ISSUE NO. 6

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 The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

RULE ADOPTION SECTION

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

In the matter of the amendment of ARM 24.216.402 fee schedule, 24.216.501 applications, 24.216.502 minimum licensure standards, 24.216.503 examination, 24.216.2102 continuing education, amendment and transfer of 24.216.2103 sanitarian-in-training, and the adoption of NEW RULE I inactive status licensure	))))))))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT, AMENDMENT AND TRANSFER, AND ADOPTION

TO: All Concerned Persons

1. On April 14, 2011, at 10:00 a.m., a public hearing will be held in room B-07, 301 South Park Avenue, Helena, Montana, to consider the proposed amendment, amendment and transfer, and adoption 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 Sanitarians (board) no later than 5:00 p.m., on April 8, 2011, to advise us of the nature of the accommodation that you need. Please contact Susan Wevley, Board of Sanitarians, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2348; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2309; e-mail dlibsdsan@mt.gov.

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

24.216.402 FEE SCHEDULE

(1) through (4) remain the same.

(5) Inactive renewal 90

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

(7) Sanitarian-in-training (NEHA registered) application fee 100

(6) through (9) remain the same, but are renumbered (8) through (11).

AUTH: 37-1-134, 37-40-203, MCA
IMP: 37-1-134, 37-1-141, 37-40-301, 37-40-302, MCA

REASON: The board is proposing New Rule I to establish inactive licensure status for sanitarians. It is reasonably necessary to set a reduced fee for inactive license renewal, as board staff will not monitor any continuing education requirements for

them. The board estimates that 20 licensees will be affected by the new fee, and the board's annual revenue will be reduced by $1,800.

The board is adding (7) to set a reduced sanitarian-in-training application fee for National Environmental Health Association (NEHA) registered applicants. Following amendment of ARM 24.216.502, the board concluded a lesser fee is appropriate since NEHA-registered applicants will only provide proof of a general microbiology class, while other applicants must submit a supervision plan. The board estimates that approximately two individuals will be affected by this new fee, with a reduction in overall annual revenue of $200.

24.216.501 APPLICATIONS (1) An application for original license, renewal, examination, or reinstatement must be made on a form provided by the board and completed and signed by the applicant~~, with the signature acknowledged before a notary public~~.

(2) remains the same.

~~(3) The board shall require the applicant to submit a recent, passport-type photograph of the applicant.~~

~~(4)~~ (3) The board shall review ~~fully-completed~~ complete applications for compliance with board law and rules. The board may request additional information or clarification of information provided in the application as it deems reasonably necessary. Incomplete applications may be returned to the applicant with a statement regarding incomplete portions.

~~(5)~~ (4) The applicant shall correct any deficiencies ~~and resubmit the application~~ as requested. Failure to ~~resubmit the application~~ correct any deficiencies within 60 days shall be treated as a voluntary withdrawal of the application. After voluntary withdrawal, an applicant will be required to submit an entirely new application to begin the process again.

~~(6) The board shall notify the applicant in writing of the results of the evaluation of the application and schedule the applicant to sit for the examination within 30 days of the approval date.~~

~~(7)~~ (5) All requests for reasonable accommodations under the Americans with Disabilities Act of 1990, as 42 USC section 12101, et seq., with regard to a board-administered licensing examination, must be made on forms provided by the board and submitted with the application prior to any application deadline set by the board.

AUTH: 37-40-203, MCA
IMP: 37-40-301, 37-40-302, MCA

REASON: The board determined it is reasonably necessary to amend (1) and no longer require notary acknowledgment of an applicant's signature, as the applicant's identity is verified through other methods. The board is also eliminating the unnecessary requirement for a passport photograph in (3) to reduce nonelectronic storage costs and because identity is already verified. The board concluded that having duplicate applications is unnecessarily redundant and increases storage costs, and is amending (5) so applicants will not have to resubmit a full application when correcting deficiencies. To align board processes with those of other

department boards, the board is deleting (6). This amendment will facilitate electronic notification and acknowledges that some circumstances prevent exam scheduling within 30 days.

24.216.502 MINIMUM STANDARDS FOR ~~LICENSURE~~ SANITARIANS AND SANITARIANS-IN-TRAINING (1) The board may accept graduation from an accredited college or university with a bachelor's degree, and including a minimum of 45 quarter or 30 semester hours in the physical and biological sciences, including courses in chemistry, ~~microbiology, and~~ biology, and at least one general microbiology course as an equivalent qualification of a bachelor's degree in environmental health as required by 37-40-302, MCA. "General microbiology course" means an accredited course that focuses on the basic concepts of microbiology and the activities of bacteria, viruses, and other microorganisms, and their impact on humans. Courses that focus primarily on cellular biochemistry, cellular genetics, and intracellular functions are not general microbiology courses for the purpose of this rule.

~~(2) A holder of current National Environmental Health Association (NEHA) registration is qualified to be registered as a sanitarian in the state of Montana.~~

(2) A person meeting the minimum standards for licensure, with the exception of approved microbiology credits, may be approved as a sanitarian-in-training, but must satisfactorily complete the microbiology course during the one-year sanitarian-in-training permit period provided for in 37-40-101(6), MCA.

(3) A holder of a current National Environmental Health Association (NEHA) registration, who also has not completed a general microbiology course, is qualified to be a sanitarian-in-training. A holder of a current NEHA registration, who has taken the required general microbiology course, is qualified to be registered as a sanitarian in the state of Montana.

AUTH: 37-1-131, 37-40-203, MCA
IMP: 37-40-302, MCA

REASON: The board determined it is reasonably necessary to amend (1) to further specify the microbiology course required for equivalency to a bachelor's degree in environmental health under 37-40-302, MCA. Although microbiology is currently required for equivalency, the board is clarifying the course content now to address applicant confusion and ensure adequate education for alternate degree applicants.

The board is adding new (2) to allow applicants without the required general microbiology course to complete a course during the sanitarians-in-training permit period, and clarify licensure requirements for NEHA-registered applicants in new (3). Noting that most applicants are missing the general microbiology course, the board concluded that sanitarians-in-training may complete the microbiology course when they are supervised by registered sanitarians during their permit period. Having concluded that microbiology is required for environmental health degree equivalency, and noting that NEHA registration no longer requires a general microbiology class, the board is specifying in (3) that NEHA certificate holders must also complete a general microbiology course. Further, NEHA certificate holders

without the microbiology course qualify as sanitarians-in-training and may complete the course during the supervised permit period.

24.216.503 EXAMINATION (1) Upon approval of the application set forth in ARM 24.216.501 ~~or~~ and ~~24.216.2103~~ 24.216.506, the applicant shall submit an examination fee and make an appointment with the board office to sit for the written examination within 30 days of the application approval, or once the applicant receives an admissions letter from the board office, the applicant shall submit the examination fee and schedule a time to sit for the written examination with the vendor testing service within 30 days of the application approval. Examination candidates must present photo identification prior to being admitted to the examination.

(2) through (4) remain the same.

(5) If~~,~~ after one year of receipt of an application, an applicant has not passed the examination, a new application and application fee will be required to sit for the examination.

(6) remains the same.

AUTH: 37-1-131, 37-40-203, MCA
IMP: 37-1-131, 37-40-302, MCA

REASON: The board is amending (1) to reflect the current procedure in which some examination candidates elect to take the examination from an approved vendor, rather than directly from the board. The board is also updating this rule to reflect a transferred rule elsewhere in this notice.

24.216.2102 CONTINUING EDUCATION (1) Continuing education is that education obtained after registration of a sanitarian, which is in addition to the educational requirements set by statute for licensure. Continuing education must be related to the practice of the profession of a sanitarian.

(2) A licensee must affirm on the licensee's license renewal form that the licensee has obtained a minimum of 15 clock hours (50 to 60 minutes per hour) or 1.5 continuing education units with the licensee's renewal form each odd-numbered year.

(3) and (4) remain the same.

(5) Credit for any continuing education courses, workshops, seminars, educational conferences, and other programs is subject to approval by the board.

(6) remains the same.

(a) Workshops, seminars, and educational conferences sponsored by the National Environmental Health Association, the Montana Environmental Health Association, the Montana Department of Environmental Quality, and the Montana Department of Public Health and Human Services; and

(b) remains the same.

(7) Continuing education may be obtained by correspondence course work through the National Environmental Health Association, Centers for Disease Control, Food and Drug Administration, and other organizations, subject to approval by the board.

(8) Any continuing education which has been obtained in another state that meets the continuing education requirements of that state may be approved for credit by the board.

~~(9) The board may approve a waiver of the continuing education requirement of a registered sanitarian who has retired from active practice of the profession and submits a written request to the board before the renewal date.~~

AUTH: 37-1-319, 37-40-203, MCA
IMP: 37-1-306, 37-40-203, MCA

REASON: The board is amending (6) to reflect the board's decision that Montana Department of Environmental Quality workshops, seminars, and conferences are important to public safety, and therefore do not need special board approval. This amendment will also simplify the continuing education (CE) approval process. The board is deleting the provision for board waiver of CE for retired sanitarians in (9), as there is no retired license status. Authority and implementation cites are being amended to accurately reflect all statutes implemented through the rule and provide the complete sources of the board's rulemaking authority.

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

24.216.2103 (24.216.506) SANITARIAN-IN-TRAINING (1) On a form prescribed by the board, an applicant shall apply for and the board may issue a sanitarian-in-training ~~exemption~~ permit to an applicant who meets the minimum educational requirements for a registered sanitarian under 37-40-301 and 37-40-302, MCA, and ARM 24.216.502. A person who has not completed an approved general microbiology course, but who otherwise meets the minimum standards for licensure, may be approved as a sanitarian-in-training.

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

(b) A sanitarian-in-training who satisfies the requirements of ARM 24.216.502(3):

(i) shall inform the board regarding his or her participation in a general microbiology course; and

(ii) is not required to complete a separate plan of supervision if the sanitarian-in-training submits the information required in (2)(b)(i).

(3) "Supervision," for purposes of this rule, means the availability of a licensed sanitarian for purposes of immediate communication and consultation on a weekly and as-needed basis as identified in the approved plan of supervision.

(4) A sanitarian-in-training ~~exemption~~ permit is valid for a period of one year. ~~While practicing under a valid sanitarian-in-training exemption, the sanitarian-in-training is eligible to sit for the examination.~~ A sanitarian-in-training who meets all the minimum standards for licensure is eligible to take the examination. There is no limit to the number of times a sanitarian-in-training may take the examination during the one-year exemption period.

AUTH: 37-1-131, ~~37-1-319,~~ 37-40-203, MCA

IMP: 37-1-131, ~~37-1-305,~~ 37-40-101, 37-40-203, ~~37-40-301, 37-40-302,~~ MCA

REASON: The board is amending this rule to align with amendments to ARM 24.216.502 and address sanitarian-in-training licensure for applicants with current NEHA registration, but without a general microbiology course. These applicants will be required to provide proof of participation in a general microbiology course, but will not need a plan of supervision. The board is amending (4) to clarify that sanitarians-in-training must meet all minimum licensure standards to be eligible to take the exam to answer questions and diminish confusion among applicants.

The board is replacing "exemption" with "permit" throughout the rule to align with statutory terminology. The board is transferring the rule to properly place the rule in subchapter five with the other licensing rules. Authority and implementation cites are being amended to accurately reflect all statutes implemented through the rule and provide the complete sources of the board's rulemaking authority.

5. The proposed new rule provides as follows:

NEW RULE I INACTIVE STATUS AND CONVERSION FROM INACTIVE TO ACTIVE STATUS (1) A licensee may place the license on inactive status by either indicating on the renewal form or by informing the board office, in writing, that an inactive status license is desired. It is the sole responsibility of the inactive licensee to keep the board informed as to any change of address during the period of time the license remains on inactive status. Inactive licensees must pay the renewal fee annually to maintain license status.

(2) A licensee may not practice as a sanitarian in the state of Montana while the license is on inactive status.

(3) To convert an inactive status license to active status, an applicant shall complete an application and must:

(a) signify to the board, in writing, that upon issuance of the active license, the applicant intends to be an active practitioner in the state of Montana; and

(b) present satisfactory evidence that the applicant has attended 15 hours of continuing education within the last two years prior to reactivation, which comply with the continuing education rules of the board.

AUTH: 37-1-319, 37-40-203, MCA
IMP: 37-1-319, MCA

REASON: The board determined it is reasonably necessary to establish an inactive licensure status for licensees not actively working as sanitarians or those working outside Montana. The board notes that a number of licensees would like to retain licensure, but are currently considering retirement or not actively working in the state. To convert back to active status, licensees must notify the board in writing and prove 15 hours of continuing education within the last two years, which the board concluded will ensure adequate public protection.

6. 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 Sanitarians, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2309, or by e-mail to dlibsdsan@mt.gov, and must be received no later than 5:00 p.m., April 22, 2011.

7. 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.sanitarian.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.

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, 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 Sanitarians, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; faxed to the office at (406) 841-2309; e-mailed to dlibsdsan@mt.gov; or made by completing a request form at any rules hearing held by the agency.

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

10. Don Harris, attorney, has been designated to preside over and conduct this hearing.

BOARD OF SANITARIANS
JIM ZABROCKI, RS, 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 March 14, 2011

BEFORE THE BOARD OF VETERINARY MEDICINE
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of ARM 24.225.401 fees, 24.225.503 examination application requirements, 24.225.504 examination for licensure, 24.225.907 board-approved training program criteria, 24.225.910 certified euthanasia technician test criteria, and 24.225.921 certified euthanasia agency inspection criteria	)))))))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On April 18, 2011, at 10:30 a.m., a public hearing will be held in room B-07, 301 South Park Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Veterinary Medicine (board) no later than 5:00 p.m., on April 15, 2011, to advise us of the nature of the accommodation that you need. Please contact Cheryl Brandt, Board of Veterinary Medicine, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2394; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail dlibsdvet@mt.gov.

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

24.225.401 FEE SCHEDULE

(1) remains the same.	
(a) Renewal of license	$ ~~65~~ 110
(b) and (c) remain the same.	
(d) Temporary permit	~~50~~ 75
(2) remains the same.	
(a) Application ~~for examination~~	~~450~~ 100
(b) Examination	450
~~(b)~~ (c) Renewal of certification	~~65~~ 110
(3) and (3)(a) remain the same.	
(b) Technician renewal	~~70~~ 110
(c) remains the same.	
(d) Agency renewal	~~125~~ 195

(e) through (5) remain the same.

AUTH: 37-1-134, 37-18-202, 37-18-603, MCA
IMP: 37-1-134, 37-1-141, 37-1-304, 37-1-305, 37-18-302, 37-18-603, MCA

REASON: Section 37-1-134, MCA, requires all professional and occupational licensing boards to set and maintain fees commensurate with associated costs. The board is amending this rule by raising certain fees to meet the expected costs of a new division computer database, the scanning and electronic storage of all licensing files, and an overall increase in board staff workload. In providing administrative services to the board, the Department of Labor and Industry (department) has determined that unless the licensure fees are increased as proposed, the board will have a negative cash balance and shortage of operating funds in FY 2012. The board estimates that the proposed fee changes will affect approximately 1086 licensees and examinees and result in a $48,995 increase in annual board revenue.

The board is amending (2)(a) to separate the examination application fee for embryo transfer technicians from the cost of the examination itself. When a candidate fails and retakes the exam, the cost of the examination remains static. The board concluded that the cost to process applications should not be combined with the examination fee, because the application remains open while the candidate pays for and retakes the examination. Currently, the board is not compensated for these application processing costs.

24.225.503 EXAMINATION APPLICATION REQUIREMENTS

(1) Applicants for licensure by examination in the state of Montana shall submit a completed application with the proper fee and supporting documents to the board office. ~~Applicants for the North American Veterinary Licensing Examination (NAVLE) wishing to sit as a Montana candidate shall submit the Montana state licensure application to the board no later than August 1 for the fall NAVLE administration or January 3 for the spring NAVLE administration. Montana NAVLE candidates shall submit the NAVLE application and fee directly to the National Board of Veterinary Medical Examiners.~~

(2) Supporting documents for the Montana state licensure application must include:

(a) and (i) remain the same.

(b) North American Veterinary Licensing Examination (NAVLE) score received directly from the official score reporting agency. NAVLE candidates shall submit the NAVLE application and fee directly to the National Board of Veterinary Medical Examiners (NBVME);

(b) and (c) remain the same, but are renumbered (c) and (d).

~~(d)~~ (e) the candidate's work history of all ~~employment~~ concurrent ~~as well as~~ and consecutive employment, starting at the date of application and working back to graduation; and

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

(a) pass the NAVLE at or above the designated passing standard established by the national examination entity as approved by the board within 62 months of the application date; and

(b) remains the same.

~~(3)~~ (4) Foreign veterinary school graduates from a school not accredited by the AVMA Council on Education shall either have completed the requirements of the American Veterinary Medical Association's Education Commission for Foreign Veterinary Graduates (ECFVG), as evidenced by a copy of the ECFVG certificate, or must have completed the requirements of the Program for the Assessment of Veterinary Education Equivalence (PAVE), as evidenced by a copy of the PAVE certificate, before an application will be accepted.

(a) For specific information on the requirements of the ECFVG, contact the American Veterinary Medical Association, ECFVG, 1931 North Meacham Road, Suite 100, Schaumburg, IL 60173. For specific information on the requirements of the PAVE, contact the American Association of Veterinary State Boards at ~~4106 Central~~ 380 West 22nd Street, Suite 101, Kansas City, MO ~~64111~~ 64108.

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

AUTH: 37-1-131, 37-18-202, MCA
IMP: 37-1-131, 37-18-302, MCA

REASON: The board determined it is reasonably necessary to amend (1) and remove the early submission requirement of Montana applications to the board. The National Board of Veterinary Medical Examiners recently started preapproving NAVLE applications and the board is amending this rule to align with their timelines and simplify the overall exam application process.

The board is amending (2) to clarify that the NAVLE scores must be received directly from the official score-reporting agency to ensure that scores are not tampered with in any manner. The board no longer receives any examination applications for candidates sitting for the national examination. It is reasonably necessary to amend this rule to instruct candidates on the proper process for applying for and paying for the NAVLE.

The board is amending (3)(a) to clarify that acceptable examination scores must be obtained within 62 months of the application date. This will help ensure that candidates maintain adequate veterinary skills and knowledge in the period between applying and passing the examination. Candidates who do not take or who take and do not pass the examination within the 62-month period may not be suitable for veterinary licensing. The board is also amending (4)(a) to provide the current address for the American Association of Veterinary State Boards (AAVSB).

24.225.504 EXAMINATION FOR LICENSURE (1) through (1)(b) remain the same.

(2) A candidate may not sit for the NAVLE more than five times and may not sit for the examination at a date that is later than five years after a candidate's initial attempt, unless approved by the board. Each of the final two attempts must be at least one year from the previous attempt. Any previous attempts by a candidate to pass the NAVLE, prior to the fall 2007 administration of the examination, will not count towards the five-attempt limit.

(3) remains the same.

AUTH: 37-1-131, 37-18-202, MCA
IMP: 37-1-131, 37-18-302, MCA

REASON: The board determined it is reasonably necessary to amend this rule to allow the board to grant exceptions for candidates seeking to sit for the NAVLE a sixth time or outside the five-year time limit. The board has been previously unable to consider requests from candidates who did not pass the examination once, and then pursued another graduate degree complementary to veterinary medicine. Other requests have come from candidates who experienced personal hardships such as illness or family events. The board concluded that it is reasonable for the board to have some discretion to grant limited exceptions in certain situations.

24.225.907 BOARD-APPROVED TRAINING PROGRAM CRITERIA (1) through (1)(b)(ii) remain the same.

(iii) pharmacology of approved euthanasia and restraint drugs;

(iv) through (1)(c)(iv) remain the same.

(v) number of hours; and

(vi) remains the same.

AUTH: 37-1-131, 37-18-202, 37-18-603, MCA
IMP: 37-18-603, MCA

REASON: The board is amending this rule to clarify that instruction in the pharmacology of restraint drugs is required for approved euthanasia training programs. The board recognizes that euthanasia would be inhumane without the proper use of restraint drugs, and is amending this rule to help ensure their legal and proper use, following appropriate training and examination.

24.225.910 CERTIFIED EUTHANASIA TECHNICIAN TEST CRITERIA

(1) through (1)(c) remain the same.

(d) pharmacology of sodium pentobarbital, xylazine, and acepromazine;

(e) proper dosage and injection techniques of approved euthanasia and restraint drugs;

(f) through (2) remain the same.

(3) A passing score on the practical test will be determined by the successful completion of hands-on demonstrations, which indicate that the applicant has been properly trained in procedures, which enable the applicant safely and effectively to restrain and perform humane euthanasia with restraint drugs and sodium pentobarbital. The practical examination will be graded on a pass/fail basis. The practical test shall be administered by the board-approved course provider.

(4) remains the same.

AUTH: 37-1-131, 37-18-202, 37-18-603, MCA
IMP: 37-18-603, MCA

REASON: The board is amending this rule to require that two drugs commonly used in euthanasia, xylazine and acepromazine, are included in all course tests for

training euthanasia technicians. The board is adding restraint drugs to the required test criteria, because the board recognizes that euthanasia would be inhumane without the proper use of restraint drugs, and is amending this rule to help ensure their legal and proper use, following appropriate training and examination.

24.225.921 CERTIFIED EUTHANASIA AGENCY INSPECTION CRITERIA - NOTIFICATION OF DEFICIENCIES AND CORRECTIONS (1) through (2)(a) remain the same.

(b) verification of the correct security, storage, disposal, and labeling of euthanasia and restraint drugs;

(c) verification of correct drug record-keeping;

(d) and (e) remain the same.

(3) If the inspector determines that a deficiency substantially affects the public health, safety, or welfare, or jeopardizes animals under the control of the CEA, the inspector must immediately inform law enforcement and the board, which may summarily suspend the CEA's certificate pursuant to 2-4-631, MCA, and applicable Montana law. If a less serious deficiency is found after inspection, it must be communicated to the agency and the board in writing. The CEA must correct any such deficiency within 30 days from the date of the inspection. If a second inspection is required, a second inspection fee must be paid by the agency. Failure to sufficiently correct a noted deficiency will be addressed as a disciplinary matter by the screening panel of the board, and the board may notify the DEA.

AUTH: 37-1-131, 37-18-202, 37-18-603, MCA
IMP: 37-18-603, MCA

REASON: The board is adding restraint drugs to the list of inspection criteria, because the board recognizes that euthanasia would be inhumane without the proper use of restraint drugs, and is amending this rule to help ensure their legal and proper use, following appropriate training and examination.

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 Veterinary Medicine, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to dlibsdvet@mt.gov, and must be received no later than 5:00 p.m., April 26, 2011.

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.vet.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 Veterinary Medicine, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; faxed to the office at (406) 841-2305; e-mailed to dlibsdvet@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. Anne O'Leary, attorney, has been designated to preside over and conduct this hearing.

BOARD OF VETERINARY MEDICINE
ROBERT SAGER, DVM, PRESIDENT

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

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

Certified to the Secretary of State March 14, 2011

BEFORE THE PETROLEUM TANK RELEASE COMPENSATION BOARD
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 17.58.201, 17.58.301, 17.58.311, 17.58.313, 17.58.323, 17.58.325, 17.58.326, 17.58.331, 17.58.332, 17.58.333, 17.58.334, 17.58.335, 17.58.336, 17.58.337, 17.58.340, 17.58.341, 17.58.342, and 17.58.343; the adoption of New Rule I; and the repeal of ARM 17.58.312 and 17.58.339 pertaining to procedural and substantive rules regarding petroleum tank release compensation	NOTICE OF AMENDMENT, ADOPTION, AND REPEAL (PETROLEUM TANK RELEASE COMPENSATION BOARD)

TO: All Concerned Persons

1. On January 13, 2011, the Petroleum Tank Release Compensation Board published MAR Notice No. 17-313 regarding a notice of public hearing on the proposed amendment, adoption, and repeal of the above-stated rules at page 1, 2011 Montana Administrative Register, issue number 1.

2. The board has amended ARM 17.58.201, 17.58.313, 17.58.323, 17.58.325, 17.58.326, 17.58.331, 17.58.332, 17.58.333, 17.58.334, 17.58.335, 17.58.336, 17.58.337, 17.58.340, 17.58.341, 17.58.342, and 17.58.343; adopted New Rule I (17.58.344); and repealed ARM 17.58.312 and 17.58.339 exactly as proposed. The board has amended ARM 17.58.301 and 17.58.311 as proposed, but with the following changes:

17.58.301 GUIDELINES FOR PUBLIC PARTICIPATION (1) remains as proposed.

(2) The board shall provide access to the interested parties e-mail list link on the board web site for persons who wish to know about the board's proposed rules and rulemaking proceedings. Any person may add their name and e-mail address to ~~this list through~~ the board's interested parties e-mail list ~~link on the board web site~~.

(3) and (4) remain as proposed.

17.58.311 DEFINITIONS Unless the context clearly indicates otherwise, the following definitions, in addition to those in 75-11-302, MCA, apply throughout this chapter:

(1) through (24)(b) remain as proposed.

(25) "Release discovery date" means the earliest of:

(a) the date of discovery by an owner or an operator of any of the conditions set forth in ARM 17.~~58~~56.502(1), provided that a release is confirmed in any manner provided in ARM 17.~~58~~56.504 or 17.~~58~~56.506 after the condition is discovered;

(b) the date that the owner or operator had actual knowledge of a release; or

(c) the date that the release is confirmed in any manner provided in ARM 17.~~58~~56.504.

(26) through (31) remain as proposed.

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

COMMENT NO. 1: The guidelines for public participation in ARM 17.58.301(2) seem a little wordy and confusing. There isn't a list that shows all interested parties. Perhaps this wording might be more clear: "The board shall provide access to the link to subscribe to the interested parties e-mail list on the board website."

RESPONSE: The board acknowledges that the proposed amendments to ARM 17.58.301(2) could have been more clear and has amended the rule as shown above.

COMMENT NO. 2: One comment was received stating that ARM 17.58.311, Definitions, references Title 17, chapter 58, subchapter 5 series rules. It does not appear that Title 17, chapter 58 has a 500 series subchapter. The rule should be revised to correct the ARM references.

RESPONSE: The board agrees with this comment and has amended the rule as shown above to correct the internal references. When the board initially drafted the amendments the references were to ARM Title 17, chapter 58; those references should have been to ARM Title 17, chapter 56.

Reviewed by: PETROLEUM TANK RELEASE COMPENSATION BOARD

/s/ James M. Madden By: */s/ Roger Noble*

JAMES M. MADDEN, Rule Reviewer

ROGER NOBLE, Chairman

Certified to the Secretary of State March 14, 2011.

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 17.50.213 pertaining to reimbursement payments for abandoned vehicle removal	))))	NOTICE OF AMENDMENT (MOTOR VEHICLE RECYCLING AND DISPOSAL)

TO: All Concerned Persons

1. On January 27, 2011, the Department of Environmental Quality published MAR Notice No. 17-316 regarding a notice of proposed amendment of the above-stated rule at page 91, 2011 Montana Administrative Register, issue number 2.

2. The department has amended the rule exactly as proposed.

3. No public comments or testimony were received.

Reviewed by:

DEPARTMENT OF ENVIRONMENTAL QUALITY

/s/ David Rusoff
DAVID RUSOFF
Rule Reviewer

By: */s/ Richard H. Opper*
RICHARD H. OPPER, DIRECTOR

Certified to the Secretary of State, March 14, 2011.

