ISSUE NO. 5

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 The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

Page Number

TABLE OF CONTENTS

PROPOSAL NOTICE SECTION

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 2.21.1931, 2.21.1932, 2.21.1933, 2.21.1934, 2.21.1937, 2.21.1938, 2.21.1939, 2.21.1940, and 2.21.1941 and the repeal of ARM 2.21.1930 pertaining to the VEBA plan	))))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT AND REPEAL

TO: All Concerned Persons

1. On April 9, 2013, at 10:00 a.m., the Department of Administration will hold a public hearing in Suite 115, 100 N. Park Avenue, Helena, Montana, to consider the proposed amendment and repeal of the above-stated rules.

2. The Department of Administration will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Department of Administration no later than 5:00 p.m. on April 2, 2013, to advise us of the nature of the accommodation that you need. Please contact Amber Godbout, Department of Administration, Health Care and Benefits Division, P.O. Box 200130, Helena, Montana 59620-0130; telephone (406) 444-9479; fax (406) 444-0080; TDD (406) 444-1421; or e-mail AGodbout@mt.gov.

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

2.21.1931 ~~POLICY AND~~ OBJECTIVES (1) ~~It is the policy of the~~ The state of Montana ~~to~~ administers a Voluntary Employees Beneficiary Association (VEBA) that allows Montana public employees to access health reimbursement accounts for themselves, their spouses, and their qualified dependents~~, and their beneficiaries,~~ funded by employer contributions and earnings from investment of the contributions. This program ~~shall be~~ is called the Montana VEBA Health Reimbursement Account (HRA).

(2) The Department of Administration shall approve ~~VEBA~~ groups across the state, provide access to the Montana VEBA HRA by eligible contracting employers, and determine the investment vehicles available to members.

(3) The objective of ~~this policy~~ these rules is to establish consistent and cost-effective procedures for establishing and maintaining ~~VEBA~~ groups and account contributions.

AUTH: 2-18-1305, MCA
IMP: 2-18-1302, MCA

STATEMENT OF REASONABLE NECESSITY: As part of its required biennial review of rules, the Department of Administration proposes amending ARM

2.21.1931 to better align the rules with federal statutes, regulations, and rulings and remove redundancy. Specifically, the amounts paid to an employee under the Montana VEBA HRA are not taxed if the plan permits amounts to be paid as qualified medical expenses to an employee's spouse and qualified dependents. However, under IRS Revenue Ruling 2006-36, the amounts paid to an employee under the VEBA plan are taxed if the plan permits amounts to be paid as qualified medical expenses to an individual other than the employee's spouse or qualified dependents. To maintain the Montana VEBA HRA as a tax-free plan, this proposed rule clarifies the language to ensure that the plan is consistent with Revenue Ruling 2006-36. The department considered leaving the rule unchanged but felt that the word "beneficiaries" could be misconstrued to the detriment of the nontax status of the VEBA plan. This clarification approach is consistent with the approach the department has taken with the remaining amendments it proposes in this notice. Given that this area of the law is complex, the department is trying to be as clear and concise as it can be so that these rules may be understood and applied by employers and employees.

Finally, references to "policy" need to be removed to alleviate confusion between administrative rules and state policies.

2.21.1932 DEFINITIONS (1) remains the same.

~~(2) "Department" means the Department of Administration established in 2-15-1001, MCA.~~

(2) "Eligible to retire" means eligible for benefits from the employer's given retirement system.

(3) remains the same.

~~(4) "Employer" means all offices, departments, boards, commissions, institutions, universities, colleges, and any other administrative unit of state government and political subdivision of the state, including a county, an incorporated city or town, or school district.~~

(4) "Group" means a minimum of five employees employed by the same agency and identified as having common characteristics for the purposes of conducting a VEBA election vote.

(5) "HRA" means health reimbursement account. This is a tax-exempt account established for the payment of qualified health care expenses through employer contributions and investment earnings. ~~At any time after a member's account has been established, the member may access funds in the account in a manner prescribed by the department.~~ The funds may be accessed only for the payment of qualified health care expenses, ~~which are~~ defined to include medical plan premiums, ~~and~~ until the funds have been exhausted.

~~(6) "Member" means a current or former employee for whom employer deposits have been received by Montana VEBA HRA and whose account has a positive balance.~~

(6) "Separation from service" or "Separate from service" means the employee retires or otherwise has a termination of employment. The separation from service must be a separation from the employer. If it is a transfer to another agency, VEBA eligibility is based on the new group and its VEBA criteria.

~~(7) "VEBA group" means a collection of employees who are employed by the same employer who elect to form a voluntary employees' beneficiary association. A group may not be considered if the group would not meet requirements for nondiscrimination.~~

~~(8)~~(7) "VEBA participant" means ~~an~~ a former employee ~~who belongs to a VEBA group enrolled in the Montana VEBA HRA, established under 2-18-1310, MCA~~ for whom employer deposits have been received by the Montana VEBA HRA and whose account has a positive balance.

AUTH: 2-18-1305, MCA
IMP: 2-18-1302, MCA

STATEMENT OF REASONABLE NECESSITY: As part of its required biennial review of rules, the department is amending ARM 2.21.1932 to better align the policy with federal statutes, regulations, and rulings, more clearly define terms, and remove redundancy.

The department proposes to add the definition of "eligible to retire" to clarify that group voting opportunities exist that allow only employees who are eligible to retire to participate in a vote, thereby focusing on those members who may be most interested in the benefit.

The department proposes to include the definition of "group" and remove the current definition of "VEBA group" to provide a clearer explanation of what constitutes a group and the required minimum number of members.

In the definition of "HRA," the department proposes to delete the sentence "At any time after a member's account has been established, the member may access funds in the account in a manner prescribed by the department" because this identical sentence is included within 2-18-304(2), MCA. Rules may not unnecessarily repeat statutory language. 2-4-305(2), MCA. The department proposes to keep the last sentence in the HRA definition because, while it closely follows the last sentence in 2-18-304(2), MCA, it clarifies that qualified health care expenses include medical plan premiums. The department believes that this clarification is important because employees have asked whether premiums are covered.

The department proposes to add the definition of "separation from service" to clarify that an employee leaving their job for any reason (e.g., voluntary or involuntary termination) is subject to VEBA contribution requirements. For example, if an employee in a group leaves their state job to work in another state, the employee's designated sick leave cash-out contribution must be placed in the VEBA account and not paid as cash to the terminating employee, unless the group has elected that option. The reason why the department believes this emphasis is important is to avoid any potential issues with individual choice. The department discusses why it is critical to avoid individual choice regarding a VEBA HRA in the reasonable necessity statements explaining the proposed amendments to ARM 2.21.1937 and ARM 2.21.1938.

The terms "department," "employer," and "member" are proposed to be removed because these terms are defined in statute.

2.21.1933 MONTANA VEBA HRA ADMINISTRATION (1) The department shall:

(a) provide educational presentations about the Montana VEBA HRA upon request.;

~~(2) The department shall~~

(b) review employer proposals for participation in the Montana VEBA HRA and determine whether the proposed group meets the definition of a group and whether the employer may become a contracting employer.;

(c) develop a plan for administration of the Montana VEBA HRA;

(d) enforce the participation requirements by not allowing discriminatory groups to form or by refusing to administer funds from groups that do not continue to comply with the department's requirements; and

(e) determine and process contributions as provided by the department in accordance with IRS tax law restrictions.

~~(3)~~(2) Contracting employers must:

(a) allow educational presentations;

~~(a)~~(b) define groups and enroll eligible members as provided in these rules;

~~(b)~~(c) determine the types of employer contributions to the HRA available to a ~~VEBA~~ group. Allowable employer contributions may include sick leave cash-outs, periodic employer contributions, group salary contributions, percent of raise contributions, unused employee benefit funds, annual vacation leave cash-outs as permitted by state statute, group merit pay, and longevity payments ~~(through collective bargaining only)~~ or other contributions not prohibited by state statute;

~~(c)~~(d) determine whether current employees can become members or whether an employee must terminate employment to become a member; and

~~(d)~~(e) notify the Montana VEBA HRA when an employee ~~a VEBA participant~~ becomes a member.; ~~and~~

~~(e) determine and process contributions as provided by the department in accordance with IRS tax law restrictions.~~

~~(4) The department shall enforce the participation requirements by not allowing illegal or discriminatory VEBA groups to form or by refusing to administer funds from VEBA groups that do not continue to comply with the department's requirements.~~

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

~~(6)~~(4) A ~~member~~ group shall operate in a manner prescribed by the department unless the association is disbanded in a manner prescribed by the department.

(7) through (9) remain the same, but are renumbered (5) through (7).

AUTH: 2-18-1305, MCA
IMP: 2-18-1302, MCA

STATEMENT OF REASONABLE NECESSITY: Some confusion has arisen, particularly at the city and town level, regarding the department's authority to administer VEBA. While the Voluntary Employees' Beneficiary Association Act, 2-18-1301, et seq., MCA, (Act) broadly clothes the department with authority to administer the Act for all statutorily defined "employers," which includes cities,

towns, and school districts, the department's specific duties are not outlined. The department proposes (1)(c), (1)(d), and (1)(e) to explain more clearly the department's responsibilities. Without these clarifications, the department believes that confusion will continue about the department's role in administering the Act.

The department also proposes that the contracting employer must allow educational presentations to the employees. The department believes that employee education is vitally important for employees to understand their options, especially since the VEBA laws and regulations are complex. At times, some employers have been reluctant to allow the department to conduct educational sessions. This proposal makes clear that an employer may not deny its employees educational opportunities offered by the department.

In renumbered (2)(c), the department proposes deleting "(through collective bargaining only)" because statute does not provide for this restriction.

2.21.1934 FEES (1) Contracting employers shall not be charged a fee by the department to establish one or more ~~VEBA~~ groups.

(2) ~~Members shall~~ VEBA participants may be required to pay ~~a~~ monthly administration fees, ~~plus~~ and shall pay a percentage of the monthly HRA administration expenses as determined by the department. The fee ~~will start~~ begins when their accounts are established and continues until the account has a zero balance.

AUTH: 2-18-1305, MCA
IMP: 2-18-1302, MCA

STATEMENT OF REASONABLE NECESSITY: The IRS allows the department to charge administration fees. In the past, the department assessed a $5 a month fee and a percentage fee. The department has since dropped the $5 fee and reduced the percentage fee. The proposed language gives the department the ability to reinstate the monthly fee should that become necessary to allow continued administration of the program. Deletion of "VEBA" in (1) and the word "Members" amended to "VEBA participants" are necessary to align with proposed changes in ARM 2.21.1932.

2.21.1937 ELIGIBILITY (1) A ~~VEBA~~ group may be formed ~~voluntarily~~ by:

(1)(a) through (1)(d) remain the same.

(2) A group may consist of employees who are:

(a) all currently eligible to retire;

(b) all currently ineligible to retire; or

(c) a mix of those eligible and ineligible to retire.

~~(2)~~(3) No ~~VEBA~~ group may be formed ~~that is~~ with fewer than ~~two~~ five employees.

~~(3)~~(4) No ~~VEBA~~ group may discriminate in favor of highly compensated employees and be formed ~~that is~~ only for the benefit of a select group of the highest paid employees, which means compensation in excess of $80,000 and in the top 20% of employees ranked on the basis of compensation paid during the year.

