50,000 <u>55,125</u>
Five	58,500 <u>64,475</u>
Six	67,000 <u>73,825</u>
Seven	75,000 <u>83,175</u>
Eight	84,000 <u>92,525</u>
Each Additional Person, Add	8,500 <u>9,350</u>

(3) remains the same.

AUTH: 53-19-305, 53-19-307, MCA

IMP: 53-19-305, 53-19-307, MCA

4. The Montana Telecommunications Access Program (MTAP) provides specialized telecommunications equipment to low income persons who need such equipment to communicate effectively using a telecommunications system. MTAP is administered by the Committee on Telecommunications Access Services for Persons with Disabilities (the Committee). Persons whose gross family income is less than 250% of the poverty guidelines established by the U.S. Department of Health and Human Services (HHS) are eligible for MTAP services.

ARM 37.36.604

ARM 37.36.604 currently provides that persons whose gross family income is less than 250% of HHS' 2006 poverty guidelines are eligible for MTAP services. HHS updates the poverty guidelines each year to take into account increases in the cost of living. It is therefore necessary to amend ARM 37.36.604 to provide that the 2009 poverty guidelines, which are higher than the 2006 guidelines, will be used to determine eligibility for MTAP. If the committee did not use the most current poverty guidelines, some persons might be ineligible for MTAP due to inflationary increases in their household income that do not reflect an increase in actual buying power.

ARM 37.36.604 contains a table showing the level of income equal to 250% of the federal poverty guidelines for households of various sizes. The table is currently based on the 2006 poverty guidelines. It is therefore necessary to amend the rule to insert the new income amounts based on the 2009 poverty guidelines.

In addition to ARM 37.36.604 it is necessary to amend several other rules to incorporate changes to MTAP's governing statute made by Montana's 60th

Legislature in House Bill 611 (HB 611). The most significant change was the amendment of 53-19-311, MCA, which provides funding for MTAP by providing for an assessment of ten cents per month. At the time the MTAP statute was originally enacted in 1989 the most common type of telephone service was provided by telephone exchange companies via land lines rather than by wireless service, so in 53-19-311, MCA provided that local exchange companies must bill a charge of ten cents a month on each telephone access line. Although the term "telephone access line" was defined broadly in 53-19-302(8), MCA to include channel and wireless service as well as telephone exchange access lines, the Legislature amended 53-19-311, MCA to make its language consistent with the newer telecommunications technologies. It was amended to provide that ten cents per month must be assessed by the service provider (rather than the local exchange company) against each end user connection (rather than against each telephone access line). The statute now specifically mentions that the assessment applies to prepaid options. This change in 53-19-311, MCA does not change the policy on the applicability of the assessment but merely clarifies that the assessment applies to prepaid wireless services as well as to wireless service that is billed monthly.

ARM 37.36.201

The amendment of ARM 37.36.201 regarding assessments is therefore necessary to reflect the changes in terminology in 53-19-311, MCA. In addition to changing the term "telephone access line" to "end user connection" and the term "local exchange company" to "service provider" in ARM 37.36.201, the department is also revising the rule to provide that a fee, rather than a charge, of ten cents per month, is assessed because the word "fee" was substituted for "charge" in 53-19-311, MCA.

Section 53-19-311, MCA was also amended to specify how the ten cent per month fee is to be collected when the subscriber is not billed for service periodically, for example, in the case of subscribers who purchase prepaid wireless service for a flat fee. Section 53-19-311, MCA as amended provides that the service provider may include in the purchase price a fee of ten cents for each 30-day period during which the subscriber is authorized to use the service or may collect the fee in two other ways listed in the statute. ARM 37.36.201 is therefore being amended to include a description of the methods available for collecting the fee in cases where the subscriber is not billed periodically.

ARM 37.36.201(2) regarding when the assessment begins and ends also must be amended due to the changes in terminology. It currently provides that subscribers are not required to pay the assessment in the month when they are connected to the local exchange company, but must pay it in the month when they are disconnected. Since the fee is now assessed against end user connections rather than access lines to the local exchange company, (2) is now being amended to provide that subscribers must pay the fee in the month when they first gain access to the telecommunications network, but not in the month when their access terminates.

ARM 37.36.202

ARM 37.36.202 provides that certain entities are exempt from paying the assessment. It currently provides that Indian tribes and enrolled members of Indian tribes do not have to pay the assessment in regard to access lines on the reservation. Due to the change in terminology in 53-19-311, MCA and ARM 37.36.201, it is now necessary to amend (1)(a) and (b) of ARM 37.36.202 to state that Indian tribes and enrolled members of Indian tribes do not have to pay the assessment if the end user connection is on a reservation.

ARM 37.36.206

ARM 37.36.206 requires service providers to submit quarterly reports which state, among other things, the provider's number of exempt and nonexempt access lines and the total assessment calculated by multiplying the number of nonexempt access lines by the charge of ten cents per month of service. Because of the changes in terminology in the MTAP statute, it is now necessary to amend ARM 37.36.206 to provide that the number of exempt and nonexempt end user connections must be reported as well as the total assessment calculated by multiplying the number of nonexempt end user connections by the charge of ten cents per month of service. Additionally, the rule currently does not specify with whom the reports are to be filed. ARM 37.36.206 is also being amended to state that the reports are to be filed with the Department of Revenue. This is merely being added for clarification and does not reflect a change in policy, as providers have always filed the reports with the Department of Revenue.

ARM 37.36.101

Finally, many of the definitions in ARM 37.36.101 must now be revised or deleted as a result of changes in terminology in the MTAP statute. As discussed above, the term "telephone access line" has been replaced by the term "end user connection" in the statute, so the definition of "telephone access line" has been deleted from the rule and a definition of "end user connection" has been added. Similarly, the term "local exchange company" has been replaced by "service provider," so the definition of "local exchange company" is being deleted and a definition of "service provider" is being added. Throughout the MTAP statute the word "disabled" has been inserted in place of "impaired" because "disabled" is now the preferred term. To reflect this change in the statute, the word "disabled" has been substituted for "impaired" in the definitions of "mobility impaired," "person with a telephone usage disability" and "speech impaired".

It is no longer necessary to define the word "provider" in the definitions rule because it has been replaced by the term "service provider" in ARM 37.36.206 on reporting requirements. The definition of "provider" is therefore being eliminated, and, as mentioned above, a definition of "service provider" is being added. Prior to the amendment of 53-19-302, MCA, by HB 611, "specialized telecommunications equipment" was defined as "telecommunications devices that assist a person with a disability to communicate with others by means of the conventional telephone

network". Due to recent changes in telecommunications technology, HB 611 amended the definition of "specialized telecommunications equipment" to state that they are telecommunications devices that assist a person with a disability to communicate by means of internet protocol-enabled voice communications service as well as by the public switched telephone network. The definition of "specialized telecommunications equipment" in ARM 37.36.101 is therefore being amended to reflect this change.

The terms "subscriber" and "telecommunications" were previously used in the MTAP rules but were never defined. Definitions of these terms were added to 53-19-302, MCA by HB 611 and are now being added to ARM 37.36.101 as well. Finally, the definition of "Department" to mean the Department of Public Health and Human Services in ARM 37.36.101 is being deleted because the term "Department" is no longer used in the MTAP rules.

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, Montana, 59604-4210; fax (406) 444-9744; or e-mail dphhslegal@mt.gov, and must be received no later than 5:00 p.m., August 27, 2009.

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 contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted by letter dated March 6, 2007, sent postage prepaid via USPS.

/s/ Barbara Hoffmann
Rule Reviewer

/s/ Anna Whiting Sorrell
Anna Whiting Sorrell, Director
Public Health and Human Services

/s/ Linda Kirkland
Chairman of the Montana
Telecommunications Access
Committee

Certified to the Secretary of State July 20, 2009.

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

In the matter of the adoption of New	)	NOTICE OF PUBLIC HEARING ON
Rules I through VII, the amendment	)	PROPOSED ADOPTION,
of ARM 37.79.101, 37.79.102,	)	AMENDMENT, AND REPEAL
37.79.106, 37.79.201, 37.79.202,)	
37.79.206, 37.79.207, 37.79.208,)	
37.79.301, 37.79.302, 37.79.303,)	
37.79.312, 37.79.317, 37.79.325,)	
37.79.326, 37.79.501, 37.79.503,)	
37.79.505, 37.79.601, 37.79.602,)	
37.79.605, 37.79.801, and 37.82.701,)	
and the repeal of 37.79.209)	
pertaining to implementing the)	
Healthy Montana Kids Plan Act)	

TO: All Concerned Persons

1. On August 20, 2009, 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, amendment, and repeal 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 August 11, 2009, 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, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

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

RULE I PROCESS FOR IDENTIFYING AND APPROVING ENROLLMENT PARTNERS (1) The following entities are qualified to be enrollment partners:

- (a) a licensed health care provider;
- (b) a school district;
- (c) a community-based organization; and
- (d) a government agency.

(2) The department will consider requests to act as an enrollment partner from other entities and approve requests on a case-by-case basis.

(3) A qualified entity becomes an enrollment partner by contacting the department and indicating an interest in becoming an enrollment partner. The department will notify the entity if it is accepted as an enrollment partner. The department will provide an enrollment partner with Healthy Montana Kids (HMK) Plan materials and applications. Enrollment partners must complete department sponsored training and provide application assistance to HMK Plan applicants.

(4) The department will maintain a list of the names, addresses, and telephone numbers of its enrollment partners and publish the list on its web site.

(5) Enrollment partners are volunteers who receive no compensation from the state of Montana. The department has the option of denying or discontinuing enrollment partner status.

AUTH: 53-4-1105, MCA

IMP: 53-4-1104, 53-4-1105, MCA

RULE II ACTIVE ENROLLMENT PROCESS (1) The department will promote the HMK Plan through a combination of traditional marketing methods and social marketing. The department will develop and maintain an enrollment partner network to encourage, assist, and actively enroll children in the plan.

(2) An individual may apply for the HMK Plan coverage group, HMK, or HMK Plus at any time and, if qualified, will be enrolled in the appropriate program. The department will process applications based upon the date of receipt. The department will enroll eligible children in the appropriate HMK Plan group based upon the respective program guidelines. An application can be submitted to the HMK Plan office or any county public assistance office.

AUTH: 53-4-1105, MCA

IMP: 53-4-1104, 53-4-1105, MCA

RULE III MOVEMENT BETWEEN HMK AND HMK PLUS (1) The HMK Plan is available to all Montana residents who are 18 years of age or younger and live in households with a combined family income at or below 250% of the 2009 federal poverty level (FPL). The HMK Plan provides for two coverage groups, HMK and HMK Plus. The HMK coverage group is available to qualified residents who reside in households with a combined family income between 134% and 250% of the 2009 FPL. A waiting list may apply to this program. The HMK Plus coverage group is available to qualified residents who reside in households with a combined family income between 0 and 133% of the 2009 FPL.

(2) The HMK and HMK Plus coverage groups provide 12 months continuous coverage.

