ISSUE NO. 13

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 The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the adoption of New Rule I pertaining to the addition of beans and pulse crops to the listed commodities of Montana	))))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION

TO: All Concerned Persons

1. On August 2, 2012, at 3:00 p.m. the Montana Department of Agriculture will hold a public hearing in Room 225 of the Scott Hart Building, 302 N. Roberts at Helena, Montana, to consider the proposed adoption of the above-stated rule.

2. The Department of Agriculture will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact Department of Agriculture no later than 5:00 p.m. on July 26, 2012, to advise us of the nature of the accommodation that you need. Please contact Cort Jensen at the Montana Department of Agriculture, 302 North Roberts, P.O. Box 200201, Helena, MT 59620-0201; phone: (406) 444-3144; fax: (406) 444-5409; or e-mail: agr@mt.gov.

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

NEW RULE I OTHER COMMODITIES (1) In addition to those specified commodities in 80-4-402, MCA, the following crops are commodities for all purposes:

(a) pulse crops including but not limited to peas, dried peas, chickpeas, and lentils;

(b) beans.

AUTH: 80-4-402, MCA
IMP: 80-4-402, 80-4-501, 80-4-601, 80-4-704, MCA

REASON: The increased acreage of these valuable crops necessitates treating them as commodities in order to protect the growers of these crops from loss by purchasers and warehouse operators. It will also create a level regulatory field between these crops and wheat/barley. This change will necessitate those wishing to buy or store these crops to obtain the proper license and secure bonding.

FINANCIAL IMPACT: Some purchasers are already licensed either voluntarily or as the buyer/warehouse of other commodities, for them there will be minimal impact. For those not currently licensed and bonded, the likely impact will be the license fees of $464 for a commodity dealer and $464 for a commodity warehouse. In addition, a company will have to be bonded based on the amount they store or buy up to the maximum amounts set by law.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Cort Jensen at the Montana Department of Agriculture, 302 North Roberts, P.O. Box 200201, Helena, MT 59620-0201; telephone (406) 444-3144; fax: (406) 444-5409; or e-mail: agr@mt.gov, and must be received no later than 5:00 p.m. on August 9, 2012.

5. Cort Jensen, Department of Agriculture, has been designated to preside over and conduct this hearing.

6. The Department of Agriculture maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request which includes the name, e-mail, and mailing address of the person and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to Montana Department of Agriculture, 302 North Roberts, P.O. Box 200201, Helena, MT 59620-0201; fax: (406) 444-5409; or e-mail: agr@mt.gov or may be made by completing a request form at any rules hearing held by the Department of Agriculture.

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

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

DEPARTMENT OF AGRICULTURE

/s/ Cort Jensen
Rule Reviewer

/s/ Ron de Yong
Director

Certified to the Secretary of State, July 2, 2012.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 17.30.617 and 17.30.638 pertaining to outstanding resource water designation for the Gallatin River	NOTICE OF EXTENSION OF COMMENT PERIOD ON PROPOSED AMENDMENT (WATER QUALITY)

TO: All Concerned Persons

1. On October 5, 2006, the Board of Environmental Review published MAR Notice No. 17-254 regarding a notice of public hearing on the proposed amendment of the above-stated rules at page 2294, 2006 Montana Administrative Register, issue number 19. On March 22, 2007, the board published MAR Notice No. 17-257 regarding a notice of extension of comment period on the proposed amendment of the above-stated rules at page 328, 2007 Montana Administrative Register, issue number 6. On September 20, 2007, the board published MAR Notice No. 17-263 regarding a notice of extension of comment period on the proposed amendment of the above-stated rules at page 1398, 2007 Montana Administrative Register, issue number 18. On March 13, 2008, the board published MAR Notice No. 17-268 extending the comment period on the proposed amendment of the above-stated rules at page 438, 2008 Montana Administrative Register, issue number 5. On September 11, 2008, the board published MAR Notice No. 17-276 extending the comment period on the proposed amendment of the above-stated rules at page 1953, 2008 Montana Administrative Register, issue number 17. On February 26, 2009, the board published MAR Notice No. 17-276 extending the comment period on the proposed amendment of the above-stated rules at page 162, 2009 Montana Administrative Register, issue number 4. On August 13, 2009, the board published MAR Notice No. 17-276 extending the comment period on the proposed amendment of the above-stated rules at page 1324, 2009 Montana Administrative Register, issue number 15. On February 11, 2010, the board published MAR Notice No. 17-276 extending the comment period on the proposed amendment of the above-stated rules at page 264, 2010 Montana Administrative Register, issue number 3. On July 29, 2010, the board published MAR Notice No. 17-276 extending the comment period on the proposed amendment of the above-stated rules at page 1648, 2010 Montana Administrative Register, issue number 14. On January 27, 2011, the board published MAR Notice No. 17-276 extending the comment period on the proposed amendment of the above-stated rules at page 89, 2011 Montana Administrative Register, issue number 2. On July 14, 2011, the board published MAR Notice No. 17-276 extending the comment period on the proposed amendment of the above-stated rules at page 1244, 2011 Montana Administrative Register, issue number 13. On January 12, 2012, the board published MAR Notice No. 17-276 extending the comment period on the proposed amendment of the above-stated rules at page 5, 2012 Montana Administrative Register, issue number 1.

2. During the initial comment period and extensions of the original comment period, the board was advised that members of the Big Sky community, which would be affected by this rulemaking, had formed a collaborative, called the "Wastewater Solutions Forum," and had hired an engineering firm, which completed a feasibility study on extending the coverage of the Big Sky Water and Sewer district service area. The board received comments indicating that this would protect water quality in the Gallatin River as well as or better than adoption of the proposed rule. The Forum was exploring funding options when the economic downturn began. That downturn resulted in an interruption of those efforts. However, those efforts have now resumed. The board received comments indicating that the Forum has funding for and is conducting a pilot test to determine the feasibility of disposing of wastewater from the Big Sky and Yellowstone Mountain Club wastewater treatment facilities using snow making at a confined site at the Yellowstone Mountain Club. If successful, this will provide a method for disposal of wastewater without affecting the Gallatin River, which may allow for expansion of the sewer system and protection of the Gallatin. During the most recent comment period, the board received a comment stating that the snow making is complete and that monitoring of runoff water quality is ongoing. Results of the pilot test are expecting to be complete during the summer. The board has determined that it will further extend the comment period in order to allow submission of the results of the pilot test and comments and information on the feasibility of this option.

3. Written data, views, or arguments may be submitted to Elois Johnson, Paralegal, Department of Environmental Quality, 1520 E. Sixth Avenue, P.O. Box 200901, Helena, Montana, 59620-0901; faxed to (406) 444-4386; or e-mailed to ejohnson@mt.gov, no later than November 2, 2012. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

4. The board will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking action or need an alternative accessible format of this notice. If you require an accommodation, contact the board no later than 5:00 p.m., July 23, 2012, to advise us of the nature of the accommodation that you need. Please contact the board secretary at P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2544; fax (406) 444-4386; or e-mail ber@mt.gov.

Reviewed by: BOARD OF ENVIRONMENTAL REVIEW

/s/ John F. North BY: */s/ Joseph W. Russell*
JOHN F. NORTH JOSEPH W. RUSSELL, M.P.H.
Rule Reviewer Chairman

Certified to the Secretary of State, July 2, 2012.

BEFORE THE BOARD OF ATHLETIC TRAINERS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of ARM 24.118.402 fee schedule and the adoption of NEW RULES I and II applications and NEW RULE III renewals	)))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT AND ADOPTION

TO: All Concerned Persons

1. On August 7, 2012, at 2:00 p.m., a public hearing will be held in room 439, 301 South Park Avenue, Helena, Montana, to consider the proposed amendment 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 Athletic Trainers (board) no later than 5:00 p.m., on July 30, 2012, to advise us of the nature of the accommodation that you need. Please contact Cynthia Breen, Board of Athletic Trainers, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2392; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail dlibsdatr@mt.gov.

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

24.118.402 FEE SCHEDULE ~~(1) Fees for original examination and license, and original endorsement and license must be renewed annually by the date specified in ARM 24.101.413. The following is the fee schedule for licensed athletic trainers:~~

~~(a)~~ (1) Original ~~examination~~ application and license fee $175
~~(b) Original endorsement application and license fee 175~~
(c) remains the same, but is renumbered (2).
(2) and (3) remain the same, but are renumbered (3) and (4).

AUTH: 37-1-134, 37-36-102, MCA
IMP: 37-1-134, 37-36-201, 37-36-202, MCA

REASON: The board determined it is reasonably necessary to amend this rule to remove repetitive and confusing language. The board is also condensing the application and licensure fees into a single type while removing the endorsement method. There is no difference in either licensure requirements or the application review process between an applicant for initial licensure, or someone who is licensed in another state.

4. The proposed new rules provide as follows:

NEW RULE I APPLICATIONS (1) A completed application must include the following:

(a) transcripts sent directly from the educational institution documenting that the applicant has received at least a baccalaureate degree from a postsecondary institution that meets the academic standards for athletic trainers established by the National Athletic Trainers Association Board of Certification (BOC);

(b) proof of the applicant's current certification from the BOC;

(c) letters of recommendation from at least two clinical supervisors familiar with the applicant's clinical training;

(d) license verifications sent directly from all states where the applicant holds or has held a license in any professional capacity;

(e) proof of the applicant's current Health Care Provider Cardio Pulmonary Resuscitation (CPR) certification;

(f) the appropriate fee; and

(g) additional documentation the board may require to show no criminal conviction or disciplinary action against the applicant per 37-36-201, MCA.

(2) The board may issue a temporary license to an applicant who qualifies under 37-36-201(2), MCA.

(3) A temporary license is valid after the date of issuance for 90 days or until the board acts on the person's license application, whichever is earlier.

(4) Applications not completed within one year of submission will expire and a new application and fee will be required.

AUTH: 37-1-131, 37-36-102, MCA
IMP: 37-1-131, 37-36-201, MCA

REASON: The board is adopting New Rule I to clearly set forth for applicants the specific requirements needed for licensure. The board concluded that maintaining all licensure requirements in a single location will make it simpler and easier for applicants to locate licensure requirements.

NEW RULE II DEFINITION OF NONROUTINE APPLICATION

(1) The board considers the following as nonroutine applications for athletic trainer licensure that require full board review and approval:

(a) applications containing any of the criteria in the division's definition of nonroutine application in ARM 24.101.402; or

(b) applications that disclose:

(i) an applicant having prior felony convictions of any nature, or prior misdemeanor convictions relating to sex, drugs, or violence;

(ii) an applicant having two or more alcohol-related convictions over any period of time, or one alcohol-related conviction within the past five years; or

(iii) that an applicant's professional license in this or another state or jurisdiction was disciplined or voluntarily surrendered.

AUTH: 37-1-131, 37-36-102, MCA
IMP: 37-1-101, MCA

REASON: The board is proposing New Rule II to implement 37-1-101, MCA, which allows department staff to issue and renew routine licenses on behalf of the boards. The board is now defining nonroutine applications to clarify which athletic trainer applications need full board review prior to license issuance and which can be processed by staff.

NEW RULE III RENEWALS (1) All athletic trainers must renew their license annually with the board. The renewal date for an athletic trainer license is set by ARM 24.101.413.

(2) Renewal notices will be sent as specified in ARM 24.101.414.

(3) Licensees must, upon renewal, attest to holding current BOC certification.

(4) The board may conduct a random audit of ten percent for documentary verification of the certification requirement.

(5) All licensees shall notify the department within 30 days of any change in mailing addresses.

AUTH: 37-1-131, 37-36-102, MCA
IMP: 37-1-131, 37-1-141, 37-1-309, 37-36-202, MCA

REASON: The board determined it is reasonably necessary to adopt New Rule III to clarify the current renewal processes and auditing requirement. The board anticipates this rule will alleviate confusion by providing licensees a clear reference for renewal questions.

5. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Board of Athletic Trainers, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to dlibsdatr@mt.gov, and must be received no later than 5:00 p.m., August 14, 2012.

6. An electronic copy of this Notice of Public Hearing is available through the department and board's web site on the World Wide Web at www.athletictrainer.mt.gov. The department strives to make the electronic copy of this notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems, and that technical difficulties in accessing or posting to the e-mail address do not excuse late submission of comments.

7. The board 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 Athletic Trainers, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; faxed to the office at (406) 841-2305; e-mailed to dlibsdatr@mt.gov; or made by completing a request form at any rules hearing held by the agency.

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

9. Kevin Maki, attorney, has been designated to preside over and conduct this hearing.

BOARD OF ATHLETIC TRAINERS
CHRIS HEARD, CHAIRPERSON

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

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

Certified to the Secretary of State July 2, 2012

BEFORE THE BOARD OF CLINICAL LABORATORY SCIENCE PRACTITIONERS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of ARM 24.129.2101 continuing education requirements	)))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On August 3, 2012, at 1:30 p.m., a public hearing will be held in B-07, 301 South Park Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rule.

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 Clinical Laboratory Science Practitioners (board) no later than 5:00 p.m., on July 27, 2012, to advise us of the nature of the accommodation that you need. Please contact Linda Grief, Board of Clinical Laboratory Science Practitioners, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2395; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail dlibsdcls@mt.gov.

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

24.129.2101 CONTINUING EDUCATION REQUIREMENTS (1) and (1)(a) remain the same.

(b) ~~Up to seven hours earned in excess of the 14 hours required in a licensing year may be carried over into the succeeding year.~~

~~(c)~~ All continuing education credits must be germane to the profession and must contribute to the professional competence of a clinical laboratory science practitioner.

(2) remains the same.

(a) Any continuing education offered ~~or~~ by providers and approved by the ~~following:~~ board and listed in the board office or on the board web site.

~~(i) American Society of Clinical Pathologists (ASCP);~~

~~(ii) National Certifying Agency (NCA);~~

~~(iii) American Medical Technologists (AMT);~~

~~(iv) American Society of Clinical Laboratory Science (ASCLS);~~

~~(v) National Laboratory Training Network (NLTN);~~

~~(vi) Laboratory Education for North Dakota (LEND);~~

~~(vii) Colorado Association for Continuing Medical Laboratory Education (CACMLE);~~

~~(viii) American Association of Blood Banks (AABB);~~

~~(ix) American Association of Clinical Chemists (AACC);~~

~~(x) American Society for Microbiologists (ASM);~~
~~(xi) Association of Cytogenetic Technologists (ACT);~~
~~(xii) International Society for Clinical Laboratory Technology (ISCLT);~~
~~(xiii) American Association of Bioanalysts (AAB);~~
~~(xiv) Mayo medical laboratories;~~
~~(xv) professional laboratory societies in any of the 50 states;~~
~~(xvi) Clinical Laboratory Management Association (CLMA); or~~
~~(xvii) other providers as listed in the office of the board or on the web site.~~

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

(c) Continuing education not ~~sponsored by organizations listed~~ referenced in (2)(a) shall be submitted to the ~~Montana Board of Clinical Laboratory Science Practitioners~~ board for its consideration for approval.

(3) remains the same.

AUTH: 37-1-319, 37-34-201, MCA
IMP: 37-1-306, 37-1-319, ~~37-34-201,~~ MCA

REASON: The board determined it is reasonably necessary to amend (1)(b) to no longer allow licensees to carry over excess annual continuing education (CE) hours into a subsequent year. The board believes that CE requirements help ensure that licensees remain current in the profession which is growing quickly with new advances in technology and changes in health care, in general, and that allowing carryover does not further that purpose. The board has found big gaps in both quality and timeliness of courses attended when carryover courses were used. Eliminating carryover will also simplify the continuing education requirements and reporting process for licensees.

The board is amending (2)(a) to facilitate the listing of board-approved CE providers on the board's web site instead of within the rule text. This change will eliminate costly rule amendments required every time a provider name changes or when the board adds or deletes a provider. In addition, this amendment will allow the board flexibility to more timely approve providers in response to new advances in technology, simply by updating the lists maintained on the board's web site and in the board office.

The board is amending (2)(c) for clarity and simplicity by removing unnecessary and redundant language.

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. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Board of Clinical Laboratory Science Practitioners, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to dlibsdcls@mt.gov, and must be received no later than 5:00 p.m., August 13, 2012.

