MONTANA ADMINISTRATIVE REGISTER

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ISSUE NO. 23

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 The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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 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) 444-9000.

Page Number

TABLE OF CONTENTS

PROPOSAL NOTICE SECTION

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

In the matter of the amendment of ARM 24.147.302 funeral service definitions, 24.147.403 inspections – mortuaries, branch establishments, and crematories, 24.147.408 transportation and custody of human remains, 24.147.501 out-of-state mortician licenses, 24.147.901 mortuary and branch establishment operation standards, 24.147.904 mortuary and branch establishment licenses and temporary permits, 24.147.1101 crematory licenses, temporary permits, and operation standards, 24.147.2101 continuing education requirements – morticians, 24.147.2301 unprofessional conduct, the amendment and transfer of ARM 24.147.402 (24.147.507) mortician licenses, 24.147.405 (24.147.509) examinations, 24.147.903 (24.147.407) name change, closure, transfer, or sale – mortuary, branch establishment, crematory, or cemetery, the adoption of NEW RULE I change of mortician-in-charge or crematory operator-in-charge, NEW RULE II nonlicensed personnel, and the repeal of ARM 24.147.2102 sponsors	))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT, AMENDMENT AND TRANSFER, ADOPTION, AND REPEAL

TO: All Concerned Persons

1. On January 4, 2018, at 9:30 a.m., a public hearing will be held in the Large Conference Room, 301 South Park Avenue, 4th Floor, Helena, Montana, to consider the proposed amendment, amendment and transfer, adoption, and repeal of the above-stated rules.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Funeral Service (board) no later than 5:00 p.m., on December 27, 2017, to advise us of the nature of the accommodation that you need. Please contact Lucy Richards, Board of Funeral Service, 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; or dlibsdfnr@mt.gov (board's e-mail).

3. GENERAL STATEMENT OF REASONABLE NECESSITY: As part of the rulemaking process, the board determined it is reasonably necessary to rename and reorganize some existing subchapters, and transfer some of the amended rules to different subchapters. This reorganization will make it easier for licensees and the public to identify and locate rules.

Additionally, the board is updating the authority and implementation citations throughout to accurately reflect all statutes implemented through the rules and provide the complete sources of the board's rulemaking authority.

Any additional and more specific reasons for proposed changes will be identified immediately following each rule.

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

24.147.302 FUNERAL SERVICE DEFINITIONS As used in this chapter, the following definitions apply:

~~(1) "Funeral goods" means personal property typically sold or provided in connection with a funeral or the final disposition of human remains, including, but not limited to, caskets or other primary containers, cremation or transportation containers, outer burial containers, vaults, funeral clothing or accessories, monuments, cremation urns, and similar funeral or burial items.~~

~~(2) "Funeral services" means those services typically provided in connection with a funeral, or the final disposition of human remains, including, but not limited to, funeral directing services, embalming services, care of human remains, preparation of human remains for final disposition, transportation of human remains, use of facilities or equipment for viewing human remains, visitation, memorial services or services which are used in connection with a funeral or the disposition of human remains, coordinating or conducting funeral rites or ceremonies and similar funeral or burial services.~~

(1) "Change in ownership" means when more than 50 percent of the equitable ownership of a mortuary, branch establishment, crematory, or cemetery is transferred to one or more persons or any other legal entity, in a single transaction or in a related series of transactions.

(2) "Crematory operator-in-charge" means the Montana licensed crematory operator, as described in 37-19-101 and 37-19-702, MCA, who accepts responsibility for the operation of a crematory in conformance with all laws and rules pertinent to operation of the crematory. The crematory operator-in-charge:

(a) is personally in full and actual charge of the crematory; and

(b) assures the crematory and all crematory personnel working in the crematory have current and appropriate licensure.

~~(3) "Guaranteed price agreement" means a prepaid funeral agreement under which, in exchange for the proceeds of a funeral trust or funeral insurance policy, the provider agrees to provide the stated funeral goods and services in the future,~~

~~regardless of whether or not the retail value of those services and funeral goods exceeds the funds available from the funeral trust or funeral insurance policy at the time of death of the intended funeral recipient.~~

~~(4)~~ (3) "Hazardous ~~implants~~ implant" ~~is defined as being~~ means any foreign object or substance that has been surgically or otherwise placed in the human body that may present a threat of injury to the public or the crematory operator, or to the crematory retort or related equipment, during the cremation process~~, or to the public~~.

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

(5) "Mortician-in-charge" means a Montana-licensed mortician who accepts responsibility for the operation of a mortuary in conformance with all laws and rules pertinent to the practice of mortuary science. The mortician-in-charge:

(a) is personally in full and actual charge of the mortuary;

(b) assures the mortuary and all mortuary personnel working in the mortuary have current and appropriate licensure; and

(c) is responsible for the supervision of nonlicensed personnel as defined in these rules.

~~(6) "Nonguaranteed price agreement" means a prepaid funeral agreement funded with a funeral trust or funeral insurance policy, the proceeds of which the provider will apply to the current retail value of the prepaid funeral goods and services previously selected at the time of death of the intended funeral recipient, but which agreement shall not bind the provider to provide the services and funeral goods if the value thereof exceeds the funds available at the time of death of the intended funeral recipient.~~

(6) "Nonlicensed personnel" means any person employed by a licensed mortuary or mortuary branch establishment who is not licensed as a mortician or intern.

(7) "Permit" ~~as referred to~~ as referenced in 37-19-814, MCA, is ~~defined to be~~ synonymous with "license" ~~for purposes of this chapter~~ in the context of cemetery permits issued by the board under these rules.

~~(8) "Preneed funeral arrangement" or "preneed funeral agreement" means arrangements made with a licensed funeral director or licensed mortician by a person on the person's own behalf or by an authorized individual on the person's behalf prior to the death of the person.~~

~~(9)~~ (8) "Prepaid funeral agreement" as further clarified in these rules means a written agreement ~~and all documents related thereto made by a purchaser with a provider~~ for preneed funeral arrangements which is made between a purchaser and provider prior to the death of the intended funeral recipient~~, with which there is connected a provisional means of paying for preneed funeral arrangements upon the death of the intended funeral recipient by the use of a funeral trust or funeral insurance policy, made payable to a provider and in return for which the provider promises to furnish, make available or provide the prepaid funeral goods or services, or both, specified in the agreement, the delivery of which occurs after the death of the intended funeral recipient~~.

~~(10)~~ (9) "Prepaid funeral goods" means funeral goods purchased in advance of need and which will not be delivered until the death of the intended funeral recipient named in a prepaid funeral agreement. Prepaid funeral goods ~~shall~~ do not mean ~~the sale of~~ interment spaces offered or sold by a cemetery company.

~~(11)~~ (10) "Prepaid funeral services" means funeral services which are purchased in advance of need and which will not be provided or delivered until the death of the intended funeral recipient named in a prepaid funeral agreement. Prepaid funeral services ~~shall~~ does not mean the sale of services incidental to the provision of interment spaces offered or sold by a cemetery company.

(11) "Price agreement" means a prepaid funeral agreement funded with a funeral trust or funeral insurance policy. The two types of price agreements are as follows:

(a) "guaranteed price agreement" means that the provider will provide the selected funeral goods and services in exchange for the proceeds of a funeral trust or funeral insurance policy. The agreement binds the provider to provide the selected funeral goods and services regardless of whether or not the current retail value of those services and funeral goods exceeds the funds available from the funeral trust or funeral insurance policy at the time of death of the intended funeral recipient; and

(b) "nonguaranteed price agreement" means the provider will apply the proceeds of the funeral trust or funeral insurance policy to the current retail value of the selected funeral goods and services at the time of death of the intended funeral recipient. The agreement does not bind the provider to provide the services and funeral goods if the current value of those funeral goods and services exceeds the funds available at the time of death of the intended funeral recipient.

(12) "Provider" means a licensed mortician or the licensed mortuary ~~by whom the~~ where the licensed mortician is employed~~,~~ that is providing or offering to provide at-need, preneed, or prepaid funeral arrangements, and/or funeral goods or services.

(13) "Purchaser" means the person named in a prepaid funeral agreement who purchases the prepaid funeral goods and services to be provided ~~thereunder~~ per the agreement. The purchaser may or may not be the intended funeral recipient. If the purchaser is different than the intended funeral recipient, it is understood ~~that~~ the relationship of the purchaser to the intended funeral recipient includes a means to provide administrative control over the agreement on behalf of the intended funeral recipient.

(14) "Supervision of nonlicensed personnel" means:

(a) regular and direct oversight and guidance of duties directed by the mortician-in-charge; and

(b) the mortician-in-charge's acceptance of responsibility for the work.

AUTH: 37-1-131, 37-19-202, MCA
IMP: 37-1-131, 37-19-101, 37-19-402, 37-19-702, 37-19-705, 37-19-814, 37-19-827, 37-19-828, 37-19-829, MCA

REASON: The board determined it is reasonably necessary to add several definitions to this rule regarding supervision of unlicensed personnel. While the board currently uses both "mortician-in-charge" and "crematory operator-in-charge," these terms were not previously defined in rule. Since mortuaries and branch facilities employ nonlicensed staff, it is necessary to define certain terms to clarify the supervision of those persons as these terms are used throughout this chapter.

The board is placing the definition of "change in ownership" in this rule instead of duplicating the term in multiple rules.

The board is striking "funeral goods" and "funeral services" as these are already defined in Federal Trade Commission regulations which the board has adopted by reference in ARM 24.147.406. Additionally, the board is striking "preneed funeral arrangements" as the term is defined in 37-19-101, MCA.

The board is adding the definition of "price agreement" at (11) to incorporate the clarifying terms "guaranteed price agreement" and "nonguaranteed price agreement" previously defined at (3) and (6).

It is reasonably necessary to further amend definitions in this rule to remove outdated, redundant, and unnecessary provisions and add clarifying language where needed to address questions, and provide consistency, simplicity, better organization, and ease of use for licensees.

24.147.403 INSPECTIONS – MORTUARIES, BRANCH ESTABLISHMENTS, AND CREMATORIES ~~MORTUARY TRANSFERS, INSPECTIONS, AND TEMPORARY PERMITS~~ (1) A board-designated inspector will conduct annual on-site inspections of all existing licensed mortuaries, branch establishments, and crematories for compliance with board regulations.

(a) Inspections may be conducted with or without advance notice to the licensee.

(b) Results of the inspection will be provided to the licensee.

(c) If there are any items of noncompliance, the mortician-in-charge or crematory operator-in-charge must submit a written response to the board which addresses those items of noncompliance. The response must be received by the board within ten days of the licensee receiving notification of noncompliance.

(d) A report of significant noncompliance will be reviewed by the board screening panel per the department's standard compliance process.

(2) The following inspection process applies to applicants for licensure as a mortuary or branch establishment per ARM 24.147.904 or a crematory per ARM 24.147.1101, and applicants for transfer of an existing mortuary, branch establishment, or crematory license per ARM [24.147.407].

(a) Applicants must pass an initial inspection of the facility by a board-designated inspector prior to a license being issued.

(b) Results of the inspection will be provided to the licensee.

(c) If there are any items of noncompliance, the mortician-in-charge or crematory operator-in-charge must submit a written response to the board which addresses those items of noncompliance. The response must be received by the department within ten days of receiving notification of noncompliance.

(d) If issues of noncompliance are not corrected within ten days, a report of noncompliance will be reviewed by the board at the next regularly scheduled board meeting following the initial inspection. For good cause the board may order a re-inspection, the costs of which will be paid by the applicant.

~~(1) Upon receipt of a completed application for a new mortuary license and accompanying fee, the department shall inspect the mortuary for compliance with board laws and rules.~~

~~(a) Except as provided in (3), a "new" mortuary, for the purposes of this rule, includes newly constructed mortuaries and existing mortuaries acquired by new owners, whether by sale or devise.~~

~~(b) Except upon issuance of a temporary license, the new mortuary may not operate until the board deems the mortuary and its operations to be in substantial compliance with board laws and rules after review of the application and inspection report.~~

~~(c) The applicant may apply for and receive a temporary license from the department provided there is no reason to deny the license under 37-1-316, MCA, or board rules defining unprofessional conduct. The mortuary may operate under the temporary permit until the board grants a license or issues an interim summary suspension order if warranted, or final order to deny it.~~

~~(d) The department inspector shall provide a written inspection report to the licensee in charge of the mortuary and to the board office.~~

~~(e) The licensee in charge of the mortuary shall submit to the board office a written response to all items of noncompliance no later than ten business days after the inspection.~~

~~(f) The board shall review all inspection reports indicating noncompliance, and any responses to the inspection at the next regularly scheduled board meeting after the inspection. For good cause, the board may request a reinspection; the costs of which shall be paid by the applicant prior to issuance of a permanent license.~~

~~(2) A mortuary under new ownership shall comply with the notification provisions at ARM 24.147.903 and provide a signed statement of relinquishment of license from the previous owner.~~

~~(3) The owner of a mortuary may transfer a mortuary license to a different mortuary and maintain the same license number only when terminating services at the former mortuary, upon submission of an application for transfer with the new information pertaining to the mortuary and applicable fees.~~

~~(a) The same process for obtaining a temporary permit, inspection, and approval set forth in (1)(b) through (f) applies to applications for a mortuary transfer.~~

~~(b) In the case of license transfers, staff shall link the license history of the former mortuary location to the new mortuary location.~~

~~(4) The department shall conduct annual mortuary inspections with or without advanced notice for compliance with board laws and rules, following the same steps outlined in (1)(d) through (f), except that the screening panel will review reports of significant noncompliance referred to it by the board, and determine whether further investigation or disciplinary action is warranted.~~

AUTH: 37-1-131, 37-19-202, 37-19-403, MCA
IMP: 37-1-131, 37-19-402, 37-19-403, 37-19-703, ~~75-10-1001, 75-10-1002, 75-10-1003, 75-10-1004, 75-10-1005, 75-10-1006,~~ MCA

REASON: The board determined it is reasonably necessary to amend this rule to clarify the various types of inspections and associated processes for mortuaries, branch establishments, and crematories. Through these amendments, the board

will address questions and locate all inspection provisions in one rule since the general process is identical for all license types.

Additionally, the board is relocating all license application provisions from this rule to the appropriate individual application rules for mortuaries, branch establishments, and crematories.

It is reasonably necessary to further amend this rule to remove outdated, redundant, and unnecessary provisions and add clarifying language where needed to address questions, and provide consistency, simplicity, better organization, and ease of use for licensees.

24.147.408 TRANSPORTATION AND CUSTODY OF HUMAN REMAINS

(1) ~~Upon authorization specified at 50-15-405, MCA,~~ Authorization to remove and transport a body from place of death must be made by a physician, physician designee, coroner, or mortician per 50-15-405, MCA ~~to remove and transport human remains, only a coroner, mortician, or person who is properly trained and for whose actions the mortician-in-charge will be responsible may transport the body to either a mortuary, coroner's morgue, or, in cases in which direct cremation or burial is legally permissible and authorized, directly to a crematory or cemetery~~.

(2) Once removal is authorized, only a coroner, mortician, or nonlicensed personnel under the supervision of the mortician-in-charge may transport the body.

(3) The body must be transported:

(a) to a mortuary;

(b) to a coroner's morgue; or

(c) directly to a crematory or cemetery in cases in which direct cremation or burial is legally permissible and authorized.

~~(2)~~ (4) ~~Nothing in these rules shall be construed to~~ These rules do not apply to transportation, custody, preparation, funeral arrangements, or disposition carried out individually by an authorizing agent, subject to such agent's compliance with all applicable state and local laws and regulations, including, but not limited to:

(a) and (b) remain the same.

~~(3)~~ (5) ~~In no case may an~~ An authorizing agent, as defined in 50-15-101, MCA, can only delegate the activities set forth in ~~(2)~~ (4)~~, unless~~ to a mortician employed by a mortuary.

AUTH: 37-19-202, 37-19-703, MCA
IMP: 37-19-101, ~~37-19-301, 37-19-302,~~ 37-19-703, 37-19-704, ~~50-15-405,~~ MCA

REASON: It is reasonably necessary to amend terminology to align with the new definition of "nonlicensed personnel" in ARM 24.147.302. The changes also clarify that the mortician-in-charge is ultimately responsible for supervising nonlicensed personnel.

The board is also amending this rule for better organization, clarity, and ease of use for the reader, and to comply with ARM formatting requirements.

24.147.501 ~~LICENSURE OF~~ OUT-OF-STATE MORTICIAN LICENSES ~~APPLICANTS~~ (1) Applicants for licensure as morticians who are currently licensed

in another state or jurisdiction must submit a completed application on forms provided by the department. Completed applications include appropriate fees and required documentation.

~~(1) Upon submission of a completed application containing the affirmations in (2) and (3) of this rule and payment of the proper license fee, the board staff may issue a license to a person if, at the time of application:~~

(2) Applicants must:

(a) ~~the applicant holds~~ hold a current, active license in good standing in another state or jurisdiction to practice under a funeral ~~services~~ service scope of practice recognized in Montana. At the time of application, the standards of that state or jurisdiction must be substantially equivalent to Montana standards;

~~(b) the applicant has a license based on standards in another state whose standards at the time of application to this state are substantially equivalent to Montana standards; and~~

~~(c) there is no reason to deny the license under 37-1-137 and 37-1-316, MCA, or board rules defining unprofessional conduct, or for staff to determine the application to be nonroutine.~~

(b) provide verification of any professional license(s) the applicant has ever held in any state or jurisdiction;

(c) have been actively engaged in practice during the period of licensure for five of the last seven years, or have passed the national examination within the timeframe described in ARM [24.147.509]; and

(d) pass the state jurisprudence examination as described in ARM [24.147.509].

(3) Incomplete applications will automatically expire one year from the date the fee was received. If an application expires, the applicant must reapply and pay all appropriate fees.

~~(2) As provided by 37-1-304, MCA, the applicant shall affirm whether the applicant has requested verification of the applicant's current license or licenses in good standing to be sent directly to the board office from all other states in which the licensee holds or has ever held any type of professional or occupational license.~~

~~(3) The applicant shall affirm whether the applicant has been actively engaged in the practice during the period of licensure in another state. If not actively engaged in practice as a mortician in five of the last seven years from the date of the application, the applicant must provide proof of successful completion of the national examination on a date within five years prior to the date of application, sent directly from the Conference to the board office.~~

~~(4) All applicants for licensure under this rule must pass the Montana jurisprudence examination.~~

AUTH: 37-1-131, 37-19-202, MCA
IMP: 37-1-131, ~~37-1-137,~~ 37-1-304, ~~37-1-316,~~ 37-19-302, MCA

REASON: The board is amending this rule to relocate all examination provisions from this rule to ARM 24.147.509, the examination rule that is proposed to be transferred from ARM 24.147.405 in this notice. The board is adding (3) regarding

application expiration to align with current standardized department procedures for license application processing.

The board determined it is reasonably necessary to amend (1) and (2) to allow licensure of applicants licensed in other jurisdictions, as well as other U.S. states. Because licensure of out-of-state applicants requires standards substantially equivalent to Montana's, the board concluded there is no reason to exclude applicants from comparable jurisdictions such as Canadian provinces.

The board is also amending this rule for better organization, clarity, and ease of use for the reader, and to comply with ARM formatting requirements.

24.147.901 MORTUARY AND BRANCH ESTABLISHMENT OPERATION STANDARDS (1) A mortuary or branch establishment cannot operate unless:

(a) a license or temporary permit has been issued to the current owner; and

(b) there is a designated mortician-in-charge as per these rules. The board must be notified of any change of mortician-in-charge per the requirements of [NEW RULE I].

(2) To qualify for licensure as a mortuary or branch establishment, applicants must meet the minimum licensing requirements described in these statutes and rules. Minimum licensing requirements include the operation standards in (3) through (8) of this rule and ARM 24.147.904.

~~(1)~~ (3) ~~A~~ Mortuary and branch establishment preparation ~~room shall~~ rooms must be maintained in a clean and sanitary condition at all times and meet the following minimum requirements:

(a) through (c) remain the same.

(d) restricted access to persons authorized by a licensed mortician or intern and a clearly labeled entrance as "private," "authorized persons only," or "no admittance";

(e) through (i) remain the same.

(4) A branch establishment with no preparation room may not prepare dead human bodies. The only authorized activities that may occur in a branch establishment without a preparation room include:

(a) making at-need and preneed funeral arrangements;

(b) viewing; and

(c) funeral services.

~~(2)~~ (5) ~~The preparation~~ 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 establishment. ~~with a preparation room, except~~ The only exception is that washing, dressing, and casketing may be provided by a person with the right of disposition ~~in~~ under 37-19-904, MCA.

~~(3) Unless requested by a consumer making the initial contact to make funeral arrangements at a place other than the mortuary or mortuary branch, funeral arrangements, both pre- and at-need, may only be performed in a licensed mortuary or mortuary branch.~~

~~(4) The mortuary shall designate a mortician-in-charge of the mortuary and within ten days provide written notice to the board of any change in the designation.~~

~~(5) The mortuary shall display the facility and personal licenses of licensed staff in plain view for members of the public to view. Personal addresses on licenses may be covered.~~

(6) Funeral arrangements, including preneed and at-need, can only be made in a licensed mortuary or branch establishment unless the consumer making the initial contact requests otherwise.

(7) Mortuaries and branch establishments must display the facility license and licenses of all licensed staff in a conspicuous place so they can be seen by members of the public. Personal addresses on licenses may be covered.

~~(6)~~ (8) ~~The mortuary shall~~ Mortuaries and branch establishments must obtain and maintain for inspection all applicable local, state, and federal permits or licenses, including, but not limited to, those relating to:

(a) business;~~,~~

(b) zoning;~~,~~

(c) building codes (including plumbing, electrical, and mechanical);~~,~~

(d) air quality;~~,~~ and

(e) water quality.

~~(7)~~ (9) ~~The mortuary shall conduct staff training in and require the~~ The handling and disposal of all medical, hazardous, or infectious waste must be in accordance with federal, state, and local laws and regulations, including, but not limited to~~, the~~:

(a) OSHA Bloodborne Pathogen Standard, 29 CFR 1910.1030;

(b) Hazard Communication Standard, 29 CFR 1910.1200;

(c) Personal Protective Equipment Standard, 29 CFR 1910.132;

(d) U.S. Department of Transportation Hazardous Material Regulations, 49 CFR Part 171; and

(e) Hazardous Waste Management and Infectious Waste Management Acts, Title 75, chapter 10, parts 4 and 10, MCA.

AUTH: 37-19-202, 37-19-403, ~~75-10-1006,~~ MCA
IMP: 37-19-101, 37-19-401, 37-19-402, 37-19-403, 37-19-904, ~~75-10-421, 75-10-1001, 75-10-1002, 75-10-1003, 75-10-1004, 75-10-1005, 75-10-1006,~~ MCA

REASON: The board is amending this rule to be the single location for all mortuary and branch facility operation standards by incorporating the branch facility standards from ARM 24.147.904. These amendments will also improve organization and eliminate unnecessary duplication between these two rules.

It is reasonably necessary to amend (3)(d) to address confusion by clarifying that interns as well as morticians may authorize access to preparation rooms. While not a new provision, this was not stated previously in rule.

The board is striking (4) and relocating the provisions to NEW RULE I.

The board is also amending this rule for better organization, clarity, and ease of use for the reader, to remove outdated, redundant, and unnecessary provisions, and to comply with ARM formatting requirements.

24.147.904 MORTUARY AND BRANCH ESTABLISHMENT LICENSES AND TEMPORARY PERMITS (1) Applicants for licensure as a mortuary or branch

establishment must submit a completed application on forms provided by the department. Completed applications include appropriate fees and required documentation.

(2) Applicants for licensure as a mortuary must:

(a) designate a mortician-in-charge;

(b) apply for a temporary permit; and

(c) once a temporary permit has been issued, pass an initial inspection by a board-designated inspector. The inspection is based on the operation standards described in these statutes and rules.

(3) Applicants for licensure of an existing mortuary with a change in ownership must meet the applicable requirements in ARM [24.147.407] in addition to the requirements listed in (1) and (2).

(4) Applicants for transfer of an existing mortuary license per 37-19-402, MCA, must meet the applicable requirements in ARM [24.147.407] in addition to the requirements listed in (1) and (2).

(5) Applicants for licensure of a branch establishment must meet:

(a) the definition of a branch establishment as defined in 37-19-101, MCA; and

(b) the requirements described in (1) and (2).

~~(1) A licensed mortuary may operate a branch establishment that meets all of the criteria of a "mortuary" as defined in 37-19-101, MCA, except that the branch mortuary is not required to have a visitation room or preparation room.~~

~~(2) If a branch mortuary has no preparation room, no preparation of dead human bodies may occur there and the only authorized activities that may occur include the making of at-need and pre-need funeral arrangements, viewing, and funeral services.~~

~~(3) Except as stated in this rule, a branch mortuary is otherwise subject to the same requirements as that of a mortuary.~~

AUTH: 37-1-131, 37-19-202, MCA
IMP: 37-1-131, 37-19-101, 37-19-402, 37-19-403, MCA

REASON: To align with the creation of distinct rules for mortuary and branch inspections (ARM 24.147.403) and operation standards (ARM 24.147.901), the board is amending this rule to set forth all initial licensure requirements for mortuaries and branch establishments in one rule. While not establishing new standards, the amended rule will clearly delineate all minimum license requirements and clarify the relationship between licensure, temporary licenses, and the inspection process in a single location.

