

MONTANA ADMINISTRATIVE REGISTER

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MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 4

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 The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

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BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the adoption of New) NOTICE OF PUBLIC HEARING ON
Rule I pertaining to Public Safety) PROPOSED ADOPTION
Answering Point allowable uses of funds)

TO: All Concerned Persons

1. On March 26, 2018, at 1:00 p.m., the Department of Administration will hold a public hearing in Room 7 of the Mitchell Building, at 125 N. Roberts St., Helena, Montana, to consider the proposed adoption of the above-stated rule.

2. The Department of Administration will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Administration no later than 5:00 p.m. on March 14, 2018, to advise us of the nature of the accommodation that you need. Please contact Rhonda Sullivan, Department of Administration, 1400 8th Ave., P.O. Box 200113, Helena, Montana 59620; telephone (406) 444-2420; fax (406) 444-2701; Montana Relay Service 711; or e-mail rsullivan@mt.gov.

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

NEW RULE I ALLOWABLE USES OF FUNDS (1) Funds distributed to a certified PSAP from the 9-1-1 systems account established by 10-4-304, MCA, may be used by the certified PSAP for 9-1-1 purposes for any of the uses set out in the department's February 13, 2018, list of allowable uses, adopted by reference in this rule. The list is available on the department's website at sitsd.mt.gov/PublicSafetyCommunications.

(2) If items, services, or personnel are used or employed for a purpose other than the 9-1-1 system, the department shall allocate funds based on the cost attributable only to the 9-1-1 system. A certified PSAP shall:

(a) advise the department that items, services, or personnel are used or employed for a purpose other than the 9-1-1 system;

(b) calculate the cost of the items, services, or personnel attributable to the 9-1-1 system and provide the calculation and cost to the department; and

(c) provide information verifying the use and calculation upon request by the department.

(3) A certified PSAP may further distribute funds to a local government entity or tribal government participating with the certified PSAP in the 9-1-1 system for any of the uses described in (1).

AUTH: 10-4-108, MCA

IMP: 10-4-107, 10-4-305, MCA

STATEMENT OF REASONABLE NECESSITY: The purpose of this rule is to identify allowable uses of funds paid from the 9-1-1 systems account. Under 10-4-107, MCA, the department is required to monitor the expenditure of funds and ensure payments are used only for 9-1-1 purposes. The department has developed a list of allowable uses of funds based on previous distributions to local government entities for 9-1-1 purposes. Because these allowable uses are already considered to be for 9-1-1 purposes, a local government entity may expend funds received from the 9-1-1 systems account for any of these identified uses. This rule informs interested persons about the list of allowable uses and how they may access the list.

NEW RULE I implements and enforces the spending limitations in 10-4-107 and 10-4-305, MCA. Section (2) addresses the common situation where items, services, or personnel are used or employed by a local government entity for more than one purpose. Section 10-4-107, MCA, limits reimbursement to payments for 9-1-1 purposes. Therefore, the proposed rule allows the local government entity to calculate and request a prorated reimbursement for the portion of the expenditure attributable to a 9-1-1 purpose.

Section (3) provides that a local government entity that hosts a certified PSAP may distribute funds to other local government or tribal government entities participating in the 9-1-1 system with the local government entity that hosts the PSAP only if the funds are ultimately used for an allowable expense. Given its broad rulemaking authority granted in 10-4-108, MCA, which in part addresses "distribution procedures," and 10-4-107, MCA, which states that the department shall "allocate and distribute 9-1-1 fees," the department interprets 10-4-305, MCA, to allow further distributions to other participating entities.

The department initially proposed adoption of New Rule I in MAR Notice No. 2-13-566; however, the list of allowable uses in (1) was not available on the main page of the Public Safety Communications Bureau website as indicated. To allow more time for public consideration and comment, the department is proposing the rule in a slightly modified form. In addition, in response to public comment received in the prior rulemaking and additional input from the 9-1-1 Advisory Council, the department has changed the rule to remove the option of departmental approval of allowable uses on a case-by-case basis. Changes to the list of uses will require amendment of the rule.

4. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Rhonda Sullivan, Department of Administration, 1400 8th Ave., P.O. Box 200113, Helena, Montana 59620; telephone (406) 444-2420; fax (406) 444-2701; or e-mail rsullivan@mt.gov, and must be received no later than 5:00 p.m., April 2, 2018.

5. Don Harris, Department of Administration, has been designated to preside over and conduct this hearing.

6. The division maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the mailing list shall make a written request which includes the

name and mailing address or e-mail address of the person to receive notices and specifies that the person wishes to receive notices regarding Public Safety Communications Bureau rulemaking actions. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 4 above or may be made by completing a request form at any rules hearing held by the department.

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

8. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor, Representative Frank Garner, was contacted on September 1, 2017, by electronic mail, telephone, and United States Postal Service first class mail.

9. The department has determined that under 2-4-111, MCA, the proposed adoption of NEW RULE I will not significantly and directly affect small businesses.

By: /s/ John Lewis
John Lewis, Director
Department of Administration

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

Certified to the Secretary of State February 13, 2018.

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

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

TO: All Concerned Persons

1. On April 28, 2018, the Public Employees' Retirement Board proposes to amend the above-stated rules.

2. The Public Employees' Retirement Board will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Montana Public Employee Retirement Administration no later than 5:00 p.m. on March 16, 2018, to advise us of the nature of the accommodation that you need. Please contact Kris Vladic, Montana Public Employee Retirement Administration, P.O. Box 200131, Helena, Montana, 59620-0131; telephone (406) 444-2578; fax (406) 444-5428; TDD (406) 444-1421; or e-mail kvladic@mt.gov.

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

2.43.3502 ADOPTION OF INVESTMENT POLICY STATEMENT AND STABLE VALUE FUND INVESTMENT GUIDELINES (1) The board adopts and incorporates by reference the State of Montana 401(a) Defined Contribution Plan Investment Policy Statement approved by the board on ~~May 11, 2017~~ February 8, 2018. The Investment Policy Statement provides investment guidelines for the defined contribution plan, a long-term retirement-savings vehicle that permits participants to invest employer and participant contributions on a tax-deferred basis. The investment guidelines help the board to meet its fiduciary responsibilities to evaluate and positively influence the direction of the plan and its investments for the benefit of the plan participants and beneficiaries.

(2) and (3) remain the same.

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

2.43.5102 ADOPTION OF INVESTMENT POLICY STATEMENT AND STABLE VALUE FUND INVESTMENT GUIDELINES (1) The board adopts and incorporates by reference the State of Montana 457 Plan (deferred compensation)

Investment Policy Statement approved by the board on ~~May 11, 2017~~ February 8, 2018. The Investment Policy Statement provides investment guidelines for the 457(b) deferred compensation plan, a supplemental retirement-savings vehicle that permits participants to invest on either a pre-tax or a tax-deferred basis. The investment guidelines help the board to meet its fiduciary responsibilities to evaluate and positively influence the direction of the plan and its investments for the benefit of the plan participants and beneficiaries.

(2) and (3) remain the same.

AUTH: 19-50-102, MCA

IMP: 19-50-102, MCA

REASON: The Public Employees' Retirement Board, as administrator of the Public Employees' Retirement System Defined Contribution Retirement Plan (DCRP) and the State of Montana's 457(b) Deferred Compensation Plan (457 Plan), adopted the two plans' original investment policy statements in 2002. The investment policy statements are reviewed on a yearly basis and amended to reflect best practices in defined contribution plan investments.