~~(4)~~(5) Employees who may be excluded from participation without violating the nondiscrimination provisions described in (4) include:

(a) employees ~~with less than three years of service;~~ who are not:

(i) eligible for sick leave;

(ii) eligible for benefits with the employer;

(iii) receiving an employer contribution for group benefits under 2-18-703, MCA, or other employer contribution to benefits; and

(iv) active in the employer's retirement system (retirement-eligible-only groups);

(b) seasonal and less-than-half-time employees;

(c) employees covered by a collective bargaining agreement; and

(d) certain nonresident aliens.

(6) When a group has been formed:

(a) members and VEBA participants may not opt out of the group;

(b) current employees or retirees of the same employer not already in the group may not opt into the group; and

(c) if an employee's circumstances change such that the employee becomes eligible to be a member of an existing group, the employee automatically becomes a member of this group.

AUTH: 2-18-1305, MCA
IMP: 2-18-1302, MCA

STATEMENT OF REASONABLE NECESSITY: The department proposes the amendments to this rule to clarify language, particularly to include the use of the phrase "highly compensated employees," (HCE) which is the phrase used in the Internal Revenue Code. IRC section 105(h) states that plans may not discriminate in favor of HCEs regarding eligibility or participation or benefits provided under the plan. Generally, the top 25% of paid employees are considered to be HCEs. There are exclusions from consideration for certain groups of employees when applying these nondiscrimination rules for individuals who have not completed three years of service, have not attained age 25, are part-time or seasonal, are nonresident aliens, or are a part of a collective bargaining agreement subject to good faith bargaining.

The employer can define certain groups of employees as eligible as well as exclude certain groups or classifications of employees from participation due to their unique facts and circumstances. Often an employer will restrict participation for groups that could be negatively affected by directing forms of payment into the HRA –payments that would otherwise provide for a higher lifetime retirement or other benefit. However, once defined as eligible/ineligible, all group members occupying the same status must be treated the same.

The department's purpose in identifying particular groups that may be excluded from participation in VEBA is based on the principle that contributions to a VEBA account are from the employer. If an employee is not eligible to receive sick leave or any other employer benefits, then an employer cannot make a contribution to the account.

The department receives questions regarding employee's options once a group is formed. In particular, one question that is regularly asked is if the majority

of the proposed group votes to establish a group, may those employees who voted not to form a group opt out of the group? In general terms, HRA plans must be operated in a uniform design where all group members defined as eligible must participate without any form of individual choice. Individual choice is generally defined as an individual having any ability to affect their treatment under the plan, including opting out of participation.

The IRS rules mandate that employer contributions to an accident or health plan are excludable from an employee's gross income, provided that the employee does not have a choice between nontaxable benefits (e.g., plan contributions) and taxable benefits (e.g., cash, stock, etc.).

An individual is permitted choice between two nontaxable benefits where there is no option for cash or any other taxable benefit. Should an employee have a choice between taxable and nontaxable benefits, all contributions to a plan become taxable to the employee and must be included in gross income for that taxable year. In summary, if the minority of employees who voted against forming a group were allowed to opt out, then the plan would lose its tax-exempt status. Some employees have opined that being included in a group that they did not want to form is unfair. However, given the IRS regulations, the department may not circumvent the opt-out restrictions and still maintain tax-free groups. Losing the tax-exempt status would defeat the whole purpose of having a group. As explained in ARM 2.21.1938(8)(c) below, a vote on whether to maintain the group may be conducted within 12 months from the date the group was formed. The purpose of the 12-month waiting period is to avoid any potential for individual choice.

Finally, the minimum of five employees per group comes from informal IRS guidance regarding minimum group size. Given the IRS's experience and authority concerning VEBA matters, the department believes a minimum of five group members is more appropriate than two.

Deletion of "VEBA" in (1), (3), and (4) is necessary to align with proposed changes in ARM 2.21.1932.

2.21.1938 ELECTIONS (1) remains the same.

(2) An employer may either initiate or facilitate an election to determine whether employees will form a ~~member~~ group ~~for the purpose of participating~~ to participate in the Montana VEBA HRA. When at least 25% of the employees request an election, an employer must facilitate the election within 60 calendar days from the date of the request. Employers shall notify employees of an impending vote at least 15 days prior to the date the vote commences.

(3) The election may include all the employer's employees or a specified group of employees to determine whether those employees will form a group ~~for the purpose of participating in the Montana VEBA HRA~~.

(4) The source of contribution must be agreed upon before a vote is conducted.

~~(4)~~(5) Employees who are members of a collective bargaining unit may decide to either participate with other employees in the formation of a ~~VEBA~~ group or to initiate the election through the bargaining unit. If the employees decide to participate with other employees, a written memorandum of understanding from the

union representing the bargaining unit employees must be obtained by the employer.

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

~~(6)~~(7) If a majority of the employees ~~voting on the question~~ vote to become ~~VEBA participants~~ members, then all ~~of the~~ employees ~~that were~~ eligible to vote ~~on the question,~~ and any employees subsequently hired into the positions covered under the terms and conditions of the election, must be formed as a ~~VEBA~~ group and the employees must become ~~VEBA participants~~ members. If the majority of the employees vote to become members, employees who voted not to participate in the group are still included in the group and may not opt out of the group.

~~(7)~~(8) Members of a ~~VEBA~~ group may hold an annual election to determine whether or not they will continue their participation in the Montana VEBA HRA if at least 25% of the members of the ~~VEBA~~ group requests an election.

(a) If a majority of ~~eligible~~ members elect to discontinue their participation, their ~~VEBA~~ group is disbanded until another election is conducted; however, the members are not required to wait 12 months from the date of the election to form another group.

(b) Once a ~~VEBA~~ group disbands, an employer shall not make further contributions to ~~members'~~ VEBA participants' accounts ~~until the employer's eligible employees form another group~~. However, distributions from existing ~~members'~~ VEBA participants' accounts will continue until the funds in the accounts are exhausted.

(c) Once an election is conducted, and a positive vote is cast by a majority, an employer ~~is not required to~~ may not conduct another election for that ~~VEBA~~ group for 12 months from the date of the election.

~~(8)~~(9) The effective date of the ~~VEBA~~ group must be~~gin~~ no later than 30 days following completion of the vote and announcement of the election outcome which creates the ~~VEBA~~ group.

AUTH: 2-18-1305, MCA
IMP: ~~2-18-1302,~~ 2-18-1310, MCA

STATEMENT OF REASONABLE NECESSITY: The department proposes a minimum notice period of 15 days before an impending vote. The department has discussed this issue with its consultant, and the consultant, based on its experience and industry practice, recommended the 15-day period. The department believes this minimum time period is adequate for employees to become familiar with the issues. Of course, employers may provide a longer notice period.

The department proposes adding (4) because it has learned of confusion among employees about what employer contributions may be included in the employee's account. The department believes that requiring the groups to explicitly agree upon the contribution source(s) before the vote will go a long way toward dissipating the confusion. In addition, this requirement allows for greater control and oversight and restricts an employee from making individual choices, which would defeat the tax-exempt status of the plan.

The department proposes the changes to new (7) and new (8)(c) to clearly explain that an employee in a group may not choose to opt out if a positive vote is

cast by a majority of those who want to become members of a group. As noted in the statement of reasonable necessity for ARM 2.21.1937, allowing an employee to opt out would jeopardize the tax-exempt status of the VEBA plan.

In new (8)(a), the department proposes clarifying that if a group is disbanded, employees do not have to wait 12 months to vote to form another group. The reason why a group must wait 12 months to conduct another vote after a group has been formed is to avoid any potential issue with individual choice. If employees vote to disband, then no issue exists with individual choice, rendering the 12-month waiting period for another vote unnecessary.

Deletion of "VEBA" and revision of the words "Members" and "VEBA participants" are necessary to align with proposed changes in ARM 2.21.1932. The statute implemented by this rule is 2-18-1310, MCA, rather than 2-18-1302, MCA, necessitating the change shown.

2.21.1939 PARTICIPATION (1) and (2) remain the same.

~~(3) At any time after a member's account has been established, the member may access funds in the account in a manner prescribed by the department. The funds may be accessed only for the payment of qualified health care expenses and until the funds have been exhausted.~~

(3) Members may make investment changes on a monthly basis.

AUTH: 2-18-1305, MCA
IMP: 2-18-1302, MCA

STATEMENT OF REASONABLE NECESSITY: The department proposes this amendment because the rules were not clear how often an employee could make investment changes. The department believes that allowing changes on a monthly basis gives the employee the flexibility needed to manage the investment of funds. Section (3) is being removed because it unnecessarily repeats statute, which is prohibited by 2-4-305(2), MCA.

2.21.1940 CONTRIBUTIONS (1) Employer contributions into an account, the accumulation of interest or other earnings in an account, and payments from an account for qualified health care expenses are tax-exempt, as provided in ~~15-30-111~~ 15-30-2110, MCA, and under applicable federal laws and regulations to the extent that the plan is qualified under applicable sections of the Internal Revenue Code.

(2) remains the same.

(3) Each participating employer shall provide for a member to annually designate how many hours (if any) of the member's sick leave and/or annual vacation leave balance in excess of 240 hours will be automatically converted to an employer contribution to the member's account each pay period, as provided in 2-18-1311, ~~et seq.,~~ MCA. The current state policy designates 0 hours.

(4) Sick leave is considered a contribution source, as approved by the voting entity, and may be converted tax-free for the purposes of a contribution. The rate of sick leave is 25% of the employee's balance at the time of separation. As agreed upon by the voting entity, the sick leave balance of 25% may be divided as listed by the department between VEBA HRA contribution and taxable cash.

~~(4)~~(5) Each participating employer may establish a maximum amount of sick leave hours that may be automatically converted to ~~a~~ an annual contribution. An employer may establish the maximum annual hours at "0" until an employee ~~terminates employment~~ separates from service.

(6) Annual vacation leave is considered a contribution source, as approved by the voting entity, and may be converted tax-free for the purposes of a contribution. The rate of annual vacation leave is 100% of the employee's balance at the time of separation of service.

~~(5)~~(7) Other contributions shall be allowed as outlined in statute, but may not be discriminatory in favoring highly compensated employees. The ~~VEBA~~ group must all participate in any form of approved contributions.

AUTH: 2-18-1305, MCA
IMP: ~~2-18-1302~~, 2-18-1311, MCA

STATEMENT OF REASONABLE NECESSITY: In 2007 the Montana Legislature amended 2-18-1311, MCA, to allow contributions of annual vacation leave to an account in addition to the sick leave contributions. The statute referenced in (1) was renumbered in the 2009 legislative session necessitating this amendment.

The department proposes to add the last sentence in (3) to clarify that the state of Montana has determined that it is not financially possible for the state as a whole to make employer contributions on an annual basis.

New (4) summarizes statutory language found in 2-18-1311, MCA. The department proposes this summary because it regularly fields questions on this issue, and the department is hopeful this summary will simplify for employees sick leave contributions into a VEBA account.

The department proposes the addition of "annual" in (5) to clarify that this conversion is only available on a yearly basis as allowed by statute. Clarifying this matter is again consistent with the approach taken by the department in these rules–being clear without unnecessarily repeating statutory language.

Proposed (6) explicitly recognizes that annual vacation leave may be a contribution source and that 100% of the balance may be converted to an employer contribution. In addition, the statute implemented by this rule is 2-18-1313, MCA, rather than 2-18-1302, MCA, necessitating the change shown.

2.21.1941 BENEFITS IN THE EVENT OF DEATH (1) A member ~~must~~ may designate ~~an individual as a beneficiary~~ a spouse and/or qualified dependent(s) in a manner prescribed by the department.