24.147.1101 CREMATORY LICENSES, TEMPORARY PERMITS, AND OPERATION STANDARDS (1) Crematories may not operate unless they have:

(a) been issued a license or temporary permit; and

(b) designated a crematory operator-in-charge per these rules. The board must be notified of any change of crematory operator-in-charge per the requirements of [NEW RULE I].

(2) Applicants for licensure as a crematory must submit a completed application on forms provided by the department. Completed applications include appropriate fees and required documentation.

(3) Applicants for licensure as a crematory must:

(a) designate a crematory operator-in-charge;

(b) apply for a temporary permit; and

(c) once a temporary permit has been issued, pass an initial inspection by a board-designated inspector per ARM 24.147.403. The inspection is based on the operation standards described in these statutes and rules.

(4) Applicants for licensure of an existing crematory with a change in ownership must meet the applicable requirements in ARM [24.147.407] in addition to the requirements listed in (2) and (3).

(5) Applicants for relocation of an existing crematory license must meet the applicable requirements in ARM [24.147.407] in addition to the requirements listed in (2) and (3).

(6) Crematories must meet the following minimum operation requirements:

(a) all crematory employees must be licensed per 37-19-702, MCA;

(b) comply with all local, state, and federal laws and rules pertaining to the operation of a crematory;

(c) have floors and walls constructed of an impervious material to allow cleaning and disinfection of these surfaces;

(d) maintain the crematory and all related cremation equipment after each use in a clean and sanitary condition;

(e) conduct appropriate maintenance and safe operation of equipment used in cremations;

(f) post signs near telephones and in the vicinity of the retort to direct staff to call 911 in a fire or other emergency; and

(g) display the facility license and licenses of all staff in a conspicuous place so they can be seen by members of the public. Personal addresses on licenses may be covered.

(7) Crematories must obtain and maintain all applicable local, state, and federal permits or licenses, including, but not limited to, those relating to:

(a) business;

(b) zoning;

(c) building codes (including plumbing, electrical, and mechanical);

(d) fire codes;

(e) air quality; and

(f) water quality.

(8) Crematories must have procedures to ensure:

(a) proper authorization to cremate exists; and

(b) the identification of:

(i) remains awaiting cremation;

(ii) remains in the cremation chamber;

(iii) cremated remains in the processing station; and

(iv) the urns or containers holding the cremated remains.

(9) Crematories must notify the board of any changes in equipment described in 37-19-703, MCA, within ten days.

~~(1) All crematory facilities shall:~~

~~(a) comply with all local, state, and federal laws and rules pertaining to the operation of a crematory, and maintain for inspection permits relating to business, zoning, building codes (including plumbing, electrical, and mechanical), fire codes, air quality, and water quality;~~

~~(b) notify the board in writing of any changes in equipment from that reported on the application and maintain for inspection maintenance and repair schedules of equipment;~~

~~(c) designate a crematory operator-in-charge and notify the board in writing within ten days of any change in that designation;~~

~~(d) post signs near telephones and in the vicinity of the retort to direct staff to call 911 in a fire or other emergency;~~

~~(e) display the facility and personal licenses of licensed staff in plain view for members of the public to view. Personal addresses on licenses may be covered;~~

~~(f) conduct appropriate maintenance and safe operation of equipment used in cremations;~~

~~(g) maintain the crematory and all related cremation equipment after each use in a clean and sanitary condition;~~

~~(h) have floors and walls constructed of an impervious material to allow cleaning and disinfection of these surfaces;~~

~~(i) have procedures to identify remains awaiting cremation, remains in the cremation chamber, cremated remains in the processing station, and the urns or containers holding the cremated remains; and~~

~~(j) have procedures to ensure the proper authorization to cremate exists.~~

~~(2) All crematory facilities shall comply with the requirements of ARM 24.147.403 that are applicable to mortuaries regarding transfers, inspections, and eligibility for a temporary permit to operate a crematory, and ARM 24.147.903 regarding name change, closure, or sale of a crematory facility.~~

AUTH: 37-1-131, 37-19-202, 37-19-703, MCA
IMP: 37-1-131, 37-19-702, 37-19-703, 37-19-704, 37-19-705, MCA

REASON: The board determined it is reasonably necessary to amend this rule to combine initial licensing and ongoing operation requirements for crematories in a single location. While not establishing new standards or procedures, the amended rule will clearly delineate all minimum crematory license requirements and further clarify the relationship between licensure, temporary licenses, and the inspection process in a single location.

Noting that crematory operation standards are not changing, the board is amending the current language for better organization, clarity, and to comply with ARM formatting and numbering requirements.

24.147.2101 CONTINUING EDUCATION REQUIREMENTS – MORTICIANS

(1) Continuing education consists of educational activities designed to:

(a) review existing concepts and techniques;

(b) convey information beyond the basic professional education; and

(c) update knowledge on the practice and advances in mortuary science.

(2) Continuing education approved by the board must directly relate to the scope of practice of mortuary science as defined in board statutes and rules.

(3) The primary objective of continuing education is the protection of the health, safety, and welfare of the public, and deals primarily with the scope of practice, professional conduct, or ethical obligations of the license held. Licensees are responsible for selecting quality programs that contribute to their knowledge and competence and meet these objectives.

(a) Courses in which the principal purpose is to promote, sell, or offer goods, products, or services to funeral providers, or to promote the personal interests of the licensees do not meet continuing education requirements.

(4) Continuing education requirements will not apply until the licensee's first full year of licensure.

(5) The board may randomly audit up to 50 percent of renewed licensees' continuing education hours.

~~(1)~~ (6) 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, 2013, 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~~ are required to obtain a total of six continuing education hours annually, prior to renewal on July 1.

(a) A minimum of 1.5 hours of the six hours must address 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.

~~(2) Compliance with the requirements of continuing education is a prerequisite for license renewal as evidenced by the renewal applicant's affirmation on his or her renewal form, subject to random audit.~~

~~(3) Except as provided in ARM 24.147.2102, the board will not preapprove continuing education courses or sponsors. It is the responsibility of licensees to select courses which meet the criteria set forth in this rule.~~

~~(4) To be approved, continuing education courses must meet the following criteria:~~

~~(a) as its primary objective the protection of the health, safety, and welfare of the public, and deal primarily with the scope of practice, professional conduct, or ethical obligations of the license held. The board shall not allow credit for courses where the principal purpose of the course is to promote, sell, or offer goods, products, or services to funeral providers, or to promote the personal interests of the licensees;~~

~~(b) be conducted or written by an individual or group qualified by practical or academic experience; and~~

~~(c) must provide the licensee with documentation of successful program completion and attendance, including:~~

~~(i) full name and qualifications of the presenter;~~

~~(ii) title of the presentation attended;~~

~~(iii) number of hours and date of each presentation attended;~~

~~(iv) name of sponsor; and~~

~~(v) description of the presentation format.~~

~~(5) The board may accept hours from other organizations not listed in ARM 24.147.2102 if the course meets the criteria in (4).~~

~~(6) Funeral service board members may receive continuing education credit by attending a regularly scheduled board meeting.~~

~~(7) Licensees may earn up to three hours per year by self-study, audio, video, internet-based, or other activity as long as the licensee passes a test on the materials as evidenced by a certificate of completion.~~

(7) Board meetings are approved as continuing education.

(a) A licensee must attend at least half of a meeting to obtain credit.

(b) A board meeting is worth one hour of continuing education credit.

~~(8) The board may randomly audit ten percent of the licenses held by persons subject to the continuing education requirement each year and require the selected licensees to provide copies of completion certificates to the board as verification of compliance.~~

(8) All continuing education must be documented to show proof of completion. The licensee is responsible for maintaining these records for one year following the renewal cycle reporting period, and for making those records available upon board request. Documentation must include the following information:

(a) licensee name;

(b) course title and description of content;

(c) presenter or sponsor;

(d) course date(s); and

(e) number of continuing education hours earned.

(9) All licensees will affirm understanding of their recurring duty to comply with continuing education requirements as a part of annual license renewal.

~~(9)~~ (10) Licensees found to be in noncompliance with continuing education requirements may be ~~are~~ subject to disciplinary action ~~against their licenses~~. Licensees may not apply continuing education hours used to complete delinquent continuing education plan requirements for the next continuing education reporting period.

~~(10) Upon request of a licensee, the board may grant a waiver for extenuating circumstances of certified illness or undue hardship.~~

~~(11) The burden is on the licensee to satisfy the requirements of this rule. The licensee shall maintain documentation of completion of continuing education for two years following the renewal cycle in which the hours were reported.~~

~~(12)~~ (11) ~~Continuing education credits~~ Any continuing education hours required by disciplinary order ~~shall not be used to satisfy the biannual requirement~~ do not apply toward the six hours that are required annually under this rule.

(12) A licensee may request a hardship exemption from continuing education requirements due to certified illness or undue hardship. Requests will be considered by the board.

AUTH: 37-1-131, 37-1-319, ~~37-19-202,~~ MCA
IMP: 37-1-131, 37-1-306, 37-1-319, MCA

REASON: The board is amending this rule to help facilitate the department's standardized application, renewal, and audit procedures, and streamline the rule for better organization and ease of use for the reader. As a part of the standardization, the board is placing the responsibility on mortician licensees to select quality continuing education (CE) programs that contribute to their knowledge and competence. Following amendment, the board will no longer approve sponsors or courses as the licensees must choose CE that meets the education objectives described in this rule. Additionally, the board is changing to annual CE reporting to align with the annual license renewal cycle, which will save staff time and overall board expenses, and facilitate standard processes among all boards.

Additionally, the board is removing the three-hour limit for online hours to allow licensees more flexibility in selecting relevant courses. Following amendment, there will be no limit to online hours. Additional amendments will allow licensees to obtain CE by attending at least half of a board meeting.

The board is further amending this rule to allow flexibility in conducting random CE audits. Currently, the board may randomly audit 10 percent of all renewed licensees each reporting period. This amendment will allow the board to respond to staffing and budget issues by adjusting the number of licensees audited, while remaining consistent with the statutory maximum of 50 percent in 37-1-306, MCA.

The board is also amending this rule for better organization, clarity, and ease of use for the reader, to remove outdated, redundant, and unnecessary provisions, and to comply with ARM formatting requirements.

24.147.2301 UNPROFESSIONAL CONDUCT (1) through (1)(e) remain the same.

(f) failing to exercise appropriate supervision of nonlicensed personnel;

(g) allowing nonlicensed personnel to perform duties that are statutorily reserved for licensees;

(f) through (o) remain the same but are renumbered (h) through (q).

~~(p) permitting nonlicensed personnel to make arrangements for a funeral;~~

(q) through (s) remain the same but are renumbered (r) through (t).

(u) disposing of human remains in any manner not specified by the authorizing agent, or otherwise permitted by law;

(t) through (w) remain the same but are renumbered (v) through (y).

AUTH: 37-1-131, 37-1-136, 37-1-319, ~~37-19-202,~~ MCA
IMP: 37-1-136, 37-1-316, 37-1-319, MCA

REASON: The board determined it is reasonably necessary to amend this rule by adding to the actions considered by the board as unprofessional conduct. The board is adding (1)(f) and (g) to align with new definitions in ARM 24.147.302 and the adoption of NEW RULE II regarding nonlicensed personnel. It is reasonably necessary to clearly explain that improper supervision or delegating nonallowed functions to nonlicensed individuals is considered unprofessional conduct.

Following a recommendation by the board's prosecuting attorney, the board is adding (1)(u) to address situations currently occurring in other areas of the United States. To better protect public health, safety, and welfare, the board is amending this rule to enable the board to adequately address complaints of this nature, should they occur in the future in Montana.

5. The rules proposed to be amended and transferred are as follows, stricken matter interlined, new matter underlined:

24.147.402 (24.147.507) ~~ORIGINAL~~ MORTICIAN LICENSES - ~~APPLICATION~~ (1) Applicants for licensure not currently licensed in another state or jurisdiction must submit a completed application on forms provided by the department. Completed applications include appropriate fees and required documentation.

~~(1) An applicant for licensure as a mortician shall submit a completed application form provided by the department, the application fee, and the following documents in order to receive permission to take the jurisprudence examination:~~

(2) All transcripts must be certified and sent directly from the school(s). Applicants must meet the following education requirements:

~~(a) a certified transcript of 60 semester credits or 90 quarter credits, sent directly to the board office from a funeral service or mortuary science education program accredited by the American Board of Funeral Service Education (ABFSE) or its successor, granting an associate degree, certificate, or diploma;~~

(a) minimum of an associate's degree in funeral service or mortuary science from a program accredited by the American Board of Funeral Service Education (ABFSE) or its successor which consists of a minimum of 60 semester credits or 90 quarter credits; and

(b) ~~a certified transcript of~~ an additional 30 semester credits or 45 quarter credits ~~sent directly to the board office~~ from a college or university accredited by a regional accrediting agency recognized by the U.S. Department of Education in any of the following subjects:

(i) through (xiii) remain the same.

~~(c) a completed internship agreement on a form provided by the department; and~~

~~(d) a certified copy of the certification form verifying successful completion, within five years prior to the date of application, of the International Conference of Funeral Service Examining Board (Conference) examination sent directly to the board office from the Conference.~~

(3) Exceptions to the education requirements in (2) are as follows:

(a) if an applicant graduated or attended a foreign school or university instead of obtaining the required education from an accredited U.S. school or university as described in (2), the applicant must submit transcripts or other official documentation which will be evaluated by the board; and

(b) per ARM 24.147.508, relevant military training, service, or education which will be evaluated by the board.

(4) In addition to the education requirements for licensure, applicants must:

(a) have completed an internship as required in 37-19-302, MCA, and ARM 24.147.504;

(b) have passed examinations as described in ARM [24.147.509]; and

(c) provide verification of any professional license(s) the applicant has ever held in any state or jurisdiction.

(5) Incomplete applications will automatically expire one year from the date the fee was received. If an application expires, the applicant must reapply and pay all appropriate fees.

~~(2) No credits used to satisfy the credit hours in (1)(a) may be used to satisfy the credit hours in (1)(b).~~

~~(3) A certified transcript demonstrating a baccalaureate degree in a funeral service or mortuary science education program from an ABFSE or successor accredited college will serve to meet the requirements of (1)(a) and (b).~~

~~(4) Upon submission of all required information and successful completion of the jurisprudence examination, mortician applicants shall qualify to receive a mortician intern license. In order to receive an unrestricted mortician's license, interns must submit an additional application on a form provided by the department and provide evidence of successful completion of the internship requirements as set forth in ARM 24.147.504.~~

~~(5) Applicants having served their internship in another state shall complete the application form for a mortician license and submit documentation of completion of an internship substantially equivalent to Montana internship requirements.~~

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

AUTH: 37-1-131, 37-19-202, MCA
IMP: ~~37-1-101,~~ 37-1-131, 37-19-302, 37-19-303, MCA

REASON: The board is renumbering and transferring this rule from subchapter 4 to 5 to house all rules regarding morticians and interns in the same subchapter.

The board determined it is reasonably necessary to amend this rule and allow the board to consider education received outside the United States when evaluating minimum education requirements of mortician applicants. The board has concluded that it has the necessary tools to thoroughly evaluate education obtained in other countries and determine whether it meets current U.S. standards.

The addition of (3)(b) specifies that the board will consider relevant military training, service, or education in lieu of a degree per ARM 24.147.508.

The board is striking (4) and (5) since intern licensure is a separate application process and is adequately described in ARM 24.147.504.

The board is adding (5) regarding the expiration of incomplete applications to align with current standardized department procedures for application processing.

Additional changes remove outdated, redundant, and unnecessary language to provide consistency, simplicity, better organization, and ease of use for licensees.

24.147.405 (24.147.509) EXAMINATIONS (1) ~~The licensing examination required of morticians is~~ Morticians and interns must pass the following examinations:

(a) the National Board Examination of the International Conference of Funeral Service Examining Boards within five years prior to the date of application; and~~.~~

~~(2) In addition, an applicant for licensure as a mortician or a mortician intern shall take and pass, with a grade of 75 percent or higher,~~

(b) a jurisprudence examination prescribed by the board covering the statutes and rules governing the practice of funeral service in Montana. ~~under Title 37, chapter 19, MCA, pertinent portions of Title 46, chapter 4, MCA, relating to county coroner's duties, Title 50, chapter 15, MCA, relating to vital statistics and the rules of the Montana state Department of Public Health and Human Services covering registration of deaths, embalming, transportation, disposition of dead human bodies, and funeral directing.~~

(2) The jurisprudence examination must be passed with a score of 75 percent or greater. Any applicant who fails the jurisprudence exam may retake the examination, but must pay the reexamination fee listed in ARM 24.147.401 for each subsequent reexamination.

AUTH: 37-1-131, 37-19-202, MCA
IMP: 37-1-131, 37-19-302, 37-19-303, 37-19-304, MCA

REASON: The board is renumbering and transferring this rule from subchapter 4 to 5 to house all rules regarding morticians and interns in the same subchapter.

The board is amending this rule to set forth examination standards and procedures in a single location, thus eliminating unnecessary duplication in multiple rules. Additionally, the board addresses questions by clarifying that only mortician and intern applicants must pass the jurisprudence exam and further explaining the jurisprudence retake fee, set forth in ARM 24.147.401.

Additional changes remove outdated, redundant, and unnecessary language for consistency, simplicity, and ease of use for the reader.

24.147.903 (24.147.407) NAME CHANGE, CLOSURE, TRANSFER, OR SALE ~~OF FACILITY~~ – MORTUARY, BRANCH ESTABLISHMENT, CREMATORY, OR CEMETERY ~~(1) In addition to the provisions of ARM 24.147.403 applicable to mortuaries, a licensee or manager in charge of a mortuary, crematory, or cemetery shall notify the board office within ten days of any change of a business name, closure, relocation, sale, or other change in ownership. When there is a change of ownership, the existing license is void and a new license must be obtained from the board.~~

(1) Using forms provided by the department, mortuaries, branch establishments, crematories, and cemeteries must notify the board within ten days of any of the following occurring:

(a) change of business name;

(b) closure;

(c) transfer, as defined in 37-19-402, MCA, or relocation; or

(d) sale or change of ownership as defined in these rules.

~~(2) A change in ownership, for purposes of this rule, shall occur whenever more than 50 percent of the equitable ownership of a facility is transferred in a single transaction, or in a related series transaction, or in a related series of transactions to one or more persons, associations, or corporations. A new owner of a facility shall publish, for a one-week period, a notice of the change of ownership in a newspaper of general circulation in the county in which the facility is located, within 30 days of the change of ownership. The notice shall contain only the following information under the title "Notice of Change of Ownership":~~

(2) When there is a change in ownership the license issued to the previous owner is void. The new owner must:

(a) apply for a license per the applicable requirements in this chapter; and

(b) within 30 days of the change of ownership, publish notice of the change of ownership in a newspaper of general circulation in the county in which the facility is located.

(3) The notice in (2)(b) must be published for no less than one week. The notice must contain the following under the title "Notice of Change of Ownership":

(a) remains the same.

(b) the name of each new owner ~~if sole proprietor or partnership;~~ and whether the facility is owned by a sole proprietor, partnership, or corporation. If the new owner is a corporation, the notice must contain:

(i) name of the corporation;

(ii) name of the registered agent of the corporation; and

(iii) registered agent's address if it is different than the physical address; and

~~(c) if the new owner is a corporation, the name of the corporation, its registered agent, and registered agent's address, if different than the physical address; and~~

~~(d)~~ (c) the name of the mortician-in-charge, crematory operator-in-charge, or cemetery manager ~~licensee in charge~~.

AUTH: 37-19-202, 37-19-403, 37-19-703, 37-19-816, MCA
IMP: 37-19-402, 37-19-403, 37-19-703, 37-19-816, MCA

REASON: The board is renumbering and transferring this rule to subchapter 4 to be located with other rules that apply generally across multiple license types.

The board determined it is reasonably necessary to amend this rule to standardize the process for licensees to notify the board of changes in business name, closure, transfer, or sale. The board concluded that these changes will ensure the board receives adequate data and help facilitate department efficiencies.

The amendments to (3) will further clarify that for ownership changes, the newspaper notice must contain the name of the mortician-in-charge, crematory operator-in-charge, or cemetery manger, since these facilities could have multiple licensees.

The board is also amending this rule for better organization, clarity, and ease of use for the reader, to remove outdated, redundant, and unnecessary provisions, and to comply with ARM formatting requirements.

6. The proposed new rules are as follows:

NEW RULE I CHANGE OF MORTICIAN-IN-CHARGE OR CREMATORY OPERATOR-IN-CHARGE (1) When there is a change of mortician-in-charge at a mortuary or branch establishment or a crematory operator-in-charge at a crematory, the following must occur:

(a) the mortician or crematory operator who has ceased to be the person-in-charge will be held responsible for notifying the board of termination of services; and

(b) the mortuary or branch establishment or crematory must designate a new person-in-charge and notify the board within ten days.

(2) The notifications described in (1) must be done using forms provided by the department.

AUTH: 37-1-131, 37-19-202, MCA
IMP: 37-1-131, 37-19-402, 37-19-702, MCA

REASON: Mortuaries, branch establishments, and crematories are required to have a designated mortician-in-charge or crematory operator to operate. While it has always been the responsibility of the licensed facility to notify the board of a new person-in-charge within ten days, the board is adopting this rule to also require that the previous person-in-charge notifies the board of termination of services. These changes will help standardize the notification process and facilitate department efficiencies and recordkeeping.

NEW RULE II NONLICENSED PERSONNEL (1) Nonlicensed personnel must be supervised by the mortician-in-charge of the mortuary or branch establishment.

(2) The mortician-in-charge assumes full legal and ethical responsibility for tasks performed by nonlicensed personnel.

(3) The mortician-in-charge is responsible for determining the competency of nonlicensed personnel to perform tasks under direction and supervision.

(4) No mortician can delegate any responsibilities statutorily reserved for a mortician to nonlicensed personnel.

AUTH: 37-1-131, 37-19-202, MCA
IMP: 37-1-131,37-19-402, MCA

REASON: The board is adopting this rule to align with new definitions in ARM 24.147.302 and the amendment of ARM 24.147.2301 regarding nonlicensed personnel. Because mortuaries and branch facilities regularly employ nonlicensed staff, the board determined it is reasonably necessary to clearly describe the supervision of nonlicensed persons. The board is adopting this rule to specify that the mortician-in-charge is responsible for nonlicensed personnel and that morticians cannot delegate to nonlicensed personnel any responsibilities statutorily reserved for licensees.

7. The board proposes to repeal the following rule:

24.147.2102 SPONSORS

AUTH: 37-1-319, 37-19-202, MCA
IMP: 37-1-306, MCA

REASON: The board is repealing this rule as obsolete and no longer necessary. With the amendments proposed in ARM 24.147.2101, the board will no longer approve sponsors or continuing education courses.

8. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Board of Funeral Service, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or e-mail to dlibsdfnr@mt.gov, and must be received no later than 5:00 p.m., January 5, 2018.

9. An electronic copy of this notice of public hearing is available at www.dlibsdfuneral.mt.gov (department and board's web site). Although the department strives to keep its web sites accessible at all times, concerned persons should be aware that web sites may be unavailable during some periods, due to system maintenance or technical problems, and that technical difficulties in accessing a web site do not excuse late submission of comments.

10. The board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this board. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding all board administrative rulemaking proceedings or other administrative proceedings. The request must indicate whether e-mail or standard mail is preferred. Such written request may be sent or delivered to the Board of Funeral Service, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; faxed to the office at (406) 841-2305; e-mailed to dlibsdfnr@mt.gov; or made by completing a request form at any rules hearing held by the agency.

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

12. Regarding the requirements of 2-4-111, MCA, the board has determined that the amendment of ARM 24.147.302, 24.147.403, 24.147.408, 24.147.501, 24.147.901, 24.147.904, 24.147.1101, 24.147.2101, and 24.147.2301 will not significantly and directly impact small businesses.

Regarding the requirements of 2-4-111, MCA, the board has determined that the amendment and transfer of ARM 24.147.402 (24.147.507), 24.147.405 (24.147.509), and 24.147.903 (24.147.407) will not significantly and directly impact small businesses.

Regarding the requirements of 2-4-111, MCA, the board has determined that the adoption of NEW RULES I and II will not significantly and directly impact small businesses.

Regarding the requirements of 2-4-111, MCA, the board has determined that the repeal of ARM 24.147.2102 will not significantly and directly impact small businesses.

Documentation of the board's above-stated determinations is available upon request to the Board of Funeral Service, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2394; facsimile (406) 841-2305; or to dlibsdfnr@mt.gov.

13. Lucy Richards, Executive Officer, has been designated to preside over and conduct this hearing.

BOARD OF FUNERAL SERVICE
JOHN TARR, PRESIDING OFFICER

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

/s/ GALEN HOLLENBAUGH
Galen Hollenbaugh, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State November 27, 2017.

BEFORE THE DEPARTMENT OF PUBLIC SERVICE REGULATION
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 38.5.2202 and 38.5.2302 pertaining to pipeline safety	)))))	NOTICE OF PROPOSED AMENDMENT NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On January 15, 2018, the Department of Public Service Regulation proposes to amend the above-stated rules.

2. The Department of Public Service Regulation will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Department of Public Service Regulation no later than 5:00 p.m. on January 2, 2018 to advise us of the nature of the accommodation that you need. Please contact Rhonda Simmons, Department of Public Service Regulation, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana, 59620-2601; telephone (406) 444-6170; fax (406) 444-7618; TDD (406) 444-6199; or e-mail rhonda.simmons@mt.gov.