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

In the matter of the amendment of ARM 24.126.510 endorsement, 24.126.701 inactive status and conversion, 24.126.904 minimum requirements for impairment evaluators, and the adoption of NEW RULE I prepaid treatment plans	))))))	NOTICE OF AMENDMENT AND ADOPTION

TO: All Concerned Persons

1. On October 14, 2010, the Board of Chiropractors (board) published MAR notice no. 24-126-31 regarding the public hearing on the proposed amendment and adoption of the above-stated rules, at page 2284 of the 2010 Montana Administrative Register, issue no. 19.

2. On November 5, 2010, a public hearing was held on the proposed amendment and adoption of the above-stated rules in Helena. Several comments were received by the November 12, 2010, deadline.

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

All comments reference proposed NEW RULE I on prepaid treatment plans.

COMMENT 1: Three commenters stated that the escrow account requirement will put unnecessary financial and time burdens on ethical chiropractors, and may harm more than protect the public because requiring such an account would increase the administrative expenses of moving and tracking funds on a daily basis. The additional expenses would have to be passed on to clients, thus increasing health care costs. The commenters opined that this requirement may result in chiropractors not offering prepaid plans and people not being able to get needed chiropractic care.

RESPONSE 1: Noting that the intent of New Rule I is to protect the public, the board concluded that the public's protection in requiring funds in an escrow account outweighs the potential that chiropractors may not be able to afford to offer prepaid plans. The board also notes that a chiropractor who offers prepaid treatment plans should know that it might require some additional costs.

COMMENT 2: Two commenters stated the premise of increasing complaints about prepaid plans is not reflected in the number of complaints on record. One commenter recalled very few claims of this type over 14 years, and stated that all such complaints were dismissed by the board.

RESPONSE 2: The board notes that complaints before the screening panel are not available to the public and there is no way for the commenters to know how many of the complaints that come before the board are related to prepaid treatment plans.

COMMENT 3: Five commenters stated that the new rule would not prevent future complaints, since unethical chiropractors could still steal patient money without providing services, because the chiropractor controls the escrow accounts. The commenters stated the issue is a chiropractor's ethics, not the system of payment, and suggested the rule will punish the many ethical chiropractors offering prepaid treatment plans, because of an unethical few. The commenters suggested the board continue handling complaints regarding prepaid plans on an individual basis.

RESPONSE 3: The board notes that the chair of the New Mexico Board of Chiropractors reported that the number of payment-for-services complaints before the NM board has decreased with a similar escrow account requirement in place.

COMMENT 4: Three commenters stated that the rule ignores studies that long-term maintenance care or wellness care drastically reduces people's expenditures on visits to medical providers, which prepaid treatment plans support. The commenters urged the board to look at the reason for offering such plans, which is to allow people to invest in their health care in an affordable way. The commenters believe that these plans are a tremendous benefit to the public.

RESPONSE 4: The board agrees that offering prepaid treatment plans may be beneficial to the public, but disputes the existence of studies in peer-reviewed literature that conclude long-term maintenance care or wellness care drastically reduces expenditures on visits to medical providers.

COMMENT 5: Three commenters asserted that patients discontinue care for many reasons and may be unable to complete even prepaid treatments. The commenters stated that most chiropractors will refund the patient's money in such situations.

RESPONSE 5: The board recognizes that many chiropractors will handle financial transactions from prepaid treatment plans ethically, but notes that requiring an escrow account increases patient protection because money will not be paid to the chiropractor until services are rendered.

COMMENT 6: Five commenters stated that if the escrow account requirement is necessary to protect the public, then the requirement should apply to all healthcare professionals who utilize prepayment plans. Since no such escrow requirement exists for dentists, acupuncturists, physical therapists, obstetricians, or orthodontists, the commenters suggested the board put the requirement in statute to apply to all healthcare professionals who utilize prepaid treatment plans. The commenters stated it is inappropriate for chiropractors to be held to a different standard than other professionals.

RESPONSE 6: The board has no authority to require any healthcare practitioners to maintain escrow accounts except Montana licensed chiropractors. Because some chiropractors in Montana are offering prepaid treatment plans, the board has concluded that escrow accounts are necessary to protect the public.

COMMENT 7: One commenter questioned how the board will regulate the new rule's requirements.

RESPONSE 7: The board will consider complaints of licensees violating the new rule on an individual basis and in the same manner as other allegations of unprofessional conduct.

COMMENT 8: One commenter stated that (2) lacks clarity and is confusing as to what "all treatment appropriate" means and includes.

RESPONSE 8: The board agrees and is deleting (2) in its entirety.

COMMENT 9: One commenter asserted that the board lacks the authority to regulate fees the board charges, or the manner to collect or use those fees (whether prepaid or not), and stated this is a matter for the Montana Attorney General.

RESPONSE 9: The board determined that the board does have the required authority pursuant to 37-1-131(1)(a), 37-1-319(4), and 37-12-201(4), MCA.

COMMENT 10: Two commenters suggested that the board should require preferred providers for private insurance and participating Medicare providers to have escrow accounts for patients who utilize those types of insurance, in case a refund is deemed to be appropriate.

RESPONSE 10: The board notes that prepaid treatment plans and insurance refunds are two completely different things, and the board is only concerned with up-front patient expenditures. Insurance refunds are for patients that have paid for services already rendered, so an escrow account would not be warranted.

COMMENT 11: Three commenters asserted that the documentation requirements in (1)(b) are already sufficiently addressed in the board's unprofessional conduct rule at ARM 24.126.2301(1)(r). The commenters stated that the rule is discriminatory because it applies different documentation standards to chiropractors utilizing prepaid treatment plans than those who do not. The commenters further opined that if these requirements are necessary, they should apply to all chiropractors, whether or not they offer prepaid treatment plans.

RESPONSE 11: The board agrees that the documentation requirements should not be different for chiropractors offering prepaid treatment plans, and is amending New Rule I accordingly. The board decided that it is not necessary to specify every required provision in a chiropractor's contract with patients, and is further amending the rule accordingly.

COMMENT 12: A commenter asserted that the public is sufficiently protected under ARM 24.126.2301(1)(s), which provides it is unprofessional conduct for chiropractors to enter into a contract that obligates a patient to pay for future services, unless the contract provides for a full patient refund for services not received within a reasonable amount of time.

RESPONSE 12: The board notes there is a deficiency in ARM 24.126.2301(1)(s), since it does not require chiropractors to safeguard client money by keeping it in an account separate from the chiropractor's money until services are rendered.

COMMENT 13: Five commenters opposed the new rule because it will hold chiropractors who utilize prepaid plans to a higher standard of care than other chiropractors. One commenter suggested that the new rule should apply to all chiropractors and recommended the board delete (2) in its entirety.

RESPONSE 13: The board agrees that the requirements in (2) and (3) should apply to all chiropractors, and is deleting the sections from New Rule I at this time.

4. The board has amended ARM 24.126.510, 24.126.701, and 24.126.904 exactly as proposed.

5. The board has adopted NEW RULE I (24.126.412) with the following changes, stricken matter interlined, new matter underlined:

NEW RULE I PREPAID TREATMENT PLANS (1) through (1)(a)(ii) remain as proposed.

(b) Maintain ~~in the patient's file the following:~~

~~(i) A proposed treatment plan, including enumeration of all aspects of evaluation, management, and treatment planned to therapeutically benefit the patient relative to the condition determined to be present and necessitating treatment.~~

~~(ii) A~~ a contract for prepayment of services ~~outlining beginning and ending dates and a proposed breakdown of the proposed treatment frequency, types of modalities, and procedures included in the contracted treatment, methods of evaluating the patient's progress or serial outcome assessment plan, method of recording or assessing patient satisfaction, and any necessary procedures for refunding payments provided for any care not received within a reasonable amount of time~~.

~~(iii) A consent for treatment document specifying the condition for which the treatment plan is formulated, prognosis and alternate treatment options.~~

~~(2) The chiropractor is responsible for providing all treatment appropriate and necessary to address and manage the condition, including unforeseen exacerbations or aggravations within the chiropractor's licensure that may occur during the course of time for which the contract is active. This does not include alternative services procured by the patient or treatment by providers other than the treating chiropractor or those under the chiropractor's direct supervision.~~

~~(3) If nutritional products or other hard goods including braces, supports, or patient aids are to be used during the proposed treatment plan, the contract must state whether these items are included in the gross treatment costs or if they constitute a separate and distinct service and fee.~~

BOARD OF CHIROPRACTORS
JOHN SANDO, DC, PRESIDENT

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

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

Certified to the Secretary of State March 14, 2011

BEFORE THE BOARD OF PROFESSIONAL ENGINEERS
AND PROFESSIONAL LAND SURVEYORS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the adoption of NEW RULES I through IV pertaining to professional land surveyor scope of practice activities	))))	NOTICE OF ADOPTION

TO: All Concerned Persons

1. On October 14, 2010, the Board of Professional Engineers and Professional Land Surveyors (board) published MAR notice no. 24-183-36 regarding the public hearing on the proposed adoption of the above-stated rules, at page 2288 of the 2010 Montana Administrative Register, issue no. 19.

2. On November 9, 2010, a public hearing was held on the proposed adoption of the above-stated rules in Helena. Several comments were received by the November 17, 2010, deadline.

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

COMMENT 1: One commenter stated that the proposed rules do not accurately reflect the final intent of the advisory group and objected to the use of "consensus" in the general statement of reasonable necessity.

RESPONSE 1: The board notes that the advisory group included land surveyors, state and local government agencies involved in land surveying issues, geographic information systems developers, and global positioning system users, who provided input and produced the draft document that formed the basis of the new rules.

COMMENT 2: One commenter suggested that the use of the word "land" before "surveyor" in New Rule I (2) is erroneous, because national geodetic surveyors are geodetic surveyors, not land surveyors.

RESPONSE 2: The board concluded that geodetic surveyors are included in the subset of "land surveyors," and is adopting New Rule I exactly as proposed.

COMMENT 3: One commenter suggested the word "preformed" in New Rule II (4)(a)(ii) should be changed to "performed."

RESPONSE 3: The board agrees with the comment and is amending the rule accordingly.

COMMENT 4: One commenter suggested that the language describing when a map need not be prepared under the responsible charge of a professional land surveyor in (1)(h)(iii) of New Rule III should also be included in (1)(h)(i). The commenter suggested repeating the provision to align with Geomatics Advisory Committee guidelines.

RESPONSE 4: The board determined that including the same language after each example is redundant and unnecessary and notes that since the language is included within subsection (h), it refers to all examples presented in (h).

COMMENT 5: One commenter questioned why the board included (1)(k) of New Rule IV in the proposed rules.

RESPONSE 5: The board notes that the text now in (1)(k) was included in an earlier version of the rules. The subsection was renumbered to (11) in accordance with administrative rules formatting standards.

4. The board has adopted NEW RULE I (24.183.1108), NEW RULE III (24.183.1110), and NEW RULE IV (24.183.1111) exactly as proposed.

5. The board has adopted NEW RULE II (24.183.1109) with the following changes, stricken matter interlined, new matter underlined:

NEW RULE II GEOMATICS DEFINITIONS (1) through (4)(a)(i) remain as proposed.

(ii) Geodetic control provides a common, consistent, and accurate reference system for establishing coordinates from which supplemental surveying, engineering, and mapping work is ~~preformed~~ performed and to which any geographic data may be tied.

(iii) through (7) remain as proposed.

BOARD OF PROFESSIONAL ENGINEERS
AND PROFESSIONAL LAND SURVEYORS
DAVID ELIAS, ES, PRESIDING OFFICER

/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 March 14, 2011

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

In the matter of the adoption of New Rules I through XLII, the amendment of ARM 37.97.101, 37.97.102, 37.97.105, 37.97.106, 37.97.110, 37.97.115, 37.97.128, 37.97.130, 37.97.132, 37.97.206, 37.97.207, 37.97.216, 37.97.230, and the repeal of ARM 37.97.118, 37.97.201, 37.97.202, 37.97.213, 37.97.220, 37.97.225, 37.97.226, 37.97.233, 37.97.238, 37.97.239, 37.97.250, 37.97.253, 37.97.254, 37.97.257, 37.97.258, 37.97.259, 37.97.270, 37.97.501, 37.97.502, 37.97.506, 37.97.508, 37.97.519, 37.97.521, 37.97. 522, 37.97.524, 37.97.526, 37.97.528, 37.97.801, 37.97.805, 37.97.809, 37.97.810, 37.97.811, 37.97.815, 37.97.816, 37.97.817, 37.97.820, 37.97.821, 37.97.822, 37.97.825, 37.97.830, 37.97.831, 37.97.832, 37.97.833, 37.97.836, 37.97.837, 37.97.838, 37.97.842, and 37.97.843 pertaining to youth care facility (YCF) licensure	)	NOTICE OF ADOPTION, AMENDMENT, AND REPEAL

TO: All Concerned Persons

1. On September 23, 2010, the Department of Public Health and Human Services published MAR Notice No. 37-519 pertaining to the public hearing on the proposed adoption, amendment, and repeal of the above-stated rules at page 2108 of the 2010 Montana Administrative Register, Issue Number 18. On February 10, 2011, the Department of Public Health and Human Services published an Amended Notice of Public Hearing on Proposed Adoption, Amendment, and Repeal at page 138 of the 2011 Montana Administrative Register, Issue Number 3. The purpose of the amended notice was to address comments from Legislative Services on the department's statement of reasonable necessity. All rules remained as proposed.

2. The department has adopted New Rule II (37.97.136), III (37.97.140), IV (37.97.141), VI (37.97.159), XII (37.97.153), XIII (37.97.154), XV (37.97.160), XVI (37.97.156), XVII (37.97.161), XVIII (37.97.162), XIX (37.97.163), XX (37.97.164), XXI (37.97.165), XXII (37.97.170), XXV (37.97.126), XXVI (37.97.127), XXIX (37.97.177), XXX (37.97.179), XXXI (37.97.184), XXXII (37.97.185), XXXIV

(37.97.187), XXXV (37.97.188), XXXVI (37.97.182), XXXVII (37.97.178), and XXXVIII (37.97.190) as proposed.

3. The department has amended ARM 37.97.101, 37.97.105, 37.97.106, 37.97.110, 37.97.115, 37.97.128, 37.97.130, 37.97.206, 37.97.207, 37.97.216, and 37.97.230 and repealed ARM 37.97.118, 37.97.201, 37.97.202, 37.97.213, 37.97.220, 37.97.225, 37.97.226, 37.97.233, 37.97.238, 37.97.239, 37.97.250, 37.97.253, 37.97.254, 37.97.257, 37.97.258, 37.97.259, 37.97.270, 37.97.501, 37.97.502, 37.97.506, 37.97.508, 37.97.519, 37.97.521, 37.97.522, 37.97.524, 37.97.526, 37.97.528, 37.97.801, 37.97.805, 37.97.809, 37.97.810, 37.97.811, 37.97.815, 37.97.816, 37.97.817, 37.97.820, 37.97.821, 37.97.822, 37.97.825, 37.97.830, 37.97.831, 37.97.832, 37.97.833, 37.97.836, 37.97.837, 37.97.838, 37.97.842, and 37.97.843, as proposed.

4. The department is repealing the following rules in response to comment #11.

37.37.101 THERAPEUTIC YOUTH GROUP HOMES, DEFINITIONS is found on page 37-8069 of the Administrative Rules of Montana.

AUTH: 41-3-1103, 41-3-1142, 52-2-111, 52-2-622, MCA
IMP: 41-3-1102, 41-3-1142, 52-2-111, 52-2-622, MCA

37.37.105 THERAPEUTIC YOUTH GROUP HOME, APPLICABILITY AND PARTICIPATION is found on page 37-8073 of the Administrative Rules of Montana.

AUTH: 41-3-1103, 52-1-103, 52-2-111, MCA
IMP: 41-3-1103, 41-3-1122, 41-3-1105, 52-1-103, MCA

37.37.108 THERAPEUTIC YOUTH GROUP HOMES, STAFFING OF MODERATE LEVEL HOMES is found on page 37-8077 of the Administrative Rules of Montana.

AUTH: 41-3-1103, 41-3-1142, 52-2-111, 52-2-602, 52-2-603, 52-2-622, 53-4-212, MCA
IMP: 41-3-1103, 41-3-1142, 52-2-111, 52-2-602, 52-2-603, 52-2-622, 53-2-201, MCA

37.37.111 THERAPEUTIC YOUTH GROUP HOMES, STAFFING OF CAMPUS BASED LEVEL HOMES is found on page 37-8081 of the Administrative Rules of Montana.

AUTH: 41-3-1103, 41-3-1142, 52-2-111, 52-2-602, 52-2-603, 52-2-622, 53-4-212, MCA
IMP: 41-3-1103, 41-3-1142, 52-2-111, 52-2-602, 52-2-603, 52-2-622, 53-2-201, MCA

37.37.115 THERAPEUTIC YOUTH GROUP HOMES, STAFFING OF INTENSIVE LEVEL HOMES is found on page 37-8085 of the Administrative Rules of Montana.

AUTH: 41-3-1103, 41-3-1142, 52-2-111, 52-2-602, 52-2-603, 52-2-622, 53-4-212, MCA
IMP: 41-3-1103, 41-3-1142, 52-2-111, 52-2-602, 52-2-603, 52-2-622, 53-2-201, MCA

37.37.120 THERAPEUTIC YOUTH GROUP HOMES, MEDICAL NECESSITY, ADDITIONAL TRAINING REQUIREMENTS is found on page 37-8089 of the Administrative Rules of Montana.

AUTH: 41-3-1103, 41-3-1142, 52-2-111, MCA
IMP: 41-3-1103, 41-3-1142, 52-2-111, MCA

37.37.130 THERAPEUTIC YOUTH GROUP HOMES, MEDICAL NECESSITY, WELL-CHILD SCREENING, AND CHEMOTHERAPY is found on page 37-8093 of the Administrative Rules of Montana.

AUTH: 41-3-1103, 41-3-1142, 52-2-111, MCA
IMP: 41-3-1103, 41-3-1142, 52-2-111, MCA

37.37.136 THERAPEUTIC YOUTH GROUP HOMES, MEDICAL NECESSITY, ADDITIONAL CASE RECORDS is found on page 37-8097 of the Administrative Rules of Montana.

AUTH: 41-3-1103, 41-3-1142, 52-2-111, MCA
IMP: 41-3-1103, 41-3-1142, 52-2-111, MCA

5. The department has adopted the following rules as proposed with the following changes from the original proposal. Matter to be added is underlined. Matter to be deleted is interlined.

NEW RULE I (37.97.135) YOUTH CARE FACILITY (YCF): QUALITY ASSESSMENT (1) through (1)(a) remain as proposed.

(b) maintaining records on the occurrence, duration, and frequency of ~~physical escorts and~~ physical restraints used; and

(c) through (2) remain as proposed.

AUTH: 52-2-111, 52-2-603, 52-2-622, MCA
IMP: 52-2-113, 52-2-603, 52-2-622, MCA

NEW RULE V (37.97.142) YOUTH CARE FACILITY (YCF): STAFF TRAINING (1) through (4) remain as proposed.

(5) All direct care staff shall complete the following ~~certification~~ training within ~~90 days~~ six months of hire:

(a) the use of de-escalation training and methods of managing youth as described in the provider's policies and [NEW RULE XXIV (37.97.172)];

(b) first aid and CPR certification; and

(c) maintain and update these trainings and certifications as required.

(6) Direct care staff may not work alone without completing the ~~training~~ requirements of (5).

(7) and (8) remain as proposed.

AUTH: 52-2-111, 52-2-603, 52-2-622, MCA
IMP: 52-2-113, 52-2-603, 52-2-622, MCA

NEW RULE VII (37.97.145) YOUTH CARE FACILITY (YCF): ADMISSIONS

(1) through (3) remain as proposed.

(4) An initial assessment of the youth's emotional, medical, developmental, social, and behavioral status must be conducted within ~~eight~~ 24 hours of the youth's admission.

(5) remains as proposed.

(6) The YCF's policies and procedures must provide for and encourage a preplacement process with the child and family and may allow exceptions for emergency placements, ~~and~~ geographical distances, and youth placed under runaway grant funding. The referring parties should be encouraged to assist with these arrangements.

(7) and (8) remain as proposed.

AUTH: 52-2-111, 52-2-603, 52-2-622, MCA
IMP: 52-2-113, 52-2-603, 52-2-622, MCA

NEW RULE VIII (37.97.146) YOUTH CARE FACILITY (YCF): PLACEMENT AGREEMENTS (1) remains as proposed.

(2) The placement agreement must contain~~s~~ the terms of the youth's placement, the responsibilities of the YCF, the placing agency's responsibilities, and when appropriate, the parent's or guardian's responsibilities.

(3) and (4) remain as proposed.

(5) An exception to the placement agreement requirement may be granted until custody for youth placed under runaway grant funding has been determined.

AUTH: 52-2-111, 52-2-603, 52-2-622, MCA
IMP: 52-2-113, 52-2-603, 52-2-622, MCA

NEW RULE IX (37.97.147) YOUTH CARE FACILITY (YCF): YOUTH ORIENTATION (1) A YCF shall have written orientation policies and procedures for admission to the YCF. ~~A~~ For youth over the age of five, the youth's orientation shall include but is not limited to:

(a) a procedure for ensuring that each youth receives a personal orientation to the YCF as soon as appropriate, but not later than ~~12~~ 24 hours after admission;

(b) through (2) remain as proposed.

AUTH: 52-2-111, 52-2-603, 52-2-622, MCA
IMP: 52-2-113, 52-2-603, 52-2-622, MCA

NEW RULE X (37.97.148) YOUTH CARE FACILITY (YCF): CASE PLAN

(1) through (2)(g) remain as proposed.

(3) The initial case plan must:

(a) be developed within seven business days after admission; and

(b) be updated at least every ~~90 days~~ three months from the day of development.

(4) through (6) remain as proposed.

AUTH: 52-2-111, 52-2-603, 52-2-622, MCA
IMP: 52-2-113, 52-2-603, 52-2-622, MCA

NEW RULE XI (37.97.152) YOUTH CARE FACILITY (YCF): PHYSICAL CARE (1) remains as proposed.

(2) Medical, dental, psychiatric, psychological care, and counseling services ~~must be obtained~~ will be arranged for youth as needed.

(3) If a youth has not received a complete physical examination within ~~six months~~ a year prior to placement, within 30 days after admission to the facility the YCF shall arrange for the youth to have a complete physical examination ~~within 30 days after admission to the facility~~ and annually thereafter.

(4) through (6) remain as proposed.

AUTH: 52-2-111, 52-2-603, 52-2-622, MCA
IMP: 52-2-113, 52-2-603, 52-2-622, MCA

NEW RULE XIV (37.97.155) YOUTH CARE FACILITY (YCF): NUTRITION

(1) through (5) remain as proposed.

(6) Hands must be washed with warm water and soap before the handling of food. ~~Hand sanitizer gels may be used in lieu of washing hands with soap and water.~~

AUTH: 52-2-111, 52-2-603, 52-2-622, MCA
IMP: 52-2-113, 52-2-603, 52-2-622, MCA

NEW RULE XXIII (37.97.171) YOUTH CARE FACILITY (YCF): BEHAVIOR MANAGEMENT POLICIES (1) A YCF shall have and follow written behavior management policies and procedures which include a description of the model, program, or techniques to be used with youth. The YCF shall have policies addressing discipline, therapeutic de-escalation in crisis situations, ~~nonviolent~~ crisis intervention and physical restraint, and time-out. Behavior management must be based on an individual assessment of each youth's needs, stage of development, and behavior. It must be designed with the goal of teaching youth to manage their own behavior, and be based on the concept of providing effective treatment by the least restrictive means.

(2) through (8) remain as proposed.

AUTH: 52-2-111, 52-2-603, 52-2-622, MCA
IMP: 52-2-113, 52-2-603, 52-2-622, MCA

NEW RULE XXIV (37.97.172) YOUTH CARE FACILITY (YCF): USE OF ~~NONVIOLENT~~ CRISIS INTERVENTION AND PHYSICAL RESTRAINT STRATEGIES (1) The YCF shall have written policies and procedures governing the appropriate use of ~~nonviolent~~ crisis intervention and physical restraint strategies, including but not limited to the use of de-escalation techniques and physical restraint methods if used by provider.

(2) The ~~nonviolent~~ crisis intervention and physical restraint strategies policies and procedures must comply with the following:

(a) through (c) remain as proposed.

(d) Physical restraint may be used only by employees who are documented to be specifically trained in ~~nonviolent~~ crisis intervention and physical restraint techniques.

(e) YCF policies and procedures must prohibit the application of a ~~nonviolent~~ physical restraint if a youth has a documented physical condition that would contradict its use, unless a health care professional has previously and specifically authorized its use in writing. Documentation must be maintained in the youth's record.

(f) through (g) remain as proposed.

(3) All TGHs must provide physical restraint training and comply with this rule.

AUTH: 52-2-111, 52-2-603, 52-2-622, MCA
IMP: 52-2-113, 52-2-603, 52-2-622, MCA

NEW RULE XXVII (37.97.175) YOUTH CARE FACILITY (YCF): SEARCHES (1) through (5) remain as proposed.

(6) The YCF shall have adopted policies and procedures prior to use of urinalysis testing for the purpose of determining drug and alcohol use which address, at minimum, procedures for obtaining samples for urinalysis testing, procedures for processing urinalysis testing, and consequence to the youth when a urinalysis is positive.

(a) through (7)(d) remain as proposed.

AUTH: 52-2-111, 52-2-603, 52-2-622, MCA
IMP: 52-2-113, 52-2-603, 52-2-622, MCA

NEW RULE XXVIII (37.97.176) YOUTH CARE FACILITY (YCF): CONTRABAND (1) and (2) remain as proposed.

(3) All contraband that is not illegal must be returned to the youth's parent or guardian, or destroyed in accordance with the YCF's contraband policy. When contraband is disposed of, at least two staff members must be present and the disposal must be ~~witnessed by at least two staff members and be~~ documented in the youth's case record.

(4) remains as proposed.

AUTH: 52-2-111, 52-2-603, 52-2-622, MCA
IMP: 52-2-113, 52-2-603, 52-2-622, MCA

NEW RULE XXXIII (37.97.186) YOUTH CARE FACILITY (YCF): PHYSICAL ENVIRONMENT (1) through (8) remain as proposed.

(9) Facilities licensed prior to September 23, 2010, that did not meet the requirements of (8) are allowed to maintain the existing bathroom access through resident room, kitchen, or dining areas. However, if future remodeling or additions are to be made to these structures, the remodeling or additions must comply with current standards.

AUTH: 52-2-111, 52-2-603, 52-2-622, MCA
IMP: 52-2-113, 52-2-603, 52-2-622, MCA

NEW RULE XXXIX (37.97.903) THERAPEUTIC GROUP HOMES (TGH): STAFFING (1) In addition to the requirements specified in [NEW RULE ~~XXXIX~~ V (37.97.142)], TGH providers must meet staffing requirements specified in this rule to provide a therapeutic environment and treatment interventions identified in the youth's individual treatment plan.

(2) A TGH with four or fewer youth shall have a ratio of youth to direct care staff of no more than 2:1 ~~each day for a~~ present for 15 hours each day between 7:00 a.m. and 7:30 a.m., ~~15-hour period beginning at, or between 7:00 a.m. and 7:30 a.m.,~~ or beginning at some other reasonable morning half hour which is approximately 15 hours prior to the bedtime of the youth.

(3) A TGH with five or more youth shall have a minimum of two direct care staff present for 15 hours each day between 7:00 a.m. and 7:30 a.m., or beginning at some other reasonable morning half hour which is approximately 15 hours prior to the bedtime of the youth.

(4) Exceptions to youth to direct care staff ratio:

(a) During regular school hours when youth are not normally present, at least one on-call staff must be available only if there are no other staff in the facility. Staff must report to work at the TGH within 30 minutes of notification that they are needed.

(b) through (5) remain as proposed.