5. An electronic copy of this notice is available through the department and board's web site on the World Wide Web at www.cls.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 Clinical Laboratory Science Practitioners, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, faxed to the office at (406) 841-2305, e-mailed to dlibsdcls@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 CLINICAL LABORATORY
SCIENCE PRACTITIONERS
ALISON MIZNER, CHAIRPERSON

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

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

Certified to the Secretary of State July 2, 2012

BEFORE THE BOARD OF MEDICAL EXAMINERS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of ARM 24.156.618 testing requirement and the adoption of NEW RULES I through V reporting obligations	))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT AND ADOPTION

TO: All Concerned Persons

1. On August 6, 2012, at 1:00 p.m., a public hearing will be held in room 439, 301 South Park Avenue, Helena, Montana, to consider the proposed amendment 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 Medical Examiners (board) no later than 5:00 p.m., on July 30, 2012, to advise us of the nature of the accommodation that you need. Please contact Ian Marquand, Board of Medical Examiners, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2360; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail dlibsdmed@mt.gov.

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

24.156.618 TESTING REQUIREMENT (1) A physician seeking to reactivate a Montana license, which has been inactive for the two or more years preceding the request for reactivation, and who has ceased the clinical practice of medicine in all jurisdictions for the entire time during which the license has been inactive, must either have been board certified/recertified during the two years preceding the request for reactivation or pass the special purpose examination (SPEX) or the comprehensive osteopathic medical variable-purpose examination (COMVEX) given by the Federation of State Medical Boards~~.~~, and may also be required to complete a reentry plan to the satisfaction of the board. The board must review and approve a reentry plan as determined appropriate by the board prior to the applicant beginning the reentry plan. Depending on the amount of time out-of-practice, the applicant may also be required to do one or more of the following:

(a) practice for a specified period of time under a mentor/supervising physician who will provide periodic reports to the board;

(b) obtain certification or recertification by a specialty board recognized by the American Board of Medical Specialties (ABMS) or the American Osteopathic Association's Bureau of Osteopathic Specialists (AOA-BOS);

(c) complete one year of accredited postgraduate or clinical fellowship training, which must be preapproved by the board, or;

(d) complete any other requirements as determined by the board. The applicant who fails the SPEX or COMVEX examination three times, whether in Montana or other states, must successfully complete one year of an accredited residency or an accredited or board-approved clinical training before retaking the SPEX or COMVEX examination.

(2) remains the same.

(3) A physician seeking to reactivate a Montana license, which has been inactive for the two or more years preceding the request for activation, and who has practiced medicine on an active license in another state or jurisdiction for the five years preceding the request to reactivate, may be required to appear before the board, and must:

(a) provide verification of one or more active licenses maintained during the time period the physician has held an inactive Montana license;

(b) identify all locations and dates of practice during the five years preceding the request for reactivation; and

(c) pay the difference between the fee for an inactive and active license.

AUTH: 37-1-319, 37-3-203, 37-3-802, MCA
IMP: 37-1-319, 37-3-101, 37-3-202, 37-3-802, MCA

REASON: The board is amending this rule following a determination that requiring the SPEX test for all physicians whose Montana licenses have been on inactive status for more than two years is unnecessarily punitive for physicians who have maintained an active practice in another state. The board decided that a distinction must be made between reactivation requirements for physicians who have been actively practicing outside Montana and those who have been completely inactive prior to reactivating.

4. The proposed new rules provide as follows:

NEW RULE I OBLIGATION TO REPORT TO BOARD (1) A physician shall report to the board within three months from the date of a final judgment, order, or agency action, all information related to malpractice, misconduct, criminal, or disciplinary action in which the physician is a named party.

AUTH: 37-1-131, 37-1-319, 37-3-202, MCA
IMP: 37-1-131, 37-1-319, 37-3-323, 37-3-401, 37-3-405, MCA

REASON: The board is proposing to adopt New Rules I through V to require mandatory reporting of licensees' final discipline, misconduct, and court actions. The board determined it is reasonably necessary to require this reporting to ensure that the board has accurate and current information on licensees, and to enable the board to discipline licensees who do not report. These new rules will be consistent with reporting obligations for physician assistants and nutritionists already in place.

NEW RULE II OBLIGATION TO REPORT TO BOARD (1) An EMT shall report to the board within three months from the date of a final judgment, order, or

agency action, all information related to malpractice, misconduct, criminal, or disciplinary action in which the EMT is a named party.

AUTH: 37-1-131, 37-1-319, 50-6-203, MCA
IMP: 37-1-131, 37-1-319, 50-6-203, MCA

NEW RULE III OBLIGATION TO REPORT TO BOARD (1) A podiatrist shall report to the board within three months from the date of a final judgment, order, or agency action, all information related to malpractice, misconduct, criminal, or disciplinary action in which the podiatrist is a named party.

AUTH: 37-1-131, 37-1-319, 37-6-106, MCA
IMP: 37-1-131, 37-1-319, 37-6-311, MCA

NEW RULE IV OBLIGATION TO REPORT TO BOARD (1) A telemedicine practitioner shall report to the board within three months from the date of a final judgment, order, or agency action, all information related to malpractice, misconduct, criminal, or disciplinary action in which the telemed is a named party.

AUTH: 37-1-131, 37-1-319, 37-3-202, MCA
IMP: 37-1-131, 37-1-319, 37-3-323, 37-3-401, 37-3-405, MCA

NEW RULE V OBLIGATION TO REPORT TO BOARD (1) An acupuncturist shall report to the board within three months from the date of a final judgment, order, or agency action, all information related to malpractice, misconduct, criminal, or disciplinary action in which the acupuncturist is a named party.

AUTH: 37-1-131, 37-1-319, 37-13-201, MCA
IMP: 37-1-131, 37-1-319, MCA

5. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Board of Medical Examiners, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to dlibsdmed@mt.gov, and must be received no later than 5:00 p.m., August 14, 2012.

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

accessing or posting to the e-mail address do not excuse late submission of comments.

7. The board 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 Medical Examiners, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; faxed to the office at (406) 841-2305; e-mailed to dlibsdmed@mt.gov; or made by completing a request form at any rules hearing held by the agency.

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

9. Anne O'Leary, attorney, has been designated to preside over and conduct this hearing.

BOARD OF MEDICAL EXAMINERS
ANNA EARL, MD, CHAIRPERSON

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

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

Certified to the Secretary of State July 2, 2012

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of ARM 24.351.201, 24.351.204, 24.351.211, 24.351.224 and 24.351.227 weighing and measuring devices, 24.351.301 and 24.351.321 packaging and labeling, 24.351.401 and 24.351.411 petroleum, 24.351.1104, 44.351.1111 and 24.351.1115 voluntary registration, the adoption of NEW RULE I certification of stationary standards, and the repeal of 24.351.221 weighing device license transfer	)))))))))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT, ADOPTION, AND REPEAL

TO: All Concerned Persons

1. On August 2, 2012, at 1:30 p.m., a public hearing will be held in room B-07, 301 South Park Avenue, Helena, Montana, to consider the proposed amendment, adoption, and repeal of the above-stated rules.

2. The Weights and Measures Bureau (bureau) of the Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or who need an alternative accessible format of this notice. If you require an accommodation, contact the bureau no later than 5:00 p.m., on July 27, 2012, to advise us of the nature of the accommodation that you need. Please contact Tim Lloyd, Bureau Chief, Weights and Measures Bureau, Business Standards Division, Department of Labor and Industry, 2801 N. Cooke Street, P.O. Box 200516, Helena, Montana 59620-0516; telephone (406) 443-3289; facsimile (406) 443-8163; TTD (406) 444-2978; Montana Relay 1 (800) 253-4091; or e-mail tlloyd@mt.gov.

3. GENERAL STATEMENT OF REASONABLE NECESSITY: The department is amending several of the bureau's rules to adopt and implement the most current editions of the National Institute of Standards and Technology (NIST) handbooks. Per statute, the standards published by NIST govern all weighing and measuring equipment and transactions in Montana. It is necessary to periodically update the rules to align references to the new handbooks and keep up with advances in technology and testing methods. Accordingly, the department has determined that reasonable necessity exists to generally amend certain rules at this time. Where additional specific bases for a proposed action exist, the department will identify those reasons immediately following that rule.

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

24.351.201 NIST HANDBOOK 44 - SPECIFICATIONS, TOLERANCES, AND OTHER TECHNICAL REQUIREMENTS FOR WEIGHING AND MEASURING DEVICES (1) The bureau, with the advice and counsel of NIST, adopts the specifications, tolerances, and requirements for commercial weighing and measuring devices published in NIST Handbook 44, ~~2005~~ 2012 edition, as the specifications, tolerances, and requirements for commercial weighing and measuring devices for ~~the state of~~ Montana with the following exception:

(a) remains the same.

(2) A copy of NIST Handbook 44 can be obtained from the United States Department of Commerce, National Institute of Standards and Technology, National Conference of Weights and Measures, Gaithersburg, MD 20899-0001. The web site is www.nist.org.

AUTH: 30-12-202, MCA
IMP: 30-12-202, 30-12-205, 30-12-401, 30-12-406, 30-12-407, 30-12-408, 30-12-409, MCA

24.351.204 UNIFORM REGULATION FOR NATIONAL TYPE EVALUATION (1) The bureau adopts and incorporates by reference the Uniform Regulation for National Type Evaluation, as found in NIST Handbook 130, ~~2005~~ 2012 edition, and is adopted in its entirety with the following modifications:

(a) remains the same.

(b) in Section 4, ~~subsections 3~~ (c) through ~~7~~ (g), insert in all blank spaces the date of January 1, 1999; and

(c) in Section ~~8~~ 7, insert in the blank space January 1, 1999, for the effective date for this regulation.

(2) A copy of NIST Handbook 130 can be obtained from the United States Department of Commerce, National Institute of Standards and Technology, National Conference of Weights and Measures, Gaithersburg, MD 20899-0001. The web site is www.nist.org.

AUTH: 30-12-202, MCA
IMP: 30-12-202, MCA

24.351.211 FEES FOR TESTING AND CERTIFICATION (1) remains the same.

(a) units over 5000 pounds of testing weights, $2.50 ~~a~~ per mile, measured by the distance the bureau's employee travels in connection with the special inspection;

(b) all other units, $1.25 ~~a~~ per mile, as measured by the distance the bureau's employee travels in connection with the special inspection; and

(c) time for testing by inspection, $75 ~~an~~ per hour.

(2) Where fees are not paid within 30 days after the special inspection, ~~equipment will be sealed and removed from service by~~ the bureau may seal and remove from service the device in question, until such fees have been paid. The bureau will coordinate the special inspections, whenever possible, with other inspection activities in an effort to keep charges as reasonable as possible.

AUTH: 30-12-202, MCA
IMP: 30-12-202, 30-12-203, MCA

REASON: The department is amending (2) to allow, rather than require the seal and removal of equipment due to nonpayment of special inspection fees. In the past ten years, the bureau has not removed a device from service within 30 days, nor might it be possible to do so within such a tight time frame. The bureau notes that allowing additional time may be desirable depending on the individual circumstances.

24.351.224 ACCESSIBILITY TO STOCK SCALES (1) All permanently installed stock scales must be provided with a landing or access to the scale, having a width at least equal to the width of the scale platform~~, having~~ and a length of at least five feet from the scale platform enclosure~~.~~. The landing must be level with the deck of the scale platform and be constructed of concrete.

(2) A pathway must be provided to the scale access such that the test vehicle will not become mired down and such that the test vehicle can be parked in a relatively level position, both horizontally and vertically. The pathway is required to have a width of from ~~10~~ ten to ~~12~~ twelve feet and a height clearance of at least ~~14~~ fourteen feet. This pathway must be continuous to the scale access concrete. All gates in the pathway must be in good working order.

(3) Portable livestock scales must be located on level ground and be provided with a temporary landing or access to the scale, having a width at least equal to the width of the scale platform, having a length of at least five feet from the scale platform enclosure, be level with the deck of the scale platform, and be constructed of materials sufficient to support a test vehicle.

AUTH: 30-12-202, MCA
IMP: 30-12-203, MCA

REASON: The department determined it is reasonably necessary to amend this rule to distinguish between requirements for a permanent livestock scale and a portable scale, better define what is required for access, and provide access requirements for portable livestock scales. Additionally, portable scales are becoming more common every year and there have been occasions where bureau inspectors were unable to test these devices because they were installed improperly or there was no material available to construct a temporary landing.

24.351.227 SCALE PIT CLEARANCE (1) remains the same.

(2) Scale pits are not required for fully electronic scales, unless the pit is necessary for the installation, operation, or maintenance of the particular scale.

(3) Electronic scales which do not require a pit for their installation, operation, or maintenance must be installed in strict compliance with the manufacturer's specification for each specific model and with the requirements of NIST Handbook 44, ~~2005~~ 2012 edition.

(4) Scale pits must have concrete walls surrounding the entire pit, substantial in both durability and strength to prevent soil, snow, and other materials from

entering the pit area and preventing the scale from operating properly. The requirements of this rule will apply only to those scales installed after its adoption.

AUTH: 30-12-202, MCA
IMP: 30-12-202, MCA

24.351.301 NIST HANDBOOK 130 - UNIFORM LAWS AND REGULATIONS (1) The bureau, with the advice and counsel of NIST, adopts the model regulations to provide accurate and adequate information on packages as to the identity and quantity of contents, so that purchasers can make price and quantity comparison. The regulations are published in NIST Handbook 130, ~~2005~~ 2012 edition, ~~part IV,~~ subparts:

(a) ~~A,~~ Uniform Packaging and Labeling Regulation;

(b) ~~B,~~ Uniform Regulation for the Method of Sale of Commodities; and

(c) ~~C,~~ Uniform Unit Pricing Regulation.

(2) A copy of NIST Handbook 130 can be obtained from the United States Department of Commerce, National Institute of Standards and Technology, National Conference of Weights and Measures, Gaithersburg, Maryland 20899-0001. The web site is www.nist.org.

AUTH: 30-12-202, MCA
IMP: 30-12-202, MCA

24.351.321 NIST HANDBOOK 133 – CHECKING THE NET CONTENTS OF PACKAGED GOODS (1) The bureau, with the advice and counsel of NIST, adopts the test methods and procedures as published in NIST Handbook 133, ~~fourth~~ 2011 edition, as the methods and procedures to be used for determining net weight of packaged commodities for ~~the state of~~ Montana.

(a) A copy of NIST Handbook 133 can be obtained from the United States Department of Commerce, National Institute of Standards and Technology, National Conference of Weights and Measures, Gaithersburg, Maryland 20899-0001. The web site is www.nist.org.

AUTH: 30-12-202, 30-12-207, 30-12-301, 30-12-302, MCA
IMP: 30-12-202, 30-12-207, 30-12-301, 30-12-302, MCA

24.351.401 NIST HANDBOOK 130 - UNIFORM LAWS AND REGULATIONS (1) The bureau, with the advice and counsel of NIST, adopts, except as provided in (2), the regulations concerning fuel specifications and gasoline-oxygenate blends. The regulations are published in NIST Handbook 130, ~~2005~~ 2012 edition, ~~part IV,~~ subpart G, Uniform Regulation of Engine Fuels, Petroleum Products, and Automotive Lubricants.

(a) A copy of NIST Handbook 130 can be obtained from the United States Department of Commerce, National Institute of Standards and Technology, National Conference of Weights and Measures, Gaithersburg, Maryland 20899-0001. The web site is www.nist.org.

(2) The following are the minimum antiknock index requirements for the various grades of gasoline sold in Montana and supersede the minimum requirements contained in paragraph 3.2.5, Table 1, p. ~~137~~ 180, of Handbook 130:

Term	Minimum Antiknock Index
Premium, Super, Supreme High Test	91
Midgrade, Plus	88
Regular Unleaded with Lead Substitute	87
Regular, Unleaded (alone)	85.5

AUTH: 82-15-102, 82-15-103, MCA
IMP: 82-15-103, MCA

REASON: Authority cites are being amended to provide the complete sources of the department's rulemaking authority.

24.351.411 SAMPLING OF PETROLEUM PRODUCTS (1) All sampling will be done by employees of the bureau. A random sampling of petroleum products of the manufacturer and importer ~~will~~ may be made to ensure that proper standards are being met. The bureau may require the cost of testing samples ~~must~~ be paid for by the manufacturer or importer.

(2) remains the same.

AUTH: 82-15-102, MCA
IMP: 82-15-107, MCA

REASON: It is reasonably necessary to amend this rule to allow, rather than require the bureau's random sampling of petroleum products for testing, as the bureau does not receive funding to perform this sampling. The bureau will continue to investigate complaints and will test petroleum products if warranted by the results of the investigation. Additionally, the cost of this testing may not always be the responsibility of the manufacturer or importer, due to the blending of petroleum products and pipelines used to transport products produced by different manufacturers.