(2) Upon proof of a ~~member's~~ VEBA participant's death, if the deceased ~~member's~~ VEBA participant's account has a positive account balance, the ~~member's designated beneficiary is entitled~~ VEBA participant's surviving spouse and/or qualified dependent(s) are eligible to use the account for qualified health care expenses.

~~(3) If a deceased member's account has a positive account balance and the member failed to designate a beneficiary or has no surviving designated beneficiary, the account balance will be available to pay qualified health care benefits incurred by~~

~~the person(s) certified to be the beneficiary by the executor or administrator of the member's estate.~~

(3) If a deceased VEBA participant's account has a positive account balance, the VEBA participant's surviving spouse, if any, may file claims for eligible medical benefits incurred by the VEBA participant, the surviving spouse, and any other qualified dependents.

(4) If a deceased VEBA participant's account has a positive account balance and dies without a surviving spouse but with qualified dependent(s), the guardian(s) of the dependent(s) may file claims for eligible medical benefits on the dependent(s)' behalf.

(5) At the death of the VEBA participant who has no surviving spouse or qualified dependents, or when the last to die of the VEBA participant and their qualified dependents eligible for medical benefits under the plan dies or is no longer described in IRC 152(a), then the executor or administrator of that person's estate may file claims for any eligible expenses incurred by that person, after which the remaining account balance shall be reallocated on a per capita basis to all Montana VEBA HRA member accounts.

~~(4)~~(6) ~~In the event~~ If any ~~member's~~ VEBA participant's account ~~shall have~~ has been unclaimed for a period of at least 35 months since the whereabouts or continued existence of the person entitled to the account was last known to the administrator, the ~~member's~~ VEBA participant's account shall become the property of the Montana VEBA HRA.

AUTH: 2-18-1305, MCA
IMP: ~~2-18-1302~~, 2-18-1313, MCA

STATEMENT OF REASONABLE NECESSITY: As discussed in the statement of reasonable necessity for ARM 2.21.1931, IRS Revenue Ruling 2006-36 states that HRA funds may only be used by spouses and qualified dependents upon the VEBA participant's death. The department proposes new (3), (4), and (5) to specifically address what happens to the VEBA participant's account when the VEBA participant dies, consistent with the guidance from Revenue Ruling 2006-36. The department believes it is important to educate employees about these situations so that no confusion will exist when a VEBA participant dies. In addition, the statute implemented by this rule is 2-18-1313, MCA, rather than 2-18-1302, MCA, necessitating the change shown.

4. The department proposes to repeal the following rule:

2.21.1930 SHORT TITLE, found on Administrative Rules of Montana page 2-851.

AUTH: 2-18-1305, MCA
IMP: 2-18-1302, MCA

STATEMENT OF REASONABLE NECESSITY: ARM 2.21.1930 is proposed for repeal to alleviate confusion between administrative rules and state policies.

5. In addition, when this rulemaking is finalized, the department intends to repeal Montana Operations Manual policy "State Government VEBA HRA."

6. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Amber Godbout, Department of Administration, Health Care and Benefits Division, P.O. Box 200130, Helena, Montana 59620-0130; telephone (406) 444-9479; fax (406) 444-0080; or e-mail AGodbout@mt.gov, and must be received no later than 5:00 p.m., April 12, 2012.

7. Amber Godbout, Attorney, Department of Administration, has been designated to preside over and conduct this hearing.

8. The division 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 mailing list shall make a written request which includes the name and mailing address or e-mail address of the person to receive notices and specifies that the person wishes to receive notices regarding Voluntary Employees Beneficiary Association rulemaking actions. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 6 above or may be made by completing a request form at any rules hearing held by the department.

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

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

By: /s/ Sheila Hogan
Sheila Hogan, Director
Department of Administration

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

Certified to the Secretary of State March 4, 2013.

BEFORE THE BURIAL PRESERVATION BOARD
OF THE STATE OF MONTANA

In the matter of the adoption of New Rules I through VII, pertaining to repatriation of human skeletal remains and funerary objects and transfer of ARM 2.65.102 through 2.65.108 pertaining to human skeletal remains and burial site protection	)))))))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION AND TRANSFER

TO: All Concerned Persons

1. On April 4, 2013, at 11:00 a.m., the Burial Preservation Board (board) of the state of Montana will hold a public hearing in Room 53 of the Mitchell Building, at 125 N. Roberts, Helena, Montana, to consider the proposed adoption and transfer of the above-stated rules.

2. The board 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 no later than 5:00 p.m. on March 28, 2013, to advise us of the nature of the accommodation that you need. Please contact Monica Abbott, Department of Administration, 125 N. Roberts, Room 155, P.O. Box 200101, Helena, Montana 59620-0101; telephone (406) 444-2460; TTY (406) 444-1421; fax (406) 444-6194; or e-mail mabbott@mt.gov.

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

NEW RULE I MODEL PROCEDURAL RULES (1) The board adopts and incorporates by reference the following model rules, which may be found at http://www.mtrules.org:

(a) the Attorney General's model procedural rules ARM 1.3.211 through 1.3.224 and 1.3.226 through 1.3.233, including, as applicable, the appendix of sample forms in effect [effective date of this rule]; and

(b) the Secretary of State's model rules ARM 1.3.301, 1.3.302, 1.3.304, 1.3.305, 1.3.307 through 1.3.309, and 1.3.311 through 1.3.313 in effect [effective date of this rule]. These rules define model requirements for rulemaking under the Montana Administrative Procedure Act.

AUTH: 22-3-804, 22-3-904, MCA
IMP: 22-3-904, 22-3-913, 22-3-914, MCA

Statement of Reasonable Necessity: Section 22-3-904, MCA, requires the board to adopt rules necessary to provide for filing of repatriation claims under the Montana Repatriation of Human Remains and Funerary Objects Act of 2001 (Repatriation Act), 22-3-901 through 22-3-922, MCA, and procedures for hearings

and resolving multiple claims. The rules must, at a minimum, address standards of evidence, standards of proof, and criteria for determining lineal descent and cultural affiliation. Hearings may not occur until the board has adopted such rules. The Attorney General's Model Rules cover the procedures for hearings and resolving claims and standards of evidence and proof in detail. The board has determined that the Attorney General's model rules will be sufficient to serve the board's purposes and, because those model rules already exist, the board saw no reason to craft its own originally written rules. The board is proposing to adopt the model forms, as applicable, because all the model forms may not apply to the board's activities. ARM 1.3.201(3) provides that agencies may adopt the Attorney General's model rules by incorporating them by reference. The board has determined such incorporation is the best approach because it will keep the board's rules to a manageable size.

Section 2-4-201, MCA, requires that the each agency adopt rules describing its organization and procedures. The Secretary of State's Model Rules are proposed to be adopted to satisfy this statutory requirement. The board has determined that, given the comprehensiveness of the Secretary of State's model rules, these rules will be sufficient to serve the board's purposes, and because those model rules already exist, the board saw no reason to craft its own originally written rules. ARM 1.3.301(3) provides that agencies may adopt the Secretary of State's model rules by incorporating them by reference. The board has determined such incorporation is the best approach because it will keep the board's rules to a manageable size.

Finally, the board proposes that the Attorney General's Model Rules and the Secretary of State's Model Rules be incorporated by reference to apply to the Human Skeletal Remains and Burial Site Protection Act (Protection Act), 22-3-801 et seq., MCA, which is a statute that the board also implements. The board makes this proposal for the same reasons stated above supporting adoption of these model rules for the Repatriation Act. Section 2-4-804(3)(i), MCA, authorizes the board to adopt rules necessary to administer and enforce the provisions of the Protection Act.

NEW RULE II SCOPE OF RULES (1) The board's repatriation rules apply to:

(a) Native American or non-Native American human skeletal remains and funerary objects discovered on state-owned or private lands in Montana and held by museums or state agencies in Montana that receive state funding but no federal funding;

(b) non-Native American human skeletal remains and funerary objects discovered on state-owned or private lands in Montana and held by museums or state agencies in Montana that receive state and federal funding; and

(c) Native or non-Native American human skeletal remains and funerary objects discovered on state-owned or private lands in Montana and held by a person.

(2) The federal Native American Graves Protection and Repatriation Act (NAGPRA), 25 USC 3001 et seq. and NAGPRA's implementing regulations, 43 CFR 10, apply exclusively to any museum or state agency that receives federal funding,

either alone or in conjunction with state funding, and that possesses Native American human remains and funerary objects.

AUTH: 22-3-904, MCA
IMP: 22-3-904, MCA

Statement of Reasonable Necessity: Confusion sometimes arises regarding whether NAGPRA supplants a state's repatriation laws. Congress intended NAGPRA, and in particular NAGPRA's repatriation provisions, to apply to governmental and educational institutions. However, there is no indication that Congress intended federal law to occupy this area entirely, to the exclusion of state law. The Repatriation Act plays an important role in covering gaps left by NAGPRA. State laws could be construed to overlap, to some extent, NAGPRA. To the extent that the state and federal laws conflict, then state law is preempted under Article VI, Section 2 of the U.S. Constitution commonly called the Supremacy Clause. The repatriation rules the board has proposed are structured to avoid potential conflicts in interpretation and to ensure the full protection of human remains, burial sites, and funerary objects under both federal and state law.

The Repatriation Act provides for the repatriation of culturally affiliated human skeletal remains or funerary objects taken from burial sites in Montana before July 1, 1991, and in the possession or control of a museum, agency, or person, as those terms are defined in the Repatriation Act. 22-3-902(2)(b), 22-3-903, MCA. The Repatriation Act makes clear that items interred with human remains are not abandoned, and discoverers have no right of ownership to such items. 22-3-902(1)(c), MCA. The Repatriation Act is broader than NAGPRA in that it applies to Native and non-Native funerary objects and remains. 22-3-902(2)(a); see also *Written Testimony of D. Fred Matt, Chairman, Confederated Salish and Kootenai Tribes*, January 12, 2001, before the House Judiciary Committee ("With the passage of the proposed legislation, HB 165, The Montana Repatriation Act, the state of Montana would develop a mechanism for the repatriation of human remains and burial goods, regardless of ethnic origin, burial context, or age."). However, the Repatriation Act is also narrower than NAGPRA in that, while it provides for the repatriation of funerary items, it does not provide for the return of sacred objects and objects of cultural patrimony.

NAGPRA and the Repatriation Act encompass areas of exclusive application, as well as areas that could be construed as concurrent federal-state application. In areas of exclusive federal or state regulatory authority, there will be no preemption issues. With regard to NAGPRA, this includes its application to museums or other entities that receive federal funding but no state funding. Further, NAGPRA's inventory and repatriation requirements are exclusive with regard to Native American sacred objects and objects of cultural patrimony. Similarly, the Repatriation Act applies exclusively to those museums and other entities that receive state money but no federal money. State law is exclusive as it applies to private persons who possess or control human remains and funerary objects. State law is also exclusive as it applies to non-Native human remains and funerary objects.

However, NAGPRA and the Repatriation Act could be construed to overlap in their application to museums/entities that receive both federal and state funding, and which possess or control Native American remains and funerary items. In such instances the museum or agency must, if possible, abide by both NAGPRA and by the Repatriation Act. The federal and state laws function similarly in requiring: (1) an inventory or listing of items in a collection; (2) notification to lineal descendants and tribes of the inventory; and (3) provisions for the repatriation of culturally affiliated items. If in these areas the terms of the federal and state laws directly conflict, or if it is impossible to comply with both sets of law, or if the state law stands as an obstacle to federal objectives, then state law is preempted.

