ISSUE NO. 13

The Montana Administrative Register (MAR or Register), a twice-monthly publication, has three sections. The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted. The Rule Adoption Section contains final rule notices which show any changes made since the proposal stage. All rule actions are effective the day after print publication of the adoption notice unless otherwise specified in the final notice. The Interpretation Section contains the Attorney General's opinions and state declaratory rulings. Special notices and tables are found at the end of each Register.

Inquiries regarding the rulemaking process, including material found in the Montana Administrative Register and the Administrative Rules of Montana, may be made by calling the Secretary of State's Office, Administrative Rules Services, at (406) 444-2055.

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PROPOSAL NOTICE SECTION

BEFORE THE PUBLIC EMPLOYEES' RETIREMENT BOARD
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 2.43.2114 and 2.43.2608 establishing a process for the payment on employer contributions on behalf of working retirees, including independent contractors and other workers in PERS-covered positions	)))))))	NOTICE OF PROPOSED AMENDMENT NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On August 23, 2013, the Public Employees' Retirement Board proposes to amend the above-stated rules.

2. The Public Employees' Retirement Board will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Public Employees' Retirement Administration no later than 5:00 p.m. on August 1, 2013, to advise us of the nature of the accommodation that you need. Please contact Kris Vladic, Public Employees' Retirement Administration, P.O. Box 200131, Helena, Montana, 59620-0131; telephone (406) 444-2578, fax (406) 444-5428; TDD (406) 444-1421; or e-mail kvladic@mt.gov.

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

2.43.2114 REQUIRED EMPLOYER REPORTS (1) All reporting agencies shall file ~~required~~ the following employer reports~~,~~ for member and nonmember employees~~, other than working retiree reports required by ARM 2.43.2608 and optional member election applications required by ARM 2.43.2102,~~ no later than five working days after each regularly occurring payday~~.~~:

(a) a contributing employee report;

(b) a non-contributing employee report; and

(c) a working retiree report, which includes:

(i) a PERS retiree performing work in a PERS-covered position as an employee, an independent contractor, or through a professional employer arrangement, an employee leasing arrangement, or a temporary service contractor. A working retiree returning to a PERS-covered position in other than employee status is defined as a "worker" for purposes of this rule;

(ii) a SRS retiree performing work in a SRS-covered position as an employee;

(iii) a FURS retiree performing work in a FURS-covered position as an employee.

~~(a)~~ (2) Each report must be accompanied by statutorily required employer and employee contributions to the appropriate retirement system as follows~~.~~:

(a) the contributing employee report requires employer and employee contributions;

(b) the non-contributing employee report requires no contributions; and

(c) the working retiree report requires employer contributions only.

(3) The required contribution rate is the rate in effect at the time the employees or workers are paid, and not the contribution rate in effect when the compensation was earned.

~~(b) Beginning July 1, 2003, reporting~~

(4) Reporting agencies shall use MPERA's ~~online web-based~~ employer web reporting system and shall remit payment via automated clearing house (ACH).

~~(c)~~ (5) If the reporting agency does not have access to the internet, the employer reports may be either hard-copy or electronic, but must be in the format provided by MPERA, and must be accompanied by the payment of all applicable contributions.

~~(2)~~ (6) The report must be in alphabetical order by last name and contain for each employee or worker, regardless whether the employee or worker is a member of a MPERA-administered retirement system or not:

(a) through (e) remain the same.

(f) the actual hours for which the employee or worker received compensation; and

(g) each employee or worker who terminated during the pay period being reported.

~~(3)~~ (7) In addition to the information contained in ~~(2)~~ (6), employers must also provide the home addresses of employees and workers who are members of an MPERA-administered retirement system. Home addresses of nonmembers are not required.

(4) remains the same but is renumbered (8).

~~(5)~~ (9) Reporting agencies of the Montana university system (MUS) shall report employees in PERS-covered positions who elect the MUS optional retirement program (ORP). The MUS ORP report must include all information required in ~~(2)~~ (6). At the same time, reporting agencies of the MUS shall transmit amounts equal to the statutorily required plan choice rate and the education fund rate for those employees.

(6) remains the same but is renumbered (10).

AUTH: 19-2-403, MCA
IMP: Section 12, Chapter 178, Laws of 2013, Section 1, Chapter 239, Laws of 2013, 19-2-506, 19-3-315, 19-3-316, 19-3-412, 19-3-1106, 19-3-2117, 19-7-1101, MCA

2.43.2608 RETURN TO COVERED EMPLOYMENT BY PERS, SRS, OR FURS RETIREE – REPORT (1) An employer who ~~employs~~ pays for work performed by a retired PERS member in a position covered by PERS or in "employment covered by the retirement system" as specified in 19-3-1106, MCA, must submit a certification ~~report~~ to MPERA for each payroll period during which ~~a~~

~~retired PERS member is employed~~ the work is performed.

(a) remains the same.

(b) The PERS certification ~~report~~ must contain information for every position held by the PERS retiree, whether the position is covered by PERS or not.

(2) An employer who employs a retired SRS member in a position covered by SRS must submit a certification ~~report~~ to MPERA for each payroll period during which a retired SRS member is employed.

(3) An employer who employs a retired FURS member in a position covered by FURS must submit a certification ~~report~~ to MPERA for each payroll period during which a retired FURS member is employed.

(4) The certification ~~report~~ must include the following information for each individual referred to in (1) through (3):

(a) remains the same.

(b) pay period being ~~reported~~ certified;

(c) name and address of employer;

(d) through (f) remain the same.

(5) The employer must submit the certification ~~report~~ by filing it with MPERA no later than ten working days after each regularly occurring payday for which working retirees are reported pursuant to ARM 2.43.2114. The certification ~~report~~ must be submitted electronically using MPERA's ~~online~~ employer web~~-based~~ reporting system.

(6) A separate certification ~~report~~ must be filed with MPERA for each ~~position held by the~~ working retiree.

(7) remains the same.

AUTH: 19-2-403, MCA
IMP: Section 1, Chapter 239, Law of 2013, 19-3-1104, 19-3-1106, 19-7-1101, 19-13-301, MCA

STATEMENT OF REASONABLE NECESSITY: The Montana Public Employees' Retirement Board is amending ARM 2.43.2114 because Chapter 239, Laws of 2013 requires payment of employer contributions on working retirees in the Public Employees' Retirement System, the Sheriffs' Retirement System, and the Firefighters' Unified Retirement System. Additionally, Chapter 178, Section 12, Laws of 2013 expands working retiree to include PERS retirees who return to PERS-covered employment as an independent contractor, in addition to those who return as an employee leasing arrangement, or temporary service contractor. Both of these statutory changes impact employer reporting effective July 1, 2013.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to: Public Employees' Retirement Board, P.O. Box 200131, Helena, Montana, 59620-0131; telephone (406) 444-3154; fax (406) 444-5428; or e-mail mpera@mt.gov, and must be received no later than 5:00 p.m., August 8, 2013.

5. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must

make written request for a hearing and submit this request along with any written comments to Kris Vladic at the above address no later than 5:00 p.m., August 8, 2013.

6. If the agency receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 59 persons based on 594 current working retirees in PERS, FURS, and SRS.

7. The Public Employees' Retirement Board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 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 this notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the Secretary of State works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

9. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted by mail on May 21, 2013.

/s/ Melanie Symons
Melanie Symons, Legal Counsel
and Rule Reviewer

/s/ Scott Moore
Scott Moore
Board President
Public Employees' Retirement Board

Certified to the Secretary of State July 1, 2013.

BEFORE THE PUBLIC EMPLOYEES' RETIREMENT BOARD
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 2.43.3502 pertaining to the investment policy statement for the Defined Contribution Retirement Plan and ARM 2.43.5102 pertaining to the investment policy statement for the 457 Deferred Compensation Plan	))))))	NOTICE OF PROPOSED AMENDMENT NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On August 23, 2013, the Public Employees' Retirement Board proposes to amend the above-stated rules.

2. The Public Employees' Retirement Board will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Public Employees' Retirement Administration no later than 5:00 p.m. on August 1, 2013, to advise us of the nature of the accommodation that you need. Please contact Kris Vladic, Montana Public Employee Retirement Administration, P.O. Box 200131, Helena, Montana, 59620-0131; telephone (406) 444-2578; fax (406) 444-5428; TDD (406) 444-1421; or e-mail kvladic@mt.gov.

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

2.43.3502 ADOPTION OF INVESTMENT POLICY STATEMENT AND STABLE VALUE FUND INVESTMENT GUIDELINES (1) The board adopts and incorporates by reference the State of Montana 401(a) Defined Contribution Plan Investment Policy Statement approved by the board on ~~August 11, 2011~~ May 9, 2013.

(2) and (3) remain the same.

AUTH: 19-3-2104, MCA
IMP: 19-3-2104, 19-3-2122, MCA

2.43.5102 ADOPTION OF INVESTMENT POLICY STATEMENT AND STABLE VALUE FUND INVESTMENT GUIDELINES (1) The board adopts and incorporates by reference the State of Montana 457 Plan (deferred compensation) Investment Policy Statement approved by the board ~~August 11, 2011~~ May 9, 2013.

(2) and (3) remain the same.

AUTH: 19-50-102, MCA
IMP: 19-50-102, MCA

STATEMENT OF REASONABLE NECESSITY: The Public Employees' Retirement Board, as administrator of the Defined Contribution Retirement Plan (DCRP) of the Public Employees' Retirement System and the State of Montana Deferred Compensation Plan (457 Plan), adopted the original investment policy statement for each plan by reference in 2002.

Upon recommendation from Employees' Investment Advisory Council the Board determined on May 9, 2013 to amend the two investment policy statements (IPS) to remove the Sharpe Ratio as a measurement of risk and adding a comparison to the appropriate benchmark over the three and five year periods.

Because the Public Employees' Retirement Board determined to adopt the original investment policy statements by reference, 2-4-307(3), MCA, requires that changes to those statements also be adopted by reference. Therefore, it is necessary to amend the administrative rules that adopt the statements by reference.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to: Public Employees' Retirement Administration, P.O. Box 200131, Helena, Montana, 59620-0131; telephone (406) 444-3154; fax (406) 444-5428; or e-mail mpera@mt.gov, and must be received no later than 5:00 p.m., August 8, 2013.

5. If persons who are directly affected by the proposed amendments wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments they have to Kris Vladic at the above address no later than 5:00 p.m., August 8, 2013.

6. If the Public Employees' Retirement Board receives requests for a public hearing on the proposed amendments from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed amendment; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 1,088 persons based on approximately 2,666 participants in the Defined Contribution Retirement Plan and 8,217 participants in the Deferred Compensation Plan as of June 2013, for a total 10,883 participants.

7. The Public Employees' Retirement Board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written

request may be mailed or delivered to the contact person in 5. above or may be made by completing a request form at any rules hearing held by the PER Board.