24.351.1104 INDIVIDUAL APPLICANTS FOR REGISTRATION (1) and (1)(a) remain the same.

(i) is fully qualified to install, service, repair, or recondition whatever devices for the service of which competence is being registered;

(ii) remains the same.

(iii) has full knowledge of all appropriate weights and measures laws, rules, and regulations.

(b) remains the same.

(2) An individual applicant must have available sufficient standards and equipment to adequately test devices as set forth in the notes section of each

applicable code in NIST Handbook 44, ~~2005~~ 2012 edition, "Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices." The equipment must meet the applicable specifications of:

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

(3) Each individual applicant shall complete and pass a written test to determine the applicant's knowledge of the appropriate weights and measures laws, rules, and regulations prior to the issuance by the bureau of the initial certificate of registration.

(a) Subsequent testing and/or continuing education classes may be necessary due to changes in weights and measures laws and rules. Such testing and/or classes shall be given whenever deemed necessary by the bureau. If such subsequent testing is appropriate, the bureau shall provide notice to registered ~~servicepersons~~ service persons of the subsequent testing prior to the time of the next renewal of the certificate of registration.

(4) There is a $25 fee for registration as a ~~serviceperson~~ service person.

(5) remains the same.

(6) A certificate of registration expires on December 31, unless revoked earlier for good cause~~.~~, which shall include, but not be limited to:

(a) taking unfair advantage of an owner of a device;

(b) failure to have test equipment or standards certified;

(c) failure to use adequate testing equipment;

(d) continued failure to submit, or to submit in a timely manner, properly completed placed-in-service reports for new installations or repair of existing devices;

(e) failure to adjust commercial or law enforcement devices to comply with the regulations adopted by the bureau;

(f) nonpayment of calibration or registration fees; or

(g) continued failure to properly seal devices.

AUTH: 30-12-202, MCA
IMP: 30-12-202, MCA

REASON: The department is amending (3) to clarify that the bureau may require registered service persons to either retest and/or attend continuing education classes. Requiring them to retest and/or attend classes will help ensure that registered service persons have knowledge of the regulations adopted by the bureau. It is also reasonably necessary to amend (6) and specify several possible reasons for revocation of a certificate of registration to address questions posed to the bureau. The department notes that certificates have been revoked for both continued late submission of placed-in-service reports and delinquent payment of calibration or registration fees.

24.351.1111 PRIVILEGES AND OBLIGATIONS OF A CERTIFICATE HOLDER (1) remains the same.

(2) A registered ~~serviceperson~~ service person or registered service agency may not use, in servicing commercial weighing or measuring devices, any standards or testing equipment that have not been certified by the bureau. Equipment

calibrated by another state's weights and measures laboratory that can show traceability to the ~~national institute of standards and technology~~ National Institute of Standards and Technology will also be recognized as equipment suitable for use by registered ~~servicepersons~~ service persons or registered service agencies in this state.

(3) A registered ~~serviceperson~~ service person or registered service agency is responsible for installing, repairing, and adjusting devices such that the devices are adjusted as closely as practicable to zero error.

(4) A registered service person or registered service agency is responsible for following the testing procedures in the regulations that are adopted by the bureau.

~~(4)~~ (5) Each registered ~~serviceperson~~ service person and registered service agency shall execute a "placed-in-service" report when a device is placed in service. The "placed-in-service" report must be on a form provided or approved by the bureau. An agency may request approval of a company form already in use if such form meets bureau standards. Such a form must:

(a) and (b) remain the same.

(c) be signed by the registered ~~serviceperson~~ service person responsible for each:

(i) and (ii) remain the same.

~~(5)~~ (6) Within ~~24 hours~~ five working days after a device is restored to service~~,~~ or placed in service, the original of the properly executed placed-in-service report, together with any official rejection tag removed from the device, must be mailed to the bureau at the Department of Labor and Industry, Weights and Measures Bureau, P.O. Box 200516, Helena, Montana 59620-0516. It is also permissible to fax or e-mail a copy of the original and any removed tags to the bureau, with the registered service agency maintaining the original. The duplicate copy of the report must be given to the owner or operator of the device. The removed rejection tag or original placed-in-service report is not to be left with the owner or operator of the device.

(7) Each registered service person shall have a unique identifier if they place devices into service that can be physically sealed. Unique identifiers for new service persons registered after January 1, 2013 shall have the service person's registration number that is provided by the bureau. For devices with internal controls, and thus cannot be physically sealed, the registered service person shall place a sticker or label on the device bearing their name, company name, and the date the device was placed into service.

AUTH: 30-12-202, MCA
IMP: 30-12-202, MCA

REASON: The department determined it is reasonably necessary to amend (4) and require registered service persons to follow the testing procedures in the regulations adopted by the bureau. There have been cases where the bureau has received test reports that indicate registered service persons have not tested the device correctly. Following amendment, the department will be able to hold registered service persons accountable for not following bureau-approved testing procedures.

The department is amending (5) to allow registered agencies to submit either a placed-in-service report or test report as long as the report includes all information required by the bureau. Following suggestion by registered service companies, the department agreed that the amendment will still gain the required information, but will also reduce bureau printing costs and the paper work required of registered service providers. The bureau's placed-in-service report will still be available at no cost for service providers who wish to use the form.

The department is amending (6) to increase the time for submission of placed-in-service reports and allow fax or e-mail versions of the submission. The department determined that 24 hours did not allow reasonable time for submission of the reports after a device is restored to or placed in service.

It is reasonably necessary to add (7) and require that registered service persons use unique identifier numbers on their placed-in-service reports and seals on devices. Use of the identifiers allows the bureau to ensure that service persons are registered, and enable follow-up with the actual technicians to ensure the work they do results in devices which are accurate to bureau standards. Although the bureau has been working with companies to assign and use these identifying numbers, the requirement was not previously set forth in rule.

24.351.1115 RENEWAL OF CERTIFICATE OF REGISTRATION

(1) remains the same.

(a) ~~serviceperson~~ service person $25.00

(b) and (c) remain the same.

(2) A registered ~~serviceperson~~ service person and a registered service agency shall submit, at least biennially or every two years, to the bureau for examination and certification, any standards and testing equipment that are used~~,~~ or are to be used~~,~~ in the performance of the service and testing functions, with respect to weighing and measuring devices for which competence is registered. Failure to timely submit suitable standards and testing equipment may disqualify the individual or agency from renewing the certificate of registration.

(3) remains the same.

AUTH: 30-12-202, MCA
IMP: 30-12-202, MCA

REASON: The department is amending (2) to clarify that standards and test equipment must be calibrated every two years, to address repeated questions regarding the meaning of the word "biennially."

5. The proposed new rule provides as follows:

NEW RULE I CERTIFICATION OF STATIONARY STANDARDS (1) The recommended interval for certification of stationary standards used for testing hopper or similar scales is every five years. The bureau may require any stationary standards showing signs of degradation to be certified every five years.

AUTH: 30-12-202, MCA

IMP: 30-12-202, MCA

REASON: The department determined it is reasonably necessary to adopt New Rule I and recommend that stationary standards for testing hopper or similar scales be submitted every five years for examination and certification. Although standards and testing equipment used by service companies must be certified every two years per ARM 24.351.1115, there is no current requirement addressing the certification of stationary standards.

Since stationary standards are not exposed to the same hazards as standards used by service companies, a longer certification interval is warranted. In cases where the stationary standards are showing signs of degradation, which can affect the testing and calibration of the scale, the bureau will require the standards to be recertified.

6. The rule proposed to be repealed is as follows:

24.351.221 WEIGHING DEVICE LICENSE TRANSFER found at ARM page 24-35043.

AUTH: 30-12-202, MCA
IMP: 30-12-203, MCA

REASON: The department is repealing this rule since all licenses are now administered by the one-stop licensing program and the second tier of regulation in this rule is no longer needed.

7. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Tim Lloyd, Bureau Chief, Weights and Measures Bureau, Business Standards Division, Department of Labor and Industry, 2801 N. Cooke Street, P.O. Box 200516, Helena, Montana 59620-0516; facsimile (406) 443-8163; or e-mail tlloyd@mt.gov, and must be received no later than 5:00 p.m., August 10, 2012.

8. An electronic copy of this Notice of Public Hearing is available through the department and program's web site on the World Wide Web at www.bsd.dli.mt.gov/bc/ms_index.asp. The department strives to make the electronic copy of this notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems, and that technical difficulties in accessing or posting to the e-mail address do not excuse late submission of comments.

9. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies 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 Tim Lloyd, Bureau Chief, Weights and Measures Bureau, Business Standards Division, Department of Labor and Industry, 2801 N. Cooke Street, P.O. Box 200516, Helena, Montana 59620-0516; faxed to the office at (406) 841-2060; e-mailed to tlloyd@mt.gov; or made by completing a request form at any rules hearing held by the agency.

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

11. Darcee L. Moe, attorney, has been designated to preside over and conduct this hearing.

DEPARTMENT OF LABOR AND INDUSTRY

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

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

Certified to the Secretary of State July 2, 2012

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

In the matter of the amendment of ARM 37.80.101 and 37.80.306 pertaining to child care policy manual revisions	))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On August 1, 2012, at 11:00 a.m., the Department of Public Health and Human Services will hold a public hearing in Room 207 of the Department of Public Health and Human Services Building, 111 North Sanders, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Department of Public Health and Human Services no later than 5:00 p.m. on July 25, 2012, to advise us of the nature of the accommodation that you need. Please contact Kenneth Mordan, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

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

37.80.101 PURPOSE AND GENERAL LIMITATIONS (1) through (12) remain the same.

(13) The Child Care Assistance Program will be administered in accordance with:

(a) remains the same.

(b) the Montana Child Care Manual in effect on ~~January 27, 2012~~ September 7, 2012. The Montana Child Care Manual, dated ~~January 27, 2012~~ September 7, 2012, is adopted and incorporated by this reference. The manual contains the policies and procedures utilized in the implementation of the department's Child Care Assistance Program. A copy of the Montana Child Care Manual is available at each child care resource and referral agency; at the Department of Public Health and Human Services, Human and Community Services Division, 111 N. Jackson St., P.O. Box 202925, Helena, MT 59620-2925; and on the department's web site at www.childcare.mt.gov.

AUTH: 52-2-704, 53-4-212, MCA
IMP: 52-2-702, 52-2-704, 52-2-713, 52-2-731, 53-2-201, 53-4-211, 53-4-601, 53-4-611, 53-4-612, MCA

37.80.306 LEGALLY CERTIFIED PROVIDERS: CERTIFICATION REQUIREMENTS AND PROCEDURES (1) remains the same.

(2) An application for certification or recertification will be denied under any of the following circumstances:

(a) through (c) remain the same.

(d) the applicant has currently been denied a child care provider registration or license or would be denied a registration or license if the applicant applied, or the applicant has been denied a child care provider registration or license in the past or has had a child care provider registration or license revoked for cause in the past.;

(e) the background check process has exceeded 90 days in duration; or

(f) the applicant has an open child protection services (CPS) case under investigation.

(3) The applicant and ~~any adult~~ all adults who reside~~s~~ in the applicant's home must provide authorization for criminal, FBI, state and national sexual/violent offender registry, and child protective services background checks for the period of time from the present date back to the date of the individual's 18th birthday.

(a) remains the same.

(4) In addition to completing all required application forms for certification under this chapter, applicants for certification to provide child care as legally certified providers, and all adults in their household, must truthfully attest in writing that he or she:

(a) through (c) remain the same.

(d) does not have a pending criminal charge for a crime that bears upon the applicant's fitness to have responsibility for the safety and well-being of children;

(d) through (h) remain the same, but are renumbered (e) through (i).

(5) A conviction for driving under the influence of alcohol more than three years prior to the application date does not constitute grounds for denial.

(5) and (6) remain the same, but are renumbered (6) and (7).

AUTH: 52-2-704, MCA
IMP: 52-2-704, 52-2-713, 52-2-721, 52-2-722, 52-2-723, 52-2-731, MCA

4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (the department) is proposing to amend ARM 37.80.101 and 37.80.306, pertaining to child care assistance.

ARM 37.80.101

ARM 37.80.101(13)(b) currently adopts and incorporates by reference the Montana Child Care Manual effective January 27, 2012. The department proposes to make revisions to this manual that will take effect on September 7, 2012. The proposed amendment to (13) is necessary to incorporate into the Administrative Rules of Montana (ARM) the revisions to the manual and to permit all interested parties to comment on the department's policies and to offer suggested changes. Manuals

and draft manual material are available for review in each local Office of Public Assistance and on the department's web site at www.bestbeginnings.mt.gov.

ARM 37.80.306

The department is proposing to amend ARM 37.80.306(2) by adding two additional reasons for denying an application for certification or recertification as a legally certified provider (LCP). Certification or recertification will be denied if the background check process has exceeded 90 days in duration or the applicant has an open child protection services (CPS) case under investigation. The change to deny an application that exceeds 90 days is necessary because the occasional application that exceeds that window may cause other background check information to become outdated and require reprocessing because of the time delay. The change to deny an application when there is an open CPS investigation is necessary to allow time for that investigation to be completed before a decision is made on child care certification.

The department is proposing to amend ARM 37.80.306(4) by requiring attestation regarding criminal convictions for all adults in the household of the person applying to be certified as a legally certified provider (LCP). Adult household members living with LCPs will receive this scrutiny because there is no additional oversight by the department for this provider type. The department believes that such charges and convictions on the part of adults living in the provider's household should preclude these individuals from receiving state or federal funds for providing care to children. The department does not anticipate any adverse impact for parents and children; however, the department does see potential adverse impact for providers who may not qualify to provide legally certified care because of criminal records pertaining to other adults in the household.

ARM 37.80.306(4)(d) is being amended to include the requirement that an applicant not have a pending charge for a crime that bears upon the applicant's fitness to have responsibility for the safety and well-being of children. The department believes that a criminal charge for a crime that bears upon the applicant's fitness to care for children should preclude these individuals from receiving state or federal funds for providing care to children until the criminal matter is resolved. The department does not anticipate any adverse impact for parents and children; however, the department does see potential adverse impact for providers who may not qualify to provide legally certified care.

ARM 37.80.306(5) is being added to remove from consideration convictions for Driving Under the Influence (DUI) of alcohol that occurred more than three years prior to the application date. The applicant must disclose these convictions but is not automatically precluded from certification. Background checks currently go back to age 18 for all adults living in the legally certified provider's household. The department believes that DUIs within three years of the date of application have a greater potential for putting the health and safety of young children at risk. The department does not anticipate any adverse affect for parents and children;

however, the department does see potential adverse impact for providers who may not qualify to provide legally certified care.

Child Care Manual Changes

The following is a brief overview of the Child Care Manual Section with changes related to the above rule citations.

Section 6-2 Serving the Family – Legally Certified Providers
This manual section is being revised to add language allowing the denial of applications where background check processing exceeds 90 days or there is an open CPS case under investigation for applicants. In both cases, once background checks are completed and the applicant is cleared, they may reapply.

The phrase "and all adults in their household" is added to the manual so that all criminal records that disqualify an LCP applicant also applies to all adults living in the household.

Additional language included in this manual provision allows the bureau to approve applicants who have DUI charges and adjudications that are older than three years of the application date.

Fiscal Impact

The department does not anticipate any adverse effect or any fiscal impact associated with the proposed amendments to this rule and manual.

5. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Kenneth Mordan, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail dphhslegal@mt.gov, and must be received no later than 5:00 p.m., August 9, 2012.

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

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

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

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

/s/ Geralyn Driscoll
Rule Reviewer

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

Certified to the Secretary of State July 2, 2012

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

In the matter of the amendment of ARM 37.87.2202, 37.87.2205, and 37.87.2225 pertaining to non-Medicaid respite care services	))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On August 1, 2012, at 1:30 p.m., the Department of Public Health and Human Services will hold a public hearing in the auditorium of the Department of Public Health and Human Services Building, 111 North Sanders, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Department of Public Health and Human Services no later than 5:00 p.m. on July 25, 2012, to advise us of the nature of the accommodation that you need. Please contact Kenneth Mordan, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

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

37.87.2202 MENTAL HEALTH SERVICES FOR YOUTH WITH SERIOUS EMOTIONAL DISTURBANCE (SED) NON-MEDICAID RESPITE CARE SERVICES, DEFINITION For purposes of this subchapter, the following definitions apply:

(1) "Respite care" means relief services that allow family members, who are regular care givers of a youth with a serious emotional disturbance (SED), to be relieved of their care giver responsibilities for a temporary, short-term period.