(6) Each program manager shall be responsible for no more than ~~two TGH~~ 16 youth. The program manager may not be counted in the direct care staffing to youth ratio except as provided in (4)(b).

(7) through (10) remain as proposed.

AUTH: 52-2-111, 52-2-603, 52-2-622, MCA
IMP: 52-2-113, 52-2-603, 52-2-622, MCA

NEW RULE XL (37.97.905) THERAPEUTIC GROUP HOMES (TGH): CLINICAL ASSESSMENT (1) A clinical assessment must be completed on a youth admitted to a TGH within ten business days (Monday through Friday), of admission

unless a current clinical assessment that has been completed within the last ~~72~~ 12 months is submitted with the youth's referral packet.

AUTH: 52-2-111, 52-2-603, 52-2-622, MCA
IMP: 52-2-113, 52-2-603, 52-2-622, MCA

NEW RULE XLI (37.97.906) THERAPEUTIC GROUP HOMES (TGH): ~~THERAPY~~ THERAPEUTIC SERVICE REQUIREMENTS (1) The therapeutic services provided by the lead clinical staff and the program manager are "therapy" and "therapeutic intervention" services. The purpose of both therapeutic services is to:

(a) reduce the impairment of the youth's mental disability and to improve the youth's functional level;

(b) alleviate the emotional disturbances;

(c) reverse or change maladaptive patterns of behavior; and

(d) encourage personal growth and development.

(2) Each youth must receive ~~from the lead clinical staff 150~~ 75 minutes of therapy and 75 minutes of therapeutic intervention services per week (Sunday through Saturday). Therapy includes ~~of~~ individual~~,~~ and group~~, and~~ or family therapy as clinically indicated based on the specific treatment needs of the youth. Therapy requirements include the following:

(a) Individual therapy must be provided at least 50 minutes out of the required ~~150~~ 75 minutes per week. Individual therapy may be provided in two 25-minute sessions per week as clinically appropriate. The lead clinical staff shall document specific reasons why a 50-minute therapy session cannot be provided.

(b) remains as proposed.

(3) In the event the lead clinical staff and/or program manager is unavailable due to vacation, illness, or if the youth is on a home visit, or similar circumstance, therapeutic services can be suspended for no more than 780 minutes per calendar year per youth. The amount of minutes will be prorated for youth placed in the facility for less than one year.

~~(2)~~(4) Therapy sessions and therapeutic interventions must address the youth's treatment goals and objectives in the treatment plan, and each session must be documented in the case record by the lead clinical staff. Documentation must include the signature of the person who provided the therapy and the date, start and end times of each session.

(5) Each youth shall receive from the program manager or lead clinical staff 75 minutes of therapeutic interventions per week. Therapeutic interventions are as clinically indicated based on the specific needs of the youth.

~~(3)~~(6) Internal staff meetings to address the needs of each youth must be conducted weekly and must include the program manager, lead clinical staff, and direct care staff. Staff meeting time spent addressing the needs of youth may not be included as therapy or therapeutic intervention time.

AUTH: 52-2-111, 52-2-603, 52-2-622, MCA
IMP: 52-2-113, 52-2-603, 52-2-622, MCA

NEW RULE XLII (37.97.907) THERAPEUTIC GROUP HOMES (TGH): TREATMENT PLAN (1) through (3) remain as proposed.

(4) A copy of the treatment plan must be provided to the youth's placing agency and custodial parent or guardian within ~~seven~~ ten days of the plan's development or update.

AUTH: 52-2-111, 52-2-603, 52-2-622, MCA
IMP: 52-2-113, 52-2-603, 52-2-622, MCA

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

37.97.102 YOUTH CARE FACILITY (YCF): DEFINITIONS The following definitions apply to all YCF licensing rules:

(1) through (3) remain as proposed.

(4) "Clinical assessment" means an ~~psychological~~ assessment with DSM - IV diagnosis and a social history completed by the lead clinical staff or an in-training mental health professional supervised by the lead clinical staff. Clinical assessments include the following information:

(a) diagnosis supported by a rationale, ~~and~~ with specific behaviors and risk factors identified;

(b) through (e) remain as proposed.

(f) psychiatric history (interventions, responses to treatment, medications); and

(g) social and educational history~~; and~~.

~~(h) risk factors.~~

(5) through (9) remain as proposed.

(10) "Lead clinical staff (LCS)" means an employee of the therapeutic group home (TGH) provider. The LCS is responsible for the supervision and overall provision of treatment services to youth in the TGH. Effective July 1, 2012, the ~~The~~ LCS must be a licensed clinical psychologist, licensed master level social worker (MSW), or licensed clinical professional counselor (LCPC). The LCS can be an in-training mental health professional.

(11) through (21) remain as proposed.

(24) remains as proposed but is renumbered (22).

(23) "Therapeutic intervention" means interventions provided by the program manager under the supervision of the LCS to provide youth with activities and opportunities to improve social, emotional, and/or behavioral skill development and reduce symptoms of the youth's serious emotional disturbance. Interventions include implementing behavior modification techniques and offering psycho-educational groups and activities. Interventions may be provided to the youth individually, in a group setting, or with the youth and family.

(22) remains as proposed but is renumbered (24).

~~(23)~~(25) "Therapeutic services" means ~~the provision of psychotherapy and related services as defined in [New Rule I published at MAR Notice No. 37-518] by the lead clinical staff acting within the scope of the professional's license or provided~~

~~by an in-training practitioner in a therapeutic group home.~~ the provision of therapy and therapeutic interventions to reduce the impairment of the youth's mental disability and to improve the youth's functional level, to alleviate the emotional disturbances, to reverse or change maladaptive patterns of behavior, and to encourage personal growth and development.

(26) "Therapy" means the provision of psychotherapy and rehabilitative services provided by the LCS acting within the scope of the professional's license or same services provided by an in-training mental health professional under the supervision of the LCS in the TGH. These services include a combination of supportive interactions, cognitive therapy, interactive psychotherapy, and behavior modification techniques which are used to induce therapeutic change for youth in TGH. Interactive psychotherapy means using play equipment, physical devices, language interpreter, or other mechanisms of nonverbal communication.

(25) through (31) remain as proposed but are renumbered (27) through (33).

AUTH: ~~41-3-1103~~, 41-3-1142, 52-2-111, 52-2-603, 52-2-622, ~~53-4-111~~, MCA
IMP: ~~41-3-1102~~, ~~41-3-1142~~, 52-2-113, 52-2-602, 52-2-622, 53-2-201, ~~53-4-113~~, MCA

37.97.132 YOUTH CARE FACILITY (YCF): GENERAL REQUIREMENTS FOR ALL ADMINISTRATORS, STAFF, INTERNS, AND VOLUNTEERS

(1) through (6) remain as proposed.

(7) YCF volunteers and interns shall:

(a) remains as proposed.

(b) be under the ~~direct and constant~~ supervision of YCF staff;

(c) through (e) remain as proposed.

AUTH: ~~41-3-1103~~, ~~41-3-1142~~, ~~53-4-111~~, 52-2-111, 52-2-603, 52-2-622, MCA
IMP: ~~41-3-1103~~, ~~41-3-1142~~, 53-4-111, 52-2-111, 52-2-603, 52-2-622, MCA

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

Comment #1: Commenter thinks that the proposed new rules go a long way towards improving the standards of care and ensuring the provision of quality services to the children and families the commenter serves and thanks the department for bringing the consolidated rules to fruition.

Response #1: The department acknowledges the comment.

Comment #2: Commenter compliments the department for developing a solid, comprehensive, fairly representative and simplified set of rules that cover the breadth of issues in our state's residential and mental health services for children and families.

Response #2: The department acknowledges the comment.

Comment #3: Commenter appreciates the joint effort that went into the development of the rules.

Response #3: The department acknowledges the comment.

Comment #4: Commenter thanks the department for clarifying that there are now no licensing provisions for youth care facilities in Montana, so seclusion is not an issue in these rules. Hopefully, should the time come that we need to consider licensure for YCFs, we will be able to rule out the use of seclusion in such facilities.

Response #4: The comment is somewhat confusing as the rules proposed are licensing provisions for YCFs in Montana and all YCFs must be licensed. The proposed new rules are modifications to current rules for licensed YCFs. The proposed new rules prohibit seclusion in any licensed youth care facility in Montana as the only license type that allowed seclusion in current rule has been repealed.

Comment #5: Several commenters indicated the proposed new rules include many new or increased requirements that will impose more costs to providers at a time when provider reimbursement rates have been frozen and there is a possibility that rates will be rolled back to 2009 funding levels. Commenters believe that these new proposed requirements constitute "unfunded mandates" without an adequate method to reimburse providers for these increased costs.

Response #5: The department agrees that the rules require significant changes and may result in a minimal increase in cost to providers. However, the department has worked to keep this increase to a minimum by decreasing requirements in many areas so that providers may transfer those savings to the other requirements that may increase the cost. The SFY 2008 therapeutic group home (TGH) cost report indicates TGH providers are reimbursed adequately compared to the average cost of providing the TGH services. In the rules, the department has made various trade-offs realizing that some requirements have expanded while other requirements have decreased. For example, the lead clinical staff (LCS) duties for TGH were significantly increased while program manager duties were significantly decreased. Current rule requires the LCS to be an employee or under contract with the TGH and must be a clinical psychologist, master level social worker (MSW), licensed professional counselor (LPC), or have a master's degree in a human services field with a minimum of one year of clinical experience. The proposed new rules require the LCS to be an employee of the TGH and be a licensed clinical psychologist, licensed master level social worker (MSW), or licensed clinical professional counselor (LCPC). The LCS can be an in-training mental health professional. Current rule requires a campus-based TGH to have a LCS who is responsible for no more than eight children. The current rule for intensive level group homes requires a LCS who is responsible for no more than 12 children. The proposed new rule does not have a limit for the number of youth served by LCS and is left up to the TGH and the LCS to determine how many youth they can adequately serve. TGH providers may not see an increase in FTEs for the LCS position. The cost increase will come

from the licensing requirement for the LCS. The cost increase in the LCS requirements may be offset by the decrease in the program manager (PM) requirements. Current rule requires a campus-based group home to have a PM who is responsible for not more than four children. An intensive level TGH licensed to serve four to six children is required to have one full-time PM, and an intensive level TGH licensed for seven or eight children must have a 1.5 full-time PM. The proposed new rule requires one PM who is responsible for up to 16 youth. These changes should provide some cost savings in order to implement the new LCS requirements. In addition, campus-based TGHs should see significant cost savings with the elimination of the social worker, clinical director, director of operations, and registered nurse requirements. Using an example given within these comments, the potential cost savings to providers are listed below.

	Four 4-Bed Group Homes			Two 8-Bed Group Homes		
	Current Rule	Proposed Rule	Cost Savings	Current Rule	Proposed Rule	Cost Savings
Campus Based						
LCS	2 LCS	No Limit	None	2 LCS	No Limit	None
Program Manager (PM)	4 PM FTEs	1 PM FTE	3 FTEs	4 PM	1 PM	3 FTEs
Social Worker	.5 FTE	None	.5 FTE	.5 FTE	None	.5 FTE
Clinical Director	.5 FTE	None	.5 FTE	.5 FTE	None	.5 FTE
Director of Operations	.5 FTE	None	.5 FTE	.5 FTE	None	.5 FTE
Registered Nurse	.4 FTE	None	.4 FTE	.4 FTE	None	.4 FTE
Intensive Level						
LCS	1.33 LCS	No Limit	None	1.33 LCS	No Limit	None
Program Manager	2.6 PM FTEs	1 PM FTE	1.6 FTE	3 PMs	1 PM	2 FTEs

Campus level group homes will see a potential cost saving of a minimum of 4.9 FTEs while intensive level group homes will see a potential cost savings of a minimum of 1.6 FTEs. The cost savings in FTEs for TGHs will cover the cost to implement the LCS licensing requirements and proposed changes within the rule. In addition, 8-bed intensive level TGHs will also see a cost savings in the night time staffing ratio. Current rule requires 1.5 night time FTE for intensive level group homes licensed for eight beds. The proposed new rule requires one night time FTE for potential cost savings of .5 FTE per night.

In addition to a decrease in FTEs the proposed new rules also decrease the amount of therapeutic sessions required each week by the LCS or PM in intensive level therapeutic group homes. Current rule requires three group treatment sessions, two individual treatment sessions, two treatment team meetings and family therapy when needed or medically necessary for each child. An average therapy session is

approximately 50 minutes allowing an additional 10 minutes of the hour for the therapist to complete notes. Treatment team meetings are on average 15 minutes per child. This is a combined total of 5.5 hours of required therapeutic sessions with the LCS or PM. The proposed new rule requires 150 minutes of "therapeutic service" per week. "Therapeutic services" have been redefined to include "therapy" and "therapeutic interventions" provided by the LCS or PM. A minimum of 75 minutes of "therapy" must be provided by the LCS. The PM may provide up to 75 minutes of "therapeutic intervention" to complete the 150 minute weekly requirement. This is a combined total of three hours of required sessions per youth. The decrease in required sessions will allow the LCS to serve more youth and increase the benefit to the youth by receiving therapy from a licensed and trained individual.

For facilities licensed as youth shelter cares, requirements are currently 16 hours of orientation training, and an additional 14 hours of training within the first year of hire. The proposed new rule requires 24 hours of orientation training and has eliminated the additional 14 hours of training within the first year of hire. This is a decrease of six hours of training required within the first year of employment for new staff. This decrease should offset the cost of additional CPR and first aid training.

Youth Group Home (YGH) training costs will increase. ARM 37.97.524 requires four hours of orientation training for new staff in YGHs which is completely inadequate. Sufficient orientation training cannot be adequate without receiving policy and procedure overview, mandatory reporting requirements for abuse and neglect, fire safety emergency evacuation routes, suicide prevention, emergency medical care procedures, report writing, youth rights, and confidentiality. It would be impossible to sufficiently address these topics in four hours of training. YGH youth to staff ratio is 8:1; therefore, it is essential that new staff receive adequate training in the above areas prior to being eligible for working alone with youth to ensure the safety and well-being of the youth in care.

Many YGHs may not see an increase in training costs as they are currently dually licensed as a youth shelter care facility. Staff working in these facilities must meet current training requirements for both YGH and youth shelter care (YSC) facilities. As stated above, YSC staff training hours within the first training for YSCs will be decreased, therefore the dually licensed facilities may not have an increase in costs for providing training. The state's base reimbursement rate for YGHs and YSCs is equal. YGHs have seen a larger profit than YSCs due to the lack of adequate training requirements.

Child care agencies and maternity homes may see an increase in cost due to training requirements. Current rule requires 15 hours of annual training for staff working in a child care agency. An additional nine hours of orientation training and five hours of annual training is required. Training requirements have been updated to include on the job supervision, first aid and CPR. Montana has one licensed child care agency that serves SED children under a TGH license. Children in the maternity home not being properly cared for by the parent must also be included in

the staffing ratio. This may increase cost to providers as this has not been a requirement in the past. However, if the parents are not properly caring for the child, the staff must intervene. Caring for small children is a difficult task and will consume a great deal of the direct care staff time. It is difficult to determine the cost associated with this rule because the department does not know how often this may occur.

The benefits of updating training requirements outweigh the reasons for leaving the current rules as they are. The changes benefit the youth substantially and the cost is minimal. The rules have not been updated for numerous years and the minimum standards have been changed to incorporate basic health and safety updates and best practice standards of care. See also Response #5 and 65.

Comment #6: Several comments were received about the assumptions regarding cost and provider affordability that served as the basis of the cost study. At the time the cost study was conducted, the average occupancy was 88 percent. Commenter indicates the issue of basing reimbursement rates on the assumption of an 88 percent occupancy rate is unreasonable. Commenters state that the study was never presented formally to providers for discussion, adjustment, and agreement until it was included in the MAR notice. They claim the study shows savings when the department sees it as being applicable, but never mentions when increased costs are equally clear. A commenter said that expenses are directly related to revenue and most therapeutic group home providers solely serve Medicaid clients (thereby not having any higher paying/insured clients) and fewer than half raise significant donations to subsidize fees.

Providers therefore can only have spent amounts slightly lower than the Medicaid rates, meaning the expenses will run slightly under rates, and they will not have extra revenue to increase wages or make improvements. Commenters believe the cost study should be based on an 80 percent occupancy rate. Today many providers have empty beds and few think 88 percent occupancy is a level of use that can be maintained at this time. One commenter agrees that rates as of 2008 were adequate at the start of planning for these new rules. It was suggested the department may wish to obtain current occupancy rates prior to making these changes.

Commenters disagree that the proposed new rules do not cause more expenses for providers. At the start of the rules redesign, the department "promised" it would not add rules that would increase costs to the provider without an increase in rates, the department did not uphold this strategy. There are a number of new rules that, while they would define better quality services, require increased spending without increased payments to cover these improvements. This is unfair to providers. Commenter doesn't agree that the provider should have to pay for what the department desires.

Response #6: The department completed a cost report of TGHs for state fiscal year (SFY) 2008. Expenses were divided into four categories: (1) room and board; (2)

nonlicensed observation and support; (3) licensed therapies; and (4) education. One of the 14 TGH providers did not complete the cost report. Three TGH providers who completed the cost report did not report expenses in the "licensed therapies" category, therefore the expenses were not included in calculating the average cost of TGH "licensed therapies". The "licensed therapies" category included expenses for both licensed and nonlicensed clinicians. Medicaid reimbursement is not available for categories (1) or (4). Based on the TGH cost report, the average cost per day for all TGH providers for category (3) was $23.25 per day. The average cost for TGH providers for category (2) was $148.47 per day. The total of these two categories is $171.72 per day. At the SFY 2011 TGH reimbursement rate of $183.98, the department is reimbursing TGH providers 7 percent more than the average cost of providing the Medicaid portion of TGH services. If the TGH reimbursement rate for SFY 2012 is rolled back to the SFY 2009 reimbursement rate of $180.37, the TGH reimbursement rate is 5 percent more than the average cost of providing the Medicaid portion of TGH services.

The department does not believe the SFY 2008 TGH cost report was flawed. The financial information and average occupancy levels used in the report were based on actual data submitted by the TGH providers, and not occupancy rates used in the past. The average occupancy rate was 88 percent. The department did not agree to use an 80 percent occupancy rate. TGH providers received a draft cost report to review and the department gave providers a chance to respond to anything they disagreed with in the cost report. TGH providers did not disagree with the utilization data they submitted on the cost report, which was used to calculate the average occupancy rate.

The department considered what additional requirements should be provided in a TGH reimbursed by Medicaid and which ones could include an additional expense. The department believes therapy services provided by appropriately trained and credentialed individuals should be required in group homes reimbursed by Medicaid. Changes in TGH licensing requirements have been made in an attempt to offset additional costs. The department would like to point out that only 13.5 percent of the Medicaid portion of the cost report expenses reflects "licensed therapies". The department believes the TGH Medicaid daily rate should include more licensed therapeutic services to treat SED youth.

The department does not think it is reasonable to use current occupancy levels with SFY 2008 expenses and will explore the possibility of completing another TGH cost report in the next biennium to capture current costs. See also Response #5 and 7.

Comment #7: Since these new rules include children's emergency crisis shelter level of care there are many new requirements of this level of care. The rate of reimbursement for this level of care pays for 50-60 percent of the cost to provide care to kids with the requirements currently. It is estimated that this will potentially decrease to 40-50 percent with the implementation of these rules. This decrease in addition to this level of care not having the ability to receive the Direct Care Wage Increase for workers will be an enormous revenue cut. It will impact this level of

care to the point that many providers will no longer be able to continue to provide it. Commenter asks that the implementation of these additional costly rules be delayed until rates can be increased to help providers be able to meet the intent of the changes. Commenter agrees that these changes are good for children and families, but providers simply can't afford to meet them without a rate increase.

Response #7: Commenter requests the implementation of these rules be delayed until rates can increase to help providers be able to meet the intent of the changes. See Response #12. The department agrees that the proposed new rules are good for kids and families which has driven the desire to update the existing rules to benefit the population served. It is difficult to justify not implementing a change when clearly the benefit to youth is substantial and the cost minimal. These are difficult financial times and the department does relate to the provider's plight. The department would prefer to increase the reimbursement rate to all providers; however, it is not feasible and a rate increase is not necessary to comply with these rule changes. The changes proposed will benefit providers by strengthening their programs and possibly help with decreasing staff turnover. A quality program attracts quality employees. See also Response #5.

Comment #8: Four-bed homes specially designed to meet the needs of low-functioning, sometimes autistic youth will no longer be able to operate. What is the department's plan for serving children with an IQ below 70 if intensive-level group homes are no longer a viable option?

Response #8: Intensive level group homes can continue to serve SED youth that will benefit from this service. Autistic children and children with an IQ below 70 may not benefit from this level of care. Should the youth not benefit from this service, the group home may be better off applying for a license for a Community Home for Persons with Developmental Disabilities. These children can and many currently are served by the Developmental Services Division. Youth currently being served at the TGH level are required to benefit from therapeutic services. Therapeutic services for TGHs are not new and are in current rules for all TGH providers including licensed 4-bed group homes. The certificate of need process for youth admitted to developmental disability homes that is the same for all intensive level group homes regardless of the number of licensed beds. The department will continue placing youth in TGHs that will benefit from the services.

Comment #9: MAR Notice No. 37-518, which is not the notice for these rules, includes a new service, ENA (Extraordinary Needs Aid) Services. There are problems with reimbursement for this service.

Response #9: The comment is in reference to rules proposed in MAR Notice 37-518. The comment has been redirected for response in conjunction with that notice.

Comment #10: Commenter stated that to preserve services for the most difficult to serve youth in a 4-bed model, the requirements should be kept under the existing rules with existing staffing ratios and existing reimbursement rate. The new and

lesser ratios and requirements promulgated by these rules could be adopted as a "moderate" level of care, and reimbursement rates could be adjusted commensurate with the significantly reduced costs.

Response #10: Current rule does not limit intensive level group homes to four residents. Montana has licensed several 6- to 8-bed intensive level homes currently serving SED youth. Group homes licensed to serve only four youth are not required to take more intensive SED youth. The certificate of need process is the same for all TGHs licensed at the intensive level. The level of care required for the youth being served exceed certificate of need requirements for moderate level group homes. This has essentially required providers to abandon the moderate level of licensing and begin offering intensive level services in all group homes. The department currently does not have any licensed moderate level TGHs. The commenter is stating the new rules as written would cost less to implement than current rule which would increase the revenue to providers. The department does not believe the cost would significantly increase or decrease for providers. The department believes the current level system for licensure as a TGH is outdated. If commenter is correct and the cost to implement the new rules will decease for providers offering care for more than four youth, it is safe to assume the 4-bed programs would be able to continue delivering services to youth as they currently practice without seeing a significant increase in cost. See also Response # 61.

Comment #11: It would appear that the department created New Rules I (37.97.135) through XLII (37.97.907) and amended many of those rules in Chapter 97 pertaining to youth care facility licensure without repealing or amending a parallel set of rules (ARM 37.37.101 et seq.) governing the same type of facility (Therapeutic Youth Group Homes). Many of the rules contained in Chapter 37 are in conflict with the proposed new rules and amended rules in this MAR Notice (e.g., definitions, staffing, training requirements). Adoption of these new and amended rules without repealing those applicable rules in Chapter 37 will leave providers in the untenable position of meeting the requirements of one set of rules only to be out of compliance with another set of rules governing the same requirements. This is a fatal procedural defect and new rules cannot be adopted as proposed.

Response #11: The department inadvertently neglected to list ARM Title 37, Chapter 37, subchapter 1 rules as proposed to be repealed in paragraph 5, but included the intent to repeal these rules in paragraph 6 of the proposal notice. ARM 37.37.101, 37.37.105, 37.37.108, 37.37.111, 37.37.115, 37.37.120, 37.37.130, and 37.37.136 will be repealed so that these rules will not conflict with the proposed rules.

Comment #12: Several commenters ask that the department carefully look at the timeframe to implement these rule changes. Many of the proposed changes are quite substantial for most providers. The rules are comprehensive and require mass changes from staffing to policy development. Providers would welcome a transitional period in which the providers can work on becoming compliant with new regulations. A commenter asks that providers be given four to six months to

completely come into compliance and that providers be required to submit a plan as to what providers need to do, with timelines, to come into compliance.

Response #12: The department agrees and will allow until July 1, 2011, for providers to come into compliance with the rules. However, the department will amend ARM 37.97.102(10) to allow providers until July 1, 2012, to meet the LCS requirement of being a licensed clinical psychologist, MSW or LPCP. This time extension is being given to allow adequate time for providers to plan for, recruit, and hire licensed professionals for the LCS positions. Requiring providers to submit a plan as to what providers need to do, with timelines, to come into compliance is not necessary. The department would rather have providers focus on becoming compliant rather than develop and submit an action plan.

Rule I (37.97.135)

Comment #13: Commenter agrees that a quality assessment system is important for an organization to learn and provide better quality services to clients. However, implementing this type of process takes staff time and funds to do it in a way that is meaningful. Many providers are small operations with very little support staff to make such assessments. Without additional funding to the rate, it is hard to imagine these providers and larger ones doing quality assessment within the reimbursement rate provided. The impact will not be improving the quality of care, but merely spending staff time to make sure the process is done and not learning from its outcomes.

Response #13: A quality assessment program is essential for providers to learn and provide a better service to youth. The proposed new rule for quality assessment is minimal and may involve a slight increase to cost; however, the benefit would be substantial to the youth being served. Many providers currently implement a quality assessment program because they realize it is necessary to make improvements. A quality assessment program is also a requirement of accreditation programs that large organizations currently hold. The department has omitted the requirement to maintain quality assurance records of physical escorts to further reduce the staff time required for quality assurance. See also Response #12 and #5.

Comment #14: Commenter indicates the department, in development and discussion around the drafting of these proposed rules, emphasized the importance and the primary goal of implementing evidence-based practices and research-based treatment. There is no mention of providers having the capability to show outcomes for its clients. Nor is there any requirement or goal for implementing evidence-based practices or research-based treatment. The state has data available through their current systems and it could be responsible for gathering other information which could be used in the decision-making processes. Providers can, and should be, required to collect and use clinical outcome data to show the effectiveness of services provided. It appears that the goal of requiring providers to demonstrate the use of evidence-based practices has been abandoned. The rules could be amended to include this important and often-stated goal. Has the department

determined this to be of low priority and abandoned its commitment toward evidence-based practices and research-based treatment?

Response #14: The department assumes this comment is directed at rules proposed for TGH, MAR Notice 37-518, but no specific rules were identified. In addressing the comment to TGH, the department did not indicate that the rules were to be written for the purpose of implementing evidence-based and research-based treatment. For these rules, the department has only modified current YCF rules and has not changed the therapeutic interventions or treatment services delivered to youth. The department's primary goal was to enhance and improve the current TGH rules which serve seriously emotionally disturbed youth. The LCS may implement any evidenced-based practice which focuses on the mental and behavioral difficulties of the youth. The treatment team may develop goals and objectives for the youth that can be implemented in the therapeutic milieu to correspond with the LCS's treatment.

Current rule does not have quality assurance requirements for providers. New Rule I (37.97.135) attempts to capture the provider's concerns regarding outcomes for clients served. The new quality assurance requirements are minimal requirements to assist providers in developing a measurement system that will provide the basis for improving a provider's policies, procedures, and services provided to youth in care. Requiring only minimal requirements will keep the cost of implementing this new rule to a minimum for providers. The department did not want to be too prescriptive in the quality assessment program. Providers may include clinical data in the quality assurance process. Requiring providers to collect and use clinical outcome data to show the effectiveness of service provided would be expensive and time consuming for them. The concept has merit but will not be required at this time.