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

38.5.2202 INCORPORATION BY REFERENCE OF FEDERAL PIPELINE SAFETY REGULATIONS (1) The commission adopts and incorporates by reference the U.S. Department of Transportation (DOT) Pipeline Safety Regulations, Code of Federal Regulations (CFR), Title 49, chapter 1, subchapter D, parts 191, 192, and 193, including all revisions and amendments enacted by DOT on or before October 30, ~~2016~~ 2017. A copy of the referenced regulations may be obtained from United States Department of Transportation, Office of Pipeline Safety, Western Region, 12300 West Dakota Avenue, Suite 110, Lakewood, Colorado 80228, or may be reviewed at the Public Service Commission Offices, 1701 Prospect Avenue, Helena, Montana 59620-2601.

AUTH: 69-3-207, MCA
IMP: 69-3-207, MCA

38.5.2302 INCORPORATION BY REFERENCE OF FEDERAL PIPELINE SAFETY REGULATIONS -- DRUG AND ALCOHOL TESTING AND PREVENTION PROGRAMS (1) Except as otherwise provided in this subchapter, the commission adopts and incorporates by reference the DOT Pipeline Safety Regulations, Drug and Alcohol Testing, 49 CFR 199, including all revisions and amendments enacted by DOT on or before October 30, ~~2016~~ 2017. A copy of the referenced CFRs is

available from the United States Department of Transportation, Office of Pipeline Safety, Western Region, 12300 West Dakota Avenue, Suite 110, Lakewood, Colorado 80228, or may be reviewed at the Public Service Commission Offices, 1701 Prospect Avenue, Helena, Montana 59620-2601.

AUTH: 69-3-207, MCA
IMP: 69-3-207, MCA

REASON: Amendment of ARM 38.5.2202 and 38.5.2302 (annual update) is necessary to allow the department to administer the most recent version of federal rules applicable in the department's administration of all federal aspects of Montana's pipeline safety programs. A copy of the referenced regulations may be reviewed at the department's offices or are available online at http://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID= 3e139b8fe42796ca0335e22c595fab2a&r= PART&n=49y3.1.1.1.7.

4. Concerned persons may submit their written data, views, or arguments to Legal Division, Department of Public Service Regulation, 1701 Prospect Avenue, P.O. Box 202601, Helena, MT 59620-2601; telephone (406) 444-6170; fax (406) 444-7618; or e-mail rhonda.simmons@mt.gov and must be received no later than 5:00 p.m., January 8, 2018.

5. The Montana Consumer Counsel, 111 North Last Chance Gulch, Helena, Montana 59620-1703, telephone (406) 444-2771, is available and may be contacted to represent consumer interests in this matter.

6. If persons who are directly affected by the proposed amendment wish to express their data, views, or arguments either 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 Rhonda Simmons, Legal Division, Department of Public Service Regulation, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601, or e-mail jkraske@mt.gov to be received no later than 5:00 p.m., January 8, 2018.

7. If the PSC 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 2 entities based on the 27 entities affected.

8. The PSC maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the PSC. Persons who wish to have their name added to the list shall make a written request which includes that name, e-mail address, and mailing address of the person to receive notices and specifies that the

person wishes to receive notices regarding: electric utilities, providers, and suppliers; natural gas utilities, providers, and suppliers; telecommunications utilities and carriers; water and sewer utilities; common carrier pipelines; motor carriers; rail carriers; and/or administrative procedures. Such written request may be mailed or delivered to Department of Public Service Regulation, Legal Division, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601, faxed to Rhonda Simmons at (406) 444-6170, e-mailed to rhonda.simmons@mt.gov, or may be made by completing a request form at any rules hearing held by the PSC.

9. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of the above-referenced rules will not significantly and directly impact small businesses.

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

/s/ JUSTIN KRASKE
Justin Kraske
Rule Reviewer

/s/ BRAD JOHNSON
Brad Johnson
Chairman
Department of Public Service Regulation

Certified to the Secretary of State November 27, 2017.

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

In the matter of the repeal of ARM 6.6.4901, 6.6.4902, 6.6.4903, 6.6.4905, 6.6.4906, 6.6.4907, 6.6.4908, and 6.6.4909 regarding patient-centered medical homes	)))))	NOTICE OF REPEAL

TO: All Concerned Persons

1. On September 22, 2017, the Commissioner of Securities and Insurance, Office of the Montana State Auditor (CSI), published MAR Notice No. 6-238 pertaining to the proposed repeal of the above-stated rules at page 1574 of the 2017 Montana Administrative Register, Issue Number 18.

2. Effective December 31, 2017, the CSI has repealed the above-stated rules as proposed.

3. No comments or testimony were received.

/s/ Michael A. Kakuk
Michael A. Kakuk
Rule Reviewer

/s/ Kris Hansen
Kris Hansen
Chief Legal Counsel

Certified to the Secretary of State on November 27, 2017.

BEFORE THE DEPARTMENT OF TRANSPORTATION
OF THE STATE OF MONTANA

In the matter of the adoption of New Rules I through VIII pertaining to Fuel Tax Bridge and Road Safety and Accountability Program	))))	NOTICE OF ADOPTION

TO: All Concerned Persons

1. On October 13, 2017, the Department of Transportation published MAR Notice No. 18-165 pertaining to the proposed adoption of the above-stated rules at page 1717 of the 2017 Montana Administrative Register, Issue Number 19.

2. 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 (18.16.101) DEFINITIONS (1) through (15) remain as proposed.

AUTH: 15-70-104, MCA
IMP: ~~Ch. 267, Sections 2, 3, and 5, L. 2017~~ 15-70-127, 15-70-130, 60-2-225, MCA

NEW RULE II (18.16.102) ELIGIBILITY – ALLOCATION – MATCHING FUNDS (1) through (5) remain as proposed.

AUTH: 15-70-104, MCA
IMP: ~~Ch. 267, Sections 2 and 3, L. 2017~~ 15-70-127, 15-70-130, MCA

NEW RULE III (18.16.103) DISTRIBUTION TERMS AND CONDITIONS (1) through (6) remain as proposed.

AUTH: 15-70-104, MCA
IMP: ~~Ch. 267, Sections 2, 3, and 5, L. 2017~~ 15-70-127, 15-70-130, 60-2-225, MCA

NEW RULE IV (18.16.104) BARSAA MATCH FUNDS – ADMINISTRATION OF FEDERAL-AID PROJECTS (1) and (2) remain as proposed.

AUTH: 15-70-104, MCA
IMP: ~~Ch. 267, Sec. 3, L. 2017~~ 15-70-130, MCA

NEW RULE V (18.16.105) DISTRIBUTION REQUEST PROCESS – DEADLINES (1) through (6) remain as proposed.

AUTH: 15-70-104, MCA
IMP: ~~Ch. 267, Sections 2 and 3, L. 2017~~ 15-70-127, 15-70-130, MCA

NEW RULE VI (18.16.106) RESTRICTED ASSET ACCOUNT – OBLIGATION OF FUNDS (1) through (3) remain as proposed.

AUTH: 15-70-104, MCA
IMP: ~~Ch. 267, Sections 2 and 3, L. 2017~~ 15-70-127, 15-70-130, MCA

NEW RULE VII (18.16.107) RESERVATION OF ALLOCATED FUNDS (1) through (7) remain as proposed.

AUTH: 15-70-104, MCA
IMP: ~~Ch. 267, Sections 2 and 3, L. 2017~~ 15-70-127, 15-70-130, MCA

NEW RULE VIII (18.16.108) ANNUAL REPORT (1) remains as proposed.

AUTH: 15-70-104, MCA
IMP: ~~Ch. 267, Sec. 5, L. 2017~~ 60-2-225, MCA

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

COMMENT #1: One comment was received stating the word "road" should be defined as it applies to the rules. The comment asked whether the rules allow for improvements to all types of transportation facilities within the right-of-way, such as sidewalks, transit facilities, paths, lighting, stormwater facilities, etc. The comment stated the rules should apply to these types of facilities.

RESPONSE #1: The department notes HB 473, Section 3 (15-70-130, MCA) and New Rule III(2) (ARM 18.16.103) both state all BARSAA funds allocated under the program must be used for construction, reconstruction, maintenance, and repair of rural roads, city or town streets and alleys, and bridge projects; or roads and streets a local government has the responsibility to maintain; or as a match for federal funds for these projects. Therefore, under legislative intent and statutory language, the BARSAA funds must be used for projects in which the primary improvement is to the roadway or bridge, for safety reasons, and not for purchase of capital equipment or "other" right-of-way facilities such as shared use paths, sidewalks, lighting, etc. (transit facilities are not eligible at all under the Constitution as a use of fuel tax). If the primary road or bridge project includes associated right-of-way facilities such as these, they may qualify for funding, but will not qualify as a stand-alone project.

COMMENT #2: One comment was received stating New Rule V(3) (ARM 18.16.105) states "Each distribution request must be complete and accompanied by all required supplement materials." The comment stated there is no explanation of

what these materials are. The comment requested additional detail as to what MDT will require to be submitted as part of the request for gas-tax funds.

RESPONSE #2: The department notes HB 473 (15-70-130, MCA) and New Rule V (18.16.105) both set forth the requirements for a local government's distribution request. The request must include the amount of funding sought, a description of the project, and a copy of an adopted resolution by the local government. The supplement materials therefore consist of the local government resolution. The department's website BARSAA distribution request page will request all statutorily required information, and will require the attachment of the resolution as supplemental material.

/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 November 27, 2017.

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

In the matter of the amendment of ARM 24.138.304 definition of nonroutine application, 24.138.505 dentist licensure by credential, 24.138.509 dental hygiene limited access permit, 24.138.530 licensure of retired or nonpracticing dentist or dental hygienist for volunteer service, 24.138.601 restricted temporary licensure of nonresident volunteer dentists and dental hygienists, 24.138.2106 exemptions and exceptions, 24.138.3221 minimum qualifying standards, 24.138.3223 minimum monitoring standards; the adoption of NEW RULE I infection control; and the repeal of ARM 24.138.518 renewals	)))))))))))))	NOTICE OF AMENDMENT, ADOPTION, AND REPEAL

TO: All Concerned Persons

1. On September 22, 2017, the Board of Dentistry (board) published MAR Notice No. 24-138-72 regarding the public hearing on the proposed amendment, adoption, and repeal of the above-stated rules, at page 1601 of the 2017 Montana Administrative Register, Issue No. 18.

2. On October 13, 2017, a public hearing was held on the proposed amendment, adoption, and repeal of the above-stated rules in Helena. No comments were received by the October 20, 2017, deadline.

3. The board has amended ARM 24.138.304, 24.138.505, 24.138.509, 24.138.530, 24.138.601, 24.138.2106, 24.138.3221, and 24.138.3223 exactly as proposed.

4. The board has adopted NEW RULE I (24.138.418) exactly as proposed.

5. The board has repealed ARM 24.138.518 exactly as proposed.

BOARD OF DENTISTRY
GEORGE JOHNSTON, DDS
PRESIDENT

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

/s/ GALEN HOLLENBAUGH
Galen Hollenbaugh, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State November 27, 2017.

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

In the matter of the amendment of ARM 24.201.301 definitions; 24.201.535 and 24.201.537 licensing; 24.201.2101 renewals; 24.201.2106, 24.201.2120, 24.201.2124, 24.201.2136, 24.201.2137, 24.201.2138, and 24.201.2139 continuing education; 24.201.2410 complaint procedures; the adoption of NEW RULE I credit for blended learning; and the repeal of ARM 24.201.704, 24.201.705, 24.201.706, 24.201.707, 24.201.708, 24.201.709, 24.201.710, 24.201.718, 24.201.720, and 24.201.726 professional conduct	))	NOTICE OF AMENDMENT, ADOPTION, AND REPEAL

TO: All Concerned Persons

1. On July 21, 2017, the Board of Public Accountants (board) published MAR Notice No. 24-201-50 regarding the public hearing on the proposed amendment, adoption, and repeal of the above-stated rules, at page 1088 of the 2017 Montana Administrative Register, Issue No.14.

2. On August 16, 2017, a public hearing was held on the proposed amendment, adoption, and repeal of the above-stated rules in Helena. Two comments were received by the August 18, 2017, deadline.

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

COMMENT 1: One commenter suggested that the current CPE requirement may not allow for a wide variety of non-sponsored professional education. The commenter encouraged the board to simplify the rules and allow for a wider variety of CPE, rather than making the rules more technical and difficult to comply with.

RESPONSE 1: The board does not agree with the commenter's conclusion. The board is expanding the types of delivery methods recognized as acceptable CPE. Except for nano-learning, registration of a program sponsor is not required. Non-sponsored self-study credit can still be earned, but at 1/2 credit.

The proposed amendment to ARM 24.201.2120(1) clarifies that a program is acceptable as CPE if it is delivered from one of the expanded list of recognized delivery methods and "…contributes directly to the licensee's knowledge, ability, and/or competence to perform the licensee's professional responsibilities." The

board concludes that the amendments allow for greater flexibility for a licensee to take meaningful CPE.

COMMENT 2: One commenter included a narrative on the NASBA CPE audit process and the application of board rules by the NASBA CPE tracking system that is not part of this rule notice. Because of the commenter's experience with the rules applied through the CPE tracking system, the commenter requested further clarification of amendments to ARM 24.201.2137(1)(a). The commenter asserted that it creates confusion to determine that a self-study course not recognized by the NASBA National Registry of CPE Sponsors receives half the credit amount granted by the sponsor. Certificates from these non-recognized sponsors generally indicate the credit awarded is based on a "100 minute" hour, which is 1/2 the credit allowed from a recognized provider. After the half-credit amount granted by the sponsor is applied, this results in the licensee receiving 1/4 credit for a non-recognized sponsor self-study course.

RESPONSE 2: The board agrees that this is not the intent of this rule and is amending the rule accordingly.

4. The board has amended ARM 24.201.301, 24.201.535, 24.201.537, 24.201.2101, 24.201.2106, 24.201.2120, 24.201.2124, 24.201.2136, 24.201.2138, 24.201.2139, and 24.201.2410 exactly as proposed.

5. The board has adopted NEW RULE I (24.201.2140) exactly as proposed.

6. The board has repealed ARM 24.201.704, 24.201.705, 24.201.706, 24.201.707, 24.201.708, 24.201.709, 24.201.710, 24.201.718, 24.201.720, and 24.201.726 exactly as proposed.

7. The board has amended ARM 24.201.2137 with the following changes, stricken matter interlined, new matter underlined:

24.201.2137 CREDIT FOR FORMAL SELF-STUDY AND NANO-LEARNING PROGRAMS (1) remains as proposed.

(a) All other formal self-study programs receive continuing education credit ~~equal to half of the credit amount granted by the sponsor~~ based on a 100-minute hour. Self-study courses that are offered by a sponsor that is not recognized by the NASBA National Registry of CPE Sponsors must be at least 50 minutes to receive credit.

(2) and (3) remain as proposed.

BOARD OF PUBLIC ACCOUNTANTS
KATHLEEN VANDYKE
PRESIDING OFFICER

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

/s/ GALEN HOLLENBAUGH
Galen Hollenbaugh, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State November 27, 2017.

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

In the matter of the amendment of ARM 37.79.304 pertaining to clarifying contents of Healthy Montana Kids (HMK) evidence of coverage and adopting the Medicaid ambulance contracts	))))))	CORRECTED NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On June 23, 2017, the Department of Public Health and Human Services (department) published MAR Notice No. 37-743 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 861 of the 2017 Montana Administrative Register, Issue Number 12. On October 13, 2017, the department published the notice of amendment at page 1905 of the 2017 Montana Administrative Register, Issue Number 19.

2. This amendment to ARM 37.79.304 remains as adopted.

3. A comment was received for this rulemaking; however, it was not responded to in the final notice of adoption. The department is correcting the adoption notice by adding the following comment and the response:

COMMENT #1: One commenter was concerned that the Applied Behavioral Analysis (ABA) benefit, which was coupled with habilitative services in Senate Bill 199 (SB199), was not included in the MAR Notice No. 37-743 filing.

RESPONSE #1: The process for oversight and administration of the ABA benefit is still in development in conjunction with the Medicaid program. There will be a future rulemaking to include services for autism, including ABA, and align the HMK benefit with Medicaid.

4. The replacement pages for this corrected notice will be submitted to the Secretary of State on December 31, 2017.

/s/ Caroline Warne
Caroline Warne, Attorney
Rule Reviewer

/s/ Sheila Hogan
Sheila Hogan, Director
Public Health and Human Services

Certified to the Secretary of State November 27, 2017.

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

In the matter of the amendment of ARM 37.40.830, 37.85.104, 37.85.105, 37.86.610, 37.86.705, 37.86.805, 37.86.1101, 37.86.1105, 37.86.1406, 37.86.1807, 37.86.2005, 37.86.2605, 37.86.2803, 37.86.2806, 37.86.2905, 37.86.2912, 37.86.3007, 37.86.3109, 37.86.3205, and 37.87.1226 pertaining to updating the effective dates of non-Medicaid and Medicaid fee schedules to January 1, 2018	)	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On July 7, 2017, the Department of Public Health and Human Services published MAR Notice No. 37-788 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 1006 of the 2017 Montana Administrative Register, Issue Number 13.

2. The department has amended the following rules as proposed: ARM 37.86.610, and 37.87.1226.

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

37.40.830 HOSPICE, REIMBURSEMENT (1) through (11) remain as proposed.

(12) The hospice fee schedules are effective ~~October 1, 2017~~ January 1, 2018. Copies of the department's current fee schedules are posted at http://medicaidprovider.mt.gov and may be obtained from the Department of Public Health and Human Services, Health Resources Division, 1401 East Lockey, P.O. Box 202951, Helena, MT 59602-2951.

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

37.85.104 EFFECTIVE DATES OF PROVIDER FEE SCHEDULES FOR MONTANA NON-MEDICAID SERVICES (1) The department adopts and incorporates by reference the fee schedule for the following programs within the Addictive and Mental Disorders Division and Developmental Services Division on the dates stated:

(a) Mental health services plan provider reimbursement, as provided in ARM 37.89.125, is effective ~~October 1, 2017~~ January 1, 2018.

(b) 72-hour presumptive eligibility for adult-crisis stabilization services reimbursement for services, as provided in ARM 37.89.523, is effective ~~October 1, 2017~~ January 1, 2018.

(c) Youth respite care services, as provided in ARM 37.87.2203, is effective ~~October 1, 2017~~ January 1, 2018.

(d) Substance use disorder services provider reimbursement, as provided in ARM 37.27.908, is effective ~~October 1, 2017~~ January 1, 2018.

(2) remains as proposed.

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

37.85.105 EFFECTIVE DATES, CONVERSION FACTORS, POLICY ADJUSTERS, AND COST-TO-CHARGE RATIOS OF MONTANA MEDICAID PROVIDER FEE SCHEDULES (1) remains as proposed.

(2) The department adopts and incorporates by reference, the resource-based relative value scale (RBRVS) reimbursement methodology for specific providers as described in ARM 37.85.212 on the date stated.

(a) remains as proposed.

(b) Fee schedules are effective ~~October 1, 2017~~ January 1, 2018. The conversion factor for physician services is ~~$36.23~~ $36.53. The conversion factor for allied services is ~~$24.17~~ $24.29. The conversion factor for mental health services is ~~$23.95~~ $24.07. The conversion factor for anesthesia services is ~~$28.73~~ $28.87.

(c) remains as proposed.

(d) The payment-to-charge ratio is effective ~~October 1, 2017~~ January 1, 2018 and is ~~45.37%~~ 45.59% of the provider's usual and customary charges.

(e) through (h) remain as proposed.

(i) Reimbursement for physician-administered drugs described in ARM 37.86.105 is determined in 42 CFR 414.904 (2016). The department adopts ~~102.32%~~ 102.83% of the Average Sale Price (ASP), effective ~~October 1, 2017~~ January 1, 2018.

(j) Reimbursement for vaccines described at ARM 37.86.105 is effective ~~October 1, 2017~~ January 1, 2018.

(3) The department adopts and incorporates by reference, the fee schedule for the following programs within the Health Resources Division, on the date stated.

(a) The inpatient hospital services fee schedule and inpatient hospital base fee schedule rates including:

(i) the APR-DRG fee schedule for inpatient hospitals as provided in ARM 37.86.2907, effective ~~October 1, 2017~~ January 1, 2018; and

(ii) the Montana Medicaid APR-DRG relative weight values, average national length of stay (ALOS), outlier thresholds, and APR grouper version 34 are contained in the APR-DRG Table of Weights and Thresholds effective ~~October 1, 2017~~ January 1, 2018. The department adopts and incorporates by reference the APR-DRG Table of Weights and Thresholds effective ~~October 1, 2017~~ January 1, 2018.

(b) The outpatient hospital services fee schedules including:

(i) remains as proposed.

(ii) the conversion factor for outpatient services on or after ~~October 1, 2017~~ January 1, 2018 is ~~$54.67~~ $54.95;

(iii) remains as proposed.

(iv) the bundled composite rate of ~~$243.26~~ $244.47 for services provided in an outpatient maintenance dialysis clinic effective on or after ~~October 1, 2017~~ January 1, 2018.

(c) The hearing aid services fee schedule, as provided in ARM 37.86.805, is effective ~~October 1, 2017~~ January 1, 2018.

(d) The Relative Values for Dentists, as provided in ARM 37.86.1004, reference published in 2017 resulting in a dental conversion factor of ~~$32.61~~ $32.77 and fee schedule is effective ~~October 1, 2017~~ January 1, 2018.

(e) remains as proposed.

(f) The outpatient drugs reimbursement, dispensing fees range as provided in ARM 37.86.1105(3)(b) is effective ~~October 1, 2017~~ January 1, 2018:

(i) for pharmacies with prescription volume between 0 and 39,999, the minimum is $3.41 and the maximum is ~~$14.48~~ $14.55;

(ii) for pharmacies with prescription volume between 40,000 and 69,999, the minimum is $3.41 and the maximum is ~~$12.55~~ $12.61; or

(iii) for pharmacies with prescription volume greater than 70,000, the minimum is $3.41 and the maximum is ~~$10.62~~ $10.67.

(g) remains as proposed.

(h) The outpatient drugs reimbursement, vaccine administration fee as provided in ARM 37.86.1105(6), will be ~~$20.58~~ $20.68 for the first vaccine and ~~$12.55~~ $12.61 for each additional administered vaccine, effective ~~October 1, 2017~~ January 1, 2018.

(i) remains as proposed.

(j) The home infusion therapy services fee schedule, as provided in ARM 37.86.1506, is effective ~~October 1, 2017~~ January 1, 2018.

(k) Montana Medicaid adopts and incorporates by reference the Region D Supplier Manual, effective ~~October 1, 2017~~ January 1, 2018, which outlines the Medicare coverage criteria for Medicare covered durable medical equipment, local coverage determinations (LCDs), and national coverage determinations (NCDs) as provided in ARM 37.86.1802, effective ~~October 1, 2017~~ January 1, 2018. The prosthetic devices, durable medical equipment, and medical supplies fee schedule, as provided in ARM 37.86.1807, is effective ~~October 1, 2017~~ January 1, 2018.

(l) Fee schedules for private duty nursing, nutrition, children's special health services, and orientation and mobility specialists as provided in ARM 37.86.2207(2), are effective ~~October 1, 2017~~ January 1, 2018.

(m) and (n) remain as proposed.

(o) The ambulance services fee schedule, as provided in ARM 37.86.2605, is effective ~~October 1, 2017~~ January 1, 2018.

(p) The audiology fee schedule, as provided in ARM 37.86.705, is effective ~~October 1, 2017~~ January 1, 2018.

(q) The therapy fee schedules for occupational therapists, physical therapists, and speech therapists, as provided in ARM 37.86.610, are effective ~~October 1, 2017~~ January 1, 2018.

(r) The optometric fee schedule provided in ARM 37.86.2005, is effective ~~October 1, 2017~~ January 1, 2018.

(s) The chiropractic fee schedule, as provided in ARM 37.85.212(2), is effective ~~October 1, 2017~~ January 1, 2018.

(t) The lab and imaging fee schedule, as provided in ARM 37.85.212(2) and 37.86.3007, is effective ~~October 1, 2017~~ January 1, 2018.

(u) The Federally Qualified Health Center (FQHC) and Rural Health Clinic (RHC) fee schedule for add-on services, as provided in ARM 37.86.4412, is effective ~~October 1, 2017~~ January 1, 2018.

(v) The Targeted Case Management for Children and Youth with Special Health Care Needs fee schedule, as provided in ARM 37.86.3910, is effective ~~October 1, 2017~~ January 1, 2018.

(w) The Targeted Case Management for High Risk Pregnant Women fee schedule, as provided in ARM 37.86.3415, is effective ~~October 1, 2017~~ January 1, 2018.

(x) The mobile imaging fee schedule, as provided in ARM 37.85.212, is effective ~~October 1, 2017~~ January 1, 2018.

(y) The licensed direct entry midwife fee schedule, as provided in ARM 37.85.212, is effective ~~October 1, 2017~~ January 1, 2018.

(4) The department adopts and incorporates by reference, the fee schedule for the following programs within the Senior and Long Term Care Division on the date stated:

(a) Home and community-based services for elderly and physically disabled persons fee schedule, as provided in ARM 37.40.1421, is effective ~~October 1, 2017~~ January 1, 2018.

(b) Home health services fee schedule, as provided in ARM 37.40.705, is effective ~~October 1, 2017~~ January 1, 2018.

(c) Personal assistance services fee schedule, as provided in ARM 37.40.1135, is effective ~~October 1, 2017~~ January 1, 2018.

(d) Self-directed personal assistance services fee schedule, as provided in ARM 37.40.1135, is effective ~~October 1, 2017~~ January 1, 2018.