(a) Inventories

The inventory requirements of the federal and state laws contain potential conflicts. NAGPRA requires that item-by-item inventories of Native American human remains and associated funerary items were to be completed by 1995. 25 USC 3003(b)(1)(B), (c) (allowing for extensions of time). If, after 1995, a museum or agency receives a new holding or collection, or locates previously unreported items, it must prepare a new inventory. 43 CFR 10.13(b). An initial summary of the new materials must be sent to affiliated or potentially affiliated tribes within six months of the receipt of the materials by the museum or agency. 43 CFR 10.13(b)(1)(i). A detailed inventory must then be completed within two years of the receipt of the materials. 43 CFR 10.13(b)(1)(ii). Inventories of existing and new collections must identify, if possible, the circumstances of acquisition and the geographical and cultural information related to each listed item. 25 USC 3003(a); 43 CFR 10.9(c). In completing inventories of existing or new collections, a museum or agency must consult with tribal governments and traditional religious leaders. 25 USC 3003(b)(1)(A). NAGPRA also requires that museums or agencies prepare a summary of "unassociated funerary items"–defined to mean funerary objects that have become separated from a set of human remains. 25 USC 3001(3)(B). These summaries were to have been completed by 1993 and follow most of the same basic requirements as the inventories. 43 CFR 10.8(c). Inventories must also include a listing of all culturally unidentifiable remains and associated funerary objects. 43 CFR 10.9. NAGPRA provides for an extension of time to complete inventories upon a finding by the Secretary of the Interior that the museum is making a good faith effort to complete its work. 25 USC 3003(c); 43 CFR 10.9(f).

The Repatriation Act requires that museums and agencies with possession or control over human skeletal remains or funerary objects must have completed an inventory of these items by November 2001. 22-3-911(1), MCA. The inventory must, to the extent possible, identify the circumstances of acquisition including geographical information; cultural affiliation if known; and list those items that are not culturally identifiable. 22-3-911(1)(a) through (c), MCA. Whenever a museum or agency receives new remains or objects through loan or donation, it must update its inventory within six months. 22-3-911(4), MCA.

A museum or agency that has met the inventory requirements of NAGPRA for its existing collections will have met the inventory requirements of the Repatriation Act, with regard to Native American human remains and funerary objects. For existing collections held by museums prior to 1995 or 2001, these requirements should have been met long ago.

Potential conflicts arise with regard to holdings or collections acquired more recently. First, NAGPRA allows up to two years for the completion of an inventory, in consultation with tribes, of newly acquired items or collections (although an initial summary of the items must be completed within six months). 43 CFR 10.13(b)(1)(i), (ii). State law allows only six months for the completion of an updated inventory for newly acquired items and does not require tribal consultation. 22-3-911(4), MCA. Second, under NAGPRA an extension can be granted by the Secretary of the Interior to museums or agencies making a good faith effort to complete their inventories. 25 USC 3003(c); 43 CFR 10.9(f). Under state law, there is no provision for an extension. The shorter state timeline, the lack of tribal consultation, and the lack of any means to grant extensions under state law could be construed to undermine the federal objective of ensuring adequate time for tribal consultation and the preparation of thorough inventories of newly acquired Native American collections.

(b) Notification

After completion of an inventory, NAGPRA and the Repatriation Act require that various entities be notified of the inventory. Under NAGPRA, a museum or agency shall, not later than six months after the completion of an inventory, notify lineal descendants and tribes determined to be culturally affiliated with any remains or funerary items in the inventory. 25 USC 3003(d)(1); 43 CFR 10.9(e)(1), (3). The notice shall: (1) identify each set of remains and funerary objects and the circumstances of its acquisition; (2) list all remains and objects that are clearly identifiable as to tribal origin; (3) list remains or objects that are not clearly identifiable as to tribal origin, but that are reasonably believed to be affiliated with a tribe; and (4) describe those remains, with or without associated funerary objects, that are culturally unidentifiable. 25 USC 3003(d)(2); 43 CFR 10.9(e)(2). The notice must also be sent to the Secretary of the Interior, who is to publish it in the Federal Register. 25 USC 3003(d)(3); 43 CFR 10.9(e)(4).

The Repatriation Act requires that within three months of completing an inventory, the museum or agency must provide a copy to the board, the State Historic Preservation Office, and each tribal government in Montana. 22-3-911(2), MCA. There are no apparent conflicts that arise in complying with both the federal and the state notification provisions.

(c) Repatriation

After an inventory is completed and notification has been sent to the appropriate parties, repatriation may take place if certain requirements are met. The

federal process begins upon a museum's or agency's receipt of a repatriation request from a lineal descendant or culturally affiliated tribe. 25 USC 3005(a)(1); 43 CFR 10.10(a), (b). If the cultural affiliation of human remains and associated funerary objects is known per the inventory, then the museum or agency must expeditiously return such items to the requesting descendants or tribes. 25 USC 3005(a)(1). In cases where cultural affiliation has not been definitively established via the inventory, tribes have the opportunity to show cultural affiliation by a preponderance of the evidence. 25 USC 3005(a)(4); 43 CFR 10.14. With regard to unassociated funerary objects, lineal descendants and tribes must establish cultural affiliation and present evidence that a museum or agency has no right of possession. 25 USC 3005(a)(2), (c). The cultural affiliation of unassociated funerary objects can be established via the summary process or through presentation of a preponderance of evidence. 43 CFR 10.10(a)(2)(ii); 43 CFR 10.14. If the museum or agency cannot overcome the evidence indicating no right of possession, it must return the requested items. 25 USC 3005(c). Delays in repatriation may occur if the remains or items are needed for the completion of a scientific study of major benefit to the United States, or in cases of competing claims. 25 USC 3005(b), (e). Repatriation need not occur if a court of competent jurisdiction determines that a taking of property without just compensation would result. 43 CFR 10.10(c). In the case of culturally unidentifiable remains and associated funerary objects, the museum or agency must prove it has a right of possession or, if it cannot prove such a right, it must repatriate the remains to the tribe upon whose tribal or aboriginal lands the remains were found, if such tribes agree to accept them. 43 CFR 10.11(c).

The state repatriation process begins with the filing of a written claim with the board and the person possessing the claimed human skeletal remains and funerary objects. 22-3-912(1)(a), MCA. The claimant must then prove by a preponderance of the evidence the claimant's cultural affiliation with the remains and objects, and that the possessing entity has no right of possession. 22-3-912(1)(b)(i), (ii), MCA. A hearing under the Montana Administrative Procedure Act is the forum where the claimant presents its case. 22-3-913(1), MCA. If the hearing examiner concludes that the remains and objects are culturally affiliated with the claimant, and that the possessing entity has no right of possession, then the examiner shall recommend to the board that it order repatriation. 22-3-913(3)(a), MCA. Conversely, if the examiner finds that there is no cultural affiliation and that the possessing entity has a right of possession, then a recommendation must be made that repatriation not occur and that possession remain with the possessing entity. 22-3-913(3)(b). The board, upon receipt of the examiner's recommendation, makes the final decision on repatriation, subject to appeal to state district court. 22-3-916, 22-3-917, MCA.

As they apply to Native American human remains and funerary items, the state repatriation procedures are in potential conflict with the NAGPRA repatriation procedures. Under NAGPRA, if a museum or agency inventory establishes the cultural affiliation of Native American remains and associated funerary objects, they are to be expeditiously repatriated upon the request of lineal descendants or the affiliated tribe. 25 USC 3005(a)(1); 43 CFR 10.14. Under the Repatriation Act, even

when cultural affiliation is established during an inventory process, a claimant, before repatriation may occur, must in an administrative hearing still prove cultural affiliation and that the possessing entity has no right of possession. 22-3-912(1)(b)(i), (ii), 22-3-913, MCA.

The Montana state repatriation process could be construed to undermine the federal directive for expeditious repatriation when cultural affiliation is established by an inventory; duplicates the process for establishing cultural affiliation, which occurs during the federal inventory process; and imposes additional administrative processes and costs on claimants beyond what is required under NAGPRA.

In certain circumstances, NAGPRA does require claimants to prove cultural affiliation and disprove a museum's right of possession. With regard to human remains and associated funerary objects, claimants must prove cultural affiliation only when affiliation has not been established through the inventory process, but claimants do not have to prove that a museum or agency lacks a right of possession in human remains and associated funerary objects. 25 USC 3005(a)(1), (4); 43 CFR 10.10(b). Regarding unassociated funerary objects, a claimant is obligated to prove that the holding museum or agency lacks any right of possession before repatriation can occur. 25 USC 3005(a)(2), (c). A claimant must prove cultural affiliation only when the summary process does not establish such affiliation. 25 USC 3005(a)(4). In instances where it is necessary under NAGPRA for a claimant to present evidence, the evidence is submitted to the possessing entity itself, rather than to a hearing examiner in a neutral administrative forum. See 43 CFR10.10; (*See also*, *Fallon Paiute-Shoshone Tribe v. US Bureau of Land Management)*, 455 F.Supp.2d 1207 (Dist. Nev. 2006).

A claimant that must prove cultural affiliation and/or that a museum or agency lacked a right of possession would thus be required to present evidence to two different bodies: the possessing entity under NAGPRA and the hearings examiner under the Repatriation Act. It is quite possible that those two bodies may come to different conclusions as to affiliation and repatriation. Appeals from these decisions would go to different courts: federal district court under NAGPRA, and state district court under the Repatriation Act. In such an event, it could be impossible for a claimant to simultaneously comply with both the federal repatriation process and the state repatriation process.

Given that certain provisions of the Repatriation Act could be construed to overlap and conflict with NAGPRA, as they apply to Native American remains and funerary objects held by facilities that receive both state and federal funding, the board believes that these conflicts may be overcome by the distinctions outlined in the proposed rule. These distinctions relieve the board from constructing a duplicative and potentially conflicting set of administrative rules with regard to museums and agencies that receive federal funding and possess Native American remains and funerary objects, and ensure that such entities are protected from liability that may arise under conflicting state law. Further, the distinctions eliminate

the confusion and conflicts that could arise in attempting to comply with two different sets of law–federal and state–at the same time.

Because the proposed rules will be implementing the Repatriation Act, there is no need that these rules mirror the NAGPRA repatriation rules. The board, however, has used some of the NAGPRA rules as models for these proposed rules. The board has taken this approach because the NAGPRA rules have gone through extensive public review and the resulting rules are clear and fairly concise.

Finally, and importantly, the above approach is consistent with recommendations made by the Montana Attorney General's Office.

NEW RULE III DEFINITIONS In addition to the definitions found in 22-3-903, MCA, the following definitions apply in this subchapter:

(1) "Culturally unidentifiable human skeletal remains or funerary objects" means human remains and funerary objects in a museum or an agency's possession for which no lineal descendant or cultural affiliation has been identified in the inventory process described in 22-3-911, MCA.

(2) "Group" means a "tribal group" as defined in 22-3-803, MCA, or a "cultural group" as defined in 22-3-805, MCA.

(3) "Identifiable earlier tribe" means:

(a) Blackfeet;
(b) Gros Ventres;
(c) Crow;
(d) Sioux;
(e) Kootenai (Flathead Reservation);
(f) Assiniboine (Fort Belknap Reservation);
(g) Assiniboine (Fort Peck Reservation);
(h) Chippewa (Rocky Boy's Reservation and Little Shell Tribe);
(i) Pend d'Oreille, Flathead (Flathead Reservation);
(j) Salish or Upper Kalispell (Flathead Reservation);
(k) Cheyenne;
(l) Cree (Rocky Boy's Reservation);
(m) Kiowa;
(n) Shoshone;
(o) Bannock; and
(p) Apachean.