Rule II (37.97.136)

Comment #15: Several commenters indicate New Rule II(3) (37.97.136) is a new requirement and would increase administrative costs in addressing abuse and neglect already handled by Child and Family Services. What commenter understands is that review by the Board of Visitors is very thorough and, while valuable, it would take staff time that is not currently available and would increase administrative demands and staffing.

Response #15: This is not a new reporting requirement, but one that has been required by 41-3-201 and 53-21-107, MCA. It was included in rule to reiterate it. The reporting process remains the same. Any increased administrative demands and staffing should have been realized already.

Rule III (37.97.140)

Comment #16: Several comments were received regarding New Rule III(2) (37.97.140). One commenter indicates the provider is a rural community and knows many of the people hired. Commenter does criminal background checks for

Montana but feels it could be very costly to contact other states. Commenters indicate the providers already work on a tight budget and are asked to produce more for less revenue and the requirement is quite difficult to complete with some other states. Many questions are answered on the DPHHS-CF S/LIC-018 form for Release of Information, and Personal Statement of Health, DPHHS-QAD/CRL-005.

Response #16: In order to adequately screen prospective employees that have lived outside of Montana in the past five years, the providers must complete an out-of-state background check. Requiring providers to run only a Montana background check on these individuals is completely inadequate and would not provide an accurate screening of potential employees. Should a prospective employee commit a horrendous crime in another state within the past five years, including crimes involving children, the provider would not have access to that information when conducting only a Montana background check. Nothing in current rule would prohibit this individual from being hired and working with our most vulnerable youth. Individuals committing such crimes may very well come to Montana and apply for such positions working with children due to the fact Montana does not currently require fingerprint background checks or out-of-state background checks. The provider could elect to either complete a fingerprint background check or complete individual checks in each state a prospective employee may have resided in the past five years. The provider may assume the cost or pass on the additional cost to the applicant. It is important to recognize that most youth care facility staff are Montana residents; therefore, this rule will not apply. The slight increase in cost the providers may assume is scant compared to the enormous risk factors involved without requiring out-of-state background checks. The forms referenced provide basic information that needs to be verified through the required background checks.

Comment #17: A comment was received agreeing with the intent of New Rule III(5) (37.97.140) but commenter is not sure that any provider has the ability to know or find out if "The administrator, staff member, volunteer, or intern who is charged with a crime involving children, physical or sexual violence against any person, or any felony drug related offense and awaiting trial may not provide care or be present in the facility pending the outcome of the criminal proceeding". Commenter does not know of any background check that provider does that will list any crime the person is charged with. Our constitution has taught us that all people are innocent until proven guilty. Commenter wants the department to review the requirement and determine that it is something a provider can do. We must make certain we can actually complete the tasks at hand.

Response #17: The department believes if an individual is charged with a crime and is awaiting trial, there is a safety risk. The department has the responsibility of ensuring the safety and welfare of youth in care. The intent of the rule is to provide some safeguards and develop a best practice. Through the use of the Criminal Justice Information Network (CJIN) in conducting background checks, it is possible to determine if an arrest has been made and the suspect is awaiting trial or if there has been a disposition of the case. In other instances, the person charged may self report to the provider, law enforcement may contact the provider, or the suspect may

be identified by the media. The department acknowledges it is possible that not every one of these instances described in (5) will be known to the provider, but believes the requirement does provide some degree of protection to those in the facility.

Rule IV (37.97.141)

Comment #18: The commenter listed problems about the methodology of calculating the rate of ENA services, which would apparently be setting the hourly salary at $9.50 per hour.

Response #18: The comment is in reference to rules proposed in MAR Notice 37-518. The comment has been redirected for response in conjunction with that notice.

Comment #19: Commenter would like clarification about what is expected in a "night shift safety protocol" in New Rule IV(4) (37.97.141). Commenter also indicates it may be helpful to add this in the definition section.

Response #19: New Rule IV(4) (37.97.141) requires YCF to have a nighttime safety protocol in place as only one staff person is working the night shift. This topic was talked about extensively in the three meetings with providers as listed in the rule notice. It was agreed to allow the providers to implement a nighttime safety protocol that would best suit their program. The rule avoids prescribing an approach to providers and allows them the ability to make policy based on the needs of the program, level of care required for youth being served, and staff availability. The safety protocol should be designed to inform staff working alone at night what procedures should be followed in the event of an emergency or other unusual circumstance. The department believes it is unnecessary to include in the definition rule because this could limit the provider's flexibility in determining the protocols that work best for the provider's program to ensure the safety of youth and staff.

Rule V (37.97.142)

Comment #20: Several comments were received regarding New Rule V (37.97.142) indicating that current rules require four hours of staff orientation for youth group homes, 15 hours of orientation in therapeutic youth group homes, and 16 hours of staff orientation for youth shelter care facilities. The proposed rule raises this requirement to 24 hours of "orientation training" which is a significant increase with an associated significant increase in cost to providers and current rates do not support this increase. One commenter suggested that the training requirement be 16 hours since this youth shelter care requirement is currently the highest standard.

Response #20: Please see response #5.

Comment #21: Hours required for on-the-job training should be deleted from the list of requirements for orientation training in New Rule V(3)(j) (37.97.142). Commenter

would suggest that, since the hours of orientation training are paid hours of employment for staff, this would suffice as the "on-the-job training".

Response #21: The department believes that orientation and on-the-job training are not the same even though they are complimentary. Orientation is necessary for all who have youth contact to ensure the safety of youth and those working with the youths. See also Response #5, 22, and 23.

Comment #22: Commenter indicates that New Rule V(3)(j) (37.97.142) is not clear and wants to know if the provider must account for time for new staff to shadow parts of shifts.

Response #22: The orientation training must include on-the-job shadowing which would allow the staff to work a shift with properly trained staff in order for them to oversee the operation of the facility. Without providing this training the facility would be lacking sufficient training for the staff. It would be irresponsible to allow an untrained staff person to be counted in the staff/youth ratio when untrained staff have not experienced any time in the facility working with the youth. Providers can account for time new staff spend shadowing partial shifts. Providers have the ability to determine the method and times shadowing requirements will be met. See also Response #5, 21, and 23.

Comment #23: Several commenters indicate New Rule V(4) (37.97.142) is a lengthy order to have complete before a person can count in the youth-to-awake staff ratio. Commenters can see on-the-job training and shadowing hours but believes there needs to be a timeline to accommodate all of the training required. Commenter questions if this person could be considered a part of the ratio. The new staff would be shadowing/learning from another staff. This is often helpful to the learning process for a new staff and would be helpful to providers if they can use them in this capacity as well as enhance the new staff's learning experience. Commenter indicates it will also cost more to providers to implement.

Response #23: Orientation is necessary for the safety and protection of those in the YCF. The intent of the rule is not to have an untrained individual working for the sake of filling a position, but to have an individual who has at least some basic knowledge of the facility's operations and the youth prior to being included in the youth-to-awake staff ratio for the safety of the youth and staff. Providers have the ability to determine the method and times shadowing requirements will be met. Requiring 24 hours of training prior to staff being counted in the ratio is not unreasonable. The staff may not be counted in the staff ratio prior to these orientation hours being completed as staff needs to be responsible for overseeing the care of the youth and not overseeing the training of the new staff. It is not in the best interest of the youth or the staff to simply place a person on the floor simply to meet the ratios. Requiring 24 hours of training will provide the staff the basic information regarding the operation of the program. See also Response #5, 21, and 22.

Comment #24: Commenter suggests clarification in New Rule V (37.97.142) that nonviolent restraint interventions may only be performed by staff who are currently trained and certified in the actual implementation of whatever program the facility has elected to use (which includes, as set forth below), the considerations listed in the Children's Health Act at 42 U.S.C. §592(b)(1)(B). See Response #53.

Response #24: The department believes that the changes in New Rule V (37.97.142) clarify that only those staff members that are currently trained and certified in the actual implementation of nonviolent restraint interventions may perform such duties. New Rule XXIV (37.97.172) prohibits staff from performing such duties unless properly trained in crisis intervention strategies. Not all facilities are required to use physical restraint. All facilities must have written policies and procedures governing the method of crisis intervention they use and must follow appropriate training requirements for the level of intervention used. See also Response #53.

Comment #25: Several commenters indicate New Rule V(5) (37.97.142) requires certification of de-escalation and first aid/CPR training and methods within 90 days because commenter does not think that the classes are available frequently enough throughout the state, and smaller classes would be needed frequently which will result in increased costs. Commenter would ask that providers be given six months after hire to get new employee certification completed.

Response #25: The department agrees to increase the allowed time for de-escalation training and CPR and first aid certifications. The changes reflect suggestions from several commenters. These trainings will be required to be completed within the first six months of hire rather than 90 days of hire. See also Response #26, 27, and 31.

Comment #26: A comment was received regarding New Rule V(5) (37.97.142). Commenter requested that the word "certification" be defined. It is not clear what is meant by certification, if that is something that can only be done by a professional or if it is something the organization can provide. Commenter currently provides training for direct care staff to become certified in CPR and first aid through Red Cross, the local hospital etc. Commenter is not able to certify all employees in de-escalation due to the cost of that type of training. Commenter is able to provide de-escalation training by staff or outside assistants that are knowledgeable in this area.

Response #26: The department agrees with provider's comments that 90 days is not an adequate amount of time to complete the requirements of (5) and will increase the time to complete the training to six months. The department also agrees that certification training may not be the right terminology for those who do not train staff in physical methods for managing youths in group homes and shelter cares. However, physical restraint training must be certified in group homes that use it. Certification can be defined as holding appropriate documentation and being qualified to perform a specified function or practice a specified skill. The CPR and

first aid courses commenter currently uses are certified courses and are acceptable. See also Response #25, 27, and 31.

Comment #27: Commenter does de-escalation training but there is not a certification for this. Commenter thinks certification is the wrong word here and thinks training is correct.

Response #27: The use of physical restraint requires certified training while the use of nonphysical restraint (de-escalation) does not require it. Common de-escalation training that is provided in-house does not need to be as in depth or comprehensive as physical restraint training. TGHs are the only YCF required to provide physical restraint training. The rule will be amended to clarify the intent. For clarification purposes this rule is amended to reference New Rule XXIV (37.97.172) which addresses the use of crisis intervention strategies. See also Response #28.

Comment #28: Commenter recommends deleting the word "certification" and replacing with "documented" in New Rule V(5)(a) (37.97.142) because commenter currently conducts MANDT training annually throughout commenter's homes. Commenter would advocate that abbreviated training, conducted and documented by a certified trainer, demonstrating that recently hired staff has acquired a "basic" understanding of the provider's preferred de-escalation policies, and will suffice until a provider conducts the annual training or hires sufficient employees to warrant a separate two - three day class. Otherwise, the department has created a costly and burdensome requirement for providers. No provider would accept the potential liability of employing individuals without adequate training. If the department retains the word "certification", commenter recommends that an abbreviated training documented by a certified instructor would satisfy the requirement.

Response #28: The department agrees that certification training may not be the right terminology for those who do not train staff in physical methods for managing youths in group homes and shelter cares. However, physical restraint training must be certified in group homes that use it and all TGHs.

The department disagrees with the suggestion of providing "basic" training in programs that utilize physical restraint and only require annual training. Physical restraint requires intensive training to properly apply. Proper training must be implemented to avoid injuries for youth and staff. See also Response #26, 27, and 31.

Comment #29: Commenter would like the term "certification" clarified. This is a broad statement and could mean anything. If the rule requires providers to have an outside entity train and certify staff in de-escalation techniques, it will be extraordinarily expensive. The cost to send a staff to become certified in one of these de-escalation programs cost $500-$800 per person just for the training fee. If a staff becomes a "certified trainer" it costs $1,300 in training fees and additional costs for lodging and meals for almost five days. This certified staff may train others, but it still costs about $50/staff for materials and certification from the company and

that doesn't include the amount of cost for the staff trainer's time. It is hard to imagine providers can afford to do this and the rate providers are reimbursed doesn't come close to covering the costs to do this.

Response #29: The department agrees that certification is the wrong wording for de-escalation training as some providers do not utilize physical restraints as part of their program. All TGHs are required to have physical restraint training. All certification programs have a physical restraint component that would be required to complete prior to staff receiving certification. Provider policies must specify the de-escalation training provided to the staff and used by the program. Changes to rule will require staff to be trained in the provider's de-escalation techniques.

The rule does not require an outside entity to train or certify staff in de-escalation techniques. Provider may use training methods that are currently in place to maintain compliance with current rule because de-escalation training is required except for youth group homes. Providers other than TGHs will see no increase in cost to implement this rule. See also Response #26, 27, 28, and 31.

Comment #30: Commenter understands that certification governs both CPR and first aid competency in New Rule V(5)(b) and (c) (37.97.142).

Response #30: The department has added the term certification when mentioning CPR.

Comment #31: Current rules do not require CPR and first aid training in youth group homes or therapeutic youth group homes, so this is a new requirement with additional costs to the provider. Training "in the use of physical and nonphysical methods of controlling children and adolescents to assure protection and safety of the client and staff" is currently required by rule but does not specify a timeframe within which it must be completed and does not prohibit a staff person working alone until completion of the training. The proposed "orientation training" requirements already include training in behavioral management techniques and emergency medical procedures. It seems particularly burdensome to expect this exorbitant amount of training to occur in such a short time frame and to prohibit direct care workers from working alone until it has been completed. An overnight awake staff could not work alone (despite the proposed staffing requirement of only one overnight awake staff) until all orientation requirements and the requirements in (5) had been met. A provider, therefore, would be required to pay two overnight awake staff until these requirements had been fulfilled, thus doubling their staffing cost. Commenter would recommend that the time period in (5) be changed to six months and that New Rule V(6) (37.97.142) be deleted entirely.

Response #31: The department believes that the proposed rule in having training completed prior to staff working alone will increase the safety measures for both youth and staff. Emergencies arise at any time day or night in YCFs. At least one fully trained staff person must be available on site to deal with the situation. Night time staff deal with a variety of behaviors and issues from the youth. Youth often

experience an increase in negative behavior at night. Staff must be able to deal with a crisis at any time and therefore must be provided with adequate training before serving alone. For this reason, (6) will not be deleted. See also Response #5, 26, 27, and 33.

Comment #32: Commenter agrees that New Rule V(6) (37.97.142) constitutes a best practice, although it is hard to imagine that all providers (especially smaller group homes and shelters) are going to be able to afford to operate in such a manner. Again, the rate needs to follow and support the requirement.

Response #32: The department agrees changes in proposed rule are a best practice and are necessary to provide for the safety and welfare of the youth and staff. See also Response #5 and 20.

Comment #33: Commenter indicates that New Rule V(6) (37.97.142) requires that staff must be certified in de-escalation and first aid/CPR prior to working alone, but many night shifts are filled by relief staff and are often the shifts that new staff start working. The rule would make it much more difficult to fill night shifts. It is impossible to get the certification in the time frame that is proposed. Commenter would ask the department to allow providers to develop an interim training procedure for first aid, CPR and de-escalation to keep clients and staff safe but not require certification until the sixth month of employment. Also, commenter is not sure what is meant by the term "certification" and whether we are talking about a recognized certificate or certification by the provider that the training has been done. Perhaps the best solution is for the department to partner with providers to contract with a Montana university to develop an on-line tutorial to address CPR, first aid and de-escalation so it can be easily done and tested prior to being on any shift. This solution would take time and money.

Response #33: The department agrees that certification is the wrong wording for de-escalation training as many providers do not complete training in de-escalation to the point that staff would be certified. Per provider's policies, youth group homes may not allow physical restraints as part of their program. Provider policies must specify the de-escalation training provided to the staff and used by the program. Changes to rule will require staff to be trained in the provider's de-escalation techniques. First aid and CPR training will remain the same. Staff working the night shift are required to complete the same training requirements as any other staff. Often youth are very disruptive at night and many behaviors surface during this time. Night shift staff are not immune to seeing disruptive behaviors in youth and medical emergencies can occur at any time. Again the timeline for training and certifications has been increased to six months as suggested. See also Responses #26, 27, and 31.

Although the department appreciates the commenter's suggestion of partnering with a Montana university to develop an on-line tutorial to address these training issues the suggestion is beyond the scope of these rules.

Rule VI (37.97.159)

Comment #34: In regard to New Rule VI (37.97.159), commenter suggests clarification that youth civil rights in facilities are not limited to the provisions of these rules. Rights to refuse treatment and to limit, under certain circumstances, access to health information in respect of mental health, pregnancy, sexually transmitted diseases and substance abuse, and the rights of emancipated minors, set forth at §41-1-401 et seq., MCA., should be referenced and considered in these rules to the extent they apply. The commenter also suggests that the constitutional rights of youth to privacy, dignity and autonomy, as well as association, and privacy in correspondence, probably cannot be arbitrarily waived by parents or guardians without consideration of the youth's due process rights under Article II, Section 14 of the Montana Constitution or the Fourteenth Amendment. This includes "correspondence searches" defined in ARM 37.97.102(5) and permitted by New Rule XXVII(1) (37.97.175), urinalyses permitted by New Rule XXVII(6) (37.97.175) and breathalyzer testing by New Rule XXVII(7) (37.97.175). The rule seems to suggest that some of these searches may be permitted by the consent of a parent or guardian, which the commenter submits is not universally the case.

The commenter also suggests that a youth in a facility has a right to access legal counsel and to communicate privately with such counsel, and also has a right to access advocacy services, specifically including the protection and advocacy system (Disability Rights Montana), the Board of Visitors and the Mental Health Ombudsman, and these rights should be enumerated in New Rule VI (37.97.159).

Response #34: Section 41-1-401, MCA, defines an "emancipated minor". An emancipated minor has been granted the right to consent to medical treatment pursuant to an order of limited emancipation granted by a court pursuant to 41-1-503, MCA.

The youth rights requirement has addressed commenter's concerns regarding the youth's right to privacy, dignity and autonomy in New Rule VI(1)(e) (37.97.159), when it is not contrary to the treatment and safety of the youth. Youth placed in YCFs are dealing with a wide range of emotional difficulties that may require interventions that restrict the youth's privacy in order to maintain the safety of the youth and others in the YCFs.

The parent or legal guardian of youth has the right to consent to all medical treatment of the youth. This includes the right to consent to urinalysis and breathalyzer testing to determine the use of drugs or alcohol. The provisions of 41-1-401, MCA, do not restrict the right of a parent or guardian of a youth that has not been emancipated. The youth being served in YCFs are dealing with a wide range of issues which may include drug and alcohol use. The rule as outlined requires the YCF to establish sound policy and procedures that address the facility's ability to perform such testing and requires the facility to obtain the appropriate permission. Searches may not be conducted unless there is reasonable cause to believe the search is warranted.

Rule VII (37.97.145)

Comment #35: Regarding New Rule VII(4) (37.97.145), commenter indicated requiring that an "initial assessment of the youth's emotional, medical, developmental, social and behavioral status be conducted within eight hours of the youth's admission" is unreasonable. A youth may be admitted to a YCF at all hours of the day (or night as the case may be in a shelter care program), which makes it very difficult, within the structure and staffing of the milieu at that time, to conduct such an assessment without compromising the supervision of the other clients. Also, this is an additional requirement of staff time and documentation that is not funded via payment for increased staff time. Commenter recommends that (4) be deleted.

Response #35: The department will not delete (4), but will increase the time allowed to conduct the initial assessment to 24 hours. The initial assessment is a brief assessment of the child's overall status upon arrival and is not a clinical assessment and may be completed by a simple checklist.

Comment #36: Several commenters would like clarification on whether pre-placement in New Rule VII(5) and (6) (37.97.145) applies to children's crisis shelters. If it does apply, this could be difficult to meet the rule for this type of YCF. Commenters indicate that (6) and (7) should be waived for runaway and homeless youth. Children are placed often in the middle of the night and there isn't any time for a "pre-placement" process. Information is gathered after the child is placed in care. Additionally, (6) recognizes involving the child's family in the pre-placement process. This is not feasible in a shelter as the children have often been removed from their families and contact may be supervised by an outside contractor or the Department of Children's and Family Services, in which the shelter has not control. Commenter would suggest that this rule provide that (5) and (6) do not apply to children's crisis shelter, and allow these YCFs to collect information such as social history, resources, and developmental needs of youth post placement within 48 hours of placement.

New Rule VII(7) (37.97.145) requires placements only if accepted by parents or agencies authorized by law to place. Commenter, and some other licensed providers, have federal runaway and homeless funding that allows youth to be sheltered within a reasonable period of time to contact parents or other authority so commenter does not want that funding eliminated under this rule. The funding allows youth in crisis to be safely sheltered in a licensed, quality setting. Commenter asks the department to accommodate such placements.

Response #36: The preplacement process does not apply in emergency situations that place children in shelter cares or other YCFs. The department acknowledges there will be times when the facility's preplacement procedures with the child and family will not be feasible. New Rule VII(6) (37.97.145) already allows for exceptions for emergency placements and geographical distances. The rule will be amended to

allow for exceptions for youth placed under the federal runaway and homeless grant. The policies and procedures for these facilities would indicate how this type of exception is to be handled. The department agrees eight hours is not enough time to complete the initial assessment as outlined in (4). The department has amended the rule to increase the time allowed to complete the initial assessment to 24 hours.

Comment #37: New Rule VII(8) (37.97.145) seems unclear when it says a provider cannot limit contact with youth's approved family members. It is not clear who approves family members, and the phrase "cannot limit contact" seems limitless in chances for interruption of a child in care if every family member has no limitation on contact – does that really mean any time?

Response #37: Family members will be approved by the legal guardian of the youth. The admission policy cannot limit contact with the youth's approved family members as part of their admissions process. Some programs have restricted contact with all family members for a period of time after admission. This practice will now be prohibited. The primary goal for all children should be to return to their parents unless reunification would be harmful to the youth. In those cases where contact with family members is not appropriate, the legal guardian must inform the facility. This rule is limited to the admissions policy and does not prohibit facilities to limit contact with family members when it is not appropriate or clinically indicated.

Rule VIII (37.97.146)

Comment #38: In New Rule VIII(3) (37.97.146), commenter has concerns regarding "No youth from out-of-state shall be accepted into the YCF…." where a youth comes in and is brought by police in the middle of the night, the provider cannot ascertain which state the child resides in until the next day. Commenter is also concerned about losing federal runaway and homeless grant. These are emergency situations.

Response #38: New Rule VIII(3) (37.97.146) is not intended to prohibit emergency short-term placement of youth. The purpose is to prevent facilities from providing treatment to out-of-state youth who have not been approved by the interstate compact administrator. See also Response #37.

Comment #39: In regard to New Rule VIII(3) (37.97.146), commenter indicates the process for out-of-state placements is extremely cumbersome and often takes months to complete, which isn't responsive to children and families in crisis and in need of placement. This is especially true of children who are being placed privately in a YCF who are in legal custody of their parents and the placement isn't paid by any public/Medicaid funds. Commenter would suggest that this requirement be waived for privately funded placement where the child placed is also in care of legal guardians and there is not state legal guardianship involvement or any public funds involved.

Response #39: The Interstate Compact on the Placement of Children, regulation #4, section 2(C), specifically states that "Any placement of a minor for treatment of

that minor's chronic mental or behavioral condition into a facility having treatment programs for acute and chronic conditions must be made pursuant to the Interstate Compact on the Placement of Children. The Interstate Compact on the Placement of Children becomes applicable once the minor is placed for treatment of a chronic condition regardless of whether that child was originally placed by the family in the facility for treatment of an acute condition". The department has incorporated the interstate compact regulations under Montana Law and ARM 37.50.901(1)(d): This requirement cannot be waived. See also Response #38 and 40.

Comment #40: Commenter indicates this rule disallows any placement from out-of-state without approval of the interstate compact administrator. This impinges on placements of runaways or other out-of-state youth picked up locally and placed at the shelter. Commenter would like that to be an exception. Commenter also wonders if a legal placement from an out-of-state family who is neither involved in the public funding system nor involved with public placing agencies needs to be processed through the interstate compact administrator as commenter believes it relates to an agency-to-agency agreement. Please clarify this second point and again allow the shelter placements in a crisis or emergency.

Commenter runs a runaway and homeless youth program, funded by Tumbleweed (Mountain Plains) grants. When accepting youth that are runaways or homeless commenter often will not have an agency placing the youth therefore will not have any adult available to enter into a written placement agreement. If this rule is not able to make exception for these youth, commenter will no longer be able to take homeless youth or runaways off the street and would in turn lose that grant funding for commenter's program.

Response #40: The department has granted an exception for youth being placed under runaway and homeless grants participants. All facilities must comply with interstate compact regulations regardless of origin of placement be it family or agency as stated in Title 41, chapter 4, part 1, MCA. See also Response #36, 38, and 39.

Rule IX (37.97.147)

Comment #41: Commenter indicates it makes sense to do a youth orientation as outlined for children who are five years of age and older. A modified version of an orientation needs to be done for younger children. It will be very difficult to do any form of orientation for infants aged 0-18 months. Commenter hopes the rule allows for this developmental range and exceptions. If it doesn't then commenter would like the requirement to be for youth five years and older, and an additional requirement that children under five years of age receive an orientation appropriate to their age and developmental stages that is documented by the staff.

Response #41: The department agrees to limit orientation to youth over the age of five and changes will be made to New Rule IX (37.97.147).

Comment #42: Two comments were received regarding the timeframe in New Rule IX(1)(a) (37.97.147). Commenter recommends that this be changed from 12 to 24 hours. There are times when it will be very difficult to orient a new youth to the program especially in emergency situations and admissions during the middle of the night.

Response #42: The department agrees that 12 hours may not be enough time to complete a full orientation of the youth. The department will amend the rule to increase the time for completing orientation to the facility to 24 hours after admission as commenter suggests.

Rule X (37.97.148)

Comment #43: Commenter indicates New Rule X(3)(a) (37.97.148) requires an initial case plan be developed "within seven days after admission" and suggests that it be changed to seven business days and read "within seven business days after admission." This will allow for weekends and holidays.

Response #43: The department agrees and will modify the proposed new rule.

Comment #44: Commenter suggests that the 90 day requirement to update case plans New Rule X(3)(b) (37.97.148) be changed to "be at least every three months or quarterly from the day of development". Doing so provides for uniformity of a staffing calendar because of varying lengths of months. It allows for the intent of this regulation to be met, but gives providers some room to create a staffing calendar that is achievable and has regularity to it. When it reads "90 days", it has always been difficult to implement without falling a day or two off the 90 days due to the calendar. Having three months allows for the intent of the rule to be met.

Response #44: The department agrees and has modified the rule to read "updated at least every three months".

Rule XI (37.97.152)

Comment #45: Several comments were received regarding New Rule XI(2) (37.97.152). Several commenters are concerned about the way (2) was written and several suggestions have been made for clarification. Several commenters are concerned about the facility/provider being financially responsible for medical, dental, psychiatric, psychological care, and counseling services. Several commenters state a YCF is responsible for the provision of certain services within the parameters defined by ARM and contract requirements.

One commenter indicates the YCF has no control over the availability of external providers for the services listed in this rule, it cannot require an external provider to accept a patient for care, and it does not have the legal authority to consent to medical care in lieu of the parent/guardian's right. Additionally, MAR Notice No. 37-518, the proposed amendment to ARM 37.87.901(3) referencing the Medicaid

Mental Health Plan and Mental Health Services Plan for Youth Services Excluded from Simultaneous Reimbursement (Service Matrix) specifically excludes counseling services (outpatient therapy) from being paid for at the same time as therapeutic youth group home services. Since this proposed rule states that the YCF must obtain these services, is it expected that the YCF would pay for these services if an external provider does not accept Medicaid or if there is no third party reimbursement for the particular service. Commenter would recommend that the language in this rule be changed to "A YCF shall refer a youth for medical, dental, psychiatric, psychological care and counseling services as needed and as approved by the youth's parent, legal guardian or placing agency".