AUTH: 53-4-1105, MCA

IMP: 53-4-1104, 53-4-1105, 53-4-1110, MCA

RULE IV POINT OF ACCESS (1) The department will accept and determine eligibility for all applications for children's health coverage provided by the HMK Plan. Applications may be submitted directly to the Healthy Montana Kids Plan

office or any county office of public assistance (OPA). The department staff in each location will screen for potential eligibility for the HMK Plan.

(2) OPA and HMK Plan staff will coordinate eligibility determination activities and enroll eligible children in the appropriate HMK Plan coverage group, HMK, or HMK Plus.

AUTH: 53-4-1105, MCA

IMP: 53-4-1104, 53-4-1105, MCA

RULE V TRANSITION (1) On October 1, 2009, all children currently enrolled in the CHIP and the Medicaid children's programs will transition from CHIP and Medicaid to the HMK Plan.

(2) The second transition will take place when current CHIP enrollees from families with income between 100% and 133% of the FPL transition to the CHIP-funded Medicaid expansion program. The transition will occur at the time of annual reapplication during federal fiscal year 2010 (October 1, 2009 to September 30, 2010). Approximately 10,000 current CHIP enrollees will be affected by this transition. The staggered transition will occur throughout the year.

(a) For an eligible child in the HMK coverage group there is a 12-month family span.

AUTH: 53-4-1105, MCA

IMP: 53-4-1104, 53-4-1105, 53-4-1110, MCA

RULE VI PROSPECTIVE PAYMENT SYSTEM FOR FEDERALLY QUALIFIED HEALTH CENTER (FQHC) REIMBURSEMENT (1) The Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA) requires states with separate or combined CHIP programs to pay federally qualified health centers (FQHCs) and rural health centers (RHCs) using the Medicaid outpatient prospective payment system (OPPS) as described in ARM 37.86.4413. An OPPS rate for the HMK coverage group will be developed by the department.

AUTH: 53-4-1105, MCA

IMP: 53-4-1104, 53-4-1105, MCA

RULE VII OUTREACH EFFORTS (1) The department will promote the HMK Plan through a combination of traditional marketing methods, social marketing, the development and maintenance of an enrollment partner network and collaborative efforts with schools, advocacy groups, health care providers, and other community organizations to encourage, assist, and actively enroll children in the plan. All outreach will include the name HMK Plan on documents associated with the plan including, but not limited to advertising, brochures, applications, and membership cards.

AUTH: 53-4-1105, MCA

IMP: 53-4-1104, 53-4-1105, MCA

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

37.79.101 CHILDREN'S HEALTH INSURANCE PLAN (CHIP) HEALTHY MONTANA KIDS PLAN (HMK) (1) ~~The rules in this subchapter implement the Children's Health Insurance program, which is provided through the Children's Health Insurance Plan (CHIP). CHIP is jointly funded by the federal and state government. The purpose of CHIP is to provide health care benefits to uninsured individuals under the age of 19 years from low income families who are not eligible for the Montana Medicaid program.~~ The rules in this subchapter implement the Healthy Montana Kids Plan to provide comprehensive health care coverage to Montana residents who are 18 years of age or younger residing in households with a combined family income at or below 250% of the 2009 federal poverty level (FPL). There is no resource test, as that term is used in 53-6-113 and 53-6-131, MCA, to qualify to participate in the Healthy Montana Kids Plan.

(2) The Healthy Montana Kids Plan has two health care coverage groups, Healthy Montana Kids (HMK) and Healthy Montana Kids Plus (HMK Plus). The coverage group an applicant is eligible for is determined by the combined family income.

(a) Qualified residents residing in households with income at or below 250% of the 2009 FPL but greater than 133% of the 2009 FPL qualify for the HMK coverage group. The HMK coverage group is a public benefit program administered by the department through a third party administrator. HMK enrollees have health care coverage to the extent described in this chapter. HMK providers are members of a provider network reimbursed at rates agreed to by contract. The provisions of this chapter apply to HMK enrollees.

(b) Qualified residents residing in households with income at or below 133% of the 2009 FPL qualify for the HMK Plus coverage group. The HMK Plus coverage group is the term used to identify the Montana Medicaid program for Montana residents 18 years of age or younger. HMK Plus enrollees have health care coverage to the extent provided by Montana Medicaid. HMK Plus providers are reimbursed at Montana Medicaid rates. The provisions of this chapter and Title 37, chapters 82, 83, 85, 86, and 88 apply to HMK Plus.

AUTH: 53-4-1004, 53-4-1009, 53-4-1105, MCA

IMP: 53-4-1003, 53-4-1004, 53-4-1009, 53-4-1104, 53-4-1105, 53-4-1110, MCA

37.79.102 DEFINITIONS As Definitions as used in this subchapter, unless expressly provided otherwise, the following definitions apply:

(1) "Advanced practice registered nurse (APRN)" means a registered professional nurse who has completed educational requirements related to the nurse's specific practice role, in addition to basic nursing education, as specified by the Board of Nursing in ARM Title 8, chapter 32, subchapter 3 ~~who has completed educational requirements related to the nurse's specific practice role, in addition to basic nursing education, as specified by the Board of Nursing pursuant to 37-8-202(5)(a), MCA.~~

(2) remains the same.

(3) "Applicant" means an individual under the age of 19 years who applied for ~~CHIP~~ the HMK Plan benefits or whose parent or guardian applied for ~~CHIP~~ the HMK Plan benefits on the individual's behalf.

(4) remains the same.

(5) "Benefit year" means the period from October 1st through September 30th ~~of a calendar year~~. If an individual is enrolled in ~~CHIP~~ the HMK coverage group after October 1st, the benefit year is the period from the date of enrollment through the following September 30th of the calendar year.

(6) "Children's Health Insurance ~~Plan~~ Program (CHIP)" means the Children's Health Insurance ~~Plan~~ Program described in this subchapter and administered by the department under Title 53, chapter 4, part 10, MCA and Title XXI of the Social Security Act.

(7) through (9)(c) remain the same.

(10) "Enrollee" means an individual who is eligible to receive ~~CHIP~~ HMK Plan benefits as determined by the department under this subchapter and is enrolled in the ~~CHIP program~~ the HMK coverage group. An individual is not an enrollee while on a waiting list or pending issuance of a hearing decision or during any period a hearing officer determines the individual was not eligible for ~~CHIP~~ the HMK coverage group benefits. The term "enrollee" and "member" are synonymous.

(11) "Enrollment partner" means an organization or individual approved by the department to assist in enrolling eligible children in the plan.

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

~~(12)~~ (13) "Family span" means the 12 month period beginning the first day of the month after ~~an eligibility determination~~ the department receives an application for ~~CHIP~~ HMK coverage group benefits is completed and ending the last day of the 12th month. Although qualified for ~~CHIP~~ the HMK coverage group benefits, applicants placed on the waiting list may not be enrolled during the entire family span.

~~(13)~~ (14) "Federal poverty level (FPL)" means the poverty ~~income~~ guidelines published in the ~~Federal Register by the U.S. Department of Health and Human Services for 2007~~ for 2009 for the 48 contiguous states and the District of Columbia as published under the "Annual Update on the HHS Poverty Guidelines" in the Federal Register each year on or about February 15.

(15) "Federally qualified health center (FQHC)" means an entity that is a federally qualified health center as defined in 42 USC 1396d(l)(2)(B) (2009 Supp.).

(14) remains the same but is renumbered (16).

(17) "Health coverage" means a program administered by the department or a disability insurance plan, referred to in 33-1-207(1)(b), MCA, that provides public health care coverage or private health insurance for children.

(18) "Healthy Montana Kids (HMK) Plan" means the two health care coverage groups, Healthy Montana Kids (HMK) and Healthy Montana Kids (HMK) Plus, which pay for covered health care services to qualified individuals until their 19th birthday. The HMK coverage group was formerly referred to as CHIP and the provisions of Title 53, chapter 4, part 10, MCA apply. The HMK Plus coverage group is also referred to as children's Medicaid and the provisions of Title 53, chapter 6, MCA apply.

(15) and (16) remain the same but are renumbered (19) and (20).

(21) "Initiative I-155" means the initiative passed by Montana voters in November, 2008, that enacted the HMK Plan Act.

(17) remains the same but is renumbered (22).

~~(18) "Medicaid screening" means a determination by the department of an individual's potential eligibility to receive Medicaid benefits applying the criteria set forth in ARM Title 37, chapter 82 and certain Medicaid rules which disregard income.~~

(19) remains the same but is renumbered (23).

~~(20)~~ (24) "Member" means an individual who is eligible to receive CHIP HMK Plan benefits as determined by the department under this and is enrolled in the CHIP program rule. An individual is not a member while on a waiting list or pending issuance of a hearing decision or during any period a hearing officer determines the individual was not eligible for CHIP the HMK coverage group benefits. The term "member" and "enrollee" are synonymous.

(21) and (22) remain the same but are renumbered (25) and (26).

(27) "Outpatient prospective payment system (OPPS)" means the reimbursement method for federally qualified health centers (FQHCs) and Rural Health Centers (RHCs).

(28) "Outreach" means efforts which promote the Healthy Montana Kids Plan through a combination of traditional marketing methods, and social marketing. The department will develop and maintain an enrollment partner network to encourage, assist, and actively enroll children in the program.

(23) and (24) remain the same but are renumbered (29) and (30).

(31) "Rural health clinic (RHC)" means a clinic determined by the secretary of the U.S. Department of Health and Human Service to meet the rural health clinic conditions of certification specified in 42 CFR, part 491, subpart A.

~~(25)~~ (32) "Serious emotional disturbance (SED)" means the criteria stated in ARM 37.87.303 means a designation determined by qualified department staff and based on social history and clinical information in the form of a psychological assessment with DSM-IV diagnosis, completed by a licensed psychologist, social worker, or professional counselor, that a youth is seriously emotionally disturbed according to the definition set forth in ARM 37.86.3702(2).

~~(26)~~ (33) "State employee" means a person, including the CHIP HMK applicant, employed on a permanent basis by the state of Montana.

~~(27)~~ (34) "Third party administrator (TPA)" means an entity with a certificate of registration to conduct business in Montana in accordance with 33-17-603, MCA, or an entity licensed as a health service corporation. The CHIP program department may contract for TPA services including but not limited to claims processing, maintaining an adequate network of participating providers, coordination and continuation of care, health education, notices, quality assurance, reporting, case management services, and customer service.

(28) remains the same but is renumbered (35).

~~(29)~~ (36) "Waiting list" means a list of applicants who have been determined eligible for CHIP the HMK coverage group but who are not enrolled because funds are not available.

AUTH: 53-4-1004, 53-4-1009, 53-4-1105, MCA

IMP: 53-4-1003, 53-4-1004, 53-4-1009, 53-4-1104, 53-4-1105, MCA

37.79.106 ELECTRONIC APPLICATIONS AND SIGNATURES (1) The CHIP program HMK Plan will accept electronic applications and signatures. Electronic signatures are allowed in compliance with the requirements of ARM Title 30, chapter 18, subchapters 106, 117, and 122 to the extent those provisions are not inconsistent with this subchapter.