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 this notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that if a discrepancy exists between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the Secretary of State works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

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

/s/ Melanie A. Symons
Melanie A. Symons
Chief Legal Counsel
and Rule Reviewer

/s/ Scott Moore
Scott Moore
President
Public Employees' Retirement Board

Certified to the Secretary of State July 1, 2013.

BEFORE THE COMMISSIONER OF SECURITIES AND INSURANCE
MONTANA STATE AUDITOR

In the matter of the amendment of ARM 6.6.705 pertaining to Composition of the Committee	)))))	NOTICE OF PROPOSED AMENDMENT NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On August 26, 2013, the Office of the Commissioner of Securities and Insurance, Montana State Auditor, proposes to amend the above-stated rule.

2. The CSI 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 CSI no later than 5:00 p.m., August 12, 2013, to advise us of the nature of the accommodation that you need. Please contact Darla Sautter, CSI, 840 Helena Avenue, Helena, Montana, 59601; telephone (406) 444-2726; TDD (406) 444-3246; fax (406) 444-3499; or e-mail dsautter@mt.gov.

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

6.10.705 COMPOSITION OF THE COMMITTEE (1) The committee shall be composed of three employees of the CSI. Those three persons shall be~~:~~ appointed by the Commissioner, at the Commissioner's discretion.

~~(a) the deputy commissioner of securities, who shall serve as chairperson;~~
~~(b) chief legal counsel; and~~
~~(c) an attorney to be appointed quarterly by the chief legal counsel.~~

AUTH: 30-10-1008, MCA
IMP: 30-10-1008, MCA

4. STATEMENT OF REASONABLE NECESSITY

The Commissioner of Securities and Insurance, Montana State Auditor, Monica J. Lindeen, (Commissioner) is the statewide elected official responsible for administering and regulating the business of the Montana Securities and Insurance Code.

The amendment to ARM 6.10.705 will provide greater flexibility. Under the current rule, the committee shall consist of the deputy commissioner of securities and the chief legal counsel. The chief legal counsel then selects an attorney to be on the committee on a quarterly basis. The proposed amended rule will allow the Commissioner to select the committee, at the Commissioner's discretion. This will

allow for greater flexibility under several circumstances. The first is where a committee member will not be available for an extended period. Under the proposed amended rule, the Commissioner may select a different member to ensure efficiency whereas the current rule does not allow for flexibility. The second is where a committee member is unable to render an impartial opinion, for whatever reason. Here, the Commissioner may select a new committee member under the proposed amended rule.

5. Concerned persons may submit their data, views, or arguments concerning the proposed actions in writing to Jameson Walker, Attorney, Office of the Commissioner of Securities and Insurance, Montana State Auditor, 840 Helena Ave., Helena, Montana, 59601; telephone (406) 444-2040; fax (406) 444-3499; or e-mail jwalker@mt.gov, and must be received no later than 5:00 p.m., August 14, 2013.

6. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to Jameson Walker, Attorney, at the above address no later than 5:00 p.m., August 14, 2013.

7. If the agency receives requests for a public hearing on the proposed action from either 10 percent or 35, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 35 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 35 persons based on the number of persons on the Concerned Parties list.

8. The CSI maintains a list of concerned persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Such written request may be mailed or delivered to Darla Sautter, Office of the Commissioner of Securities and Insurance, Montana State Auditor, 840 Helena Ave., Helena, Montana, 59601; telephone (406) 444-2726; fax (406) 444-3499; or e-mail dsautter@mt.gov, or may be made by completing a request form at any rules hearing held by the CSI.

9. An electronic copy of this proposal notice is available through the Secretary of State's web site at http://sos.mt.gov/ARM/Register. The Secretary of State strives to make the electronic copy of the notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the Secretary of State works to keep its

web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

10. Pursuant to 2-4-302, MCA, the bill sponsor contact requirements do not apply.

11. Pursuant to ARM 1.3.309, and SB 139, the Small Business Impact Analysis statement does not apply to this rule.

/s/Brett O'Neil	/s/Jesse Laslovich
Brett O'Neil	Jesse Laslovich
Rule Reviewer	Chief Legal Counsel

Certified to the Secretary of State July 1, 2013.

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

In the matter of the amendment of ARM 24.225.401 fee schedule	)))	NOTICE OF EXTENSION OF COMMENT PERIOD ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On May 23, 2013, the Board of Veterinary Medicine (board) published MAR Notice No. 24-225-36 regarding the public hearing on the proposed amendment of the above-stated rule, at page 814 of the 2013 Montana Administrative Register, issue no. 10. A public hearing was announced in the notice and subsequently held in Helena on June 13, 2013.

2. In response to public request, the board has decided to extend the public comment period to 5:00 p.m., on July 19, 2013.

3. The Department of Labor and Industry (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 Board of Veterinary Medicine no later than 5:00 p.m., on July 13, 2013, to advise us of the nature of the accommodation that you need. Please contact Cheryl Brandt, Board of Veterinary Medicine, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2394; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail dlibsdvet@mt.gov.

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

24.225.401 FEE SCHEDULE

(1) remains the same.

(a) Renewal of license	$~~110~~ 145
(b) through (2)(b) remain the same.	
(c) Renewal of certification	~~110~~ 145
(3) and (a) remain the same.	
(b) Technician renewal	~~110~~ 145
(c) remains the same.	
(d) Agency renewal	~~195~~ 257

(e) through (5) remain the same.

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

REASON: Section 37-1-134, MCA, requires all professional and occupational licensing boards to set and maintain fees commensurate with associated costs. The board is amending this rule by raising renewal fees to meet expected operating costs for salaries and benefits, legal costs, and the scanning and electronic storage of all licensing files. In providing administrative services to the board, the department has determined that unless these renewal fees are increased as proposed, the board will have a negative cash balance and shortage of operating funds in FY 2014. The board estimates that the proposed fee changes will affect approximately 1056 renewing licensees and result in a $37,203 increase in annual board revenue.

5. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to the Board of Veterinary Medicine, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, dlibsdvet@mt.gov.

BOARD OF VETERINARY MEDICINE
KIM BAKER, PRESIDENT

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

/s/ PAM BUCY
Pam Bucy, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State July 1, 2013

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

In the matter of the amendment of ARM 37.34.2101, 37.34.2102, and 37.34.2111 and the repeal of ARM 37.34.2106, 37.34,2107, and 37.34.2112 pertaining to developmental disabilities program staffing	))))))	AMENDED NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT AND REPEAL

TO: All Concerned Persons

1. On February 28, 2013, the Department of Public Health and Human Services published MAR Notice No. 37-625 pertaining to the public hearing on the proposed amendment and repeal of the above-stated rules at page 249 of the 2013 Montana Administrative Register, Issue Number 4.

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 the Department of Public Health and Human Services no later than 5:00 p.m. on July 18, 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 MT 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

3. In response to comments received to the Notice of Public Hearing on Proposed Amendment and Repeal, MAR Notice No. 37-625, the department is proposing additional amendments.

ARM 37.34.2101 and 37.34.2102

The department has determined that it is necessary to make changes to the proposed rules so as to broaden the scope of the rules to include all contractors and all staff, employed by the contractors, providing developmental disability program services. Currently, the proposed rules apply to contractors and staff members only in the provision of direct care to persons that the contractor serves. The term "direct care" is being removed from these rules. This change is also necessary to assure full compliance with federal legal authorities that prohibit the employment of persons who are federally debarred from 1) providing services in relation to persons who are eligible for federally funded health care programs or 2) being compensated with federal monies.

ARM 37.34.2101

The department is amending the proposed rule to remove the requirement that a background check be completed prior to an offer of employment. Instead, the background check must be completed prior to a person providing developmental disability program services. This will allow contractors to offer positions contingent upon the background check. The department is also amending the rule to include entities that provide national background checks as an approved source because it provides a more comprehensive check.

The department is amending the rule to remove the requirement for monthly reviews of the list of excluded individuals and entities maintained at the System for Award Management maintained by the federal General Services Administration (GSA). The Office of Inspector General strongly suggests that monthly reviews are prudent in order for providers to avoid the liability of employing an excluded individual; however, the department recognizes that it is the provider's responsibility to ensure that their employees are not listed on the excluded list and therefore the department is removing the proposed language requiring monthly reviews. Providers who employ an excluded individual are liable for such action and are subject to the federal penalties as determined by the Office of Inspector General.

Upon adoption of the rule, the department also plans to remove the training requirements from the staffing rules and locate them in service-specific areas of the rules.

4. The rule as proposed is being amended as follows, new matter underlined, deleted matter interlined:

37.34.2101 STAFFING: APPLICABILITY (1) This subchapter specifies requirements applicable to provision of developmental disability program services. These rules are in addition to requirements generally applicable to Medicaid providers as otherwise provided in state and federal statute, rules, regulations, and policies.

~~(1)~~ (2) A contractor who contracts to provide developmental disabilities services funded by the developmental disabilities program must employ, in the provision of ~~direct care~~ services to persons eligible for those services, staff who are able to demonstrate the ability to meet the needs of the persons that the contractors serve.

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

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

37.34.2102 STAFFING: STAFF COMPETENCIES (1) The contractor must have, for each ~~direct care~~ staff position, a written position description that specifies the physical requirements and the minimum standards for education and experience.

(2) The contractor must conduct a screening and a background check of a person prior to ~~an offer of employment~~ a person assuming their duties and

responsibilities ~~as a direct care staff~~. A screening and background check must include a criminal background check through the Montana Department of Justice or another background check entity that provides a national background check.

(3) The contractor must verify to the department upon hire and on a regular basis thereafter, that each ~~direct care~~ staff person meets the competencies to perform the tasks and responsibilities of their position in the provision of developmental disabilities program services.

(4) Upon hiring of a ~~direct care~~ staff person ~~and thereafter on a monthly basis~~ , inclusive of administrative and management services, the contractor must review the list of excluded individuals and entities maintained by the Office of Inspector General and the excluded parties list system at the System for Award Management maintained by the federal General Services Administration (GSA) to determine whether the person appears on the list and if the person appears on the list, must:

(a) through (7) remain as proposed.

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

5. The public comment period has been extended. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to: Kenneth Mordan, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena MT 59604-4210, no later than 5:00 p.m. on July 25, 2013. Comments may also be faxed to (406) 444-9744 or e-mailed to dphhslegal@mt.gov.

/s/ Cary B. Lund
Cary B. Lund
Rule Reviewer

/s/ Mary E. Dalton acting for
Richard H. Opper, Director
Public Health and Human Services

Certified to the Secretary of State July 1, 2013.

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 4.5.112 pertaining to the Noxious Weed Management Advisory Council member terms	))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On May 9, 2013, the Department of Agriculture published MAR Notice No. 4-14-211 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 737 of the 2013 Montana Administrative Register, Issue Number 9.

2. A hearing was held May 29, 2013. The department has amended the above-stated rule as proposed.

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

COMMENT #1: Multiple comments were received expressing concern that term limits should not be removed to allow more people the opportunity to serve on the council.