Pursuant to the recommendation of the board's investment consultant, Xerox Corporation dba Conduent, the board's advisory committee, the Employee Investment Advisory Council, and the board's policy committee, the board amended the investment policy statements on February 8, 2018 to eliminate BOARD Admin 08 DC Plans Investment Option Overlap Policy. The language from BOARD Admin 08 has been merged into both BOARD Admin 11 and Board Admin 12. BOARD Admin 11 is the State of Montana Investment Policy Statement for the 401(a) Defined Contribution Retirement Plan and BOARD Admin 12 is the State of Montana Investment Policy Statement for the 457(b) Deferred Compensation Plan.

Because the board determined to adopt the original investment policy statements by reference, 2-4-307(4), MCA, requires that changes to the documents also be adopted by reference. Therefore, it is necessary to amend the rules that adopt the investment policy statements to indicate the version being adopted by reference.

The investment policy statements are available on the board's web page at mpera.mt.gov.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to: Montana Public Employee Retirement Administration, P.O. Box 200131, Helena, Montana, 59620-0131; telephone (406) 444-3154; fax (406) 444-5428; or e-mail mpera@mt.gov, and must be received no later than 5:00 p.m., March 23, 2018.

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

p.m., March 23, 2018.

6. If the Public Employees' Retirement Board receives requests for a public hearing on the proposed amendments from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed amendment; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 1,178 persons based on approximately 2,541 participants in the Defined Contribution Retirement Plan and 9,239 participants in the 457(b) Deferred Compensation Plan as of June 30, 2017, for a total of 11,780 participants.

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

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

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

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

/s/ Maggie Peterson
Maggie Peterson
Vice President
Public Employees' Retirement Board

Certified to the Secretary of State February 13, 2018.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the amendment of ARM) NOTICE OF PROPOSED
2.59.310, 2.59.318, 2.59.705,) AMENDMENT
2.59.1701, 2.59.1738, and 2.59.1748)
pertaining to annual reporting for) NO PUBLIC HEARING
consumer loan licensees, escrow) CONTEMPLATED
business reference updates, mortgage)
definitions, mortgage renewal fees, and)
escrow funds held by mortgage)
companies)

TO: All Concerned Persons

1. On March 30, 2018, the Department of Administration proposes to amend the above-stated rules.

2. The Department of Administration will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Administration no later than 5:00 p.m. on March 16, 2018, to advise us of the nature of the accommodation that you need. Please contact Heather Hardman, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, Montana 59620-0546; telephone (406) 841-2922; TDD (406) 841-2974; facsimile (406) 841-2930; or e-mail to banking@mt.gov.

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

2.59.310 ADOPTION OF STANDARDIZED FORMS AND PROCEDURES OF THE NATIONWIDE MULTISTATE LICENSING SYSTEM (NMLS) (1) remains the same.

(2) The following standardized NMLS forms relating to consumer loan licensing are approved and adopted by reference:

(a) NMLS company form dated ~~March 31, 2014~~ September 12, 2015;

(b) remains the same.

(c) NMLS individual form dated ~~July 30, 2014~~ September 12, 2016.

(3) The following state-specific forms on the NMLS are approved and adopted by reference:

(a) Montana consumer loan license new application checklist dated ~~August 31, 2015~~ October 7, 2016;

(b) remains the same.

(c) Montana consumer loan license surrender checklist dated ~~August 31, 2015~~ September 8, 2016;

(d) through (f) remain the same.

(4) For renewal, companies, branches, and individuals must go to the NMLS home page (<http://mortgage.nationwidelicensingsystem.org>) and select the "Annual Renewal" link under the State Licensing tab and follow the instructions.

(5) remains the same.

AUTH: ~~32-5-201~~, 32-5-209, 32-5-401, MCA

IMP: 32-5-201, 32-5-209, MCA

GENERAL STATEMENT OF REASONABLE NECESSITY: As part of its required biennial review of rules, the department has identified necessary changes identified in these proposed amendments.

STATEMENT OF REASONABLE NECESSITY: The rule amendment is necessary to clarify that the rule pertains specifically to consumer loan licensing and to update the current NMLS forms and current division checklists. The division is proposing removal of the communication protocol HTTP from the URL because it is not necessary to access the webpage. The department is also correcting the authority citations. The department's authority to make rules implementing 32-5-201 and 32-5-209, MCA, is found in 32-5-209 and 32-5-401, MCA. The department does not have rulemaking authority in 32-5-201, MCA.

2.59.318 ADOPTION OF ANNUAL REPORT FORM AND DUE DATE

(1) An entity holding a consumer loan license for any period of time during a calendar year reporting period shall complete and file with the department by ~~April~~ February 15 of the following calendar year a Consumer Loan Annual Report of Licensee (annual report). The annual report must be filed whether ~~or not~~ any loans were originated during the reporting period and whether ~~or not~~ the licensee renewed its license at the end of the reporting period or held a license when the report came due the following ~~April~~ February 15.

(2) A completed annual report may must be mailed to the ~~Division of Banking and Financial Institutions, 301 S. Park Ave., Suite 316, P.O. Box 200546, Helena, MT 59620-0546; faxed to (406) 841-2930; or e-mailed to banking@mt.gov~~ mortgagelicensing@mt.gov.

(3) The ~~Consumer Loan Annual Report of Licensee form~~ annual report, July 1, 2016 January 25, 2018, edition, is adopted and incorporated by reference and available on the division's website at banking.mt.gov.

(4) ~~Copies of the annual report form and instructions for completion are available on the division's web site, <http://banking.mt.gov/Home/Forms#164912244-consumer-loan>.~~

AUTH: 32-5-308, 32-5-209, 32-5-401, MCA

IMP: 32-5-308, MCA

STATEMENT OF REASONABLE NECESSITY: The department proposes to update the catchphrase to use consistent terminology to refer to the annual report. The proposed rule amendment is necessary to modify the annual report due date to more evenly distribute division staff workload throughout the year. Also, the division

prefers to receive materials electronically to improve security and recordkeeping, reduce costs, and eliminate waste. Additional amendments are to make the rule language more concise. The department is also correcting the authority citations. The department's authority to make rules implementing 32-5-308, MCA, is found in 32-5-209 and 32-5-401, MCA. The department does not have rulemaking authority in 32-5-308, MCA.

2.59.705 ADOPTION OF STANDARDIZED FORMS AND PROCEDURES OF THE NATIONWIDE MULTISTATE LICENSING SYSTEM (NMLS)

(1) The NMLS Policy Guidebook dated July 23, 2012, is approved and adopted by reference. It can be found at <http://mortgage.nationwidelicensingsystem.org/licensees/resources/LicenseeResources/NMLS%20Guidebook%20for%20Licensees.pdf>.

(2) The following standardized NMLS forms relating to escrow business licensing are approved and adopted by reference:

(a) NMLS company form dated ~~March 31, 2014~~ September 12, 2015;

(b) remains the same.

(c) NMLS individual form dated ~~July 30, 2014~~ September 12, 2016.

(3) The following state-specific forms on the NMLS are approved and adopted by reference:

(a) Montana escrow business company new application checklist dated ~~September 1, 2015~~ January 23, 2017;

(b) Montana escrow business company amendment checklist dated ~~July 20, 2015~~ January 23, 2017; and

(c) remains the same.

(4) For renewal, companies, branches, and individuals must go to the NMLS home page (<http://mortgage.nationwidelicensingsystem.org>) and select the "Annual Renewal" link under the State Licensing tab and follow the instructions.