(2) "SED" criteria are defined in ARM 37.87.303.

(3) ~~"Youth" is defined in ARM 37.87.102.~~ "Youth" means a person 17 years of age or younger.

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

37.87.2205 MENTAL HEALTH SERVICES FOR YOUTH WITH SERIOUS EMOTIONAL DISTURBANCE (SED) NON-MEDICAID RESPITE CARE SERVICES, LIMITATIONS (1) Non-Medicaid ~~R~~respite care services may be provided only on a short-term basis~~, such as part of a day, weekends, or vacation periods~~.

(2) Non-Medicaid ~~R~~respite care services may not be provided in a ~~youth's~~

~~place of residence or through placement in another private residence or other related community setting, excluding~~ psychiatric residential treatment ~~facilities~~ facility.

(3) Non-Medicaid ~~R~~respite care services are limited to available funding each state fiscal year.

(a) Retroactive funds for non-Medicaid respite care services are not available.

(4) Youth must meet SED criteria and must also be receiving Medicaid funded mental health services.

(5) Non-Medicaid respite care services shall only be provided to youth who receive Therapeutic Family Care (TFC) services or upon authorization by the department or its designee.

(6) For youth who qualify and receive non-Medicaid respite care services, the individualized treatment plan must document non-Medicaid respite care in accordance with ARM 37.106.1916(c).

(7) Non-Medicaid respite care services are available to a youth 17 years or age or younger.

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

37.87.2225 MENTAL HEALTH SERVICES FOR YOUTH WITH SERIOUS EMOTIONAL DISTURBANCE (SED) NON-MEDICAID RESPITE CARE SERVICES, PROVIDER PARTICIPATION (1) Licensed and enrolled mental health centers and child placing agencies may provide non-Medicaid respite care services upon approval by the department ~~of enrollment and according to the written provider agreement between the provider and the department and~~, provided they meet the requirements of this subchapter.

(2) Persons delivering non-Medicaid respite care services must be employed by a provider agency.

~~(2)~~ (3) The provisions of ARM 37.85.402 shall apply for purposes of provider enrollment. Providers must enroll with the department's Medicaid fiscal agent in the same manner and according to the same requirements applicable under the Montana Medicaid program. The department may accept current Medicaid enrollment for purposes of enrollment, if the provider agrees, in a form acceptable to the department, to be bound by applicable requirements.

~~(3)~~ (4) For purposes of enrollment, providers must be and remain enrolled in the Montana Medicaid program for the same category of service and must meet the same qualifications and requirements that apply to the provider's category of service under the Montana Medicaid program.

~~(4)~~ (5) ~~All providers of mental health services must maintain records which fully demonstrate the extent, nature, and medical necessity of services provided to youth with SED. These records must be retained for a period of at least six years and three months from the date of service in accordance with ARM 37.85.414.~~ The provisions of ARM 37.85.414 shall apply for purposes of provider record keeping and retention.

~~(5)~~ (6) The provider of non-Medicaid respite care services must ensure that its employees providing the services are:

(a) physically and mentally qualified to provide this service to the youth;
(b) aware of emergency assistance systems and crisis plans;
(c) knowledgeable of the physical and mental conditions of the youth;
(d) knowledgeable of ~~common~~ the safety, risks, and proper administration or supervision of medications ~~and related conditions of~~ the youth requires; and
(e) capable of administering basic first aid.

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

4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (the department) is proposing amendments to ARM 37.87.2202, ARM 37.87.2205, and ARM 37.87.2225 pertaining to non-Medicaid respite care services.

These rules guide non-Medicaid respite care services for youth with serious emotional disturbance. The department proposes to amend the rules in order to stay within current budgetary constraints and to clarify the appropriate delivery of this service. The department also proposes language in order to bring the rules up to date and ensure correct and consistent references therein.

ARM 37.87.2202
The department proposes to add reference to the department's accepted definition of provider and to remove the reference to the definition of youth located in ARM 37.87.102. While many of the children's mental health programs are available to youth after the age of 17 who are enrolled in secondary education, respite services end when a youth becomes a legal adult.

ARM 37.87.2205
The department proposes to amend ARM 37.87.2205 to add language which specifies that this is non-Medicaid respite, to clarify language, and to add concurrent therapeutic family care (TFC) as an eligibility requirement. The department's current budget is insufficient to meet the needs of those currently eligible to receive non-Medicaid respite. If access to those eligible is not limited, the department will have to close access to the program prior to the end of the state fiscal year. The department reviewed current eligibility requirements to identify the areas of greatest need for non-Medicaid respite. The department identified those youth currently receiving therapeutic family care as having the greatest need for respite services when compared to youth in less intensive outpatient therapeutic services. In order to stay within the department's appropriations for non-Medicaid respite while still serving the youth with the highest need, the department proposes to provide non-Medicaid respite services concurrently with therapeutic family care. This will not affect the eligibility requirements to Medicaid-funded respite services available through the Children's Mental Health Bureau.

ARM 37.87.2225

The proposed amendments to ARM 37.87.2225 will add child placing agencies as an additional provider type. At this time only licensed mental health centers can provide non-Medicaid respite, however, child placing agencies provide TFC and in order to align the non-Medicaid respite services with TFC, all providers who provide TFC must also have the ability to provide non-Medicaid respite services. This proposed rule amendment specifies that only employees of provider agencies may provide non-Medicaid respite services at this time. The department is currently researching opportunities to provide self-directed non-Medicaid respite services; however, it is currently unavailable. Further proposed amendments include correcting reference to record keeping requirements and updating language pertaining to administration and supervision of medications.

5. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Kenneth Mordan, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail dphhslegal@mt.gov, and must be received no later than 5:00 p.m., August 9, 2012.

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

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

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

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

/s/ John Koch
Rule Reviewer

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

Certified to the Secretary of State July 2, 2012.

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 44.6.111 and 44.6.112 pertaining to Farm Bill Master List output and fees pertaining to the Business Services Division	)))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On August 2, 2012, a public hearing will be held at 9:30 a.m. in the Secretary of State's Office Conference Room, Room 260, State Capitol Building, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Secretary of State 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 Secretary of State no later than 5:00 p.m. on July 27, 2012, to advise us of the nature of the accommodation that you need. Please contact Jorge Quintana, Secretary of State's Office, P.O. Box 202801, Helena, MT 59620-2801; telephone (406) 461-5173; fax (406) 444-4249; TDD/Montana Relay Service (406) 444-9068; or e-mail jquintana@mt.gov.

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

44.6.111 LIENS APPEARING ON THE FARM BILL MASTER LIST AND FEES FOR OBTAINING THE FARM BILL MASTER LIST (1) remains the same.

(2) The secretary of state shall charge and collect ~~for~~ the following fees for providing the farm bill master list:

(a) ~~on CD ROM~~ online access, per month $ 20.00

(b) remains the same.

~~(c) on microfiche, per farm product category 5.00~~

AUTH: 30-9A-526, MCA
IMP: 30-9A-525, MCA

REASON: The Secretary of State is in the process of implementing a more robust online database that will allow the Farm Bill Master List to be made available online through a web-based application. The Farm Bill Master List will no longer be provided on CD-ROM or microfiche, thereby necessitating the amendment to the rule. The new online application will allow multiple persons within an organization to view the information from different desktops at the same time and the online lien information will be updated daily. This change addresses concerns expressed over the years from Montana buyers of farm products. The access fee to the Farm Bill

Master List remains the same as the fee for the CD-ROM, but buyers will receive a much better product.

44.6.112 FARM BILL MASTER LIST (1) remains the same.

(2) The farm bill master list is published~~:~~

~~(a)~~ on the ~~fifteenth~~ 15th day of every month~~; or.~~

~~(b) on the preceding business day if the fifteenth falls on a weekend or holiday.~~

(3) The farm bill master list is distributed to registered buyers no later than the ~~twentieth~~ 20th of each month.

AUTH: 30-9A-526, MCA
IMP: 30-9A-302, MCA

REASON: The amendments to the days of the month references in (2)(a) and (3) are simply style and format changes. Subsection (2)(b) is deleted in its entirety because it will no longer be applicable when the new web-based database for the Business Services Division is implemented.

4. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Jorge Quintana, Secretary of State's Office, P.O. Box 202801, Helena, Montana 59620-2801; telephone (406) 461-5173; fax (406) 444-4240; or e-mail jquintana@mt.gov, and must be received no later than 5:00 p.m., August 9, 2012.

5. Jorge Quintana, Secretary of State's Office, has been designated to preside over and conduct this hearing.

6. The Secretary of State maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 4 above or may be made by completing a request form at any rules hearing held by the Secretary of State.

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

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

/s/ JORGE QUINTANA
Jorge Quintana
Rule Reviewer

/s/ LINDA MCCULLOCH
Linda McCulloch
Secretary of State

Dated this 2nd day of July, 2012.

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the adoption of New Rule I relating to the Eurasian Watermilfoil Management Area	)))	NOTICE OF ADOPTION

TO: All Concerned Persons

1. On April 26, 2012 the Department of Agriculture published MAR Notice No. 4-14-208 pertaining to the public hearing on the proposed adoption of the above-stated rule at page 802 of the 2012 Montana Administrative Register, Issue Number 8. On May 24, 2012 the Department of Agriculture published MAR Notice No. 4-14-208 pertaining to the amended notice on proposed adoption and extension of comment period of the above-stated rule at page 1017 of the 2012 Montana Administrative Register, Issue Number 10.

2. The department has adopted the following rule as proposed, but with the following change to the catchphrase:

NEW RULE I (4.12.3902) UPPER AND LOWER MISSOURI RIVER EURASIAN WATERMILFOIL MANAGEMENT AREA

REASON: Catchphrase was changed due to similar rule with same title. Additional language clarifies location of management area.

3. No comments or testimony were received.

/s/ Cort Jensen
Cort Jensen
Rule Reviewer

/s/ Ron de Yong
Ron de Yong
Director
Department of Agriculture

Certified to the Secretary of State July 2, 2012.

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

In the matter of the adoption of NEW RULE I, II, and III regarding bodies of water identified as contaminated with Eurasian watermilfoil	))))	NOTICE OF ADOPTION

TO: All Concerned Persons

1. On April 26, 2012, the Department Fish, Wildlife and Parks (department) published MAR Notice No. 12-376 pertaining to the public hearings on the proposed adoption of the above-stated rules at page 811 of the 2012 Montana Administrative Register, Issue Number 8.

2. The department has adopted NEW RULE III [12.5.703] as proposed.

3. The department has adopted NEW RULE I [12.5.701] and NEW RULE II [12.5.702] as follows, stricken matter interlined, new matter underlined:

NEW RULE I [12.5.701] IDENTIFIED CONTAMINATED BODIES OF WATER (1) through (2)(c) remain as proposed.

(d) Missouri River:

(i) from Fort Peck Dam to the ~~North Dakota border~~ mouth of the Milk River;

(ii) and (e) remain as proposed.

AUTH: 80-7-1007, MCA
IMP: 80-7-1010, MCA

NEW RULE II [12.5.702] ~~BAIT~~ RESTRICTIONS WITHIN IDENTIFIED CONTAMINATED BODIES OF WATER (1) through (1)(c) remain as proposed.

(2) ~~Commercial bait fish seining is prohibited within any identified contaminated body of water listed in [NEW RULE I].~~ Upon departure of a contaminated body of water all vessels and equipment, including bait buckets, must be free of Eurasian watermilfoil.

AUTH: 80-7-1007, MCA
IMP: 80-7-1010, MCA

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

Comment 1: Five comments were received in support of the rule. The comments acknowledged that the department took angler interests into consideration and that the proposed rules are reasonable and will help prevent the spread of Eurasian watermilfoil.

Response 1: The department appreciates the support and interest in this rulemaking process.

Comment 2: Two comments were received questioning why the restrictions were different for commercial bait seiners than for those taking bait animals for personal use. The belief was expressed that the risk associated with seines and traps used for taking minnows and other bait animals for personal use were just as likely, or more likely, to spread Eurasian watermilfoil than those used by commercial seiners. As such, the commenters were concerned that the rule did not address seines and traps as vectors for Eurasian watermilfoil in addition to contaminated water.

Response 2: The department appreciates the comments and agrees with the concerns over equipment used for seining and trapping. In response to these comments the department has revised proposed NEW RULE II to not allow either the commercial seining or the taking of bait animals for personal use from any contaminated waters listed in NEW RULE I. By removing the exception for taking of bait animals, the prohibitions of 80-7-1010, MCA apply which states that no bait animals can be taken from contaminated waters. Additionally, the department added language to NEW RULE II to emphasize that all vessels and equipment must be free from Eurasian watermilfoil before leaving any contaminated waters.

Comment 3: One comment was received about the listing of the Missouri River from Fort Peck Dam to the North Dakota border as a contaminated body of water. The commenter pointed out that Eurasian watermilfoil has not been detected in the Missouri River below Fort Peck Dam, and even though there was a chance that it could be there, it would most likely be in the Missouri River immediately below Fort Peck Dam. It was stated that department biologists had spent extensive time on the Missouri River below Fort Peck Dam and had not found Eurasian watermilfoil in that stretch of river. The commenter recommended that the listing be removed until Eurasian watermilfoil is confirmed in the Missouri River below Fort Peck Dam.

Response 3: The department appreciates the comment and acknowledges that at the current time no Eurasian watermilfoil has been confirmed in the Missouri River below Fort Peck Dam. The department also acknowledges that the risk is greatest in the section of the river close to the dam where fragments coming through the turbines might take root. Therefore, the department is revising NEW RULE I to read Missouri River from Fort Peck Dam to the mouth of the Milk River.

/s/ Joe Maurier
Joe Maurier, Director
Department of Fish, Wildlife and Parks

/s/ Rebecca Jakes Dockter
Rebecca Jakes Dockter
Rule Reviewer

Certified to the Secretary of State July 2, 2012

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the adoption of ARM 17.24.1264 pertaining to the department's obligations regarding the applicant/violator system	)))))	CORRECTED NOTICE OF ADOPTION (STRIP AND UNDERGROUND MINE RECLAMATION ACT)

TO: All Concerned Persons

1. On December 22, 2011, the Board of Environmental Review published MAR Notice No. 17-324 regarding a notice of public hearing on the proposed amendment, adoption, and repeal of the above-stated rule at page 2726, 2011 Montana Administrative Register, issue number 24. On April 12, 2012, the board published the notice of amendment, adoption, and repeal of the rules at page 737, 2012 Montana Administrative Register, issue number 7.

2. This corrected notice of amendment is being published to delete the word "of" from New Rule I(7) (numbered ARM 17.24.1264(7) in the adoption notice), which was inadvertently inserted in the original notice.

17.24.1264 THE DEPARTMENT'S OBLIGATIONS REGARDING THE APPLICANT/VIOLATOR SYSTEM (1) through (6) remain as adopted.

(7) Whenever a court of competent jurisdiction enters a judgment against a person under 82-4-254(4) or convicts a person ~~of~~ under 82-4-254(6) or (7), MCA, the department shall update the AVS.

3. The replacement pages for this rule were submitted to the Secretary of State on June 30, 2012.

Reviewed by: BOARD OF ENVIRONMENTAL REVIEW

/s/ John F. North By: */s/ Joseph W. Russell*
JOHN F. NORTH JOSEPH W. RUSSELL, M.P.H.,
Rule Reviewer Chairman

Certified to the Secretary of State, July 2, 2012.

BEFORE THE DEPARTMENT OF TRANSPORTATION
OF THE STATE OF MONTANA

In the matter of the amendment of 18.8.101, 18.8.207, 18.8.306, 18.8.411, 18.8.412, 18.8.413, 18.8.414, 18.8.415, 18.8.420, 18.8.422, 18.8.426, 18.8.508, 18.8.509, 18.8.510A, 18.8.510B, 18.8.511A, 18.8.512, 18.8.517, 18.8.518, 18.8.519, 18.8.602, 18.8.604, 18.8.1501, 18.8.1502, 18.8.1503, and 18.8.1505, pertaining to motor carrier services	)	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On April 26, 2012 the Department of Transportation published MAR Notice No. 18-135 pertaining to the proposed amendment of the above-stated rules at page 819 of the 2012 Montana Administrative Register, Issue Number 8.