AUTH: 53-4-1004, 53-4-1009, 53-4-1105, MCA

IMP: 53-4-1003, 53-4-1004, 53-4-1009, 53-4-1104, 53-4-1105, MCA

37.79.201 ELIGIBILITY (1) An applicant may be eligible for covered services under ~~CHIP~~ the HMK coverage group if:

(a) and (b) remain the same.

(c) the family of which the applicant is a member has annual family income, without regard to other family resources, at or below ~~175%~~ 250% of the federal poverty level (FPL);

(d) through (f) remain the same.

(g) the applicant is not an inpatient in an institution for mental disease on the date of initial application or reapplication; the date of any redetermination of eligibility; and

(h) the applicant does not have or has not had creditable health insurance coverage as defined in ~~42 USC 300gg(c) 30 days~~ for three months prior to becoming eligible for ~~CHIP~~ the HMK coverage group. This 30 day period shall three month period does not apply if the parent or guardian providing the insurance:

(i) dies;

(ii) is ~~ired~~ terminated or laid off;

(iii) can no longer work due to a disability;

(iv) has a lapse in insurance coverage due to new employment; or

~~(v) has an employer who does not offer dependent coverage.~~

(v) had insurance coverage that ended because the stepparent, who provided the coverage, and the parent divorced;

(vi) had coverage through the Insure Montana Program;

(vii) had coverage through the Medicaid Health Insurance Premium Payment (HIPP) program; or

(viii) paid more than 50% of the insurance premium.

~~(i) the applicant or the applicant's parent is not eligible for health insurance coverage under the state of Montana Employee's Health Insurance Plan; and~~

~~(j) the applicant is not eligible or potentially eligible for Medicaid coverage as determined by the department.~~

(2) An applicant who is eligible for health benefits coverage under the Montana Employee's Health Insurance Plan or the Montana University System Employees Health Insurance Plan is not eligible for HMK coverage.

(3) An applicant who is eligible or potentially eligible for Medicaid as determined by the department is not eligible for the HMK coverage group.

(4) The department must verify an applicant's citizenship or qualified alien status before an otherwise eligible applicant is enrolled.

~~(2)~~ (5) Family income information for all family members must be included on the signed and dated application must be verified to determine eligibility.

(a) Family income ~~includes~~ may include one or more of the following:

(i) the income of both parents if the child resides with both parents;

(ii) the income of the ~~custodial~~ parent with whom the child resides the majority of the year, including any child support received for the child, if the child resides with one parent in a single parent household:

(A) If the ~~custodial~~ parent with whom the child resides the majority of the year has remarried, the stepparent's income is imputed to the ~~custodial~~ parent with whom the child resides the majority of the year.

(B) The income of individuals under the age of 19 who live in the household but do not attend school is imputed to the ~~custodial~~ parent with whom the child resides the majority of the year.

(b) Family income does not include:

(i) money received from assets drawn down such as withdrawals from a savings account, an annuity, or from the sale of a house or a car;

(ii) gifts, loans, one-time insurance payments, or lump sum compensation for an injury;

(iii) the first \$2,000 of an enrolled tribal member's per capita payment;

(iv) the first \$2,000 of an enrolled tribal member's tribal land income;

(v) the interest earned on ~~(2)(b)(iv)~~ (2)(b)(iii) and ~~(v)~~ (iv);

(vi) earned income which is excluded and dependent care expenses which are deducted from income under the ~~state Medicaid poverty programs for children~~ HMK Plus coverage group;

(vii) through (d) remain the same.

~~(3)~~ (6) An applicant whose ~~CHIP~~ HMK coverage group enrollment ended because his or her parent was activated into military service and who was insured through Tri-care, which is the insurance available to active duty and retired military families during the parent's military activation period, is not subject to the ~~30-day~~ minimum three month waiting period for previous creditable health insurance and will be enrolled in ~~CHIP~~ the HMK coverage group if he or she continues to be eligible for ~~CHIP~~ the HMK coverage group. Upon notification that the parent was deactivated and the applicant loses Tri-care coverage, the applicant may be re-enrolled:

(a) the month after ~~CHIP~~ HMK Plan is notified, if the family has an open family span; or

(b) the month after a completed application is received and the applicant requalifies for ~~CHIP~~ benefits, if the family does not have an open family span HMK coverage group.

~~(4)~~ (7) Applicants eligible to receive services from the Indian Health Services (IHS) program administered by the United States Department of Health and Human Services are eligible for ~~CHIP~~ the HMK coverage group if they meet the criteria specified in this subchapter.

~~(5)~~ (8) Applicants who are losing ~~Medicaid~~ HMK Plus coverage or who were denied ~~Medicaid~~ HMK Plus coverage for a reason other than the family withdrew their application or failed to comply with ~~Medicaid~~ HMK Plus requirements will be referred to ~~CHIP~~ the HMK coverage group via an electronic report. ~~CHIP~~ The HMK

coverage group eligibility will be determined and applicants will be enrolled in ~~CHIP~~ the HMK coverage group or placed on the ~~CHIP~~ HMK coverage group's waiting list.

~~(6)~~ remains the same but is renumbered ~~(9)~~.

~~(7)~~ ~~(10)~~ ~~CHIP~~ The HMK coverage group benefits do not start until the applicant is enrolled even though the applicant may have been determined eligible for ~~CHIP~~ the HMK coverage group prior to the date of enrollment.

~~(8)~~ ~~(11)~~ ~~CHIP~~ The HMK coverage group eligibility is redetermined within one year after the initial eligibility period, and annually thereafter. A renewal application must be completed, signed, dated, and returned by a specified date for purposes of eligibility redetermination. Prior eligibility for ~~CHIP~~ HMK does not guarantee continued eligibility or enrollment in ~~CHIP~~.

~~(9)~~ ~~(12)~~ ~~CHIP~~ The HMK coverage group eligibility and benefits are not an entitlement. If funding is insufficient, the department may reduce enrollment numbers or reduce eligibility to a lower percentage of the federal poverty level to limit the number of individuals who are eligible to participate.

~~(10)~~ ~~(13)~~ A determination of ~~CHIP~~ the HMK coverage group eligibility will be completed within ~~20 working~~ 45 calendar days after receipt of a complete application.

AUTH: 53-4-1004, 53-4-1009, 53-4-1105, MCA

IMP: 53-4-1003, 53-4-1004, 53-4-1009, 53-4-1104, 53-4-1105, MCA

37.79.202 NONQUALIFYING APPLICANTS (1) Applicants determined by the department to be eligible for ~~Medicaid through a Medicaid determination process~~ are the HMK Plus coverage group are eligible to receive the HMK Plus coverage group benefits but not eligible to receive ~~CHIP~~ the HMK coverage group benefits.

~~(2)~~ Applicants determined by the department to be potentially eligible for Medicaid during the ~~CHIP~~ eligibility determination process will be referred to their local office of public assistance for a determination of Medicaid eligibility.

~~(3)~~ ~~(2)~~ Applicants who are themselves eligible or who have a parent who is eligible for state employee or the Montana University System employee insurance benefits are not eligible for ~~CHIP~~ the HMK coverage group.

~~(4)~~ ~~(3)~~ Applicants who apply for ~~CHIP~~ benefits while they are patients in an institution for mental disease (IMD) shall not be enrolled in ~~CHIP~~ until they are discharged from the IMD. A ~~CHIP~~ enrollee who becomes a patient in an IMD shall not lose ~~CHIP~~ benefits solely because the enrollee is a patient in an IMD Applicants who are patients in an institution for mental diseases on the date of initial application or any redetermination of eligibility are not eligible for the HMK coverage group (42 CFR 457.310).

~~(5)~~ ~~(4)~~ Applicants who are incarcerated cannot be enrolled in ~~CHIP~~ the HMK coverage group.

~~(6)~~ ~~(5)~~ Applicants who are not eligible for ~~CHIP~~ HMK coverage group benefits because their family income exceeds the ~~CHIP~~ HMK coverage group income guideline for the family size will be referred to other health care programs for children, as appropriate.

AUTH: 53-4-1004, 53-4-1009, 53-4-1105, MCA

IMP: 53-4-1003, 53-4-1004, 53-4-1009, 53-4-1104, 53-4-1105, MCA

37.79.206 ELIGIBILITY REDETERMINATION, NOTICE OF CHANGES

(1) Eligibility determinations shall be effective for a period of 12 months unless one or more of the following changes occurs:

(a) remains the same.

(b) the enrollee moves, does not notify ~~CHIP~~ the department of the new address and ~~CHIP~~ the department is unable to locate the enrollee;

(c) through (e) remain the same.

(f) the enrollee or the enrollee's parent becomes eligible for state employee or the Montana University System employee benefits before the expiration of the 12 month eligibility period;

(g) remains the same.

(h) the enrollee becomes eligible for Medicaid HMK Plus.

(2) remains the same.

(3) A ~~CHIP~~ HMK renewal application must be completed and ~~CHIP~~ eligibility redetermined every 12 months. If the renewal application is not returned before ~~CHIP~~ the HMK coverage group enrollment is scheduled to end, benefits will terminate. A new application may be completed at a later date but, if the children are determined eligible, they may be placed on the waiting list if one exists.

AUTH: 53-4-1004, 53-4-1009, 53-4-1105, MCA

IMP: 53-4-1003, 53-4-1004, 53-4-1009, 53-4-1104, 53-4-1105, MCA

37.79.207 TERMINATION OF ELIGIBILITY AND GUARDIAN LIABILITY

(1) ~~CHIP~~ The HMK coverage group eligibility terminates immediately upon:

(a) and (b) remain the same.

(2) ~~CHIP~~ The HMK coverage group eligibility terminates at the end of the month the department becomes aware:

(a) remains the same.

(b) the parent or guardian or enrollee becomes eligible for state employee or Montana University System employee insurance benefits;

(c) remains the same.

(d) the enrollee is determined eligible for Medicaid HMK Plus;

(e) and (f) remain the same.

(g) the applicant has moved without providing a new address and ~~CHIP~~ the department is unable to locate the applicant; or

(h) through (4) remain the same.

AUTH: 53-4-1004, 53-4-1009, 53-4-1105, MCA

IMP: 53-4-1003, 53-4-1004, 53-4-1009, 53-4-1104, 53-4-1105, MCA

37.79.208 PROVISIONAL BENEFITS, DETERMINATION OF ELIGIBILITY, AND APPLICATIONS FOR ~~CHIP~~ HMK

(1) Provisional ~~CHIP~~ HMK coverage group benefits may be extended to enrollees who would otherwise lose health care coverage while awaiting a ~~Medicaid~~ an HMK Plus determination. Provisional coverage may be extended to enrollees who:

(a) submit a completed CHIP HMK Plan renewal application before their CHIP HMK coverage group benefits are scheduled to end;

(b) have been determined potentially eligible for Medicaid HMK Plus coverage; and

(c) are awaiting a Medicaid an HMK Plus eligibility determination.

(2) A determination of CHIP HMK Plan eligibility will be completed within 20 45 working days after receipt of a complete application.