Response #45: ARM 37.97.506 and 37.97.831 state "Medical, dental, psychiatric, psychological care and counseling services must be obtained for the youth as needed". This is the language that was proposed in New Rule XI(2) (37.97.152). The requirements have not changed and the department is unsure as to why this caused confusion among those commenting on this rule. The rule also does not require YCF to pay. Payment for these services should be discussed and agreed upon in the placement agreement that is required prior to accepting a youth. Placement agreements are outlined in New Rule VIII (37.97.146). The department will remove the word "obtain" and substitute "will be arranged" to clarify the intent of New Rule XI(2) (37.97.152).

Commenter is correct that MAR Notice 37-518 did state that specifically excludes counseling services (outpatient therapy) from being paid for at the same time as therapeutic youth group home services. MAR Notice No. 37- 518 only applies to TGHs, not to all YCFs. See Notice 37-518 [also published in this issue of the Register-second notice to be adopted at the same time as this notice].

Comment #46: Commenter indicates New Rule XI(3) (37.97.152) should also be within a year, not six months. The placing agency should be required to provide proof of the last physical, dental and eye examination within seven days of placement.

Response #46: Oftentimes the information is not available for the placing agency. Licensing cannot require a placing agency to provide that information, however the department can require a provider to obtain it. The department did not include specific timeframes for obtaining this information as it may be burdensome to the provider, case worker, and medical providers to meet.

Comment #47: In New Rule XI(3) (37.97.152), commenter requests that "six" be replaced with "12" and "30" be replaced with "90" because this would be consistent with dental and eye exams. It seems an annual physical is an acceptable medical standard. Of course provider would schedule a youth for a physical sooner if a compelling reason existed. To do otherwise, a provider would be remiss and negligent.

Response #47: The department will amend the rule to indicate that if a youth has not received a complete physical examination within a year prior to placement, within 30 days from admission to the facility, the YCF shall arrange for the youth to have a complete physical and have it annually thereafter. This language will make this provision consistent with the dental and eye exam language. The department will not replace "30" with "90" for physical exams because three months is too long for the youth to continue with the assessment process without review of the youth's physical condition and any medications that may have been previously prescribed. The rule is clarified to indicate that the YCF has 30 days from admission to schedule the appointment. Waiting 90 days prior to appointment scheduling may be detrimental to the youth.

Comment #48: In regard to New Rule XI(5) (37.97.152), commenter indicates that many therapeutic youth group homes have a nurse on site that can give the child an eye screen on a regular basis (like a school nurse would in public school) and make a referral to have a community provider give the child an eye exam if the child screen is a failure with anything greater than 20/30 vision. Please clarify if a Registered Nurse can give the child an eye screen in place of the eye exam within 90 days of admission. If the child fails this screen they will be seen by a provider for an eye exam; if they pass, the child will receive an eye exam within a year of placement. If this rule does not allow it, commenter suggests that the rule specify that a screen by an RN would qualify for the initial 90-day exam.

Response #48: Current rule requires TGHs licensed at a campus level to have a .20 full time nurse available. However, this requirement has been removed in order to increase requirements in other areas without significantly increasing cost.

Routine eye exams can detect vision problems, eye disease and general health problems before an individual is aware a problem exists. Vision screenings are limited eye tests that help identify people who are at risk for vision problems. Depending on who is performing the test and where the test is given, vision screenings may include tests for blur, muscle coordination and/or common eye diseases. A vision screening can indicate that an individual needs to get the eyes checked, but it does not serve as a substitute for a comprehensive eye exam. A comprehensive eye examination is performed by an eye doctor and includes careful testing of all aspects of the individual's vision.

A nurse can continue to complete the Snellar Chart exam and refer the youth to an eye doctor when problems may exist, however it cannot substitute for a comprehensive eye exam provided by a qualified eye doctor.

Rule XIV (37.97.155)

Comment #49: Several comments were received regarding New Rule XIV(6) (37.97.155) indicating that according to Health Department rules and the World Health Organization hand sanitizers are not allowed to be used in lieu of washing hands with soap and water.

Response #49: The department acknowledges the commenter is correct and hand sanitizers are not to be used during food service or preparation. The rule will be amended to delete the use of hand sanitizers in lieu of hand washing before handling food.

Rule XX (37.97.164)

Comment #50: Commenter indicates New Rule XX(1) (37.97.164) requires a YCF to provide access to an educational program, and since funding is not provided to group home for educational programming, it seems to remain the responsibility of the public schools and/or the individual or agency that has custody for the child to provide access. It is the role of the provider to assist in these matters and again support such educational programs.

Response #50: The rule requires the YCF to provide access to an education program, not to provide the education program for the youth. The YCF must comply with school attendance laws and enroll the youth in the public school system or other appropriate educational program as appropriate to the needs of each youth. Additional funding is not required to comply with this rule. This new rule is not a new requirement until it exists in the current rules.

Rule XXII (37.97.170)

Comment #51: In regard to New Rule XXII (37.97.170), the commenter is concerned over the definition of "time-out" at ARM 37.97.102(25) as the "restriction" of a youth to a designated area. If the youth's separation from a favored activity is compelled, or if he or she is prevented from leaving the time-out area, the procedure is not a time-out but seclusion. The commenter suggests the definition be re-written to use a different word than "restriction", such as "voluntary separation of a youth for a period of time to a designated area".

Response #51: The use of time-out is defined in part as a restriction of a youth for a period of time to a designated area from which the resident is not physically prevented from leaving. As the youth are not prevented from leaving the area a time-out is not considered seclusion. The use of time-out may not be voluntary by the youth under every circumstance and therefore the commenter's recommended wording would not be appropriate. Although seclusion is prohibited in all licensed YCFs, the definition remains in ARM 37.97.102 to avoid confusion between time-out and seclusion.

Rule XXIV (37.97.172)

Comment #52: Commenter recommends that the term "nonviolent" be deleted from the catchphrase, (1), (2), (2)(d), and (2)(e). This phrase "nonviolent crisis intervention and nonviolent physical restraint", is not a standard term used in the literature or in the industry as a whole. An example of how this term can confuse the

issue is found in (2)(e) which prohibits "the application of a nonviolent physical restraint if a youth has a documented physical condition...". One could argue that this language, then, would allow the application of a violent physical restraint. Delete the word nonviolent and simply use crisis intervention and physical restraint.

Response #52: The department has completed research on the commenter's concerns and agrees the use of the term "nonviolent" regarding crisis intervention is not a standard term used in literature or in the industry as a whole. The rule will be amended as suggested.

Comment #53: A commenter urges that the standards from the Children's Health Act be incorporated verbatim into New Rule XXIV (37.97.172). For example, the rule could be amended by adding a new subparagraph (effectively the language of 42 U.S.C. §592(b)(1)(B)) that states:

> (2)(h): Policies and procedures must consider the needs and behaviors of the population served, relationship building, alternatives to restraint and seclusion, de-escalation methods, avoiding power struggles, thresholds for restraints and seclusion, the physiological and psychological impact of restraint and seclusion, monitoring physical signs of distress and obtaining medical assistance, legal issues, position asphyxia, escape and evasion techniques, time limits, the process for obtaining approval for continued restraints, procedures to address problematic restraints, documentation, processing with children, and follow-up with staff, and investigation of injuries and complaints.

The commenter also urges that the rules prohibit prone restraints or any floor restraint technique in which staff immobilize a youth with staff body weight on any part of the youth's body. The commenter also urges that the prohibition and definition of chemical restraint be expanded to include the use of P.R.N. sedatives or psychotropics with sedative effects to control behavior.

Response #53: 42 U.S.C. §592(b)(1)(B) are federal requirements that outline the restraint rules for Children's Psychiatric Residential Treatment Facilities (PRTF). Montana has three such licensed facilities which are required to follow the federal guidelines as cited. Restraints in PRTFs differ greatly from what is allowed in an YCF. For example a restraint in an YCF must not exceed 15 consecutive minutes as opposed to restraints in a PRTF which can be utilized up to 24 hours. Chemical and mechanical restraints may also be utilized in a PRTF and are prohibited in an YCF. The new rules proposed for restraint in YCFs has attempted to incorporate as many of the federal requirements as possible without making the requirements too cumbersome for providers. A facility's policy and procedures must address crisis prevention with verbal and nonverbal de-escalation as the preferred method. The use of physical restraint may only be used to safely control a youth until the youth can regain control of the youth's own behavior when the youth has failed to respond to de-escalations techniques and it is necessary to prevent harm to the youth and others. The rule also requires the policy to address debriefing the restraint included with the staff that conducted the restraint and the youth.

The federal requirements for restraints conducted in health care facilities such as the PRTFs are lengthy and extremely time consuming. These requirements are more appropriate for the PRTF level of care which implement lengthy physical restraints and chemical and mechanical restraints which are prohibited in YCFs. Physical restraint is the only restraint that is allowed and only allowed for a short period of time. If the youth requires a more intensive level of restraint or seclusion the youth must move to a higher level of care such as a PRTF.

The new rules require any facility that uses physical restraint to train staff in implementing appropriate restraint techniques. Facilities use the certification courses that they choose. Some certification courses are discontinuing the teaching of floor restraints as part of their training due to the high number of deaths that have occurred as a result of floor restraints. However, they are continuing to address how to respond to situations in which staff may find themselves in a situation when they and the youth are on the floor and a need to protect them is required. These programs continue to evaluate and evolve based on the most current and accurate information available. Requiring certification in these training programs assures the staff are learning the most current methods of restraint.

The definition of chemical restraint means the use of a drug or medication that is used to control a youth's behavior or restrict the youth's freedom of movement. The use of drugs or medication that is not a standard treatment for the youth is prohibited. The department cannot prohibit the use of P.R.N. medication or psychotropic medication if prescribed by a physician acting within the scope of his/her license. New Rule XII(6) (37.97.153) prohibits the use of psychotropic or other prescription or over-the counter medication be given for disciplinary purposes, for the convenience of the staff, or as a substitute for other appropriate treatment services.

Comment #54: Commenter indicates that in the event providers and/or the department have not developed a process to assure the proper training and certification of facility staff in the skills described in New Rule XXIV (37.97.172), the Interim Procedures Relating to Training and Certification set forth in the Children's Health Act should apply. The commenter has taken the liberty of including those procedures in this document:

> "(2) INTERIM PROCEDURES RELATING TO TRAINING AND CERTIFICATION.—
> (A) IN GENERAL.—Until such time as the State develops a process to assure the proper training and certification of facility personnel in the skills and competencies referred in paragraph (1)(B), the facility involved shall develop and implement an interim procedure that meets the requirements of subparagraph (B).
> (B) REQUIREMENTS.—A procedure developed under subparagraph (A) shall—
> (i) ensure that a supervisory or senior staff person with training in restraint and seclusion who is competent to conduct a face-to-face assessment (as defined in regulations promulgated by the Secretary), will assess the mental and physical

well-being of the child or youth being restrained or secluded and assure that the restraint or seclusion is being done in a safe manner;
(ii) ensure that the assessment required under clause (i) take place as soon as practicable, but in no case later than 1 hour after the initiation of the restraint or seclusion; and
(iii) ensure that the supervisory or senior staff person continues to monitor the situation for the duration of the restraint and seclusion."

Response #54: Although de-escalation training and physical restraint training are located in New Rule XXIV (37.97.172) the requirement is not new for YCFs that currently are licensed as a TGH or by facilities that implement physical restraint as part of their program. The interim procedures suggested above are not necessary as the facilities already have staff trained and certified in physical restraint. See also Response #53.

Rule XXVII (37.97.175)

Comment #55: Commenter suggests that (2) appears to limit searches to situations in which there is a court order allowing the search and probable cause to conduct it. However, (3) – (7) appear to broaden the condition permitting search to include the consent of parents, guardians and/or "placing worker." It is questionable whether a blanket, third party waiver of fundamental constitutional rights is valid. This commenter also expressed the same concerns in Comment #34.

Response #55: The parent or legal guardian of youth has the right to consent to all medical treatment of the youth. This includes the right to consent to urinalysis and breathalyzer testing to determine the use of drugs or alcohol. The provisions of Title 41, chapter 1, part 4, MCA, do not restrict the right of a parent or guardian of a youth that has not been emancipated. The youth being served in YCFs are dealing with a wide range of issues which may include drug and alcohol use. The rule as outlined requires the YCF to establish sound policy and procedures that address the facility's ability to perform such testing and requires the facility to obtain the appropriate permission. Searches may not be conducted unless there is reasonable cause to believe the search is warranted.

Comment #56: Commenter indicates that New Rule XXVII(6) (37.97.175) is difficult to apply when dealing with young children in care. It would be helpful to add to (6) the following that is underlined: "The YCF shall have adopted policies and procedures prior to the use of urinalysis testing for the purpose of determining drug and alcohol use which addresses, at a minimum, procedures..." This clarification would be helpful to delineate that the purpose of the urinalysis and required procedures are for determining if the youth is using drugs and/or alcohol. This clarification is needed to separate when urinalysis is ordered by a primary physician for medical reasons to determine infections.

Response #56: The rule was never intended to apply to cases such as suggested by the commenter. The department agrees and will make changes suggested to clarify the rule is for the purpose of determining drug and alcohol use.

Rule XXVIII (37.97.176)

Comment #57: It appears that the New Rule XXVIII (37.97.176) contemplates that there are two forms of contraband – prohibited and illegal. The commenter suggests that the two topics should be separated. Possession of illegal property (drugs – including alcohol and tobacco products by a minor – weapons and child pornography) is a violation of criminal law and methods of search, seizure and destruction are provided for in the criminal codes.

Possession of "prohibited" contraband is an entirely different issue. The commenter recommends that, rather than use the term "prohibited", the rule establish the criteria by which facilities would restrict the rights of youth to possession of otherwise legal objects inappropriate or dangerous to residents in a youth facility.

Response #57: Commenter is correct in stating there are two forms of contraband, prohibited and illegal. New Rule XXXVIII (37.97.190) allows the YCF to define prohibited contraband in policy. This will allow facilities to define contraband and determine what types of items can be used by youth and allowed in the facility. In a youth care facility it is unreasonable to believe the youth can be allowed to have any item that is considered legal in their possession. Such an example would be a hunting knife. Allowing possession of such an item may place the youth, other residents, and staff at risk of harm. Allowing the facility to define contraband and determine what items the youth may keep in their possession reduces the risk of having items that may be harmful to youth and staff in the YCF. The facility must contact law enforcement when appropriate when illegal contraband is discovered as commenter is suggesting.

Comment #58: New Rule XXVIII(3) (37.97.176) requires the provider to have two staff to witness when provider disposes of such contraband and that is unclear whether it requires a staff person and two witnesses or just two staff. Please clarify and commenter hopes the answer will be that the two staff required on a shift can dispose of contraband.

Response #58: The department agrees that the wording in this rule may be confusing and has changed it to read "When contraband is disposed of, at least two staff members must be present and the disposal must be documented in the youth's case record".

Rule XXXIII (37.97.186)

Comment #59: A comment was received regarding New Rule XXXIII(8) (37.97.186). The provider has one private room, and the bathroom for that resident is off of the dining room. It has been this way since 1974. Commenter thinks this should be

waived for existing facilities. Comment also indicates provider has a male and female dorm, each with its own connected bathroom.

Response #59: The department understands this provider's concerns and is willing to amend the rule to grandfather existing licensed facilities who do not currently comply to be exempt from this provision. Any new renovation, remodeling, or additions to structure must comply with the requirements. The rule will be amended to allow a grandfathering provision.

Rule XXXVIII (37.97.190)

Comment #60: A comment was received regarding New Rule XXXVIII(2) (37.97.190) and the rationale for the rule. Commenter indicates that this rule states that the responsibility for paying for medical and dental care usually lies with the parent, guardian, custodian and/or referring party. If it is going to become a rule that sometimes the YCF will be responsible for those costs, it becomes an additional, unreimbursed cost to the provider. There could potentially be times that a youth could incur medical bills that would threaten to bankrupt a YCF. It should not be the responsibility of the YCF to pay for medical bills at any time.

Response #60: See Response #45 and 61.

Comment #61: Commenter states that in New Rule XXXVIII(2) (37.97.190) "Financial responsibility for medical and dental treatment must be established prior to placement and must usually lie with the parent, guardian, custodian, and/or referring party of the child." In the comments toward the end this is further clarified by stating, "It is necessary to require the YCF to have financial responsibility for medical and dental treatment in order to ensure that the youth receive required treatment. All YCFs are required to provide ongoing medical and dental treatment to the youth, and the facility's lack of resources should not hinder in obtaining such services." Financial responsibility for this should lie with the guardian or placing agency when Medicaid or insurance does not pay. Responsibility should not be the providers. Please clarify this statement such that providers won't be required to pay for these services.

Response #61: The department agrees that statement in the rationale is not clear on the intent of the rule. The rule requires that the YCF establish who is financially responsible for medical care of the youth prior to placement. The rule states financial responsibility must usually lie with the parent, guardian, custodian, and/or referring party of the child. The rule reads correctly. The provider generally is not responsible for this payment and will be required to have this established prior to placement. The rule states it "usually lies with the parent, guardian, custodian, and/or referring party of the child" due to rare circumstances that might arise when the provider agrees to be responsible for these payments. See also Response #45.

Rule XXXIX (37.97.903)

Comment #62: The department's policy clearly identifies the preference for the use of six and 8-bed facilities for the delivery of therapeutic group care services, while on its face, the rule suggests that 4-bed (historically intensive) homes can be continued under the proposed rules. The proposed rules increase the costs of operation of the 4-bed (and other) homes through increased training requirements, expanded human resource tasks, program and policy changes, requirements for environmental modifications, staff management and supervision and the addition of requiring licensed clinical staff. Meeting the demands of the rule, and operating without continued financial loss, require a provider to offer the six and 8-bed version of 'intensive-level' homes.

Response #62: The department has no preference regarding the number of youth served in a TGH. Currently the department has 56 TGHs licensed for a various number of beds. The breakdown for bed licenses is as follows: two facilities licensed for three beds, nine facilities licensed for four beds, three facilities licensed for five beds, 23 facilities licensed for six beds, two facilities licensed for seven beds, 16 facilities licensed for eight beds, and one facility licensed for nine beds. The number of beds a facility is licensed for is a choice made by the provider depending on the program and service delivered.

The proposed rules do not increase the costs of operating for a 4-bed home above other TGHs licensed that serve higher numbers of youth in the areas commenter references: increased training requirements, expanded human resource tasks, program and policy changes, requirements for environmental modifications, staff management and supervision and the addition of requiring licensed clinical staff. These changes apply to all TYGs. The 4-bed model will have an increase in cost regarding direct care staff versus a group home that serves a higher number youth. However, the direct care staffing ratio for a 4-bed group home remains the same as in current rule, therefore the provider will not see an increase in cost to operate. The proposed rule as written did increase the cost regarding the program manager requirements for a 4-bed group home, however, the proposed rule has been amended to address this concern. See also Response #5 and 63.

Comment #63: Moving "intensive level" group homes to 6- and 8-bed facilities favors increased profits for providers instead of serving more intensive youth. It pays providers more to do less. Is the department clear that it is promulgating policy that allows and encourages a provider to significantly reduce its staffing and receive the same reimbursement? The table below identifies staffing patterns under the rule for serving a basic unit of 16 youth. Provider profits will significantly increase (100 percent increase in revenue with marginal increase in staffing costs) while they serve less-intensive youth with a far smaller intensive staffing ratio.

	4-4-bed model homes 16 youth	2-8-bed homes 16 youth	Current proposed rule
Minimum staffing	8 afternoon staff 4 overnight staff	4 afternoon staff 2 overnight staff	A TGH with five or more shall have a minimum of two direct

during a weekday			care staff present for 15 hours each day.
	2 program managers (In commenter's current system they would run 4)	1 program manager	(6) Each program manager shall be responsible for no more than two TGH (1 program manager)
	150 minutes of psychotherapy 1.5 FTE LCS (In commenter's current system they would run 2 LCS providing individual, family and group sessions tailored to meet the needs of each child at his or her functioning level exceeding 15 minutes of direct care.)	150 minutes of psychotherapy. .75 FTE LCS	(8) Program managers and lead clinical staff may be the same employee as long as they meet the minimum qualifications of both positions and have sufficient time to carry out the functions of both positions.

Response #63: The licensing requirements do not require 4-bed homes to serve more intensive level need youth. All TGH currently are required to serve SED youth regardless of the number of youth the home is licensed to serve.

As the commenter demonstrates in the table above, the rule as written would increase the costs of direct care staffing requirements and program manager requirements (discussed below). However, the commenter's assessment of the LCS position is incorrect. The direct care staffing ratio has not increased from current rule for a TYG licensed for six beds and under. Providers will not see an increase in cost in this area. The direct care staffing ratio has been decreased for TYGs providing care for seven and eight youth. The department has attempted to make several changes that would decrease costs in some areas to cover the increased cost in other areas. The direct care staffing ratio for TGHs licensed for six beds and under could not be reduced and continue to maintain the safety of the youth and staff.

Commenter is correct the proposed rule as written would cost a 4-bed group home more to operate than an 8-bed group home when comparing the program manager position. In referencing the table above, four 4-bed group homes would be required

to have two program managers and two 8-bed group homes would only be required to have one program manager. Both scenarios would be serving 16 youth. The department has modified the proposed rule to allow one program manager to serve up to 16 youth; the rule will be consistent between four 4-bed and two 8-bed group homes. The duties and responsibilities of the program manager do not vary according to number of licensed beds.

Commenter also states that they currently are only required to have two program managers for four 4-bed group homes but they exceed the requirement by having four program managers for four 4-bed group homes. However, in a four to six bed facility, current rule requires one full-time program manager. Provider is meeting current rule, not exceeding the current rule.

The department disagrees with the commenter's assessment of the LCS position differing between a 4-bed group home and 8-bed group home. The table above suggests a unit of four 4-bed group homes serving 16 youth would require 1.5 LCS versus a unit of two 8-bed group homes serving 16 youth would require a .75 LCS. In actuality the LCS requirement will be the same in serving a unit of four 4-bed homes and two 8-bed homes. The proposed new rule does not increase the LCS requirements for a 4-bed home versus an 8-bed home. The cost of the LCS requirement is equivalent in the example set forth in the above table. The rule as modified requires the LCS to conduct 75 minutes of therapy per youth per week. The requirement is per youth and is not dictated by the number of youth the facility is licensed to serve. Using the above table to demonstrate: four 4-bed group homes serving a total of 16 youth would require the LCS to deliver 1,200 minutes of therapy per week for each youth. Two 8-bed group homes serving a total of 16 youth would also require the LCS to deliver 1,200 minutes of therapy per week for each youth. The LCS requirements are equivalent. If commenter currently has two LCS positions for four 4-bed group homes, an increase in staffing should not be required. See also Response #66.

Comment #64: In regard to New Rule XXXIX (37.97.903), commenter indicates that staffing requirements for TGHs licensed for five or more youth will decrease provider costs. This statement is inaccurate for facilities licensed for five or six youth as the rule makes no change in direct care line workers on any shifts. Commenter will maintain 1:3 staffing currently in place under this rule.

Response #64: Commenter is correct. Staffing requirements for five and 6-bed homes will remain the same. The department apologizes for the error.

Comment #65: Commenter believes that New Rule XXXIX(3) (37.97.903) should be worded similar to (2) regarding the hours "15 hour period beginning at, or between 7:00 a.m. and 7:30 a.m., or beginning at some other reasonable morning half hour which is approximately 15 hours prior to the bedtime of the youth."

Response #65: The department agrees and has modified the rule to have consistent language in (2) and (3).

Comment #66: Several comments were received regarding New Rule XXXIX(4)(a) (37.97.903). During school hours when no youth are present, is the provider required to have one on-call staff available even if there is one direct care staff, one program manager and one therapist on the premises in the program? Please change the language to state that an on-call staff is required only if there are no other staff in the facility.

Response #66: The proposed rule does not require a staff member to be physically present at the facility during regular school hours when youth are not normally present. The rule requires one staff to be on-call and available if needed. The department will amend the rule to incorporate the suggested language.

Comment #67: Commenter agrees that the intent of New Rule XXXIX(4) (37.97.903) is to prevent program managers from being counted in the staff ratio when they are working office hours and not providing direct care to youth. Commenter also agrees that having a staff on call is necessary to provide good and safe care to the youth. However, not allowing the program manager to be included in the required ratio in certain conditions significantly hinders the TGH's ability to respond to the needs of the TGH and thus the youth.

Commenter suggests the addition of the following language to (4)(c): "The program manager may be counted in the direct care staffing to youth ratio when scheduled as defined in (2) or (3), when called in when on call, and when not otherwise scheduled for office hours".

Commenter goes on to state it is important that the program manager be able to provide coverage when necessary due to staff illness, vacation or other personal needs. Additionally, staff may need to take a child off campus for a home visit, doctor appointment, recreational activity, etc. Allowing the program manager to be scheduled on either a planned shift or an emergency fill-in will allow the TGH to have greater flexibility to meet the needs of children, families, and the treatment needs of each individual. Commenter would also suggest an addition: (6) should read "Each Program Manager shall...except as provided in (4)(b) and (c)."

Commenter also indicates that in rationale for New Rule XXXIX (37.97.903), discusses that these staffing changes will be a cost savings for TGH because they will no longer require certain roles such as a nurse, clinical director, director of operation, etc. The simple fact is that this change will not result in a cost savings. The reality of operating a program often involves taking out-of-state placements to make it fiscally viable to run and operate a program. This is a reality because the rate of reimbursement from the state of Montana isn't enough to cover the cost of running quality programs with solid outcomes, paying staff adequately and competitively, developing and train staff, etc. If providers want to be competitive in the market and provide quality services, providers must be accredited. Any out-of-state market and accrediting body requires roles such as clinical directors, directors of operations, and nurses. These roles can't go away and even if licensing doesn't

require them anymore, providers still have to operate with them. Also, for quality and outcomes, an organization must operate with some clinical and administrative oversight beyond those who are also doing the work. It is so busy for the person providing clinical services and supervising staff. To then expect them to do things such as assure medication are administered appropriately and safely, run a quality assessment program, supervise clinical work provided, meet the needs of customers, etc. is impossible. The assumption made in the rationale that this is a cost saving is inaccurate.

Response #67: The department has made several changes regarding the program manager requirements in the proposed rules. The program manager's primary responsibility is to train and supervise direct care staff. The program manager can be responsible for up to one or more TGHs that serve up to a combined total of 16 youth. In some cases the program manager can be responsible for up to four group homes. The changes have been made to balance the cost of operating a TGH to current rates while being able to implement the extensive changes that are being proposed. Due to comments received, the department is also changing the proposed new rules to allow the program manager to provide 75 minutes of therapeutic interventions to each youth per week. This added responsibility of training and supervising staff will consume the program manager's time. In some cases the program manager may also be employed as the LCS providing they are qualified for both positions and have sufficient time to carry out the functions of both positions. The department has already incorporated a few exceptions into the rule. In New Rule XXXIX(4)(b) (37.97.903), if no more than two youth do not attend school and remain in the TGH, the program manager may be counted in the direct care staff ratio. New Rule XXXIX(5) (37.97.903) requires one on-call staff be available each night. The program manager may be scheduled as the on-call night staff to meet this requirement. The program manager is unable to complete all the requirements of the position and have time to work as a direct care staff person.

TGHs currently licensed as a campus-based ones are required to have a .25 full-time social worker for each eight children in care, .25 full-time clinical director for each eight children in care who must be licensed by the Montana Board of Psychologists, .25 full-time director of operations for each eight children in care, and a .20 full-time registered nurse for each eight children in care. These requirements have been eliminated in the proposed new rules. These requirements are more suited for a Psychiatric Residential Treatment Facilities (PRTF). Montana has three licensed PRTF facilities. The elimination in these staffing requirements will be a substantial cost savings to TGHs licensed at the campus-based level.