RESPONSE #1: Finding individuals to serve is a challenge. The time necessary for council members to get fully acquainted with the council's work and to understand and navigate the process effectively is also considered. Additional terms would allow the state to take full advantage of council members' experience and expertise and will provide council consistency and continuity. Council members may provide notice to resign their position at any time.

Certain council positions are difficult to fill due to a small candidate pool such as the biological research and control position. Often there are a small number of individuals within a particular sector willing to commit the time and resources needed. Both the time commitment and the dates associated with the council's work (late February to mid-March) make it difficult. Potential members must balance the conflicts and challenges between serving as a council member and meeting the operational demands of their farms, ranches, and businesses. Certain representatives must be able to provide objective expertise across a spectrum of products or have experience with services as is the case for the herbicide dealer and applicator council position.

COMMENT #2: Three comments supporting the rule as proposed were received. We are in agreement with the comments that diversity and new perspectives are important. The department has not lost sight of these considerations and will

continue to include them when recruiting for new council member candidates. Every two years the director has an opportunity to find new people willing and able to serve. With the removal of term limits, this will be an opportunity for change, not a requirement to remove a qualified member willing to serve.

RESPONSE #2: The department concurs with the comments. For the reasons stated above, the Department of Agriculture plans to adopt two-year council terms with an unlimited number of terms for the Montana Noxious Weed Management Advisory Council.

/s/ Cort Jensen
Cort Jensen
Rule Reviewer

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

Certified to the Secretary of State July 1, 2013

BEFORE THE DEPARTMENT OF COMMERCE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 8.2.501 pertaining to the administration of the 2015 Biennium Quality Schools Grant Program – Planning Grants, and amendment of ARM 8.2.502 pertaining to the administration of the 2015 Biennium Quality Schools Grant Program – Emergency Grants	))))))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On May 9, 2013, the Department of Commerce published MAR Notice No. 8-2-111 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 741 of the 2013 Montana Administrative Register, Issue Number 9.

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

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

COMMENT #1: A comment was received – in the form of a question to staff – would it be possible to require a pre-application meeting with the Department of Commerce staff just so we can clarify which priority may be the closest fit to the application?

RESPONSE #1: The current planning grant guidelines do not require a pre-application meeting with Community Development Division (CDD) staff because in certain cases this may be a burden for districts to complete prior to making a planning grant application to the department. However, CDD staff is always available to discuss prospective planning applications with potential applicants, whether over the phone via conference call or in person, whenever possible. CDD encourages potential applicants to utilize guidance from staff in determining whether a proposed planning activity would be eligible under the current guidelines or what priority may be best suited to an application. Additionally, planning activities that fall outside one of the six categories identified in Section II of the guidelines, *Eligible Planning Projects And Costs,* requires that program staff be contacted for additional guidance prior to an application being submitted.

COMMENT #2: A comment was received – in the form of a question to staff – to clarify whether the planning grants can be used for preliminary explorations that might result in a new facility.

RESPONSE #2: Applications for preliminary explorations (PERs or PARs) that may result in an optional new facility will be accepted and evaluated against the criteria set forth in Section IV of the 2015 Quality Schools Application Guidelines, *Application Review Process*. Applicants proposing a planning activity to study new construction *may* not be scored as high based on the changes made to the guidelines prioritizing deferred maintenance, repair, or replacement of existing components.

COMMENT #3: A comment was received – in the form of a question to staff – that if for some reason not all the planning grant funds are expended or allocated within the initial review period, would it be possible to have a second round of planning grant applications?

RESPONSE #3: Any planning grant funds not allocated during the 2015 biennium will be recaptured and re-allocated toward future projects in the next biennium.

COMMENT #4: A comment was received – in the form of a question to staff – requesting confirmation that the initial planning grant is for an amount not to exceed $25,000 with a 1:4 match.

RESPONSE #4: To confirm, the 2015 biennium Quality Schools planning grants may be awarded in amounts up to $25,000 per applicant and require a $1 match for every $4 awarded by the state (1:4 match requirement).

COMMENT #5: A comment was received – in the form of a question to staff – asking whether there is a way to look at projects that have been completed and better guide clients through the process. Can there be pre-application meetings with the Department of Commerce to show projects that have been completed with the FCI report? Because we've got several districts that have completed some of the work, and are just interested in knowing how best to go about updating that work to keep that (FCI) more current.

RESPONSE #5: CDD staff are always available to discuss prospective planning applications with potential applications, whether over the phone via conference call or in person, whenever possible. Additionally, planning activities that fall outside one of the six categories identified in Section II of the guidelines, *Eligible Planning Projects And Costs,* requires that program staff be contacted for additional guidance prior to an application being submitted.

COMMENT #6: A comment was received – in the form of a question to staff – asking whether an existing school district could apply to conduct a planning activity to study consolidation of square footage. Would this be an opportunity for project money if it's within the scope of doing renovations within existing schools to reduce square footage?

RESPONSE #6: A project of this type could be applied for and would be reviewed under the criteria found in Section IV of the 2015 Quality Schools Application Guidelines, *Application Review Process*.

COMMENT #7: A comment was received – in the form of a question to staff – asking for clarification on the ineligible costs incurred prior to July 1, 2013. As you know, most people aren't having board meetings in July, so most of the meetings to talk about going after a grant would happen in June, so there will be some costs incurred. Is that something that could be thought of just in the future? Right now since we've missed the board meetings in May, June is really the only time to get it out there for a superintendent or a trustee to get approval to pursue a grant, and there is some time that could be starting to be incurred in June.

RESPONSE #7: Planning grant funds cannot reimburse for expenses incurred in the preparation of the planning grant application itself; planning grant funds can be utilized for the preparation of a grant application for the Quality Schools Infrastructure Grant Program, as this process would occur as part of or directly following the planning process itself (pursuant to Section II – *Eligible Planning Projects and Costs*).

/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 June 24, 2013.

BEFORE THE DEPARTMENT OF COMMERCE
OF THE STATE OF MONTANA

In the matter of the repeal of ARM 8.97.801, 8.97.802, 8.97.803, 8.97.804, 8.97.805, 8.97.806, 8.97.807, 8.97.808, and 8.97.809 relating to Montana Capital Companies	))))))	NOTICE OF REPEAL

TO: All Concerned Persons

1. On May 9, 2013, the Department of Commerce published MAR Notice No. 8-97-112 pertaining to the proposed repeal of the above-stated rules at page 744 of the 2013 Montana Administrative Register, Issue Number 9.

2. The department has repealed ARM 8.97.801, 8.97.802, 8.97.803, 8.97.804, 8.97.805, 8.97.806, 8.97.807, 8.97.808, and 8.97.809 as proposed.

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 June 10, 2013.

BEFORE THE DEPARTMENT OF COMMERCE
OF THE STATE OF MONTANA

In the matter of the adoption of New Rule I pertaining to the implementation of the Primary Sector Workforce Training Grant Program and the repeal of ARM 8.99.801, 8.99.802, 8.99.803, 8.99.804, and 8.99.805, pertaining to the implementation of the Primary Sector Workforce Training Grant Program	))))))))	NOTICE OF ADOPTION AND REPEAL

TO: All Concerned Persons

1. On May 9, 2013, the Department of Commerce published MAR Notice No. 8-99-113 pertaining to the public hearing on the proposed adoption and repeal of the above-stated rules at page 747 of the 2013 Montana Administrative Register, Issue Number 9.

2. The department has adopted the above-stated rule as proposed: New Rule I (8.99.806).

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

COMMENT #1: One comment was received from Brett Doney, with Great Falls Development Authority expressing support for the program.

RESPONSE #1: Montana Department of Commerce appreciates Brett Doney's support for this program.

4. The department has repealed ARM 8.99.801, 8.99.802, 8.99.803, 8.99.804, and 8.99.805 as proposed.

/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 June 24, 2013.

BEFORE THE DEPARTMENT OF COMMERCE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 8.111.602 and 8.111.603 pertaining to the Low Income Housing Tax Credit Program	))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On May 9, 2013, the Department of Commerce published MAR Notice No. 8-111-114 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 750 of the 2013 Montana Administrative Register, Issue Number 9.

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

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 June10, 2013.

BEFORE THE DEPARTMENT OF TRANSPORTATION
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 18.8.414, 18.8.1002, 18.8.1502, 18.8.1503, and 18.8.1505, pertaining to motor carrier services	))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On May 9, 2013, the Department of Transportation published MAR Notice No. 18-142 pertaining to the proposed amendment of the above-stated rules at page 759 of the 2013 Montana Administrative Register, Issue Number 9.

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

3. No comments or testimony were received.

/s/ Carol Grell Morris
Carol Grell Morris
Rule Reviewer

/s/ Michael T. Tooley
Michael T. Tooley
Director
Department of Transportation

Certified to the Secretary of State July 1, 2013.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the adoption of NEW RULES I through IV, and the amendment of ARM 24.29.1401A, 24.29.1402, 24.29.1406, 24.29.1432, 24.29.1510, 24.29.1513, 24.29.1515, 24.29.1522, 24.29.1533, 24.29.1538, pertaining to medical services rules for workers' compensation matters	))))))))))	NOTICE OF ADOPTION AND AMENDMENT

TO: All Concerned Persons

1. On April 25, 2013, the department published MAR Notice No. 24-29-273 regarding the public hearing on the proposed adoption and amendment of the above-stated rules at page 557 of the 2013 Montana Administrative Register, issue no. 8.

2. On May 16, 2013, a public hearing was held in Helena concerning the proposed rules at which oral comments were received. Additional written comments were received prior to the closing date of June 13, 2013.

3. The department has thoroughly considered the comments and testimony received on the proposed new rules. The following is a summary of the comments received, along with the department's response to those comments:

Comment 1: One comment from an orthopedic center noted that the proposed change to the $60.52 conversion factor in the professional fee schedule would result in a loss of $130,637, based on 2012 data. Another commenter expressed concern regarding patient access to non-hospital employed surgeons and ASCs. The commenter requested that the professional fee schedule conversion factor for imaging and surgery reimbursements not be reduced because the reduction could result in a loss of service to workers' compensation patients.

Response 1: The commenters' calculations and estimations do not take into consideration that the Relative Value Units (RVUs) have generally increased. RVUs are multiplied by the conversion factor to determine the reimbursement amount. Because of the RVU increase, the reimbursement amounts are not predicted to be lower. In addition, the professional fee schedule conversion factor calculation is statutorily set at no greater than 10% above the average conversion factors of the top five group health insurers in the state. Because this calculation is set in statute, the department does not have discretion to change the amount.

Comment 2: One commenter requested that purchase orders not be allowed for implantable reimbursement documentation in lieu of invoices, because they consider invoices to be superior documentation.

Response 2: The use of purchase orders as adequate implantable reimbursement documentation was added to address potential delays in implantable reimbursements due to waiting for invoices and because it is considered standard business practice. The new rules specify that the purchase order is only acceptable if it includes the number of items, the wholesale price, and the shipping costs. If the allowance for purchase orders causes issues under the new rules, the department will consider amendments in the future.