2. The department has amended the following rules as proposed: ARM 18.8.101, 18.8.207, 18.8.306, 18.8.411, 18.8.412, 18.8.413, 18.8.414, 18.8.415, 18.8.420, 18.8.422, 18.8.426, 18.8.509, 18.8.510A, 18.8.510B, 18.8.511A, 18.8.512, 18.8.517, 18.8.518, 18.8.519, 18.8.602, 18.8.1501, 18.8.1502, 18.8.1503, and 18.8.1505.

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

<u>18.8.604 VEHICLE WEIGHT ANALYSIS AND ROUTE ANALYSIS</u>

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

(2) Upon request, a route analysis shall be conducted by the department when necessary ~~as a one-time-only approval~~<u>, and issued as an annual approval, when submitted</u> for a specific vehicle configuration, axle spacing, axle weights, gross weight, and route of travel to determine the conditions of travel for the movement of overweight vehicles or loads upon a specific route.

(a) and (b) remain as proposed.

AUTH: 61-10-155, MCA
IMP: 61-10-121, 61-10-125, MCA

4. The department has amended the following rule to correct a deficiency in citation of authority, which was inadvertently omitted from the proposed rule notice, new matter underlined, deleted matter interlined:

18.8.508 SELF-ISSUING PERMIT (1) through (3) remain the same. ~~(History: This rule is advisory only but may be a correct interpretation of the law. IMPLIED, 61-10-121, 61-10-155, MCA;~~

AUTH: 61-10-155, MCA
IMP: 61-10-101, 61-10-102, 61-10-103, 61-10-104, 61-10-106, 61-10-107, 61-10-108, 61-10-109, 61-10-110, 61-10-113, 61-10-121, 61-10-122, 61-10-123, 61-10-124, 61-10-125, 61-10-126, 61-10-127, 61-10-128, 61-10-129, 61-10-130, 61-10-141, 61-10-142, 61-10-143, 61-10-144, 61-10-145, 61-10-146, 61-10-147, 61-10-148, MCA

REASON: The proposed amendment is necessary to delete a reference to the advisory nature of the rule. The department has full rulemaking authority under 61-10-155, MCA, to adopt rules to implement Title 61, chapter 10, MCA, thus the rule is not adopted under "implied" rulemaking authority, and the "advisory" designation is not appropriate under 2-4-308, MCA. This correction to the citation was inadvertently omitted from the proposed rule notice published as MAR Notice No. 18-135, but is being corrected on the adoption notice.

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

COMMENT #1: One comment was received regarding ARM 18.8.101(3), definition of "commercial use." The comment asked whether a passenger vehicle or pickup truck owned by a business would be considered a commercial vehicle in its everyday use or only if it is used as described under ARM 18.8.101(2) under the definition of "commercial motor vehicle."

RESPONSE #1: The department notes the definition of "commercial use" in (2) already states that a vehicle registered to a business and used in commerce would meet the definition of "commercial use." However, the vehicle may or may not be required to follow commercial motor vehicle safety rules unless it also meets the definitions found in ARM 18.8.101(2) and 18.8.1501(2).

COMMENT #2: Two comments were received regarding ARM 18.8.510A on restrictions for flag vehicles. The comments stated the rule should not use 14,000 lbs. gvw, as that is too restrictive, and the rule should look at vehicles up to 26,000 lbs. gvw with two axles and some size restrictions, or as approved by the department. The comment stated in many cases if a "shop truck" could be used to flag a vehicle it would save fuel and valuable time and avoid a situation where a disabled vehicle may sit in a lane of traffic for hours until this type of vehicle can be called to help repair the vehicle. The comments also stated it was understood a two-ton designation for a single axle truck is no longer standard industry term, nor vehicle manufacturer's designation language, however, the comment understood the existing language to allow a vehicle with two axles to be allowed to be used as an escort vehicle. The comment stated often times a service truck, which could be a

two-axle truck that could legally be licensed for more than 14,000 lbs., is used as an escort vehicle for larger oversize moves. The comment was unsure if the proposed change to a 10,000 to 14,000 lb. gvw will limit the size of the vehicle. The comment suggested the department continue to allow the use of a standard two-axle vehicle as an escort vehicle.

RESPONSE #2: The department notes that service trucks which exceed the 14,000 lbs. gvw limit are not appropriate as flag vehicles in situations where flag vehicles are required. The department further notes that 26,000 lbs. gvw vehicles, as suggested by the comment, are too big, such that the vehicle would become another truck operating on the highway. The use of a 26,000 lb. gvw vehicle would affect additional rules, including required lighting on the truck for added visibility for the traveling public. The department notes its proposed rule language on "10,000 lbs. to 14,000 lbs." gvw follows the American Association of State Highway and Transportation Officials (AASHTO) recommendations, based on nationwide research which state: "the pilot vehicle shall not exceed a maximum gvw rating of 14,000 lbs." The department has also researched regulations in surrounding states to maintain consistency with flag vehicle requirements in other states such as WA (vehicle shall not exceed a maximum gvw rating of 14,000 lbs.), UT (gvw shall be a maximum of 12,000 lbs.) and ND (pilot car vehicle must be a passenger vehicle or a two-axle truck only.)

COMMENT #3: One comment was received regarding ARM 18.8.517 and 18.8.518 on special vehicle combinations. The comment stated they agreed with the intent of the rules, as state permits are no longer a necessity as these drivers must be now certified to drive LCVs under federal regulations and to carry this permit in only one state is burdensome to many companies who do business in surrounding states and whose drivers may deliver in Montana.

RESPONSE #3: The department acknowledges receipt of the comment in support of the proposed rule changes.

COMMENT #4: Two comments were received regarding ARM 18.8.604 on vehicle weight analysis and route analysis. The commenters stated they were concerned with language in (2) on "one-time only approval" as this language may be construed to prevent the return of the same load to origin without applying for and receiving a new analysis. The commenters stated that many times these loads go from point A to point B and then may need to return to point A, therefore it should be clear that this can be done under the same permit and analysis as the original trip. The commenters stated delays in this could be a considerable expense to many companies where time is of the essence. The comments further stated that once a vehicle configuration is analyzed along with a given route segment, the analysis can be applied to additional permits for the same vehicle over the same route. The commenters stated the proposed rule language could be interpreted to mean that each move may be subjected to a route analysis, even if such analysis has already been done for the same route and vehicle. The commenters felt it was their

understanding that the department would allow the route analysis to be used in such a manner and suggested the language be clarified to remove any doubt.

RESPONSE #4: The department agrees with the comment and will clarify the rule language as shown above, to replace the existing language "one-time-only" with "annual approval" to reflect the actual practice.

COMMENT #5: One comment was received stating the rule should have increased the height on annual permits to 16 feet 11 inches.

RESPONSE #5: The department acknowledges receipt of this comment, however notes that no height change was proposed in this Proposed Rule Notice, therefore it cannot make this type of rule change with this adoption notice. However, the department is evaluating this and may consider increasing the height on the annual permit with future proposed rule changes.

COMMENT #6: One comment was received stating tow truck drivers weren't given sufficient notification of the proposed rule changes, but would like to have input on rules governing the towing industry. The comment stated tow truck drivers need more time to think about what changes they need and how to write them up to best serve the towing industry and the public.

RESPONSE #6: The department notes that no general towing rules were proposed for change with this Proposed Rule Notice. Therefore, the department cannot now make any type of towing rule changes with this adoption notice. Instead, the department will consider the towing industry comments received and based on the concerns raised, will initiate a review of towing rules for a future proposed rule amendment notice. All interested parties will continue to be given ample opportunity for public comment on any future proposed rule changes.

COMMENT #7: One comment was received regarding ARM 18.8.519 on wreckers or tow vehicle requirements. The comment suggested language in (1)(b) regarding separation of combination vehicles if creating a threat to life or property.

RESPONSE #7: See response to Comment #6 above.

COMMENT #8: One comment was received regarding ARM 18.8.519 on wreckers or tow vehicle requirements. The comment suggested language in (1)(c) on special combination and nondevisable loads and point of disablement.

RESPONSE #8: See response to Comment #6 above.

COMMENT #9: One comment was received regarding ARM 18.8.519 on wreckers or tow vehicle requirements. The comment suggested language on a new subsection regarding exemptions for tow truck operation for restricted hours and weather conditions, and towing from either the front or rear of a motor vehicle.

RESPONSE #9: See response to Comment #6 above.

/s/ Carol Grell Morris
Carol Grell Morris
Rule Reviewer

/s/ Timothy W. Reardon
Timothy W. Reardon
Director
Department of Transportation

Certified to the Secretary of State July 2, 2012.

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 23.4.201, 23.4.212, 23.4.213, 23.4.214, 23.4.215, 23.4.216, 23.4.217, 23.4.218, 23.4.219, 23.4.220, and 23.4.225, pertaining to drug and alcohol analyses	))))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On April 12, 2012 the Department of Justice published MAR Notice No. 23-4-228 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 681 of the 2012 Montana Administrative Register, Issue Number 7.

2. A public hearing was held on May 4, 2012.

3. The department has amended the above-stated rules as proposed.

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

Comment #1: Concern that the proposed rules no longer require a "competency" test for certification of breath test specialists and that the rules will thereby prevent or at least inhibit challenges to the "competency" of breath-test specialists by the defense.

Response #1: The proposed rule amendments provide the same continuing requirement that in order to be initially certified, all prospective breath-test specialists must first complete an extensive 40-hour training course and then pass a final examination at the end of the training course. Once initially certified, the breath-test specialists must then possess a current permit at the time the subject breath test is administered.

The amendments do not inhibit challenges to breath tests. The requirements of initial certification and to maintain a valid, current permit remain the same. At trial, the state must still meet the same foundational requirements, which may include cross examination by the defense on competency and training of the breath-test specialist, before results of a breath test may be admitted into evidence. The rules are simply clarified to comply with the intent of the division regarding permit renewal. Further, a breath test is typically only one portion of other competent evidence obtained by law enforcement officers throughout the entire investigation of the offense.

The increased technical sophistication of the new Intoxylizer 8000, which the state of Montana currently uses, requires a simple procedure to operate, comparable

to starting a car. Consequently, there is no need to retrain a breath-test specialist every year. What is important, however, is that a breath-test specialist remain current concerning the legal and technical updates for a subject breath test, as provided for by the proposed rules.

Finally, the rules do not (and cannot) change the statutory requirement that at the time of the actual breath test, the subject of the breath test must be provided the opportunity to obtain an independent blood test by a medical professional.

Comment # 2: Request that all monthly calibration tests and any repair requirements for the "machines" be made public information.

Response # 2: The proposed rule amendments do not address whether the calibration tests are public, and thus this comment is beyond the scope of this rule change.

/s/ J. Stuart Segrest
J. Stuart Segrest
Rule Reviewer

/s/ Steve Bullock
Steve Bullock
Attorney General
Department of Justice

Certified to the Secretary of State July 2, 2012.

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

In the matter of the adoption of NEW RULES I through VI pertaining to stay at work/return to work for workers' compensation	))))	NOTICE OF ADOPTION

TO: All Concerned Persons

1. On April 26, 2012, the Department of Labor and Industry published MAR Notice No. 24-29-266 pertaining to the public hearing on the proposed adoption of the above-stated rules at page 836 of the 2012 Montana Administrative Register, Issue Number 8.

2. The department has adopted the following rules as proposed:

NEW RULE III (24.29.1811) DUTIES OF THE DEPARTMENT

NEW RULE IV (24.29.1815) PAYMENT SCHEDULE FOR DEPARTMENT-PROVIDED SAW/RTW ASSISTANCE

NEW RULE V (24.29.1821) VOCATIONAL REHABILITATION COUNSELOR POOL FOR DEPARTMENT-PROVIDED SAW/RTW ASSISTANCE

NEW RULE VI (24.29.1803) APPLICABILITY

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

NEW RULE I (24.29.1801) DEFINITIONS As used in this subchapter, the following definitions apply:

(1) remains as proposed.

(2) "Injured worker" means an individual who has filed a claim for a workers' compensation injury or occupational disease and who does not meet the definition of a disabled worker. ~~The term "injured worker" includes an individual who meets the definition of a disabled worker.~~

(3) through (10) remain as proposed.

AUTH: 39-71-203, 39-71-1051, MCA
IMP: 39-71-105, 39-71-116, 39-71-1011, 39-71-1036, MCA

NEW RULE II (24.29.1807) RESPONSIBILITIES OF THE INSURER

(1) remains as proposed.

(2) The insurer shall designate a single point of contact with authority to coordinate all department requests for SAW/RTW assistance for injured workers and

shall provide the department with written notice of the contact person's name or position title, telephone number, e-mail address, and mailing address. When contact information changes, the insurer shall update the department a minimum of ten business days in advance of the change.

(3) remains as proposed.

(4) When a request for SAW/RTW assistance is made directly to the insurer and the insurer declines to provide SAW/RTW assistance ~~or denies liability for an injured worker's claim~~, the insurer shall notify the injured worker and the department in writing within three business days of a request for assistance.

(5) After the department has initiated SAW/RTW assistance to an injured worker, the insurer shall notify the department in writing within three business days of the insurer's acceptance or denial of liability for an injured worker's claim.

(6) through (8) remain as proposed.

AUTH: 39-71-203, 39-71-1051, MCA
IMP: 39-71-105, 39-71-1011, 39-71-1031, 39-71-1041, 39-71-1042, 39-71-1043, 39-71-1049, MCA

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

COMMENT #1: One commenter suggested that the inclusion of "disabled worker" in the proposed definition for "injured worker" in New Rule I be eliminated because an "injured worker" only qualifies for SAW/RTW assistance pursuant to 39-71-1011(9), MCA, prior to the worker being determined as a "disabled worker," which must be established by objective medical findings, pursuant to 39-71-1011(3), MCA.

RESPONSE #1: The department concurs and has amended New Rule I to clarify that an injured worker who qualifies for SAW/RTW assistance had not been designated a "disable worker," pursuant to 39-71-1011(3), MCA.

COMMENT #2: Two commenters suggested that New Rule II be amended to clarify the process for notification to the department when the insurer is the first point of contact when SAW/RTW assistance is requested. The proposed language separates the insurer's decision to provide SAW/RTW assistance from the acceptance or denial of the claim. Claim acceptance or denial might not occur within three business days of the request for assistance.

RESPONSE #2: The department concurs with this comment, and has amended New Rule II accordingly.

COMMENT #3: A commenter questioned whether the requirement in New Rule II that an insurer designate a single point of contact to coordinate the provision of SAW/RTW assistance requires the insurer to designate an individual person for this purpose.

RESPONSE #3: The department requires a single point of contact to coordinate requests for SAW/RTW Assistance. The department has amended New Rule II to allow an insurer to identify the point of contact by either a named person or position title. The insurer must provide the department with the name or position title, telephone number, e-mail address, and mailing address of the single point of contact for the insurer. Additionally, the insurer must update the department a minimum of ten days in advance of any point of contact change.

COMMENT #4: A commenter stated that it was not clear what is the purpose is served with the requirement in New Rule II (5) that the insurer provide three-day notification to the department.

RESPONSE #4: The three-day notification to the department is a statutory requirement. If the insurer does not timely notify the department that it is acting to provide SAW/RTW assistance, the department is required to obtain SAW/RTW assistance for the worker.

/s/ MARK CADWALLADER
Mark Cadwallader
Alternate Rule Reviewer

/s/ KEITH KELLY
Keith Kelly
Commissioner
Montana Department of Labor and Industry

Certified to the Secretary of State July 2, 2012

BEFORE THE ALTERNATIVE HEALTH CARE BOARD
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of ARM 24.111.409 inactive status, 24.111.511 naturopathic physician natural substance formulary list, 24.111.602 direct-entry midwife apprenticeship requirements, 24.111.2102 naturopathic physician continuing education requirements, and 24.111.2103 midwives continuing education requirements	)	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On February 23, 2012, the Alternative Health Care Board (board) published MAR notice no. 24-111-24 regarding the public hearing on the proposed amendment of the above-stated rules, at page 345 of the 2012 Montana Administrative Register, issue no. 4.

2. On March 15, 2012, a public hearing was held on the proposed amendment of the above-stated rules in Helena. Several comments were received by the March 23, 2012, 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 amendments to ARM 24.111.602, to require Level II apprentices have five of ten births supervised by a licensed direct-entry midwife, and Level III apprentices have eight of 15 continuous care births supervised by a Montana-licensed direct-entry midwife, will decrease women's choices for alternative medical care.