AUTH: 22-3-904, MCA
IMP: 22-3-904, 22-3-911, 22-3-912, MCA

Statement of Reasonable Necessity: 22-3-911, MCA, directs that an agency or museum, as those terms are defined in the Repatriation Act, shall complete an inventory identifying, among other things, the human skeletal remains or funerary objects that are not clearly identifiable as to cultural affiliation. The Repatriation Act, however, does not define or explain what "culturally unidentifiable" means. The new rule provides a definition, which was taken from the NAGPRA regulations, 43 CFR

10.2(e)(2). The board opted to use the NAGPRA definition because this definition is well accepted by professionals in this field, and the board saw no need to craft its own definition. In addition, the board believed that maintaining consistency between the federal and state rules, where appropriate, will eliminate unnecessary confusion.

In addition, the board considered whether or not it should propose rules regarding disposition of culturally unidentifiable human remains or funerary objects. NAGPRA regulations do address the disposition of culturally unidentifiable human remains and associated funerary objects. 43 CFR 10.11. In summary, these federal regulations require that a museum or federal agency must initiate a consultation process with Indian tribes or Native Hawaiian organizations arising from either a request to transfer control of culturally unidentifiable remains and associated funerary objects from an Indian tribe or Native Hawaiian organization, or if no request is received, before any offer to transfer control of culturally unidentifiable human remains and associated funerary objects is made. 43 CFR 10.11(b)(1)(i), (ii).

The Repatriation Act, however, does not empower the board to adopt rules regarding disposition of culturally unidentifiable human remains or funerary objects. The board's rulemaking authority under the Repatriation Act is limited to addressing claims for repatriation of culturally affiliated human remains and funerary objects. Given this lack of statutory authority, the board declines to propose such rules.

The Repatriation Act defines "right of possession" in part as "possession obtained with the voluntary consent of a group or individual that had authority of alienation over the human skeletal remains or funerary object." 22-3-903(15)(b), MCA. In comments the board received to the last set of proposed repatriation rules (MAR Notice No. 2-65-432 published October 14, 2010), which were not adopted, a commenter requested that the board define the word "group." After considering this request, the board proposes to use the definitions of tribal group and cultural group. These definitions adequately address the subject matter, and the board saw no need to craft its own definitions.

The Repatriation Act defines "cultural affiliation" as the "existence of a shared group identity that can reasonably be traced historically or anthropologically between a tribal group and an identifiable earlier tribe. It may also include a shared identity that can reasonably be traced historically between an individual and an identifiable individual lineal descendant or next of kin." 22-3-903(6), MCA. The Repatriation Act, however, does not define the term "identifiable earlier tribe." Given that this term is an integral part of the definition of "cultural affiliation," the board believes that it is important to define it so that everyone is working from the same base of knowledge.

Most of the list of tribes was taken from the Montana House Joint Resolution No. 27 (2009 legislative session) urging educators, journalists, and public speakers in Montana to learn and use, when writing or speaking, the names of each tribe in Montana as used in the tribe's own language. Experts on the board also identified three additional earlier tribes. One such earlier tribe is the Kiowa, which has been

documented as having members in Montana in the early 18th century but whose members moved south along the Front Range in the late 18th century and now have tribal headquarters in Oklahoma. Others would be the Shoshone or Bannock, who were probably residents of Montana for thousands of years, but who now have tribal headquarters in Idaho and Wyoming. Finally, the Apacheans (Athabaskan speakers including modern Navajo and Apaches) moved from Alberta through Montana to the eastern Great Basin about 1200 years ago, and down the Rocky Mountain Front perhaps 500 years ago. The board believes the proposed list is complete. However, future other "identifiable earlier tribes" may be documented as having been resident in Montana.

NEW RULE IV PETITION TO ADD A TRIBE (1) A person, as defined in 22-3-903(12), MCA, or tribe may petition the board to add a tribe or tribes to the list in [NEW RULE III]. The petition must be in writing and include evidence supporting the proposal to add a tribe or tribes to the list.

(2) The board shall consider each petition and decide, based on the petitioner's evidence and any other evidence coming to the board's attention, whether adding a tribe or tribes to the list is justified.

(3) If, based on a preponderance of the evidence, the board finds that the petition documents an identifiable earlier tribe, the board shall propose to amend [NEW RULE III].

(4) If, based on a preponderance of the evidence, the board finds that the petition fails to document an identifiable earlier tribe, the board shall dismiss the petition without prejudice, allowing a person to resubmit a petition with additional evidence.

AUTH: 22-3-904, MCA
IMP: 22-3-903, 22-3-904, MCA

Statement of Reasonable Necessity: The board proposes a process allowing a person to petition the board to add to the list. The board has chosen this approach because it is certainly possible that a person may offer evidence about a tribe or tribes that the board has not considered. The board proposes a "preponderance of evidence" standard as the benchmark for finding if a tribe or tribes should be passed on to the rulemaking process under the Montana Administrative Procedure Act. The board proposes this standard because it is the most common standard used in civil proceedings. This standard means that the evidence shows as a whole that the fact(s) sought to be proved is more probable than not. The Repatriation Act uses a "preponderance of evidence" standard to determine cultural affiliation.

The board considered alternatives to the "preponderance of evidence" standard. First, it considered whether any evidentiary standard was appropriate. The board rejected this alternative because without an evidentiary standard of some kind, the board would have no framework to make a decision and the process would appear arbitrary and fickle. Second, the board considered standards greater than a preponderance of evidence, such as clear and convincing evidence. "Clear and

convincing" evidence is evidence that is not a mere preponderance of the evidence but a preponderance of evidence that is definite, clear, and convincing. "Clear and convincing" does not mean unanswerable or conclusive evidence or evidence beyond a reasonable doubt (applied in criminal cases). *Thibodeau v. Bechtold*, 347 Mont. 277, paragraph 23, (2008). The board determined the "clear and convincing" and "beyond a reasonable doubt" standards were too severe given that the Repatriation Act and NAGPRA repatriation regulations apply a "preponderance of evidence" standard and that the stricter standards generally are used in criminal and related matters.

Since the board has proposed to list the "identifiable earlier tribes" in rule, an amendment to the rule must follow the Montana Administrative Procedure Act. This process will allow public comment on the board's decision to add a tribe or tribes to the list. In (4), the board proposes that if a petitioner does not meet the burden of proof, then the board must dismiss the petition without prejudice. "Without prejudice" means that the petitioner may resubmit its petition at a later date buttressed with additional evidence. The board opted for the "without prejudice" standard because it allows for the possibility that new evidence may come to light, supporting a decision to add to the list. The board considered the alternative of dismissing a petition with prejudice, meaning a petitioner could not refile a petition on the same matter. This standard was judged too harsh, since evidence regarding tribes is evolving and no good reason exists to truncate the learning process.

In comments received to the board's last set of proposed repatriation rules, which were not adopted, a commenter suggested that the board change the statutory definition of "Right of possession" by striking the word "nonculturally" and replacing it with the words "culturally unidentifiable." 22-3-903(15), MCA. The board has no authority to change a statutory definition. Only the Montana Legislature may do that. In addition, the board must follow the definition of "Right of possession" when implementing the Repatriation Act.

This commenter also suggested that the board adopt NAGPRA's definition of "cultural affiliation." 43 CFR 10.2(e)(1). The Repatriation Act, however, defines "cultural affiliation" in 22-3-903(6), MCA, and since, as discussed above, these proposed rules address areas not governed by NAGPRA, the board must follow the Montana Legislature's definition.

NEW RULE V CONTENTS OF A CLAIM FOR REPATRIATION (1) A claimant shall file its written claim with the board. A written claim for repatriation must include a description of the claimant's cultural affiliation to the human skeletal remains or funerary objects and an explanation why the possessing entity does not have the right of possession.

(2) In reviewing a claim, the board shall determine whether the claim includes the information described in (1). The board may not review the merits of the claim at this stage of the review.

(3) If a claimant fails to provide the above information, the board shall dismiss and return the claim to the claimant. A claimant may file a revised claim with the board.

AUTH: 22-3-904, MCA
IMP: 22-3-904, 22-3-912, MCA

Statement of Reasonable Necessity: 22-3-912, MCA, allows for the filing of claims for repatriation. This statute, however, is unclear regarding what minimum information a claim must contain and what happens if a claim is deemed insufficient. New Rule V is necessary to provide the information that a claim must have and clarify that a claim omitting the necessary information must be dismissed, but that the claimant may refile a claim.

In comments the board received to the last set of proposed repatriation rules, which again were not adopted, a commenter asked what standard of evidence should be utilized for a claim to be dismissed under this proposed rule. Under proposed (2), the board would determine whether a claim contains the minimum information since, under the Repatriation Act, the claimant must file the claim with the board. 22-3-912(1)(a), MCA. No standard of evidence would apply at this stage. A claim either has the information or it does not. That is, the claimant must state the claimant's cultural affiliation with the human remains or funerary objects and why the claimant believes the possessing entity does not have the right of possession. At this point, all the board would be reviewing is whether the claim includes these elements. The board would not be determining if the claimant has proven by a preponderance of the evidence that the claimant has a cultural affiliation with the human remains or funerary objects and that the possessing entity does not have a right of possession. That is for the hearing examiner to decide at a hearing. The board believes it is important that it act as the initial reviewer so that the hearing examiner is not burdened with this responsibility. After the conclusion of the hearing, the hearing examiner issues a recommended decision to the board. 22-9-913(3)(a), (b), and (c), MCA. The board then reviews the hearing examiner's decision and issues findings of fact and conclusions of law regarding the case. 22-3-916(1)(a), (b), and (c), MCA.

The board considered other alternatives to this approach of having the claim refiled if it lacked sufficient information. For example, the board could accept a filing and have its staff complete the details by contacting the claimant. The board rejected this approach because the claimant is the person who best knows its claim and is best able to express its request. Also, the board does not have the staff to assist claimants with their claims. Another alternative is that the board could simply reject an incomplete claim and not allow refiling. The board believed this approach was punitive and would not serve the goals of the Repatriation Act.

NEW RULE VI CRITERIA FOR DETERMINING LINEAL DESCENT AND CULTURAL AFFILIATION WHEN REVIEWING A REPATRIATION CLAIM (1) A

lineal descendant is an individual tracing his or her ancestry directly and without interruption by:

(a) means of the traditional kinship system of the appropriate tribal or other cultural group; or

(b) the common law system of decendance to a known individual whose human skeletal remains or funerary objects are being requested under these rules.

(2) Cultural affiliation is a relationship of shared group identity that may be reasonably traced historically or anthropologically between a tribal group and an identifiable earlier tribe. It may also include a shared identity that can reasonably be traced historically between an individual and an identifiable individual lineal descendant or next of kin. All of the following requirements must be met to determine cultural affiliation between a claimant and the human remains or funerary objects:

(a) existence of an identifiable present-day Indian tribe; and

(b) evidence of the existence of an identifiable earlier group. Support for this requirement may include, but is not necessarily limited to evidence sufficient to:

(i) establish the identity and cultural characteristics of the earlier group; or

(ii) document distinct patterns of material culture manufacture and distribution methods for the earlier group; and

(c) evidence of the existence of a shared group identity that can be reasonably traced between the present-day Indian tribe and the earlier group. Evidence to support this requirement must establish that a present-day Indian tribe has been identified from prehistoric or historic times to the present as descending from the earlier group.