Comment 3: One commenter supported the rule change allowing purchase orders as adequate implantable reimbursement documentation because the commenter stated this is standard business practice and allows for prompt, consistent payment. The commenter agreed that the purchase order must include the number of items, the wholesale price, and the shipping costs. The commenter noted that New Rule I (11)(e)(ii) and (12)(f)(ii) do not reference the acceptability of a purchase order when specifying how reimbursement is calculated.

Response 3: The department concurs with this comment and has amended the rule as indicated below to add purchase orders to New Rule I(11)(e)(ii) and (12)(f)(ii).

Comment 4: Numerous commenters stated their support for the rules.

Response 4: The department acknowledges these comments.

Comment 5: One commenter requested that the provisions of New Rule I(11) and (12) regarding reimbursement for implants, be changed to use the term "implant record" instead of "operative report" because the implant record provides a complete description of the implant, and is therefore preferred over the operative report, which does not necessarily include the full description of the components of the implant.

Response 5: While the department will consider this change in the future, the change will not be made at this time, so that other stakeholders can give input on this suggested language when it is noticed to the public.

Comment 6: One commenter asserted that New Rule II(2), which states an injured worker has a duty to select a treating physician, goes beyond the authority of 39-71-1101, because that statute says a worker "may" choose a person who is listed in 39-71-116(41) for initial treatment. The commenter also asserted the rule places additional restrictions on who an injured worker may select as a treating physician.

Response 6: The department agrees that in light of the language in 39-71-1101, it is appropriate to clarify this issue, so the department has amended the rule as indicated below to remove the affirmative duty and state that an injured worker may select a treating physician. The department disagrees that the rule goes beyond the authority of statute. As the reasonable necessity statement indicates, that provision of the rule is modeled on ARM 24.29.1510, which has been an existing rule since 1993. The purpose behind ARM 24.29.1510, was to prevent unnecessary and

repeated visits to emergency rooms, when treatment in a nonemergency setting is appropriate. Under 39-71-704, MCA, insurers are only required to reimburse for reasonable medical treatment. Repeated visits to an emergency room when nonemergency care is available and appropriate is not reasonable. Therefore, the provisions of the rule are intended to guide an injured worker toward proper care and prevent repeated visits to an emergency room that may not be reimbursable. Nothing in the rule prevents an injured worker from going to an emergency room when the situation is an emergency and nothing in the rule prevents an injured worker from choosing a health care provider who also happened to treat them in an emergency room, if that provider is available for nonemergency treatment as well. In addition, the language that guides a worker to select a treating physician with consideration for the injury type, the location of treatment, and the provider's availability is only intended to be a common sense guide so that the worker selects a provider whose care is reasonable and therefore reimbursable pursuant to 39-71-704, MCA.

Comment 7: One commenter stated that New Rule II(3) is incorrect because it allows an insurer to designate or approve a treating physician when the insurer pays a claim under a right of reservation and has not yet accepted liability for the claim.

Response 7: The department agrees and has amended the rule as indicated below.

Comment 8: One commenter stated that New Rule II cannot require that the insurer "formally" designate or approve the treating physician and that informal acceptance and acquiescence should be considered designation of the treating physician.

Response 8: The department disagrees. Under 39-71-1101(4), MCA, a treating physician does not receive compensation at the rate of 110% until the insurer designates or approves that individual as the treating physician. Until the designation or approval, the treating physician is reimbursed at 100% of charges pursuant to 39-71-1101(6), MCA. This provision states: "(6) A health care provider providing health care on a compensable claim prior to the designation or approval of the treating physician by the insurer must be reimbursed at 100% of the department's fee schedule." The department believes that the statutory language clearly requires that the insurer affirmatively accomplish the designation or approval requirement, to enable the higher reimbursement rate. The proposed rule provides a mechanism whereby all the involved parties will know the applicable reimbursement rate.

Comment 9: One commenter expressed the concern that New Rule II established a new requirement that the treating physician coordinate "all" medical care.

Response 9: Because the department believes the rule's requirements are the same without the word "all", the department has amended the rule as indicated below. The department disagrees that using the word "all" in the rule goes beyond the language of the statute because the rule means the treating physician has to meet all the requirements of the statute. For example, the statute indicates the

treating physician is to "arrange" for treatment within the utilization and treatment guidelines. This may include referring the injured worker to a specialist who will treat the injured worker as appropriate.

Comment 10: One commenter expressed the belief that the statute allowing insurer designation of the treating physician is unconstitutional and that New Rule II improperly interprets legislative intent.

Response 10: The department does not have the authority to address the concerns raised regarding the constitutionality of a statute. In addition, the department is required to implement the plain language of the statute and the department believes the rule properly does so.

4. The department has amended 24.29.1401A, 24.29.1402, 24.29.1406, 24.29.1432, 24.29.1510, 24.29.1513, 24.29.1515, 24.29.1522, 24.29.1533, and 24.29.1538 as proposed.

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

NEW RULE I (24.29.1433) FACILITY SERVICE RULES AND RATES FOR SERVICES PROVIDED ON OR AFTER JULY 1, 2013 (1) through (10) remain as proposed.

(11) through (11)(d) remain as proposed.

(e) Where an implantable exceeds $10,000 in cost, hospitals may seek additional reimbursement beyond the normal MS-DRG payment. Hospitals may seek additional reimbursement by using Montana unique code MT003. Any implantable that costs less than $10,000 is bundled in the implantable charge included in the MS-DRG payment.

(i) Any reimbursement for implantables pursuant to this subsection must be documented by a copy of the invoice for the implantable (or purchase order if it lists the number of items, the wholesale price, and the shipping costs) and the operative report. Insurers are subject to privacy laws concerning disclosure of health or proprietary information.

(ii) Reimbursement is set at a total amount that is determined by adding the actual amount paid for the implantable on the invoice or purchase order for the implantable, plus 15 percent of the actual amount paid for the implantable, plus the handling and freight cost for the implantable. Handling and freight charges must be included in the implantable reimbursement and are not to be reimbursed separately.

(iii) When a hospital seeks additional reimbursement pursuant to this subsection, the implantable charge is excluded from any calculation for an outlier payment.

(iv) Because the decision regarding an implantable is a complex medical analysis, this rule defers to the judgment of the individual physician and facility to determine the appropriate implantable. A payer may not reduce the reimbursement when the medical decision is to use a higher cost implantable.

(f) through (g) remain as proposed.

(12) through (12)(e) remain as proposed.

(f) Where an outpatient implantable exceeds $500 in cost, hospitals or ASCs may seek additional reimbursement beyond the normal APC payment. In such an instance, the provider may bill using Montana unique code MT003. Any implantable that costs less than $500 is bundled in the APC payment.

(i) Any reimbursement for implantables pursuant to this subsection must be documented by a copy of the invoice for the implantable (or purchase order if it lists the number of items, the wholesale price, and the shipping cost) and the operative report. Insurers are subject to privacy laws concerning disclosure of health or proprietary information.

(ii) Reimbursement is set at a total amount that is determined by adding the actual amount paid for the implantable on the invoice or purchase order for the implantable, plus 15 percent of the actual amount paid for the implantable, plus the handling and freight cost for the implantable. Handling and freight charges must be included in the implantable reimbursement and are not to be reimbursed separately.

(g) remains as proposed.

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

NEW RULE II (24.29.1512) SELECTION OF PHYSICIAN FOR CLAIMS ARISING ON OR AFTER JULY 1, 2013 (1) For claims arising on or after July 1, 2013, "treating physician" has the meaning provided by 39-71-116, MCA.

(2) The worker ~~has a duty to~~ may select a treating physician. Initial treatment in an emergency room or urgent care facility is not selection of a treating physician. The selection of a treating physician ~~must~~ should be made as soon as practicable. A worker may not avoid selection of a treating physician by repeatedly seeking care in an emergency room or urgent care facility. The worker should select a treating physician with due consideration for the type of injury or occupational disease suffered, as well as practical considerations such as the proximity and the availability of the physician to the worker.

(3) Any time after an insurer accepts liability for an injury or occupational disease ~~or pays under a right of reservation~~, the insurer may recognize a treating physician selected by the injured worker. The treating physician is compensated at 100 percent of the fee schedule.

(4) After acceptance of liability, the insurer may formally approve the treating physician selected by the injured worker as a designated treating physician or may choose a different physician to be the designated treating physician. The designated treating physician is compensated at 110 percent of the fee schedule.

(a) The designated treating physician is responsible for coordination of ~~all~~ medical care, pursuant to 39-71-1101(2), MCA. The designated treating physician must agree to accept these responsibilities.

(b) The insurer must provide formal notification of the designated treating physician by e-mail, facsimile, or letter to:

(i) the injured worker;

(ii) the current treating physician; and

(iii) the designated treating physician. The effective date of the designation of treating physician is the date the insurer sends the notice of designation unless the physician declines within ten working days.

(c) A health care provider who is referred by the designated treating physician is compensated at 90 percent of the fee schedule. These providers are not responsible for coordinating care or providing determinations as required by the designated treating physician.

(5) Treatment from a physician's assistant or an advanced practice nurse, when the treatment is under the direction of the treating physician, does not constitute a change of physician and does not require prior authorization pursuant to ARM 24.29.1517.

(6) Subject to 39-71-1101, MCA, ARM 24.29.1517, and any other applicable rule or statute, nothing in this rule prohibits the claimant from receiving treatment from more than one physician if required by the claimant's injury or occupational disease.

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

6. The department has adopted New Rule III (24.29.1523) and New Rule IV (24.29.1534) as proposed.

/s/ JUDY BOVINGTON	/s/ PAM BUCY
Judy Bovington	Pam Bucy, Commissioner
Rule Reviewer	DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State July 1, 2013

BEFORE THE BOARD OF FUNERAL SERVICE
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of ARM 24.147.402 mortician application, 24.147.403 inspections, 24.147.405 examination, 24.147.406 federal trade commission regulations, 24.147.501, 24.147.502, 24.147.504, and 24.147.505 licensing, 24.147.901 sanitary standards, 24.147.902 disclosure statement on embalming, 24.147.903 transfer or sale of mortuary license, 24.147.2101 continuing education requirements, 24.147.2102 sponsors, 24.147.2301 unprofessional conduct, the adoption of NEW RULE I mortuary branch establishment, and the repeal of ARM 24.147.301 continuing education definitions, 24.147.503 conditional permission to practice, 24.147.506 renewal of cemetery license, 24.147.1501 branch facility, 24.147.2108 and 24.147.2109 continuing education, 24.147.2302 through 24.147.2305 unprofessional conduct, and 24.147.2401 complaint filing	))	NOTICE OF AMENDMENT, ADOPTION, AND REPEAL

TO: All Concerned Persons

1. On March 28, 2013, the Board of Funeral Service (board) published MAR notice no. 24-147-33 regarding the public hearing on the proposed amendment, adoption, and repeal of the above-stated rules, at page 382 of the 2013 Montana Administrative Register, issue no. 6.

2. On April 18, 2013, a public hearing was held on the proposed amendment, adoption, and repeal of the above-stated rules in Helena. Several comments were received by the April 25, 2013, deadline.