(5) ~~Copies of the~~ The standardized NMLS forms are available on the NMLS web site at http://mortgage.nationwidelicensingsystem.org/slr/PublishedStateDocuments/MT-Consumer_Loan_License-Company-New-App-Checklist.pdf. All standardized forms ~~to be~~ submitted to the department must be accessed through NMLS and submitted electronically.

AUTH: ~~32-7-109, 32-7-108, 32-7-112, MCA~~

IMP: 32-7-109, 32-7-112, MCA

STATEMENT OF REASONABLE NECESSITY: The proposed rule amendment is necessary to clarify that the rule pertains specifically to escrow licensing and to refer to the current NMLS forms and current division checklists. The division is proposing removal of the communication protocol HTTP from the URL because it is not necessary to access the webpage. The department is also correcting the authority citations. The department's authority to make rules implementing 32-7-109 and 32-7-112, MCA, is found in 32-7-108 and 32-7-112, MCA. The department was not granted rulemaking authority in 32-7-109, MCA.

2.59.1701 DEFINITIONS For purposes of the Montana Mortgage Act and this subchapter, the following definitions apply:

(1) "Breach of trust" means:

(a) a wrongful act, use, misappropriation, or omission with respect to any property or fund that has been committed to a person in a fiduciary or official capacity; or

(b) the misuse of a person's official or fiduciary position to engage in a wrongful act, use, misappropriation, or omission.

(2) "Dishonesty" means:

(a) to cheat or defraud directly or indirectly;

(b) to cheat or defraud for monetary gain or its equivalent; or

(c) to wrongfully take property belonging to another in violation of any criminal statute.

(d) Dishonesty includes acts involving want of integrity, lack of probity, or a disposition to distort, cheat, or act deceitfully or fraudulently, and may include crimes which federal, state, or local laws define as dishonest.

(1) through (10) remain the same, but are renumbered (3) through (12).

AUTH: 32-9-109, 32-9-121, 32-9-130, MCA

IMP: 32-9-109, 32-9-116, 32-9-120, 32-9-121, 32-9-122, 32-9-123, 32-9-133, 32-9-166, MCA

STATEMENT OF REASONABLE NECESSITY: This proposed rule amendment is necessary to include definitions of "breach of trust" and "dishonesty." These terms are used in 32-9-120, MCA, but are not defined in statute. Because a person's license may be denied under 32-9-120, MCA, for crimes involving dishonesty or breach of trust, it is important for applicants, the public, and division staff to have a clear understanding of the terms. The division has referred to the FDIC's definitions of "breach of trust" and "dishonesty" in the FDIC Statement of Policy for Section 19 of the Federal Deposit Insurance Act, December 11, 2012, for guidance since the enactment of the Secure and Fair Enforcement for Mortgage Licensing Act in 2008. Use of terminology that is consistent with federal guidance, as opposed to the division creating its own definitions, will aid applicants' understanding of and compliance with the rules, as many applicants are licensed in multiple states. The department has added an implementation citation because the terms "breach of trust" and "dishonesty" are referenced in 32-9-120, MCA.

2.59.1738 RENEWAL FEES (1) remains the same.

(a) Mortgage Broker Entity, \$500.00, (except as provided in 32-9-117(1)(b), MCA);

(b) Mortgage Broker Branch, \$250.00;

(c) Mortgage Lender Entity, \$750.00;

(d) Mortgage Lender Branch, \$250.00;

(e) Mortgage Loan Originator, \$400.00;

(f) Mortgage Servicer Entity, \$750.00;

(g) Mortgage Servicer Branch, \$250.00.

(2) The renewal fees listed in (1) are reduced by ~~50~~ 75 percent for ~~2017~~ 2019. This section sunsets on March 1, ~~2017~~ 2019.

AUTH: 32-9-117, 32-9-134, MCA

IMP: 32-9-117, 32-9-130, 32-9-134, MCA

STATEMENT OF REASONABLE NECESSITY: The department is adding "(except as provided in 32-9-117(1)(b), MCA)" to this rule because this provision existed prior to the insertion of (2), which sunset on March 1, 2017. This rule was proposed for amendment in MAR Notice No. 2-59-567, but rather than adopting those amendments, the rule was further amended to include a renewal fee reduction.

The intent of the amendment is to make the renewal fees consistent with the initial license application fees that exist in statute. In addition, the department is earmarking the individual fees in (1) to provide additional clarity.

This amendment pertains to a mortgage broker who is both an individual mortgage loan originator licensee and the owner of a mortgage broker entity. The department does not believe it would be fair to charge separate renewal fees to an individual who is licensed as a mortgage loan originator as well as an owner of a mortgage broker entity.

Under this amendment, a person who owns a mortgage broker entity and is also individually licensed as a mortgage loan originator will pay a single license renewal fee of \$500. This represents a \$400 decrease in renewal fees for licensees that meet these criteria. There are 128 mortgage broker entities currently licensed in Montana. The division has determined 34 mortgage broker entities have an owner who is also individually licensed as a mortgage loan originator. The department predicts that all affected licensees will renew their licenses. This proposed change to the rule will reduce department revenues by approximately \$13,600.

The amendment of (2) is proposed to reduce mortgage licensee renewal fees by 75 percent for 2019. The division is self-funded through its licensing fees and strives to keep its licensing fees consistent with each licensing program's expenditures. The mortgage program is currently generating more revenue than it is spending due to a rapid increase in the number of individual licensees. The revenue generated significantly exceeded our estimate. A 75 percent reduction will approximate needed expenditures for the year.

The division does not intend to permanently decrease renewal fees for the mortgage program because it does not know whether this trend will continue, and has elected to reduce the renewal fees by 75 percent for 2019 only. The division will continue to monitor its revenue and expenses and, if necessary, revise the licensing and/or renewal fees up or down to keep revenues in line with expenses.

Currently licensed in Montana, there are:

- 126 mortgage broker entities;
- 118 mortgage broker branches;
- 177 mortgage lender entities;
- 335 mortgage lender branches;

- 141 mortgage servicer entities;
- 117 mortgage servicer branches; and
- 2806 mortgage loan originators.

The division expects that not all current licensees will renew their licenses for 2019. However, based on prior years' renewals, the division predicts that approximately 79 percent of its mortgage loan originators and 99 percent of mortgage company and mortgage company branch licensees will renew their licenses for 2019. This proposed change to the rule will reduce division revenues by approximately \$1,174,800.

In addition, the department is updating the authority citations for the rule to include a reference to 32-9-134, MCA, which allows the department to create rules regarding renewal requirements.

2.59.1748 MONTANA-SPECIFIC ESCROW FUND (1) A mortgage servicer or lender shall:

(a) and (b) remain the same.

AUTH: 32-9-130, MCA

IMP: 32-9-145, MCA

STATEMENT OF REASONABLE NECESSITY: The department is amending this rule to correct an oversight. Because 32-9-145, MCA, addresses both mortgage lenders and mortgage servicers, the requirements of this rule should apply to both. Mortgage lenders were inadvertently left out of the rule when it was originally adopted.

4. Concerned persons may present their data, views, or arguments concerning the proposed action to Kelly O'Sullivan, Legal Counsel, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, Montana 59620-0546; faxed to the office at (406) 841-2930; or e-mailed to banking@mt.gov; and must be received no later than 5:00 p.m., March 23, 2018.

5. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to the person listed in 4 above no later than 5:00 p.m., March 23, 2018.

6. If the Division of Banking and Financial Institutions 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 342 persons based on the 3,419 existing consumer loan, escrow, and mortgage licensees.