(e) Community first choice services fee schedule, as provided in ARM 37.40.1026, is effective ~~October 1, 2017~~ January 1, 2018.

(5) The department adopts and incorporates by reference, the fee schedule for the following programs within the Addictive and Mental Disorders Division on the date stated:

(a) Mental health center services for adults reimbursement, as provided in ARM 37.88.907, is effective ~~October 1, 2017~~ January 1, 2018.

(b) Home and community-based services for adults with severe disabling mental illness, reimbursement, as provided in ARM 37.90.408, is effective ~~October 1, 2017~~ January 1, 2018.

(c) Substance use disorder services reimbursement, as provided in ARM 37.27.908, is effective ~~October 1, 2017~~ January 1, 2018.

(6) The department adopts and incorporates by reference, the fee schedule for the following program~~s~~ within the Developmental Services Division, on the date stated: Mental health services for youth, as provided in ARM 37.87.901 in the

Medicaid Youth Mental Health Services Fee Schedule, is effective ~~October 1, 2017~~ January 1, 2018.

AUTH: 53-2-201, 53-6-113, MCA
IMP: 53-2-201, 53-6-101, 53-6-125, 53-6-402, MCA

37.86.705 AUDIOLOGY SERVICES, REIMBURSEMENT (1) remains as proposed.

(2) Subject to the requirements of this rule, the Montana Medicaid program pays the following for audiology services:

(a) For patients who are eligible for Medicaid, the lowest of:

(i) and (ii) remain as proposed.

(iii) ~~96.53%~~ 97.01% of the Medicare Region D allowable fee; or

(iv) remains as proposed.

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

37.86.805 HEARING AID SERVICES, REIMBURSEMENT (1) The department will pay the lowest of the following for covered hearing aid services and items:

(a) and (b) remain as proposed.

(c) ~~96.53%~~ 97.01% of the Medicare Region D allowable fee.

(2) For items or services where no Medicare allowable fee is available, the fee schedule amount in (1)(b) will be calculated using the following methodology:

(a) remains as proposed.

(b) For supplies or equipment, reimbursement will be set at ~~72.4%~~ 72.8% of the manufacturer's suggested retail price. For items without a manufacturer's suggested retail price, the charge will be considered reasonable if the provider's acquisition cost from the manufacturer is at least 50% of the charge amount. For items that are custom-fabricated at the place of service, the amount charged will be considered reasonable if it does not exceed the average charge of all Medicaid providers by more than 20%.

(c) and (3) remain as proposed.

AUTH: 53-2-201, 53-6-113, MCA
IMP: 53-2-201, 53-6-101, 53-6-111, 53-6-113, 53-6-141, MCA

37.86.1101 OUTPATIENT DRUGS, DEFINITIONS (1) and (2) remain as proposed.

(3) "Allowed ingredient cost" means the "Average Acquisition Cost (AAC)" or "submitted ingredient cost," whichever is lower. If AAC is not available, drug reimbursement is determined at the lesser of "Wholesale Acquisition Cost (WAC) minus ~~3.47%~~ 2.99%," "Federal Maximum Allowable Cost (FMAC)," or the "submitted ingredient cost."

(4) through (15) remain as proposed.

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

37.86.1105 OUTPATIENT DRUGS, REIMBURSEMENT (1) through (12) remain as proposed.

(13) Specialty pharmacies, hemophilia treatment centers, or centers of excellence that dispense clotting factors:

(a) not purchased through the 340B program will be reimbursed at the lesser of the usual and customary charge, submitted ingredient cost, or wholesale acquisition cost minus ~~3.47%~~ 2.99%, plus the professional dispensing fee; or

(b) when purchased through the 340B program, will be reimbursed the lesser of the usual and customary charge or wholesale acquisition cost minus ~~3.47%~~ 2.99%, plus the professional dispensing fee.

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

37.86.1406 CLINIC SERVICES, REIMBURSEMENT (1) Ambulatory surgical center (ASC) services as defined in ARM 37.86.1401(2) provided by an ASC will be reimbursed on a fee basis as follows:

(a) ~~96.53%~~ 97.01% of the Medicare allowable amount. For purposes of determining the Medicare allowable amount for ASC services to Medicaid members under this rule, the department adopts and incorporates by reference the methodology at 42 CFR part 416, subpart F, and the schedule listing the allowable amounts for ASC services in the Medicare Claims Processing Manual. The cited authorities are federal regulations and manuals specifying the methods and rules used to determine reasonable cost for purposes of the Medicare program. The Medicare Claims Processing Manual can be found on the Centers for Medicare and Medicaid website at www.cms.gov. The Code of Federal Regulations can be found at www.gpo.gov.

(i) through (2) remain as proposed.

AUTH: 53-2-201, 53-6-113, MCA
IMP: 53-6-101, 53-6-141, MCA

37.86.1807 PROSTHETIC DEVICES, DURABLE MEDICAL EQUIPMENT, AND MEDICAL SUPPLIES, FEE SCHEDULE (1) and (2) remain as proposed.

(3) The department's DMEPOS Fee Schedule for items other than those billed under generic or miscellaneous codes as described in (1) will include fees set and maintained according to the following methodology:

(a) ~~96.53%~~ 97.01% of the Medicare region D allowable fee;

(b) Except as provided in (4), for all items for which no Medicare allowable fee is available, the department's fee schedule amount will be ~~72.4%~~ 72.8% of the provider's usual and customary charge.

(i) remains as proposed.

(ii) Items having no product retail list price, such as items customized by the provider, will be reimbursed at ~~72.4%~~ 72.8% of the provider's usual and customary charge as defined in (3)(b)(i).

(4) The department's DMEPOS Fee Schedule, referred to in ARM 37.86.1807(2), for items billed under generic or miscellaneous codes as described in (1) will be ~~72.4%~~ 72.8% of the provider's usual and customary charge as defined in (3)(b)(i).

AUTH: 53-2-201, 53-6-113, MCA
IMP: 53-2-201, 53-6-101, 53-6-111, 53-6-113, 53-6-141, MCA

37.86.2005 OPTOMETRIC SERVICES, REIMBURSEMENT (1) remains as proposed.

(2) For items or services where no RBRVS or Medicare is available, the fee schedule amount in (1)(c) will be calculated using the following methodology:

(a) remains as proposed.

(b) For supplies or equipment, reimbursement will be set at ~~72.4%~~ 72.8% of the manufacturer's suggested retail price. For items without a manufacturer's suggested retail price, the charge will be considered reasonable if the provider's acquisition charge from the manufacturer is at least 50% of the charge amount. For items that are custom-fabricated at the place of service, the amount charged will be considered reasonable if it does not exceed the average charge of all Medicaid providers by more than 20%.

(c) and (3) remain as proposed.

AUTH: 53-6-113, MCA
IMP: 53-6-101, 53-6-113, 53-6-141, MCA

37.86.2605 AMBULANCE SERVICES, REIMBURSEMENT (1) through (3) remain as proposed.

(4) For supplies or equipment, where there is no Medicare or Medicaid set fee, the provider's usual and customary charge in (1)(a) will be considered reasonable if set at ~~72.4%~~ 72.8% of the manufacturer's suggested retail price. For items without a manufacturer's suggested retail price, the charge will be considered reasonable if the provider's acquisition cost from the manufacturer is at least 50% of the charge amount.

(5) remains as proposed.

AUTH: 53-2-201, 53-6-113, MCA
IMP: 53-6-101, 53-6-113, 53-6-141, MCA

37.86.2803 ALL HOSPITAL REIMBURSEMENT, COST REPORTING

(1) Allowable costs will be determined in accordance with generally accepted accounting principles as defined by the American Institute of Certified Public Accountants.

(a) through (c) remain as proposed.

(d) For cost report periods ending January 1, 2006 through ~~September 30, 2017~~ December 31, 2017, for each hospital which is a critical access hospital, as defined in ARM 37.86.2901, reimbursement for reasonable costs of inpatient and outpatient hospital services shall be limited to 101% of allowable costs, as determined in accordance with (1).

(e) For cost report periods ending on or after ~~October 1, 2017~~ January 1, 2018, for each hospital which is a critical access hospital, as defined in ARM 37.86.2901, reimbursement for reasonable costs of inpatient and outpatient hospital services will be limited to ~~97.50%~~ 97.98% of allowable costs, as determined in accordance with (1).

(2) and (3) remain as proposed.

AUTH: 53-2-201, 53-6-113, MCA
IMP: 53-2-201, 53-6-101, 53-6-111, 53-6-113, 53-6-149, MCA

37.86.2806 COST-BASED HOSPITAL, GENERAL REIMBURSEMENT

(1) Cost-based reimbursement shall be applied as follows:

(a) Critical access hospital (CAH) interim reimbursement is based on a hospital specific Medicaid inpatient cost-to-charge ratio (CCR), not to exceed 100%. For dates of service on or after ~~October 1, 2017~~ January 1, 2018, critical access hospital (CAH) interim reimbursement is based on a hospital-specific Medicaid inpatient cost-to-charge ratio (CCR), less ~~3.47%~~ 2.99%, not to exceed 100%.

(b) For cost report periods ending on or prior to ~~September 30, 2017~~ December 31, 2017, CAH final reimbursement is for reasonable costs of hospital services limited to 101% of allowable costs, as determined in accordance with ARM 37.86.2803(1). For cost report periods ending on or after ~~October 1, 2017~~ January 1, 2018, CAH final reimbursement is for reasonable costs of hospital services limited to ~~97.50%~~ 97.98% of allowable costs as determined in accordance with ARM 37.86.2803(1).

(2) through (8) remain as proposed.

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

37.86.2905 INPATIENT HOSPITAL SERVICES, GENERAL REIMBURSEMENT (1) remains as proposed.

(2) Interim reimbursement for cost-based facilities is based on a hospital-specific Medicaid inpatient cost-to-charge ratio, not to exceed 100%. For dates of service on or after ~~October 1, 2017~~ January 1, 2018, the interim reimbursement is based on a hospital-specific Medicaid inpatient cost-to-charge ratio, less ~~3.47%~~ 2.99%, not to exceed 100%. Cost-based facilities will be reimbursed their allowable costs as determined according to ARM 37.86.2803. For cost report periods ending on or prior to ~~September 30, 2017~~ December 31, 2017, final cost settlements for CAH facilities will be reimbursed at 101% of allowable costs. For cost report periods ending on or after ~~October 1, 2017~~ January 1, 2018, final cost settlements for CAH facilities will be reimbursed at ~~97.50%~~ 97.98% of allowable costs.

(3) through (5) remain as proposed.

AUTH: 53-2-201, 53-6-113, MCA
IMP: 53-2-201, 53-6-101, 53-6-111, 53-6-113, 53-6-141, MCA

37.86.2912 INPATIENT HOSPITAL PROSPECTIVE REIMBURSEMENT, CAPITAL-RELATED COSTS (1) remains as proposed.

(2) The interim payment made to CAHs is based on the hospital-specific cost-to-charge ratio and includes capital costs. For dates of service on or after ~~October 1, 2017~~ January 1, 2018, the interim payment made is based on the hospital-specific cost-to-charge ratio, less ~~3.47%~~ 2.99%, and includes capital costs.

(3) remains as proposed.

AUTH: 2-4-201, 53-2-201, 53-6-113, MCA
IMP: 2-4-201, 53-2-201, 53-6-101, 53-6-111, 53-6-113, MCA

37.86.3007 OUTPATIENT HOSPITAL SERVICES, PROSPECTIVE PAYMENT METHODOLOGY, CLINICAL DIAGNOSTIC LABORATORY SERVICES

(1) Clinical diagnostic laboratory services, including automated multichannel test panels (commonly referred to as "ATPs") and lab panels, will be reimbursed on a fee basis as follows with the exception of hospitals reimbursed under ARM 37.86.3005 and specific lab codes which are paid under ARM 37.86.3020:

(a) The fee for a clinical diagnostic laboratory service is the applicable percentage of the Medicare fee schedule as follows:

(i) ~~57.918%~~ 58.206% of the prevailing Medicare fee schedule for a birthing center or where a hospital laboratory acts as an independent laboratory, i.e., performs tests for persons who are nonhospital patients;

(ii) ~~59.8486%~~ 60.1462% of the prevailing Medicare fee schedule for a hospital designated as a sole community hospital as defined in ARM 37.86.2901; or

(iii) ~~57.918%~~ 58.206% of the prevailing Medicare fee schedule for a hospital that is not designated as a sole community hospital as defined in ARM 37.86.2901.

(b) through (3) remain as proposed.

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

37.86.3109 OUTPATIENT CARDIAC AND PULMONARY REHABILITATION REIMBURSEMENT (1) Critical access hospital (CAH) interim reimbursement is based on a hospital-specific Medicaid outpatient cost-to-charge ratio, not to exceed 100%. For dates of service on or after ~~October 1, 2017~~ January 1, 2018, the interim reimbursement is based on the hospital specific Medicaid outpatient cost-to-charge ratio (CCR), less ~~3.47%~~ 2.99%, not to exceed 100%. CAHs will be reimbursed their actual allowable costs determined according to ARM 37.86.2803.

(2) and (3) remain as proposed.

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

37.86.3205 NONHOSPITAL LABORATORY AND RADIOLOGY (X-RAY) SERVICES, REIMBURSEMENT (1) through (3) remain as proposed.

(4) For clinical laboratory services, the department pays the lower of:

(a) remains as proposed.

(b) ~~57.918%~~ 58.206% of the Medicare fee schedule for physician offices and independent labs and hospitals functioning as independent labs; or

(c) remains as proposed.

AUTH: 53-6-113, MCA
IMP: 53-6-113, 53-6-141, MCA

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

Comment 1: The department received many comments opposing the 3.47% reduction in Medicaid provider rates.

Response 1: The department has lowered the rate reduction from 3.47% to 2.99%, which will be effective January 1, 2018. The lowered rate reduction was achieved by implementing legislatively mandated funding reductions in Senate Bill (SB) 261 §§ 12 and 21. SB 261 § 12 included a 0.5% reduction to Medicaid benefits of $1,423,827, which is part of the rate reduction. The SB 261 § 21 reduction for Health Resources Division of $3,500,000 is included in the calculation of the rate reduction.

Comment 2: On July 26, 2017, the Legislative Children, Families, Health and Human Services Interim Committee (committee) notified the department that members of the committee objected to the proposal notice, pursuant to 2-4-305(9), MCA, although the committee did so without articulating any basis for its objection. On November 8, 2017, the committee adopted a formal written objection to the proposal notice, pursuant to 2-4-406(1), MCA, which set forth its reasons for objecting.

Response 2: As originally proposed, the effective date of the rate change would have been October 1, 2017. The department delayed the filing of its final notice in light of the committee's objection pursuant to 2-4-305(9), MCA. The committee first set forth the bases for its objection in its formal objection adopted November 8, 2017, pursuant to 2-4-406(1), MCA. Pursuant to 2-4-406(2), MCA, the department is permitted to submit to the committee its response to the written objection, after which the committee may withdraw its objection.

Comment 3: The department received comments that its interpretation of House Bill 2 of the regular session (HB 2) and SB 261 is contrary to legislative intent.

Response 3: The department decreased the rate reduction from the proposed 3.47% cut to a 2.99% cut. The department does not agree with the commenters that its interpretation of HB 2 or SB 261 is contrary to legislative intent.

Legislative Intent:

Section 17-7-138(1)(a), MCA, provides: "Expenditures by a state agency must be made in substantial compliance with the budget approved by the legislature. Substantial compliance may be determined by conformity to the conditions contained in the general appropriations act and to legislative intent as established in the narrative accompanying the general appropriations act."

The department considered the following factors while calculating the 2.99% provider rate decrease:

a. Legislative intent as adopted in the legislative fiscal analyst narrative (Legislative Fiscal Report) located at http://leg.mt.gov/content/Publications/fiscal/Budget-Books/2019/fiscal-publications.asp;

b. Conditions contained in Senate Bill (SB) 261 (Note: In the special session the legislature amended and revised HB 2 by incorporating legislative changes from the 2017 regular session that were made by several bills, including SB 261. In doing so, the legislature intended the incorporated changes to reflect current law before the special session commencing November 14, 2017.); and

c. The amount of time available to achieve the required spending reductions.

The department's proposed provider rates were based on legislative appropriations: The department calculated the 2.99% rate decrease based on the money the legislature appropriated to spend for the following programs: Medicaid provider services (MAR Notice No. 37-788); targeted case management services (MAR Notice No. 37-801); developmental disabilities program services that were available through the 1915c, 0208 and 0667 Home and Community Based Waiver programs (MAR Notice No. 37-802); and nursing facility reimbursement rates (MAR Notice No. 37-805).

SB 261

SB 261 revised Montana's state budgeting law. SB 261 reduced appropriations if actual state revenue was less than thresholds the legislature established in SB 261.

Section 21(1) of SB 261 provides as follows: If the amount of the certified unaudited state general fund revenue and transfers into the general fund received at the end of fiscal year 2017 is less than $2,192,000,000, as determined by the state treasurer on or before August 15, 2017, and if House Bill No. 2 is passed and approved, then the department of public health and human services general fund appropriation for "Health Resources Division" in House Bill No. 2 is reduced by $3,500,000 in fiscal year 2018 and $3,500,000 in fiscal year 2019.

Section 21(3) of SB 261 provides as follows: The legislature intends that the appropriation reduction in subsections (1) and (2) be used to reduce Medicaid provider rates over the 2019 biennium.

Section 21(4) of SB 261 provides as follows: The appropriation reductions in subsections (1) and (2) are in addition to the across-the-board reduction in general fund appropriations in [section 12].

Section 12(1) of SB 261 provides as follows: If the amount of the certified unaudited state general fund revenue and transfers into the general fund received at the end of fiscal year 2017 is less than $2,204,000,000, as determined by the state treasurer on or before August 15, 2017, and if House Bill No. 2 is passed and approved [section 11 of House Bill No. 2] must be amended as follows:

Section 11. Appropriations -- reduced appropriations for certain fiscal year 2019 general fund appropriations. (1) All general fund appropriations in this section for fiscal year 2019, excluding the appropriations for K-12 BASE Aid, Reimbursement Block Grants, State Tuition Payments, Transportation, Natural Resource Development K-12 School Facilities Payment, Special Education, and the Coal-Fired Generating Unit Closure Mitigation Block Grant are reduced by 0.5%.

The 2.99% decrease in provider rates is calculated as follows:

Appropriation reductions in SB 261

SB 261, Section 12, amends HB 2, §11 to reduce Medicaid general fund appropriations by 0.5% or	-$1,423,827
SB 261, Section 21, reduces the appropriation for the Health Resources Division by	-$3,500,000
Total reduction	-$4,923,827
Total federal funds lost due to general fund appropriation reduction	-$9,331,608
Total required cost reduction in SFY 2018	-$14,255,435
Projected expenditures for impacted Medicaid provider types	$954,922,507
Rate reduction required to achieve reduction in 12 months	1.49%
Rate reduction required to achieve reduction in 6 months	2.99%

The earliest the department can implement the rate reductions is January 1, 2018. Therefore the rate reduction implemented in this notice, in accordance with legislative intent as previously described, is 2.99%.

Comment 4: Instead of cutting Medicaid rates, why doesn't the department cut employees, facilities, programs, and operating costs?

Response 4: The department has numerous cost reduction measures in place including staff reductions. The Legislature reduced the department's total personnel services budget by 6.3% in HB 2 and SB 261. The department has limited its hiring to essential positions since April of 2017 to achieve this cost constraint. In addition, there is a 1.7% reduction in non-Medicaid general fund appropriations included in HB 2. Cost constraints in operating costs, facilities, and other department programs have been implemented to achieve this requirement. These appropriation reductions and corresponding cost constraints are separate and distinct from the proposed Medicaid provider rate reduction discussed in this notice.

The department continues to look for cost savings in facilities, programs, and operating costs, but it has not identified any additional savings that would not adversely impact citizens.

Comment 5: Provider rate reductions will increase Medicaid expenditures in higher cost usages, such as emergency room visits, inpatient hospitalizations, and the state psychiatric facility.

Response 5: The department does not agree that an across-the-board 2.99% rate reduction will significantly impact access. See response to comment 7. The department's analysis shows that Medicaid members will continue to receive medical care and services despite the rate reduction; therefore the rate reduction will not cause increased use of higher cost services.

Comment 6: Why did the department reduce all rates by a uniform amount instead of evaluating each program's reimbursement rates?

Response 6: Evaluating and adjusting each program's reimbursement rates would have been time consuming and costly and would not result in rate changes that were significantly different than the uniform reduction. Instead of evaluating each program, the department calculated a uniform rate reduction based on the amount of the budget reductions in SB 261, the time needed to recover the amount of the budget reductions, and the specific instructions in SB 261, Section 21. Acting promptly is important because the reduction must be made during SFY 2018. A percentage rate reduction can be smaller if the total is recovered over a longer period of time. The uniform reduction is a reasonable, non-biased solution.

Comment 7: The department received several comments stating that rate reductions will cause more providers to refuse Medicaid patients, reducing access to services, and affecting quality of care.

Response 7: The new rates are consistent with efficiency, economy, and quality of care. The rates are sufficient to enlist enough Medicaid providers so that care and services through the Montana Medicaid program are available to the extent that such care and services are available to the general population in the geographic area.

Comment 8: The department received several comments that rate reductions will detrimentally impact small businesses.

Response 8: The department agrees that all rate reductions detrimentally impact providers, including small businesses; however the requirements of 2-4-111, MCA, are not triggered by the rate change. Section 2-4-111, MCA, requires state agencies to determine if a proposed rule will significantly and directly impact small businesses. For purposes of 2-4-111, MCA, a small business is defined as "a business entity, including its affiliates, that is independently owned and operated and that employs fewer than 50 full-time employees." Section 2-4-102(13), MCA. The Governor's Office of Economic Development (GOED) has interpreted "small business" to mean privately owned, for-profit entities. (July 22, 2013, memorandum from GOED).

Although the proposed rate decreases do not significantly and directly impact small businesses, as defined in statute, the department included statements of the fiscal impact on providers in its notice of proposed amendment. Because the rate decrease is required by law there are no alternatives to identify.

Comment 9: The department received comments that the legislature intended the provider rate cut in SB 261 to be 1%.

Response 9: The department does not agree that a 1% Medicaid provider rate reduction represents the entirety of legislative intent. Section 21 of SB 261 requires a provider rate reduction evenly spread across applicable providers to achieve a $3,500,000 annual general fund cost reduction. If implemented over a 12-month period, the $3,500,000 reduction in Section 21 alone would result in an approximate 1% provider rate reduction. Section 21, however, is just one of several components of reductions in SB 261. In addition to Section 21, this notice also implements other reductions mandated by SB 261. See response to comment 1.

Comment 10: A commenter suggested the department follow the standard of care and allow eye exams for Medicaid members once every two years instead of annually. The commenter stated a policy of annual eye exams and yearly frame and lens benefits exceeds recommended standards of care and coverage provided by some private sector vision insurance plans.

Response 10: The department is evaluating the proposal that would reduce Medicaid member eye exams and eyeglass benefits from once per year to once every two years. If approved, the department will move forward with rule changes to

implement the benefit change. If the department proposes the change, it must provide public notice and an opportunity for comment.

Comment 11: A commenter expressed concerns over Medicaid members having both Medicaid and commercial vision coverage and that some members are using their commercial vision insurance discount plans in addition to Medicaid.

Response 11: Medicaid is the payer of last resort when another insurance policy is available. In general, Medicaid pays allowable charges up to the Medicaid allowed amount after the primary insurance has adjudicated the claim. The department will release additional guidance to providers through a provider notice to ensure that providers understand that in this circumstance a claim should be submitted to private insurance as the primary insurer and that Medicaid is the payer of last resort.

Comment 12: Assisted living facilities realize a higher rate reduction due to the method used for reimbursement for these facilities.

Response12: The department is currently developing a strategy to restructure the reimbursement methodology to bring about a more consistent and fair rate computation for assisted living facilities.

Comment 13: A commenter expressed concern that the department is updating the schedule of weights in the inpatient hospital DRG grouper and the outpatient APC schedule at the same time it proposes a fee schedule reduction.

Response 13: The department has followed the same process since the implementation of the APR-DRG methodology in 2009. As part of the standard annual process of developing hospital payment rates, the department adopted a new grouper version, DRG weights and thresholds, and reviewed other factors of inpatient pricing. The department decreased base rates, added an adult policy adjustor, and increased the outlier threshold as we attempt to limit outlier payments to 5%. These changes were completed to meet the appropriated budget for inpatient hospitals. The department does not take into consideration weight changes when establishing the conversion factor for outpatient hospitals; therefore a 2.99% reduction is applied only to the APC conversion factor.

Comment 14: A commenter requested that the department provide the underpinning financial worksheets and other materials regarding inpatient hospitals to allow providers to more clearly understand the department's calculations supporting the proposed rules.

Response 14: The department modeled claims data utilizing version 34 of the DRG grouper. As part of the department's standard annual process, the modeling completed the following: re-centered the national APR-DRG weights to a case mix of 1.0; reduced the hospital base rates equally; added a new adult policy adjustor which reduced payment for services for adults age 18 or over (excluding OB and Rehab) by 10%; and increased the outlier threshold from $60,000 to $75,000.

These steps are necessary to establish the annual inpatient payment parameters to meet the appropriated budget.

Comment 15: A commenter expressed concern with the proposed rule language in ARM 37.86.2803, 37.86.2806, and 37.86.2905. The commenter was concerned the department would implement those rules in a manner that penalized critical access hospitals that use cost reporting periods that overlapped the change in the final cost settlement percentage.