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

COMMENT 1: One commenter suggested the board amend ARM 24.147.402 to read "in accordance with department policy" instead of "three days," since the

department is establishing a divisionwide policy to employ best practices regarding the processing of applications, which will incorporate a deadline earlier than three days.

RESPONSE 1: The board appreciates all comments made during the rulemaking process and will amend the rule accordingly.

COMMENT 2: One commenter noted that proposed amendments to ARM 24.147.405 would clarify that the exam is only for morticians and not crematory operators, technicians, or cemetery permit holders, and that elsewhere it is clarified that the FTC applies to a crematory that sells urns. The commenter expressed concern about direct cremation and burial services being provided by crematories and cemeteries without the aid of mortuaries, and asked the board to reinforce the limited nature of the scope of practice of crematory operators, technicians, and cemetery permit holders to ensure the intent of the law is protected.

RESPONSE 2: The board decided to make no changes in response to this comment. Regarding the sale of funeral goods such as caskets and urns, the board has no jurisdiction to limit or regulate their sale, unless the seller of such goods also provides funeral services. Thus, in the case of a crematory selling urns or combustible containers, the FTC "funeral rule" applies, subjecting the provider to various disclosure requirements. The application of the funeral rule in no way extends or broadens the limited scope of practice of an independent crematory, particularly because this rule must be read with current law that describes the extremely limited scope of practice of an independent crematory through the definition of terms "cremation" and "crematory operator," and specific procedures expressed in Title 37, chapter 19, part 7.

COMMENT 3: One commenter asserted that the requirement in ARM 24.147.502 that licensees on inactive status for more than five years must retake the jurisprudence examination before reactivating their licenses has a disparate impact on older license holders. Likewise, the commenter stated that the requirement to take additional CE to reactivate a license would not allow an inactive practitioner to reactivate his or her license in a timely manner to address an emergency in a rural community where a single active licensee serves the community.

RESPONSE 3: The board notes that this comment addresses requirements in current rule that were not included in the proposal notice and are therefore outside of the scope of this rule proposal.

COMMENT 4: Regarding ARM 24.147.901(1)(e), a commenter stated that the board will have difficulty enforcing the formaldehyde standard, without a device to measure airborne concentration of formaldehyde.

RESPONSE 4: The proposed rule references the federal OSHA formaldehyde standard, under which licensees have to meet existing obligations. The board is statutorily mandated to set "ventilation standards." The board believes that adoption

of federal standards is the best practice and will devise appropriate methods to determine compliance with this rule.

COMMENT 5: Regarding ARM 24.147.901(1)(g), one commenter stated there are provisions of Title 75, chapter 10, part 10 that may allow for disposal of infectious wastes other than through a commercial disposal entity, and suggested the board further clarify the standard to avoid an overly strict application of the law.

RESPONSE 5: The board agrees with the comment and is amending the rule to remove "through a commercial disposal entity" to ensure that any allowable method of disposal of infectious wastes available under the cited reference may be used by a funeral provider.

COMMENT 6: Regarding ARM 24.147.901(7), a commenter pointed out that the current inspection standard is to request whether the mortuary uses "red bags" and how they dispose of the contents. Mortuaries respond that they use "commercial bio-medical waste providers" or they "treat the waste chemically and dispose via landfill." The commenter asserted that new (7) may conflict with the earlier (1)(g) on requiring a commercial disposal entity to handle all hazardous waste.

RESPONSE 6: The board believes there is no longer such a conflict with the amendment to ARM 24.147.901(1)(g) described above.

COMMENT 7: One commenter stated that the phrase in ARM 24.147.901(3) "unless requested by a consumer making the initial contact," is vague and should be clarified to restrict that the consumer may only make a request to a licensed mortician. The commenter asserted this change will prevent independent crematories from interpreting the rule to allow direct cremation, without involvement of a mortician, on the grounds that the consumer made the initial request to the crematory. The commenter further suggested the board add "or cremation" after "funeral" in ARM 24.147.2301(1)(p), to ensure there is no debate that the prohibition against allowing unlicensed personnel to make funeral arrangements may be construed to allow unlicensed persons to perform "cremations." The same comment applies to the definition of "funeral directing" at 37-19-101(20), MCA.

RESPONSE 7: The board declines to make the proposed suggestions for the following reasons: first, the proposed language "unless requested by a consumer making the initial request," is intended to ensure that "funeral arranging," as that term encompasses acts exclusively within the scope of practice of a licensed mortician, is done in licensed mortuaries. The exception, as requested by a consumer who has not been solicited by the mortician, allows a mortician to make funeral arrangements outside of the mortuary.

Under current laws, an independent crematory may only perform cremations of deceased persons presented to the crematory by a mortician. The board will propose in future rulemaking to provide an exception for private persons having the statutory "right of disposition" in 37-19-904, MCA, to carry out funeral arrangements on their own accord, i.e., without assistance from anyone other than a mortician or a

coroner. Such arrangements would include the ability to prepare the body, ensure the authorized removal of potentially hazardous implants, make disposition arrangements, hold viewings, obtain authorizations for removal, transportation, and cremation, execute and file death certificates, and transport human remains in a combustible container to a cemetery or crematory facility.

The "initial request" of a consumer in the instances of "home funerals," will be limited to constitute only contacting a crematory, whether it is independent or attached to a mortuary, to schedule a time for the cremation and to determine the cost of the service, or, in the case of a cemetery, to schedule a time for burial and to determine the cost of burial-related services and goods. Unless the crematory operator or cemetery manager is also a licensed mortician, the crematory operator or cemetery manager may not discuss, offer, or negotiate prepaid or any funeral arrangements, or, in any other manner, infringe upon the scope of practice of a mortician as expressed in Title 37, chapter 19. Such recognition of a family's desire to self-execute funerary duties will not be construed to expand the scope of practice of an independent crematory or that of a cemetery manager.

Second, with respect to adding "cremation" to modify the term "funeral", the comment exceeds the scope of the proposed rulemaking, because the change is grammatical only. In responding to the substantive comment however, the board notes that the definition of "funeral arrangements" (and by extension the phrase "arrangements for a funeral") pertains only to the scope of practice of a licensed mortician and concluded that it is not necessary to further distinguish it.

COMMENT 8: Several commenters urged the board to allow a person to be cared for by loved ones at home for a short time after death as a comfort for grief, and asked that the board protect a family's ability to care for their deceased loved ones personally. Another commenter referred to an intrinsic right of individuals to be cared for after death by their loved ones, whether family or friend, that should not be infringed by the government. The commenters also expressed concern that ARM 24.147.901(2) and (3), (i.e., requiring preparation of human remains and funeral arrangements to be done in a licensed mortuary, respectively) could be construed against the ability of authorized individuals to arrange for disposition of a decedent's remains without using the services of a licensed mortician, and asserted that the rules should not be construed to foreclose this less expensive option.

The commenters further opined that the rule would forbid discussion of a funeral arrangement at a place other than a mortuary, despite that existing law permits a consumer to choose to make disposition arrangements other than with a mortuary. The commenters proposed adding a rule stating that "Nothing in these rules shall be construed to apply to funeral and disposition arrangements of deceased individuals carried out privately by authorized persons pursuant to § 37-19-901 *et seq.*, MCA, and § 50-15-403, MCA."

RESPONSE 8: The board notes that both ARM 24.147.901(2) and (3) are intended to prohibit "mobile" preparation rooms and inappropriate solicitation of funeral arrangements and to emphasize that a mortician must perform funeral-related services in a licensed facility. The board also intends these subsections to underscore that an independent crematory may not prepare human remains, make

funeral arrangements, provide funeral services, or sell preneed funeral contracts since, under current law, these matters are solely within a licensed mortician's scope of practice.

As described in Response 7, the board will propose future rulemaking that will recognize persons having a right of disposition to handle the funeral arrangements for and transport the decedent's remains without using the services of a licensed mortician or mortuary. In these instances of "home funerals," the family will be solely responsible for duties that, if contracted or assumed by a party other than a person having the right of disposition, would fall within the scope of practice of a licensed mortician.

To address steps in the process other than just transportation, the board is amending ARM 24.147.901(2) to add "except that washing, dressing, and casketing may be provided by a person with the right of disposition in 37-19-904, MCA."

COMMENT 9: One commenter asserted that current law allows for direct cremation.

RESPONSE 9: The board notes that current law provides that only a mortician may make funeral arrangements, transport, prepare, and supervise final disposition of a dead human body. A mortuary may offer "direct cremation," which is generally understood to be a cremation without any related memorial services or funeral goods.

Montana law does not authorize a crematory facility that is independent of a mortuary to offer "direct cremation," that is, to transport or prepare bodies, execute authorizations, collect information for the death certificate, or other activities that are contained within the scope of practice of a mortician. Under current law, an independent crematory may only accept a closed combustible container from a mortuary, along with appropriate documentation and identification of the body.

In the case of "home funerals" described above, a person may enter a preneed cremation authorization with a crematory under 37-19-708, MCA, and execute an at-need contract to cremate a body. Because the law cannot prohibit the sales of goods, an independent crematory may sell urns or combustible containers for transporting a body.

However, in no case may the independent crematory, without aid of a licensed mortician, actually transport or handle the body. The law and rules may not be read, nor in particular may the provisions of 37-19-708, MCA, be read to authorize an independent crematory to engage in preneed sales or make funeral arrangements, other than scheduling the cremation and collecting payment at need for the cremation. The board is attempting in its rulemaking to recognize a common law duty of persons who do not wish to contract with a mortuary for the care of their loved ones. The board stresses that neither an independent crematory nor a cemetery is obligated to accept human remains without the assistance of a mortician and mortuary.

COMMENT 10: A commenter stated that a new rule to be proposed for adoption in a future rules notice only addresses transportation and does not adequately protect the full range of rights of individuals to direct and conduct after-death care and disposition of loved ones.

RESPONSE 10: The board points out that the new rule described by the commenter is not a part of this rulemaking notice, but is included in draft board rules that have not yet been filed with the Secretary of State.

COMMENT 11: Numerous commenters stated that other states do not impose such restrictions, and have laws that specifically allow "direct cremation."

RESPONSE 11: While the duty to carry out funerary duties for a loved one belongs to the family, if the duty is to be delegated or contracted away, it may only be to a licensed entity or individual. A minority of states have carved out, from the mortician's scope of practice, a "direct disposer" license, e.g., FLA Rev. Stat. 497.601 or a registration as a "surface transportation and removal service," e.g., Code of VA Section 54.1-2819. Such statutes provide express authority and specific acts that may be performed by persons other than funeral directors or morticians and embalmers. In Montana, that authority and specificity are expressed only with regard to morticians. Montana's current statutes do not allow the board to make rules that conflict with the statutes.