~~(3) Applications for applicants who appear to be Medicaid eligible will be forwarded to the appropriate county office of public assistance for a Medicaid eligibility determination within 20 working days after receipt of a complete application.~~

~~(a) (3) Applicants who are denied Medicaid HMK Plus coverage for failure to comply with Medicaid HMK Plus eligibility requirements:~~

~~(i) (a) are not eligible for CHIP the HMK coverage group benefits; and~~

~~(ii) (b) will not have their application referred to other health care resources.~~

~~(b) (4) CHIP HMK coverage group applications will be processed for those applicants who subsequently provide information which would preclude them from Medicaid HMK Plus eligibility.~~

AUTH: 53-4-1004, 53-4-1009, 53-4-1105, MCA

IMP: 53-4-1003, 53-4-1004, 53-4-1009, 53-4-1104, 53-4-1105, MCA

37.79.301 COVERED BENEFITS (1) through (3) remain the same.

(4) Access to information through a 24-hour call-in service, commonly referred to as a "nurse advice line", is a covered benefit for HMK Plan members.

AUTH: 53-4-1004, 53-4-1009, 53-4-1105, MCA

IMP: 53-4-1003, 53-4-1004, 53-4-1009, 53-4-1104, 53-4-1105, MCA

37.79.302 COVERAGE LIMITATIONS (1) and (2) remain the same.

~~(3) Covered benefits shall be provided to an enrollee who is receiving inpatient hospital benefits up to and including the 11th day after the effective date of losing CHIP benefits.~~

~~(4) (3) A newborn of a CHIP an HMK coverage group enrollee shall have all medically necessary benefits covered by the CHIP HMK coverage group program for 31 days after the newborn's date of live birth. Coverage for the newborn shall begin the day of live birth, without regard to whether the newborn is hospitalized on the date of coverage.~~

AUTH: 53-4-1004, 53-4-1009, 53-4-1105, MCA

IMP: 53-4-1003, 53-4-1004, 53-4-1009, 53-4-1104, 53-4-1105, MCA

37.79.303 BENEFITS NOT COVERED (1) In addition to any exclusions noted elsewhere in these rules, the following services are not covered benefits:

(a) through (g) remain the same.

(h) biofeedback and neurofeedback;

(i) through (x) remain the same.

AUTH: 53-4-1004, 53-4-1009, 53-4-1105, MCA

IMP: 53-4-1003, 53-4-1004, 53-4-1009, 53-4-1104, 53-4-1105, MCA

37.79.312 PRESCRIPTION DRUG BENEFITS (1) through (4) remain the same.

(5) The CHIP HMK coverage group program shall use the Medicaid formulary if the program chooses to employ a formulary.

AUTH: 53-4-1004, 53-4-1009, 53-4-1105, MCA

IMP: 53-4-1003, 53-4-1004, 53-4-1009, 53-4-1104, 53-4-1105, MCA

37.79.317 CHEMICAL DEPENDENCY BENEFITS (1) remains the same.

(2) The combined benefit for inpatient and outpatient treatment for alcoholism and drug addiction, excluding costs for medical detoxification, is subject to a maximum benefit of \$6,000 in a 12-month period. ~~Inpatient benefits are limited to a maximum benefit of \$6,000 in a 12-month period. Inpatient benefits are limited to a~~ The lifetime inpatient maximum benefit of is \$12,000. After ~~If the inpatient lifetime maximum benefit has been is met, the annual outpatient benefit may be is reduced to \$2,000.~~

(3) Benefits for medical detoxification treatment will be paid the same as any illness and are not subject to the annual and lifetime limits stated above.

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

AUTH: 53-4-1004, 53-4-1009, 53-4-1105, MCA

IMP: 53-4-1003, 53-4-1004, 53-4-1009, 53-4-1104, 53-4-1105, MCA

37.79.325 AUDIOLOGY BENEFITS (1) and (2) remain the same.

(3) ~~Hearing aides aids are not a covered benefit and prior authorization is required.~~

AUTH: 53-4-1004, 53-4-1009, 53-4-1105, MCA

IMP: 53-4-1003, 53-4-1004, 53-4-1009, 53-4-1104, 53-4-1105, MCA

37.79.326 DENTAL BENEFITS (1) through (2) remain the same.

(3) The following procedures are not a benefit of the CHIP HMK coverage group Dental Program:

(a) through (e) remain the same.

(4) Providers must comply with all applicable state and federal statutes, rules and regulations, including the United States Code governing CHIP the HMK Plan and all applicable Montana statutes and rules governing licensure and certification.

(5) Enrollees with significant dental needs beyond those covered in the basic dental plan may, with prior authorization, receive additional services through the CHIP HMK coverage group Extended Dental Plan (EDP). The EDP program is dependent on legislative appropriation for the program.

(a) A CHIP HMK coverage group enrollee determined eligible for extended dental benefits may receive additional services in the benefit year. The maximum

EDP payment to all dental providers for an enrollee's additional dental services is \$1000 per benefit year.

(b) through (6) remain the same.

(7) For purposes of applying the provisions of any Medicaid rule as required by this subchapter, references in the Medicaid rule to "Medicaid" or the "Montana Medicaid program" or similar references shall be deemed to apply to ~~CHIP~~ the HMK Plan as the context permits.

AUTH: 53-4-1004, 53-4-1009, 53-4-1105, MCA

IMP: 53-4-1003, 53-4-1004, 53-4-1009, 53-4-1104, 53-4-1105, MCA

37.79.501 COST SHARING PROVISIONS (1) Except as provided in (2) and (3), the parent or guardian of each ~~CHIP~~ HMK coverage group enrollee whose family income is greater than 100% of the federal poverty level must pay to the provider of service the following copayments not to exceed the cost of service:

(a) through (3) remain the same.

AUTH: 53-4-1004, 53-4-1009, 53-4-1105, MCA

IMP: 53-4-1003, 53-4-1004, 53-4-1009, 53-4-1104, 53-4-1105, MCA

37.79.503 ENROLLMENT (1) The ~~CHIP program~~ HMK coverage group will accept without restriction eligible applicants in the order in which they are received for enrollment until the maximum enrollment, at which time eligible applicants will be put on a waiting list and will be enrolled when spaces become available. Applicants come off the waiting list and are enrolled based on the date they were determined eligible.

(2) The enrollment date will always be the first day of the enrollment month. An applicant eligible child will be enrolled ~~the later of:~~

(a) ~~the month after the applicant is determined eligible~~ the first of the month following the month the application is received if the family is determined eligible; or

(b) the month funding is sufficient to enroll the applicant from the waiting list.

(3) The ~~CHIP program~~ HMK coverage group will:

(a) provide each enrollee with a handbook of information about ~~CHIP~~ the program including a summary of benefits; and

(b) remains the same.

AUTH: 53-4-1004, 53-4-1009, 53-4-1105, MCA

IMP: 53-4-1003, 53-4-1004, 53-4-1007, 53-4-1009, 53-4-1104, 53-4-1105, MCA

37.79.505 DISENROLLMENT (1) Participation in ~~CHIP~~ the HMK coverage group is voluntary and an enrollee may withdraw from the program at any time.

(a) ~~CHIP~~ HMK coverage group benefits may be terminated for good cause if the enrollee, parent, or guardian has violated rules adopted by the Montana Commissioner of Insurance for enrollment with an insurer.

(b) remains the same.

(2) Disenrollment takes effect, at the earliest, the first day of the month after the department receives the request for disenrollment, but no later than the first day

of the second calendar month after the request for disenrollment is received. The enrollee remains enrolled in ~~CHIP~~ the HMK coverage group and the ~~CHIP HMK coverage group~~ program is responsible for benefits covered under the contract until the effective date of disenrollment, which is always the first day of a month.

(3) remains the same.

AUTH: 53-4-1004, 53-4-1009, 53-4-1105, MCA

IMP: 53-4-1003, 53-4-1004, 53-4-1009, 53-4-1104, 53-4-1105, MCA

37.79.601 CONTRACT FOR TPA SERVICES (1) ~~The department may contract as it determines appropriate and in conformity with state and federal procurement law for services to administer the HMK coverage group enter into a contract with an entity with a certificate of authority issued by the Montana Commissioner of Insurance to provide third party administration specified in these rules.~~

~~(2) A third party administrator may not in any manner hold an enrollee, parent, or guardian responsible for the debts of the third party administrator.~~

~~(3) The department may contract with a vendor to purchase eyeglasses under a volume purchase contract.~~

~~(4) The department may contract with individual dentists to provide dental benefits as specified in ARM 37.79.326.~~

AUTH: 53-4-1004, 53-4-1009, 53-4-1105, MCA

IMP: 53-4-1003, 53-4-1004, 53-4-1009, 53-4-1104, 53-4-1105, MCA

37.79.602 PROVISION OF BENEFITS (1) ~~The CHIP program~~ department may impose the following requirements in the provision of benefits:

(a) through (d) remain the same.

(2) An enrollee must use the ~~CHIP program's or the TPA's~~ HMK coverage group's TPA participating providers unless:

(a) the ~~CHIP program~~ department authorizes a nonparticipating provider to provide a service; or

(b) remains the same.

(3) The TPA and participating providers must provide covered benefits as listed in this subchapter to enrollees in the same manner as those benefits are provided to ~~non-CHIP members~~ any child who is not enrolled in the HMK Plan.

AUTH: 53-4-1004, 53-4-1009, 53-4-1105, MCA

IMP: 53-4-1003, 53-4-1004, 53-4-1009, 53-4-1104, 53-4-1105, MCA

37.79.605 PARTICIPATING PROVIDERS (1) through (4) remain the same.

(5) In addition to the cost sharing provisions outlined in ARM 37.79.501, participating providers may bill the enrollee, parent, or guardian for services provided to a ~~CHIP~~ HMK coverage group enrollee, which are not covered benefits.

(6) through (6)(b) remain the same.

AUTH: 53-4-1004, 53-4-1009, 53-4-1105, MCA

IMP: 53-4-1003, 53-4-1004, 53-4-1009, 53-4-1104, 53-4-1105, MCA

37.79.801 GRIEVANCE AND APPEAL PROCEDURES (1) remains the same.

(2) Except when ~~CHIP~~ the HMK coverage group eligibility has been denied, an enrollee, parent, or guardian must exhaust the third party administrator's grievance procedure before appeal of the matter may be made to the department.

(3) An applicant, parent, or guardian aggrieved by a denial, suspension, or termination of ~~CHIP~~ the HMK coverage group eligibility or an enrollee, parent, or guardian aggrieved by a final grievance decision of a third party administrator, including but not limited to a reduction or denial of benefits, may request a fair hearing in accordance with ARM 37.5.304, 37.5.313, 37.5.322, 37.5.325, 37.5.328, 37.5.334, and 37.5.337.

(4) and (5) remain the same.

AUTH: 53-4-1009, MCA

IMP: 53-4-1003, MCA

37.82.701 GROUPS COVERED, NONINSTITUTIONALIZED FAMILIES AND CHILDREN (1) Medicaid will be provided to:

(a) through (d)(i) remain the same.

(e) a pregnant woman whose pregnancy has been verified, whose family income does not exceed 133% of the federal poverty guidelines, and whose countable resources do not exceed \$3,000. This coverage group is known as the "pregnancy group";

(i) remains the same.