Response 15: The department understands the issue raised in the comment. The proposed rules will not penalize critical access hospitals that have cost reporting periods that overlap the change in final cost settlement percentages. The department will only reimburse at the reduced rate and cost settle at the lower amount for the services provided after January 1, 2018.

Comment 16: A commenter proposed that the department consider repealing the special and enhanced payments made to hospitals located outside of Montana and retain the savings within the payment system inside Montana.

Response 16: The majority of hospitals outside Montana receive the same inpatient base rate as in-state hospitals. The two exceptions to the standard base rates are for long term acute care hospitals and centers of excellence. Eliminating the increased base rate for centers of excellence would detrimentally affect Montana Medicaid members' access to care because services provided in out-of-state centers of excellence are not available in Montana. These facilities provide a higher level of multi-specialty comprehensive care that is unavailable in Montana. Ensuring access to these providers is critical for our members.

5. These rule amendments are effective January 1, 2018.

/s/ Brenda K. Elias
Brenda K. Elias, Attorney
Rule Reviewer

/s/ Sheila Hogan
Sheila Hogan, Director
Public Health and Human Services

Certified to the Secretary of State November 27, 2017.

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

In the matter of the adoption of New Rules I, II, and III and the amendment of ARM 37.86.4412 pertaining to the promising pregnancy care program	))))	NOTICE OF ADOPTION AND AMENDMENT

TO: All Concerned Persons

1. On May 12, 2017, the Department of Public Health and Human Services published MAR Notice No. 37-793 pertaining to the public hearing on the proposed adoption and amendment of the above-stated rules at page 595 of the 2017 Montana Administrative Register, Issue Number 9. On October 13, 2017, the Department of Public Health and Human Services published MAR Notice No. 37-793 pertaining to the public hearing on the amended notice of proposed adoption and amendment of the above-stated rules at page 1769 of the 2017 Montana Administrative Register, Issue Number 19.

2. The department has adopted New Rules I (37.86.4501), II (37.86.4502), and III (37.86.4503) as proposed.

3. The department has amended ARM 37.86.4412 as proposed.

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

COMMENT #1: One commenter expressed concern regarding the requirement that providers enrolled in the Promising Pregnancy Care Program must provide data to the department on all Medicaid enrolled pregnant women within their practice. The commenter is concerned with the administrative burden this could place on a practice and noted that the Centers for Medicare and Medicaid Services' (CMS) initiative, "Patients over Paperwork," gives recognition to the growing concerns that regulations are reducing the amount of time providers are spending with patients.

RESPONSE #1: The department thanks the commenter for their concern. The Promising Pregnancy Care Program is a voluntary program for providers to enroll in, and the required data elements are being used to measure the success of the program. The data elements were created in conjunction with providers who are already providing group prenatal care and were approved by CMS in our Medicaid State Plan.

5. The department intends to apply these rule adoptions and amendments retroactively to July 1, 2017. A retroactive application of the proposed rule adoptions and amendments does not result in a negative impact to any affected party.

/s/ Caroline Warne
Caroline Warne, Attorney
Rule Reviewer

/s/ Marie Matthews for
Sheila Hogan, Director
Public Health and Human Services

Certified to the Secretary of State November 27, 2017.

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

In the matter of the adoption of New Rule I pertaining to behavioral health targeted case management fee schedule	))))	NOTICE OF ADOPTION

TO: All Concerned Persons

1. On July 7, 2017, the Department of Public Health and Human Services published MAR Notice No. 37-801 pertaining to the public hearing on the proposed adoption of the above-stated rule at page 1038 of the 2017 Montana Administrative Register, Issue Number 13.

2. The department has adopted New Rule I (37.85.106) as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

NEW RULE I MEDICAID BEHAVIORAL HEALTH TARGETED CASE MANAGEMENT FEE SCHEDULE (1) remains as proposed.

(2) The Department of Public Health and Human Services (department) adopts and incorporates by reference the Medicaid Behavioral Health Targeted Case Management Fee Schedule effective ~~October 1, 2017~~ January 1, 2018 for the following programs within the Developmental Services Division (DSD) and the Addictive and Mental Disorders Division (AMDD):

(a) through (3) remain as proposed.

AUTH: 53-2-201, 53-6-113, MCA
IMP: 53-2-201, 53-6-101, 53-6-402, MCA

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

Comment 1: The department received many comments opposing the 3.47% reduction in Medicaid provider rates.

Response 1: The department has lowered the rate reduction from 3.47% to 2.99%, which will be effective January 1, 2018. The lowered rate reduction was achieved by implementing legislatively mandated funding reductions in Senate Bill (SB) 261 §§ 12 and 21. SB 261 § 12 included a 0.5% reduction to Medicaid benefits of $1,423,827, which is part of the rate reduction. The SB 261 § 21 reduction for Health Resources Division of $3,500,000 is included in the calculation of the rate reduction.

Comment 2: On July 26, 2017, the Legislative Children, Families, Health and Human Services Interim Committee (committee) notified the department that members of the committee objected to the proposed rule, pursuant to 2-4-305(9), MCA, although the committee did so without articulating any basis for its objection. On November 8, 2017, the committee adopted a formal written objection to the proposed rule, pursuant to 2-4-406(1), MCA, which set forth its reasons for objecting.

Response 2: As originally proposed, the effective date of the rate change would have been October 1, 2017. The department delayed the filing of its final notice in light of the committee's objection pursuant to 2-4-305(9), MCA. The committee first set forth the bases for its objection in its formal objection adopted November 8, 2017, pursuant to 2-4-406(1), MCA. Pursuant to 2-4-406(2), MCA, the department is permitted to submit to the committee its response to the written objection, after which the committee may withdraw its objection.

Comment 3: The department received comments that its interpretation of House Bill 2 of the regular session (HB 2) and SB 261 is contrary to legislative intent.

Response 3: The department decreased the rate reduction from the proposed 3.47% cut to a 2.99% cut. The department does not agree with the commenters that its interpretation of HB 2 or SB 261 is contrary to legislative intent.

Legislative Intent:

Section 17-7-138(1)(a), MCA, provides: "Expenditures by a state agency must be made in substantial compliance with the budget approved by the legislature. Substantial compliance may be determined by conformity to the conditions contained in the general appropriations act and to legislative intent as established in the narrative accompanying the general appropriations act."

The department considered the following factors while calculating the 2.99% provider rate decrease:

a. Legislative intent as adopted in the legislative fiscal analyst narrative (Legislative Fiscal Report) located at http://leg.mt.gov/content/Publications/fiscal/Budget-Books/2019/fiscal-publications.asp;

b. Conditions contained in Senate Bill (SB) 261 (Note: In the special session the legislature amended and revised HB 2 by incorporating legislative changes from the 2017 regular session that were made by several bills, including SB 261. In doing so, the legislature intended the incorporated changes to reflect current law before the special session commencing November 14, 2017.); and

c. The amount of time available to achieve the required spending reductions.

The department's proposed provider rates were based on legislative appropriations: The department calculated the 2.99% rate decrease based on the money the legislature appropriated to spend for the following programs: Medicaid provider services (MAR Notice No. 37-788); targeted case management services (MAR Notice No. 37-801); developmental disabilities program services that were available through the 1915c, 0208 and 0667 Home and Community Based Waiver programs (MAR Notice No. 37-802); and nursing facility reimbursement rates (MAR Notice No. 37-805).

SB 261

SB 261 revised Montana's state budgeting law. SB 261 reduced appropriations if actual state revenue was less than thresholds the legislature established in SB 261.

Section 21(1) of SB 261 provides as follows: If the amount of the certified unaudited state general fund revenue and transfers into the general fund received at the end of fiscal year 2017 is less than $2,192,000,000, as determined by the state treasurer on or before August 15, 2017, and if House Bill No. 2 is passed and approved, then the department of public health and human services general fund appropriation for "Health Resources Division" in House Bill No. 2 is reduced by $3,500,000 in fiscal year 2018 and $3,500,000 in fiscal year 2019.

Section 21(3) of SB 261 provides as follows: The legislature intends that the appropriation reduction in subsections (1) and (2) be used to reduce Medicaid provider rates over the 2019 biennium.

Section 21(4) of SB 261 provides as follows: The appropriation reductions in subsections (1) and (2) are in addition to the across-the-board reduction in general fund appropriations in [section 12].

Section 12(1) of SB 261 provides as follows: If the amount of the certified unaudited state general fund revenue and transfers into the general fund received at the end of fiscal year 2017 is less than $2,204,000,000, as determined by the state treasurer on or before August 15, 2017, and if House Bill No. 2 is passed and approved [section 11 of House Bill No. 2] must be amended as follows:

Section 11. Appropriations -- reduced appropriations for certain fiscal year 2019 general fund appropriations. (1) All general fund appropriations in this section for fiscal year 2019, excluding the appropriations for K-12 BASE Aid, Reimbursement Block Grants, State Tuition Payments, Transportation, Natural Resource Development K-12 School Facilities Payment, Special Education, and the Coal-Fired Generating Unit Closure Mitigation Block Grant are reduced by 0.5%.

The 2.99% decrease in provider rates is calculated as follows:

Appropriation reductions in SB 261

SB 261, Section 12, amends HB 2, §11 to reduce Medicaid general fund appropriations by 0.5% or	-$1,423,827
SB 261, Section 21, reduces the appropriation for the Health Resources Division by	-$3,500,000
Total reduction	-$4,923,827
Total federal funds lost due to general fund appropriation reduction	-$9,331,608
Total required cost reduction in SFY 2018	-$14,255,435
Projected expenditures for impacted Medicaid provider types	$954,922,507
Rate reduction required to achieve reduction in 12 months	1.49%
Rate reduction required to achieve reduction in 6 months	2.99%

The earliest the department can implement the rate reductions is January 1, 2018. Therefore the rate reduction implemented in this rule, in accordance with legislative intent as previously described, is 2.99%.

Comment 4: Instead of cutting Medicaid rates, why doesn't the department cut employees, facilities, programs, and operating costs?

Response 4: The department has numerous cost reduction measures in place including staff reductions. The Legislature reduced the department's total personnel services budget by 6.3% in HB 2 and SB 261. The department has limited its hiring to essential positions since April of 2017 to achieve this cost constraint. In addition, there is a 1.7% reduction in non-Medicaid general fund appropriations included HB 2. Cost constraints in operating costs, facilities, and other department programs have been implemented to achieve this requirement. These appropriation reductions and corresponding cost constraints are separate and distinct from the proposed Medicaid provider rate reduction discussed in this rule.

The department continues to look for cost savings in facilities, programs and operating costs, but it has not identified any additional savings that would not adversely impact citizens.

Comment 5: Provider rate reductions will increase Medicaid expenditures in higher cost usages, such as emergency room visits, inpatient hospitalizations, and the state psychiatric facility.

Response 5: The department does not agree that an across-the-board 2.99% rate reduction will significantly impact access. See response to comment 7. The department's analysis shows that Medicaid members will continue to receive medical care and services despite the rate reduction; therefore the rate reduction will not cause increased use of higher cost services.

Comment 6: Why did the department reduce all rates by a uniform amount instead of evaluating each program's reimbursement rates?

Response 6: Evaluating and adjusting each program's reimbursement rates would have been time consuming and costly and would not result in rate changes that were significantly different than the uniform reduction. Instead of evaluating each program, the department calculated a uniform rate reduction based on the amount of the budget reductions in SB 261, the time needed to recover the amount of the budget reductions, and the specific instructions in SB 261, Section 21. Acting promptly is important because the reduction must be made during SFY 2018. A percentage rate reduction can be smaller if the total is recovered over a longer period of time. The uniform reduction is a reasonable, non-biased solution.

Comment 7: The department received several comments stating that rate reductions will cause more providers to refuse Medicaid patients, reducing access to services, and affecting quality of care.

Response 7: The new rates are consistent with efficiency, economy, and quality of care. The rates are sufficient to enlist enough Medicaid providers so that care and services through the Montana Medicaid program are available to the extent that such care and services are available to the general population in the geographic area.

Comment 8: The department received several comments that rate reductions will detrimentally impact small businesses.

Response 8: The department agrees that all rate reductions detrimentally impact providers, including small businesses; however the requirements of 2-4-111, MCA, are not triggered by the rate change. Section 2-4-111, MCA, requires state agencies to determine if a proposed rule will significantly and directly impact small businesses. For purposes of 2-4-111, MCA, a small business is defined as "a business entity, including its affiliates, that is independently owned and operated and that employs fewer than 50 full-time employees." Section 2-4-102(13), MCA. The Governor's Office of Economic Development (GOED) has interpreted "small business" to mean privately owned, for-profit entities. (July 22, 2013, memorandum from GOED).

Although the proposed rate decreases do not significantly and directly impact small businesses, as defined in statute, the department included statements of the fiscal impact on providers in its notice of proposed amendment. Because the rate decrease is required by law there are no alternatives to identify.

Comment 9: The department received comments that the legislature intended the provider rate cut in SB 261 to be 1%.

Response 9: The department does not agree that a 1% Medicaid provider rate reduction represents the entirety of legislative intent. Section 21 of SB 261 requires a provider rate reduction evenly spread across applicable providers to achieve a $3,500,000 annual general fund cost reduction. If implemented over a 12-month period, the $3,500,000 reduction in Section 21 alone would result in an approximate 1% provider rate reduction. Section 21, however, is just one of several components of reductions in SB 261. In addition to Section 21, this rule also implements other reductions mandated by SB 261. See response to comment 1.

Comment 10: One commenter stated that they were concerned the hearing and written comments will not be considered.

Response 10: The department thanks the commenter for the comment. All comments and testimony provided by all parties in connection with this rulemaking are reviewed and considered as part of the rulemaking process.

Comment 11: One commenter stated that a transition plan was needed before the rate reductions became effective.

Comment 11: The department thanks the commenter. The time between the proposed rate change and the effective date is approximately 6 months, which provides some time for planning.

Comment 12: Several commenters stated that providers will have to eliminate targeted case management (TCM) services, reduce staff, reduce salaries, or some combination if provider rate reductions take effect.

Response 12: The department is required to implement the reduction of appropriation for TCM services mandated by the 65th Legislature. The department is hopeful that TCM providers can implement operational efficiencies in a manner that minimizes the impact on client services.

Comment 13: One commenter expressed concern that a reduction in TCM services will hinder youths', families' and members' ability to access services such as medication management and outpatient psychotherapy, particularly in rural areas.

Response 13: TCM services do not include medication management or outpatient psychotherapy. The commenter's concern likely relates to referrals to those services by a TCM case manager. The department is hopeful that TCM providers can implement operational efficiencies in a manner that minimizes the impact on client services.

Comment 14: One commenter asked why the department stated that the provider rate reductions to TCM rates are consistent with efficiency, economy and quality of care.

Response 14: The language refers to 42 U.S.C. § 1396a(a)(30)(A) which requires a state to assure Medicaid payments are consistent with efficiency, economy, and quality of care and are sufficient to enlist enough providers so that care and services are available. SB 261 reduced the general fund appropriation for targeted case management in the Addictive and Mental Disorder Division by $965,000 in fiscal year 2018 and $965,000 in fiscal year 2019. Additionally, SB 261 reduces the general fund appropriation for targeted case management in the Developmental Services Division by the same amounts for fiscal years 2018 and 2019. The resulting rates are sufficient to enlist targeted case management providers.

Comment 15: One commenter stated the department should collaborate with providers on alternative solutions to budget reductions.

Response 15: The department agrees with the commenter. The department has ongoing contact with its providers through its TCM program officers and other department employees. The department welcomes information and input.

4. This rule adoption is effective January 1, 2018.

/s/ Brenda K. Elias
Brenda K. Elias
Rule Reviewer

/s/ Sheila Hogan
Sheila Hogan, Director
Public Health and Human Services

Certified to the Secretary of State November 27, 2017.

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

In the matter of the amendment of ARM 37.34.3005 and 37.86.3607 pertaining to amendments to fee schedules	))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On July 7, 2017, the Department of Public Health and Human Services published MAR Notice No. 37-802 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 1043 of the 2017 Montana Administrative Register, Issue Number 13.

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

37.34.3005 REIMBURSEMENT FOR SERVICES OF MEDICAID FUNDED DEVELOPMENTAL DISABILITIES HOME AND COMMUNITY-BASED SERVICES (HCBS) WAIVER PROGRAMS (1) remains as proposed.

(2) The department adopts and incorporates by this reference the rates of reimbursement for the delivery of services and items available through each Home and Community-Based Services Waiver Program as specified in the Montana Developmental Disabilities Program Manual of Service Rates and Procedures of Reimbursement for Home and Community-Based Services (HCBS) 1915c 0208 and 0667 Waiver Programs, effective ~~October 1, 2017~~ January 1, 2018. A copy 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://dphhs.mt.gov/dsd/developmentaldisabilities/DDPratesinf.

AUTH: 53-2-201, 53-6-402, MCA
IMP: 53-2-201, 53-6-402, MCA

37.86.3607 CASE MANAGEMENT SERVICES FOR PERSONS WITH DEVELOPMENTAL DISABILITIES, REIMBURSEMENT (1) Reimbursement for the delivery by provider entities of Medicaid funded targeted case management services to persons with developmental disabilities is provided as specified in the Montana Developmental Disabilities Program Manual of Service Reimbursement Rates and Procedures for Developmental Disabilities Case Management Services for Persons with Developmental Disabilities Who Are 16 Years of Age or Older or Who Reside in a Children's Community Home, dated ~~October 1, 2017~~ January 1, 2018.

(2) The department adopts and incorporates by this reference the Montana Developmental Disabilities Program Manual of Service Reimbursement Rates and

Procedures for Developmental Disabilities Case Management Services for Persons with Developmental Disabilities Who Are 16 Years of Age or Older or Who Reside in a Children's Community Home, dated ~~October 1, 2017~~ January 1, 2018. A copy 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://dphhs.mt.gov/dsd/developmentaldisabilities/DDPratesinf.

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

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: The department received many comments opposing the 3.47% reduction in Medicaid provider rates.

Response 1: The department has lowered the rate reduction from 3.47% to 2.99%, which will be effective January 1, 2018. The lowered rate reduction was achieved by implementing legislatively mandated funding reductions in Senate Bill (SB) 261 §§ 12 and 21. SB 261 § 12 included a 0.5% reduction to Medicaid benefits of $1,423,827, which is part of the rate reduction. The SB 261 § 21 reduction for Health Resources Division of $3,500,000 is included in the calculation of the rate reduction.

Comment 2: On July 26, 2017, the Legislative Children, Families, Health and Human Services Interim Committee (committee) notified the department that members of the committee objected to the proposal notice, pursuant to 2-4-305(9), MCA, although the committee did so without articulating any basis for its objection. On November 8, 2017, the committee adopted a formal written objection to the proposal notice, pursuant to 2-4-406(1), MCA, which set forth its reasons for objecting.

Response 2: As originally proposed, the effective date of the rate change would have been October 1, 2017. The department delayed the filing of its final notice in light of the committee’s objection pursuant to 2-4-305(9), MCA. The committee first set forth the bases for its objection in its formal objection adopted November 8, 2017, pursuant to 2-4-406(1), MCA. Pursuant to 2-4-406(2), MCA, the department is permitted to submit to the committee its response to the written objection, after which the committee may withdraw its objection.

Comment 3: The department received comments that its interpretation of HB 2 and SB 261 is contrary to legislative intent.

Response 3: The department decreased the rate reduction from the proposed 3.47% cut to a 2.99% cut. The department does not agree with the commenters that its interpretation of House Bill 2 of the regular session (HB 2) or SB 261 is contrary to legislative intent.

Legislative Intent:

Section 17-7-138(1)(a), MCA, provides: "Expenditures by a state agency must be made in substantial compliance with the budget approved by the legislature. Substantial compliance may be determined by conformity to the conditions contained in the general appropriations act and to legislative intent as established in the narrative accompanying the general appropriations act."

The department considered the following factors while calculating the 2.99% provider rate decrease:

a. Legislative intent as adopted in the legislative fiscal analyst narrative (Legislative Fiscal Report) located at http://leg.mt.gov/content/Publications/fiscal/Budget-Books/2019/fiscal-publications.asp;

b. Conditions contained in Senate Bill (SB) 261 (Note: In the special session the legislature amended and revised HB 2 by incorporating legislative changes from the 2017 regular session that were made by several bills, including SB 261. In doing so, the legislature intended the incorporated changes to reflect current law before the special session commencing November 14, 2017.); and

c. The amount of time available to achieve the required spending reductions.

The department's proposed provider rates were based on legislative appropriations: The department calculated the 2.99% rate decrease based on the money the legislature appropriated to spend for the following programs: Medicaid provider services (MAR Notice No. 37-788); targeted case management services (MAR Notice No. 37-801); developmental disabilities program services that were available through the 1915c, 0208 and 0667 Home and Community Based Waiver programs (MAR Notice No. 37-802); and nursing facility reimbursement rates (MAR Notice No. 37-805).

SB 261

SB 261 revised Montana's state budgeting law. SB 261 reduced appropriations if actual state revenue was less than thresholds the legislature established in SB 261.

Section 21(1) of SB 261 provides as follows: If the amount of the certified unaudited state general fund revenue and transfers into the general fund received at the end of fiscal year 2017 is less than $2,192,000,000, as determined by the state treasurer on or before August 15, 2017, and if House Bill No. 2 is passed and approved, then the department of public health and human services general fund appropriation for

"Health Resources Division" in House Bill No. 2 is reduced by $3,500,000 in fiscal year 2018 and $3,500,000 in fiscal year 2019.

Section 21(3) of SB 261 provides as follows: The legislature intends that the appropriation reduction in subsections (1) and (2) be used to reduce Medicaid provider rates over the 2019 biennium.

Section 21(4) of SB 261 provides as follows: The appropriation reductions in subsections (1) and (2) are in addition to the across-the-board reduction in general fund appropriations in [section 12].

Section 12(1) of SB 261 provides as follows: If the amount of the certified unaudited state general fund revenue and transfers into the general fund received at the end of fiscal year 2017 is less than $2,204,000,000, as determined by the state treasurer on or before August 15, 2017, and if House Bill No. 2 is passed and approved [section 11 of House Bill No. 2] must be amended as follows:

Section 11. Appropriations -- reduced appropriations for certain fiscal year 2019 general fund appropriations. (1) All general fund appropriations in this section for fiscal year 2019, excluding the appropriations for K-12 BASE Aid, Reimbursement Block Grants, State Tuition Payments, Transportation, Natural Resource Development K-12 School Facilities Payment, Special Education, and the Coal-Fired Generating Unit Closure Mitigation Block Grant are reduced by 0.5%.

The 2.99% decrease in provider rates is calculated as follows:

Appropriation reductions in SB 261

SB 261, Section 12, amends HB 2, §11 to reduce Medicaid general fund appropriations by 0.5% or	-$1,423,827
SB 261, Section 21, reduces the appropriation for the Health Resources Division by	-$3,500,000
Total reduction	-$4,923,827
Total federal funds lost due to general fund appropriation reduction	-$9,331,608
Total required cost reduction in SFY 2018	-$14,255,435
Projected expenditures for impacted Medicaid provider types	$954,922,507
Rate reduction required to achieve reduction in 12 months	1.49%
Rate reduction required to achieve reduction in 6 months	2.99%

The earliest the department can implement the rate reductions is January 1, 2018. Therefore the rate reduction implemented in this notice, in accordance with legislative intent as previously described, is 2.99%.

Comment 4: Instead of cutting Medicaid rates, why doesn't the department cut employees, facilities, programs, and operating costs?

Response 4: The department has numerous cost reduction measures in place including staff reductions. The Legislature reduced the department's total personnel services budget by 6.3% in HB 2 and SB 261. The department has limited its hiring to essential positions since April of 2017 to achieve this cost constraint. In addition, there is a 1.7% reduction in non-Medicaid general fund appropriations included in HB 2. Cost constraints in operating costs, facilities, and other department programs have been implemented to achieve this requirement. These appropriation reductions and corresponding cost constraints are separate and distinct from the proposed Medicaid provider rate reduction discussed in this notice.

The department continues to look for cost savings in facilities, programs and operating costs, but it has not identified any additional savings that would not adversely impact citizens.

Comment 5: Provider rate reductions will increase Medicaid expenditures in higher cost usages, such as emergency room visits, inpatient hospitalizations, and the state psychiatric facility.

Response 5: The department does not agree that an across-the-board 2.99% rate reduction will significantly impact access. See response to comment 7. The department's analysis shows that Medicaid members will continue to receive medical care and services despite the rate reduction; therefore the rate reduction will not cause increased use of higher cost services.

Comment 6: Why did the department reduce all rates by a uniform amount instead of evaluating each program's reimbursement rates?

Response 6: Evaluating and adjusting each program's reimbursement rates would have been time consuming and costly and would not result in rate changes that were significantly different than the uniform reduction. Instead of evaluating each program, the department calculated a uniform rate reduction based on the amount of the budget reductions in SB 261, the time needed to recover the amount of the budget reductions, and the specific instructions in SB 261, Section 21. Acting promptly is important because the reduction must be made during SFY 2018. A percentage rate reduction can be smaller if the total is recovered over a longer period of time. The uniform reduction is a reasonable, non-biased solution.

Comment 7: The department received several comments stating that rate reductions will cause more providers to refuse Medicaid patients, reducing access to services, and affecting quality of care.

Response 7: The new rates are consistent with efficiency, economy, and quality of care. The rates are sufficient to enlist enough Medicaid providers so that care and services through the Montana Medicaid program are available to the extent that such care and services are available to the general population in the geographic area.

Comment 8: The department received several comments that rate reductions will detrimentally impact small businesses.