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

8. The Division of Banking and Financial Institutions maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this division. Persons who wish to have their name added to the mailing list shall make a written request that includes the name, mailing address, and e-mail address of the person to receive notices and specifies that the person wishes to receive notices regarding division rulemaking actions. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written requests may be mailed or delivered to Heather Hardman, Division of Banking and Financial Institutions, 301 S. Park, Ste. 316, P.O. Box 200546, Helena, Montana 59620-0546; faxed to the office at (406) 841-2930; e-mailed to banking@mt.gov; or may be made by completing a request form at any rules hearing held by the department.

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

10. The department has determined that under 2-4-111, MCA, the proposed amendment of the above-stated rules will not significantly and directly impact small businesses.

By: /s/ John Lewis
John Lewis, Director
Department of Administration

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

Certified to the Secretary of State February 13, 2018.

BEFORE THE OFFICE OF THE STATE PUBLIC DEFENDER
OF THE STATE OF MONTANA

In the matter of the amendment of ARM) NOTICE OF PUBLIC HEARING ON
2.69.201, 2.69.203, and 2.69.301, and) PROPOSED AMENDMENT AND
the repeal of ARM 2.69.202 and) REPEAL
2.69.601 pertaining to model rules,)
definitions, determination of indigency,)
and reasonable compensation)

TO: All Concerned Persons

1. On March 16, 2018, at 1:00 p.m., the Office of the State Public Defender will hold a public hearing at 44 W. Park St., Butte, Montana, to consider the proposed amendment and repeal of the above-stated rules.

2. The Office of the State Public Defender will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Office of the State Public Defender no later than 5:00 p.m. on March 9, 2018, to advise us of the nature of the accommodation that you need. Please contact Cathy Doyle, Office of the State Public Defender, 44 West Park Street, Butte, MT 59701; telephone (406) 496-6080; facsimile (406) 496-6098; Montana Relay Service 711; or e-mail to cmdoyle@mt.gov.

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

2.69.201 MODEL PROCEDURAL RULES PROCEDURES FOR ADOPTING, AMENDING, AND REPEALING AGENCY RULES (1) The Office of the State Public Defender (OPD) Commission, for purposes of establishing agency rulemaking procedures, adopts and incorporates by reference the following model rules, which may be found at <http://sos.mt.gov/>:

(a) the Attorney General's Model Procedural Rules 1 found in ARM 1.3.102 and 2 through 7 found in ARM 1.3.205 through 1.3.210. A copy of the Attorney General's Model Rules may be obtained by contacting the Attorney General's Office, Justice Building, 215 N. Sanders, P.O. Box 201401, Helena, MT 59620-1401, telephone (406) 444-2026 ARM 1.3.201, 1.3.202, 1.3.211 through 1.3.224, and 1.3.226 through 1.3.233, including the appendix of sample forms in effect February 13, 2018. These rules provide model rules of practice for contested case hearings and declaratory rulings; and

(b) the Secretary of State's model rules ARM 1.3.101, 1.3.102, 1.3.301, 1.3.302, 1.3.304, 1.3.305, 1.3.307 through 1.3.309, and 1.3.311 through 1.3.313 in effect February 13, 2018. These rules define model requirements for rulemaking under the Montana Administrative Procedure Act.

AUTH: 2-4-201, MCA

IMP: 2-4-201, MCA

STATEMENT OF REASONABLE NECESSITY: The agency proposes to amend this rule to ensure its compliance with current Attorney General's and Secretary of State's Model Rules and to update where rules may be accessed. In addition, this amendment consolidates model rules for declaratory rulings currently found in ARM 2.69.202 into this rule to make the information available in a single rule. The agency believes these model rules fit its operations well and therefore sees no need to draft its own procedural and rulemaking rules.

2.69.203 DEFINITIONS (1) remains the same.

(2) "Income" includes, but is not limited to, all household wages; business or self-employment income; unemployment, social security or workers' compensation benefits; Supplemental Nutrition Assistance Program (SNAP) benefits; government assistance payments; dividends; pension, retirement, or interest income; and rental income. Child support, the percentage of veteran's benefits related to disability, and student financial aid are excluded from income. Applicant's income is subject to periodic review.

(2) remains the same but is renumbered (3).

(4) "Substantial hardship" means that an evaluation of multiple criteria has determined that retaining competent private counsel would incur substantial hardship to the applicant or the members of the applicant's household. The criteria to be considered include, but are not limited to:

(a) gross household income less reasonable and necessary expenses;

(b) extent and liquidity of assets;

(c) severity of crime(s) charged;

(d) estimated cost of retaining private counsel; and

(e) incarceration status.

AUTH: 47-1-105, MCA

IMP: 47-1-105, 47-1-111, ~~47-1-216~~, 47-1-121, MCA

STATEMENT OF REASONABLE NECESSITY: The agency proposes to add definitions to this rule to improve the eligibility determination process by providing standard criteria for use by eligibility specialists statewide. The sources proposed to be included or excluded in the definition of "income" are based on existing national standards and practices currently in use across the country. The agency therefore does not see a need to craft its own standards and practices. Applicants who do not qualify under the gross income poverty guidelines are evaluated more extensively to determine whether substantial hardship may exist in the retention of private counsel.

A hardship determination necessarily requires the consideration of multiple factors beyond just income. Accordingly, to provide guidance and achieve consistent application of this process, the agency, also using current national standards and practices, determined that listing the most common factors considered in making hardship determinations in the definition of "substantial hardship" is appropriate.

Because 47-1-216, MCA, was renumbered in Chapter 358, Laws of 2017, the reference to that statute must be changed to reflect the new section number, 47-1-121, MCA.

2.69.301 DETERMINATION OF INDIGENCY (1) The Central Services Division office shall prepare forms to capture financial information from an applicant for public defender services, including an affidavit as required in 47-1-111(2), MCA. The forms must be reviewed biennially.

(2) Local OPD The offices shall distribute the forms to courthouses, jails, and other venues determined appropriate by the offices.

(3) The applicant will shall complete the forms in accordance with following instructions provided on the forms and forward them to the appropriate regional office indicated on the forms.

(4) The staff of the regional local office shall review an applicant's forms and determine whether, based on the provisions of 47-1-111, MCA, an applicant is indigent and qualifies for public defender services based on the income guidelines in 47-1-111(3)(a), MCA. The applicant will be notified of this determination, regardless of outcome.

(5) The local office shall forward application forms for those who do not qualify based on income to the Central Services Division for an eligibility determination under the substantial hardship qualification in 47-1-111(3)(b), MCA, using criteria in ARM 2.69.203.

(6) The local office shall notify the applicant if the applicant does not qualify for public defender services, and shall file a motion to rescind with the court.

~~(5)(7)~~ All information collected on the forms shall must be treated as confidential except:

(a) and (b) remain the same.

AUTH: 47-1-105, 47-1-111, MCA

IMP: 47-1-105, 47-1-111, MCA

STATEMENT OF REASONABLE NECESSITY: The agency proposes to amend this rule to reflect changes to the eligibility determination process made in Chapter 358, Laws of 2017. Section 47-1-111, MCA, now requires that the Central Services Division verify information for all determinations made under the substantial hardship qualification, including an affidavit. These proposed amendments are necessary to clarify the verification and notification process. The Central Services Division provides only the hardship determination. The remainder of the process, notifying the client and filing the motion to rescind, is up to the local office. Additional amendments are to improve the grammar and clarity of the rule.