(ii) newborn children are continuously eligible through the month of their first birthday, provided they continue to reside with their mother in Montana and ~~she would continue to be eligible for assistance if she were still pregnant~~. This coverage group is known as the "~~automatic newborn assistance~~ child-newborn group";

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

(h) a child who ~~has attained age six but~~ has not yet reached age 19, whose family income does not exceed ~~100%~~ 133% of the federal poverty guidelines and ~~whose countable resources do not exceed \$15,000~~. This coverage group is known as the "~~child-age six to 19 group~~" "Healthy Montana Kids (HMK) Plus" group. There is no resource test for this coverage group;

(i) ~~a child through the month of the sixth birthday whose family income does not exceed 133% of the federal poverty guidelines and whose countable resources do not exceed \$15,000; this group is known as the "child-under age six group";~~

(j) through (o)(ii) remain the same but are renumbered (i) through (n)(ii).

(2) and (3) remain the same.

AUTH: 53-4-212, 53-4-1105, 53-6-113, MCA

IMP: 53-4-231, 53-4-1104, 53-4-1105, 53-6-101, 53-6-131, 53-6-134, MCA

5. The department proposes to repeal the following rule:

37.79.209 ELIGIBILITY VERIFICATION REVIEWS, is found on page 37-17614 of the Administrative Rules of Montana.

AUTH: 53-4-1009, MCA

IMP: 53-4-1004, MCA

6. The Department of Public Health and Human Services (the department) is proposing to adopt new Rules I, II, III, IV, V, VI, and VII, the amendment of ARM 37.79.101, 37.79.102, 37.79.106, 37.79.201, 37.79.202, 37.79.206, 37.79.207, 37.79.208, 37.79.301, 37.79.302, 37.79.303, 37.79.312, 37.79.317, 37.79.325, 37.79.326, 37.79.501, 37.79.503, 37.79.505, 37.79.601, 37.79.602, 37.79.605, 37.79.801, and 37.82.701, and the repeal of 37.79.209 pertaining to the Healthy Montana Kids Plan Act, which expands eligibility for the Children's Health Insurance Program (CHIP) and the Montana Medicaid program. The department administers both Montana Medicaid and CHIP.

Montana Medicaid is a program administered by the department that pays for medical assistance to qualified low income Montana residents. Montana and the federal government jointly fund the program. Montana pays providers for service delivered to eligible individuals enrolled in the Medicaid program.

CHIP is a program administered by the department to provide health care to children who are not eligible for health care services under the Montana Medicaid program. The department currently operates CHIP as a self funded insurance program that makes direct payment to providers for service delivered to eligible enrollees. The department contracts with a third party administrator (TPA) to maintain a provider network and pay claims. Provider rates are generally set as a percentage of the TPA's rate schedule. Like Medicaid, the CHIP program is jointly funded by Montana and federal taxpayers.

The department is proposing these amendments to implement the changes in Montana Medicaid and CHIP that result from Initiative 155 as implemented in House Bill 2 (HB 2) of the 2009 Legislature and Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA), Public Law 111-3.

In November, 2008, the Montana voters approved Initiative 155 that enacted the Healthy Montana Kids (HMK) Plan Act. The Healthy Montana Kids Plan Act is now codified at Title 53, chapter 4, part 11, MCA. Congress also enacted significant changes in the CHIP program in CHIPRA. Both acts require significant changes in the programs that will be implemented in phases.

As of October 1, 2009, the department intends to have the following HMK Plan Act requirements implemented: create an administrative single point of access for the HMK Plan within the department, use the name "Healthy Montana Kids" to the extent permitted by federal law, transition current CHIP and Medicaid enrollees on October 1, 2009 to the HMK Plan, increase the income limit for the HMK coverage group from 175% to 250% of the federal poverty level, increase the income limit for

HMK Plus from 100% of FPL to 133% of FPL, eliminate the Medicaid resource limits for children, change the time period a child must be without creditable health insurance coverage from one month to three months, and provide a new combined application for HMK and HMK Plus, expand access to the HMK Plan through enrollment partners and implement outreach efforts.

At a later date the department will adopt rules to implement provisions applicable to section 125 plans, premium assistance and presumptive eligibility.

CHIPRA requirements regarding documentation of status as a citizen or qualified resident will be implemented October 1, 2009. In phase two a rate for the outpatient prospective payment system (OPPS) for federally qualified health centers (FQHC) and rural health centers (RHC) will be developed. A similar payment system already applies to HMK Plus. In phase two the department will address mental health parity, substance abuse benefits and dental benefits. These changes will be made after federal regulatory guidelines are provided.

RULE I

The HMK Act directs the department to use interested organizations and individuals assistance to enroll eligible children in the HMK Plan. This rule establishes a framework for identifying and approving enrollment partners. The HMK Plan uses enrollment partners for efficient and effective outreach to provide health care to eligible children.

RULE II

The HMK Act directs the department to create and define an active enrollment process. This rule states how the department will promote the HMK Plan. The department's goal is to encourage and assist families to obtain medically necessary health care and actively enroll eligible children in the HMK Plan.

RULE III

The HMK Plan Act directs the department to promote seamless movement between the two coverage groups, HMK and HMK Plus. The two coverage groups have some basic differences that are statutory. For example, different income thresholds apply, the HMK coverage group may have a waiting list but HMK Plus coverage may not, HMK Plus has more extensive coverage and there are different provider rates of reimbursement for each coverage group. Both coverage groups eligibility will be determined on a 12-month basis. An enrollee in HMK Plus will remain eligible for HMK Plus coverage throughout his or her 12-month continuous eligibility period. An enrollee in the HMK coverage group will have the option of applying for HMK Plus coverage.

RULE IV

The HMK Act directs the department to provide a single point of access for the HMK Plan. The department interprets this to mean that it must have a single application process that applies to both programs. Montana residents will have multiple opportunities to apply for the HMK Plan but the application process will be uniform across the state and apply to both the HMK and HMK Plus coverage groups.

RULE V

This rule transition applies during the period from October 1, 2009 to September 30, 2010. The rule describes the schedule the department will follow to implement the HMK Plan. CHIP currently provides a 12-month continuous eligibility period that begins the first of the month after eligibility is determined. All CHIP enrollees will transfer into the HMK coverage group on October 1, 2009. At the time of the annual enrollment redetermination, the enrollee may be determined eligible for either the HMK or the HMK Plus coverage group. An individual enrolled in HMK coverage who is eligible for HMK Plus coverage may enroll in HMK Plus anytime.

RULE VI

CHIPRA requires states to pay FQHCs and RHCs using an OPPS. OPPS currently applies to Montana Medicaid payments for FQHCs and RHCs. The department will develop a OPPS rate for HMK coverage group.

RULE VII

The HMK Plan Act requires the department to adopt rules to encourage enrollment partners to actively enroll as many eligible, uninsured children as possible. This rule describes how the department intends to carry out that directive by actively encouraging program participation.

ARM 37.79.101

CHIP provides health care coverage to children up to the age of 19 with family income greater than the amount that qualifies for Medicaid benefits but less than or equal to 175% of the FPL. The HMK Plan Act expanded the eligibility guidelines of the former CHIP program to 250% of FPL.

The Act also allowed for the expansion of Medicaid coverage up to 185% of FPL. The Legislature determined that Medicaid should be expanded to 133% of FPL. Children and young adults living in households with income between 100 and 133% of FPL formerly were not eligible for Medicaid but were eligible for CHIP.

The HMK Plan Act directed the department to include and coordinate health coverage for enrollees in CHIP and Montana Medicaid and, to the extent possible, use the name Healthy Montana Kids. To carry out this direction the department has identified two coverage groups within the Healthy Montana Kids (HMK) Plan, Healthy Montana Kids (HMK), and Healthy Montana Kids Plus (HMK Plus).

Generally, HMK refers to the program that was formerly known as CHIP and HMK Plus refers to the Montana Medicaid program for qualified individuals up to their 19th birthday.

There are differences in the two coverage groups. The HMK Plus coverage group generally provides enrollees more extensive coverage and the HMK coverage group's provider rates are generally higher than the HMK Plus provider rates.

ARM 37.79.102

This rule is a definition section. It is being amended to include or change definitions of terms applicable from the HMK and HMK Plus.

ARM 37.79.106, 37.79.206, 37.79.207, 37.79.312, 37.79.326, 37.79.501, 37.79.503, 37.79.505, 37.79.602, 37.79.605, and 37.79.801

There are no substantive amendments to these rules. The rules are amended to change references from the acronym CHIP to HMK.

ARM 37.79.201

The amendments to this rule extend the current 30-day insurance delay period after creditable coverage ends to a three month waiting period, as provided by 53-4-1004(1)(c), and amend or add exceptions to the delay period. The amendments also make the rule consistent with the federal requirements stated in 42 CFR 457.310 regarding who can qualify as a "targeted low income child", establish an income verification requirement and expand the time allowed for processing applications. The HMK Act raised the combined family income limit for the program from 175% of the federal poverty level to 250% of the federal poverty level. This change is being made throughout these rules to be consistent with the Act. There are also edits throughout the rule to replace the term "CHIP" with "HMK" or "HMK coverage group".

Insurance delay period and exceptions. Prior to the passage of I-155, 53-4-1004(1)(c), MCA, stated "To be considered eligible for the program, a child . . . may not already be covered by private insurance that offers creditable coverage, as defined in 42 USC 300gg(c)" I-155 added the phrase "for three months prior to enrollment in the program or since birth, whichever period is less." The department had implemented the pre I-155 language of 53-4-1004(1)(c) by adopting a 30-day insurance delay period with exceptions necessary to avoid irrational or arbitrary results.

The department is proposing to amend some of the exceptions to the insurance delay period. Current exception (1)(h)(v) is struck because it is unnecessary. If a parent's employer did not offer dependent coverage the applicant did not have creditable coverage and the insurance delay period did not apply. New exceptions (1)(h)(v) and (viii) are proposed to avoid irrational results from the application of the

delay period. Without these exceptions, to be eligible for HMK coverage an otherwise qualified child who had had creditable coverage would have to be uninsured for three months if the child's parent and step parent divorced. A child would also be ineligible if the parent had paid for the majority of the cost of the insurance premium. A child whose parent or step parent had never provided coverage, however, would not have delayed coverage. There is no rational basis for this disparity and it would result in situations where previously insured children had no health care coverage, which is contrary to the intent of the HMK Act.

The department has the authority, pursuant to 53-4-1004(3), to adopt rules governing eligibility, including financial standards and criteria for income and resources. The department is proposing an exception to the insurance delay period when a parent paid more than 50% of the premium because the department understands the intent of the three month waiting period to have been to avoid substitution of coverage, also referred to as "crowd out". This proposal implements the intent of the initiative and seeks to avoid irrational results.

New exceptions (1)(h)(vi) and (vii) are being added to make HMK and HMK Plus transitions seamless and to accurately state current practice.

Targeted low income child. Amendments are proposed to accurately state current law, which is that inpatients in an "institution for mental disease" (a term from 42 CFR 457.310), employees of state government and employees of the state university system are not eligible for the HMK coverage group regardless of income level. The amendments are necessary for compliance with current federal regulations regarding CHIP and do not represent a change in practice under the HMK Act.