COMMENT 12: A commenter stated that the proposed amendments to ARM 24.147.901(2) would render illegal the basic preparation of human bodies by direct cremation businesses and direct burial businesses that do not offer embalming, and thus have no need of an embalming room. The commenter further opined that this rule would bar crematories from touching a decedent in any way for preparation, including the removal of pacemakers. The commenter further stated that this provision serves no rational purpose to protect consumers or the public and gives funeral homes a legal monopoly by outlawing these basic preparations by entities other than full-service funeral homes.

RESPONSE 12: See Response 13 below. Additionally, the board is constrained in its rulemaking and interpretation by the current statutes, which require all mortuary facilities to have preparation rooms. The board may not make or interpret rules in a way that conflicts with the statutes. Unless or until the statutes are changed to expressly allow a crematory operator to remove a pacemaker, the board has no choice in its interpretation. The current law is assumed to be constitutional, i.e., to have a rational relationship to a legitimate governmental interest, and the board and administratively attached department is obligated to enforce it as written and reasonably interpreted.

COMMENT 13: A commenter stated that the proposed amendment to ARM 24.147.901(3) is ambiguous, and suggested that if the goal is to prohibit predatory sales pitches at nursing homes, then direct language should be drafted that does not allow interpretation against an operator such as Central Montana Crematorium.

RESPONSE 13: The board notes that under current law, an independent crematory may not make a "funeral arrangement," and that an independent crematory may

only perform cremations of deceased persons presented to the crematory by a mortician in a closed combustible container.

Future rulemaking will expressly acknowledge that a crematory may, but will not be required to, accept human remains in closed containers, along with appropriate authorizations, from persons having the right of disposition giving their deceased friend or family member a "home funeral." Such acknowledgement will in no way expand the current scope of practice of an independent crematory operator to allow that operator to prepare or handle a body, remove pacemakers, allow "viewings," file death certificates, or other services contained within the scope of a mortician.

COMMENT 14: One commenter noted that in ARM 24.147.902, the FTC requires a particular statement regarding embalming and further provides that when a state has additional requirements regarding embalming, that statement also be included on the General Price List. The commenter suggested the board also incorporate language from a Department of Public Health and Human Services representative ("the Desonia Memo"), that at one time summarized the obligations contained in ARM 37.116.103.

RESPONSE 14: The board rejects the comment on the basis that the March 25, 1999, memo referred to in the comment, made recommendations for two paragraphs to be added to the GPL and, ultimately, only the first paragraph was required by ARM 24.147.902. The second paragraph was a verbatim recitation of ARM 37.116.103. The board continues to believe it is not necessary to add this information to the GPL. However, the board does believe that funeral providers should be aware of the travel parameters, which, if exceeded, require either refrigeration or embalming, and directs that the provider inform the consumer of the options within the context of transporting a body.

COMMENT 15: One commenter stated that ARM 24.147.902(2), is confusing and leaves practitioners open to unspecified "problems." The commenter questioned the meaning of the sentence, "Embalming may be necessary, however, if you select certain funeral arrangements such as a funeral with viewing."

RESPONSE 15: The board notes that this language is in current rule and is required by the Federal Trade Commission to be included verbatim on a funeral provider's GPL. The board suggests the sentence, stated otherwise, means "embalming is not generally required, but may be necessary if you select a funeral with viewing."

COMMENT 16: Regarding ARM 24.147.903, a commenter disagreed that the names of stockholders need not be listed, and asserted that the public should know whom they are dealing with.

RESPONSE 16: The board notes that the amendments to the rule do not eliminate the duty of a new facility to provide notice to the public of any change in more than 50 percent of ownership of a facility. The officers, principals, and owners of the

corporation will continue to be disclosed on the application form required to be completed as part of the application process with the board.

COMMENT 17: One commenter suggested clarifying the CE audit timing by adding the year "2015" to "July 1." The commenter also suggested language to add at the end of ARM 24.147.2101(1) to address CE requirements for morticians actively licensed for less than two full years on their first audit, to provide a specific beginning date on which the carryover will be eliminated, and ensure licensees understand their CE responsibilities.

RESPONSE 17: The board agrees with the suggestions and is amending the rule accordingly.

COMMENT 18: One commenter objected to ARM 24.147.2101(6), which would allow funeral service board members to receive CE credit by attending a regularly scheduled board meeting. The commenter opined that the board members individually would benefit from other CE courses. Another commenter asked if any limit would be placed on the number of credits the board members could receive under this section.

RESPONSE 18: The board decided to not amend the rule further in response to this comment, and recognizes both the time commitment involved and technical expertise gained by members serving on the board. The board is amending (6) exactly as proposed to give board members CE credit, with the only exception being the required three-credit minimum in particularized education every other year.

COMMENT 19: One commenter stated that adding (7) to ARM 24.147.2101 to allow licensees to receive CE credit by attending a regularly scheduled board meeting would create several administrative difficulties for board staff. The commenter believed that such difficulties would include requiring additional staff to track who such persons are and when they arrive and depart, whether board staff would then be required to produce CE certificates, whether screening panel attendance would count (for those licensees having to respond to complaints filed against them), and whether on each cycle a licensee could obtain all CE hours by attending a single board meeting, except the three hours of specific topics required under (1) of the proposed rule.

RESPONSE 19: The board agrees and is amending the rule to remove (7).

4. The board has amended ARM 24.147.403, 24.147.405, 24.147.406, 24.147.501, 24.147.502, 24.147.504, 24.147.505, 24.147.902, 24.147.903, 24.147.2102, and 24.147.2301 exactly as proposed.

5. The board has amended ARM 24.147.402, 24.147.901, and 24.147.2101 with the following changes, stricken matter interlined, new matter underlined:

24.147.402 ORIGINAL MORTICIAN LICENSE - APPLICATION (1) through (5) remain as proposed.

(6) Board staff may issue licenses in cases of routine applications. The board will review all complete nonroutine applications received by the board office ~~at least three working days~~ prior to the board meeting in accordance with department policy.

24.147.901 MORTUARY OPERATION STANDARDS (1) through (1)(f) remain as proposed.

(g) infectious wastes properly labeled and disposed of ~~through a commercial disposal entity,~~ in accordance with Title 75, chapter 10, part 10, MCA;

(h) and (i) remain as proposed.

(2) The preparation of human remains for final disposition, such as washing, disinfecting, embalming, removing hazardous implants, dressing, and casketing must only be performed in a preparation room of a licensed mortuary or mortuary branch with a preparation room, except that washing, dressing, and casketing may be provided by a person with the right of disposition in 37-19-904, MCA.

(3) through (7) remain as proposed.

24.147.2101 CONTINUING EDUCATION REQUIREMENTS (1) Morticians with active licenses, beginning with their first full year of licensure, shall complete a minimum of 12 hours of approved continuing education in a two-year period, beginning July 1, 2015, with a minimum of three hours addressing the FTC funeral rule, federal or state regulations governing safety and sanitation of funeral services practice, board rules governing funeral trusts, or funeral services ethics. The board will conduct the first audit under this rule after July 1, 2015, and every odd-numbered year thereafter. Morticians with active licenses licensed less than two full years on their first audit must provide proof of six hours of continuing education.

(2) through (6) remain as proposed.

~~(7) Licensees may receive continuing education credit by attending a regularly scheduled board meeting.~~

(8) through (13) remain as proposed, but are renumbered (7) through (12).

6. The board has adopted NEW RULE I (24.147.904) exactly as proposed.

7. The board has repealed ARM 24.147.301, 24.147.503, 24.147.506, 24.147.1501, 24.147.2108, 24.147.2109, 24.147.2302, 24.147.2303, 24.147.2304, 24.147.2305, and 24.147.2401 exactly as proposed.

BOARD OF FUNERAL SERVICE
R.J. (DICK) BROWN, MORTICIAN 396
CHAIRPERSON

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

/s/ PAM BUCY
Pam Bucy, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State July 1, 2013

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

In the matter of the adoption of NEW RULE I AMC Audit Rules) NOTICE OF ADOPTION)

TO: All Concerned Persons

1. On April 25, 2013, the Board of Real Estate Appraisers (board) published MAR notice no. 24-207-36 regarding the public hearing on the proposed adoption of the above-stated rule, at page 580 of the 2013 Montana Administrative Register, issue no. 8.

2. On May 16, 2013, a public hearing was held on the proposed adoption of the above-stated rule in Helena. Several comments were received by the May 24, 2013, deadline.

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

COMMENT 1: Multiple commenters expressed support for the proposed new rule.

RESPONSE 1: The board appreciates all public interest and comment during the rulemaking process.

COMMENT 2: One commenter asked the board to incorporate a "commercially reasonable" standard into its audit rules, because this type of standard would allow the board to assess an AMC's compliance on a broad scale, rather than forcing harsh penalties for a minor infraction when the AMC is otherwise compliant with the law.

RESPONSE 2: The board intends to apply a reasonableness standard at the time it reviews the audit.

COMMENT 3: A commenter encouraged the board to request documentation of and review all situations when an AMC makes a request to an appraiser after the appraisal has been submitted.

RESPONSE 3: The board determined this proposed amendment is too broad, because not all requests by an AMC will potentially infringe on an appraiser's professional independence.

COMMENT 4: A commenter suggested that copies of the original appraisal and review should be submitted during the audit process.

RESPONSE 4: The board intends to request these documents as appropriate.

COMMENT 5: A commenter asked the board to clearly define the difference between a revision request, which may originate from an AMC staff member (nonlicensed appraiser) or robotic quality control examination, and a revision request which may originate from an appraisal review by another Montana-licensed appraiser.

RESPONSE 5: The board does not believe this will be an issue, as appraisers must maintain their professional independence, regardless of the source of the request.

COMMENT 6: A commenter proposed that the board insert the word "appraisal" prior to the word "reviews" in (1)(a) to codify 37-54-102, MCA, which clearly distinguishes between a "quality control examination" and an "appraisal review."

RESPONSE 6: The board agrees that this suggestion would add clarity to the rule and is amending the rule accordingly.

COMMENT 7: One commenter believed it is unclear as to whether the new rule and the information that an AMC is required to maintain replaces ARM 24.207.1507, or whether it is intended to supplement this existing rule.

RESPONSE 7: The board believes the new rule will supplement and expand the current rules regarding AMCs. The board does not intend for the new rule to limit the scope of prior rules, but to provide clarity regarding information AMCs will be expected to produce to satisfy the recordkeeping and audit requirements in 37-54-312 and 37-54-513, MCA.

COMMENT 8: One commenter offered a list of additions to the proposed rule.

RESPONSE 8: The board considered each suggested amendment. The board is not amending the rule to include them, since the changes are beyond the scope of the proposal, they would have gathered more information than the board needs to satisfy the statutory obligations, and the additions would impose unnecessary additional duties on AMCs and appraisers.

COMMENT 9: One commenter observed that AMCs should not be treated differently than any local lender, and stated there could be a perception of prejudice or possibly a perception of punitive action toward AMCs.

RESPONSE 9: The board does not regulate lenders, but will not discriminate in its application of standards and rules to all licensees as required under 37-1-131(1)(a)(ii), MCA.