(3) A finding of cultural affiliation should be based upon an overall evaluation of the totality of the circumstances and evidence pertaining to the connection between the claimant and the material being claimed and should not be precluded solely because of some gaps in the record.

(4) Evidence of a kin or cultural affiliation between a present-day individual, Indian tribe, and human remains or funerary objects must be established by using the following types of evidence:

(a) geographical;

(b) kinship;

(c) archeological;

(d) anthropological;

(e) linguistic;

(f) folklore;

(g) oral tradition;

(h) historical; or

(i) other relevant information or expert opinion.

AUTH: 22-3-904, MCA
IMP: 22-3-903, 22-3-904, 22-3-912, MCA

Statement of Reasonable Necessity: As noted in the Statement of Reasonable Necessity for New Rule I, the board must adopt rules addressing criteria for determining lineal descent and cultural affiliation. The criteria for a lineal

descendent are derived from the NAGPRA regulations, 43 CFR 10.14(b). The board opted to use the NAGPRA definition because this definition is well accepted by professionals in this field, and the board saw no need to craft its own definition. This definition concisely and clearly defines the criteria. In addition, the board believed that maintaining consistency between the federal and state rules, where appropriate, will eliminate unnecessary confusion.

The cultural affiliation criteria are derived from the definition of "cultural affiliation" in 22-3-903(6), MCA, and the NAGPRA regulations, 43 CFR 10.14(c), (d), and (e). The board took this approach because it determined that the criteria for determining cultural affiliation should be consistent with the statutory definition of "cultural affiliation" under 22-9-903(6), MCA. The board chose to follow the NAGPRA subsections addressing requirements for establishing cultural affiliation because these requirements are well accepted by professionals in this field, and the board saw no need to write its own requirements.

NEW RULE VII DELAY OF REPATRIATION FOR SCIENTIFIC STUDY

(1) If the hearing examiner determines that a possessing entity has provided evidence supporting a good faith effort regarding scientific study, the hearing examiner shall provide a reasonable period of delay, not to exceed 12 months from the date of the hearing examiner's order, to allow completion of the study before repatriation.

AUTH: 22-3-904, MCA
IMP: 22-3-904, 22-3-915, MCA

Statement of Reasonable Necessity: Section 22-3-915, MCA, allows the hearing examiner to order a reasonable delay of repatriation if the possessing entity has provided evidence supporting a good faith effort regarding a scientific study. The board strongly believes that a maximum of 12 months is sufficient for such a study. This period is the same maximum period allowed for scientific studies under the Protection Act. The board considered time periods less than and greater than 12 months. The board determined that maintaining consistency with the Protection Act was important since the board implements both of these laws.

In comments the board received to the last set of proposed repatriation rules, a commenter stated that it opposed scientific studies of any kind, urging that no invasive or intrusive scientific studies be allowed. The Repatriation Act, however, allows the hearing examiner to approve a scientific study by a possessing entity on human skeletal remains or funerary object if the possessing entity has provided evidence supporting a good faith effort regarding a scientific study. 22-3-915(2), MCA. Given this law, the board cannot prevent scientific studies.

4. The board proposes to transfer the following rules:

OLD	NEW	
ARM 2.65.102	ARM 2.65.301	PROTECTION OF SITE

AUTH: 22-3-804, MCA
IMP: 22-3-805, 22-3-808, 22-3-209, MCA

ARM 2.65.103 ARM 2.65.302 NOTICE AND REPORTING REQUIREMENTS

AUTH: 22-3-804, MCA
IMP: 22-3-804, 22-3-805, MCA

ARM 2.65.104 ARM 2.65.303 FIELD REVIEW

AUTH: 22-3-804, MCA
IMP: 22-3-804, 22-3-805, MCA

ARM 2.65.105 ARM 2.65.304 REMOVAL OF REMAINS OR BURIAL MATERIALS

AUTH: 22-3-804, MCA
IMP: 22-3-804, 22-3-805, MCA

ARM 2.65.106 ARM 2.65.305 DISPOSITION OF REMAINS AND BURIAL MATERIALS

AUTH: 22-3-804, MCA
IMP: 22-3-805, MCA

ARM 2.65.107 ARM 2.65.306 PERMITS FOR SCIENTIFIC ANALYSIS

AUTH: 22-3-804, MCA
IMP: 22-3-804, 22-3-806, MCA

ARM 2.65.108 ARM 2.65.307 REPORTS AND BURIAL REGISTRY

AUTH: 22-3-804, MCA
IMP: 22-3-804, MCA

Statement of Reasonable Necessity: The board is proposing the renumbering of its current rules to better serve those who use the rules, and to follow the Secretary of State's guidance regarding title organization. The rules will be more logically separated in subchapters by topic.

5. Concerned persons may submit their data, views, or arguments concerning the proposed action either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Monica Abbott, Department of Administration, 125 N. Roberts, Room 155, P.O. Box 200101, Helena, Montana 59620-0101; telephone (406) 444-2032; TTY (406) 444-1421; fax (406) 444-6194;

or e-mail mabbott@mt.gov and must be received no later than 5:00 p.m. on April 11, 2013.

6. Michael Manion, Chief Legal Counsel for the Department of Administration, has been designated to preside over and conduct this hearing.

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

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

9. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. Notification was sent to the sponsor of HB 165 by e-mails dated September 7, 2011, and September 23, 2011, that the board was contemplating work on the substantive content and the wording of the proposal notice. On February 1, 2012, the primary sponsor informed the board by e-mail that she had no initial comments to offer and she advised the board to proceed. Given the sponsor's comments, the board began drafting the proposal notice. The bill sponsor was provided a copy of this notice on February 27, 2013.

By: /s/ Reuben Mathias
Reuben Mathias, Chair
Burial Preservation Board

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

Certified to the Secretary of State March 4, 2013

BEFORE THE BOARD OF WATER WELL CONTRACTORS AND
THE DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION OF THE STATE OF MONTANA

In the matter of the amendment of ARM 36.21.415 pertaining Board of Water Well Contractors' fees	)))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On April 10, 2013, at 9:00 a.m., the Department of Natural Resources and Conservation will hold a public hearing in the Fred Buck Conference Room (bottom floor), Water Resources Building, 1424 Ninth Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rule.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than March 29, 2013, to advise us of the nature of the accommodation that you need. Please contact Art Robinson, Department of Natural Resources and Conservation, P.O. Box 201601,1424 Ninth Avenue, Helena, MT 59620-1601; telephone (406) 444-6643; fax (406) 444-0533; e-mail arobinson@mt.gov.

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

36.21.415 FEE SCHEDULE

(1) Application and examination	
(a) Contractors	~~$300.00~~ $375
(b) Drillers	~~250.00~~ $275
(c) Monitoring well constructor	~~300.00~~ $375
(2) Re-examination	
(a) Water well contractor	~~150.00~~ $175
(b) Water well driller	~~125.00~~ $150
(c) Monitoring well constructor	~~150.00~~ $175
(3) Renewal	
(a) Contractor	~~270.00~~ $375
(b) Driller	~~170.00~~ $275
(c) Monitoring well constructor	~~270.00~~ $375
~~(d) Contractor/monitoring well constructor~~	~~295.00~~
~~(e)~~ (d) Monitoring well constructor/water well driller	~~275.00~~ $375

(f) through (h) remain the same, but are renumbered (e) through (g).

(4) Late renewal	~~75.00~~ $150

(a) through (8) remain the same.

AUTH: 37-43-202, MCA

IMP: 37-43-202, 37-43-303, 37-43-305, 37-43-307, MCA

REASONABLE NECESSITY: The Board of Water Well Contractors is required to set fees commensurate with program costs (37-43-202, MCA). Based on an evaluation of program cost and revenues, an increase in fees is necessary. 233 people will be affected with a total increase in revenue of $23,000 annually. The renewal fee for contractor/monitoring well constructor has been removed because it is obsolete. A licensed contractor does not need a separate license to construct monitoring wells (37-43-302(1), MCA).

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: Art Robinson, Department of Natural Resources and Conservation, P.O. Box 201601,1424 Ninth Avenue, Helena, MT 59620-1601; telephone (406) 444-6643; fax (406) 444-0533; e-mail arobinson@mt.gov, and must be received no later than 5:00 p.m. on April 11, 2013.

5. Art Robinson, Department of Natural Resources and Conservation, has been designated to preside over and conduct this hearing.

6. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding conservation districts and resource development, forestry, oil and gas conservation, trust land management, water resources, or a combination thereof. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to Lucy Richards, PO Box 201601, 1625 Eleventh Avenue, Helena, MT 59620; fax (406) 444-2684; e-mail lrichards@mt.gov; or may be made by completing a request form at any rules hearing held by the department.

7. An electronic copy of this proposal notice is available through the department's web site at http://www.dnrc.mt.gov. 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.

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

/s/ John E. Tubbs
JOHN E. TUBBS
Director
Natural Resources and Conservation

/s/ Fred Robinson
FRED ROBINSON
Rule Reviewer

Certified to the Secretary of State on March 4, 2013.

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

In the matter of the amendment of ARM 37.30.101, 37.30.102, 37.30.405, 37.30.730, 37.30.1001, 37.30.1002, 37.30.1401, and 37.31.201 pertaining to updates to the disability transitions program	))))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On April 3, 2013, at 11:00 p.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, at 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 March 27, 2013, 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:

37.30.101 DEFINITIONS (1) through (11) remain the same.

(12) "Montana Vocational Rehabilitation program (MVR)" means the program of federal and state authorized vocational rehabilitation services for persons with disabilities provided through the department's ~~Disability Services Division~~ Disability, Employment, and Transitions Division, inclusive of the Blind and Low Vision Services program and those federal programs authorized at 29 USC 701, et seq.

(13) through (23) remain the same.

AUTH: 53-7-102, 53-7-203, 53-7-206, 53-7-302, 53-7-315, 53-19-112, MCA
IMP: 53-7-101, 53-7-103, 53-7-105, 53-7-106, 53-7-107, 53-7-108, 53-7-109, 53-7-201, 53-7-202, 53-7-203, 53-7-204, 53-7-205, 53-7-206, 53-7-301, 53-7-302, 53-7-303, 53-7-306, 53-7-310, 53-7-314, 53-7-315, 53-19-101, 53-19-102, 53-19-103, 53-19-104, 53-19-105, 53-19-106, 53-19-110, 53-19-112, MCA

37.30.102 VOCATIONAL REHABILITATION POLICY: INCORPORATION BY REFERENCE OF FEDERAL AND STATE AUTHORITY (1) The department,

except as otherwise provided in this chapter, adopts and incorporates by reference, for purposes of administering the program of vocational rehabilitation services, the federal regulations specified in (2) as presented in the ~~July 1, 2006~~ July 1, 2010 edition of the Code of Federal Regulations (CFR). These federal regulations, adopted by the United States Department of Education, govern the administration and delivery by the states of various aspects of vocational rehabilitation services.

(2) remains the same.

(3) The department, except as otherwise provided in this chapter, adopts and incorporates by reference, for purposes of administering the program of vocational rehabilitation services, the policies specified in (4), as presented in the Montana Vocational Rehabilitation Policy Manual. Copies of the policies may be obtained through the Department of Public Health and Human Services, ~~Disability Services Division, 111 N. Sanders,~~ Disability, Employment, and Transitions Division, 111 N. Last Chance Gulch, Suite 4C, P.O. Box 4210, Helena, MT 59604-4210.