Income verification. Currently, the CHIP program does not require an applicant to verify reported income but Montana Medicaid does. The HMK Plan requires consistent program administration between HMK and HMK Plus coverage groups and the department decided that requiring income verification was appropriate.

Expand the time allowed for processing applications. The current rule requires a CHIP eligibility determination to be made within 30 working days. The amendment extends that period to 45 calendar days. Allowing approximately two additional weeks is necessary because of the income verification requirement.

ARM 37.79.202 and 37.79.207

The changes in these rules are necessary to comply with federal requirements for financial participation. Family members of an employee of the state's university system are not eligible for the CHIP (the HMK coverage group) group regardless of income pursuant to 42 USC 1397. A person who is a patient in an institution for mental disease on the date of initial application or any redetermination of eligibility (42 CFR 457.310(2)(ii)) is also not eligible. Both of these are federal requirements

and are not a change in current practice. The rule is being amended to correctly state current practice.

ARM 37.79.208

The department is proposing to change the days allowed for processing applications from 20 working days to 45 calendar days. This allows sufficient time to process the HMK Plan application and obtain citizenship and income verification. These changes improve program integrity and consistent administration between the HMK and HMK Plus coverage groups.

ARM 37.79.209

ARM 37.79.209 is being repealed because income verification will be required for both the HMK and HMK Plus. This change is necessary to have a uniform application process for both coverage groups. Income verification is currently required for Montana Medicaid.

ARM 37.79.301

This rule change is necessary because HMK is adding a benefit. HMK will be adding access by telephone to a nurse who will help assess symptoms and direct members to the appropriate level of care.

ARM 37.79.302

The department is proposing to strike ARM 37.79.302(3). In October, 2006 CHIP became a fully self-insured program but continued to allow for inpatient hospital benefit extension. In federal fiscal year (FFY) 2008 24 CHIP enrollees received inpatient hospitalization benefit extension. The department reviewed standard insurance industry practice and found that this coverage benefit is not a standard practice. This proposed amendment is implemented as a cost-savings measure.

ARM 37.79.303

Neurofeedback is added to the list of benefits not covered. This amendment is for clarity only and is not a change in policy. Neurofeedback is a type of biofeedback, and has never been a covered benefit.

ARM 37.79.317

The amendments to this rule are necessary for clarity. The rule changes are not intended to have substantive impact because the new language states CHIP's current practice regarding chemical dependency benefits. There is currently an annual limit of \$6,000 for medically necessary in and outpatient chemical dependency treatment. There is also a \$12,000 lifetime limit on inpatient benefits but the program will allow up to \$2,000 per year of medically necessary outpatient

treatment after the lifetime inpatient benefit has been attained. The rule as currently worded is confusing.

ARM 37.79.325

The proposed amendment will expand HMK coverage to include medically necessary hearing aids with prior authorization. Inclusion of the benefit meets a critical need for hearing impaired children and is not estimated to be costly to the program.

ARM 37.79.503

The effective date of enrollment is changed so eligible children will have HMK coverage beginning the month after the application is received in either the HMK office or an office of public assistance. Currently, children are enrolled the first of the month after their eligibility is determined. This change will reduce the time a child is without health coverage since it is the application date, rather than the eligibility determination date, which determines the enrollment date.

ARM 37.79.601

The amendment clarifies the extent of the department's authority to contract for services related to the HMK coverage group. The title of this rule was Contract for Third Party Administration. HMK does currently contract for third party administrative services but it can, and does, contract for a number of services related to HMK. For example, the department contracts with a vendor to purchase eyeglasses and also contracts with individual dentists. The department intends to contract with a nurse advice line for a 24-hour, seven days a week access to health information. The current rule gives the erroneous impression that all contracts are listed in rule, which is not correct and is not required by the Montana Administrative Procedures Act.

ARM 37.82.701

ARM 37.82.701 describes the noninstitutionalized families and children's groups covered by Medicaid. The department is proposing to amend this rule to expand eligibility for Medicaid for children through age 18 to 133% of the federal poverty level. These children will now be eligible for health care coverage through Medicaid, to be known as Healthy Montana Kids Plus (HMK Plus). There will be no resource test applied for children in HMK Plus.

I-155 set the income maximum for participation in HMK Plus at 185% of the federal poverty level and allows the department to establish lower maximum income levels to the extent necessary to maximize federal matching funds. The department considered the range of income allowed by statute and chose 133% to be consistent with the current maximum income for children age zero to six to keep siblings

together and to operate the program within the funding appropriated by the Legislature for the 2009-2011 biennium.

The rule for newborn coverage is amended as a result of the CHIPRA enactment. States can no longer require that the newborn lives with the mother to be continuously eligible through the month of their first birthday. Instead, the newborn must only be a resident of the state.

Fiscal Impact

It is estimated that that 29,978 additional enrollees will be eligible for HMK. The annual impact of this will be \$14,112,556 in FY 2010 and \$14,819,024 in state special revenue funds. The impact will be \$47,157,483 in FY 2010 and \$50,148,202 in FY 2011 in federal funds.

It is estimated 10,000 current CHIP enrollees who were not eligible for Medicaid will become eligible for the CHIP-funded/Medicaid Expansion program. These enrollees will receive the expanded benefit coverage of the HMK Plus coverage group. Cost sharing (copayments) will not be required. The provider reimbursement rate for services to these enrollees will change from the current CHIP rate to the Medicaid rate, which will result in a net decrease in provider reimbursement. There are approximately 6,000 Medicaid providers.

7. The department intends the rule amendments to be applied effective October 1, 2009. In the event the rules are amended retroactively no negative impact is anticipated.

8. 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, Montana, 59604-4210; fax (406) 444-9744; or e-mail dphhslegal@mt.gov, and must be received no later than 5:00 p.m., August 27, 2009.

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

10. 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 8 above or may be made by completing a request form at any rules hearing held by the department.

11. 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.

12. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

/s/ Geralyn Driscoll
Rule Reviewer

/s/ Laurie Lamson for
Anna Whiting Sorrell, Director
Public Health and Human Services

Certified to the Secretary of State July 20, 2009.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 10.57.412 and 10.58.527)
pertaining to mentor teachers)

TO: All Concerned Persons

1. On May 28, 2009, the Board of Public Education published MAR Notice No. 10-57-250 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 789 of the 2009 Montana Administrative Register, Issue Number 10.

2. The board has amended the above-stated rules as proposed.

3. No comments or testimony were received.

/s/ Steve Meloy
Steve Meloy
Rule Reviewer

/s/ Patty Myers
Patty Myers
Chairperson
Board of Public Education

Certified to the Secretary of State July 20, 2009.

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the adoption of NEW	)	NOTICE OF ADOPTION AND
RULE I concerning associated	)	AMENDMENT
gambling business license, NEW RULE)	
II concerning approval of variations of)	
standard bingo cards, and the)	
amendment of ARM 23.16.202,)	
23.16.401, 23.16.1245, 23.16.1716,)	
23.16.1914, 23.16.1915, 23.16.1916,)	
23.16.1916A, 23.16.2001, and)	
23.16.2602, concerning credit play,)	
card dealer licenses, card room)	
contractors license requirements,)	
sports tab game seller license,)	
distributor licenses, route operator)	
licenses, manufacturer licenses,)	
accounting system vendor licenses,)	
manufacturer of illegal gambling)	
devices license, and raffle record)	
keeping requirements)	

TO: All Concerned Persons

1. On June 11, 2009, the Department of Justice published MAR Notice No. 23-16-210, regarding the public hearing on the proposed adoption and amendment of the above-stated rules at page 912, 2009 Montana Administrative Register, Issue Number 11.

2. The Department of Justice has adopted New Rule II (23.16.2404) as proposed, and amended ARM 23.16.401, 23.16.1245, 23.16.1716, 23.16.1914, 23.16.1915, 23.16.1916, 23.16.1916A, 23.16.2001, and 23.16.2602 exactly as proposed.

3. The Department of Justice adopts the remaining rule with the following changes, stricken matter interlined, new matter underlined:

NEW RULE I (23.16.110) ASSOCIATED GAMBLING BUSINESS LICENSE

(1) through (4) remain as proposed.

(5) The provisions of this rule do not apply to ~~attorneys or accountants who are retained by licensees in their professional capacity and may have access to gambling related trade secrets, or proprietary, confidential, or tax information~~ professionals such as attorneys or accountants when they are retained in their professional capacity by licensees and may have access to gambling related trade secrets, or proprietary, confidential, or tax information. Where a gambling related business is given access to gambling related trade secrets or proprietary or

confidential information in order to produce a product or service to be made available for sale to licensees in this state, and the department requires that business possess an associated gambling business license, those requirements are provided for under separate rule.

4. The Department of Justice amends ARM 23.16.202 with the following changes, stricken matter interlined, new matter underlined:

23.16.202 CREDIT PLAY PROHIBITED (1) through (4) remain as proposed.

(5) Any merchandise or services purchased from a licensee with a credit card may be refunded or reimbursed through an adjustment to the customer's credit card account, and not by a cash refund unless, as provided in 30-14-108(4), the gift card was originally purchased for an amount in excess of \$5 and the amount remaining on the card is less than \$5.

(6) remains as proposed.

5. A public hearing was held on July 2, 2009. Written and oral comments were received from Neil Peterson, executive director, Gaming Industry Association of Montana, Inc. (GIA), relating to the proposed New Rule I, and amendment to 23.16.202 relating to credit gambling. Oral testimony was also received from Ronda Wiggers for the Montana Coin Machine Operators Association (MCMOA). A summary of those comments appear with the Department of Justice's responses.

Comment 1: Mr. Peterson commented that the proposed New Rule I, while it excludes accountants and attorneys, is not adequately narrow to exclude other professionals such as marketing firms and information service providers, as the GIA believes those businesses were not intended to constitute "associated gambling businesses." Mr. Peterson suggested expanding the list of professionals not subject to associated business licensure, and providing a separate section that excludes from licensure people who repair video gambling machines. Ms. Wiggers stated that the MCMOA concurred in these comments.

Response 1: The proposed rule amendments were drafted to conform the rules to the legislative mandate of SB 86. The new legislation defines associated gambling businesses and authorizes the department to adopt rules for licensure.

The department's proposed rule envisions two ways that a license may be issued under the provisions of the associated gambling business license statute and the proposed rule: 1) a voluntary license where a business fits the definition of an associated gambling business and requests a license, such as a video gambling machine recycler; and 2) a mandatory license where the department in consultation with industry identifies a business/function that should be licensed, such as the VGM account system manufacturers. Where the license will be mandatory, the department will adopt a separate rule. No business will be required to obtain a license except where required by separate rule. The department believes it would be unproductive and counter to this licensing scheme to attempt to identify all of the specific businesses/professions/functions that are not required to obtain licensure. The department agrees clarification is warranted, and will amend (5) of the proposed

rule to clarify that any requirement for an associated business license will be provided for under a separate rule.