RESPONSE 1: The board notes that apprentices are not primary care providers and the amendments to ARM 24.111.602 set a minimal standard for apprentices to ensure appropriate supervision by a licensed direct-entry midwife for the safety of women seeking alternative medical care. The board also concludes that the purpose of the board is to regulate and ensure the qualified and professional practice of direct-entry midwifery, and the amendments to this rule advance the board's purpose.

COMMENT 2: Two commenters suggested that the amendments to ARM 24.111.602 would delay the licensure of direct-entry midwives.

RESPONSE 2: The board responds that the amendments to ARM 24.111.602 will not impose an unreasonable delay in licensure. Applicants have five years within which to complete the apprenticeship requirements, and these amendments will ensure that apprentices obtain sufficient experience and training in the home birth setting. These requirements will also enable the apprentices to understand Montana statutes and rules under appropriate supervision.

COMMENT 3: Three commenters stated that the amendments to ARM 24.111.602 are disadvantageous to apprentices in rural areas of the state where there are few supervising midwives, and will necessitate traveling long distances to obtain the required supervision.

RESPONSE 3: The board concludes that the amendments to ARM 24.111.602 will not place an undue hardship on apprentices. Only Levels II and III are to be affected by the amendments, which set minimum standards for public safety. While travel may be necessary to obtain the required supervision, the board notes that other licensed professions must obtain training out-of-state.

COMMENT 4: One commenter suggested that alternatives to amending ARM 24.111.602 include board acceptance of Midwifery Education Accreditation Council (MEAC)-approved institutions, preapproval by the board of North American Registry of Midwives (NARM) accepted preceptors, and online classes or in-person workshops that would allow the board to focus on improving and encouraging midwifery in Montana.

RESPONSE 4: The board notes the role of the board is not to promote or encourage midwifery in Montana, but rather, to regulate midwifery and ensure public safety. Furthermore, Montana licensing requirements are more stringent than MEAC requirements. Any changes to Montana's licensing qualifications would require legislative enactment and cannot be accomplished through rulemaking.

COMMENT 5: One commenter stated that the amendment to ARM 24.111.602 to require board approval to proceed to the next level of apprenticeship, would delay the approval process up to six months.

RESPONSE 5: The board notes that this objection has been addressed through board processes. The board responds to requests to proceed to the next level of apprenticeship in a timely manner, and there are no unreasonable delays in current review of such requests.

COMMENT 6: One commenter, who is currently a Level III apprentice, objected to the proposed amendment to ARM 24.111.602, because some of her births, which were not supervised by a licensed direct-entry midwife, would be invalidated.

RESPONSE 6: The board agrees that current Level II or Level III apprentices would have difficulty complying with the proposed supervision requirements. The board is

amending ARM 24.111.602 to exempt Level II and Level III apprentices licensed on or before April 13, 2012, from the new supervision requirements.

4. The board has amended ARM 24.111.409, 24.111.511, 24.111.2102, and 24.111.2103 exactly as proposed.

5. The board has amended ARM 24.111.602 with the following changes, stricken matter interlined, new matter underlined:

24.111.602 DIRECT-ENTRY MIDWIFE APPRENTICESHIP REQUIREMENTS (1) through (10) remain as proposed.

(11) The supervision requirements set forth in (5)(a), (6)(a), and (8) shall not apply to licensees who were licensed as Level II and Level III apprentices on or before April 13, 2012.

6. The board has requested an amendment be made in the header due to a typographical error that was published in a previous notice for ARM 24.111.511. The following change is listed below with stricken matter interlined, new matter underlined:

In the matter of the amendment of ARM 24.111.409 inactive status, 24.111.511 naturopathic physician ~~national~~ natural substance formulary list, 24.111.602 direct-entry midwife apprenticeship requirements, 24.111.2102 naturopathic physician continuing education requirements, and 24.111.2103 midwives continuing education requirements

ALTERNATIVE HEALTH CARE BOARD
MAGGI BEESON, ND, CHAIRPERSON

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

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

Certified to the Secretary of State July 2, 2012

BEFORE THE BOARD OF PUBLIC ACCOUNTANTS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of ARM 24.201.501 education requirements, 24.201.528 out-of-state applicants, 24.201.537 retired status, 24.201.1108 profession monitoring, 24.201.2106, 24.201.2108, 24.201.2114, 24.201.2120, 24.201.2121, and 24.201.2124, 24.201.2136, 24.201.2137, 24.201.2138, and 24.201.2139, 24.201.2145, 24.201.2148, and 24.201.2154 renewal and continuing education, and the repeal of ARM 24.201.2105 advisory committee, 24.201.2146 continuing education reporting for permit to practice, and 24.201.2161 reinstatement	))))))))))))))))))	NOTICE OF AMENDMENT AND REPEAL

TO: All Concerned Persons

1. On March 22, 2012, the Board of Public Accountants (board) published MAR notice no. 24-201-45 regarding the public hearing on the proposed amendment and repeal of the above-stated rules, at page 543 of the 2012 Montana Administrative Register, issue no. 6.

2. On April 16, 2012, a public hearing was held on the proposed amendment and repeal of the above-stated rules in Helena. Several comments were received by the April 24, 2012, 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 challenged the timing of the board's rulemaking notice during the busy tax season.

RESPONSE 1: The board appreciates all comments made during the rulemaking process.

COMMENT 2: One commenter supported all aspects of the proposed rule changes.

RESPONSE 2: The board appreciates all comments made during the rulemaking process.

ARM 24.201.501 Education Requirements

COMMENT 3: One commenter stated that removing the language on upper division courses from (3)(a) may unintentionally allow an individual who might be changing careers to take all of the required 24 credits in a college of technology or other two-year institution, thus reducing upper level courses to courses that are merely above the introductory level. The commenter suggested language for the board to further amend the rule and clarify that this is not acceptable.

The commenter questioned the change in (3)(b) from "business-related" courses to "nonaccounting general business" courses, arguing that economic and ethics might not qualify after this change.

The commenter also opposed the deletion of (4)(a)(i) regarding an accounting concentration or equivalent, and suggested the board use "with a major, option, certificate, or comprehensive concentration in accounting as evidenced by a cohesive group of coursework in accounting."

RESPONSE 3: After careful consideration of the comments, the board agrees that the suggested language for (3)(a) adds clarity to the educational requirements. The board is therefore amending (3)(a) to specify that at least 24 semester hours (36 quarter hours) of accounting courses must be taken from a four-year institution and above the introductory level.

The board carefully considered the comments regarding (3)(b) and (4)(a)(i), but is amending these subsections exactly as proposed.

ARM 24.201.1108 Alternatives and Exemptions

COMMENT 4: One commenter addressed the board's proposed peer review regulations and asked that the board consider alternatives to having a firm that receives a peer review report with a rating of "fail" to participate in the Profession Monitoring Program (PMP). The commenter explained the process by which corrective action is taken under the American Institute of CPA's (AICPA) standards and why participation in the PMP would not be necessary. The commenter also suggested that practice units be required to participate in the "facilitated state board access (FSBA) process," a web site that allows board access to submitted materials within a proposed timeframe. The commenter provided extensive draft language for the board's review and consideration.

RESPONSE 4: After consideration of the commenter's suggested language, the board concluded that a practice unit that receives a peer review report with a rating of "fail" should fall under the PMP. The board determined that such a practice unit would benefit from enrollment in PMP, even if the commenter considers it a duplication of review, and that it is necessary to protect the Montana public. The board is amending this rule exactly as proposed.

ARM 24.201.2106 Basic Requirement

COMMENT 5: Five commenters opposed the elimination of carry-forward and carry-back provisions for continuing education, arguing that the timing of income tax updates usually occurs in November and December, and needs to be carried over to January and February. Additionally, carry-forward and carry-back provides flexibility for "life events."

One commenter suggested that changing to a calendar year from the June 30 reporting date would cause some licensees to be noncompliant and they would need the carry-forward and carry-back provisions in order to remain compliant, until they get used to the new reporting period. One commenter supported mid-year reporting, because it is not burdensome for accountants to keep track of their continuing education on a non-calendar schedule. This commenter suggested that a 2012 effective date was retroactive and that a 2013 effective date would be more equitable.

RESPONSE 5: The board carefully considered the comments opposing the elimination of carry-forward and carry-back and regarding the 2012 effective date. The board notes that, in fact, an extra six months is being added to the rolling three-year period by having the fiscal year date advance to the end of the calendar year. The board considers this additional time to be sufficient for licensees to acquaint themselves with the amendment and to comply.

Additionally, the board concluded that carry-back and carry-forward would require additional audits of continuing education to ensure that licensees were not using courses taken in one calendar year to satisfy the next or previous calendar year. The department does not have the ability to track the carry-back and carry-forward courses without time-consuming and labor-intensive manual audits. The board is amending this rule exactly as proposed.

ARM 24.201.2138 Credit for Service as a Lecturer, Instructor, Speaker, or Report Reviewer

COMMENT 6: One commenter supported the proposed changes to the CPE rules, including the reporting of and compliance with the rules, and the elimination of carry-forward and carry-back provisions, but took exception to the calculation of credit for serving as an instructor of accounting courses. The commenter noted that tax and accounting laws, auditing standards and technologies, etc., change and require continuous updating of course materials. The commenter suggested language to allow credit for preparing or updating a course every three years.

RESPONSE 6: The board carefully considered the commenter's suggested language and agreed that the intent of the suggested language was appropriate. The board is amending the rule as suggested, with minor clarification regarding the rolling three-year period.

4. The board has amended ARM 24.201.528, 24.201.537, 24.201.1108, 24.201.2106, 24.201.2108, 24.201.2114, 24.201.2120, 24.201.2121, 24.201.2124, 24.201.2136, 24.201.2137, 24.201.2139, 24.201.2145, 24.201.2148, and 24.201.2154 exactly as proposed.

5. The board has repealed ARM 24.201.2105, 24.201.2146, and 24.201.2161 exactly as proposed.

6. The board has amended ARM 24.201.501 and 24.201.2138 with the following changes, stricken matter interlined, new matter underlined:

24.201.501 EDUCATION REQUIREMENTS (1) through (3) remain as proposed.

(a) at least 24 semester hours (36 quarter hours) of accounting courses taken from a four-year institution and above the introductory level, to include one course in each of the following:

(a)(i) through (9) remain as proposed.

24.201.2138 CREDIT FOR SERVICE AS LECTURER, INSTRUCTOR, SPEAKER, OR REPORT REVIEWER (1) Lecturers, instructors, and speakers may claim continuing education credit for both preparation and presentation time to the extent the activities maintain or increase their professional competence and qualify for continuing education credit for participants. Credit may be claimed for actual preparation time up to two times the class credit hours ~~for the first time the class is presented~~ once in any rolling three-year period. The maximum credit for such preparation and teaching shall not exceed 50 percent (or 60 hours) of the basic requirement in any rolling three-year period.

(2) remains as proposed.

BOARD OF PUBLIC ACCOUNTANTS
JACK MEYER, CPA, CHAIRPERSON

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

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

Certified to the Secretary of State July 2, 2012

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

In the matter of the amendment of ARM 37.86.1101, 37.86.1102, 37.86.1105, and 37.86.1106 pertaining to Medicaid pharmacy reimbursement	)))))	CORRECTED NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On September 8, 2011 the Department of Public Health and Human Services published MAR Notice No. 37-557 pertaining to the proposed amendment of the above-stated rules at page 1805 of the 2011 Montana Administrative Register, Issue Number 17. On November 10, 2011 the department published the notice of amendment at page 2416 of the 2011 Montana Administrative Register, Issue Number 21.

2. A typographical error was recently found in ARM 37.86.1105(4)(i). The department's ARM title number was typed as "27" and it should be "37." The rule, as amended in corrected form, reads as follows, deleted matter interlined, new matter underlined:

37.86.1105 OUTPATIENT DRUGS, REIMBURSEMENT (1) through (4)(h) remain as adopted.

(i) The department may reimburse for compounded nonrebatable API bulk powders and excipients on the department's drug formulary maintained in accordance with ARM ~~27~~37.86.1102.

(5) through (7) remain as adopted.

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

3. The replacement pages for this corrected notice were submitted to the Secretary of State on June 30, 2012.

/s/ John Koch
Rule Reviewer

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

Certified to the Secretary of State July 2, 2012.

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

In the matter of the amendment of ARM 37.95.102, 37.95.128, 37.95.132, 37.95.184, 37.95.623, 37.95.702, 37.95.1001, 37.95.1002, 37.95.1003, 37.95.1004, 37.95.1005, 37.95.1011, 37.95.1015, 37.95.1016, and 37.95.1021 pertaining to infant care	)	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On March 22, 2012, the Department of Public Health and Human Services published MAR Notice No. 37-577 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 600 of the 2012 Montana Administrative Register, Issue Number 6.

2. The department has amended ARM 37.95.132, 37.95.184, 37.95.623, 37.95.702, 37.95.1001, 37.95.1004, and 37.95.1021 as proposed.

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

37.95.102 DEFINITIONS (1) through (12) remain as proposed.

(13) "Group day care home" means a private residence or other structure in which day care is provided to seven to 12 children on a regular basis. In addition to the previous definitional language found at 52-2-703, MCA, the term also means a day care facility providing care to seven to 12 children with no more than six children under two years of age, unless care is provided ~~for infants only~~ exclusively for children under age two. For facilities providing care ~~only for infants~~ exclusively for children under age two, group day care home means a place in which supplemental parental care is provided for up to eight ~~infants~~ children under age two. No other children shall be in attendance.

(a) through (44) remain as proposed.

(45) "Safe sleep environment" means an environment where an infant is placed in a safety-approved crib with a firm mattress and a firmly fitted sheet or a safety-approved play yard for all naps. For children one year of age or over, a nap mat may be used as long as compliance with ARM 37.95.1005 is met. The infant must be placed on their back and only a light-weight blanket is allowed with the infant. The infant should be dressed in safe garments and provided a smoke-free environment.

(45) through (52) remain as proposed but are renumbered (46) through (53).

AUTH: 52-2-704, 53-4-212, 53-4-503, MCA
IMP: 52-2-702, 52-2-703, 52-2-704, 52-2-713, 52-2-723, 52-2-725, 52-2-731, 52-2-735, 52-2-736, 53-2-201, 53-4-212, 53-4-601, 53-4-611, 53-4-612, MCA

37.95.128 DOCUMENTATION OF THE ABSENCE OF UNUSUAL HEALTH RISKS FOR CHILDREN UNDER AGE TWO (1) A day care facility must have on file a health record form, provided by the department, concerning any special health risks that would affect other children. This must be obtained and kept on file by the provider prior to residence or enrollment of ~~the infant in the~~ any child under age two at the day care facility. The health record form must be signed by:

(a) through (d) remain as proposed.

AUTH: 52-2-704, MCA
IMP: 52-2-731, MCA

37.95.1002 INFANT'S AND TODDLER'S WET OR SOILED CLOTHING

(1) Wet or soiled clothing shall be changed promptly. Spare clothing shall be available in the event that a child's clothing becomes wet or soiled and it is the responsibility of the parent or guardian to care for the wet or soiled clothing. The clothing shall be placed in a sealed bag and returned to the parent or guardian.

AUTH: 52-2-704, MCA
IMP: 52-2-731, MCA

37.95.1003 INFANT'S AND TODDLER'S FEEDING (1) and (2) remain as proposed.

(3) Bottles shall not be propped. Infants too young to sit in high chairs shall be held in a semi-sitting position for all bottle feedings.

(a) remains as proposed.

(b) Older infants and toddlers shall be provided age-appropriate feeding equipment when being fed ~~must be fed in safe high chairs or at baby feeding tables~~. This includes safe high chairs, baby feeding tables, booster seats, and child-size tables and chairs. Use of these types of equipment must be used in accordance with the manufacturer's instructions and must be appropriate for the age of the child using the equipment.

(c) through (6) remain as proposed.

AUTH: 52-2-704, MCA
IMP: 52-2-731, MCA

37.95.1005 INFANT'S AND TODDLER'S, SLEEPING (1) remains as proposed.

(2) Unless the parent has provided medical documentation from a health care provider ordering otherwise, ~~children under age two~~ infants shall be placed on their back and on a firm surface to reduce the risk of Sudden Infant Death Syndrome (SIDS).

(3) Each infant shall be provided with a crib or play pen for sleeping. At the discretion of the parent and provider, ~~a toddler may be allowed to sleep on a cot or mat~~ a cot or mat may be used once a child turns one year of age as long as a safe sleep environment is provided. Children one year of age through 18 months who are placed on a mat must have a signed permission statement in the file indicating that the parent has given permission for their child to be placed on a mat. In addition, a caregiver must remain with the child while they are sleeping.