(4) The following Montana vocational rehabilitation policies govern the administration and delivery of vocational rehabilitation services as specified:

(a) remains the same.

(b) For purposes of staff and consumer safety: Montana Vocational Rehabilitation Policy C1 - "Personal Safety" dated ~~December 27, 2002~~ May 9, 2011..

(c) through (h) remain the same.

AUTH: 53-7-102, 53-7-206, 53-7-302, 53-7-315, MCA
IMP: 53-7-102, 53-7-103, 53-7-105, 53-7-106, 53-7-108, 53-7-203, 53-7-205, 53-7-302, 53-7-303, 53-7-306, 53-7-310, 53-7-314, MCA

37.30.405 VOCATIONAL REHABILITATION PROGRAM: PAYMENT FOR SERVICES (1) through (3) remain the same.

(4) The department may pay for the costs for the provision of any services that are authorized to be provided to the consumer through the consumer's IPE to the extent that the consumer's income and financial resources, determined as provided in this rule and ARM 37.30.407, do not exceed the maximum amounts allowable for income and for financial resources calculated by the department as provided for in (4)(a) and (b).

(a) The maximum allowable level for income is a prospective 12 month annual income calculated at 250% of the ~~2009~~ 2013 U.S. Department of Health and Human Services poverty guidelines for households of different sizes.

(b) through (6) remain the same

AUTH: 53-7-102, 53-7-206, 53-7-315, MCA
IMP: 53-7-102, 53-7-105, 53-7-108, 53-7-205, 53-7-310, MCA

37.30.730 VOCATIONAL REHABILITATION PROGRAM: PROVIDER FEES (1) remains the same.

(2) The department adopts and incorporates by this reference the Vocational Rehabilitation Fee Schedule, dated ~~October 1, 2007~~ December 12, 2011, and published by the department as Montana Vocational Rehabilitation Policy R, "Fee Schedule Appendix A", of the Montana Vocational Rehabilitation Policy Manual. A

copy of the policy may be obtained through the Department of Public Health and Human Services, ~~Disability Services Division, 111 N. Sanders~~ Disability, Employment, and Transitions Division, 111 N. Last Chance Gulch, P.O. Box 4210, Helena, MT 59604-4210.

AUTH: 53-7-102, 53-7-203, 53-7-302, 53-7-315, MCA
IMP: 53-7-102, 53-7-105, 53-7-108, 53-7-203, 53-7-302, 53-7-303, 53-7-306, 53-7-307, 53-7-310, MCA

37.30.1001 STANDARDS FOR PROVIDERS OF SERVICES FUNDED THROUGH CERTAIN ~~DISABILITY TRANSITIONS PROGRAMS:~~ DISABILITY, EMPLOYMENT, AND TRANSITIONS DIVISION: GENERALLY (1) through (5) remain the same.

AUTH: 53-2-201, 53-7-102, 53-7-203, 53-7-206, 53-7-302, 53-7-315, MCA
IMP: 53-2-201, 53-7-102, 53-7-103, 53-7-203, 53-7-302, 53-7-303, MCA

37.30.1002 STANDARDS FOR PROVIDERS OF SERVICES FUNDED THROUGH CERTAIN ~~DISABILITY TRANSITIONS PROGRAMS:~~ DISABILITY, EMPLOYMENT, AND TRANSITIONS DIVISION: ENROLLMENT AS A PROVIDER OF PROGRAM SERVICES (1) through (5) remain the same.

(6) Copies of the standards adopted and incorporated by reference in this rule may be obtained as follows:

(a) the CARF standards may be obtained by temporary loan from the department through the Department of Public Health and Human Services, ~~Disability Transitions Programs~~ Disability, Employment, and Transitions Division, P.O. Box 4210, Helena, MT 59604-4210 or by purchase from CARF, 4891 E. Grant Road, Tucson, AZ 85712;

(b) the NAC standards may be obtained by temporary loan from the department through the Department of Public Health and Human Services, ~~Disability Transitions Programs~~ Disability, Employment, and Transitions Division, P.O. Box 4210, Helena, MT 59604-4210 or by purchase from NAC, 15 E. 40th Street, Suite 1004, New York, NY 10016;

(c) the RSAS standards may be obtained by temporary loan from the department through the Department of Public Health and Human Services, ~~Disability Transitions Programs~~ Disability, Employment, and Transitions Division, P.O. Box 4210, Helena, MT 59604-4210 or by purchase from RSAS, 1309 Horne Street NE, Olympia, WA 98516; and

(d) copies of the federal requirements for a federally authorized independent living center may be obtained through the Department of Public Health and Human Services, ~~Disability Transitions Programs~~ Disability, Employment, and Transitions Division, P.O. Box 4210, Helena, MT 59604-4210.

(7) through (11) remain the same.

AUTH: 53-2-201, 53-7-102, 53-7-203, 53-7-206, 53-7-302, 53-7-315, MCA
IMP: 53-2-201, 53-7-102, 53-7-103, 53-7-203, 53-7-302, 53-7-303, MCA

37.30.1401 FAIR HEARINGS (1) through (8) remain the same.

(9) The department adopts and incorporates by ~~this~~ reference the conciliation procedures, dated December 27, 2002, and published by the department as Policy E, "Counselor Determinations", of the Montana Vocational Rehabilitation Manual. A copy of the policy may be obtained through the Department of Public Health and Human Services, ~~Disability Services Division, 111 N. Sanders~~ Disability, Employment, and Transitions Division, 111 N. Last Chance Gulch, P.O. Box 4210, Helena, MT 59604-4210.

AUTH: 53-7-102, 53-7-203, 53-7-206, 53-7-302, 53-7-315, 53-19-112, MCA
IMP: 53-7-102, 53-7-103, 53-7-105, 53-7-106, 53-7-203, 53-7-205, 53-7-206, 53-7-302, 53-7-303, 53-7-310, 53-7-314, 53-19-103, 53-19-106, 53-19-112, MCA

37.31.201 INDEPENDENT LIVING REHABILITATION PROGRAM: SERVICES (1) remains the same.

(2) Independent living services are limited to those services specified in Montana's ~~3~~ three-year state plan for independent living rehabilitation services submitted to and approved by the federal government. The Montana ~~3~~ three-year state plan for independent living services under Title VII of the federal Rehabilitation Act of 1973 (29 USC 796) is ~~hereby~~ adopted and incorporated by reference and may be obtained from the Department of Public Health and Human Services, ~~Disability Services Division~~ Disability, Employment, and Transitions Division, P.O. Box 4210, Helena, MT 59604-4210.

(3) and (4) remain the same.

AUTH: 53-7-102, 53-7-315, 53-19-112, MCA
IMP: 53-7-102, 53-7-103, 53-19-103, 53-19-105, MCA

4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (the department) is proposing amendments to ARM 37.30.101, 37.30.102, 37.30.405, 37.30.730, 37.30.1001, 37.30.1002, 37.30.1401, and 37.31.201 regarding the vocational rehabilitation program.

The department reorganized the Disability Services Division (DSD) in 2009 at which point DSD was split into two divisions. These amendments are necessary to reflect the name and address change due to reorganization and to update these rules to meet current practices.

The proposed rules are described below.

ARM 37.30.101, 37.30.102, 37.30.730, 37.30.1001, 37.30.1002, 37.30.1401, and 37.31.201

These rules are being updated in order to reflect the name and address changes due to reorganization within the department.

ARM 37.30.102

The department is proposing to amend the revision date of the Montana Vocational Rehabilitation Policy C1 - "Personal Safety" as it was significantly revised in May of 2011.

ARM 37.30.405

The department is proposing to amend ARM 37.30.405, Vocational Rehabilitation Program: Payment for Services. This rule sets forth the criteria that allow for the department to pay for services being made available to persons who are eligible for vocational rehabilitation services. The rule provides that the payment for services by the department may occur if the consumer's income and financial resources do not exceed maximum levels for income and resources established through the rule. This rule amendment revises the maximum level of allowable income. Currently the rule provides that the maximum level is 250% of the 2009 United States Department of Health and Human Services poverty guidelines for households. The rule amendment would revise this level by replacing the year 2009 guidelines with the year 2013 guidelines.

Fiscal Impact

There is no fiscal impact due to this rulemaking.

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., April 11, 2013.

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/ Shannon L. McDonald
Shannon L. McDonald
Rule Reviewer

/s/ Richard H. Opper
Richard H. Opper, Director
Public Health and Human Services

Certified to the Secretary of State March 4, 2013.

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

In the matter of the amendment of ARM 37.34.2003 pertaining to discontinuation of services	)))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On April 3, 2013, 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 rule.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Department of Public Health and Human Services no later than 5:00 p.m. on March 27, 2013, 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 rule as proposed to be amended provides as follows, new matter underlined, deleted matter interlined:

37.34.2003 DISCONTINUATION BY PROVIDER OF SERVICE~~S~~ DELIVERY: PROVIDER INITIATED (1) When a person receiving developmental disability community services from a service provider refuses to cooperate in service delivery as provided for in their plan of care or otherwise fails to substantively engage in their plan of care or when the person's health and safety needs cannot appropriately be managed by the provider, the provider may follow the process provided in these rules to be relieved of service delivery responsibilities for the person. The provider will continue to provide services to ensure the persons' health and safety ~~until an alternative solution is established~~ during the course of the process provided for in this rule.

(2) The provider who wishes to discontinue the services must provide notice of the provider's intent to discontinue services in writing and submit the notice to:

(a) the regional manager or designee of the developmental disabilities program (DDP) of the region in which the person resides;

(b) through (6) remain the same.

(7) If the planning team cannot reach consensus on the implementation of a supplemental plan of care, the person(s) who does not consent may submit their disagreement along with the justification for their disagreement to the DDP program director or designee. The DDP program director or designee must:

(a) make a determination within three working days; and

(b) provide the determination in writing to the members of the planning team.

(7) remains the same, but is renumbered (8).

~~(8)~~ (9) If it is determined in the course of planning that an alternative provider is required, the case manager will assist the person, the legal representative, or both in seeking an alternative provider ~~as described in the developmental disabilities program porting policy~~. The case manager will place the person on the port list. If additional funding is required, the case manager will also place the person on the waiting list for screening into an opening with sufficient funding ~~in accordance with the screening policy of the department~~.

(10) A provider must, in good faith, participate in the implementation of a supplemental plan of care.

(11) At the expiration of 90 days following the receipt by the department of a proper notice of intent to discontinue services from a provider, the provider may proceed with the discontinuation of services for the person, if the provider, as determined by the department, has participated in good faith in a supplemental plan of care if applicable.

~~(9)~~ (12) A provider must abide by applicable statutes or regulations of the state of Montana regarding the relationship between the provider as the landlord and the person as the tenant.

(13) The person or the person's legal representative maintains their right to a fair hearing as provided for in ARM 37.5.115.

AUTH: 53-6-402, 53-20-204, MCA
IMP: 53-6-402, 53-20-205, MCA

4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) is proposing to amend in ARM 37.34.2003 pertaining to the discontinuation of services. This rule was proposed and adopted effective December 21, 2013. Comments were received during the comment period for this rulemaking which asked the department to consider removing the language that required the provider to serve a person receiving services an additional 90 days if an alternative solution was not found after an initial 90 days. The department inadvertently removed language pertaining to the initial 90 days which were intended to remain in the adopted rule.