In response to the GIA comment about those who repair video gambling machines, the department believes it is unnecessary and counter to the proposed licensing scheme. Only licensed manufacturers and distributors can sell VGMs and associated gambling equipment, as defined by 23-5-602, MCA to licensed operators, route operators, distributors, or manufacturers. To date, the department has not required licensure from those who provide VGM repair services as long as they did not buy or sell VGMs or associated gambling equipment. As reflected by the amendment, the department will be required to propose and adopt a new rule before it will require licensure for people or businesses providing VGM repair services.

Comment 2: Written and oral comments from Neil Peterson, GIA, addressed the proposed amendment to the rules relating to credit cards and credit gambling under 23.16.202. Mr. Peterson said the GIA strongly supports the statutory changes under SB 86, and the proposed rule amendments. Mr. Peterson noted a provision of the proposed rule amendment may conflict with 30-14-108(4), MCA, which requires the issuer or seller of gift certificates to redeem certificates for cash upon request when the original value of the certificate exceeded \$5 and the remaining value is less than \$5. The MCMOA concurs in this comment.

Response 2: The department agrees with the comments and amends (5) to provide it shall not conflict with the provisions of 30-14-108(4), MCA.

Comment 3: Ronda Wiggers for the MCMOA stated that she understood the proposed rule amendment does not prohibit the purchase of restaurant gift cards with a credit card, and she requested confirmation of that understanding. Ms. Wiggers stated that many of the Coin Ops' clients sell restaurant gift cards, and they wanted assurances they will still be able to sell the gift cards to customers who wish to make the purchase with a credit card.

Response 3: The department confirms that the rule still allows restaurants to sell gift cards and accept credit cards for their purchase. Except as limited by 30-14-108(4), MCA, the rule as amended prohibits businesses from redeeming gift cards to provide cash for gambling.

By: /s/ Steve Bullock
STEVE BULLOCK
Attorney General
Department of Justice

/s/ J. Stuart Segrest
J. STUART SEGREST
Rule Reviewer

Certified to the Secretary of State July 20, 2009.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 42.20.515 relating to taxable)
value of newly taxable property)

TO: All Concerned Persons

1. On June 11, 2009, the department published MAR Notice No. 42-2-807 regarding the proposed amendment of the above-stated rules at page 933 of the 2009 Montana Administrative Register, issue no. 11.

2. A public hearing was held on July 1, 2009, to consider the proposed amendment. Oral testimony was received at the hearing. No written testimony was received following the hearing. Oral testimony is summarized as follows along with the response of the department:

COMMENT NO. 1: Harold Blattie of Montana Association of Counties (MACO) stated that the rules appear to reflect the intent of the statutory change made by the 2009 Legislature.

RESPONSE NO. 1: The department thanks Mr. Blattie for his comments and participation in this important process.

COMMENT NO. 2: Mary Whittinghill, Montana Taxpayer Association, stated she would like to have the department show her the phase-in process for more than one year for the class 4 property. She asked what the mill levy effect would be.

RESPONSE NO. 2: The department has committed to calculate the newly taxable class 4 property using both phase-in value and the market value at the county level. This will allow the department's Tax, Policy and Research Office to track the difference between the two methods over the reappraisal cycle. The effects on the mill levies will not be known until the end of the reappraisal cycle. The department will evaluate, but cannot commit to a specific mill levy analysis at this time.

3. The department amends ARM 42.20.515 as proposed.

4. An electronic copy of this Adoption Notice is available through the department's site on the World Wide Web at www.mt.gov/revenue, under "for your reference"; "DOR administrative rules"; and "upcoming events and proposed rule changes." The department strives to make the electronic copy of this Adoption Notice conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although

the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

/s/ Cleo Anderson _____
CLEO ANDERSON
Rule Reviewer

/s/ Dan R. Bucks _____
DAN R. BUCKS
Director of Revenue

Certified to Secretary of State July 20, 2009

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 March 31, 2009. This table includes those rules adopted during the period April 1, 2009, through June 30, 2009, 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 March 31, 2009, 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 2008 and 2009 Montana Administrative Register.

To aid the user, the Accumulative Table includes rulemaking actions of such entities as boards and commissions listed separately under their appropriate title number.

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BOARD APPOINTEES AND VACANCIES

Section 2-15-108, MCA, passed by the 1991 Legislature, directed that all appointing authorities of all appointive boards, commissions, committees, and councils of state government take positive action to attain gender balance and proportional representation of minority residents to the greatest extent possible.

One directive of 2-15-108, MCA, is that the Secretary of State publish monthly in the ***Montana Administrative Register*** a list of appointees and upcoming or current vacancies on those boards and councils.

In this issue, appointments effective in June 2009 appear. Vacancies scheduled to appear from August 1, 2009, through October 31, 2009, are listed, as are current vacancies due to resignations or other reasons. Individuals interested in serving on a board should refer to the bill that created the board for details about the number of members to be appointed and necessary qualifications.

Each month, the previous month's appointees are printed, and current and upcoming vacancies for the next three months are published.

IMPORTANT

Membership on boards and commissions changes constantly. The following lists are current as of July 1, 2009.

For the most up-to-date information of the status of membership, or for more detailed information on the qualifications and requirements to serve on a board, contact the appointing authority.

BOARD AND COUNCIL APPOINTEES FROM JUNE, 2009

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Board of Environmental Review (Environmental Quality)			
Mr. Larry Anderson Great Falls Qualifications (if required): attorney	Governor	Rossbach	6/24/2009 1/1/2013
Commission on Practice of the Supreme Court (Supreme Court)			
Mr. Jon Oldenburg Lewistown Qualifications (if required): none specified	elected	not listed	6/25/2009 6/25/2013
Correctional Enterprises Advisory Council (Corrections)			
Commissioner Joe Brenneman Kalispell Qualifications (if required): public representative	Governor	Monforton	6/11/2009 10/17/2009
Interagency Disabilities Advisory Council (Administration)			
Mr. Jim Brown Billings Qualifications (if required): public representative	Governor	Scruggs	6/11/2009 4/25/2010
Ms. Robin Ray Missoula Qualifications (if required): disabilities community	Governor	Herak	6/11/2009 4/25/2010
Montana Council on Developmental Disabilities (Commerce)			
Sen. Carol Williams Missoula Qualifications (if required): legislator	Governor	reappointed	6/11/2009 1/1/2010

BOARD AND COUNCIL APPOINTEES FROM JUNE, 2009

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Southwestern Montana State Veterans' Home Site Selection Committee (Public Health and Human Services)			
Rep. Robert "Bob" Pavlovich Butte	Governor	not listed	6/1/2009 4/1/2010
Qualifications (if required): resident of Silver Bow County and honorably discharged veteran			
Vocational Rehabilitation Council (Public Health and Human Services)			
Mr. Dan Burke Missoula	Governor	reappointed	6/19/2009 10/1/2011
Qualifications (if required): representative of the disabilities community			
Ms. Jacqueline Colombe Basin	Governor	reappointed	6/19/2009 10/1/2011
Qualifications (if required): representative of the disabilities community			
Ms. Faith Dawson Missoula	Governor	reappointed	6/19/2009 10/1/2011
Qualifications (if required): representative of the disabilities community			
Ms. Dalayna Faught Missoula	Governor	reappointed	6/19/2009 10/1/2011
Qualifications (if required): vocational rehabilitation counselor			
Ms. Maureen Kenneally Butte	Governor	reappointed	6/19/2009 10/1/2011
Qualifications (if required): representative of the State Workforce Investment Board			

BOARD AND COUNCIL APPOINTEES FROM JUNE, 2009

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Vocational Rehabilitation Council (Public Health and Human Services) cont.			
Ms. Sharla LaFountain Lewistown Qualifications (if required):	Governor	reappointed	6/19/2009 10/1/2011
representative of the disabilities community			
Ms. Lois McElravy Missoula Qualifications (if required):	Governor	Pearson	6/19/2009 10/1/2011
representative of the disabilities council			
Mr. Santos Perez Pablo Qualifications (if required):	Governor	Bear	6/19/2009 10/1/2011
section 121 representative			
Ms. Michelle Williamson Pablo Qualifications (if required):	Governor	Pearson	6/19/2009 10/1/2011
representative of the disabilities council			

VACANCIES ON BOARDS AND COUNCILS -- AUGUST 1, 2009 THROUGH OCTOBER 31, 2009

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<p>Alternative Health Care Board (Labor and Industry) Ms. Molly Danison, Missoula Qualifications (if required): midwife</p>	Governor	9/1/2009
<p>Board of Athletic Trainers (Labor and Industry) Mr. George Harper, Helena Qualifications (if required): public representative</p>	Governor	10/1/2009
<p>Mr. Shawn Ruff, Great Falls Qualifications (if required): athletic trainer in a secondary school</p>	Governor	10/1/2009
<p>Board of Medical Examiners (Labor and Industry) Ms. Carole Erickson, Missoula Qualifications (if required): public representative</p>	Governor	9/1/2009
<p>Mr. Dwight Thompson, Harlowton Qualifications (if required): licensed physician assistant</p>	Governor	9/1/2009
<p>Dr. Kris Spanjian, Billings Qualifications (if required): doctor of medicine</p>	Governor	9/1/2009
<p>Ms. Patricia Bollinger, Helena Qualifications (if required): nutritionist</p>	Governor	9/1/2009
<p>Mr. Patrick Boylan, Corvallis Qualifications (if required): public representative</p>	Governor	9/1/2009

VACANCIES ON BOARDS AND COUNCILS -- AUGUST 1, 2009 THROUGH OCTOBER 31, 2009

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<p>Board of Outfitters (Governor) Mr. Shawn McNeely, Bozeman Qualifications (if required): fishing and hunting outfitter</p>	Governor	10/1/2009
<p>Mr. Lee Kinsey, Livingston Qualifications (if required): fishing outfitter</p>	Governor	10/1/2009
<p>Board of Private Security (Labor and Industry) Mr. Daniel Taylor, Glasgow Qualifications (if required): contract security company representative</p>	Governor	8/1/2009
<p>Board of Psychologists (Labor and Industry) Dr. George Watson, Bozeman Qualifications (if required): psychologist in private practice</p>	Governor	9/1/2009
<p>Board of Veterans' Affairs (Military Affairs) Mr. Keith Heavyrunner, Browning Qualifications (if required): Veteran and Resident of Region 3</p>	Governor	8/1/2009
<p>Board of Veterans' Affairs (Governor) Mr. Byron Erickson, Helena Qualifications (if required): U.S. Department of Labor representative</p>	Governor	8/1/2009
<p>Burial Preservation Board (Administration) Mr. Carl Fourstar, Poplar Qualifications (if required): representative of the Assiniboine-Sioux Tribes (Fort Peck)</p>	Governor	8/22/2009