COMMENT 10: Multiple commenters asserted the board's proposed documentation requirements in (1)(c) are in excess of statutory authority and inconsistent with the implemented statutes. The commenters stated the board should not place AMCs in the position of assessing an appraiser's geographic competency.

RESPONSE 10: The board agrees with the commenters that the USPAP places the duty of weighing geographic competency on the appraisers themselves. The board is therefore amending the rule further to require AMCs to provide their policies for requiring appraisers to comply with USPAP, including the geographic competency requirements.

COMMENT 11: Multiple commenters asserted that 37-54-312 and 37-54-313, MCA, do not give the board authority to review reconsideration of value requests and other business practices of AMCs.

RESPONSE 11: The board disagrees with the commenters, but the board is amending (1)(d)(iii)-(v), (2)(c)(v)-(vii), and (6) and not audit reconsiderations of value. The board does not intend to dictate business practices, except that they must be consistent with statute. The board concluded that potential infringements on appraiser independence as a result of reconsiderations of value could be handled via the complaint process on a case-by-case basis.

COMMENT 12: Multiple commenters asked the board to amend or remove (1)(d), stating that reconsiderations of value may have different reasons, various origins, and unique forms, because the information the board requires under (1)(d) may not exist or be maintained by an AMC that is not the source of the request, and because the board should not dictate how AMCs obtain information.

RESPONSE 12: Except as required by statute, the board does not intend to dictate how AMCs do business. For this reason, and for reasons already stated, the board is amending the rule to remove all subsections applicable to reconsiderations of value.

COMMENT 13: One commenter asked the board to delete (1)(d), asserting that the rule directly conflicts with federal mandates placed on AMCs.

RESPONSE 13: While the board disagrees with the comment, the board is deleting (1)(d) for previously stated reasons.

COMMENT 14: One commenter suggested that the board should amend the definition of reconsideration of value in (6) to clarify that a reconsideration of value, for purposes of the audit rule, is limited to only those reconsiderations that are submitted to the appraiser directly by the AMC.

RESPONSE 14: The board is deleting (6) entirely in response to other comments, and appreciates all comments and suggestions made in the rulemaking process.

COMMENT 15: A commenter asked the board to remove the definition of a reconsideration from (6), stating it would impose an unreasonable burden on market participants and does not properly reflect the intent of the framers of the statutes.

RESPONSE 15: The board does not agree; however, the board is striking (6) for other reasons.

COMMENT 16: A commenter asked the board to clarify (1)(e) to ensure that an AMC can satisfy the requirements for removal of an appraiser by submitting the removal notice.

RESPONSE 16: The board believes removal notices will often provide the information in (1)(e). The board is therefore amending the rule to reflect that the auditor will not request duplicate information if the AMC's removal notice already contains the information sought by the board.

COMMENT 17: One commenter suggested that (2) is confusing, as it is unclear whether the information requested applies to the appraisals that were reviewed or to the appraisal reviews themselves. Specifically, (2)(c) lists information that must be disclosed, and it is not clear whether this disclosure applies to the appraiser who prepared the appraisal initially or the reviewing appraiser.

RESPONSE 17: The board agrees that (2) could be confusing, and is amending (2) to clarify which parts pertain to appraisers and appraisals, and which parts pertain to the annual appraisal review.

COMMENT 18: A commenter suggested the board strike (2)(c)(i)-(viii), stating that it goes beyond ensuring that AMCs have a process in place to perform the required reviews annually.

RESPONSE 18: The board is amending the rule to remove these subsections, because they refer to reconsiderations of value and other issues that touch on appraiser independence. The board concluded that these issues can be addressed more efficiently and appropriately through the complaint process.

COMMENT 19: One commenter contended that (2)(c)(vii) is in excess of the board's authority and should be deleted.

RESPONSE 19: The board is deleting (2)(c)(vii) for other previously stated reasons.

COMMENT 20: One commenter indicated the board should remove (3), the provision on establishing by motion the information that AMCs that are subject to audit in a particular year, as audited AMCs may focus on only those areas and ensure that its records are always in compliance.

RESPONSE 20: The board expects all AMCs to abide by the requirements imposed on them by statute and rule. The board acknowledges that AMCs will likely be particularly careful regarding matters that the board emphasizes, but that this will not excuse companies from their remaining obligations under statute and rule. Thus, it is appropriate that the board inform AMCs of areas that will be scrutinized during upcoming audits.

COMMENT 21: A commenter noted that the board may be limited in the information it can collect from AMCs if (3) is included as proposed.

RESPONSE 21: The board will collect the data it is statutorily authorized to collect and only intends (3) to provide licensees notice regarding areas of particular emphasis during a particular audit cycle.

COMMENT 22: One commenter suggested the board's annual identification of the information to be collected from each audited AMC under (3) provides for an inconsistent, arbitrary, and capricious audit process.

RESPONSE 22: The board concluded that identifying specific areas of focus for each annual audit will prevent arbitrary results, as each AMC will know in advance what auditors will be looking for, and the auditors will be looking for the same information from every company.

COMMENT 23: One commenter asked the board to strike (3) and substitute language that would define auditing standards that would apply every year in order to give licensees time to anticipate and respond to the reporting requirements.

RESPONSE 23: The board contends AMCs should already be keeping all of the information required by law, thus the recordkeeping requirements will not change annually. Adopting (3) as proposed will assist AMCs in preparing for audits by giving them notice of records they should expect the auditors to request and review.

COMMENT 24: A commenter suggested the board strike (3), stating that it does not define how and when recordkeeping changes would be implemented and because will set a standard for small businesses/licensees that is impossible to meet.

RESPONSE 24: The board does not agree, because (3) does not change the recordkeeping requirements in statute. Instead, (3) requires the board to provide notice to AMCs regarding specific areas of emphasis in order to streamline the audit process for the AMCs and the board.

COMMENT 25: One commenter suggested the board delete (5), since it does not define by type, category, or by specific definition any limitations of any kind on the fees, which may be assessed on an audited AMC in addition to those defined in the statute.

RESPONSE 25: The board determined that (5) implements the requirement of 37-54-512, MCA, to attribute to AMCs the costs incurred by the board during an audit. Companies can limit their audit costs by providing records in an organized and timely manner.

COMMENT 26: A commenter predicted that the rule as proposed will have unintended consequences, including AMCs withdrawing from offering services in

Montana, and making it harder for Montana taxpayers to get mortgages because of potentially unlimited compliance costs due to the lack of a cap on audit expenses and the lack of specificity in the audit rules.

RESPONSE 26: The board concluded the new rule, amended as described below, requires only auditing of records that AMCs are mandated to keep under statute and imposes a reasonable fee as authorized by 37-54-512, MCA. Companies that are licensed in Montana must abide by the statutes, which have not been modified since enactment and consequently are the same as they were at the time any AMC applied for registration in this state.

COMMENT 27: One commenter expressed concern that AMCs will be governed by a board, including some individuals who are licensed appraisers who may have an ongoing or historic business relationship with regulated AMCs or their clients.

RESPONSE 27: Board members understand their responsibilities under state ethics laws and the department's conflict of interest guidance to members. The board expects members to disclose potential conflicts and, if necessary, recuse themselves from taking part in decisions that may relate to their self-interest. In addition, all licensees and persons appearing before the board are entitled to challenge participation by a board member, based on bias, lack of independence, disqualification by law, or another basis as provided by 2-4-611, MCA.

COMMENT 28: One commenter objected that by requiring a member of the board to decide who should pay how much for an audit without limitation, the proposed rule requires a board member to be responsible for both defining how monies are collected and how monies are distributed, and that this creates a conflict of interest.

RESPONSE 28: Board members will not be directly involved in assessing audit fees, as the fees are driven by the expense of the audit. Because board members will not be exercising discretion in determining fees for each audit, board members should not have a conflict of interest.

COMMENT 29: One commenter observed that while the statutes require that some board members are licensed appraisers, they make no provision or requirement for AMCs to be similarly represented. The board members who are appraisers would find themselves forced into the position of deciding how to distribute funds collected from different groups of licensees. The opportunity for a perception of inequality of representation for all of the parties licensed by the board is a likely consequence.

RESPONSE 29: The board notes that this concern must be addressed to the legislature, as the board does not determine its own makeup. Moreover, the commenter's concern should be alleviated, since 37-1-131(1)(a)(ii), MCA, already requires that the board applies its standards and rules in a manner that does not discriminate against any person or company licensed by the board.

COMMENT 30: One commenter asserted that the primary purpose of a board audit should be to review whether an AMC has the necessary and appropriate policies and procedures in place to comply with applicable state law, and whether the AMC is complying with those policies and procedures. The audit process should not serve as an investigation or enforcement tool.

RESPONSE 30: The board recognizes that its audit processes and complaint processes have distinct purposes.

COMMENT 31: Multiple commenters requested that the board ensure that no AMC is unreasonably burdened by audits on a continuous basis. The commenters suggested the board either require that all AMCs be audited at least once before auditing the same AMC a second time, or clarify that an AMC cannot be audited in consecutive years.

RESPONSE 31: The board determined that its audits should be truly random and does not wish to exclude any companies from the pool of licensees to be audited. If the random audits tend to pick up licensees repeatedly and consecutively, the board would consider including this suggestion in a future rules proposal.

COMMENT 32: Multiple commenters questioned whether the proposed new rule applied only to an AMC's Montana operations and appraiser panel.

RESPONSE 32: The board does not review appraisal or appraisal management activity that occurs outside Montana, except that it may issue reciprocal discipline following notice and an opportunity for hearing when another jurisdiction has sanctioned a licensee.

4. The board has adopted NEW RULE I (24.207.1509) with the following changes, stricken matter interlined, new matter underlined:

NEW RULE I AMC AUDIT REQUIREMENTS (1) remains as proposed.

(a) company written policy for quality control examinations and appraisal reviews;

(b) remains as proposed.

(c) company written policy ~~identifying how geographic competency is determined for each appraiser panel member;~~ requiring appraisers completing appraisal assignments, at its request, to comply with the Uniform Standards of Professional Appraisal Practice, including the requirements for geographic and product competence; and

~~(d) the following information regarding reconsiderations of value:~~

~~(i) company written policy to request a reconsideration of value;~~

~~(ii) number of reconsiderations of value that were requested in the 12 months preceding renewal;~~

~~(iii) name of any person who provided additional sales for reconsideration;~~

~~(iv) sources of the sales data provided for every additional sale given to the appraiser to analyze; and~~

~~(v) written notification to the appraiser regarding the justification for the reconsideration; and~~

(e) remains as proposed, but is renumbered (d).

(i) remains as proposed.

(ii) reasons for each removal, if not otherwise provided in the written removal notification; and

(iii) a copy of the written removal notification provided to each appraiser that was removed.

(2) remains as proposed.

(a) name of each appraiser on the company's appraiser panel and the number of engagements performed by each appraiser in the 12 months preceding renewal;

(b) ~~number of engagements performed~~ name of each appraiser who performed an appraisal review for an appraisal in the 12 months preceding renewal, submitted to the company in Montana as part of the company's system or process pursuant to 37-54-511, MCA, and his or her license number; and

(c) any appraisal review performed for USPAP compliance for each panel member as required by 37-54-511, MCA, and the corresponding appraisal report, including:

(i) remains as proposed.