Commenter states the rate of reimbursement from the State of Montana does not cover the cost of running a quality program. Commenter says to be competitive in the market and provide quality services, providers must be accredited and the accrediting bodies require the staffing as described in the current rule. As stated above, these requirements are not suited for a TGH level of care and are more suited for a PRTF level of care. The accreditation referred to in this comment is required for a PRTF license, and any provider that receives this accreditation is

eligible for licensure at the PRTF level and therefore it will be reimbursed at the PRTF rate. The department should not have requirements that are beyond what is appropriate and beneficial for this level of care. Campus-based TGHs are not reimbursed at a rate higher than other TGHs and should not have additional staffing requirements to increase the provider's cost to operate the program. The current staffing requirements have been eliminated which will result in substantial cost savings. Providers may choose to maintain these positions for the purpose of accreditation; however, continuing to require these standards for this reason would be unreasonable for licensed TGH. Montana Medicaid reimburses therapeutic group homes at a TGH rate, not a PRTF rate which is significantly higher. See also Response #5.

Comment #68: A comment was received regarding New Rule XXXIX(5) (37.97.903). If a provider has two direct care staff present and awake in the facility, is the provider still required to have an on-call staff available?

Response #68: The rule does not prohibit more than one awake staff member from 10:00 p.m. to 7:00 a.m. The department requires an on-call staff to be available as needed. If it is necessary to staff with more than one awake staff member, an on-call person would not be required.

Comment #69: In New Rule XXXIX(6) (37.97.903), several commenters request that the therapeutic group home program manager staffing requirement be expressed as .5 FTE to provide more flexibility in staffing patterns. The current proposed rule allows a program manager to be responsible for no more than two therapeutic group homes. Stated as .5 FTE would accomplish the same staffing levels while giving providers much needed flexibility to manage programs in the most effective and efficient manner. One commenter also suggested deleting (6) and the reference to .5 FTE, and replacing the second sentence with language "allowing a TGH employing a full-time program manager to work in a direct care capacity not to exceed .5 FTE."

Response #69: Although the department did not change the program manager requirements to .5 FTE as suggested, changes in rule were made to allow providers more flexibility in staffing patterns for the program manager position. See also Response #63 and #67.

Comment #70: Commenter indicates New Rule XXXIX(6) (37.97.903) requires that provider can allow a program manager to be responsible for no more than two TGHs. However, the rule does not define any amount of time required for the program manager to be so engaged. The department has done a great job in these rules to avoid describing an approach but rather challenging providers to meet the standard in a way that they think is best, so commenter requests that providers be given freedom to design their own programs and be able to assign FTEs to best manage them. Commenter believes it is warranted to have the rule set a minimum, adequate FTE requirement for a program manager role to be involved in a TGH. While this is a lesser requirement than continued in current rule, commenter does

not believe it can effectively reduce the current amount of FTE it uses to manage a TGH. Currently, commenter spends about 1.25 FTE to manage the program, staff and home.

Response #70: The new proposed rule program manager requirements have been amended as a result of previous comments from providers. Changes will allow a program manager to be responsible for up to 16 youth. This is still a decrease in requirements from current rule. The new rule reduces the amount of responsibility of the program manager. The new proposed rule requires the therapy sessions to be conducted by the lead clinical staff person and the therapeutic interventions can be completed by the program manager. As this change will have a financial impact on providers, the department made changes in other areas to balance costs. As the duties of the program manager have significantly decreased, it only seems appropriate to reduce the FTE requirement for this position. These requirements are minimum standards, and providers have the option of exceeding the rule if appropriate for their individual program. See also Response #72.

Rule XL (37.97.905)

Comment #71: Commenter questions if the 72 months is just a typing error in New Rule XL(1) (37.97.905).

Response #71: The department acknowledges a typing error and the rule will be amended to indicate the correct time period of 12 months.

Rule XLI (37.97.906)

Comment #72: The policies as demonstrated above allow providers significantly greater profit to the detriment of the service to youth. The table below demonstrates that it is the policy of the department to reimburse providers for a service historically referred to as "moderate-level care" (at one time designed for youth with moderate-level needs) at an "intensive-level." Is the department clear that it is promoting a policy that will lead to greater profits for providers who will essentially be paid at an intensive rate to provide what the department historically reimbursed at a moderate level?

	Moderate Group Home Rule	Existing Intensive Group Home rule	Current proposed rule
Child to staff ratio	(a) Child to staff ratio must be no more than: 4:1 each day	(a) An intensive group home with four or fewer children must have a child to staff ratio of: No more than 2:1 each day	A TGH with five or more shall have a minimum of two direct care staff present for 15 hours each day (4:1 in an 8-bed home)
Program	(c) Each program	(i) In a four to 6-bed	(6) Each program

Manager	manager shall be responsible for: No more than eight children	facility: one full-time program manager for up to six children in care. Under this subsection, a full-time program manager means a program manager working a minimum of 40 hours/week	manager shall be responsible for no more than two TGH. (Note: A single manager can be responsible for 16 children)
LCS responsibilities	(d) Each LCS shall be responsible for no more than 16 children	(e) Each LCS shall be responsible for no more than 12 children.	(8) Program managers and lead clinical staff may be the same employee as long as they meet the minimum qualifications of both positions and have sufficient time to carry out the functions of both positions. No limit and expanded duties.
	Moderate Group Home Rule	Existing Intensive Group Home rule	Current proposed rule
Treatment interventions	(i) specific treatment plan objectives and interventions which are carried out in the treatment environment and documented by daily charting: (ii) two group treatment sessions per child; (iii) one individual treatment session per child (iv) one treatment	(i) specific treatment plan objectives and interventions which are carried out in the treatment environment and documented by daily charting: (ii) three group treatment sessions per child; (iii) two individual treatment session per child	(1) Each youth must receive from the lead clinical staff 150 minutes per week (Sunday through Saturday) of individual, group, and family therapy as clinically indicated based on the specific treatment needs of the youth. Therapy requirements include the following: (a) Individual therapy must be provided at least 50 minutes out of the required 150

	team meeting; and (v) family therapy when appropriate and medically necessary	(iv) two treatment team meeting; and (v) family therapy when appropriate and medically necessary	minutes per week. Individual therapy may be provided in two 25- minute sessions per week as clinically appropriate. The lead clinical staff shall document specific reasons why a 50-minute therapy session cannot be provided. (b) Family therapy must be provided to the youth and biological, adoptive, or foster family members with whom the youth previously resided or plans to reside with upon discharge. If family therapy is not appropriate based on the particular situation of the youth, the lead clinical staff shall document specific reasons why family therapy cannot be provided.
LCS requirements	(5) "Lead clinical staff (LCS) " means an employee of, or under contract with, the moderate, campus based or intensive level therapeutic youth group home provider who is responsible for the supervision and overall provision of treatment services to children in the group home. The LCS must be a clinical psychologist,	(5) "Lead clinical staff (LCS) " means an employee of, or under contract with, the moderate, campus based or intensive level therapeutic youth group home provider who is responsible for the supervision and overall provision of treatment services to children in the group home. The LCS must be a	(10) "Lead clinical staff (LCS)" means an employee of the therapeutic group home (TGH) provider. The LCS is responsible for the supervision and overall provision of treatment services to youth in the TGH. The LCS must be a licensed clinical psychologist, licensed master level social worker (MSW), or licensed clinical

	master level social worker (MSW), licensed professional counselor (LPC), or have a master's degree in a human services field with a minimum of one year of clinical experience.	clinical psychologist, master level social worker (MSW), licensed professional counselor (LPC), or have a master's degree in a human services field with a minimum of one year of clinical experience.	professional counselor (LCPC). The LCS can be an in-training mental health professional.

Response #72: Currently the department does not have any therapeutic group homes licensed at the moderate level. 52 of the 56 TGHs are currently licensed at the intensive level, and therefore they are being reimbursed at an intensive level. Most youth being placed meet the increased need for an intensive level placement. All but four campus-based TGHs are licensed at the intensive level. The decrease in staffing requirements for program managers will help providers with increases requirements for LCS. It is the intent of the department to ensure youth placed in TGHs are provided with therapy from a licensed and trained individual which historically has not happened. The treatment interventions as shown in the above table have been delivered by individuals that are not licensed to provide therapy. It is the department's belief the youth will benefit greatly from receiving therapy from a licensed individual. The department believes the rate reimbursement for TGHs are adequate. See also Response #73.

Comment #73: The rule changes as proposed represent a major change in the options available to providers when designing services and providing treatment strategies for children with severe emotional disorders (SED). The label of SED is a broad one that covers a wide variety of problems and issues and includes the combinations of symptoms that make up the challenges of the children in the system. As a result, there is a level of flexibility that is needed, and which exists in the current rules that the department proposes to eliminate. Since 1990, when the first Intensive Therapeutic Group Home was created, the role of the LCS has been challenged. One group of thought was that the position of LCS should be a Licensed Clinical position like an LCP, LCPC, LCWS or other licensed person. The other line of thinking was that the LCS position needed to be a Master's Level position but did not need to be a Licensed Professional like people who have Master's in Education or higher, or people who have Master's in Public Administration plus five years of experience in providing treatment. These are examples of people who have held this position for the commenter's organization over the years. The first LCS in the state that designed much of the commenter's system only had a Master's degree in Education and several years of managing the

Children's Unit run by the State of Montana at the time. The important thing was the combination of skills and experience that the person brought to the position.

The most important combination of skills and education that comprises an advanced certification in Applied Behavior Analysis (ABA) that is eliminated from the proposed rule, the commenter offers ABA to families and their children. This is a particularly important position to have available to a provider like the commenter's.

These people will no longer be able to hold an LCS position in Montana, resulting in the elimination of existing employees from current jobs and prevent organizations like the commenter's from employing people with these levels of education in the future. This kind of restriction in a State that does not have an abundance of any of the level of professionals being specified in the proposed rule seems detrimental to a system that can barely find the people they need now.

The two lines of thinking on this topic each have their pros and cons. In the past, the primary level of employee available in the mental health system was licensed clinical staff, i.e., LCPC, LCSWs. Being in a state that has had a systemic problem with recruitment and retention of highly qualified staff has made it difficult. It is far more difficult when the kinds of restrictions proposed by this rule are implemented. For many years and even today, psychiatry has been unavailable to Montana provider organizations. This was true as well for PhD Clinical Psychologists, LCWSs and other highly qualified professional positions. The commenter has implemented a system over the last 15 years that has over 12 psychiatrists that support the commenter's system that includes all of the commenter's group homes and services. That is not a practice other providers can duplicate easily but it should not be something that goes unaccounted for in these rules.

Unfortunately, the commenter will be in a position to have to use an employment strategy and treatment service that has not demonstrated the results consistently needed for quality services. While the commenter has used a different employment strategy and treatment system than other providers, which has been proven to get the results consistently enough to be a primary placement site for many of the state's most difficult cases, the commenter will be forced to use a system that has not performed as well.

The commenter created a residential program that provides an above standard service to some of the most difficult cases in the state, and it did so with a program that delivers more than the minimum required services for the same reimbursement rate given to competitors. The commenter is being made to mothball that system for another system that has not been able to compare with the results the commenter has had over the past 22 years. These changes will limit the number and type of employee the commenter has used over the last 22 years, will shrink the number of children eligible for commenter's program. The changes will force the commenter to change the number of children in commenter's individual homes requiring children to share bedrooms and travel in larger groups.

Commenter will be forced to be reimbursed the best they have been reimbursed in the provider's history.

In some parts of DPHHS, extreme efforts are being undertaken to secure even more staff with alternate education programs like the BCABA course being offered by MSU-Billings and being implemented and mandated by the DD Program. As a matter of fact, ABA has been demonstrated as the treatment of preference for treatment of people with autism and people with developmental disabilities and/or people with suppressed intellectual capacity due to their mental health challenges. The rule as proposed eliminates not only staff qualified by alternate educational programs like ABA but prevents children with autism and dual diagnoses of developmental disabilities and mental health problems from being served in these homes without incurring additional costs that are prohibitive to the operations of those programs.

It is for these reasons the commenter believes the current rule changes will eliminate flexibility the commenter has in the current rule that will result in the elimination of jobs and people currently holding these positions and will eliminate children from services they can currently access. The commenter will be forced to lay off staff and begin the process of moving children currently in services to services that allow the necessary flexibility to use approaches like ABA and other approaches that are not best offered by licensed clinical staff. The primary mode of treatment contemplated by these rule changes is "talk therapy" exclusively and it is the commenter's belief that only a limited population of children benefit from this approach. The available research supports the commenter's thoughts on this matter. While the commenter can and will adjust the program to serve the children, there will be a population of children that the commenter believes need the kind of approaches the commenter has used since 1990, that are allowed under the current rule, that will either not be allowed or now will be so expensive to offer they will effectively no longer be an option for the commenter to provide.

Response #73: The department assumes commenter is referring to ARM 37.97.102(10) regarding lead clinical staff. The department appreciates the commenter's work with difficult-to-serve youth and for building psychiatric service capacity. Commenter delivers a wide range of services to our most vulnerable populations and is licensed for several services in the State of Montana. In some cases, commenter was reimbursed more than other residential providers to serve difficult youth.

ARM 37.97.102(23) defines TGH "therapeutic services" and requires they be provided by the LCS within their scope of practice as a licensed clinical psychologist, licensed master's level social worker (MSW) or licensed clinical professional counselor (LCPC) or in-training mental health professional. The term "therapeutic services" is being changed and a new definition for "therapy" and "therapeutic intervention" will be added to the rule. Licensing rules will be changed to allow the program manager to provide some of the required therapeutic services. This change is being made to allow TGH staff who are not a licensed psychologists,

MSWs, LCPCs or in-training mental health professionals such as the PM to provide specialized services such as ABA. The licensing rule change has allowed the PM to complete 75 minutes of therapeutic interventions per week per youth. The number of employees the commenter has that holds an advance certification in ABA would be able to provide this service. According to the Behavior Analyst Certification Board and MSU-Billings the commenter refers to, the certification in ABA requires a master's degree and several graduate credit hours (225) in addition to 1,500 hours of supervised independent field work in behavioral analysis. The number of individuals that hold this certificate within the provider's organization are limited and would be highly qualified to provide the therapeutic intervention requirements for the PM position. This would allow the commenter to continue to serve a difficult population and maintain employment for these individuals certified in ABA. Facilities like this, commenter states, will be reimbursed the best that they have been reimbursed in history, therefore the rate should be adequate.

As the commenter points out, other areas in the department are considering professionals with alternate educational backgrounds such as Board Certified ABA. The department's Developmental Disabilities Program has acknowledged this therapeutic intervention with individuals with autism. The commenter has two TGHs that specialize in youth with autism and has been advised that a Community Home for Persons with Developmental Disabilities license may be the more appropriate route to take to treat these youth that may not benefit from therapeutic services offered in a TGH.

Both rehabilitative and psychotherapy are terms used in the definition of "therapy" provided in a TGH versus a clinic setting. The department believes the LCS needs to be a licensed psychologist, MSW or LCPC or in-training mental health professional to provide therapy in a TGH according to the definition in ARM 37.97.102(10). The department believes the LCS should be a licensed psychologist, MSW or LCPC or in-training mental health professional to assure a minimum level of clinical competency in providing and supervising the delivery of mental health treatment services to youth with a serious emotional disturbance (SED) in a TGH. The department believes clinical competency is gained through the education and experience needed in attaining professional licensure.

Based on comments received in the rulemaking process, changes will be made to the licensing requirements regarding the amount of therapy required by the LCS and to allow some therapeutic intervention services to be provided by the PM. The department is, adding a new definition for "therapeutic intervention" that PMs may provide as part of the TGH treatment requirements for licensure. Both "therapy" and "therapeutic intervention" are treatment or therapeutic services for SED youth in a TGH.

Interactive psychotherapy will be added to the definition of "therapy". Interactive means using play equipment, physical devices, language interpreter or other mechanisms of nonverbal communication.

Current TGH licensing ARM requires the LCS to be a clinical psychologist, master level social worker (MSW) or have a master's degree in a human services field with a minimum of one year clinical experience. ARM 37.87.702(3) defines "In-training mental health professional services" as services provided under the supervision of a licensed mental health professional by an individual who has completed all academic requirements for licensure as a psychologist, clinical social worker, or licensed professional counselor and is in the process of completing the supervised experience requirement for licensure.

The department understands some individuals with a master's degree in social work, counseling, or psychology may not meet the Department of Labor's professional licensing requirements. The department believes the LCS should be a licensed or be an in-training mental health professional to assure a minimum level of clinical competency in providing mental health services to SED youth. Licensed individuals are required to complete a great deal of clinical hours and pass a licensure examination that master level individuals are not required to complete. Nothing in these rules would prohibit a licensed psychologist, MSW or LCPC or in-training mental health professional from becoming ABA certified.

The definition of SED is broad and includes many different mental disorders and functional impairments well outside normal developmental expectations and severe behavioral abnormalities not attributable to intellectual, sensory or health factors for at least a six-month period or obvious predictable period of six months. The definition of "therapy" is broad enough to encompass the diverse needs of SED youth being served. The definition includes a combination of supportive interactions, cognitive therapy and behavior modification techniques, and will be updated to include interactive psychotherapy to provide therapeutic change for youth in TGH, not exclusively "talk therapy".

Many TGH providers already use licensed clinicians in their programs. Licensing rules will allow TGH providers time to come into compliance with the new LCS requirement, although they will not grandfather existing staff into these positions. The use of in-training professionals is allowed and the PM can provide some of the required therapeutic interventions. The department believes this addresses the commenter's concerns regarding capacity issues.

Comment #74: The proposed rules include a significant change in the model of service delivery by requiring the LCS to be licensed to provide and to deliver 150 minutes of psychotherapy to clients. The change requires psychotherapy to be delivered regardless of the individual need or medical necessity. Many programs throughout the state decline to serve youth with suppressed intellectual capacity. In most cases, the youth will not benefit from psychotherapeutic approaches, which results in providers rejecting programs that are psychotherapeutically based. The 4-bed intensive group home has historically provided care for this population. Changes in this area under the proposed rules will directly impact the population to be served in these programs.

Response #74: Current rule already requires a great deal of treatment sessions per youth. The significant change would be the person who delivers the service. As the department is paying for therapeutic services to be delivered in a therapeutic youth group home, it feels the services should be provided by a licensed and trained individual. The rule has been modified by decreasing the number of minutes of therapy the LCS must provide to 75 minutes. The program manager (PM) may now provide 75 minutes of therapeutic interventions under the supervision of the LCS. As the provider has commented, the decrease in other requirements will provide for the increase in cost for the LCS. Commenter can continue to offer the current services with the LCS completing the task. See also Response #8, 63, and 73.

Comment #75: Licensed clinicians are not necessarily trained and do not necessarily have the background necessary to deliver evidence-based approaches such as Applied Behavior Analysis. The 150-minute requirement, will limit the commenter's ability to serve the population we currently serve. There is a group of youth who will not be able to participate (nor would they benefit if you could make them participate) in the minimum of two, 25-minute individual therapy sessions. These same kids have difficulty in group participation. There are specialized, evidence-based programs in use that meet the needs of this population but are not consistent with meeting this rule requirement. The cost of continuing to deliver the services the youth need while concurrently meeting the rule requirements for the sake of compliance (not medical necessity or care needs) will be prohibitive.

Response #75: Licensed clinicians may be trained as any other staff to deliver approaches such as Applied Behavior Analysis. There are also certifications and degrees offered in the approach should the provider be interested. For youth unable to participate in "talk therapy" a trained clinician can implement other therapeutic methodologies such as art therapy as an example. See Response # 5, 8, 73, and 76.

Comment #76: Regarding New Rule XLI(1) (37.97.906), a commenter challenges the 150 minutes of therapy a week for any child no matter his or her age. An example is a child who is seven years old and has a family that can be involved in treatment from a distance. Given that most sessions with kids are about 30-40 minutes at this age, anything longer will decrease the impact/effectiveness if therapy. Having a child this age sit through an hour long group would be completely ineffective for the child, the therapist, and the other children in the group. The child would need to have therapy of some type about five days a week. Additionally, the child attends school five days a week and may potentially have a doctor appointment that week. When does the child have time to attend to homework and then learn to be a child and play? The rule also doesn't include any time for recreation opportunities or potential community activities that are just as important to a child's treatment and ability to transition to the community again. Commenter has a hard time imagining that most adults could handle 150 minutes of therapy a week.

Commenter strongly recommends that the requirement be changed to a range of time from 100 to 150 minutes to accommodate the differences in children's ages,

cognitive abilities, and developmental stage. The 100 to 150 minutes of therapy could continue to require that at least 50 minutes of it is individual therapy and the rest of the time can be made up of family therapy or group therapy.

Commenter also asks that there be included exceptions allowed for weeks when a therapist is sick, on vacation, or attending other business (such as taking another child on a home visit, community assessment for a new child, etc.), or the child is gone on a home visit or off on a recreational trip. The exception would require the program manager to check in with the child for a total of 60 minutes that week while the therapist was unavailable and this is documented by the program manager. It is completely unreasonable to expect that this can be met every week of the year.

Response #76: The department has amended the rule to allow the LCS to deliver 75 minutes of therapy and the program manger to complete 75 minutes of therapeutic interventions under the supervision of the LCS.

Current rule for campus-based level of care requires one individual therapy session, two group sessions, and family therapy (when appropriate) per week. Some commenters have said that the proposed rule is a reduction in the amount of therapeutic sessions required per week. With the additional changes, the youth may be provided therapy 75 minutes per week by the LCS and additional interventions for 75 minutes per week by the program manager. Placement in a therapeutic youth group home requires youth placed in the home to benefit from this level of service and to be able to participate in the level of care. The young children may be receiving therapy in combination with therapeutic interventions five days per week as described above. However, these youth are placed in the TGH to receive therapeutic services to address their serious emotional disturbance. Seventy-five minutes of therapy per week and 75 minutes of therapeutic intervention per week should not significantly interfere with the child's school or recreational activities.

The department has allowed individual therapy to be conducted in two 25-minute sessions as clinically indicated by the LCS. This would accommodate for the younger children that cannot actively participate in therapy for a 50-minute period. The new proposed rule does not prescribe the length of time group or family therapy sessions must be. The LCS and/or program manager may deliver these services as clinically indicated based on the specific treatment needs of the youth.

The department agrees to amend the rule to allow for exceptions for therapeutic services in the event the LCS or program manager is not available. The amount of minutes will be prorated for youth placed in the facility for less than one year.

Comment #77: Commenter indicates two concerns about New Rule XLI (37.97.906). First, it is an increase in the requirement for therapy by a licensed individual and there is no increase in reimbursement to pay for this rather expensive increase. Second, each youth has the benefit of the therapeutic milieu in the group home which is a standard part of the programming. The "requirement" that additional therapy be given to every youth is not reflective of individualized

programming that is the foundation of the children's mental health system. Some youth may require more therapy and some may require less and the rule does not allow for this individualization.

Response #77: The department agrees that each youth has the benefit of the therapeutic milieu in a TGH. This therapeutic milieu is delivered by the direct care staff throughout the course of the day when behavior of youth dictates. The therapeutic milieu was never intended to be the only therapeutic service delivered to the youth. The "requirement" for therapy is not new and has been in current rule for all TGHs. At a minimum, the TGHs were required to provide three therapeutic sessions per week. The proposed new rule only changes the qualifications of the person providing the therapy. The LCS can provide the services as clinically indicated for each youth. The PM will be able to provide therapeutic interventions to the youth under the supervision of the LCS. If the youth does not require intensive level therapeutic services, the youth may be eligible for a lower level of care and access out-patient therapy as needed. See also Response #, 6, 73, and 76.

Rule XLII (37.97.907)

Comment #78: In New Rule XLII(2) (37.97.907) commenter suggests deleting "30" and replacing with "90" or add language requiring "treatment plans are to be updated monthly if providers alter the youth's treatment goals". The commenter indicates treatment plans are reviewed weekly at staff meetings, and intervention changes are noted and documented. However, commenter currently updates/revises treatment plans (goals and objectives) at quarterly intervals, and forwards the treatment plans to placing workers and parents/guardians as required by current rules. Unless a youth's treatment plan requires substantive changes to the goals, requiring providers to reproduce an identical document and mail it to the placing agencies and parents/ guardians, if applicable, seems redundant. They receive monthly progress reports describing the child's current functioning.

Response #78: The department believes that treatment plans need to be reviewed and updated on a 30-day basis to assess and evaluate the therapeutic milieu and determine if the child needs a change in therapeutic services to more appropriately treat the youth. The requirement for regular youth group homes and shelter cares for updating treatment plans is 90 days. TGHs are serving SED youth requiring a great deal of intervention. A 90-day review for TGHs does not evaluate the youth's mental health status often enough to be effective.

Comment #79: In regard to New Rule XLII(4) (37.97.907), it seems that it would be quite difficult to provide a copy of the youth's treatment plan to the stated parties "within seven days of the plan's development or update" when it states that the staff "shall read and sign off on the treatment plan within seven days of its development or update." The commenter would recommend that (4) be changed to 14 days to give the provider enough time to make copies and provide (e.g., by mail) the document to the guardian. Given that the seven day period in this rule does not clarify business days, this would allow for weekends or holidays.

Response #79: The department agrees that the timeframes in (3) and (4) appear to conflict. The intent of the rule was to allow seven days after the treatment plan was developed or updated to be given to the placing agency or custodial parent or guardian. The rule will be amended to indicate that a copy of the treatment plan must be provided to the youth's placing agency and custodial parent or guardian within ten days of the plan's development or update.

ARM 37.97.102

Comment #80: In ARM 37.97.102(4), using the term "psychological assessment" to describe the clinical assessment is confusing as it implies that the assessment is to be completed by a licensed clinical psychologist. Commenter would suggest "psychodiagnostic assessment" instead or simply removing the word "psychological." In (4)(h), "risk factors" as a distinct category for inclusion in a clinical assessment is vague and undefined. Risk factors affecting the youth would naturally be included in (a) through (g) and do not require a separate category because it is redundant. Commenter recommends deleting (h).

Response #80: The department agrees with the commenter regarding both recommendations. The term "psychological" before the term "assessment" in ARM 37.97.102(4) will be removed. Risk factors in (4)(h) will also be removed and included in (4)(a) which will now read "diagnosis supported by a rationale, with specific behaviors and risk factors identified;"

Comment #81: Commenter indicates ARM 37.97.102(10) requires a new definition for the "lead clinical staff" by requiring three required therapies for each child to be provided by the lead clinical staff, and the LCSs to be a licensed therapist or be an in-training therapist. In the rationale, the department identifies the current problem, of program managers are doing the therapies. That is a problem if inexperienced and untrained staff is providing "therapy." Commenter does not know how widespread that practice is being used. The proposed solution goes beyond solving the problem stated but commenter does understand and support qualified and trained therapists. Outside of the appeal below for a longtime counselor, commenter can support the "movement" toward licensed therapists in TGHs but feels it is imperative that, before requiring such a change, the department in partnership with providers research the plausibility in meeting this proposed standard by (1) getting a count on the numbers and ratios of licensed and unlicensed therapists who are currently employed and are providing the therapies in the TGHs; (2) researching the availability of such qualified therapists available to TGHs; (3) determining in a better manner the cost of hiring such candidates and (4) funding providers if the increased costs are determined to be significant.