VACANCIES ON BOARDS AND COUNCILS -- AUGUST 1, 2009 THROUGH OCTOBER 31, 2009

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Burial Preservation Board (Administration) cont. Dr. Randall Skelton, Missoula Qualifications (if required): physical anthropologist	Governor	8/22/2009
Mr. Steve Platt, Helena Qualifications (if required): representative of the State Historic Preservation Office	Governor	8/22/2009
Ms. Sara Young, Lame Deer Qualifications (if required): public representative	Governor	8/22/2009
Mr. Reuben Mathias, Pablo Qualifications (if required): representative of the Salish-Kootenai Tribes (Flathead)	Governor	8/22/2009
Ms. Katherine Rink, East Glacier Qualifications (if required): representative of the Blackfeet Tribe	Governor	8/22/2009
Correctional Enterprises Advisory Council (Corrections) Ms. Peggy Grimes, Missoula Qualifications (if required): public representative	Governor	10/17/2009
Sen. Kim Gillan, Billings Qualifications (if required): public representative	Governor	10/17/2009
Rep. Mike Jopek, Whitefish Qualifications (if required): public representative	Governor	10/17/2009

VACANCIES ON BOARDS AND COUNCILS -- AUGUST 1, 2009 THROUGH OCTOBER 31, 2009

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Correctional Enterprises Advisory Council (Corrections) cont. Mr. Larry Mayo, Butte Qualifications (if required): public representative	Governor	10/17/2009
Dr. David Yarlott, Crow Agency Qualifications (if required): public representative	Governor	10/17/2009
Mr. Gerald Bender, Deer Lodge Qualifications (if required): public representative	Governor	10/17/2009
Ms. Cheryl Moore-Gough, Bozeman Qualifications (if required): public representative	Governor	10/17/2009
Mr. Mike Monforton, Bozeman Qualifications (if required): public representative	Governor	10/17/2009
Mr. Brian Sheridan, Missoula Qualifications (if required): public representative	Governor	10/17/2009
Commissioner Joe Brenneman, Kalispell Qualifications (if required): public representative	Governor	10/17/2009
Corrections Advisory Council (Corrections) Sen. Jim Shockley, Victor Qualifications (if required): public representative	Governor	10/17/2009

VACANCIES ON BOARDS AND COUNCILS -- AUGUST 1, 2009 THROUGH OCTOBER 31, 2009

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Corrections Advisory Council (Corrections) cont. Lt. Governor John Bohlinger, Helena Qualifications (if required): public representative	Governor	10/17/2009
Sen. Trudi Schmidt, Great Falls Qualifications (if required): public representative	Governor	10/17/2009
Sen. Steve Gallus, Butte Qualifications (if required): public representative	Governor	10/17/2009
Judge Kurt Krueger, Butte Qualifications (if required): public representative	Governor	10/17/2009
Rep. Tim Callahan, Great Falls Qualifications (if required): public representative	Governor	10/17/2009
Commissioner Allan Underdal, Shelby Qualifications (if required): public representative	Governor	10/17/2009
Mr. Bob Peake, Helena Qualifications (if required): public representative	Governor	10/17/2009
Ms. Emily Matt Salois, Missoula Qualifications (if required): public representative	Governor	10/17/2009
Sheriff Dave Castle, Great Falls Qualifications (if required): public representative	Governor	10/17/2009

VACANCIES ON BOARDS AND COUNCILS -- AUGUST 1, 2009 THROUGH OCTOBER 31, 2009

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<p>Corrections Advisory Council (Corrections) cont. County Attorney George Corn, Hamilton Qualifications (if required): public representative</p>	Governor	10/17/2009
<p>Mr. Kevin Madman, Browning Qualifications (if required): public representative</p>	Governor	10/17/2009
<p>Mr. Channis Whiteman, Crow Agency Qualifications (if required): public representative</p>	Governor	10/17/2009
<p>Ms. Kris Copenhaver, Billings Qualifications (if required): public representative</p>	Governor	10/17/2009
<p>Flathead Basin Commission (Natural Resources and Conservation) Ms. Jan Metzmaker, Whitefish Qualifications (if required): public representative</p>	Governor	10/1/2009
<p>Ms. Margaret Sogard, Bigfork Qualifications (if required): public representative</p>	Governor	10/1/2009
<p>Mr. Thompson R. Smith, Charlo Qualifications (if required): public representative</p>	Governor	10/1/2009
<p>Governor's HIV/AIDS Advisory Council (Public Health and Human Services) Mr. Frank Gary, Butte Qualifications (if required): public representative</p>	Governor	8/29/2009

VACANCIES ON BOARDS AND COUNCILS -- AUGUST 1, 2009 THROUGH OCTOBER 31, 2009

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Governor's HIV/AIDS Advisory Council (Public Health and Human Services) cont.		
Mr. David Herrera, Missoula Qualifications (if required): public representative	Governor	8/29/2009
Ms. Mary Jane Nealon, Missoula Qualifications (if required): public representative	Governor	8/29/2009
Ms. Kathy Hall, Billings Qualifications (if required): public representative	Governor	8/29/2009
Ms. Wendy Doely, Kalispell Qualifications (if required): public representative	Governor	8/29/2009
Mr. Andrew Laue, Missoula Qualifications (if required): public representative	Governor	8/29/2009
Mr. Rick Holman, Butte Qualifications (if required): public representative	Governor	8/29/2009
Ms. Kelly Parsley, Helena Qualifications (if required): public representative	Governor	8/29/2009
Ms. Vicki Peterson, Pablo Qualifications (if required): public representative	Governor	8/29/2009
Mr. Casey Rudd, Belgrade Qualifications (if required): public representative	Governor	8/29/2009

VACANCIES ON BOARDS AND COUNCILS -- AUGUST 1, 2009 THROUGH OCTOBER 31, 2009

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Governor's HIV/AIDS Advisory Council (Public Health and Human Services) cont. Mr. Walter White Tail Feather, Poplar Qualifications (if required): public representative	Governor	8/29/2009
Ms. Donna Davis, Helena Qualifications (if required): public representative	Governor	8/29/2009
Mr. Jamee Greer, Missoula Qualifications (if required): public representative	Governor	8/29/2009
Historical Preservation Review Board (Historical Society) Mr. Donald Matlock, Hamilton Qualifications (if required): public representative	Governor	10/1/2009
Historical Records Advisory Board (Historical Society) Ms. Jodi L. Allison-Bunnell, Missoula Qualifications (if required): public representative	Governor	8/29/2009
Mr. Kim Allen Scott, Bozeman Qualifications (if required): public representative	Governor	8/29/2009
Ms. Peggy Gow, Deer Lodge Qualifications (if required): public representative	Governor	8/29/2009
Ms. Samantha K. Pierson, Libby Qualifications (if required): public representative	Governor	8/29/2009

VACANCIES ON BOARDS AND COUNCILS -- AUGUST 1, 2009 THROUGH OCTOBER 31, 2009

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Historical Records Advisory Board (Historical Society) cont. Ms. Donna McCrea, Missoula Qualifications (if required): public representative	Governor	8/29/2009
Ms. Jodie Foley, Helena Qualifications (if required): State Archivist	Governor	8/29/2009
Ms. Faith Bad Bear-Bartlett, Hardin Qualifications (if required): public representative	Governor	8/29/2009
Mr. Jordan Goffin, Missoula Qualifications (if required): public representative	Governor	8/29/2009
Montana Noxious Weed Seed Free Forage Advisory Council (Agriculture) Mr. John Kelly, Great Falls Qualifications (if required): livestock/agriculture industry member	Director	9/17/2009
Mr. James Melin, Livingston Qualifications (if required): forage producer	Director	9/17/2009
Montana Wheat and Barley Committee (Agriculture) Mr. Brian Kaae, Dagmar Qualifications (if required): resident of District 1	Governor	8/20/2009
Mr .Melvin Goffena, Wilsall Qualifications (if required): resident of District 6	Governor	8/20/2009

VACANCIES ON BOARDS AND COUNCILS -- AUGUST 1, 2009 THROUGH OCTOBER 31, 2009

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<p>Montana Wheat and Barley Committee (Agriculture) cont. Ms. Kim Holzer, Stanford Qualifications (if required): resident of District 5</p>	Governor	8/20/2009
<p>Private Security Patrol Officers and Investigators (Labor and Industry) Ms. Linda Sanem, Bozeman Qualifications (if required): licensed private investigator</p>	Governor	8/1/2009
<p>Mr. Leo Dutton, Helena Qualifications (if required): county sheriff's office representative</p>	Governor	8/1/2009
<p>Mr. Shad Foster, Butte Qualifications (if required): proprietary security organization representative</p>	Governor	8/1/2009
<p>Lt. Bryan Lockerby, Great Falls Qualifications (if required): city police department representative</p>	Governor	8/1/2009
<p>Vocational Rehabilitation Council (Public Health and Human Services) Ms. Ruth Straley, Helena Qualifications (if required): business representative</p>	Governor	10/1/2009
<p>Mr. Ronald Mills, Miles City Qualifications (if required): representative of the disabilities community</p>	Governor	10/1/2009
<p>Ms. Denise Corrao, Miles City Qualifications (if required): representative of the disabilities community</p>	Governor	10/1/2009

VACANCIES ON BOARDS AND COUNCILS -- AUGUST 1, 2009 THROUGH OCTOBER 31, 2009

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Vocational Rehabilitation Council (Public Health and Human Services) cont. Ms. Andrea Falcon, Kalispell Qualifications (if required): business representative	Governor	10/1/2009
Youth Justice Council (Justice) Rep. Rosalie Buzzas, Missoula Qualifications (if required): competency in addressing problems facing youth	Governor	9/7/2009
Mr. Dennis Dronen, Belt Qualifications (if required): juvenile probation officer	Governor	9/7/2009
Judge Pedro Hernandez, Billings Qualifications (if required): representative of the local court system	Governor	9/7/2009
Mr. Ted Lechner, Billings Qualifications (if required): competency in addressing problems facing youth	Governor	9/7/2009
Ms. Katie Yother, Bozeman Qualifications (if required): youth representative	Governor	9/7/2009
Ms. Joy Mariska, Billings Qualifications (if required): competency in addressing problems facing youth	Governor	9/7/2009
Ms. Jennifer Kistler, Missoula Qualifications (if required): youth representative	Governor	9/7/2009
Mr. Dale Four Bear, Poplar Qualifications (if required): competency in addressing problems facing youth	Governor	9/7/2009

VACANCIES ON BOARDS AND COUNCILS -- AUGUST 1, 2009 THROUGH OCTOBER 31, 2009

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Youth Justice Council (Justice) cont. Mayor Pamela B. Kennedy, Kalispell Qualifications (if required): local elected official	Governor	9/7/2009
Father Jerry Lowney, Helena Qualifications (if required): competency in addressing problems facing youth	Governor	9/7/2009
Mr. Wayne Stanford, Stevensville Qualifications (if required): competency in addressing problems facing youth	Governor	9/7/2009
Ms. Teri Young, Miles City Qualifications (if required): competency in addressing problems facing youth	Governor	9/7/2009
Ms. Penny Kipp, Pablo Qualifications (if required): competency in addressing problems facing youth	Governor	9/7/2009
Ms. Kim Miller, Virginia City Qualifications (if required): competency in addressing problems facing youth	Governor	9/7/2009
Ms. Donna Falls Down, Hardin Qualifications (if required): tribal court system representative	Governor	9/7/2009
Ms. Chantelle Gournay, Helena Qualifications (if required): youth representative	Governor	9/7/2009
Ms. Tara Houde, Missoula Qualifications (if required): youth representative	Governor	9/7/2009