(ii) date assigned and date completed; and

(iii) name and license number of appraiser who performed the review~~;~~.

~~(iv) appraisal report and corresponding appraisal review completed for USPAP compliance in the previous renewal year;~~

~~(v) documentation of any alteration of the appraisal report;~~

~~(vi) listing of any additional sales data provided to the appraiser;~~

~~(vii) name and contact information of the person who selected the additional sales data for the appraiser to respond to or analyze; and~~

~~(viii) amount of fees and date paid to the appraiser.~~

(3) through (5) remain as proposed.

~~(6) For purposes of this rule, a reconsideration of value means any suggestion, request, or demand by the appraisal management company, whether it was originated by the appraisal management company or another source, that the appraiser reconsider a value opinion or consider an alternative value for an appraisal submitted to the appraisal management company. Any such request or a similar request is considered a reconsideration of value, regardless of the nomenclature used by the appraisal management company in making the request.~~

BOARD OF REAL ESTATE APPRAISERS
THOMAS G. STEVENS, CERTIFIED
GENERAL APPRAISER, CHAIRPERSON

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

/s/ PAM BUCY
Pam Bucy, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State July 1, 2013

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

In the matter of the amendment of ARM 37.86.3607 pertaining to case management services for persons with developmental disabilities	))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On April 25, 2013, the Department of Public Health and Human Services published MAR Notice No. 37-633 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 605 of the 2013 Montana Administrative Register, Issue Number 8. On May 23, 2013, the Department of Public Health and Human Services published an Amended Notice of Public Hearing on Proposed Amendment at page 816 of the 2013 Montana Administrative Register, Issue Number 10.

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

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

COMMENT #1: Several commenters requested the department apply the full 4% provider rate increase appropriated by the 63rd Montana Legislature.

RESPONSE #1: While the department thinks that it is worthwhile to pursue incorporation of outcome measures in the distribution of the provider rate increase, there is not enough time to adequately develop meaningful outcome measures this year. As such, the department agrees to distribute the 4% provider rate increase to developmental disabilities providers effective July 1, 2013.

The final rates may be found in Section One, Rates of Reimbursement for the Provision of Developmental Disabilities Case Management Services for Persons with Developmental Disabilities 16 Years of Age or Older or Who Reside in a DD Children's Group Home Manual. A copy of Section One of the manual may be obtained through the Department of Public Health and Human Services, Developmental Services Division, Developmental Disabilities Program, 111 N. Sanders, P.O. Box 4210, Helena, MT 59604-4210 and at http://www.dphhs.mt.gov/dsd/ddp/ddprateinformation.shtml.

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

/s/ Cary B. Lund
Cary B. Lund
Rule Reviewer

/s/ Mary E. Dalton acting for
Richard H. Opper, Director
Public Health and Human Services

Certified to the Secretary of State July 1, 2013.

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

In the matter of the amendment of ARM 37.34.3001, 37.34.3002, and 37.34.3005 and the repeal of ARM 37.34.3006, 37.34.3007, 37.34.3012, 37.34.3013, and 37.34.3015 pertaining to reimbursement for services	)))))))	NOTICE OF AMENDMENT AND REPEAL

TO: All Concerned Persons

1. On April 25, 2013, the Department of Public Health and Human Services published MAR Notice No. 37-634 pertaining to the public hearing on the proposed amendment and repeal of the above-stated rules at page 608 of the 2013 Montana Administrative Register, Issue Number 8. On May 23, 2013, the Department of Public Health and Human Services published an Amended Notice of Public Hearing on Proposed Amendment at page 818 of the 2013 Montana Administrative Register, Issue Number 10.

2. The department has amended and repealed the above-stated rules as proposed.

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

COMMENT #1: Several commenters requested the department apply the full 4% provider rate increase appropriated by the 63rd Montana Legislature.

RESPONSE #1: While the department thinks that it is worthwhile to pursue incorporation of outcome measures in the distribution of the provider rate increase, there is not enough time to adequately develop meaningful outcome measures this year. As such, the department agrees to distribute the 4% provider rate increase to developmental disabilities providers effective July 1, 2013.

COMMENT #2: One commenter asked how the department expects providers to cover costs of master's level behavioral professionals and medical doctors via the rate proposed for the behavior support service.

RESPONSE #2: While the department sees the potential need to adjust this rate, rate setting outside of the 4% provider rate increase is outside the scope of this rulemaking process. However, the department agrees to consider this comment for future rulemaking.

COMMENT #3: One commenter asked what incentive exists in the proposed waiver to effectively provide behavioral therapy with credentialed and licensed professionals, with Board Certified Behavior Analysts (BCBA), or psychiatrists. They also would like to know how the department proposes to recognize effective behavior intervention strategies and incentivize providers to service intensive individuals in community settings.

RESPONSE #3: This comment is outside of this rulemaking process.

COMMENT #4: One commenter asked what the department's strategy is to allow providers to effectively serve people with intensive needs in community settings via the rates proposed in this MAR notice and alleviate the pressure on Montana Developmental Center.

RESPONSE #4: The purpose of this proposed notice and subsequent amendment is to provide for the 4% provider rate increase. Therefore, this comment is outside the scope of this rulemaking.

COMMENT #5: One commenter raised the question given that aversive treatment, if misapplied could be abusive or assaultive, has the Developmental Disabilities Program created a "race to the bottom" in allowing providers with questionable training to sign off on positive behavior support plans.

RESPONSE #5: This comment is outside of this rulemaking process. The credentials required in order to approve a positive behavior support plan were proposed and adopted into rule in MAR Notice No. 37-599.

COMMENT #6: One commenter asked why psychiatric physicians were not listed as persons who may approve a positive behavior support plan.

RESPONSE #6: This comment is outside of this rulemaking process. The credentials required in order to approve a positive behavior support plan were proposed and adopted into rule in MAR Notice No. 37-599.

COMMENT #7: One commenter asked if the department is creating reverse incentives and rewarding providers to employ staff with the lowest possible training and credentials by allowing bachelor level employees that have an Institute for Applied Behavioral Analysis (IABA) certificate to do the equivalent work of a BCBA.

RESPONSE #7: This comment is outside the scope of this rulemaking.

The final rates may be found in Section Two: Rates of Reimbursement for the HCBS 1915(c) 0208, 1037, 0667 Waiver Programs, of the Developmental Disabilities Program Manual of Service Reimbursement Rates and Procedures, published effective July 1, 2013. A copy of Section Two of the manual may be obtained through the Department of Public Health and Human Services, Developmental Services Division, Developmental Disabilities Program, 111 N.

Sanders, P.O. Box 4210, Helena, MT 59604-4210 and at http://www.dphhs.mt.gov/dsd/ddp/ddprateinformation.shtml.

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

/s/ Cary B. Lund
Cary B. Lund
Rule Reviewer

/s/ Mary E. Dalton acting for
Richard H. Opper, Director
Public Health and Human Services

Certified to the Secretary of State July 1, 2013

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

In the matter of the adoption of New Rules I and II, and the amendment of ARM 37.40.705, 37.40.1105, 37.40.1303, 37.79.102, 37.79.304, 37.85.105, 37.85.212, 37.86.105, 37.86.205, 37.86.805, 37.86.1004, 37.86.1006, 37.86.1105, 37.86.1506, 37.86.1802, 37.86.1807, 37.86.2005, 37.86.2206, 37.86.2207, 37.86.2230, 37.86.2405, 37.86.2505, 37.86.2605, 37.86.3020, 37.86.3515, 37.86.4010, 37.86.4205, 37.87.901, 37.87.1303, 37.87.1313, 37.87.1314, 37.87.1333, 37.87.2233, 37.88.907, 37.89.125, 37.89.523, and 37.90.408 pertaining to revision of fee schedules for Medicaid provider rates	))	CORRECTED NOTICE OF ADOPTION AND AMENDMENT

TO: All Concerned Persons

1. On April 25, 2013, the Department of Public Health and Human Services published MAR Notice No. 37-636 pertaining to the public hearing on the proposed adoption and amendment of the above-stated rules at page 621 of the 2013 Montana Administrative Register, Issue Number 8. On May 23, 2013, the Department of Public Health and Human Services published an Amended Notice of Public Hearing on Proposed Adoption and Amendment at page 824 of the 2013 Montana Administrative Register, Issue Number 10. On June 20, 2013, the department published the notice of adoption and amendment at page 1111 of the 2013 Montana Administrative Register, Issue Number 12.

2. Two comments received by the department, pertaining to MAR Notice No. 37-636, were inadvertently left out of the final notice of adoption and amendment. These comments and the responses are as follows:

COMMENT #1: One commenter asked why the appropriations approved in HB 2 for targeted case management (TCM) are not reflected in the rule notice or in the Medicaid Youth Mental Health Fee Schedule.

RESPONSE #1: The TCM rate published in the fee schedule reflects a 2% increase. This is because Montana does not have an approved state plan amendment (SPA) to increase the TCM rate to the amount appropriated by the 63rd Montana Legislature in HB 2. The department will submit an SPA to the Centers for Medicare and Medicaid Services (CMS) with a request to increase the TCM rate for

seriously emotional disturbed youth to the amount appropriated by the Legislature, effective July 1, 2013. The department will promulgate a retroactive rule change to the CMS-approved rate once CMS approval is received.

COMMENT #2: One commenter stated that they recall that provider rates for the services provided for in ARM 37.87.1314 and 37.87.1333 were not decreased by 2% during the previous biennium when the core Medicaid rates were decreased. They would like to know why, if the rates were not decreased previously, they would now be eligible for the rate increase along with the other Medicaid rates.

RESPONSE #2: The department would like to clarify that ARM 37.87.1314 is new effective January 1, 2013 and therefore, was not subject to any previous provider rate increases or decreases. ARM 37.87.1333 is specific to the Home and Community-Based 1915(c) Bridge Waiver for Youth with Serious Emotional Disturbance effective October 1, 2012 (previously, this program was the PRTF Home and Community-Based Services for Youth with Serious Emotional Disturbance). The rates for the services included in ARM 37.87.1333 have basically remained unchanged since the inception of the PRTF Waiver Program and have not experienced provider rate increases or corresponding decreases. Only two services, "respite per 15 minute unit" and "non-Medical transportation per mile," received a slight increase relative to legislative provider rate increases as these two codes were shared with the other waiver programs. There was a rate study completed for some of the bridge waiver services which included service units being redefined and subsequent rates applied. This was not part of any provider rate increase or decrease per the Legislature.

/s/ John Koch
John Koch
Rule Reviewer

/s/ Mary E. Dalton acting for
Richard H. Opper, Director
Public Health and Human Services

Certified to the Secretary of State July 1, 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 March 31, 2013. This table includes those rules adopted during the period April 1, 2013, through June 30, 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 March 31, 2013, 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 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.

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