4. The agency proposes to repeal the following rules:

2.69.202 PROCEDURES FOR THE ISSUANCE OF DECLARATORY RULINGS found at page 2-7109 of the Administrative Rules of Montana.

AUTH: 2-4-201, MCA

IMP: 2-4-201, MCA

STATEMENT OF REASONABLE NECESSITY: The agency proposes repeal of this rule because declaratory ruling procedures are proposed for inclusion in the revisions to ARM 2.69.201, making this rule unnecessary.

2.69.601 REASONABLE COMPENSATION found at page 2-7161 of the Administrative Rules of Montana.

AUTH: 47-1-105, 47-1-216, MCA

IMP: 47-1-105, 47-1-216, MCA

STATEMENT OF REASONABLE NECESSITY: The agency proposes to repeal this rule to reflect changes made in Chapter 358, Laws of 2017. Section 47-1-216, MCA, was amended to remove the requirement that reasonable compensation for contract attorneys and other related services be established in rule, so this rule is no longer necessary.

5. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Cathy Doyle, Office of the State Public Defender, 44 West Park Street, Butte, MT 59701; telephone (406) 496-6080; facsimile (406) 496-6098; or e-mail to cmdoyle@mt.gov, and must be received no later than 5:00 p.m., March 23, 2018.

6. Carleen Green, Office of the State Public Defender, has been designated to preside over and conduct this hearing.

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

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

9. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor, Representative Randy Brodehl, was contacted on October 31, 2017, by mail and email.

10. The agency has determined that under 2-4-111, MCA, the proposed amendment and repeal will not significantly and directly affect small businesses.

By: /s/ Harry Freebourn
Harry Freebourn, Interim Director
Office of the State Public Defender

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

Certified to the Secretary of State February 13, 2018.

BEFORE THE COMMISSIONER OF SECURITIES AND INSURANCE
MONTANA STATE AUDITOR

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
6.6.2503, 6.6.2504, 6.6.2505,) PROPOSED AMENDMENT
6.6.2506, 6.6.2507, 6.6.2508, and)
6.6.2509, relating to health)
maintenance organizations)

TO: All Concerned Persons

1. On March 16, 2018, at 9:00 a.m., the Commissioner of Securities and Insurance, Montana State Auditor (CSI), will hold a public hearing in the basement floor conference room, at the Office of the Commissioner of Securities and Insurance, Montana State Auditor, 840 Helena Ave., Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The CSI will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the CSI no later than 5:00 p.m. on March 6, 2018, to advise us of the nature of the accommodation that you need. Please contact Ramona Bidon, CSI, 840 Helena Avenue, Helena, Montana, 59601; telephone (406) 444-2726; TDD (406) 444-3246; fax (406) 444-3499; or e-mail rbidon@mt.gov.

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

6.6.2503 DEFINITIONS ~~A contract or evidence of coverage delivered or issued for delivery to any person by a health maintenance organization required to obtain a certificate of authority in this state may not contain definitions respecting the words defined in the Montana Health Maintenance Organization Act or this rule unless the definitions comply with the definitions in the Montana Health Maintenance Organization Act and this rule. Definitions other than those set forth in the Montana Health Maintenance Organization Act or this rule may be used if they do not extend, modify, or conflict with the definitions contained in the Montana Health Maintenance Organization Act and this rule.~~

~~All definitions used in the contract and evidence of coverage must be in alphabetical order. As used in these rules this subchapter, the Montana Health Maintenance Organization Act, and for the purpose of any terms used in the contract and evidence of coverage:~~

~~(1) "Basic health care services" means basic health care services as defined in 33-31-102(2), MCA.~~

(2) remains the same but is renumbered (1).

~~(3) "Copayment" means the amount a subscriber an enrollee must pay to receive a specific service that is not fully prepaid.~~

~~(4) "Dependent" means:~~

- ~~(a) a spouse of the subscriber;~~
- ~~(b) an unmarried dependent child of the subscriber who has not reached age 18 or a greater age agreed to between the health maintenance organization and the contract holder;~~
- ~~(c) an unmarried dependent child of the subscriber over the age of 18, or over a greater age agreed to between the health maintenance organization and the contract holder, who is both incapable of self-support because of mental retardation, mental illness, or physical incapacity and chiefly dependent upon the subscriber for support and maintenance; or~~
- ~~(d) an unmarried dependent child of the subscriber who is attending a recognized college, university, or trade or secondary school on a full-time basis. As used in this definition, "dependent child" means:
 - ~~(i) related to the subscriber as either a natural child, a legally adopted child, or a stepchild; or~~
 - ~~(ii) any other child residing in the subscriber's household who qualifies as a dependent of the subscriber or the subscriber's spouse under the United States Internal Revenue Code and the Federal Tax Regulations.~~~~
- ~~(5) "Enrollee" means an enrollee as defined in 33-31-102, MCA.~~
- ~~(6) "Evidence of coverage" means an evidence of coverage as defined in 33-31-102, MCA.~~
- (3) "Emergency care services" means:
 - (a) if within the service area:
 - (i) covered health care services rendered by affiliated providers under unforeseen conditions that require immediate medical attention; and
 - (ii) covered health care services from non-affiliated providers under unforeseen conditions that require immediate medical attention, but only when delay in receiving care from the health maintenance organization could reasonably be expected to cause severe jeopardy to the enrollee's condition; and
 - (b) medically necessary health care services that are immediately required because of unforeseen illness or injury while the enrollee is outside the service area.
- ~~(7) remains the same but is renumbered (4).~~
- ~~(8) "Health care services" means health care services as defined in 33-31-102(8), MCA.~~
- ~~(9) through (13) remain the same, but are renumbered (5) through (9).~~
- ~~(14) "Provider" means a provider as defined in 33-31-102, MCA. "Person", as used in that definition, means a person as defined in 33-31-102, MCA.~~
- ~~(15) through (17) remain the same, but are renumbered (10) through (12).~~

AUTH: 33-31-103, MCA

IMP: 33-31-101 through 33-31-405, MCA

REASON: The CSI proposes to remove the first two paragraphs of this rule because they are more a prohibition on health maintenance organization contracts than definitions. Those paragraphs have been moved to ARM 6.10.2506. The proposal removes several definitions that are already defined by Montana statute, and includes a definition for "emergency care services" because that term was cited in ARM 6.6.2508 without being defined. The CSI has taken the definition of

"emergency care services" from model law 432 of the National Association of Insurance Commissioners to provide consistency in regulation of health maintenance organizations.

6.6.2504 FILING EXEMPTION FOR HEALTH MAINTENANCE OPERATED BY INSURER OR HEALTH SERVICE CORPORATION AS A PLAN (1) A health maintenance organization operated as a plan (defined in 33-31-102, MCA) need not file with the commissioner, as part of its application for a certificate of authority, the financial statement required by 33-31-201(3)(d)(vi), MCA, if the same financial statement has been filed with the commissioner already under other laws or rules administered by the commissioner.

AUTH: 33-31-103, 33-31-201(7), MCA
IMP: 33-31-201, MCA

REASON: The CSI proposes to remove the subsection citation to 33-31-201, MCA, because it is no longer correct. In addition, the CSI proposes to modify the language to make it clearer that for the financial statement requirement to be waived, this office must have already received that same financial statement.

6.6.2505 MULTIDISCIPLINARY ADVISORY BOARDS (1) The membership of a health maintenance organization advisory board must include multidisciplinary providers or other individual representatives from at least three different health-related fields.

AUTH: 33-31-103, MCA and SB 353, statement of intent, p. 2, lines 15-18
IMP: 33-31-222, MCA

REASON: The CSI proposes to clarify what "multidisciplinary" means in the context of this rule.