The department also recognized during this review that person(s) on the planning team who were not in agreement with the majority determination of the team had no recourse for further presentation of their disagreement. As such, the department has added language to allow those person(s) on the planning team who disagree with the majority determination to submit their disagreement to the developmental disabilities program director for review. The department also recognized that there needed to be further language added to describe how the 90-day discontinuation process would proceed where there is a supplemental plan of care. The title of the rule has been modified to read "DISCONTINUATION BY PROVIDER OF SERVICE DELIVERY: PROVIDER INITIATED" from "DISCONTINUATION OF SERVICES:

PROVIDER INITIATED" so as to avoid confusion as to whether the person is losing eligibility for the services of the program.

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., April 11, 2013.

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/ Cary B. Lund	/s/ Richard H. Opper
Cary B. Lund	Richard H. Opper, Director
Rule Reviewer	Public Health and Human Services

Certified to the Secretary of State March 4, 2013.

BEFORE DEPARTMENT OF COMMERCE
OF THE STATE OF MONTANA

In the matter of the adoption of New Rules I through IX, regarding the Movie and TV Industries and Related Media-Tax Incentives	))))	NOTICE OF ADOPTION

TO: All Concerned Persons

1. On January 31, 2013, the Department of Commerce published MAR Notice No. 8-119-107 pertaining to the proposed adoption of the above-stated rule at page 77 of the 2013 Montana Administrative Register, Issue Number 2.

2. The department has adopted the above-stated rules as proposed: New Rule I (8.119.201), Rule ll (8.119.202), Rule III (8.119.203), Rule IV (8.119.204), Rule V (8.119.205), Rule VI (8.119.206), Rule VII (8.119.207), Rule VIII (8.119.208), Rule IX (8.119.209).

3. No comments or testimony were received.

/s/ G. Martin Tuttle
G. MARTIN TUTTLE
Rule Reviewer

/s/ Meg O'Leary
MEG O'LEARY
Director
Department of Commerce

Certified to the Secretary of State March 4, 2013.

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

In the matter of the amendment of ARM 37.108.507 pertaining to healthcare effectiveness data and information set (HEDIS) measures	))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On January 17, 2013 the Department of Public Health and Human Services published MAR Notice No. 37-623 pertaining to the proposed amendment of the above-stated rule at page 9 of the 2013 Montana Administrative Register, Issue Number 1.

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

3. No comments or testimony were received.

4. The department intends to apply these rules retroactively to January 1, 2013. A retroactive application of the proposed rules does not result in a negative impact to any affected party.

/s/ Kurt R. Moser
Kurt R. Moser
Rule Reviewer

/s/ Richard H. Opper
Richard H. Opper, Director
Public Health and Human Services

Certified to the Secretary of State March 4, 2013.

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the adoption of New Rule I pertaining to delegated authority for the disposal of public records	))))	NOTICE OF ADOPTION

TO: All Concerned Persons

1. On January 17, 2013, the Secretary of State published MAR Notice No. 44-2-183 pertaining to the public hearing on the proposed adoption of the above-stated rule at page 45 of the 2013 Montana Administrative Register, Issue Number 1.

2. The Secretary of State adopted the above-stated rule as proposed: New Rule I (44.14.106).

3. No comments or testimony were received.

/s/ JORGE QUINTANA
Jorge Quintana
Rule Reviewer

/s/ LINDA MCCULLOCH
Linda McCulloch
Secretary of State

Dated this 4th day of March, 2013.

NOTICE OF FUNCTION OF ADMINISTRATIVE RULE REVIEW COMMITTEE

Interim Committees and the Environmental Quality Council

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

Economic Affairs Interim Committee:

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

Education and Local Government Interim Committee:

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

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

- Department of Public Health and Human Services.

Law and Justice Interim Committee:

- Department of Corrections; and
- Department of Justice.

Energy and Telecommunications Interim Committee:

- Department of Public Service Regulation.

Revenue and Transportation Interim Committee:

- Department of Revenue; and
- Department of Transportation.

State Administration and Veterans' Affairs Interim Committee:

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

Environmental Quality Council:

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

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

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

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

Definitions:

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

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

Use of the Administrative Rules of Montana (ARM):

Known Subject

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

Statute

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

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies that have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through December 31, 2012. This table includes those rules adopted during the period January 1, 2013, through March 31, 2013, 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 December 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 2012/2013 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.

COMMERCE, Department of, Title 8

EDUCATION, Department of, Title 10

(Board of Public Education)

FISH, WILDLIFE AND PARKS, Department of, Title 12

(Fish, Wildlife and Parks Commission)

ENVIRONMENTAL QUALITY, Department of, Title 17

(Board of Environmental Review)

Constructed for Disposal of Coal Bed Methane Water - G-1 Classification Standards, p. 1103, 2060

17.30.702 and other rules - Department Circular DEQ-4, p. 2529, 90

17.30.1001 and other rules - Water Quality - Subdivisions/On-Site Subsurface Wastewater Treatment - Public Water and Sewage System Requirements - Solid Waste Management - Definitions - Exclusions From Permit Requirements - Subdivisions - Wastewater Treatment Systems - Plans for the Public Water Supply or Wastewater System - Fees - Operation and Maintenance Requirements for Land Application or Incorporation of Septage - Grease Trap Waste - Incorporation by Reference, p. 1169, 2067

17.30.1304 and other rules - Montana Pollutant Discharge Elimination System Permits - Permit Exclusions - Application Requirements - Incorporations by Reference, p. 1556, 2604

17.30.1330 and other rules - Concentrated Animal Feeding Operations - General Permits - Additional Conditions Applicable to Specific Categories of MPDES Permits - Modification or Revocation - Reissuance of Permits - Minor Modification of Permits - Technical Standards for Concentrated Animal Feeding Operation, p. 2510

17.36.340 and other rule - Lot Sizes: Exemptions and Exclusions, p. 2299, 265

17.38.106 and other rule - Public Water and Sewage System Requirements - Fees - Significant Deficiency, p. 1906, 2237, 212

17.85.103 and other rules - Definitions - Eligible Projects - Eligible Applicants - Application Procedure - Application Evaluation Procedure - Environmental Review and Compliance With Applicable State Law - Applications and Results Public - Loan Terms and Conditions and Reports - Accounting, p. 92

TRANSPORTATION, Department of, Title 18

18.6.402 and other rules - Motorist Information Signs, p. 1912, 2459

18.8.519 Wreckers and Tow Vehicle Requirements, p. 204

CORRECTIONS, Department of, Title 20

20.7.801 and other rules - Eastmont Chemical Dependency Treatment Center, p. 2239, 2377

20.9.101 and other rules - Youth Placement Committees, p. 2243, 51

20.9.103 and other rules - Youth Placement Committees, p. 1587, 1843

LABOR AND INDUSTRY, Department of, Title 24

Boards under the Business Standards Division are listed in alphabetical order following the department rules.

24.11.204 and other rules - Unemployment Insurance, p. 2534, 102

24.17.127 Prevailing Wage Rates for Public Works Projects, p. 2254, 114

24.101.413 and other rules - Renewal Dates and Requirements - Boiler Operating Engineer Licensure - Licensure of Elevator Contractors, Inspectors, and Mechanics - National Electrical Code - Elevator Code - Boiler Safety - Definitions - Tag-Out and Lock-Out - Stop Orders - Elevator Licensing - Elevator Inspection and Variances, p. 1932, 52

(Board of Athletic Trainers)
24.118.402 and other rules - Fee Schedule - Applications - Renewals, p. 1312, 2378

(Board of Clinical Laboratory Science Practitioners)
24.129.2101 Continuing Education Requirements, p. 1316, 2611

(Board of Medical Examiners)
24.156.618 and other rules - Testing Requirement - Reporting Obligations, p. 1319, 2464
24.156.2701 and other rules - Emergency Medical Technicians - Endorsement Application - Continuing Education Requirements - Post-Course Requirements - Obligation to Report to the Board - Complaints, p. 1809, 120

(Board of Outfitters)
24.101.413 and other rules - Renewal Dates - Requirements - Fees - Outfitter Records - NCHU Categories - Transfers - Records - Renewals - Incomplete Outfitter and Guide License Application - Guide to Hunter Ratio - Provisional Guide License, p. 2107, 2304

(Board of Physical Therapy Examiners)
I Treatments Performed Exclusively by the Physical Therapist, p. 6

(Board of Private Alternative Adolescent Residential or Outdoor Programs)
24.181.301 and other rule - Amendment - Definitions - Renewals, p. 2310, 208

(Board of Professional Engineers and Professional Land Surveyors)
24.183.1001 and other rules - Form of Corner Records - Uniform Standards for Certificates of Survey - Uniform Standards for Final Subdivision Plats, p. 1716, 2113

(Board of Real Estate Appraisers)
24.207.501 and other rules - Examination - Qualifying Education Requirements - Trainee Requirements - Mentor Requirements - Continuing Education Noncompliance - Complaints Involving Appraisal Management Companies, p. 1591, 2614

(Board of Social Work Examiners and Professional Counselors)
I Minimum Qualification Standards for Licensees to Conduct Psychological Assessments, p. 1655, 2129

24.219.401 and other rules - Fee Schedule, p. 1829, 2467

LIVESTOCK, Department of, Title 32

32.2.403 Diagnostic Laboratory Fees, p. 1445, 2068
32.2.405 and other rules - Testing Within the DSA, - Department of Livestock Miscellaneous Fees - Hot Iron Brands Required - Freeze Branding - Aerial Hunting - Identification - Identification Methodology, p. 2543
32.3.212 Additional Requirements for Cattle, p. 1462, 2069
32.4.201 and other rules - Identification of, Inspection of, Importation of Alternative Livestock - Transport Within and Into Montana - Definitions - Requirements for Mandatory Surveillance of Montana Alternative Livestock Cervidae for Chronic Wasting Disease - Alternative Livestock Monitored Herd Status for Chronic Wasting Disease - Import Requirements for Cervids, p. 104

NATURAL RESOURCES AND CONSERVATION, Department of, Title 36

I-VIII State-Owned Navigable Waterways, p. 1225, 1597, 2475
36.12.101 and other rules - Water Right Permitting, p. 1465, 2071
36.14.102 and other rules - Dam Safety - Permitting, p. 1234, 1844

PUBLIC HEALTH AND HUMAN SERVICES, Department of, Title 37

I Mandatory Cross Reporting to Law Enforcement of Crimes Against Children, p. 1832
I-III Home and Community-Based Services (HCBS) State Plan Program, p. 1509, 1733, 128
I-IV Alternatives to Out-of-State Placement for At-Risk Youths, p. 1737, 2192
I-IV Documentation for Admission to Montana State Hospital, p. 1835, 2379
I-IV Discontinuation of Services, p. 1978, 2622
I-VI Targeted Case Management Services for Substance Use Disorders, p. 2320, 269
I-XI Licensing of Specialty Hospitals, p. 1598, 54
I-XXXIII Medicaid Home and Community Services Children's Autism Program, p. 1489, 1731, 2085
37.34.101 and other rules - Developmental Disabilities Program - Regional Councils - Accreditation, p. 2435, 165
37.34.1101 and other rules - Plan of Care, p. 1983, 143
37.34.1401 and other rules - Positive Behavior Support, p. 1741, 2617
37.34.1501 and other rules - Incident Reporting, p. 1994, 148, 213
37.34.2101 and other rules - Developmental Disabilities Program Staffing, p. 249
37.34.2301 and other rules - Residential Facility Screening, p. 2140, 2630
37.36.604 Updating the Federal Poverty Index for the Montana Telecommunications Access Program, p. 2327, 247