Response 8: The department agrees that all rate reductions detrimentally impact providers, including small businesses; however the requirements of 2-4-111, MCA, are not triggered by the rate change. Section 2-4-111, MCA, requires state agencies to determine if a proposed rule will significantly and directly impact small businesses. For purposes of 2-4-111, MCA, a small business is defined as "a business entity, including its affiliates, that is independently owned and operated and that employs fewer than 50 full-time employees." Section 2-4-102 (13), MCA. The Governor's Office of Economic Development (GOED) has interpreted “small business” to mean privately owned, for-profit entities. (July 22, 2013, memorandum from GOED).

Although the proposed rate decreases do not significantly and directly impact small businesses, as defined in statute, the department included statements of the fiscal impact on providers in its notice of proposed amendment. Because the rate decrease is required by law there are no alternatives to identify.

Comment 9: The department received comments that the legislature intended the provider rate cut in SB 261 to be 1%.

Response 9: The department does not agree that a 1% Medicaid provider rate reduction represents the entirety of legislative intent. Section 21 of SB 261 requires a provider rate reduction evenly spread across applicable providers to achieve a $3,500,000 annual general fund cost reduction. If implemented over a 12-month period, the $3,500,000 reduction in Section 21 alone would result in an approximate 1% provider rate reduction. Section 21, however, is just one of several components of reductions in SB 261. In addition to Section 21, this rule also implements other reductions mandated by SB 261. See response to comment 1.

Comment 10: One commenter disagreed with politicians balancing the budget on the backs of poor, old, or disabled. A family member is already not receiving care he is supposed to be receiving.

Response 10: The department thanks the commenter for the comment. The department is trying to minimize the impact of reduced funding but funding decisions

are made by the Montana Legislature and the department is required to operate within the Legislature's appropriations.

Quality of care issues are within the authority of the department, however. The commenter, and any other interested person, is urged to bring any quality of care issues to the department's attention either by contacting the Developmental Disabilities Program directly or contacting the regional offices.

Comment 11: One commenter stated that they have previously submitted optional solutions to DPHHS regarding rule/policy change in lieu of cuts and received no response.

Response 11: The department thanks the commenter for the comment. All suggestions are appreciated and it is the department's practice to consider all suggestions. While not all suggestions can be implemented, the department regrets that the commenter did not receive a response and urges the commenter to continue to contact the department.

Comment 12: One commenter stated that they are concerned that unlicensed individuals without proper education will provide therapeutic services.

Response 12: The department thanks the commenter for their concern. Therapeutic services must be provided by qualified individuals. If applicable, license and qualification requirements are established by statute, administrative rule, and professional licensing requirements. The department and its providers must comply with those requirements.

Comment 13: One commenter stated that the proposed rules imply that program design and monitoring and children's autism trainer services will end July 1, 2017, and that the Developmental Disabilities Program has not stated, in writing, a plan to continue those services using other funding sources.

Response 13: The department thanks the commenter for the comment. Children's autism services will continue to be available as a new state plan service. These services are being implemented through a separate rule adoption notice from this rulemaking.

Comment 14: One commenter commented that rates will have an effect on the efficiency, economy, and quality of care and requested a genuine explanation of how the department's federal mandate to ensure access, quality and client choice are being met given that providers are unable to recruit and retain direct care workers to provide services.

Response 14: The department thanks the commenter for the comment. 42 U.S.C. § 1396a(a)(30)(A) requires a state to assure Medicaid payments are consistent with efficiency, economy, and quality of care and are sufficient to enlist enough providers so that care and services are available. SB 261 reduced the general fund

appropriation for targeted case management in the Addictive and Mental Disorder Division and Developmental Services Division. The department is required to follow the funding directions of the Legislation. There has been no loss of contractors. There continues to be new contractor enrollment. There are ongoing inquiries from potential new contractors. The department does not expect that there will be a loss of access or quality at the rates being adopted.

Comment 15: One commenter requested the department reconsider the removal or reduction of speech language therapy in regard to autism.

Response 15: The department thanks the commenter for the comment. Speech and language therapy remain available as Medicaid state plan services.

4. These rule amendments are effective January 1, 2018.

/s/ Francis X. Clinch
Francis X. Clinch
Rule Reviewer

/s/ Sheila Hogan
Sheila Hogan, Director
Public Health and Human Services

Certified to the Secretary of State November 27, 2017.

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

In the matter of the adoption of New Rule I pertaining to revising nursing facility reimbursement rates for state fiscal year 2018	))))	NOTICE OF ADOPTION

TO: All Concerned Persons

1. On July 21, 2017, the Department of Public Health and Human Services published MAR Notice No. 37-805 pertaining to the public hearing on the proposed adoption of the above-stated rule at page 1133 of the 2017 Montana Administrative Register, Issue Number 14.

2. The department has adopted New Rule I (37.40.309) as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

NEW RULE I (37.40.309) NURSING FACILITY REIMBURSEMENT

(1) remains as proposed.

(2) Effective ~~October 1, 2017 through June 30, 2018~~ January 1, 2018, the rate for nursing facilities will be reimbursed using a price-based reimbursement methodology. The rate for each facility will be determined using the component defined in ARM 37.40.307(2)(a) and (b).

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

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

Comment 1: The department received many comments opposing the 3.47% reduction in Medicaid provider rates.

Response 1: The department has lowered the rate reduction from 3.47% to 2.99%, which will be effective January 1, 2018. The lowered rate reduction was achieved by implementing legislatively mandated funding reductions in Senate Bill (SB) 261 §§ 12 and 21. SB 261 § 12 included a 0.5% reduction to Medicaid benefits of $1,423,827, which is part of the rate reduction. The SB 261 § 21 reduction for Health Resources Division of $3,500,000 is included in the calculation of the rate reduction.

Comment 2: On July 26, 2017, the Legislative Children, Families, Health and Human Services Interim Committee (committee) notified the department that members of the committee objected to the proposed rule, pursuant to 2-4-305(9), MCA, although

the committee did so without articulating any basis for its objection. On November 8, 2017, the committee adopted a formal written objection to the proposed rule, pursuant to 2-4-406(1), MCA, which set forth its reasons for objecting.

Response 2: As originally proposed, the effective date of the rate change would have been October 1, 2017. The department delayed the filing of its final notice in light of the committee's objection pursuant to 2-4-305(9), MCA. The committee first set forth the bases for its objection in its formal objection adopted November 8, 2017, pursuant to 2-4-406(1), MCA. Pursuant to 2-4-406(2), MCA, the department is permitted to submit to the committee its response to the written objection, after which the committee may withdraw its objection.

Comment 3: The department received comments that its interpretation of House Bill 2 of the regular session (HB 2) and SB 261 is contrary to legislative intent.

Response 3: The department decreased the rate reduction from the proposed 3.47% cut to a 2.99% cut. The department does not agree with the commenters that its interpretation of HB 2 or SB 261 is contrary to legislative intent.

Legislative Intent:

Section 17-7-138(1)(a), MCA, provides: "Expenditures by a state agency must be made in substantial compliance with the budget approved by the legislature. Substantial compliance may be determined by conformity to the conditions contained in the general appropriations act and to legislative intent as established in the narrative accompanying the general appropriations act."

The department considered the following factors while calculating the 2.99% provider rate decrease:

a. Legislative intent as adopted in the legislative fiscal analyst narrative (Legislative Fiscal Report) located at http://leg.mt.gov/content/Publications/fiscal/Budget-Books/2019/fiscal-publications.asp;

b. Conditions contained in Senate Bill (SB) 261 (Note: In the special session the legislature amended and revised HB 2 by incorporating legislative changes from the 2017 regular session that were made by several bills, including SB 261. In doing so, the legislature intended the incorporated changes to reflect current law before the special session commencing November 14, 2017.); and

c. The amount of time available to achieve the required spending reductions.

The department's proposed provider rates were based on legislative appropriations:

The department calculated the 2.99% rate decrease based on the money the legislature appropriated to spend for the following programs: Medicaid provider services (MAR Notice No. 37-788); targeted case management services (MAR Notice No. 37-801); developmental disabilities program services that were available through the 1915c, 0208 and 0667 Home and Community Based Waiver programs (MAR Notice No. 37-802); and nursing facility reimbursement rates (MAR Notice No. 37-805).

SB 261

SB 261 revised Montana's state budgeting law. SB 261 reduced appropriations if actual state revenue was less than thresholds the legislature established in SB 261.

Section 21(1) of SB 261 provides as follows: If the amount of the certified unaudited state general fund revenue and transfers into the general fund received at the end of fiscal year 2017 is less than $2,192,000,000, as determined by the state treasurer on or before August 15, 2017, and if House Bill No. 2 is passed and approved, then the department of public health and human services general fund appropriation for "Health Resources Division" in House Bill No. 2 is reduced by $3,500,000 in fiscal year 2018 and $3,500,000 in fiscal year 2019.

Section 21(3) of SB 261 provides as follows: The legislature intends that the appropriation reduction in subsections (1) and (2) be used to reduce Medicaid provider rates over the 2019 biennium.

Section 21(4) of SB 261 provides as follows: The appropriation reductions in subsections (1) and (2) are in addition to the across-the-board reduction in general fund appropriations in [section 12].

Section 12(1) of SB 261 provides as follows: If the amount of the certified unaudited state general fund revenue and transfers into the general fund received at the end of fiscal year 2017 is less than $2,204,000,000, as determined by the state treasurer on or before August 15, 2017, and if House Bill No. 2 is passed and approved [section 11 of House Bill No. 2] must be amended as follows:

Section 11. Appropriations -- reduced appropriations for certain fiscal year 2019 general fund appropriations. (1) All general fund appropriations in this section for fiscal year 2019, excluding the appropriations for K-12 BASE Aid, Reimbursement Block Grants, State Tuition Payments, Transportation, Natural Resource Development K-12 School Facilities Payment, Special Education, and the Coal-Fired Generating Unit Closure Mitigation Block Grant are reduced by 0.5%.

The 2.99% decrease in provider rates is calculated as follows:

Appropriation reductions in SB 261

SB 261, Section 12, amends HB 2, §11 to reduce Medicaid

general fund appropriations by 0.5% or	-$1,423,827
SB 261, Section 21, reduces the appropriation for the Health Resources Division by	-$3,500,000
Total reduction	-$4,923,827
Total federal funds lost due to general fund appropriation reduction	-$9,331,608
Total required cost reduction in SFY 2018	-$14,255,435
Projected expenditures for impacted Medicaid provider types	$954,922,507
Rate reduction required to achieve reduction in 12 months	1.49%
Rate reduction required to achieve reduction in 6 months	2.99%

The earliest the department can implement the rate reductions is January 1, 2018. Therefore the rate reduction implemented in this rule, in accordance with legislative intent as previously described, is 2.99%.

Comment 4: Instead of cutting Medicaid rates, why doesn't the department cut employees, facilities, programs, and operating costs?

Response 4: The department has numerous cost reduction measures in place including staff reductions. The department's total personal services budget was reduced by 6.3 % between the general appropriations act (HB 2) and SB 261. The department has limited its hiring to essential positions since April of 2017 to achieve this cost constraint. In addition, there is a 1.7% reduction in non-Medicaid general fund appropriations included in HB2. Cost constraints in operating costs, facilities, and other department programs have been implemented to achieve this requirement. These appropriation reductions and corresponding costs constraints are separate and distinct from the proposed Medicaid provider rate reduction discussed in this rule.

Comment 5: Several commenters expressed concern that the rate reduction may cause access issues due to the rate not covering costs.

Response 5: The department thanks the commenters for their concerns; however the department disagrees. MAR Notice No. 37-789 provides a rate increase greater than the rate reduction in this proposed rule, resulting in a net increase to providers over 2017. All licensed nursing facilities in Montana during state fiscal year (SFY) 2017 accepted Medicaid at a rate lower than what is in this proposed rule.

Comment 6: Several commenters disagree with the statement that appears in the notice of public hearing on this proposed rule, MAR Notice No. 37-805, at page 1136, paragraph 10: "With regard to the requirements of 2-4-111, MCA, the department has determined that the adoption of the above-referenced rule will not significantly and directly impact small businesses."

Response 6: Paragraph 10 is not a proposed rule; it is the department's compliance with the requirements of 2-4-111, MCA. The department agrees that all rate reductions detrimentally impact providers, including small businesses; however the requirements of 2-4-111, MCA, are not triggered by the rate change. Section 2-4-111, MCA, requires state agencies to determine if a proposed rule will significantly and directly impact small businesses. For purposes of 2-4-111, MCA, a small business is defined as "a business entity, including its affiliates, that is independently owned and operated and that employs fewer than 50 full-time employees." Section 2-4-102(13), MCA. The Governor's Office of Economic Development (GOED) has interpreted "small business" to mean privately owned, for-profit entities." (July 22, 2013, memorandum from GOED).

Although the proposed rate decreases do not significantly and directly impact small businesses, as defined in statute, the department included statements of the fiscal impact on providers in its notice of proposed amendment. Because the rate decrease is required by law there are no alternatives to identify.

Comment 7: The department received comments that the Legislature intended the provider cut in SB 261 to be 1%.

Response 7: The department does not agree that a 1% Medicaid provider rate reduction represents the entirety of legislative intent. Section 21 of SB 261 requires a provider rate reduction evenly spread across applicable providers to achieve a $3,500,000 annual general fund cost reduction. If implemented over a 12-month period, the $3,500,000 reduction in Section 21 alone would result in an approximate 1% provider rate reduction. Section 21, however, is just one of several components of reductions in SB 261. In addition to Section 21, this rule also implements other reductions mandated by SB 261. See response to comment 1.

Comment 8: A commenter asked if the state's revenue increases, can SB 261 reductions be repealed.

Response 8: SB 261 is legislation enacted into law. The Montana Legislature would have to amend the legislation to change the current reductions.

Comment 9: Several commenters stated HB 618 funds were only to be used for maintaining nursing facility rates.

Response 9: The department thanks the commenters for their concerns. Total funding for provider rates includes the legislatively appropriated state and federal funds and estimated patient contributions.

The department is not including the nursing home utilization fee in this reduction.

4. This rule adoption is effective January 1, 2018.

/s/ Geralyn Driscoll
Geralyn Driscoll
Rule Reviewer

/s/ Sheila Hogan
Sheila Hogan, Director
Public Health and Human Services

Certified to the Secretary of State November 27, 2017.

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

In the matter of the amendment of ARM 37.84.102, 37.84.106, 37.84.107, and 37.85.204, and the repeal of ARM 37.84.108, 37.84.109, 37.84.112, and 37.84.115 pertaining to health and economic livelihood partnership (HELP) program	)))))))	NOTICE OF AMENDMENT AND REPEAL

TO: All Concerned Persons

1. On October 13, 2017, the Department of Public Health and Human Services published MAR Notice No. 37-808 pertaining to the public hearing on the proposed amendment and repeal of the above-stated rules at page 1772 of the 2017 Montana Administrative Register, Issue Number 19.

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

3. No comments or testimony were received.

4. These rule amendments and repeals are effective January 1, 2018.

/s/ Brenda K. Elias
Brenda K. Elias
Rule Reviewer

/s/ Sheila Hogan
Sheila Hogan, Director
Public Health and Human Services

Certified to the Secretary of State November 27, 2017.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 42.23.802 and 42.23.805 pertaining to the carryforward and carryback provisions of corporate net operating losses	)))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On October 13, 2017, the Department of Revenue published MAR Notice No. 42-2-984 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 1787 of the 2017 Montana Administrative Register, Issue Number 19.

2. On November 2, 2017, a public hearing was held to consider the proposed amendment. Bob Story, Montana Taxpayers Association, appeared and testified at the hearing in support of the rules as proposed. Other members of the public attended the hearing, but did not testify. No other comments were received.

3. The department amends the above-stated rules as proposed, effective January 1, 2018.

/s/ Laurie Logan
Laurie Logan
Rule Reviewer

/s/ Mike Kadas
Mike Kadas
Director of Revenue

Certified to the Secretary of State November 27, 2017.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the adoption of New Rules I though VI, and the amendment of ARM 42.26.201, 42.26.202, 42.26.203, 42.26.204, 42.26.205, 42.26.206, 42.26.207, 42.26.208, 42.26.210, 42.26.229, 42.26.230, 42.26.231, 42.26.232, 42.26.236, 42.26.241, 42.26.251, 42.26.252, 42.26.253, 42.26.254, 42.26.257, 42.26.259, 42.26.263, 42.26.302, 42.26.307, 42.26.308, 42.26.309, 42.26.312, 42.26.401, 42.26.602, 42.26.605, 42.26.606, 42.26.702, 42.26.704, 42.26.705, 42.26.802, 42.26.805, 42.26.807, 42.26.902, 42.26.903, 42.26.904, 42.26.905, 42.26.1002, 42.26.1003, 42.26.1102, 42.26.1103, 42.26.1202, and 42.26.1204 pertaining to the allocation and apportionment of income of multistate corporate taxpayers necessitated by House Bill 511, L. 2017	)	NOTICE OF ADOPTION, AMENDMENT, AND REPEAL
Also, in the matter of the adoption of New Rule VII (Finnigan Rule) and related amendment of ARM 42.26.255 and repeal of ARM 42.26.511 (Joyce Rule) pertaining to the department's method of administering the corporate income tax regarding unitary multistate taxpayers whose Montana activity is reflected through multiple entities	)	

TO: All Concerned Persons

1. On October 13, 2017, the Department of Revenue published MAR Notice No. 42-2-985 pertaining to the public hearing on the proposed adoption, amendment, and repeal of the above-stated rules at page 1790 of the 2017 Montana Administrative Register, Issue Number 19.

2. On November 2, 2017, a public hearing was held to consider the proposed adoption, amendment, and repeal. Bob Story, Montana Taxpayers Association,

appeared and testified at the hearing. Other members of the public attended the hearing but did not testify. Written comments were received from Steve Turkiewicz, Montana Bankers Association, and Walter J. Kero, CPA.

3. The department adopts New Rule II (42.26.246), New Rule III (42.26.247), New Rule IV (42.26.248), New Rule V (42.26.249), New Rule VI (42.26.250), and New Rule VII (42.26.260), amends ARM 42.26.201, 42.26.202, 42.26.203, 42.26.204, 42.26.205, 42.26.206, 42.26.207, 42.26.208, 42.26.210, 42.26.229, 42.26.230, 42.26.231, 42.26.232, 42.26.236, 42.26.241, 42.26.251, 42.26.252, 42.26.253, 42.26.254, 42.26.255, 42.26.257, 42.26.259, 42.26.263, 42.26.302, 42.26.307, 42.26.308, 42.26.309, 42.26.312, 42.26.401, 42.26.602, 42.26.605, 42.26.606, 42.26.702, 42.26.704, 42.26.705, 42.26.802, 42.26.805, 42.26.807, 42.26.902, 42.26.903, 42.26.904, 42.26.905, 42.26.1002, 42.26.1003, 42.26.1102, 42.26.1103, 42.26.1202, and 42.26.1204, and repeals ARM 42.26.511, as proposed, effective January 1, 2018.

4. Based upon the comments received, the department adopts New Rule I (42.26.245) as proposed, effective January 1, 2018, but with the following changes from the original proposal, new matter underlined:

NEW RULE I (42.26.245) NUMERATOR OF RECEIPTS FACTOR - SALES OTHER THAN SALES OF TANGIBLE PERSONAL PROPERTY - MARKET BASED SOURCING (1) and (2) remain as proposed.

(3) Methods with respect to the exclusion of receipts from the receipts factor.

(a) The receipts factor only includes those amounts defined as gross receipts under ARM 42.26.202.

(b) through (4) remain as proposed.

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

COMMENT 1: Mr. Story commented that the Montana Taxpayers Association appreciates the extensive work the department did to develop and amend rules to implement House Bill 511, L. 2017. They realize that the major change in corporate income tax policy adopted with the passage of this legislation necessitates significant modification to the accompanying rules. And, while the proposed rule changes are lengthy, much of it is substitution of words and terms. However, they do have some questions or concerns about a few of the major changes.

RESPONSE 1: The department appreciates the Montana Taxpayers Association's understanding of its efforts to implement the new legislation.

COMMENT 2: Mr. Story commented that the rules are difficult to understand and may create confusion and potential noncompliance by taxpayers during the initial years of implementation and they hope the department will undertake an

extensive education program to help tax practitioners and taxpayers understand the new policy and the effects on them.

New Rule I provides the taxpayer with direction as to how to report and assign their receipts, which is helpful, but it is technical and may be confusing to anyone but a practitioner who works extensively in this area. The rule appears to allow a taxpayer some leeway in making decisions, but has the potential of giving the taxpayer a false sense of security when reporting. The potential for the department to find disagreement, and therefore audit and penalize, is significant.

RESPONSE 2: The 2017 Montana Legislature passed House Bill (HB) 511, requiring corporate income tax taxpayers to use a market sourcing approach for assigning receipts for purposes of the receipts apportionment factor. The new language added by HB 511 is modeled after the Multistate Tax Commission's (MTC) Revised Model Compact, Article IV. Likewise, the language as proposed in New Rule I is modeled after apportionment regulations adopted by the MTC addressing the sourcing of receipts using the market sourcing approach.

The department believes it is necessary to use language consistent with that used in HB 511 when providing guidance to taxpayers on its implementation. The department also recognizes that several western states with similar multistate taxpayers, such as Utah and California, have used market sourcing for some time and have regulations in place that are similar to those proposed by the department in this rulemaking. Many of these multistate taxpayers are familiar with market sourcing and issues that arise. The department does not foresee the technical nature of New Rule I as being a large problem for those taxpayers affected by HB 511.

COMMENT 3: Mr. Story commented that New Rule I(3)(a) talks about receipts, as defined under ARM 42.26.202, but the only definition of receipts in that rule is under "gross receipts." Is that the definition being referenced here?

RESPONSE 3: Yes. "Gross receipts" is the definition intended to be referenced in this section of the rule. The department has amended New Rule I(3)(a) to read "the receipts factor only includes those amounts defined as gross receipts under ARM 42.26.202."

COMMENT 4: Mr. Story commented that New Rule I(4)(a) references 15-31-312, MCA, a statute that was amended in 2017 to refer to the MTC articles under 15-1-601, MCA. This makes for a two-step process to determine the criteria to be complied with. There should be a reference to the compact sections. This is a recurring issue with the rule.

He further commented that ARM 42.26.231 through 42.26.241 addresses the property and payroll factors of the three-factor formula. These rules apparently need to be revised and maintained, due to statutory language requiring their use, but they again reference statutes that were amended to reference the MTC compact and therefore create a two-step process to determine what the law says.

RESPONSE 4: Referencing the compact in Title 15, chapter 31, part 3, MCA, was discussed at length within the department during the legislative session. It was ultimately decided, and recommended to the legislature, that it is best to keep the compact intact in its current location and also retain the statutes in Title 15, chapter 31, part 3, MCA. When drafting these administrative rules, the issue arose again in references within the rules. Although taxpayers will be directed to chapter 31, and then on to the compact, the department believes it is important to keep the references within the administrative rules to chapter 31. The legislature did not repeal the statutes in chapter 31, so changes may be made in future legislative sessions. If references are made directly to the compact, taxpayers may miss changes that affect them that are addressed in chapter 31.

COMMENT 5: Mr. Story commented that New Rule IV is extensive and the department has done a good job in trying to lay out the explanation as to how various services will be accounted for. However, because this is a significant change in policy, he hopes the department will be judicious in its application for a period of time until taxpayers are informed of the new policy and have had time to adapt to it. He stated he would think there would be a significant number of out-of-state people who are now going to have nexus in Montana and need to pay taxes, yet don't know it, and asked how they will find out.

RESPONSE 5: The 2017 Montana Legislature passed House Bill (HB) 511, requiring corporate income tax taxpayers to use a market sourcing approach for assigning receipts for purposes of the receipts apportionment factor. The department proposed New Rule IV not to implement a change in department policy, but rather to provide essential guidance to taxpayers regarding a significant change in Montana law. New Rule IV provides this guidance for various types of receipts under a market sourcing approach. The department has no control over when the new law goes into effect. House Bill 511 is effective for tax periods beginning on or after January 1, 2018. This administrative rule process helps put taxpayers on notice of these changes. In addition, the department will address the law changes in instructions to the corporate income tax forms.

House Bill 511 does not impose new nexus requirements. However, there may be taxpayers that have nexus in Montana but prior to HB 511 did not have any activity reported in the apportionment factors, so they did not have a tax liability in Montana. Under the provisions of HB 511, these taxpayers may now have receipts allocated to Montana in the apportionment factor, creating a tax liability.

The department recognizes that several western states with similar multistate taxpayers, such as Utah and California, have used market sourcing for some time and have regulations in place that are similar to those proposed by the department in this notice. Many of these multistate taxpayers are familiar with market sourcing and issues that arise.

COMMENT 6: Mr. Story commented that he believes the accounting for the sale and use of intangible property, in New Rule V, will create the largest probability for taxpayer misunderstanding resulting in compliance issues. This is the area that was articulated as the major need for the change in policy from cost of performance

to market sourcing. Again, the department appears to have done a lot of work to create rules to clarify the situation, but there will be some confusion for many taxpayers who are unaware of the new policy and its implications on their businesses.

RESPONSE 6: This administrative rulemaking process helps put taxpayers on notice of these changes and provides specific guidance relating to sourcing of sales of intangible property. In addition, the department will address the law changes in instructions to the corporate income tax forms.

COMMENT 7: Mr. Story commented that New Rule VI appears to be where the throw-out portion of the new law appears. A throw-out provision distorts the concept of market based apportionment. This provision is broader than what was explained to the legislature during the presentation of this concept.