6.6.2506 REQUIREMENTS FOR CONTRACTS AND EVIDENCES OF COVERAGE (1) through (2)(f) remain the same.

(g) a description of the any copayments, limitations, or exclusions on the services, kind of services, benefits, or kind of benefits to be provided, including the such as any lawful copayments, limitations, or exclusions due to preexisting conditions, waiting or affiliation periods, or an enrollee's refusal of treatment;

(h) through (k) remain the same.

(l) in compliance with Title 33, chapter 32, MCA and with (4) of ARM 6.6.2509(4), a description of the health maintenance organization's method for resolving enrollee complaints, incorporating procedures to be followed by the enrollee if a dispute arises under the contract, including any requirements for arbitration; and

~~(m) if it is a group contract and group evidence of coverage that does not cover an enrollee, who is an inpatient in a hospital or a skilled nursing facility on the date of cancellation of the group contract, in accordance with the terms of the group~~

contract until discharged from the hospital or skilled nursing facility, a provision clearly disclosing that limitation of benefits.

(n) remains the same but is renumbered (m).

(3) In addition to the requirements under (2), a group contract and evidence of coverage must contain:

(a) a provision that the coverage shall not be cancelled or terminated without giving the enrollee at least 15 days from the day written notice of termination is mailed to the enrollee; and

(b) a provision that an enrollee who is an inpatient in a hospital or a skilled nursing facility on the date of discontinuance of the group contract shall be covered in accordance with the terms of the group contract until discharged from the hospital or skilled nursing facility, and that the enrollee may be charged the appropriate premium for coverage that was in effect prior to discontinuance of the group contract.

(3) through (5) remain the same but are renumbered (4) through (6).

(7) A contract or evidence of coverage delivered or issued for delivery to any person by a health maintenance organization required to obtain a certificate of authority in this state may not contain any definitions that extend, modify, or conflict with those definitions contained in the Montana Health Maintenance Organization Act or ARM 6.10.2503. In addition, all definitions used in the contract and evidence of coverage must be in alphabetical order.

AUTH: 33-31-103, MCA

IMP: 33-31-301~~(3)(c)~~, 33-31-303, 33-31-307, 33-31-312~~(3)~~, MCA

REASON: The CSI proposes to update the rule to current law in several respects. First, the proposal modifies the language in (2)(g) to make it clear that any limitation on benefits must be disclosed, but this rule does not provide any authority to impose such limitations if they are prohibited by law. Second, (2)(l) has been modified to correctly cite the health utilization review laws in Title 33, chapter 32, MCA, which apply to health maintenance organizations. Also, a reference to arbitration clauses was removed, because they are prohibited by 27-5-114, MCA. Third, the group contract provision in (2)(m) has been moved to the new (3) on group contracts, and a requirement to provide notice of contract termination was added to conform to NAIC model law and the requirements for other group health policies contained in 33-22-530, MCA. Fourth, new (7) is a restatement of the requirement previously contained at the beginning of ARM 6.6.2503. Fifth, the changes to the implementing statutes are to make the statutory references current with existing law. The other changes that are proposed are nonsubstantive, to provide uniformity in the organization of the rule.

Finally, the CSI acknowledges that current federal law prohibits exclusions for preexisting conditions. Given that currently Montana statutes conflict with federal law in this area, the CSI has made the determination to make sure its rules continue to comply with Montana law. However, this does not mean that the CSI will enforce Montana law over federal law in this area, just that these rules will comply with Montana statutes in the event that federal laws on the issue ever change.

6.6.2507 PROHIBITED PRACTICES (1)(a) A health maintenance organization may not include in its contract and evidence of coverage a provision setting forth exclusions or limitations of services for preexisting conditions at the time of enrollment, except as permitted under 33-22-246, 33-22-514, or 33-22-1811, MCA.

(2)(b) In addition to the requirements of (1), a health maintenance organization may not exclude or limit services for a preexisting condition when the enrollee transfers coverage from one individual contract to another or when the enrollee converts coverage under his conversion option, except to the extent of a preexisting condition limitation or exclusion remaining unexpired under the prior contract, unless it clearly discloses that exclusion or limitation in the evidence of coverage.

(2) and (3) remain the same, but are renumbered (3) and (4).

AUTH: ~~33-22-1811~~, 33-31-103, MCA

IMP: 33-18-203, 33-22-1811, 33-31-111(7), 33-31-301(3)(e), 33-31-312, MCA

REASON: The CSI proposes to modify the preexisting condition exclusionary language to comport with NAIC model law 432. The proposal renumbers the sections and removes citations to subsections of implementing statutes to conform to Montana rule drafting guidelines. Also, the rule fixes an error citing to 33-18-1811, MCA, as an authorizing statute, when the rule properly just implements 33-31-103, MCA. Finally, the CSI cites to the discussion about preexisting conditions in ARM 6.6.2506.

6.6.2508 SERVICES (1)(a) A health maintenance organization shall establish and maintain adequate arrangements to provide the health services contracted for by its subscribers including:

(i) through (iv) remain the same but are renumbered (a) through (d).

(b) and (c) remain the same but are renumbered (2) and (3).

(i) through (iii) remain the same but are renumbered (a) through (c).

~~(iv)(d)~~ treatment of minor illnesses; and

~~(v)(e)~~ treatment of chronic illnesses.

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

~~(3)(5)~~ Out-of-area services are subject to the same copayment requirements set forth in subsection (3) of ARM 6.6.2509.

(6) When an enrollee is traveling or temporarily residing out of a health maintenance organization's service area, the health maintenance organization must provide benefits for reimbursement for emergency care services and transportation that is medically necessary and appropriate under the circumstances to return the enrollee to a health maintenance organization provider. These out-of-area emergency care services and transportation may only be subject to some or all of the following requirements:

(a) the condition could not have been reasonably foreseen;

(b) the enrollee could not reasonably arrange to return to the service area to receive treatment from a health maintenance organization provider; or

(c) the travel or temporary residence must be for some purpose other than the receipt of medical treatments.

~~(4)(7)~~ In addition to the basic health care services required to be provided in ~~(4) subsection (2) of this rule~~, a health maintenance organization may offer to its enrollee any supplemental health care services it chooses to provide. Limitations as to time and cost may vary from those applicable to basic health care services.

AUTH: 33-31-103, MCA

IMP: ~~33-31-102(2)~~, 33-31-202(3), 33-31-301(3), MCA

REASON: The CSI proposes to include (6) to conform with NAIC model law 432, provide greater uniformity of regulation of health maintenance organizations, and ensure that all major health insurance plans cover emergency medical services whether inside or outside of a service area. The proposed changes to the implementing statutes are meant to remove references to statutes and particular subsections of statutes that do not apply to this rule. Finally, the CSI proposes nonsubstantive changes to this rule to conform with Montana rule drafting guidelines and make the rule more readable.

6.6.2509 OTHER REQUIREMENTS (1)(a) A health maintenance organization shall provide its subscribers with a list of the names and locations of all of its providers no later than the time of enrollment or the time the contract and evidence of coverage are issued and upon request thereafter.

(a) If a provider is no longer affiliated with a health maintenance organization, the health maintenance organization shall provide notice of such change to its affected subscribers in a timely manner.

(b) Subject to the approval of the commissioner, a health maintenance organization may provide its subscribers with a list of providers or provider groups for a segment of the service area. However, a health maintenance organization shall must make a list of all providers available to subscribers upon request.