(a) through (9) remain as proposed.

(10) The licensee or registrant of facilities licensed/registered after the enactment of these rules must receive training in an approved safe sleep curriculum before being granted approval for children under age two. ~~The provider and any~~ Any caregiver who provides care to children under age two must receive training in an approved safe sleep curriculum within 60 days of hire ~~before providing care to children under two~~. Caregivers who have not received the safe sleep training shall be supervised by an individual who has successfully completed the approved safe sleep curriculum in order for the caregiver to provide care to children under age two. Facilities licensed or registered before the effective date of these rules will have until July 31, 2013 to complete this training.

(11) Providers must develop a written policy that describes the practices to be used to promote a safe sleep environment when children under age two are napping or sleeping.

(12) remains as proposed.

AUTH: 52-2-704, MCA
IMP: 52-2-731, MCA

37.95.1011 INFANT'S AND TODDLER'S, ACTIVITIES (1) remains as proposed.

(2) An infant or toddler who is awake shall not spend more than 30 minutes of consecutive time confined in a crib, playpen, jump chair, ~~walker,~~ or highchair.

(3) through (5) remain as proposed.

AUTH: 52-2-704, MCA
IMP: 52-2-731, MCA

37.95.1015 INFANT'S AND TODDLER'S, OUTDOOR ACTIVITIES

(1) remains as proposed.

(2) There must be an outdoor play area on the facility property. The play area must be fenced in accordance with ARM 37.95.121 and free of hazards which are dangerous to the health and ~~life~~ safety of the children. Every time an infant or toddler is outdoors, they must be supervised by a caregiver.

(3) and (4) remain as proposed.

AUTH: 52-2-704, MCA
IMP: 52-2-731, 52-2-736, MCA

37.95.1016 INFANT'S AND TODDLER'S, EQUIPMENT (1) ~~Feeding tables equipped with a harness or highchairs with a broad base and a harness for securing the infant or toddler,~~ Age-appropriate feeding equipment shall be provided for every four infants or toddlers. This includes safe high chairs, baby feeding tables, booster seats, and child-size tables and chairs. These types of equipment must be used in accordance with the manufacturer's instructions and must be appropriate for the age of the child using the equipment. Portable high chairs that hook onto tables are prohibited.

(2) remains as proposed.

AUTH: 52-2-704, MCA
IMP: 52-2-731, MCA

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

COMMENT #1: A commenter suggested that the term "breast milk" should be placed in front of "formula" in ARM 37.95.1003.

RESPONSE #1: The comment is outside the scope of the proposed changes but the department will consider for future rule changes.

COMMENT #2: A commenter made recommendations to the general meal patterns for infants under the nutrition section.

RESPONSE #2: The comment is outside the scope of the proposed changes but the department will consider for future rule changes.

COMMENT #3: A commenter asked "why not a 6:1 ratio for toddlers? The ratio would fall between infants and preschoolers and clearly establish toddlers as a unique group with unique needs."

RESPONSE #3: The comment is outside the scope of the proposed changes but the department will consider for future rule changes.

COMMENT #4: One commenter requested clarification about when staff needed to be counted in ratios. The commenter wanted to know whether she would count in ratios if she was in another building.

RESPONSE #4: Individuals who are counted in the ratio must be available to directly supervise the children in care. An individual who is in another room or another building would not meet the intent of this rule.

COMMENT #5: There were two comments stating that ARM 37.95.1003(2) is not appropriate for toddler feeding as it seems to go against CACFP regulation of establishing specific meal times and the promotion of family style meal service. One

commenter stated that the rule for toddlers also seems to promote the "grazing" habit.

RESPONSE #5: With the exception of adding the word "toddler" to the language in ARM 37.95.1003(2), the rest is existing language. This specific rule does not specify meal patterns. Guidance for meal patterns is found in ARM 37.95.215 and 37.95.711.

COMMENT #6: There were two comments about whether ARM 37.95.1003(2) requires parents to purchase milk for toddlers with special milk requirements. Does it include parents providing the food for children when parents have chosen to be vegetarian?

RESPONSE #6: If a child requires special dietary foods, the provider may accommodate the request. However, if they choose not to, it is the responsibility of the parent to provide the special dietary foods for their own child. This regulation is consistent with CACFP requirements.

COMMENT #7: There were eight comments about other options for feeding children ages 12 months and over. The basic concern was the allowance for child-sized tables and chairs.

RESPONSE #7: The department agrees that further clarification is needed for additional equipment that can be used for feeding. Since the department expanded the equipment that could be used, it was necessary to specify that the use of portable high chairs that hook onto tables may not be used. The department is adding language to ARM 37.95.1003(3)(b) and 37.95.1016(1).

COMMENT #8: Under ARM 37.95.1005(3), there were three comments suggesting that toddlers be allowed to sleep on a cot or mat rather than in a crib. One commenter questioned whether it was safe for a child who is able to climb out of a crib, or appropriate for a child who is almost three years be placed in a crib.

RESPONSE #8: The department agrees that the language needs to include allowances for children, starting at one year of age, to use mats or cots for sleeping. However, it is necessary to provide additional guidance for infants who will be using a cot or mat. The department has amended the proposed rule changes to include the use of cots or mats at one year of age and has also provided additional guidance when this practice is utilized.

COMMENT #9: A commenter stated that in ARM 37.95.1005(8) parents are required to provide a clean washable blanket. The commenter stated that centers are responsible for washing bedding every week as per health department regulations. If parents provide the blanket, centers are unsure if the blanket actually gets washed each week when it is sent home.

RESPONSE #9: The only part of this rule that has changed from the original version was the addition of the word "toddler." The department has allowed facilities to wash the blankets at the facility or send them home with the parent. The department will be reviewing the Interpretive Guidelines and will ensure that this practice is included.

COMMENT #10: There were three comments about ARM 37.95.1005(10). The commenters requested clarification about whether all staff in a facility need to receive safe sleep training as required since not all children are under age two. The comments also addressed the timeframes for completing the training. It was suggested that caregivers be given additional time to complete the training rather than be required to have it upon hire. One commenter mentioned that there may be issues with availability of training.

RESPONSE #10: The proposed rule only requires staff who work with children under age two to receive training in the safe sleep curriculum. The department agrees that the timeframe to receive the safe sleeping training for new staff needs to be extended. Therefore the proposed rule under ARM 37.95.1005(10) has had language added to allow for 60 days from the caregiver's start date to receive the training. However, licensees and registrants must have this training before providing care to infants. Since the department will be amending the timeframe, the department has also added language requiring at least one caregiver who has received the safe sleep curriculum to be available to staff who have not received the training.

The department has consulted with the training sponsor who will be conducting one section of the safe sleep curriculum. The sponsor indicated that the infrastructure is prepared for the increased participants who will need to complete the safe sleep curriculum.

COMMENT #11: One commenter suggested further amending language in ARM 37.95.1021(5), to read: "play areas used by children over 18 months."

RESPONSE #11: The department thinks that the proposed language is sufficient. Although some providers may choose to transition children who have just turned 19 months to an older classroom, other providers may choose to continue to keep children zero to two years together. Therefore, the proposed language will remain as proposed.

COMMENT #12: If infant and toddler changes are implemented in one regulation, it should be changed through the entire child care regulations. As it is written now, the two year regulation still exists in some areas; therefore, it causes confusion as to when the 19 month or two year old regulation can be used. Whenever there is a regulation regarding an "infant," are the licensors going to use 19 months or two years in their count for the number of children present during a visit? This has to be made very clear and not a discretionary point. If this change is to create the ability

for the system to care for an increased number of infants, the continuous use of the term "two year" nullifies it.

RESPONSE #12: The department agrees with the commenter and understands that there may be some confusion as a result of the department's proposed changes in ages.

While the department thinks that the proposed age of changes for infants and toddlers better defines the particular age groupings, there are still some areas that require clarification at 12 or 24 months due to developmentally appropriate practices and health or safety of infants and toddlers. The department will be working on a resource, which will serve as a supplement to this rule, for providers. This new tool will help to clarify what is required for children at particular ages with respect to the rules redefining the ages of infants and toddlers.

COMMENT #13: There were three comments regarding whether a higher payment rate would be received for an infant up to 19 months or two years.

RESPONSE #13: This comment is outside the scope of the proposed rule amendments. The comment will be referred to the Early Childhood Services Bureau.

COMMENT #14: One commenter agreed that change to 19 months is a better description of the developmental stage of an infant than does two years.

RESPONSE #14: The department thanks the commenter.

COMMENT #15: There were two comments about the change of the term "Day Care" to "Child Care."

RESPONSE #15: The use of this term is consistent with state law; furthermore, such a change is outside the scope of the proposed rule.

COMMENT #16: One commenter questioned whether the changes to ARM 37.95.1001(9) are measurable. The commenter suggested that it may be advisable to add language to the rule stating "Provider must supply documentation, such as conference notes or a permission form that is signed by the parents stating that it is appropriate to begin toilet training."

RESPONSE #16: The current Interpretive Guidelines address documentation and communication with parents. The department thinks that the current language is measurable and sufficient as written but will further address through the interpretative guideline document.

COMMENT #17: There were three comments stating feeding tables go against NAEYC and ITERS requirements and it was recommended that the use of feeding tables be removed.

RESPONSE #17: NAEYC and ITERS requirements utilize a best practice approach. Although the department understands and supports the use of best practices, the department is charged with providing a rule that addresses the underlying health and safety of children in care. Other than a best practice statement, the department has not found compelling evidence showing that the use of feeding tables creates a health or safety risk to children.

COMMENT #18: One comment was received with regard to ARM 37.95.1011. The rule states that infants and toddlers shall be taken outside for some period of time each day, in good weather. The commenter asked the department to define "good weather". According to the commenter, the term itself is not measurable. Additionally, the commenter goes on to state that The National Association for Family Child Care defines good weather as "wind chill not below 20 degrees F and heat index not above 80 degrees F and not stormy."

RESPONSE #18: The department thinks that the rule is sufficient as it is written. The department has provided a resource that is available on the Child Care Licensing web site that identifies timeframes children should not be exposed to particular temperatures and wind chills.

COMMENT #19: The definition of infant and toddler needs further consideration. According to the National Health and Safety Performance Standards, an infant is defined as a child between the ages of birth to 12 months of age, a toddler is defined as a child between the ages of 13 and 35 months of age, and a preschooler is defined as a child between the ages of 36 and 59 months of age. Furthermore, several states define infants, toddlers, and preschoolers in this way. The National Health and Safety Performance Standards are quoted at the bottom of the notice of proposed changes, so to use this resource for crib safety standards and disregard the age recommendations according to this resource discredits the source. This resource follows current research and practice, and the age definitions it offers are credible.

RESPONSE #19: The department reviewed recommendations and guidelines established through the American Academy of Pediatrics (AAP), the National Resource Center for Health and Safety in Child Care (NRCHSCC), Zero to Three and The National Association for the Education of Young Children (NAEYC). The department also contacted the National Child Care Information Center (NCCIC) and received additional information from surrounding states concerning infant/toddler care, ratios, and age definitions. The department took into consideration input from providers and conversations with other stakeholders including the State Fire Marshall. Although the proposed definitions vary slightly from some of the national resources, the proposed language allows the department to ensure that the particular requirements pertaining to infants and toddlers adequately meet the health and safety requirements in the state of Montana and further supports the direct input received from the various stakeholder groups. As such, the department thinks that the proposed changes are appropriate.

COMMENT #20: A commenter was concerned with ARM 37.95.1005(7)(a) as it references the American Academy of Pediatrics "Feet to Foot Rule" which is no longer recommended. The commenter suggested that this rule be eliminated from the proposed amendment to support the AAP's new policy statement.

RESPONSE #20: The department has chosen to allow a light-weight blanket for children while they are sleeping. The "Feet to Foot Rule" is no longer applicable due to the fact that the American Academy of Pediatrics no longer recommends using blankets for children under age one when they are napping. The department has chosen to allow light-weight blankets because the use of blankets is important to the culture of the families who place their children in care. The department has found through licensing surveys that parents are very vocal about allowing their infant to utilize blankets due to the climate in Montana as well as a source of comfort. Since the department is allowing light-weight blankets to be used, the department felt it was necessary to have specific parameters in place to ensure that the use and placement of the blanket is appropriate. As such, the department has proposed language that references the "Feet to Foot Rule."

COMMENT #21: A comment was made that "Infants only" was not updated to "children under age two" in three places in ARM 37.95.102(13)(a).

RESPONSE #21: The department agrees with this comment and the proposed rule under ARM 37.95.102(13)(a) has been amended. In addition, the department found that ARM 37.95.128 also needed to be amended as it referenced infants rather than children under age two.

COMMENT #22: A commenter questioned whether ARM 37.95.1002(2) was deleted entirely or just moved to a section regarding older children.

RESPONSE #22: The department proposed that ARM 37.95.1002(2) be moved under ARM 37.95.184(3) since the rule pertained to children of all ages.

COMMENT #23: A commenter asked about "one adult per child or one adult per four children" in ARM 37.95.132(8)(d).

RESPONSE #23: The intent of the rule states one adult per four children under age two.

COMMENT #24: A commenter asked why there was clarification under ARM 37.95.1003(2). The commenter stated a three year old should not be left unattended "from which they might fall either."

RESPONSE #24: This rule section is specific to infants and toddlers. The rule was written to pertain to that particular age group.

COMMENT #25: A commenter questioned about why the deadline for cribs to meet new requirements is not December 31, 2012 instead of December 28, 2012.

RESPONSE #25: The date used in the proposed rules is consistent with the date referenced by the Consumer Product Safety Commission.

COMMENT #26: A commenter asked about whether there will be a new term to replace "Infant Care Only."

RESPONSE #26: The department has not considered a title for this type of care at this time.

COMMENT #27: A commenter stated that a facility currently has three classrooms that pertain to ages addressed in proposed rule. One room has 0-12 months, the second is 12-24 months and the third is 24-36 months. The commenter questioned whether new rule would require them to separate 0-19 months and 19-24/36 months.

RESPONSE #27: The proposed rule amendment in ARM 37.95.1021(5) would not require children under age three to be split into infant and toddler groups. The rule allows for children 0-24 months to be mixed or if the facility chooses, they may also transition children over 18 months of age with older children. Basically, it is up to the facility to determine how classrooms are split as long as children under 19 months of age are not mixed with children over two years of age.

COMMENT #28: A commenter questioned about whether ARM 37.95.623(2) would allow for two children ages 16 months and two children age three as long as the lower ratio is met.

RESPONSE #28: No because this arrangement would not meet the proposed rule under ARM 37.95.1021(5) which states that play areas for infants must be separated from areas used by children over two years of age.

COMMENT #29: A commenter stated that ARM 37.95.1005(2) is not necessary for children over 12 months of age. The commenter questioned about whether the facility would be cited if a child was found on their stomach.

RESPONSE #29: The current proposed rule states that infants and toddlers shall be placed on their backs to sleep. In regard to the question about whether a facility would be cited if a child was found on their stomach, the decision to cite would be based on the situation observed. If an infant is capable of rolling from their back to stomach, the department does not expect the provider to move the infant back to a supine position. However, if an infant is laid down on their stomach (without a doctor note) regardless of whether they can roll or not, the department may choose to issue a deficiency for the noncompliance.

COMMENT #30: A commenter asked what a baby-feeding table was.

RESPONSE #30: A feeding table is a table with seats inserted into the table. There are several resources available online if one wishes to research these types of tables any further.

COMMENT #31: One commenter asked the department to change "toilet training" to "toilet learning" throughout in keeping with current language being used in child development and the Infant Toddler Caregiver certification course offered throughout the state of Montana.

RESPONSE #31: The department thinks that the language is sufficient as it is written and the suggested language changes are not significant enough to warrant a change at this time. This language is also consistent with language used by the American Academy of Pediatrics.

COMMENT #32: One comment was received concerning whether ARM 37.95.1001(7) is addressed elsewhere in the rule and whether there is a specific reference for children with special needs.

RESPONSE #32: The particular rule listed above is not referenced elsewhere for children with special needs. The department does not have specific rules pertaining to children with special needs. The department will consider this comment for future rule proposals.

COMMENT #33: A commenter suggested adding "guardians" after "parents" throughout the regulations to be inclusive of all families or clarify that "parent" includes legal guardian, etc.

RESPONSE #33: The department agrees that this language should be added and applied consistently. However, to simply change it in this section is not sufficient. There are sections outside of these proposed rules that would also need to be changed. The department will consider this change for future rule proposals and will include all applicable parts of the child care licensing rule.