RESPONSE 7: The department does not feel that the throw-out provision in New Rule VI distorts the concept of market based apportionment. The throw-out provision is limited to those receipts that do not meet the definition of gross receipts found in ARM 42.26.202, receipts where the place of sale cannot be determined or reasonably approximated, and receipts to states where the taxpayer is not taxable. These receipts would not be reported in the numerator of any state and are properly excluded from the sales denominator to prevent distortion of the sales factor. Section 15-1-601, Article IV, (3)(b), MCA, provides clarification that a taxpayer is considered taxable in another state if that state has jurisdiction to subject the taxpayer to a net income tax regardless of whether, in fact, the state does or does not do so.

COMMENT 8: Mr. Story commented that New Rule VII is a major change, by rule, in the way the department taxes multistate entities. This policy was never discussed during the adoption of House Bill (HB) 511. While the application of Finnigan may be in line with the basic concept of HB 511, it is another major policy change that was not vetted by the legislature. This rule also references the three-factor formula for apportionment. If the state were truly going to a sales based apportionment policy, a single sales factor should be adopted to provide equal treatment of taxpayers. If the goal is to establish nexus for taxation for sales into Montana by basically using a sales factor formula, the same formula should be used to tax entities in Montana that only sell out of Montana.

RESPONSE 8: The department's change from Joyce to Finnigan is unrelated to House Bill 511, and therefore was not addressed during the adoption of the new legislation. The application of Joyce was previously done through administrative rule and it is proper that the repeal of Joyce and adoption of Finnigan also be done through administrative rule. As provided in the reasonable necessity statement for New Rule VII, the department proposed the adoption of the rule to limit the risk of manipulation of the apportionment factors of a unitary combined group and to more accurately reflect the business activity within the state of the unitary combined

group. The adoption of a single sales factor would require a legislative change to Montana statutes, which is beyond the authority of the department.

COMMENT 9: Mr. Story commented that the new definition of "code," in ARM 42.26.202, leaves the state vulnerable to unexpected changes in the federal tax code. While this may be a convenience for taxpayers, it places the state at risk if major changes are made to the federal code that automatically impact the Montana tax system. He further commented that the proposed definition of "intangible property" is extensive, but also open ended. It is appropriate that the department recognizes the breadth of intangible property, and the potential for that type of property to expand.

RESPONSE 9: There are currently many references within existing statutes and administrative rules citing the Internal Revenue Code (IRC), as currently written and subsequently amended. The department believes it is necessary to be uniform with the IRS and is tied to the code as currently written or amended. The department understands the need to keep current with the federal tax code and the potential need to decouple from changes that may have an adverse effect on state revenues. In most cases, the ultimate decision on whether to decouple from the IRC rests with the legislature. The department acknowledges the need to remain up-to-date on the definition of intangible property and will amend the definition as needed.

COMMENT 10: Mr. Story commented that his recollection of the promotion of House Bill 511 was that it was to deal with the sale of intangible property. Yet the rules applying to tangible property sales are also being modified to treat those sales the same as intangible property sales. ARM 42.26.255(10) appears to allow the taxation of income from sales into a non-tax state. If Montana was truly going to a market based system, then that income should not be taxable in Montana.

RESPONSE 10: The amendments to ARM 42.26.255 are not implementing House Bill (HB) 511 and do not provide provisions of a market based system. ARM 42.26.255 addresses sales of tangible personal property – sales that are not addressed in HB 511. The proposed amendments to this rule implement the change from Joyce to Finnigan.

COMMENT 11: Mr. Story commented that treating certain software transactions as a sale of tangible property, as proposed in ARM 42.26.263(4), may create conflict or confusion with the properties described in the definition of intangible property.

RESPONSE 11: The language in the rule relating to software is modeled after apportionment regulations adopted by the Multistate Tax Commission. The department agrees with this treatment and wants to remain uniform with other states that have adopted the Multistate Tax Commission model regulations.

COMMENT 12: Mr. Turkiewicz commented that as stated in the department's reasonable necessity for the proposed adoption of New Rule VII, the Finnigan Rule,

Montana has had a long standing policy of following the Joyce approach to taxation, which is consistent with statute requiring combined reporting. The department's proposed change to the Finnigan approach effectively adopts consolidated reporting and is a major tax policy change that was not part of the legislature's consideration of House Bill 511, L. 2017. The department should consider delaying the adoption of such a major policy change until it can be addressed by the legislature.

RESPONSE 12: Application of Joyce was previously done through administrative rule and it is proper that the repeal of Joyce and adoption of Finnigan also be done through administrative rule. As provided in the statement of reasonable necessity for New Rule VII, the department proposed adopting the new rule to limit the risk of manipulation of the apportionment factors of a unitary combined group and to more accurately reflect the business activity within the state of the unitary combined group. The change from Joyce to Finnigan is not a change to adopt consolidated reporting. The adoption of Finnigan will not affect Montana's combined reporting. The adoption of Finnigan will have an effect on the computation of the apportionment factor for a combined group.

COMMENT 13: Mr. Kero commented that he testified on House Bill 511, L. 2017, before it was enacted, and still has several concerns regarding this legislation. The legislation and the proposed rules do not address a major weakness in the law. There is no limitation in law or rule to prevent a taxpayer from reporting and paying tax on more than 100 percent of its taxable income to the various states. A taxpayer could end up paying tax on more than 100 percent of its income. No one state taxing a taxpayer or affiliated group of taxpayers would be concerned about levying their pound of flesh. If one state gets what they want, who cares what the other states exact. No taxpayer should have to pay tax on more than 100 percent of its income. This result is not just.

RESPONSE 13: The potential for a taxpayer to report and pay tax on more than 100 percent of its taxable income existed prior to the passage of House Bill 511 and these rules. With more states changing from cost of performance to market sourcing, the department is hopeful that the potential for double taxation will actually be reduced rather than increased.

COMMENT 14: Mr. Kero stated that previous law regarding multi-state taxation relied on the concept of physical nexus and the various courts made rulings on the physical presence concepts. This new law and regulations are adopting the new concept of "economic nexus." These rules are full of weeds and complexity. The use of terms such as "reasonable approximation," "related party customers," "billing address," and "digital goods and services" requires further definition and will likely be the subject of ongoing litigation.

RESPONSE 14: A physical presence is not required for an entity to have nexus in Montana. While establishing nexus is a fact driven process, having an economic presence in Montana can result in taxation. This is not a new concept and House Bill 511 and the rules are not establishing a new policy in this regard.

COMMENT 15: Mr. Kero commented that the header of the rule notice states that the discussion pertains to the allocation and apportionment of multi-state corporate taxpayers, but he believes the intent is to have the rules pertain to any entity form that is involved with multi-state taxpayers. The forms would include, but not be limited to, limited liability companies, partnerships, and trusts.

RESPONSE 15: Mr. Kero is correct that these rules could apply to any entity form that is involved in multi-state activity. The header of the rules was not meant to be misleading. The department's rules relating to multi-state activity are located in ARM Title 42, chapter 26, and apply to entities such as limited liability companies, partnerships, and trusts that have multi-state activity.

COMMENT 16: Mr. Kero stated that proposed New Rule IV is a huge micromanagement on steroids. There is a significant discussion about in-person services, methods of reasonable approximation, services by an electronic transmission, and secondary methods of reasonable approximation. He commented that he sees future litigation as likely because much of this new rule will butt-up against interstate commerce.

RESPONSE 16: The 2017 Montana Legislature passed House Bill (HB) 511, requiring corporate income tax taxpayers to use a market sourcing approach for assigning receipts for purposes of the receipts apportionment factor. The new language added by HB 511 is modeled after the Multistate Tax Commission's (MTC) Revised Model Compact, Article IV. Likewise, the language in proposed New Rule IV is modeled after apportionment regulations adopted by the MTC addressing the sourcing of receipts using the market sourcing approach.

The department believes it is necessary to use language consistent with that used in HB 511 when providing guidance to taxpayers on its implementation. The department also recognizes that several western states with similar multistate taxpayers, such as Utah and California, have used market sourcing for some time and have regulations in place that are similar to those proposed by the department in this rulemaking. Many of these multistate taxpayers are familiar with market sourcing and issues that arise. The department does not foresee the technical nature of New Rule IV as being a large problem for those taxpayers affected by HB 511.

COMMENT 17: Mr. Kero stated that (with the proposed adoption of New Rule VII and repeal of ARM 42.26.511) Joyce gets fired and Finnigan gets hired. This change will allow Montana to lasso in more taxpayers. He commented that he understands that the point is to reduce the ability of a unitary group of businesses to manipulate apportionment factors, however, there is no similar limitation on Montana to reduce its ability to manipulate apportionment factors. The taxpayer can appeal or go to court. He doubts that many small taxpayers who get sucked up in these new rules and legislation will be able to afford the compliance and appeal issues resulting from these 50 plus pages of regulation.

RESPONSE 17: As stated in the reasonable necessity for New Rule VII, the department proposed the adoption of the rule to limit the risk of manipulation of the apportionment factors of a unitary combined group and to more accurately reflect the business activity within the state of the unitary combined group.

COMMENT 18: Mr. Kero commented that in the proposed definition of "billing address," in ARM 42.26.202(8), the use of the term "tax avoidance" is highly objectionable. The term that should be used here is "tax evasion." "Tax avoidance" is legal and compliant with existing law whereas "tax evasion" is illegal and noncompliant.

RESPONSE 18: The definition of "billing address," including the term "tax avoidance," is the same language included in the Multistate Tax Commissions Model Apportionment Regulations and is language agreed upon by the participating states and industry.

COMMENT 19: Mr. Kero commented that he did not see any definitions of what is considered trade or business income and asked if this is a weakness in the proposed rules. Trade or business income typically relates to "apportionable" income, and non-business income typically relates to income subject to "allocation." What do you do with a "personal holding company" under these rules? Is income from a personal holding company subject to apportionment or allocation? A personal holding company is not "in business." The rules do not provide good and clear answers to those questions.

RESPONSE 19: House Bill (HB) 511 changed the term "business income" to "apportionable income" and changed the term "nonbusiness income" to "nonapportionable income." The proposed amendment to these rules updates the terms in the rules to match the changes made in statute by HB 511. The treatment of personal holding income by the department has not changed. Income from a personal holding company is considered apportionable income if it meets the definition in the statute and administrative rules.

/s/ Laurie Logan	/s/ Mike Kadas
Laurie Logan	Mike Kadas
Rule Reviewer	Director of Revenue

Certified to the Secretary of State November 27, 2017.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the adoption of New Rules I through III pertaining to apportionment and allocation of income for financial institutions	))))	NOTICE OF ADOPTION

TO: All Concerned Persons

1. On October 13, 2017, the Department of Revenue published MAR Notice No. 42-2-986 pertaining to the public hearing on the proposed adoption of the above-stated rules at page 1844 of the 2017 Montana Administrative Register, Issue Number 19.

2. On November 2, 2017, a public hearing was held to consider the proposed adoption. Bob Story, Montana Taxpayers Association, appeared and testified at the hearing. Other members of the public attended the hearing but did not testify. Written comments were received from Steve Turkiewicz, Montana Bankers Association.

3. The department adopts New Rule II (42.26.1302) and New Rule III (42.26.1303) as proposed, effective January 1, 2018.

4. As presented at the public hearing, the department is removing the language originally proposed for New Rule I(8)(g) and (h) that references credit unions. Therefore, the department adopts New Rule I (42.26.1301) as proposed, effective January 1, 2018, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

NEW RULE I (42.26.1301) DEFINITIONS The following definitions apply to terms used in this subchapter.

(1) through (7) remain as proposed.

(8) "Financial institution" means:

(a) through (f) remain as proposed.

~~(g) a state credit union the loan assets of which exceed $50,000,000 as of the first day of its taxable year;~~

~~(h) a production credit association organized under the Federal Farm Credit Act of 1933, all of whose stock held by the Federal Production Credit Corporation has been retired;~~

~~(i)~~(g) any corporation whose voting stock is more than fifty percent owned, directly or indirectly, by any person or business entity described in ~~subsections~~ (a) through ~~(h)~~(f) above other than an insurance company;

(j) remains as proposed, but is renumbered (h).

~~(k)~~(i) any other person or business entity, other than an insurance company, a real estate broker, or a securities dealer which derives more than fifty percent of its

gross income from activities that a person described in (b), (g), ~~and~~ or (h) ~~through (j)~~ above.

(9) through (18) remain as proposed.

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

COMMENT 1: Regarding proposed New Rule II, Mr. Story commented that the rule references statutes that were changed with the adoption of House Bill 511, L. 2017, which amended the apportionment laws by referencing the Multi-State Tax Commission compact contained in 15-1- 601, MCA. However, when a person is directed in the new rule to Title 15, chapter 31, part 3, they will have to go to 15-1-601, MCA, to find out what the law really means. There should be a better way to reference this.

RESPONSE 1: Referencing the compact in Title 15, chapter 31, part 3, MCA, was discussed at length within the department during the legislative session. It was ultimately decided, and recommended to the legislature, that it is best to keep the compact intact in its current location and also retain the statutes in Title 31, chapter 31, part 3, MCA. When drafting these administrative rules, the issue arose again in references within the rules. Although taxpayers will be directed to chapter 31, and then on to the compact, the department believes it is important to keep the references within the administrative rules to chapter 31. The legislature did not repeal the statutes in chapter 31, so changes may be made in future legislative sessions. If references are made directly to the compact, taxpayers may miss changes that affect them that are addressed in chapter 31.

COMMENT 2: Regarding proposed New Rule III, Mr. Story commented that keeping the numbers included in the receipts factor tied to original collateral seems to be attempting to keep in place a formula that should change with the situation. If, for example, a borrower did have in-state property securing the original loan, but the loan is modified over time rather than being reissued and the collateral is now all out of state, why should that receipt still be taxable?

He also asked why receipts cannot be less than zero. If net gains can be taxed, why can net losses not be deducted?

Mr. Story further commented on the language pertaining to how merchant discounts are reported, and asked if there are similar rules for surcharges such as those that counties charge when a credit card is used to pay taxes.

RESPONSE 2: The language in New Rule III(2)(b) is for ease of administration for both the taxpayer and the department. Tracking the subsequent substitutions of collateral would likely not be material enough to merit the additional tracking effort.

Losses can be used to offset gains, but only to a net zero. To go below zero when offsetting gains by losses could result in a negative sales factor which would not be reflective of the entity's activity in the state. This treatment is not new. This language has been part of ARM 42.26.259 for many years.

New Rule III(7)(c) is intended to serve as a catchall for how to source other fees that are not specifically addressed in the rule.

COMMENT 3: Mr. Turkiewicz commented that while New Rule III is long and details various receipt types based on Section 3 of the MTC model rules, it does not include MTC Section 3, subparagraph (o), regarding all other receipts, which reads "the numerator of the receipts factor includes all other receipts pursuant to the rules set forth (insert your state's regular situsing rules for the receipts not covered in this section)."

Since this important subparagraph was not included in the rule, the taxpayer must go to 15-1-601(17), MCA, to determine the "other receipts" to include in the receipts factor numerator for financial institutions. He commented that he understands there are style and construction limitations that the department must follow and that the "all other receipts" language was not included for this reason, but without the Section 3, subparagraph (o) language included the taxpayer must review several sections of the Montana Code Annotated and the Montana Administrative Rules to determine the full extent of the receipts that may be included in the receipts numerator factor. There should be a better way for the taxpayer to comply with the rules without having to pour over statutes and rules when calculating the taxpayer's Montana income using the apportionment factors in the proposed new rules for financial institutions.

RESPONSE 3: The language included in subparagraph (o) of the MTC model regulations is included in New Rule II. As detailed in the reasonable necessity provided in the proposal notice, New Rule II directs taxpayers to Title 15, chapter 31, part 3, MCA, and the supporting administrative rules in ARM Title 42, chapter 26, for apportionment and allocation issues not specifically addressed in this subchapter. This is consistent with the way the other industry specific administrative rules read and is done to prevent the duplication of general apportionment and allocation rules that apply to all entities.

COMMENT 4: Mr. Turkiewicz commented that as he reads the proposed language in New Rule III(11)(a), net gains on trading assets are to be included in the apportionment factor for sales of trading assets for financial institutions, which appears to be different than the treatment of "assets" for non-financial industries. Sales of trading assets of financial institutions should have equivalent treatment as sales made by manufacturers and retailers; thus, the gross selling price of trading assets should be included in the receipts just as the gross selling price of widget sold by manufacturers and retailers are included the receipts factor. Assets maintained for sale in the inventory of a financial institution are equivalent to assets maintained for sale in the inventory of manufacturers and retailers.

Therefore, the Montana Bankers Association respectfully requests that the department include "gross receipts," not "net gains," in the apportionment factor for sales of trading assets.

RESPONSE 4: The decision to use net gains instead of gross receipts for the sales of trading assets was thoroughly discussed by the states and industry during

the MTC model regulation drafting. To allow the inclusion of gross receipts for trading assets and net gains for all other items of revenue associated with a financial institution would distort the sales factor and would not provide a fair reflection of the financial institutions' business activity in all states. The department believes that it is proper to include only net gains from the sale of trading assets in the sales numerator and denominator.

/s/ Laurie Logan
Laurie Logan
Rule Reviewer

/s/ Mike Kadas
Mike Kadas
Director of Revenue

Certified to the Secretary of State November 27, 2017.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 42.21.113, 42.21.123, 42.21.131, 42.21.137, 42.21.138, 42.21.139, 42.21.140, 42.21.151, 42.21.153, 42.21.155, 42.21.160, and 42.22.1311 pertaining to the trended depreciation schedules for valuing property	)))))))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On October 13, 2017, the Department of Revenue published MAR Notice No. 42-2-987 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 1854 of the 2017 Montana Administrative Register, Issue Number 19.

2. The department amends the above-stated rules as proposed, effective January 1, 2018.

3. No comments or testimony were received.

/s/ Laurie Logan
Laurie Logan
Rule Reviewer

/s/ Mike Kadas
Mike Kadas
Director of Revenue

Certified to the Secretary of State November 27, 2017.

BEFORE THE OFFICE OF THE COMMISSIONER OF POLITICAL PRACTICES
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 44.11.226, 44.11.227, 44.11.302, and 44.11.605 pertaining to campaign finance reporting, disclosure, and practices	)))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On September 8, 2017, the Office of the Commissioner of Political Practices (COPP) published MAR Notice No. 44-2-229 pertaining to the proposed amendment of the above-stated rules at page 1509 of the 2017 Montana Administrative Register, Issue No. 17.

2. On October 13, 2017, the COPP published MAR Notice No. 44-2-229, an amended notice of proposed amendment pertaining to the above-stated rules at page 1875 of the 2017 Montana Administrative Register, Issue No. 19.

3. The COPP has amended the following rules as proposed: ARM 44.11.226, 44.11.227, and 44.11.302.

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

<u>44.11.605 ELECTIONEERING COMMUNICATION</u> (1) through (3)(c) remain as proposed.

(d) any other regular or normal communication by a local government or a state agency that includes information about a candidate, ballot issue, or election including sample ballots~~,~~ and the time, place, or manner ~~information regarding~~ <u>of</u> an upcoming election. Any other communication may be subject to reporting and disclosure as an electioneering communication. For purposes of this rule the terms local government and state agency shall have the same meaning as the definitions of the terms in 2-2-102, MCA.

(4) through (8) remain as proposed.

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

<u>COMMENT 1:</u> One comment received before the COPP's amended proposal notice stated that the rule did not clarify what a "regular and normal communication" from a local government or state agency is, and suggested we delete the word "informational."

RESPONSE 1: The COPP accepted the comment, and proposed the amended rule language inserting examples of regular and normal communications into the rule, and deleted the word "informational."

COMMENT 2: Two commenters argued that 13-37-206, MCA, specifically exempts school district elections from the reporting and disclosure provisions of Title 13, chapter 37, part 2, MCA.

RESPONSE 2: This comment is rejected because 13-37-206, MCA, exempts from reporting and disclosure certain school district candidates, their campaigns, and political committees who support or oppose a school district ballot issue or candidate. There is no exemption in the statute for political committees making an electioneering communication expenditure that does not support or oppose a school district ballot issue.

COMMENT 3: Two commenters stated that 2-2-131(3)(b)(ii), MCA authorizes school district trustees and the school superintendent to engage in communications informing or advocating for the passage of ballot issues or levies, and the current rule and amendment violates that statute.

RESPONSE 3: This comment is rejected as the statute provides which activities are "properly incidental" to a school district trustee, superintendent, or designated employee's ability to disseminate resulting information in support of or in opposition to a ballot issue or levy. The rule does not prohibit a school district from making communications; it requires the school district to report and disclose the public money used to fund an electioneering communication which does not support or oppose the ballot issue.

COMMENT 4: Several commenters pointed out that 2-2-121(3)(a), MCA prohibits the use of "public time, facilities, equipment, supplies, personnel, or funds to solicit support for or opposition to any political committee, the nomination or election of any person to public office, or the passage of a ballot issue unless the use is: (1) authorized by law; or (2) properly incidental...".

RESPONSE 4: This is a comment that does not require acceptance or rejection by the COPP regarding the substance of the rules as proposed. See previous responses.

COMMENT 5: One commenter argued that a political subdivision is separately defined and cannot be a person that forms a political committee required to report and disclose under Title 13, Montana Code Annotated.

RESPONSE 5: The COPP rejects this comment as the definition of person includes "other organization" which includes a "political subdivision", 13-1-101, MCA. Reading the statutes as a whole, there would be no need specifically to exempt

special districts from reporting and disclosure if the provisions of Title 13, MCA did not apply to political subdivisions, 13-37-206, MCA.

COMMENT 6: One commenter suggested that county governments printing and mailing ballots, polling place information, or publishing sample ballots would also qualify as electioneering communications.

RESPONSE 6: The COPP rejects this comment as the amended proposed rule specifically exempted these activities from the definition of electioneering communication.

COMMENT 7: One commenter requested that the COPP amend the rule to exclude informational ballot issue communications from the definition of electioneering communication, just as the Secretary of State's Voter's Information Pamphlet is excluded.

RESPONSE 7: The COPP rejects this request, as local government and school districts only incidentally become involved in elections when they propose a ballot issue, and are required to report and disclose expenditures when they spend funds to make an electioneering communication. The SOS Voter Information Pamphlet is a statutorily mandated communication, 13-27-401, MCA.

COMMENT 8: One commenter stated that "communicating the impacts of the passage or failure of a levy or bond question...is the responsibility of every local government." And that the communication is often done by direct mailing to registered voters in the district to have the greatest impact with limited resources. Further that the spending is already public knowledge through public meetings, budgets, review of vendor claims, and public participation in that process.

RESPONSE 8: The COPP agrees that it is important to disclose the impacts of a ballot issue. The COPP rejects the comment, and states that the law and rule as adopted accomplish greater transparency to the people of Montana for money spent in our elections, with attribution as to the source of the information.

COMMENT 9: One commenter proposed deleting "information regarding" from the amended proposed language for readability.

RESPONSE 9: The COPP accepts this recommendation, and amends the statute herein.

/s/ Jaime MacNaughton
Jaime MacNaughton
Rule Reviewer

/s/ Jeffrey Mangan
Jeffrey Mangan
Commissioner of Political Practices
Office of the Commissioner of Political Practices

Certified to the Secretary of State November 21, 2017.

GAMBLING – "All forms of gambling are prohibited unless authorized by acts of the Legislature or by the people through initiative or referendum";
STATUTORY CONSTRUCTION – When the Legislature has not defined a statutory term, courts consider the term to have its plain and ordinary meaning;
MONTANA CODE ANNOTATED – Title 23, chapter 4; sections 1-2-101, 23-4-101(14)(a), 23-4-101(15), 23-4-101(16), 23-4-203, 23-4-204(1), 23-4-301(1), 23-5-102, 23-5-112(13)(a), 23-5-151, 23-5-502, 23-5-603;
MONTANA CONSTITUTION of 1972 - Article III, section 9;
OPINIONS OF THE ATTORNEY GENERAL - 57 Op. Att'y Gen. No. 1 (2017), 43 Op. Att'y Gen. No. 39 (1989), 42 Op. Att'y Gen. No. 39 (1987).

HELD: Montana law does not authorize wagering on historical horseracing; therefore, it is prohibited in Montana.

November 16, 2017

President Scott Sales
P.O. Box 200500
Helena, MT 59220-0500

5200 Bostwick Road
Bozeman, MT 59715

Dear President Sales:

You have requested my opinion on a question which I have restated below:

> Does Montana law authorize electronic-terminal wagering on historical horseracing events?

Historical horse races are those that took place in the past at approved horseracing facilities and are presented in the form of a video display on a terminal, at which individual wagerers may place bets. *See Appalachian Racing, LLC v. Family Trust Found. of Ky., Inc.*, 423 S.W.3d 726, 730 (Ky. 2014). A key difference between historic racing and traditional parimutuel wagering on horse races is that in historic racing, the patron wagers on a previously run race. *See* Wyoming Pari-Mutuel Commission Report (available online at http://parimutuel.state.wy.us/PDF/Documents/HistoricRacing GUIDEFINAL.pdf). Historic races are selected from the vendor's video library of tens of thousands of past horse races.

Your opinion request indicates that a Florida company, Exacta Systems, has expressed interest in expanding its historical horseracing parimutuel self-wagering terminal business into Montana. Your request further indicates in-State interest in using such terminals to bring live racing back to Montana (however, the scope of your request, as well as this Opinion, are limited to historical racing). You have also provided two legal memoranda with your request.