(b) remains the same but is renumbered (c).

(2) and (3) remain the same.

~~(4)(a) A health maintenance organization must establish and maintain a complaint system to provide reasonable procedures for the prompt and effective resolution of written complaints.~~

~~(b) A health maintenance organization shall provide complaint forms to be given to enrollees who wish to register written complaints. The forms must include the address and telephone number to which complaints must be directed and must also specify any required time limits imposed by the health maintenance organization.~~

~~(c) The complaint system must require the health maintenance organization to acknowledge a complaint in writing within 10 days and resolve or make a final determination of the complaint within 60 days from the date the complaint is registered. This period may be extended if~~

~~(i) there is a delay in obtaining the documents or records necessary for resolving the complaint; or~~

~~(ii) the health maintenance organization and the enrollee mutually agree in writing.~~

~~(d) Pending the resolution of a written complaint filed by a subscriber or enrollee, coverage may not be terminated for any reason which is the subject of the written complaint, unless the health maintenance organization has, in good faith, made a reasonable effort to resolve the written complaint through its complaint system and coverage is being terminated as provided for in subsection (2) of ARM 6.6.2507.~~

~~(e) If an enrollee's complaint and grievance may be resolved through a specified arbitration agreement, the enrollee shall be advised in writing of his rights and duties under the agreement at the time the complaint is registered. An agreement must be accompanied by a statement setting forth in writing the terms and conditions of binding arbitration. A health maintenance organization that makes binding arbitration a condition of enrollment must fully disclose this requirement to its enrollees in the contract and evidence of coverage.~~

(4) Health maintenance organizations are required to file annual audited financial reports, as set forth in ARM 6.6.3501 through 6.6.3521.

AUTH: 33-31-103, MCA

IMP: 33-31-202(3)(c), ~~33-31-301(3)(a), 33-31-301(5)(a)~~, 33-31-211, 33-31-301, 33-31-303, MCA

REASON: The CSI proposes to restructure (1) to make it more in line with Montana rule drafting standards and make it more readable. The proposal strikes old (4) relating to complaints because it has been superseded by the health utilization review laws contained in Title 33, chapter 32, MCA, which apply to health maintenance organizations. The addition of new (4), along with the changes to 33-31-211, MCA, by the 2017 Montana legislature, is meant to put health maintenance organizations on equal footing with other health insurers with respect to their financial reporting requirements. Finally, the proposed changes to the implementing statutes are meant to remove references to statutes that no longer apply, and to include a statutory reference based on new (4).

4. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Michael A. Kakuk, Attorney, Office of the Commissioner of Securities and Insurance, Montana State Auditor, 840 Helena Ave., Helena, Montana, 59601; telephone (406) 444-5223; fax (406) 444-3499; or e-mail mkakuk@mt.gov, and must be received no later than 5:00 p.m., March 23, 2018.

5. Michael A. Kakuk, Attorney, has been designated to preside over and conduct this hearing.

6. The CSI maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list may sign up by clicking on the blue button on the CSI's website at: <http://csimt.gov/laws-rules/> to specify for which program the person

wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Request may also be sent to the CSI in writing. Such written request may be mailed or delivered to the contact information in 2 above, or may be made by completing a request form at any rules hearing held by the CSI.

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

8. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of the above-referenced rules will significantly and directly impact small businesses.

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

/s/ Kris Hansen
Kris Hansen
Chief Legal Counsel

Certified to the Secretary of State on February 13, 2018.

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the amendment of ARM)	NOTICE OF PUBLIC HEARINGS
17.30.660 pertaining to nutrient)	ON PROPOSED AMENDMENT
standards variances)	
)	(WATER QUALITY)

TO: All Concerned Persons

1. On April 10, 2018, at 11:00 a.m., the Department of Environmental Quality (department) will hold a public hearing in Room 111 of the Metcalf Building, 1520 E. Sixth Avenue, Helena, Montana, and a second public hearing at Whitefish City Hall Council Chambers, 418 E. Second St., 2nd Floor, Whitefish, Montana on April 11, 2018, at 11:00 a.m., to consider the proposed amendment of the above-stated rule.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Sandy Scherer no later than 5:00 p.m., April 3, 2018, to advise us of the nature of the accommodation that you need. Please contact Sandy Scherer at the Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2630; fax (406) 444-4386; or e-mail sscherer@mt.gov.

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

17.30.660 NUTRIENT STANDARDS VARIANCES (1) A person may apply to the department for a nutrient standards variance at any time following the board's adoption of base numeric nutrient standards. In addition to this rule, variances are subject to the procedures and requirements contained in Department Circular DEQ-12B (~~June 2017~~ May 2018 edition).

(2) An application for a general variance must provide information demonstrating that the wastewater treatment facility meets the requirements of Department Circular DEQ-12B (~~June 2017~~ May 2018 edition). The decision to grant the general variance must be reflected in the permit that is made available for public comment.

(3) remains the same.

(4) The department may approve the adoption of an individual variance that specifies interim effluent limits different from those contained in general variance limits contained in Department Circular DEQ-12B (~~June 2017~~ May 2018 edition), if water quality modeling demonstrates that greater emphasis on the reduction of one nutrient may achieve similar water quality and biological improvements as would the equal reduction of both nitrogen and phosphorus. The variance must provide effluent limits that reflect the lowest effluent concentration that is feasible based on achieving the highest attainable condition for the receiving water. A person shall submit the proposed effluent limits and supporting data in an application for an

individual nutrient variance under (3). A person who has an individual variance with effluent limits that are based on this section shall, in each subsequent triennial review of those limits conducted pursuant to 75-5-313(7), MCA, collect and submit water quality data to demonstrate whether the biological status of the receiving water continues to justify those effluent limits.

(5) through (7) remain the same.

(8) The department adopts and incorporates by reference Department Circular DEQ-12B, entitled "Nutrient Standards Variances" (~~June 2017~~ May 2018 edition), which provides procedures and requirements for nutrient standards variances. Copies of Department Circular DEQ-12B are available at the Department of Environmental Quality, 1520 East 6th Avenue, P.O. Box 200901, Helena, MT 59620-0901.

AUTH: 75-5-201, 75-5-301, MCA

IMP: 75-5-313, MCA

REASON: Department Circular DEQ-12B provides MPDES permit holders with the end-of-pipe treatment requirements their effluent must meet if they are to qualify for a general variance from the state's base numeric nutrient standards (base numeric nutrient standards are found in Circular DEQ-12A). Circular DEQ-12B was updated and re-adopted, with modifications to the end-of-pipe treatment requirements in June 2017. The end-of-pipe treatment requirements in the June 2017 edition of the circular are more stringent than they were in the previous (July 2014) edition. In addition to general variance requirements, Circular DEQ-12B also provides for MPDES permit holders to pursue individual variances which are based on the permittee's particular economic situation. The proposed amendments do not alter any of the general variance requirements. Per this notice, the department is proposing to modify text in the circular pertaining to individual variances. Also, an individual variance for one community, the city of Whitefish (Whitefish), has been requested, and is proposed to be included in Circular DEQ-12B. Changes to the text in the circular pertaining to individual variances are addressed first.