Commenter must make an appeal on behalf of a current staff person who, with a bachelor's degree, has worked for this provider for over 30 years and who currently works as a therapist and has been doing so in the program since the mid-1980s. This employee started with the provider in the late 1970s and spent over six years

as a live-in houseparent in one of the provider's long term group homes. The employee was credits away from a master's degree in counseling before he walked away due to what he felt were ethical concerns in the faculty. This disqualified him as a LCS, but his talent and the current rules have allowed him to perform as a therapist, and all indications show he has done an excellent job. Commenter would ask that the department develop a procedure to "grandfather" staff such as this employee and be approved to continue providing therapies in the TGH. Doing so is better than having the employee replaced with a person who has achieved a master's degree but, has little to no experience to fill the employee's shoes. Commenter is not sure commenter's program will get a boost from this change. Commenter would love for the department to take one more shot at qualifying long term employees who have performed splendidly.

Response #81: A few significant changes to the new proposed rule will address a portion of these concerns. Changes allow the program manager to conduct 75 minutes of therapeutic interventions and the LCS to provide 75 minutes of therapy to each youth per week. The program manager may also be responsible for serving up to 16 youth. Individuals that do not meet the requirements for the LCS position may meet the requirements for the program manager position and continue to provide therapeutic interventions under the definition of therapeutic intervention in ARM 37.97.102.

The department does not feel the research requested in the comment is necessary to implement the rule. Providers are best suited to review each of their individual programs to determine the number of licensed, unlicensed, and licensable therapist(s) working in their programs. The costs associated with hiring a LCS has been offset by other changes made in the proposed rules. See also Response #73 and 82.

Comment #82: LCS requirement to be a licensed or in-training practitioner limits the commenter's ability to hire qualified individuals. Montana is an underserved area for this level of staff. Other disciplines are equally qualified, and commenter believes they may be more qualified to provide the needed services. The department should consider a "grandfather clause" to allow existing experienced staff to continue to work effectively with the youth they are currently working with. If the department proceeds with these proposed changes how will the needs of those currently served in this system be met? As a provider of dozens of these youth, commenter is unaware of any articulated plan that will coordinate the transition of these youth from their current placements. Commenter would encourage the department to make these transitions prior to implementing the new rule.

Response #82: Therapy requirements are not new, and the person providing therapy must be licensed and trained as required by Montana law. The fundamental service delivery model is not being changed. Youth will remain in current placement. The department does not agree with a "grandfather clause" to allow unlicensed individuals to perform the majority of the therapy to youth. See response #74 and #81.

Comment #83: ARM 37.97.102(24) limiting the number of youth who may be managed and treated in a therapeutic group home to eight is arbitrary and capricious and was inserted into a definitional section of the rules without providing any sound therapeutic or empirically supported reason for the restriction. There is no valid reason offered for the proposed limit and it adversely affects the operation of an existing 9-bed facility which otherwise fully complies with licensing and staffing requirements. If the rule is adopted, the commenter should be entitled to a variance grandfathering in its existing 9-bed therapeutic youth group home. The commenter set up a facility in reliance on the rules as they existed at the time and has successfully operated its present 9-bed facility for over eight years. The commenter respectfully requests a variance to continue operating the 9-bed facility if the rule is changed after the fact.

Response #83: The department disagrees that limiting the number of youth to eight in a therapeutic group home is arbitrary or capricious. TGH serve SED children with extremely difficult behaviors. Providing services to more than eight SED youth poses unreasonable safety risks to children and staff. Some believe eight are too many given the behavior they exhibit on a routine basis. The department also has decreased staffing ratio for TGH and which would increase the risk to youth and staff in a 9-bed home.

Comment #84: Commenter indicates that the intent of this cap to eight youth in ARM 37.97.102(24) is unclear. While eight beds in a TGH has been a normal for some TGHs, it does not necessarily indicate that this is best practice. Commenter agrees with the ratio set at 4:1 youth to staff for the day time hours or 8:1 during night shift. Commenter suggests the option of providing up to 12 beds be considered as long as the ratios continue to be met. A cap at 12 youth allows flexibility in the future, and especially with difficult economic times, it is difficult to predict the future of rates and needs of children. Switching the cap to 12 allows for providers to have some flexibility based on need of children and families as well as creating flexible options when finances are limited. Please consider this change as it is crucial to the future of programs and it will prevent closure of programs.

Response #84: The department strongly disagrees with increasing the number of youth served in a TGH to 12. The youth placed in these homes have serious emotional disturbances and require intensive therapeutic interventions. It is difficult to serve these youth in a home that is licensed for eight and would be exceedingly more difficult to appropriately treat these youth in a home licensed for 12. To maintain the therapeutic milieu for a home licensed for 12 would be extremely difficult and would increase safety concerns for both youth and staff. Increasing the number of youth served to 12 may increase providers' revenue but it will not benefit the youth being served. See response #83.

Comment #85: The term "serious incident" in ARM 37.97.130 has been modified to identify what occurrences meet the level needed for reporting requirements. The substance of this definition is the same as the current one in ARM 37.97.130;

however, it has been modified to include "injury to a child which requires medical attention". Current language provides that serious incidents require hospitalization. The definition change is necessary because youth in YCFs can be seriously injured but not require hospitalization. These nonhospitalized injuries may be a result of a licensing violation and may require intervention.

The commenter's policy requires staff members take youth to the doctor or emergency room any time an injury is sustained. This could be from falling down playing basketball, skateboarding, self harm, injuries while playing sports at school etc. If commenter had to turn that information into the Licensing Bureau every time, commenter would be calling at least weekly. Commenter does make calls to placing workers and guardians when there is injury of any kind. Commenter is afraid that by calling the Licensing Bureau, licensing in these cases it would appear that provider is being unsafe and would reflect poorly on the facility when in fact the provider is overly diligent in taking our youth to seek medical care when any injury occurs. Normal teenagers sustain injuries while playing. It does not mean provider is being neglectful or abusive. Further, calling every time a youth is injured is inefficient and may sidetrack licensing workers who may not then have time to respond to incidents where actual abuse and neglect may be involved.

Response #85: The department disagrees with the comment. The definition of serious incident requires emergency medical care. Reporting this type of incident would not reflect poorly on the YCF when the provider is following licensing requirements. It is the responsibility of the licensing worker to determine if the licensing violation has occurred, and the responsibility is included in their job descriptions to make those determinations.

Comment #86: Commenter indicates ARM 37.97.132(3)(a) requires all staff working in a YCF be at least 21 years of age. While commenter does not have currently any employees under the age of 21, commenter believes this rule to be illegal age discrimination. Commenter knows we cannot advertise for an employee by requiring that they be at least 21 years of age and do not know of any way to defend such a claim of age discrimination. Please either change the age required back to 18 or give providers legal backing necessary to defend hiring based upon age.

Response #86: The department believes that a reasonable business necessity exists from the age limitation. Some YCFs serve individuals who are over 18 years of age. In order for staff to not be undermined by individuals older than 18, the department made the age requirement to be 21.

Comment #87: Commenter indicates that ARM 37.97.132(7)(b) works for volunteers but does not work for mentors or interns. If the provider is going to develop mentors for its youth so they can build relationships with our clients that may be carried into adulthood, the provider needs to be able to take the youth one-on-one for recreation or bonding time. Currently, commenter has mentors approved through MYH via the volunteer program. The same issue will apply to some interns. Some interns are

working on becoming therapists and/or counselors and in order to have them receive the kind of training they may need to spend one-on-one time with a client.

Commenter indicates that (7)(b) gives an unclear description. Commenter would object that provider cannot use qualified and trained volunteers and interns (many of whom are master's students) in any one-on-one situations with clients both in and out of commenter's facilities. Commenter hopes rule can be clarified and allow providers to use interns and volunteers to do activities (sports, movies, etc.), perform services (mentoring, counseling) and transport kids one-on-one.

Response #87: The department understands the reason for the comments and agrees the rule is too restrictive on providers. The department will amend ARM 37.97.132(7)(b) to remove "direct and constant" as long as all the other provisions are followed, volunteers and interns will not be under the direct and constant supervision of the YCF staff.

ARM 37.97.207

Comment #88: A comment was received regarding ARM 37.97.207(2)(a). Commenter agrees with the intent of the rule–to provide a safe and secure environment of all residents in a maternity home, including babies and young children. Commenter would like clarification of the definition of "any child who is not being properly cared for by the youth parent." Most teen mothers requiring this level of care struggle at different times caring for their children. The added support of a structured fully staffed residential home is in place to assist them as needed. In what instances would the department deem children being "not properly cared for by the youth parent" therefore necessitating increased staffing ratio to include the babies? Additionally, commenter indicates it currently receives no funding for providing staff for the babies in its care. If this rule is adopted as stated, the provider would need to negotiate funding increases with state placing agencies to meet the intent of this rule.

Response #88: To clarify the intent of "any child who is not being properly cared for by the parent" would be in situations such as when the mother is not in the building or the child is at risk for abuse and/or neglect. The children have to be counted in the ratio if the moms are not properly caring for the child. As a licensed maternity home the provider should be able to assess if the parent is properly caring for the child. Increases with state placing agencies funding will not need to be negotiated as the child is funded using the daily foster care rate.

ARM 37.87.702

Comment #89: ARM 37.87.702(1) establishes a 90-day maximum on the receipt of CBPR&S services. This limit may not reflect the intensity of this service or the clinical application of the mentoring relationship.

Response #89: The comment is in reference to rules proposed in MAR Notice 37-518. The comment has been redirected for response in conjunction with that notice.

ARM 37.87.703

Comment #90: ARM 37.87.703(1)(a)(ii) requires that CBPR&S services must be offered only when the youth is enrolled in another Medicaid service. While this is not likely to be much of an issue, I question the legality of requiring one Medicaid service to access another.

Response #90: The comment is in reference to rules proposed in MAR Notice 37-518. The comment has been redirected for response in conjunction with that notice.

/s/ Michelle Maltese
Rule Reviewer

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

Certified to the Secretary of State March 14, 2011

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

In the matter of the amendment of ARM 37.86.3515 pertaining to case management services for adults with severe disabling mental illness, reimbursement	)))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On December 9, 2010, the Department of Public Health and Human Services published MAR Notice No. 37-529 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 2807 of the 2010 Montana Administrative Register, Issue Number 23.

2. The department has amended the above-stated rule as proposed.

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

COMMENT #1: A commenter was concerned that the rate setting methodology was not being applied uniformly.

RESPONSE #1: The Addictive and Mental Disorders Division (AMDD) within the Department of Public Health and Human Services is responsible for the provision of targeted case management for adults with severe disabling mental illness. AMDD used a methodology that has been approved by the Centers for Medicare Services (CMS) in order to determine the cost of providing this service and has adjusted the reimbursement rate accordingly. The proposed rule amendment applies only to targeted case management for adults with severe disabling mental illness.

AMDD understands the commenter's concern that another division within the department that participated in the time study did not adjust the reimbursement rate suggested by the outcome of the study. The approval of the methodology by CMS did not obligate the department to adjust rates in all programs.

COMMENT #2: There were two requests for a copy of the rate methodology used by the department to set the case management rates.

RESPONSE #2: The rate methodology has been put on the department's web site and can be found at www.dphhs.mt.gov/amdd/services/index.shtml.

COMMENT #3: A commenter stated the data used in setting rates was for Fiscal Year 2008 which is too old.

RESPONSE #3: The time study was started January 5, 2009. The Addictive and Mental Disorders Division did not receive all of the results until April 2009. AMDD requested the most current data on employee wages and benefits and used paid claims in FY 2009 to determine the adjusted rate.

/s/ Geralyn Driscoll
Rule Reviewer

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

Certified to the Secretary of State March 14, 2011

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 42.11.104, 42.11.105, 42.11.243, 42.11.402, 42.11.405, 42.11.406, 42.11.423 relating to liquor vendors	)))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On October 28, 2010, the department published MAR Notice No. 42-2-858 regarding the proposed amendment of the above-stated rules at page 2563 of the 2010 Montana Administrative Register, issue no. 20.

2. A public hearing was held on November 23, 2010, to consider the proposed amendments. Gary Funes, Regional Director - NW Control States, for Proximo; Brett Wiensch, State Manager, Young's Market Company of Montana; Robin Frey, Regional Manager, McCormick Distilling Company; and Mike Soule, Owner, Liquor Store #76, Belgrade, Montana, all appeared and provided testimony at the hearing. Written comments were received from Montana liquor store representatives Chris Byrd, of Kalispell; Shane Farnsworth, of Billings; K. C. Hill, of Ronan; Doug Kirby, of Billings; Mark Kohoutek, of Great Falls; Bea Lunda, of Conrad; Dan Moerkerke, of Hamilton; Chad Ouellette, of Big Sky; and Jacque Thomas, of Missoula. As requested in advance, the hearings officer read Mr. Hill and Mr. Byrd's written comments aloud during the hearing. Oral and written testimony received is summarized as follows along with the responses of the department:

COMMENT NO. 1: Mr. Funes commented on ARM 42.11.104(3), relative to wholesale price. He asked if this means that a product that is discontinued by the department would never be allowed to return into the product line. Mr. Funes used the example that a particular product that they couldn't give away ten years ago is now doing quite well.

RESPONSE NO. 1: The department appreciates Mr. Funes' comments. If a product marked as discontinued becomes available again, the department will offer the product for purchase again, as a new special order item.

COMMENT NO. 2: Mr. Wiensch commented on ARM 42.11.243(5), relative to samples. He questioned how the language that says a sample product may only be given to licensed retailers or liquor store agents would affect their ability to provide products such as gift baskets to charitable events. Mr. Wiensch also commented about the requirement in ARM 42.11.243(10) that the vendor fill out the department's paperwork for removing the samples, and asked if this means that the broker would no longer be able to do this on behalf of the suppliers.

RESPONSE NO. 2: The department appreciates Mr. Wiensch's comments. The proposed amendments to ARM 42.11.243 do not change current requirements. Liquor vendors and liquor representatives cannot provide products to charitable events. This rule is governed by the Code of Federal Regulations, chapter 27, part 6.91, which states that samples are an act of an industry member furnishing or giving liquor or fortified wine to a retailer who has not purchased the brand within the last 12 months. Industry members, including liquor vendors and representatives, are only allowed to give samples to a licensed retailer or liquor store agent.

Mr. Wiensch's comment regarding samples is correct. Registered representatives are no longer able to send the request to withdraw inventory for sample purposes from the warehouse. The request needs to come directly from the owner of the product, i.e., the vendor of record.

COMMENT NO. 3: Ms. Frey commented on ARM 42.11.402(3), relative to inventory policy, that the use of flavors is very vague, covers too broad of an area, and needs more definition.

Mr. Funes also commented on this rule, stating that choosing not to sell the caffeinated alcoholic products is absolutely correct. He further commented, relative to different flavors of current or new products, that the state has a responsibility to offer the products that come along to their constituents as long as they are only being sold to people 21 years of age or older.

Mr. Kohoutek commented on this rule stating that while he does not object to the first part, the language "such as, for example, bubble gum or cotton candy" in ARM 42.11.402(3)(d) seems excessive. He explained that it appears this language is added to specify that certain products won't be allowed in Montana, and says he would argue that to single out cotton candy, for example, may be incorrect. He further stated that a survey of fairs would show that at least 50 percent of cotton candy sold is for adult consumption and, therefore, it seems like a huge leap to say this flavor is directed toward children. He proposed ending ARM 42.11.402(3)(d) at "targeted toward children" and it would accomplish the department's intent without drawing a conclusion that may not be correct now or in the future.

RESPONSE NO. 3: The department thanks Ms. Frey, Mr. Funes, and Mr. Kohoutek for their comments. A very important responsibility of the state, through the department, is to protect the health, welfare and safety of the people of Montana in the sale and distribution of alcoholic beverages. The department believes the language used in ARM 42.11.402 is in the best interest of the state for the protection and safety of all citizens, including those who are under the legal age to consume alcoholic beverages.

New and innovative products are entering the market at a fast pace. Some of these products include new flavors, unique packaging, and a variety of marketing techniques. Although it may not be the intention of vendors, some flavors, packaging and advertisements do target youth under the legal age or make it difficult for individuals to differentiate an alcoholic product from a nonalcoholic product.

COMMENT NO. 4: Mr. Wiensch further commented on ARM 42.11.405(1)(b), relative to special orders, asking if this could be reworded to provide an opportunity

to bring in extra cases in some instances. He explained that we all know how hard shipping into Montana can be depending on supplier size. He said he understands the six- to eight-week lag-time, and acknowledged that the state has always been very cordial about allowing extra inventory of quicker-moving products. Mr. Wiensch asked if the elimination of the warehouse supply category leaves strictly the case-by-case option and said he has concerns that this would put these promotional products at a disadvantage.

In reference to ARM 42.11.405(1)(b)(ii), Mr. Wiensch asked if he correctly understands this to read that a supplier will only be allowed to bring in one promotional request product at a time. He explained that if a supplier brings in multiple brands, it would be harder for the department to regulate. Also, he said that due to the time it takes for something to get included in the price book's regular listings, up to ten months, it could pose a problem for introducing secondary products, new flavors, etc. Mr. Wiensch stated that Montana has been built on special order products through some of the liquor stores. He explained that he doesn't want that eliminated and requested that this be looked at more closely.

RESPONSE NO. 4: The department understands how important the special order and promotional request process is in Montana and has further amended ARM 42.11.405 to address these concerns.

The department will continue with its current practice for promotional requests. The amendments to the rules are not intended to limit a vendor to one promotional request at a time. A vendor can send multiple promotional requests to the department; however, if one request has expired and excessive inventories remain in the liquor warehouse, no additional promotional requests will be accepted until the inventory on the expired request has been removed. The department will continue to provide updates to registered representatives and vendors on the status of their promotional requests throughout the process.

Additional detail, relative to this rule, is provided in the department's response to comment no. 6.

COMMENT NO. 5: Ms. Frey also expressed a concern about ARM 42.11.406(1)(a)(i) relative to product listing, stating that erratic sales should be better defined to address distribution in more than one store. Ms. Frey further commented on ARM 42.11.406(1)(a)(iii), relative to product listing requirements, asking if it has always been a requirement that a product has been in the state for at least six months. She also asked if a newly introduced product is selling well within three months, should it be listed automatically.

RESPONSE NO. 5: The department agrees with Ms. Frey's concern and has added the term "erratic sales" into the definitions in ARM 42.11.105. In response to Ms. Frey's second comment, the six-month introductory period has been the department's practice for several years and has not created any concern. The department believes six months is both a necessary minimum and an adequate amount of time to make certain the product demonstrates a consistent sales history. The six-month period also allows the department to confirm the long-term availability of the product.

COMMENT NO. 6: Mr. Byrd commented on the provision to base the 8 percent discount on the year 1994 case sales. He stated he is already losing a substantial amount of money on case sales to taverns/casinos, and that it is not right that the statute says the state will subsidize taverns/casinos 8 percent for case lot purchases, yet the state does not compensate the stores for that amount. Mr. Byrd further stated that, in the proposed amendment to the warehouse changes, the state is offering even more product to the taverns/casinos at the 8 percent discount without proposing a method to compensate the stores for this additional cost, that the amendment favors the taverns and casinos at the expense of the stores, and he is not in favor of it.

Mr. Farnsworth wrote that he understands the department's wish to streamline the three classification sections of the warehouse; however, he stated that taking the warehouse supply products to the regular list will be detrimental to the agency stores by decreasing the profitability of sales. He added that if these items were not worthy of the regular list criteria, they should not be made so arbitrarily through rulemaking. He requested that this provision of the rule not be acted upon. Mr. Farnsworth also commented that the only problem he sees from an agent's perspective is that the warehouse supply items should go on back-order. He explained that the agents currently re-order these items weekly until they show up, and having them go on back-order would greatly relieve stress on the system.

Mr. Hill commented on the increase in the number of warehouse supply products being added to the regular list, the current weighted average discount ratio established in the year 1994, and referred to 16-2-101(2)(b)(ii)(B), and 16-2-201, MCA. Mr. Hill stated that the proposed amendments do not specify how the department will reimburse agents for the additional case lot discounts on the 550 warehouse supply products, and requested that the language in the proposed amendments specifically state how the department will reimburse agents for the additional case lot discounts on these products. Mr. Hill further stated that if it is not the intention of the department to reimburse the agents, he opposes the elimination of the concept of warehouse supply products in the proposed rule amendments.

Mr. Kirby commented that he is opposed to adding 700 or more special order and warehouse items to the front of the price book. He explained that stores make little on case lots and the special order status of the items allows stores to earn a better percentage.

Mr. Kohoutek expressed concern about the proposed amendments to ARM 42.11.405, 42.11.406, and 42.11.423. He stated that changing the listing of products will increase the regular-listed products from about 800 to 1250. This would be a 50 percent increase in the number of products that require the 8 percent discount, which seems like a huge increase. He stated that the weighted discount is based on case sales from the early 1990s and, should a change in the listing of products occur, every store would have a legal argument to have its weighted average discount adjusted. He also proposed that it would be more logical to have the warehouse supply products grouped in with special orders instead of the regular-listed products than to give an 8 percent discount to a product that may only sell 20 or so cases a year. He further stated that he would like to see the rules specify that a product must sell a certain number, such as 100 cases or more, to be a regular-

listed product. He said it seems to him that the 8 percent discount is intended for products that sell in large volume.

Ms. Lunda stated that she is opposed to the amendments to ARM 42.11.405, 42.11.406, and 42.11.423. She explained that, prior to the year 1995, the warehouse supply items were not calculated into the mathematical formula to assign a weighted discount average to each agency store, only regular-listed products were used in the formula based on case lot discounts from the year 1994. Therefore, to eliminate warehouse supply items would require all agency stores to give the 8 percent case lot discount to licensees on more than 500 additional items, and this would have a significant financial impact on many agency stores without the means to recover the added cost.

Mr. Moerkerke commented that it is hard to understand the concept behind adding more products to the regular category. He asked if by adding more products that are eligible for discount, it doesn't add more cost to the department for reimbursement to the agent stores, too. He questioned if the proposed amendments explain how the department will reimburse the agents.

Mr. Ouellette stated that while he appreciates the effort to create efficiencies in the warehouse, and that downsizing listings may make sense, the impact of the 8 percent discount on the additional cases is dramatic and many of the agencies wouldn't be able to handle the impact. He states he would like to think that there is a way to solve the listing problem without the negative monetary impact.

Mr. Soule commented that he assumes the department is aware that, with the proposed amendments to the definitions in ARM 42.11.105, by moving 750 warehouse supply items to the regular list, liquor stores will sustain a substantial cost. He further stated that there are a handful of liquor stores struggling financially, and adding more items requiring the 8 percent bar discount will be detrimental to the stores.

Ms. Thomas provided comments specific to ARM 42.11.405(1)(b), stating that she is opposed to the removal of the warehouse supply product designation. She explained that while the intention of the amendment may have been to streamline product lines, passing it would penalize liquor stores by giving away what is already a slim profit margin until the next commission rate review period, which is at least three years away. Ms. Thomas says she estimates that in her operation alone, this would result in a loss of $100,000 in gross profits and lead to significant cuts in customer service and the number of employees. She added that not only would each store be damaged, but this amendment would reduce net income to the state and reduce revenues that go back into local communities.

RESPONSE NO. 6: The department appreciates the liquor store agents' comments and understands their concerns. To help address these concerns and still meet the intent of the law, the department has further modified the language in ARM 42.11.105, 42.11.405, and 42.11.406. The modified language closely mirrors the rule classification of liquor products in the year 1994 that was in place when the mathematical formula was devised to assign a weighted average discount to each agency store. This modified language will better correspond with how the weighted average discount was calculated and provided to agency stores for the 8 percent discount.

In the year 1994, regular products were items that achieved 100 cases of sales or $1,000 annual net profit in the 12-month period prior to the preparation of the division's quarterly price book. In the year 2006, the criteria for regular products was amended, making the total number of regular products equivalent to the number of available locators in the state liquor warehouse. During this period, the department had 870 available locators.

The number of available regular products has not changed in more than five years. Based on the rules in the year 1994, which was the time period when the weighted average discount was determined for each store, the department would have 1,198 regular products today.

The modified language in ARM 42.11.105 defines regular products to be any item that has sold 50 or more cases in the 12-month period leading up to the department's biannual review process. Based on sales records, this modification would increase the number of regular products from 870 to 1,003. This is a significant decrease from the previously proposed quantity of 1,250, and is also less than the quantity of regular products it would have been if based on year 1994 rules.

The modified rule also amends the language to say that any product not meeting the regular product criteria will be classified as a special order product. Those special order products, that have sold more than 24 cases in the 12-month period leading up to the department's biannual review process, will have inventories maintained at the liquor warehouse. If the special order item has a sales history of 24 or fewer cases, the product will be brought in on a case-by-case basis, as is currently done. All special order products will go on backorder if supply is not available at the liquor warehouse. The price book will clearly note which special order items will be maintained at the liquor warehouse.

3. Based on the comments received and a proposed edit presented at the hearing by the Liquor Control Division administrator, the department further amends ARM 42.11.105, 42.11.243, 42.11.405, and 42.11.406 as follows, stricken matter interlined, new matter underlined:

42.11.105 DEFINITIONS As used in this subchapter, the following definitions apply:

(1) through (8) remain as proposed.

(9) "Erratic sales" means sales having no fixed or regular course; lacking consistency, regularity, or uniformity.

(9) through (14) remain as proposed, but are renumbered (10) through (15).

~~(15)~~(16) "Regular product" means a product ~~in which inventories are continually maintained at the state liquor warehouse.~~ that has sold 50 or more cases in the 12-month period leading up to the department's biannual review if:

(a) product sales are not a result of closeout, overstock, or erratic sales;

(b) product is available year-round; and

(c) product has been in the state for at least six months prior to the review.

(16) through (18) remain as proposed, but are renumbered (17) through (19).

~~(19)~~(20) "Special order product" means a product ~~in which inventories are not constantly maintained at the state liquor warehouse~~ that does not meet the criteria to be classified as a regular product.

(20) and (21) remain as proposed, but are renumbered (21) and (22).

AUTH: 16-1-103, 16-1-104, 16-1-303, MCA
IMP: 16-1-103, 16-1-104, 16-1-302, 16-1-401, 16-1-404, 16-1-411, 16-2-101, 16-2-201, 16-2-301, 16-3-107, MCA

42.11.243 SAMPLES (1) through (3) remain as proposed.

(4) ~~Sealed sample~~ Sample products, which must be in their original containers, may only be given to licensed all-beverage retailers or agency liquor store agents.

(5) through (10) remain as proposed.

AUTH: 16-1-103, 16-1-303, MCA
IMP: 16-3-103, MCA

42.11.405 PRODUCT AVAILABILITY (1) Liquor products will be made available for sale in the following classifications:

(a) Regular products will be designated in the department's quarterly price list, and have sufficient supply maintained in the bailment warehouse in accordance with ARM 42.11.421. An agent shall give an all-beverage licensee an 8~~%~~ percent discount on a full case lot of a regular product.

(b) Special order products that have sold at least one case in the prior 12 months will be published in the department's quarterly price list. ~~Supply will not be maintained in the warehouse and will only be available on an order-by-order basis, and depending on supplier requirements and availability of a product, orders may take six weeks or more to be filled.~~ An agent shall not give an 8~~%~~ percent discount on a full case lot of a special order product.

(i) Inventories will be maintained in the bailment warehouse if the item has sold more than 24 cases in the 12-month period leading up to the department's biannual review.

(ii) Inventories will not be maintained in the bailment warehouse if the item has sold 24 or less cases in the 12-month period leading up to the department's biannual review. These items will be available on an order-by-order basis and, depending on supplier requirements and availability, the order may take six weeks or more to be filled.

~~(i)~~(A) A vendor with a current Montana permit who has at least one registered representative may ship ~~special order~~ these products in on a promotional contract if approved by the department on a predetermined form. The promotional contract should:

~~(A)~~(I) state that the product will be maintained in the bailment warehouse;

~~(B)~~(II) list the test market locations proposed for the product and the expected initial order amount;

~~(C)~~(III) describe the promotional strategy that the vendor and the vendor's registered representative will undertake during the six-month promotion period; and

~~(D)~~(IV) specify a return address for excess product at the end of the promotional period.