In Montana, "[a]ll forms of gambling, lotteries, and gift enterprises are prohibited unless authorized by acts of the legislature or by the people through initiative or referendum." Mont. Const. art. III, § 9; *see also* Mont. Code Ann. § 23-5-151 ("Except as specifically authorized by statute, all forms of public gambling, lotteries, and gift enterprises are prohibited."). As observed by Attorney General Racicot, the Montana Legislature has mandated that gambling laws of Montana must be "strictly construed by the Department [of Justice] to allow only those types of gambling and gambling activity that are specifically and clearly allowed by law." 43 Op. Att'y Gen. No. 39, 158 (1989) (quotations omitted). Attorney General Greeley likewise recognized that strict construction of gambling-related statutes is warranted because "the Montana Constitution, article III, section 9, as well as section 23-5-102, MCA, prohibit all forms of gambling except those specifically authorized by statute." 42 Op. Att'y Gen. No. 39, 158 (1987).

As acknowledged in the Exacta Legal Memorandum submitted with your request, parimutuel wagering on horseracing is "gambling." Paisley Memo. at sec. II(d) (May 10, 2017); *see also* Mont. Code Ann. § 23-5-112(13)(a) (defining "gambling" as "risking any money, credit, deposit, check, property, or other thing of value for a gain that is contingent in whole or in part upon lot, chance, or the operation of a gambling device or gambling enterprise"). Because wagering on horseracing events is a form of gambling, the issue presented is <u>not</u> whether the subject wagering method is disallowed or prohibited by Montana statute; rather, the proper inquiry is whether it is specifically authorized.

Subject to statutory restrictions such as licensing requirements, "[i]t is lawful to conduct live or simulcast race meets at a racetrack or simulcast facility or otherwise at any time during the week." Mont. Code Ann. § 23-4-203. Montana law authorizes no other types of wagering on horse races. The electronic terminals used in historical horserace wagering are not authorized "video gambling machines" under Mont. Code Ann. § 23-5-603, because such machines include only bingo, poker, keno, video line, and multigame video gambling machines.

Thus, the issue is whether Mont. Code Ann. § 23-4-203's authorization of "live or simulcast race meets" may properly be construed as authorizing historical horseracing wagering. The answer is no, because as explained below, the scope of

statutorily authorized wagering on horse races is limited to live races on which wagers are placed before the race is run.

A "race meet" means racing of registered horses under the parimutuel system including simulcast races. Mont. Code Ann. § 23-4-101(14)(a). The definitions then add, "'Racing' means live racing'" and "'Simulcast' means a live broadcast of an actual horserace." Mont. Code Ann. §§ 23-4-101(15), (16) (emphasis added). The Montana Legislature has thus authorized only two kinds of horse races in Montana:

- Live horseracing and
- Live simulcast horseracing.

"Live," however, is not defined in Title 23, chapter 4. Where, as here, the Legislature has not defined a statutory term, courts consider the term to have its plain and ordinary meaning; and dictionary definitions may be considered. In this context, "live" means: "of or involving a presentation . . . in which both the performers and the audience are physically present." Merriam Webster's Collegiate Dictionary 681 (10th ed. 1993). A "live" race, within the meaning of Mont. Code Ann. § 23-4-203, is a horserace at which the patron/bettor is physically present at the location and time of the race.

The relevant statutes unambiguously reflect a clear intent on the part of the Montana Legislature to authorize parimutuel wagering only with respect to "live" and "simulcast" horseracing occurring in real-time, to the exclusion of historical horseracing.

The first rule of statutory construction "is simply to ascertain and declare what is in terms or in substance contained therein, not to insert what has been omitted or to omit what has been inserted." Mont. Code Ann. § 1-2-101; *see also* 57 Op. Att'y Gen. No. 1 (2017). This principle is of particular significance here, in light of Montana's constitutional prohibition of all gambling unless specifically and clearly allowed by law. Mont. Const. art. III, § 9. Inclusion of historical horseracing as an approved form of gambling would be precisely the sort of "insert[ion of] what has been omitted" expressly proscribed by black letter law.

Consequently, I conclude that historical horserace wagering is not authorized under Title 23, chapter 4, or any other provision of Montana statutory law; therefore, it is prohibited and thus unlawful. Mont. Const. art. III, § 9; Mont. Code Ann. § 23-5-151; *see also* Mont. Code Ann. § 23-4-301(1) ("It is unlawful to make, report, record, or register a bet or wager on the result of a contest of speed, skill, or endurance of an animal, whether the contest is held within or outside this state, except under 23-5-502 [limited authorization of sports pools and sports tab games] or this chapter.").

My conclusion is further supported by Mont. Code Ann. § 23-4-204(1), which provides in relevant part:

> For the purpose of encouraging the breeding in this state of valuable registered horses, at least one race each day at each race meet must be limited to horses bred in this state unless, in the board's judgment, there is an insufficient number of Montana-bred horses for the race.

Although not dispositive, the foregoing language demonstrates the Legislature's intent to generally mandate that every authorized race meet include Montana-bred horses. The technology involved in historic racing involves drawing from video archives of tens of thousands of previously run horse races, any of which could have taken place at a parimutuel facility anywhere in the United States. *See* Wyoming Pari-Mutuel Commission Report, *supra*. It is doubtful that any significant percentage of video-recorded races involve exclusively Montana-bred horses. Montana Code Annotated § 23-4-204(1) thus reflects a lack of legislative intent to authorize historical horserace wagering in Montana.

No type or form of wagering on historical horseraces is authorized by Montana law. Consequently, it is not necessary to address whether historical horseracing constitutes a true parimutuel system of wagering; and accordingly, I express no opinion in that regard.

In sum, if historical horseracing is to become legal in Montana, our Constitution mandates that it must be so authorized, in clear and unambiguous terms, by an act of the Legislature or by the people through initiative or referendum. Mont. Const. art. III, § 9. This has not been done.

THEREFORE, IT IS MY OPINION:

> Montana law does not authorize wagering on historical horseracing; therefore, it is prohibited in Montana.

Sincerely,

/s/ Timothy C. Fox
TIMOTHY C. FOX
Attorney General

tcf/rc/jym

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.

Water Policy Interim Committee (where the primary concern is the quality or quantity of water):

- 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 an online publication, issued twice-monthly, containing notices of rules proposed by agencies, notices of rules adopted by agencies, and interpretations of statutes and rules by the Attorney General (Attorney General's Opinions) and agencies (Declaratory Rulings) issued since publication of the preceding Register.

Use of the Administrative Rules of Montana (ARM):

Known Subject

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

Statute

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

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies that have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through September 30, 2017. This table includes those rules adopted during the period June 30, 2017, through September 30, 2017, and any proposed rule action that was pending during the past 6-month period. (A notice of adoption must be published within six months of the published notice of the proposed rule.) This table does not include the contents of this issue of the Montana Administrative Register (MAR or Register).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through September 30, 2017, this table, and the table of contents of this issue of the Register.

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 2017 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.

ADMINISTRATION, Department of, Title 2

New Rule	Due Date of Annual Financial Statement for Escrow Licensee, p. 623, 1141
New Rule	Definition of "Alter" for Mortgage Licensees, p. 965, 1516
2.21.3703	and other rules - Recruitment and Selection Policy, p. 1309
2.21.6608	and other rules - Employee Records Management Policy, p. 1316, 1443
2.59.1002	Merger Application Procedures for Banks, p. 724, 1295
2.59.1706	and other rules - Surety Bond – Table Funding – Application of Financial Standards – Reporting Forms for Mortgage Servicers – Standardized Forms and Procedures of the Nationwide Mortgage Licensing System – Clarification of Definition, p. 576, 1049

(Public Employees' Retirement Board)

2.43.1306	and other rules - Actuarial Rates and Assumptions - Service Purchases, p. 818, 1515
2.43.3502	and other rule - Investment Policy Statement for the Defined Contribution Retirement Plan - Investment Policy Statement for the 457 Deferred Compensation Plan, p. 815, 1514

(Montana Lottery Commission)

2.63.1201	Prizes, p. 388, 782

AGRICULTURE, Department of, Title 4

New Rule Pesticides, p. 1322, 1950
New Rules Mediation Services, p. 1926
4.10.201 and other rules - Pesticide Housekeeping Changes, p. 2261, 626, 1948
4.12.1405 and other rules - Nursery Program, p. 1319, 1949
4.12.3103 Seed Labeling - Viability Information, p. 1445, 2180

STATE AUDITOR, Office of, Title 6

(Commissioner of Securities and Insurance)
New Rules Air Ambulance - Hold Harmless Dispute Resolution, p. 1069, 1877
New Rules Corporate Governance Annual Disclosures, p. 1536, 2183
6.2.101 and other rules - Agency Rulemaking and Contested Case Procedures - Agency Debt Collection Practices, p. 1200, 1889
6.6.101 and other rules - Insurance Producer Licensing - Electronic Filing of the Appointment and Termination of Insurance Producers, p. 1206, 1890
6.6.304 and other rules - Replacement of Life Insurance - Medicare Select - Life Insurance Illustrations - Funeral Insurance - Title Insurance - Group Coordination of Benefits - Loss Cost Advisory Rate Filings - Hazardous Financial Conditions - Audited Reports and Annual Statements - Holding Company Systems - Guaranty Association - Actuarial Opinions - Captive Insurers - Mortality Tables - Viatical Settlement Agreements, p. 1186, 1888
6.6.503 and other rules - Medicare Supplement Insurance, p. 1542
6.6.1804 and other rules - Unfair Discrimination - Accreditation Fees - Small Employer Reinsurance - Insure Montana Program - Managed Care Community Networks, p. 1078, 1887
6.6.3813 and other rules - Credit for Reinsurance, p. 1929
6.6.4901 and other rules - Patient-Centered Medical Homes, p. 1574
6.6.8301 and other rule - Establishment or Revision of Classifications for Various Industries for Supplementing the NCCI Basic Manual - Updates to the Public Participation Guidelines, p. 1324, 2182

COMMERCE, Department of, Title 8

8.94.3729 and other rule - Administration of the 2017 and 2018 Program Year Federal Community Block Grant (CDBG) Program – Public Facilities Projects – Affordable Housing Projects, p. 582, 869
8.94.3817 Administration of the 2019 Biennium Treasure State Endowment Program – Planning Grants, p. 580, 868
8.99.806 Implementation of the Primary Sector Workforce Training Program, p. 730, 1143
8.99.917 and other rule - Implementation of the Big Sky Economic Development Trust Program, p. 727, 1142

8.111.303 and other rules - Financing Programs - Conditions of Financial Assistance - Approved Lenders - Approved Servicers - Counseling Requirements - Eligibility Requirements - Repayment of the Loan - Definitions - Housing Credit Allocation Procedure - Lender and Servicer Requirements and Limits - Loan Terms and Conditions - Confidentiality and Disclosure of Information, p. 460, 783

EDUCATION, Title 10

(Board of Public Education)
10.57.101 and other rules - Educator Licensure, p. 1775, 2330
10.64.301 School Bus Requirements, p. 391, 1891

(Superintendent of Public Instruction)
10.13.310 and other rules - Traffic Education, p. 1210, 1650
10.55.701 Soliciting Applications for Membership on a Negotiated Rulemaking Committee to Amend ARM 10.55.701 to Require a Policy for Suicide Prevention Programs in Schools, p. 1577

FISH, WILDLIFE AND PARKS, Department of, Title 12

New Rule Dog Training, p. 585, 1447, 2075
12.3.109 Disease Management, p. 1328, 1951

(Fish and Wildlife Commission)
12.11.501 and other rules - Flathead Lake, p. 118, 661
12.11.501 and other rule - Madison River, p. 121, 663
12.11.501 and other rules - Fort Peck Dredge Cuts - Fort Peck Reservoir, p. 124, 664
12.11.610 and other rule - Recreational Use on the Bitterroot River, p. 1451
12.11.630 Wake Restrictions on Broadwater Bay of the Missouri River, p. 1993

ENVIRONMENTAL QUALITY, Department of, Title 17

New Rules Technologically Enhanced Naturally Occurring Radioactive Material (TENORM) Waste, p. 1331, 1932
New Rules Wind Generation Facility Decommissioning and Bonding, p. 1995
17.30.660 Nutrient Standard Variances, p. 394, 470, 869
17.36.103 and other rules - Adoption of a New Version of Department Circular DEQ-8, p. 1580
17.50.403 and other rules - Definitions of Solid Waste Management - Landfarm Facility Standards - Compost Standards and Definitions, p. 3, 285, 666

(Board of Environmental Review)

17.8.102 and other rules - Incorporation by Reference - Definitions - Applicability - Operating Permit Program Overview - Applicability of Air Quality Rules, p. 1933

17.24.645 and other rules - Ground and Surface Water Monitoring - Definitions - Use and Classification Standards - Adoption by Reference, p. 2372, 602

TRANSPORTATION, Department of, Title 18

New Rules Fuel Tax Bridge and Road Safety and Accountability Program, p. 1717

18.6.202 and other rule - Outdoor Advertising Control, p. 971, 1517

18.8.1501 and other rule - Motor Carrier Services Safety Requirements, p. 968, 1400

18.8.1502 and other rules - Motor Carrier Services Safety Requirements, p. 588, 895

18.9.101 and other rules - Motor Fuels Tax, p. 1317, 1849, 2417, 893

CORRECTIONS, Department of, Title 20

20.7.1201 and other rules - Boot Camp Incarceration Program, p. 1455, 1952

JUSTICE, Department of, Title 23

New Rule and other rules - Ignition Interlock Devices, p. 2305, 2394, 896

New Rule Ignition Interlock Devices, p. 1598

23.2.301 Affidavit of Indigence - Statement of Inability to Pay Court Costs and Fees, p. 1724

23.16.101 and other rules - Loans to Licensees From Institutional and Noninstitutional Sources - Use of Checks and Debit Cards for Gambling Activities - Prohibition on Use of Credit Cards for Gambling - Sports Pool Wagers - Applications, Fees, and Issuance of Video Gambling Machine Permits, p. 1352, 1893

(Public Safety Officers Standards and Training Council)

23.13.101 and other rules - Certification of Public Safety Officers, p. 1213, 1953

LABOR AND INDUSTRY, Department of, Title 24

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

24.17.127 Prevailing Wage Rates for Public Works Projects, p. 2009

24.22.301 and other rules - Incumbent Worker Training Program, p. 1734

24.29.1433 and other rules - Workers' Compensation Facility Service Rules and Rates and Conversion Factors, p. 399, 784

24.29.1591 Utilization and Treatment Guidelines for Workers' Compensation Injuries, p. 1362, 1458, 2185

24.101.413 and other rules - Renewal Dates and Requirements - Procedural Rules - Public Participation Rules - Definitions - Fees - Prohibitions - General Licensing Requirements - Bout Approval - Fee Abatement - Promoter - Contest Regulations - Boxing Contestants - Female Contestants - Managers - Physical Examination - Ringside Health Care Professional Requirements - Number and Duration of Rounds - Down - Fouls - Appeal of Decisions of Officials - Hand Wraps - Official Boxing Gloves - Mouthpiece - Ring--Equipment - Officials Required - Judges - Seconds/Corners - Referee - Unprofessional Conduct - Department Representatives - Contracts and Penalties - Medical Advisor - Tickets - Elimination-Type Events - Inspectors – Announcer, p. 404, 786

(Workers' Compensation Court)

24.5.301 and other rules - Annual Review - Pretrial Identification of Witnesses and Exhibitions - Withdrawal of Attorney, p. 2111

(Board of Architects and Landscape Architects)

24.114.101 and other rules - Board Organization - Public Participation - Definitions - Fee Schedule - Architect Seal - Fee Abatement - Military Training or Experience - Architect Examination - Architect Licensure by Examination - Licensure of Applicants Registered in Another State - Architect Emeritus Status - Landscape Architect Licensure by Examination - Education and Experience Required for Landscape Architect Licensure - Landscape Architect Examinations - Landscape Architect Licensure by Endorsement - Landscape Architect Seal - Architect Continuing Education Requirements - Unprofessional Conduct - Screening and Adjudication Panels - Solicitation of Business by Nonresident Architects - Architects-In-Training - Renewals - Replacement Licenses, p. 976, 2076

(Board of Barbers and Cosmetologists)

24.121.601 and other rules - Licensure by Examination - School Operating Standards - School Curricula - Credited Hours for Montana-Licensed Individuals in a Cosmetology or Barbering Program, p. 1364, 1956

(Board of Dentistry)

24.138.304 Definition of Nonroutine Application - Dentist Licensure by Credential - Dental Hygiene Limited Access Permit - Licensure of Retired or Nonpracticing Dentist or Dental Hygienist for Volunteer Service - Restricted Temporary Licensure of Nonresident Volunteer Dentists and Dental Hygienists - Exemptions and Exceptions - Minimum Qualifying Standards - Minimum Monitoring Standards - Infection Control - Renewals, p. 1601

(State Electrical Board)

24.141.507 and other rules - Military Training or Experience - Unprofessional Conduct - Screening Panel - Board Meetings - Apprentice Registration - Renewals - Complaint Procedure, p. 1743

(Board of Funeral Service)

24.147.1301 and other rules - Applications for Cemetery Licenses - Transfer of Cemetery Ownership - Prearranged, Prefinanced, or Prepaid Funerals - Requirements for Sale of At-Need, Preneed, and Prepaid Funeral Arrangements - Trust Funds–General - Cemetery Perpetual Care and Maintenance Trust Accounts - Financial Records - Annual Reporting Requirements - Audits - Mortuary and Crematory Preneed Trust Accounts - Restrictions on Use of Cemetery Funds, p. 1461, 2187

(Board of Massage Therapy)

24.155.604 and other rules - Licensure by Examination - Licensure of Out-of-State Applicants - Nonroutine Applications, p. 1085, 2193

(Board of Nursing)

24.159.301 and other rule - Continuing Education, p. 2406, 604

24.159.1006 and other rule - Direct Supervision and Standards Related to the Practical Nurse's and Registered Nurse's Role in Cosmetic Procedures, p. 1232

(Board of Optometry)

24.168.401 and other rule - Fees - Continuing Education, p. 214, 788

24.168.402 and other rules - Licensure Requirements - Military Training or Experience - General Practice Requirements - Unprofessional Conduct - Screening Panel - Ophthalmological Diagnostic Permissible Drugs, p. 1474

(Board of Outfitters)

24.171.408 and other rules - Outfitter Records - Safety and First Aid Provisions - Watercraft Identification - Outfitter Qualifications - Successorship - Fishing Outfitter Operations Plan - Operations Plans and Amendments – Renewals, p. 428, 1900

(Board of Pharmacy)

24.174.401 and other rules - Fee Schedule - Internship Requirements - Foreign Intern Requirements, p. 1235, 1653

24.174.1712 Prescription Drug Registry Fee, p. 264, 1144

(Board of Physical Therapy Examiners)

24.177.503 and other rules - Military Training or Experience - Foreign-Trained Physical Therapist Applicants - Continuing Education - List of Licensed Physical Therapists, p. 1748

(Board of Private Security)

24.182.101 and other rules - Organization - Procedural Rules - Public Participation - Definitions - Fee Schedule - Identification Pocket Card - Insurance and Surety Bond Requirements - Regulations of Uniform - Qualification of Firearms for Armed Endorsement - Requalification Required Annually - Required Information for Application - Military Training or Experience - Written Examination - Temporary Practice Permit - Private Investigator Trainee - Certified Firearms Instructor - Company Licensure and Branch Offices - Firearms Training Courses - Private Investigator Training Program - Private Security Guard Training Program - Security Alarm Installer Training Program - Alarm Response Runner Training Program - Standards for Continuing Education - Annual Continuing Education Requirements - Non-approved Activities - Auditing of Continuing Education Hours - Inactive Status and Conversion to Active Status - Alarm Response Runner - Private Investigator - Private Security Guard - Process Server - Resident Manager - Security Alarm Installer - Nonroutine Applications - Experience Requirements, p. 823, 1957

(Board of Psychologists)

24.189.301 and other rules - Behavior Analysts and Assistant Behavior Analysts Licensure, Continuing Education, and Unprofessional Conduct, p. 1240, 1656

24.189.601 and other rules - Application Procedures - Exemptions - Minimum Standards - Licensure of Foreign-Trained Psychologists - Competency - Limits of Confidentiality - Continuing Education Program Options - Continuing Education Implementation - Practice of Psychology, p. 992, 1654

(Board of Public Accountants)

24.201.301 and other rules - Definitions - Licensing - Renewals - Continuing Education - Complaint Procedures - Credit for Blended Learning - Professional Conduct, p. 1088

(Board of Realty Regulation)

24.210.641 and other rules - Unprofessional Conduct - New Licensee Mandatory Continuing Education – Salespersons - Course Provider – Continuing Real Estate Education – Course Approval - Continuing Real Estate Education – Instructor Approval - Renewals - New Licensee Mandatory Continuing Education – Property Manager - Nonroutine Applications - Trust Account Course Requirement - Application for Determination of Equivalent Experience for Broker Licensing, p. 319, 1145

(Board of Respiratory Care Practitioners)

24.213.403 and other rules - Abatement of Renewal Fees - Continuing Education Requirements - Nonroutine Applications, p. 1752

(Board of Behavioral Health)
New Rules Certification of Behavioral Health Peer Support Specialists (CBHPSS), p. 1757

(Board of Speech-Language Pathologists and Audiologists)
24.222.301 and other rules - Definitions - Fees - Unprofessional Conduct - Limited Licenses - Supervised Professional Experience, p. 1479, 2079
24.222.502 and other rules - Speech-Language Pathologist and Audiologist Licenses - Military Training or Experience - Licensure of Out-Of-State Applicants - Examinations - Establishing the Practitioner-Patient Relationship - Competence - Practice Limits - Maintenance and Retention of Records - Continuing Education - Nonroutine Applications - Board Standards and Policy - Applications for License - Qualifications for Active Temporary License - Temporary Practice Permits - Policy - Continuing Education Definitions - Renewals - Complaint Procedure, p. 628, 1401

LIVESTOCK, Department of, Title 32

32.2.401 and other rules - Animal Health Division Fees - Definitions - Testing Within the DSA - Brucellosis Tests to Be Reported, p. 267, 492, 1296
32.2.403 Diagnostic Laboratory Fees, p. 850, 1297
32.3.212 and other rules - Additional Requirements for Cattle - Importation of Cattle From Mexico - Identification of Alternative Livestock With the Exclusion of Omnivores and Carnivores - Requirements for Mandatory Surveillance of Montana Alternative Livestock Farm Cervidae for Chronic Wasting Disease, p. 1001, 1101, 1661
32.18.102 and other rules - Special Identification Marks – Age Tally Mark – Numeral Mark – Placement of Digits, p. 592, 907

(Board of Milk Control)
32.24.101 and other rules - Organization of Board - Penalties - Initial Determination and/or Loss of Quota Records - New Producers– Percentage of Milk Sales Assigned to Quota Milk - Transfer of Quota - Reassignment of Quota From the Unassigned Quota Pool and Readjustment of Quota Into the Statewide Quota System - Producer Committee - Request for Review, Hardship, and Appeals - Reports and Records - Computation of Price for Quota Milk and Excess - Procedures for Pooling of Returns From Pool Milk - Payments to Pool Dairymen and Adjustment of Accounts - Marketing of Surplus Milk to Nonpool Handlers - Required Utilization of Surplus Milk - Procedures, Purchase Price, and Terms - Definitions - Transactions Involving the Purchase and Resale of Milk Within the State - Regulation of Unfair Trade Practices - Licensee Assessments - Additional Producer Assessment - Procedural Rules - Pricing Rules - Quota Definitions -

42.20.101 and other rules - Property Tax Exemption Applications - Exemptions for Veterans' Organizations - Exemption Notifications to County Treasurers - Valuation of Condominiums and Townhomes, p. 1383, 2090
42.20.171 and other rules - Land Classification - Natural Disaster Reduction - Forest Land Eligibility and Valuation, p. 1390, 2198
42.20.173 and other rules - Deadlines for Classification and Appraisal Reviews - Consideration of Sales Price and Fee Appraisals as Market Value Indicators, p. 1374, 2088
42.21.113 and other rules - Trended Depreciation Schedules for Valuing Property, p. 1854
42.21.160 and other rule - Livestock Reporting and Per Capita Fees–Honey Bees, p. 1277, 1672
42.23.802 and other rule - Carryforward and Carryback Provisions of Corporate Net Operating Losses, p. 1787
42.25.501 and other rules - Coal Valuation for Coal Gross Proceeds - Coal Severance Tax on Coal Production, p. 1637, 2204
42.26.201 and other rules - Allocation and Apportionment of Income of Multistate Corporate Taxpayers Necessitated by House Bill 511, L. 2017 - Department's Method of Administering the Corporate Income Tax Regarding Unitary Multistate Taxpayers Whose Montana Activity Is Reflected Through Multiple Entities, p. 1790
42.31.501 and other rule - Taxation of Internet Revenue, p. 780, 1154

SECRETARY OF STATE, Office of, Title 44

1.2.102 and other rule - Official Versions of the ARM and Register, p. 658, 867, 1054
1.2.104 Administrative Rules Services Fees, p. 483, 802
1.2.419 Scheduled Dates for the 2018 Montana Administrative Register, p. 1506, 1959
44.2.204 Access to Documents and Fees for Copies, p. 1137, 1677
44.2.302 and other rules - Online Filing of Annual Reports, p. 1290, 1678
44.14.301 and other rules - Fees Charged by the Records and Information Management Division, p. 480, 801

(Commissioner of Political Practices)
44.11.226 and other rules - Campaign Finance Reporting, Disclosure, and Practices, p. 1509, 1875

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