COMMENT #34: One commenter asked the department to change the second sentence in ARM 37.95.1001(9) to state, "There shall be no routine attempt to begin toilet training with children . . .."

RESPONSE #34: The department thinks that the language is sufficient as it is written and the suggested language changes are not significant enough to warrant a change at this time.

COMMENT #35: A commenter suggested adding "the clothing must be placed in a sealed plastic bag and returned to the parent, guardian, or placement agency" in ARM 37.95.1002(1).

RESPONSE #35: The department agrees with this comment and has amended the proposed rule to include this language.

COMMENT #36: A comment was received that asked if the use of "play pen" in ARM 37.95.1005(3) aligns with new Consumer Product Safety Commission requirements cited in (4).

RESPONSE #36: The department understands that the Consumer Product Safety Commission (CPSC) will be looking closer at use of play pens over the next year. Once the CPSC concludes their review of play pens, and the findings of the review are known, the department will consider whether changes to the rules will be necessary.

COMMENT #37: A commenter asked if the phrase "as a regular sleeping option" could be added at the end of the sentence in ARM 37.95.1005(3)(a).

RESPONSE #37: The department thinks that the language is sufficient as it is written and the suggested language changes are not significant enough to warrant a change at this time. This rule has been amended due to comments listed in Comment #8.

COMMENT #38: A comment was received which questioned whether stackable cribs are allowed under new federal crib requirements.

RESPONSE #38: The department has reviewed the recent guidelines through the Consumer Product Safety Commission (CPSC). The new guidelines did not prohibit the use of stackable cribs; however, the traditional style of stackable cribs does not meet the current guidelines. The CPSC recommends that providers contact the manufacturer of the crib to ensure that a certificate of compliance can be obtained in order to show compliance with the new requirements.

As a result of this decree, the department has reviewed several companies that manufacture stackable cribs – cribs that slide under another crib. There are models available that meet the CPSC standard and have a certificate of compliance through the CPSC. The department will continue to allow the use of stackable cribs as long as they meet the CPSC guidelines. Since these types of cribs fall under the new guidelines, they are also subject to the December 28, 2012 deadline. After this date, the traditional style of stackable cribs will no longer be allowed for use unless the provider has a CPSC certificate of compliance.

COMMENT #39: In new crib regulations the term used for mesh and other soft-sided less than full-size cribs is "play yard." Montana may want to use language consistent with federal requirements to avoid confusion.

RESPONSE #39: The department thinks that the language is sufficient as it is written.

COMMENT #40: A commenter suggested adding "separately" after "shall be stored" in ARM 37.95.1005(8).

RESPONSE #40: The department thinks that the rule language is sufficient as it is written.

COMMENT #41: A commenter asked that ARM 37.95.1005(9) not be deleted. The commenter recommends the following wording in keeping with best practice - "Caregivers must be responsive to all cries of infants and toddlers."

RESPONSE #41: The rule was not proposed to be removed. It was simply renumbered. As to the rewording suggested by the commenter, the department considers that the language is sufficient as it is written and the suggested language changes are not significant enough to warrant a change at this time.

COMMENT #42: A commenter supported the addition of ARM 37.95.1005(10). The commenter questioned about whether the child care licensors will be verifying and enforcing this rule by checking all Professional Development Records through the Early Childhood Project web site for compliance.

RESPONSE #42: The department works closely with the Early Childhood Project to verify completion of training for child care providers. The department will continue this process as we implement the new requirements for the safe sleep curriculum.

COMMENT #43: Two commenters requested clarification about what defines a safe sleep environment.

RESPONSE #43: The department has written a definition for safe sleep environment. This definition will be added to ARM 37.95.102. As a result of this new definition, the section will be renumbered. Due to the addition of this definition, the department amended ARM 37.95.1005(11), also to specify that the proposed rule had to include a policy that described how a "safe sleep environment" rather than "safe sleep" would be promoted.

COMMENT #44: A commenter suggested deleting "walkers" from ARM 37.95.1011(2) as they are not allowed in the Environmental Rating Scales.

RESPONSE #44: The department agrees with this comment and has amended the proposed rule to include this language. This change is also consistent with the proposed rule change under ARM 37.95.1016(2).

COMMENT #45: A commenter suggested revising wording in ARM 37.95.1011(3) to align with current Montana Infant Toddler training course: "Each infant and toddler shall have individual positive interaction and responsive care with the same adult on a regular basis at least once each hour during non-sleeping hours to help develop a sense of trust and security. Examples include reciprocal listening and responding

with verbal and nonverbal communication, holding, rocking, playing, and meeting individual basic needs through caregiving routines."

RESPONSE #45: The department thinks that the language is sufficient as it is written and the intent suggested by the commenter is met with the existing language.

COMMENT #46: A commenter suggested changing wording in ARM 37.95.1011(4) to ". . . to be taken outside for some period each day 'weather permitting' instead of 'in good weather'."

RESPONSE #46: The department thinks that the language is sufficient as it is written and the suggested language changes are not significant enough to warrant a change at this time.

COMMENT #47: A commenter suggested replacing the word "life" with "safety" in ARM 37.95.1015(2).

RESPONSE #47: The department agrees with this comment and has made the change as suggested, in ARM 37.95.1015(2).

COMMENT #48: A commenter asked the department to not delete "primary" in ARM 37.95.1012(3). There is solid research supporting the practice of each infant and toddler having a primary caregiver in child care. The commenter further stated that they did not understand the stated rationale for this change.

RESPONSE #48: The proposed changes were not intended to alter the intent of this rule. The rule as proposed still requires that each infant have a routine caregiver. The word "primary" was removed because the rule was confusing to individuals since "primary caregiver" is also a defined role of a caregiver. Individuals were unsure whether the rule required a regular "consistent" staff person or a caregiver listed as a "primary caregiver" to work with the infants. The proposed changes have provided clarification while maintaining the intent of the rule.

COMMENT #49: A comment was received regarding hand washing requirements in ARM 37.95.184. The comment states that requirements for hand washing for children should mirror those for adults. For example, children should wash their hands after using tissue for sneezing, blowing/wiping nose, coughing, etc.

RESPONSE #49: This particular comment is outside the scope of the proposed changes. The department agrees this is important and will consider for future rule changes.

/s/ Kurt R. Moser
Rule Reviewer

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

Certified to the Secretary of State July 2, 2012

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

In the matter of the amendment of ARM 37.86.3001, 37.86.3002, 37.86.3003, 37.86.3005, 37.86.3006, 37.86.3016, 37.86.3018, 37.86.3020, 37.86.3025, 37.86.3031, 37.86.3033, 37.86.3037, and 37.86.3109 and repeal of 37.86.3014 pertaining to Medicaid outpatient hospital services	)))))))))))))	NOTICE OF AMENDMENT AND REPEAL

TO: All Concerned Persons

1. On May 10, 2012, the Department of Public Health and Human Services published MAR Notice No. 37-585 pertaining to the public hearing on the proposed amendment and repeal of the above-stated rules at page 948 of the 2012 Montana Administrative Register, Issue Number 9.

2. The department has amended ARM 37.86.3001, 37.86.3002, 37.86.3003, 37.86.3005, 37.86.3006, 37.86.3016, 37.86.3018, 37.86.3025, 37.86.3031, 37.86.3037, and 37.86.3109 and repealed ARM 37.86.3014 as proposed.

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

37.86.3020 OUTPATIENT HOSPITAL SERVICES, OUTPATIENT PROSPECTIVE PAYMENT SYSTEM (OPPS) METHODOLOGY, AMBULATORY PAYMENT CLASSIFICATION (1) through (1)(e)(i) remain as proposed.

(f) The department will make separate payment for observation care procedure codes ~~if the following criteria are met:~~ for Medicare qualifying conditions or obstetric complications. If an observation service does not meet these criteria for these services, payment for observation care will be considered bundled into the APC for other services.

(i) The diagnosis used to define a potential obstetric qualification will be taken from diagnosis related groups 382 (false labor) and 383 (other antepartum diagnosis with medical complications). ~~hours or units of service must be equal to or greater than eight;~~

(ii) ~~must be~~ The department will make separate payment for observation care procedure codes when billed as a direct admit or have a high level clinic visit, high level critical care, or high level emergency room visit~~; and~~.

(iii) ~~must have~~ The department will make separate payment for observation care procedure codes if billed using a qualifying diagnosis as per the CMS Claims Processing Manual.

(g) through (2) remain as proposed.

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

37.86.3033 PROVIDER-BASED ENTITY SERVICES, RECIPIENT ACCESS AND NOTIFICATION (1) through (4) remain as proposed.

(5) ~~Recipients~~ Clients must be notified that they will be assessed two cost shares for Medicaid and/or two copayment and deductible charges for cross-over claims ~~per each visit~~.

(a) remains as proposed.

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

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

COMMENT #1: One comment was received stating that it would be helpful if the department incorporated the criteria that providers must meet in order to obtain department approval regarding provider-based status. An additional comment stated that the department is inconsistent in regard to written approval verifying provider-based status and urges the department to adopt a standard process for receipt of this approval.

RESPONSE #1: The department has outlined the criteria that providers must meet in order to obtain department approval regarding provider-based status in ARM 37.86.3031. The department recognizes that the language in the Statement of Reasonable Necessity regarding the proposed amendments to ARM 37.86.3031 should have specified "Medicaid criteria." It is the intent of the proposed rule amendment to clarify Medicaid criteria regarding provider-based status. The department believes it has been consistent in regard to obtaining written verification of provider-based status and that the rule provides a standard process for receipt of this approval.

COMMENT #2: One comment was received seeking a clarification and a reference regarding national standards of practice in the use of off-label drugs.

RESPONSE #2: At this time, the department will pay for drugs that are considered "off-label" when the usage of the off-label drug is considered to be a national standard of practice. Off-label drugs that are prescribed to treat medical conditions other than the drug's intended purpose as approved by the FDA, and are identified as safe and effective, are considered to meet national standards of practice. These off-label drugs can be identified in three officially recognized drug references: American Hospital Formulary Service, United States Pharmacopeia, and the Drugdex Information System. The department believes that it is the responsibility of the provider to ensure any off-label drugs used in the treatment of Medicaid clients

meets national standards of practice. This is the intended outcome. The obvious consequence is the nonpayment for the usage of off-label drugs that do not meet national standards of practice.

COMMENT #3: Two comments were received suggesting that the proposed rule amendments are not well explained and that there is a lack of communication with the healthcare industry.

RESPONSE #3: The department will be cognizant of writing complete and concise proposed rules when formulating future rule language. In addition, the department recognizes the need for effective communication with providers regarding proposed rule amendments. It is the department's position that communication with the healthcare industry did occur through the following: a presentation at the spring Hospital Financial Managers Association (HFMA) conference in Missoula, Montana where the proposed rule amendments were presented and discussed; the releasing of the proposed rule amendments for public comment on May 10, 2012; and the mailing/e-mailing of the proposed rule amendments to all interested parties listed on the interested parties list on May 11, 2012. The department acknowledges and thanks the commenters for their concerns.

COMMENT #4: One comment was received regarding partial hospitalization and the need for providers to add additional administrative resources and staffing to meet the requirements of the proposed rule amendment with no additional Medicaid compensation. The commenter inquired as to what the intended consequences and outcomes are regarding partial hospitalization. An additional comment sought to understand the rationale for ARM 37.86.3006(2)(c)(vii).

RESPONSE #4: The department is not changing or adding any requirements to the already existing rule regarding partial hospitalization. The language regarding partial hospitalization was moved from the definitions in ARM 37.86.3001 to ARM 37.86.3006 which is the rule that addresses mental health outpatient hospital services. By moving this language, the rule is organized into one appropriate location instead of two locations. Because the requirements for partial hospitalization have not been changed, the department believes there is no need for providers to add additional staffing or administrative resources.

COMMENT #5: One comment was received suggesting that the department is changing the criteria for obstetric observation and that there would be financial implications to providers.

RESPONSE #5: The department is not changing or adding any requirements to the already existing policy regarding obstetric observation. With this rule revision, the department is updating language to the rule that reflects current policy. The department believes that the proposed removal of the language in ARM 37.86.3020(1)(f) is necessary because this current language limits payment for observation care to only four primary diagnosis codes. By removing this language, Montana Medicaid will not limit services regarding observation care to just four

primary diagnoses. Because the requirements for obstetric observation have not been changed, but simply added to rule, the department believes there are no financial implications to providers and current services to clients are maintained.

COMMENT #6: One comment indicated that Medicare allows for self-attestation for provider-based providers. It was suggested that Medicaid is falling behind Medicare by not allowing self-attestation when Medicaid requires a CMS letter verifying provider-based status. By requiring this verification, it was suggested that Medicaid is putting a burden upon providers.

RESPONSE #6: The department does not allow self-attestation and believes it is necessary to require a CMS letter verifying provider-based status. This is one of several requirements regarding provider-based status that are currently in rule. Because this is in the existing rule, the department believes that this is not a burden upon providers.

COMMENT #7: Two comments suggested that notifying clients of two cost shares when a client seeks services from a provider-based provider creates a bureaucratic burden upon provider-based providers.

RESPONSE #7: The department believes that it is the responsibility of the provider-based provider to notify Medicaid clients of the two cost shares and/or two coinsurance and deductible charges that will be assessed. The department recognizes and understands the concerns of the provider that compliance with this rule could be difficult if clients must be notified per each visit. For this reason, the proposed language in ARM 37.86.3033 will be removed from the rule. Also, the term "recipient" was updated to meet current standards.

COMMENT #8: One comment indicated that the department cannot make the implementation date of the rule retroactively effective because the proposed rule amendments imply a change in services and a change in payments to providers.

RESPONSE #8: Because no new criteria are being proposed in the rule amendments, the department believes that the proposed amendments are budget neutral and will not affect payment to providers. In addition, no change in the level of services offered to clients will occur. The department believes that an effective date retroactive to July 1, 2012, is appropriate.

COMMENT #9: One comment suggested that fewer services would be available to out-of-state clients if the department fails to recognize out-of-state provider-based status, and that this would also create a budget impact.

RESPONSE #9: Since the department has never recognized out-of-state provider-based status, the department wishes to document this information in rule as a point of clarification to out-of-state providers. Therefore, the purpose of the proposed rule amendment is to reflect current policy and convey this policy to affected providers. The department believes that there is no change in the service levels provided by

out-of-state providers from current service levels. In addition, with no change in reimbursement methodologies, this rule amendment would also remain budget neutral.

5. The department intends to apply these rules retroactively to July 1, 2012. A retroactive application of the proposed rules does not result in a negative impact to any affected party.

/s/ John Koch
Rule Reviewer

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

Certified to the Secretary of State July 2, 2012

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

In the matter of the adoption of New Rule I and amendment of ARM 37.34.114 pertaining to certification of persons assisting in the administration of medication	)))))	NOTICE OF ADOPTION AND AMENDMENT

TO: All Concerned Persons

1. On May 24, 2012, the Department of Public Health and Human Services published MAR Notice No. 37-586 pertaining to the public hearing on the proposed adoption and amendment of the above-stated rules at page 1030 of the 2012 Montana Administrative Register, Issue Number 10.

2. The department has adopted New Rule I (37.34.113) as proposed.

3. The department has amended ARM 37.34.114 as proposed.

4. No comments or testimony were received.

/s/ Cary B. Lund
Rule Reviewer

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

Certified to the Secretary of State July 2, 2012.

NOTICE OF FUNCTION OF ADMINISTRATIVE RULE REVIEW COMMITTEE

Interim Committees and the Environmental Quality Council

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

Economic Affairs Interim Committee:

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

Education and Local Government Interim Committee:

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

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

- Department of Public Health and Human Services.

Law and Justice Interim Committee:

- Department of Corrections; and
- Department of Justice.

Energy and Telecommunications Interim Committee:

- Department of Public Service Regulation.

Revenue and Transportation Interim Committee:

- Department of Revenue; and
- Department of Transportation.

State Administration and Veterans' Affairs Interim Committee:

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

Environmental Quality Council:

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

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

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

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

Definitions:

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

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

Use of the Administrative Rules of Montana (ARM):

Known Subject

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

Statute

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

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies that have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through March 31, 2012. This table includes those rules adopted during the period April 1, 2012, through June 30, 2012, 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 March 31, 2012, 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 2012 Montana Administrative Register.

To aid the user, the Accumulative Table includes rulemaking actions of such entities as boards and commissions listed separately under their appropriate title number.

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