~~(ii)~~(B) No additional supplier promotions will be allowed until excess product

is removed from the warehouse. If arrangements have not been made to ship excess product back within 30 days of notification, product will be destroyed at the vendor's expense.

(c) Seasonal products are not published in the department's quarterly price list. Seasonal products are only available from the manufacturer during certain times of the year. The department will notify store agents when seasonal products become available. An agent shall not give an 8~~%~~ percent discount on a full case lot of a seasonal product.

(d) Discontinued products are not published in the department's quarterly price list. Discontinued products are available until all inventories have been depleted. An agent is not required to give an 8~~%~~ percent discount on a full case lot of discontinued product; however, the agent may sell the product below its last known posted price.

AUTH: 16-1-103, 16-1-303, MCA
IMP: 16-1-103, 16-1-104, 16-1-302, 16-2-201, MCA

42.11.406 PRODUCT LISTING (1) A product listing will be determined by the total number of ~~case~~ cases ~~sales~~ the product sold in the ~~past 12 months~~ 12-month period ~~prior~~ leading up to the department's biannual review. The listings will be reviewed in January and July of each year. The results of the January review are effective May 1. The results of the July review are effective November 1. The listings will be categorized as ~~follows:~~ regular product and special order product, as defined in ARM 42.11.105.

~~(a) Regular products are the top 1,250 products in the state of Montana if:~~
~~(i) product sales are not a result of closeout, overstock, or erratic sales;~~
~~(ii) product is available year-round; and~~
~~(iii) product has been in the state for at least six months prior to the review.~~
~~(b) Special order products are products that do not meet the criteria for regular list products.~~

AUTH: 16-1-103, 16-1-303, MCA
IMP: 16-1-103, 16-1-104, 16-1-302, MCA

4. Therefore, the department amends ARM 42.11.105, 42.11.243, 42.11.405, and 42.11.406 with the amendments listed above, and amends ARM 42.11.104, 42.11.402, and 42.11.423 as proposed.

5. An electronic copy of this notice is available on the department's web site at www.revenue.mt.gov. Locate "Legal Resources" in the left hand column, select the "Rules" link and view the options under the "Notice of Proposed Rulemaking" heading. 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.

/s/ Cleo Anderson
CLEO ANDERSON
Rule Reviewer

/s/ Dan R. Bucks
DAN R. BUCKS
Director of Revenue

Certified to Secretary of State March 14, 2011

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 42.14.1002 and 42.14.1102 relating to rental vehicle tax	)))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On January 13, 2011, the department published MAR Notice No. 42-2-859 regarding the proposed amendment of the above-stated rules at page 41 of the 2011 Montana Administrative Register, issue no. 1.

2. No hearing was conducted on the rules and no comments were received.

3. The department amends ARM 42.14.1002 and 42.14.1102 as proposed.

4. An electronic copy of this notice is available on the department's web site at www.revenue.mt.gov. Locate "Legal Resources" in the left hand column, select the "Rules" link and view the options under the "Notice of Proposed Rulemaking" heading. 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.

/s/ Cleo Anderson
CLEO ANDERSON
Rule Reviewer

/s/ Dan R. Bucks
DAN R. BUCKS
Director of Revenue

Certified to Secretary of State March 14, 2011

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 42.14.101 and 42.14.203 relating to lodging facility use tax	)))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On January 13, 2011, the department published MAR Notice No. 42-2-860 regarding the proposed amendment of the above-stated rules at page 44 of the 2011 Montana Administrative Register, issue no. 1.

2. No hearing was conducted on the rules and no comments were received.

3. The department amends ARM 42.14.101 and 42.14.203 as proposed.

4. An electronic copy of this notice is available on the department's web site at www.revenue.mt.gov. Locate "Legal Resources" in the left hand column, select the "Rules" link and view the options under the "Notice of Proposed Rulemaking" heading. 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.

/s/ Cleo Anderson
CLEO ANDERSON
Rule Reviewer

/s/ Dan R. Bucks
DAN R. BUCKS
Director of Revenue

Certified to Secretary of State March 14, 2011

NOTICE OF FUNCTION OF ADMINISTRATIVE RULE REVIEW COMMITTEE

Interim Committees and the Environmental Quality Council

Administrative rule review is a function of interim committees and the Environmental Quality Council (EQC). These interim committees and the EQC have administrative rule review, program evaluation, and monitoring functions for the following executive branch agencies and the entities attached to agencies for administrative purposes.

Economic Affairs Interim Committee:

- Department of Agriculture;
- Department of Commerce;
- Department of Labor and Industry;
- Department of Livestock;
- Office of the State Auditor and Insurance Commissioner; and
- Office of Economic Development.

Education and Local Government Interim Committee:

- State Board of Education;
- Board of Public Education;
- Board of Regents of Higher Education; and
- Office of Public Instruction.

Children, Families, Health, and Human Services Interim Committee:

- Department of Public Health and Human Services.

Law and Justice Interim Committee:

- Department of Corrections; and
- Department of Justice.

Energy and Telecommunications Interim Committee:

- Department of Public Service Regulation.

Revenue and Transportation Interim Committee:

- Department of Revenue; and
- Department of Transportation.

State Administration and Veterans' Affairs Interim Committee:

- Department of Administration;
- Department of Military Affairs; and
- Office of the Secretary of State.

Environmental Quality Council:

- Department of Environmental Quality;
- Department of Fish, Wildlife, and Parks; and
- Department of Natural Resources and Conservation.

These interim committees and the EQC have the authority to make recommendations to an agency regarding the adoption, amendment, or repeal of a rule or to request that the agency prepare a statement of the estimated economic impact of a proposal. They also may poll the members of the Legislature to determine if a proposed rule is consistent with the intent of the Legislature or, during a legislative session, introduce a bill repealing a rule, or directing an agency to adopt or amend a rule, or a Joint Resolution recommending that an agency adopt, amend, or repeal a rule.

The interim committees and the EQC welcome comments and invite members of the public to appear before them or to send written statements in order to bring to their attention any difficulties with the existing or proposed rules. The mailing address is P.O. Box 201706, Helena, MT 59620-1706.

HOW TO USE THE ADMINISTRATIVE RULES OF MONTANA AND THE MONTANA ADMINISTRATIVE REGISTER

Definitions:

Administrative Rules of Montana (ARM) is a looseleaf compilation by department of all rules of state departments and attached boards presently in effect, except rules adopted up to three months previously.

Montana Administrative Register (MAR or Register) is a soft back, bound publication, issued twice-monthly, containing notices of rules proposed by agencies, notices of rules adopted by agencies, and interpretations of statutes and rules by the Attorney General (Attorney General's Opinions) and agencies (Declaratory Rulings) issued since publication of the preceding register.

Use of the Administrative Rules of Montana (ARM):

Known Subject

1. Consult ARM Topical Index.
   Update the rule by checking the accumulative table and the table of contents in the last Montana Administrative Register issued.

Statute

2. Go to cross reference table at end of each number and title which lists MCA section numbers and department corresponding ARM rule numbers.

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies that have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through September 30, 2010. This table includes those rules adopted during the period October 1, 2010, through December 31, 2010, and any proposed rule action that was pending during the past 6-month period. (A notice of adoption must be published within six months of the published notice of the proposed rule.) This table does not include the contents of this issue of the Montana Administrative Register (MAR or Register).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through September 30, 2010, 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 2010 and 2011 Montana Administrative Register.

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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 February 2011 appear. Vacancies scheduled to appear from April 1, 2011, through June 30, 2011, 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 March 1, 2011.

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 FEBRUARY 2011

Appointee	Appointed by	Succeeds	Appointment/End Date
Alternative Livestock Advisory Council (Fish, Wildlife and Parks)			
Mr. Ron Moody	Governor	reappointed	2/7/2011
Lewistown			1/1/2013
Qualifications (if required): representative of the Board of Livestock			
Ms. Linda Nielsen	Governor	reappointed	2/7/2011
Nashua			1/1/2013
Qualifications (if required): representative of the Board of Livestock			
Board of Personnel Appeals (Labor and Industry)			
Rep. Dave Gallik	Governor	Joscelyn	2/8/2011
Helena			1/1/2015
Qualifications (if required): an attorney with labor-management experience			
Ms. Amy Verlanic	Governor	Dudley	2/8/2011
Anaconda			1/1/2015
Qualifications (if required): management representative with collective bargaining experience			
Mr. Steve Johnson	Governor	reappointed	2/8/2011
Missoula			1/1/2015
Qualifications (if required): management representative with collective bargaining experience			
Mr. Jerry Rukavina	Governor	Thiel	2/8/2011
Great Falls			1/1/2015
Qualifications (if required): officer of a labor union or an association recognized by the board (substitute member)			

BOARD AND COUNCIL APPOINTEES FROM FEBRUARY 2011

Appointee	Appointed by	Succeeds	Appointment/End Date
Board of Public Assistance (Public Health and Human Services)			
Ms. Helen Barta Schmitt	Governor	reappointed	2/7/2011
Sidney			1/1/2015
Qualifications (if required): public representative			
Board of Regents (Higher Education)			
Mr. Major Robinson	Governor	Pease	2/2/2011
Billings			2/1/2018
Qualifications (if required): resident of District 2 (Democrat)			
Board of Social Work Examiners and Professional Counselors (Labor and Industry)			
Mr. Peter Degel	Governor	reappointed	2/23/2011
Helena			1/1/2015
Qualifications (if required): licensed counselor			
Ms. Rosemary Hertel	Governor	Thorngren	2/23/2011
Deer Lodge			1/1/2015
Qualifications (if required): licensed counselor			
Ms. Beverley McCurry	Governor	Gilkey	2/23/2011
Columbus			1/1/2015
Qualifications (if required): public representative			
Board of Speech-Language Pathologists and Audiologists (Labor and Industry)			
Ms. Cheri Fjare	Governor	reappointed	2/15/2011
Big Timber			12/31/2013
Qualifications (if required): speech-language pathologist			

BOARD AND COUNCIL APPOINTEES FROM FEBRUARY 2011

Appointee	Appointed by	Succeeds	Appointment/End Date
Board of Speech-Language Pathologists and Audiologists (Labor and Industry) cont.			
Ms. Beverly Stiller Lame Deer Qualifications (if required): consumer representative	Governor	Sias	2/15/2011 12/31/2013
Ms. Alida Wright Columbia Falls Qualifications (if required): speech-language pathologist	Governor	Dinstel	2/15/2011 12/31/2013
Electrical Board (Labor and Industry)			
Mr. Keith Simendinger Helena Qualifications (if required): public representative	Governor	Egan	2/1/2011 7/1/2012
Facility Finance Authority (Commerce)			
Rep. Joe Quilici Butte Qualifications (if required): public member	Governor	reappointed	2/15/2011 1/1/2015
Ms. Kimberly Rickard Helena Qualifications (if required): public member	Governor	reappointed	2/15/2011 1/1/2015
Mr. Matthew B. Thiel Missoula Qualifications (if required): an attorney	Governor	reappointed	2/15/2011 1/1/2015

BOARD AND COUNCIL APPOINTEES FROM FEBRUARY 2011

Appointee	Appointed by	Succeeds	Appointment/End Date
Historical Records Advisory Council (Historical Society)			
Mr. Jon Ille	Governor	Bartlett	2/7/2011
Hardin			10/9/2011
Qualifications (if required): public representative			
Human Rights Commission (Labor and Industry)			
Ms. Lucy Simpson	Governor	Rusche	2/7/2011
Helena			1/1/2015
Qualifications (if required): public representative			
Ms. Cynthia Wolken	Governor	Fenter	2/7/2011
Missoula			1/1/2015
Qualifications (if required): public representative			
State Emergency Response Commission (Military Affairs)			
Mr. Bruce Suenram	Governor	Levitan	2/7/2011
Helena			10/1/2011
Qualifications (if required): representative of the Department of Natural Resources and Conservation			

VACANCIES ON BOARDS AND COUNCILS -- APRIL 1, 2011 THROUGH JUNE 30, 2011

Board/current position holder	Appointed by	Term end
Board of Hail Insurance (Agriculture)		
Mr. Gary Gollehon, Brady	Governor	4/18/2011
Qualifications (if required): public member		
Board of Massage Therapists (Labor and Industry)		
Mr. Michael Eayrs, Kalispell	Governor	5/6/2011
Qualifications (if required): massage therapist		
Board of Nursing Home Administrators (Labor and Industry)		
Ms. Polly Nikolaisen, Kalispell	Governor	5/28/2011
Qualifications (if required): public representative 55 years of age or older		
Mr. Ken Chase, Billings	Governor	5/28/2011
Qualifications (if required): public representative		
Board of Optometry (Labor and Industry)		
Ms. Delores Hill, Mosby	Governor	4/3/2011
Qualifications (if required): public member		
Mr. Douglas Kimball, Bozeman	Governor	4/3/2011
Qualifications (if required): registered optometrist		
Board of Plumbers (Labor and Industry)		
Mr. Marcus J. Golz, Helena	Governor	5/4/2011
Qualifications (if required): representative of the Department of Environmental Quality		
Mr. Scott Lemert, Livingston	Governor	5/4/2011
Qualifications (if required): master plumber		

VACANCIES ON BOARDS AND COUNCILS -- APRIL 1, 2011 THROUGH JUNE 30, 2011

Board/current position holder	Appointed by	Term end
Board of Plumbers (Labor and Industry) cont.		
Mr. David Lindeen, Huntley	Governor	5/4/2011
Qualifications (if required): public representative		
Ms. Debi Friede, Havre	Governor	5/4/2011
Qualifications (if required): public representative		
Mr. Steve Carey, Frenchtown	Governor	5/4/2011
Qualifications (if required): journeyman plumber		
Board of Real Estate Appraisers (Labor and Industry)		
Mr. Peter Fontana, Great Falls	Governor	5/1/2011
Qualifications (if required): real estate appraiser		
Mr. Kraig Kosena, Missoula	Governor	5/1/2011
Qualifications (if required): real estate appraiser		
Board of Realty Regulation (Labor and Industry)		
Mr. C.E. Abe Abramson, Missoula	Governor	5/9/2011
Qualifications (if required): real estate salesperson and identifies himself as a Democrat		
Ms. Shirley McDermott, Laurel	Governor	5/9/2011
Qualifications (if required): public representative and identifies herself as a Republican		
Ms. Connie Wardell, Billings	Governor	5/9/2011
Qualifications (if required): Democrat		

VACANCIES ON BOARDS AND COUNCILS -- APRIL 1, 2011 THROUGH JUNE 30, 2011

Board/current position holder	Appointed by	Term end
Board of Realty Regulation (Labor and Industry) cont.		
Mr. Larry Milless, Corvallis Qualifications (if required): Republican	Governor	5/9/2011
Board of Regents (Governor)		
Ms. Teresa Snyder, Bozeman Qualifications (if required): university student	Governor	6/30/2011
Clinical Laboratory Science Practitioners (Labor and Industry)		
Ms. Charliene Staffanson, Deer Lodge Qualifications (if required): public representative	Governor	4/16/2011
Ms. Rosemary Shively, Helena Qualifications (if required): clinical laboratory science practitioner	Governor	4/16/2011
Ms. Barbara Henderson, Miles City Qualifications (if required): clinical laboratory science practitioner	Governor	4/16/2011
County Printing Board (Administration)		
Commissioner Marianne Roose, Eureka Qualifications (if required): County Commissioner	Governor	4/1/2011
Mr. Dan Killoy, Miles City Qualifications (if required): printing industry representative	Governor	4/1/2011
Mr. Milton Wester, Laurel Qualifications (if required): printing industry representative	Governor	4/1/2011

VACANCIES ON BOARDS AND COUNCILS -- APRIL 1, 2011 THROUGH JUNE 30, 2011

Board/current position holder	Appointed by	Term end
County Printing Board (Administration) cont.		
Mr. Calvin J. Oraw, Sidney	Governor	4/1/2011
Qualifications (if required): public representative		
Commissioner Laura Obert, Townsend	Governor	4/1/2011
Qualifications (if required): County Commissioner		
District Court Council (Justice)		
Mr. Jim Reno, Billings	District Court	6/30/2011
Qualifications (if required): none specified		
Judge John C. McKeon, Malta	District Court	6/30/2011
Qualifications (if required): none specified		
Judge Katherine "Kitty" Curtis, Columbia Falls	District Court	6/30/2011
Qualifications (if required): none specified		
Ms. Glenda Travitz,	District Court	6/30/2011
Qualifications (if required): none specified		
Electronic Government Advisory Council (Administration)		
Director Mary Sexton, Helena	Governor	6/18/2011
Qualifications (if required): agency representative		
Mr. Tim Christensen, Missoula	Governor	6/18/2011
Qualifications (if required): public representative		

VACANCIES ON BOARDS AND COUNCILS -- APRIL 1, 2011 THROUGH JUNE 30, 2011

Board/current position holder	Appointed by	Term end
Electronic Government Advisory Council (Administration) cont.		
Mr. Christian Mackay, Helena Qualifications (if required): agency representative	Governor	6/18/2011
Ms. Karen Harrison, Lolo Qualifications (if required): public representative	Governor	6/18/2011
Commissioner Andy Hunthausen, Helena Qualifications (if required): local government official	Governor	6/18/2011
Flathead Basin Commission (Natural Resources and Conservation)		
Mr. Clinton Whitney, Polson Qualifications (if required): public representative	Governor	6/30/2011
Mr. Ed Heger, Kalispell Qualifications (if required): public representative	Governor	6/30/2011
Mr. Donald Loranger, Bigfork Qualifications (if required): public representative	Governor	6/30/2011
Land Information Advisory Council (Administration)		
Director Dan R. Bucks, Helena Qualifications (if required): agency representative	Governor	6/30/2011
Mr. Lance Clampitt, Bozeman Qualifications (if required): U.S. Interior Department representative	Governor	6/30/2011

VACANCIES ON BOARDS AND COUNCILS -- APRIL 1, 2011 THROUGH JUNE 30, 2011

Board/current position holder	Appointed by	Term end
Land Information Advisory Council (Administration) cont.		
Mr. Art Pembroke, Helena Qualifications (if required): local government representative	Governor	6/30/2011
Mr. Alex Philip, Missoula Qualifications (if required): private sector representative	Governor	6/30/2011
Director Richard Opper, Helena Qualifications (if required): agency representative	Governor	6/30/2011
Director Jim Lynch, Helena Qualifications (if required): agency representative	Governor	6/30/2011
Ms. Catherine Maynard, Bozeman Qualifications (if required): U.S. Agriculture Department representative	Governor	6/30/2011
Mr. Don Patterson, Missoula Qualifications (if required): U.S. Agriculture Department representative	Governor	6/30/2011
Mr. Lorin Peterson, Pablo Qualifications (if required): tribal government representative	Governor	6/30/2011
Mr. Ed Madej, Helena Qualifications (if required): private sector representative	Governor	6/30/2011
Ms. Annette Cabrera, Billings Qualifications (if required): local government representative	Governor	6/30/2011

VACANCIES ON BOARDS AND COUNCILS -- APRIL 1, 2011 THROUGH JUNE 30, 2011

Board/current position holder	Appointed by	Term end
Land Information Advisory Council (Administration) cont.		
Ms. Christiane von Reichert, Missoula Qualifications (if required): land surveyor	Governor	6/30/2011
Commissioner Joe Brenneman, Kalispell Qualifications (if required): Local government agency representative	Governor	6/30/2011
Mr. Rudy Cicon, Chester Qualifications (if required): land surveyor	Governor	6/30/2011
Mr. Joe Maurier, Helena Qualifications (if required): agency representative	Governor	6/30/2011
Ms. Kris Larson, Helena Qualifications (if required): GIS professional	Governor	6/30/2011
Ms. Erin Geraghty, Helena Qualifications (if required): GIS professional	Governor	6/30/2011
Ms. Janet Hess-Herbert, Helena Qualifications (if required): designee	Director	6/30/2011
Mr. James D. Claflin, Billings Qualifications (if required): representative of the U.S. Interior Department	Governor	6/30/2011
Library Commission (State Library)		
Ms. Nora Smith, Bozeman Qualifications (if required): public representative	Governor	5/22/2011

VACANCIES ON BOARDS AND COUNCILS -- APRIL 1, 2011 THROUGH JUNE 30, 2011

Board/current position holder	Appointed by	Term end
Library Commission (State Library) cont.		
Ms. Joyce Funda, Rollins	Governor	5/22/2011
Qualifications (if required): public representative		
Mr. Richard Quillin, Whitefish	Governor	5/22/2011
Qualifications (if required): public representative		
Ms. Lee Phillips, Butte	Governor	5/22/2011
Qualifications (if required): public representative		
MSU - Great Falls College of Technology Local Executive Board (University System)		
Mr. Dave Warner, Great Falls	Governor	4/15/2011
Qualifications (if required): public representative		
MSU - Northern Local Executive Board (University System)		
Ms. Pamela A. Hillery, Havre	Governor	4/15/2011
Qualifications (if required): public representative		
Montana Heritage Preservation and Development Commission (Commerce)		
Rep. Bob Lawson, Whitefish	Governor	5/23/2011
Qualifications (if required): public representative		
Mr. Paul Tuss, Havre	Governor	5/23/2011
Qualifications (if required): Tourism Advisory Council representative		
General James Womack, Dillon	Governor	5/23/2011
Qualifications (if required): Montana historian		

VACANCIES ON BOARDS AND COUNCILS -- APRIL 1, 2011 THROUGH JUNE 30, 2011

Board/current position holder	Appointed by	Term end
Montana Heritage Preservation and Development Commission (Commerce) cont.		
Ms. Carol Swanson, Glendive	Governor	5/23/2011
Qualifications (if required): public representative		
Montana Noxious Weed Management Advisory Council (Agriculture)		
Mr. Terry Turner, Havre	Director	6/30/2011
Qualifications (if required): representative of the Montana Weed Control Association		
Mr. Gary Olsen, Harlowton	Director	6/30/2011
Qualifications (if required): representative of eastern counties		
Mr. Todd Wagner, Glasgow	Director	6/30/2011
Qualifications (if required): representative of agriculture crop production		
Mr. Jim Story, Corvallis	Director	6/30/2011
Qualifications (if required): representative of biological research and control		
Mr. Jim Gordon, Huntley	Director	6/30/2011
Qualifications (if required): representative of herbicide dealers and applicators		
Ms. Margie Edsall, Sheridan	Director	6/30/2011
Qualifications (if required): representative of western counties		
Mr. Brent Roeder, Fort Shaw	Director	6/30/2011
Qualifications (if required): representative of a consumer group		
Mr. Kurt Myllymaki, Stanford	Director	6/30/2011
Qualifications (if required): representative of a consumer group		

VACANCIES ON BOARDS AND COUNCILS -- APRIL 1, 2011 THROUGH JUNE 30, 2011

Board/current position holder	Appointed by	Term end
Montana State University - Billings Local Executive Board (University System)		
Mr. Jeremy Seidlitz, Billings	Governor	4/15/2011
Qualifications (if required): public representative		
Montana State University Local Executive Board (University System)		
Mr. Bill Bryan, Bozeman	Governor	4/15/2011
Qualifications (if required): public representative		
Petroleum Tank Release Compensation Board (Environmental Quality)		
Ms. Theresa Blazicevich, Stevensville	Director	6/30/2011
Qualifications (if required): environmental regulatory experience		
Mr .Steve Sendon, Bozeman	Director	6/30/2011
Qualifications (if required): banker		
Postsecondary Scholarship Advisory Council (Higher Education)		
Ms. Margaret Bird, Browning	Governor	6/20/2011
Qualifications (if required): experience in financial aid at a postsecondary institution		
Private Alternative Adolescent Residential or Outdoor Programs Board (Labor and Industry)		
Rep. Tim Callahan, Great Falls	Governor	4/19/2011
Qualifications (if required): public member		
Ms. Mary Alexine, Eureka	Governor	4/19/2011
Qualifications (if required): representing residential adolescent programs (medium size)		
Mr. John Santa, Kalispell	Governor	4/19/2011
Qualifications (if required): representing residential adolescent programs (large size)		

VACANCIES ON BOARDS AND COUNCILS -- APRIL 1, 2011 THROUGH JUNE 30, 2011

Board/current position holder	Appointed by	Term end
Private Alternative Adolescent Residential or Outdoor Programs Board (Labor and Industry) cont.		
Ms. Darcie Kelly, Helena	Governor	4/19/2011
Qualifications (if required): public member		
Ms. Penny James, Trout Creek	Governor	4/19/2011
Qualifications (if required): representing residential adolescent programs (small size)		
Public Employees Retirement Board (Administration)		
Mr. Timm Twardoski, Helena	Governor	4/1/2011
Qualifications (if required): public representative		
Reserved Water Rights Compact Commission (Natural Resources and Conservation)		
Rep. Dorothy Bradley, Bozeman	Governor	6/1/2011
Qualifications (if required): public representative		
Mr. Gene Etchart, Glasgow	Governor	6/1/2011
Qualifications (if required): public representative		
Mr. Richard Kirn, Poplar	Governor	6/1/2011
Qualifications (if required): public representative		
Mr. Mark DeBruycker, Bynum	Governor	6/1/2011
Qualifications (if required): public representative		
State Compensation Mutual Insurance Fund Board (Administration)		
Mr. Joe Dwyer, Billings	Governor	4/28/2011
Qualifications (if required): policy holder		

VACANCIES ON BOARDS AND COUNCILS -- APRIL 1, 2011 THROUGH JUNE 30, 2011

Board/current position holder	Appointed by	Term end
State Compensation Mutual Insurance Fund Board (Administration) cont.		
Mr. Wally Yovetich, Billings	Governor	4/28/2011
Qualifications (if required): private enterprise		
Mr. Boyd Taylor, Butte	Governor	4/28/2011
Qualifications (if required): policy holder and in private enterprise		
State-Tribal Economic Development Commission (Commerce)		
Mr. Joseph Durglo, Pablo	Governor	6/30/2011
Qualifications (if required): representative of the Confederated Salish & Kootenai Tribes		
Mr. Richard Sangrey, Box Elder	Governor	6/30/2011
Qualifications (if required): representative of the Chippewa Cree Tribe of the Rocky Boy's Reservation		
Mr. Bud Moran, Pablo	Governor	6/30/2011
Qualifications (if required): alternate representative of the Confederated Salish & Kootenai Tribes		
Mr. Joe Fox Jr., Lame Deer	Governor	6/30/2011
Qualifications (if required): representative of the Northern Cheyenne Tribe		
Mr. Allen Fisher, Lame Deer	Governor	6/30/2011
Qualifications (if required): alternate representative of the Northern Cheyenne Tribe		
UM-Helena College of Technology Local Executive Board (University System)		
Mr. Ray Peck, Helena	Governor	4/15/2011
Qualifications (if required): public representative		

VACANCIES ON BOARDS AND COUNCILS -- APRIL 1, 2011 THROUGH JUNE 30, 2011

Board/current position holder	Appointed by	Term end
UM-Montana Tech Local Executive Board (University System)		
Mr. Doug Peoples, Butte	Governor	4/15/2011
Qualifications (if required): public representative		
UM-Western Local Executive Board (University System)		
Ms. Mary Ann Nicholas, Dillon	Governor	4/15/2011
Qualifications (if required): public representative		
University of Montana Local Executive Board (University System)		
Mr. Bill Woody, Missoula	Governor	4/15/2011
Qualifications (if required): public representative		
Western Interstate Commissioner for Higher Education (Governor)		
Mr. Clayton Christian, Missoula	Governor	6/19/2011
Qualifications (if required): public representative		