The department submitted the June 2017 version of Circular DEQ-12B to the U.S. Environmental Protection Agency (EPA) for review, and received EPA's action letter on 10/31/2017. In the action letter, EPA took no action on the department's individual variance provisions (which are found in Section 3.0 of Circular DEQ-12B). Since then, EPA has indicated to the department that wording changes to Section 3.0 would provide better alignment between that section's text and the federal variance rules at 40 CFR 131.14. Although the department considers these suggested changes minor in nature and would not alter the basic methods by which the department grants individual variances, the department recognizes the EPA's approval authority for Clean Water Act purposes. Accordingly, wording changes have been made in subsection 3.1 of Circular DEQ-12B and are being proposed in this rulemaking to better accord with language at 40 CFR 131.14, and in particular with terminology at 40 CFR 131.14(b)(1)(ii).

Additional proposed changes to Section 3.0 of the circular include clarification

on HAC (highest attainable condition) requirements for individual variances and the removal of Section 3.2. Section 3.2 addressed a computer modeling method for deriving individual variance treatment requirements. However, upon review, the department found that this section is redundant to existing rule. ARM 17.30.660(4) provides nearly the same level of detail as did Section 3.2 and, further, the department has a guidance document that provides a very high level of detail on the computer modeling method. Because it was redundant and provided no "value added," Section 3.2 would be stricken. Section 3.1 would now contain a sentence which makes clear that ARM 17.30.660(4)'s computer-model based individual variance process is linked to other methods the department uses to develop individual variances.

As noted above, Circular DEQ-12B would also be amended to contain an individual variance for Whitefish that would apply to its proposed new wastewater treatment facility. Whitefish was granted a general nutrient standards variance under the previous (July 2014) edition of Circular DEQ-12B. This general variance applies to its current facility (an aerated lagoon followed by mechanical phosphorus removal and chlorination/de-chlorination). The general variance was implemented in the current MPDES permit issued for Whitefish's wastewater treatment plant, MPDES Permit No. MT0020184. This MPDES permit will expire on 7/31/2020. During the next permit renewal process, the department may no longer implement the 2014 version of the general variance. As a result of planned upgrades to Whitefish's wastewater lagoon and the recent changes to the general variance treatment requirements, Whitefish is now requesting an individual variance.

The department has consulted with Whitefish and has determined that no reasonable alternative to an individual nutrient variance exists. Whitefish has further demonstrated that attaining the base numeric nutrient standards is not feasible and would cause substantial and widespread economic impacts. Individual variances are generally intended for permittees who would have financial difficulties meeting the current general variance treatment requirements, i.e., those in the June 2017 edition of Circular DEQ-12B, and are seeking individual nitrogen and phosphorus permit limits tailored to their specific economic situation. For individual variances, the department has defined an economic evaluation process that it uses to derive the minimum dollar value that should be expended for the purpose of achieving base numeric nutrient standards. This same dollar value is used as the basis for an individual variance. The dollar value is a function of the community's median household income (MHI) and was, in 2017, equal to 1.3 percent of Whitefish's MHI. The wastewater facility Whitefish would prefer to build (sequencing batch reactor—a type of mechanical facility) would cost the community on the order of 2.6 percent MHI, well above the 1.3 percent minimum requirement. However, the new facility would still not allow the city to meet base numeric nutrient standards, nor would it meet the general variance treatment requirements in the June 2017 edition of Circular DEQ-12B. For these reasons, Whitefish is requesting an individual nutrient standards variance for the proposed new facility.

The department has reviewed Whitefish's application for an individual nutrient

standards variance based on building and operating the facility described above and has found that Whitefish's justification for an individual variance is acceptable. The individual variance is planned to be implemented in two phases. In phase I, which is the subject of this amendment, the MPDES permit would be based on the new facility's design treatment specifications of 10 mg TN/L and 1 mg TP/L. Nutrient load limits in the next MDPES permit would then be based upon these treatment specifications. Approximately seven years later, phase II would be implemented. For phase II, the MPDES permit would be based on the actual achieved concentrations (presumably better than 10 mg TN/L and 1 mg TP/L) that have resulted from operational stabilization and optimization. Provided the substantial and widespread economic impact analyses remain unchanged, the phase II variance requirements would not result in the need for a significant increase in user rates.

The department has also determined that, as a component of the variance, Whitefish would be assigned a fixed coefficient of variation (CV; that is, the standard deviation/mean) of 0.6, which would be used when deriving Whitefish's average monthly permit limit. This would allow for expected effluent discharge variability as Whitefish's nutrient discharge concentrations decrease. It is known that the CV of effluent nutrient samples is likely to increase as lower nutrient concentrations are achieved. The fixed CV should alleviate the issue because it institutes a CV that is realistic for the point in time in the future when Whitefish achieves low nutrient concentrations in its effluent.

Individual variances must be adopted into Circular DEQ-12B on a case-by-case basis following the department's formal rulemaking process. This MAR notice is part of that rulemaking process.

A copy of proposed Department Circular DEQ-12B (May 2018) and the technical document containing the Whitefish individual variance application, entitled "City of Whitefish Wastewater Treatment Facilities Individual Variance Request from Numeric Nutrient Standards Substantial and Widespread Economic Impact," may be viewed at the department's website: <http://deq.mt.gov/Water/WQINFO/nutrientworkgroup>. Copies may also be obtained by contacting Myla Kelly at (406) 444-3639 or MKelly2@mt.gov.

4. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Sandy Scherer, Legal Secretary, Department of Environmental Quality, 1520 E. Sixth Avenue, P.O. Box 200901, Helena, Montana 59620-0901; faxed to (406) 444-4386; or e-mailed to sscherer@mt.gov, no later than 5:00 p.m., April 13, 2018. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

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

person wishes to receive notices regarding: air quality; hazardous waste/waste oil; asbestos control; water/wastewater treatment plant operator certification; solid waste; junk vehicles; infectious waste; public water supply; public sewage systems regulation; hard rock (metal) mine reclamation; major facility siting; opencut mine reclamation; strip mine reclamation; subdivisions; renewable energy grants/loans; wind energy bonding, wastewater treatment or safe drinking water revolving grants and loans; water quality; CECRA; underground/above ground storage tanks; MEPA; or general procedural rules other than MEPA. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to Sandy Scherer, Legal Secretary, Department of Environmental Quality, 1520 E. Sixth Ave., P.O. Box 200901, Helena, Montana 59620-0901, faxed to the office at (406) 444-4386, e-mailed to Sandy Scherer at sscherer@mt.gov, or may be made by completing a request form at any rules hearing held by the department.

6. Kurt Moser, attorney for the department, has been designated to preside over and conduct the hearings.

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

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

Reviewed by:

DEPARTMENT OF ENVIRONMENTAL
QUALITY

/s/ John F. North
JOHN F. NORTH
Rule Reviewer

BY: /s/ Tom Livers
TOM LIVERS
Director

Certified to the Secretary of State, February 13, 2018.

BEFORE THE BOARD OF PERSONNEL APPEALS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 24.26.612, 24.26.614,) PROPOSED AMENDMENT
24.26.618, 24.26.643, and 24.26.680)
pertaining to public sector collective)
bargaining)

TO: All Concerned Persons

1. On April 6, 2018, at 10:00 a.m., the Board of Personnel Appeals (board) will hold a public hearing in the A and B conference rooms (upper floor) of the Beck Building, 1805 Prospect Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Labor and Industry no later than 5:00 p.m. on April 2, 2018, to advise us of the nature of the accommodation that you need. Please contact Patty Flynn-Anderson, Department of Labor and Industry, P.O. Box 201503, Helena, Montana, 59620-1503; telephone (406) 444-0032; fax (406) 444-4140; TDD/Montana Relay Service (406) 444-5549; or e-mail PFlynn-Anderson@mt.gov.

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

24.26.612 PETITIONS FOR NEW UNIT DETERMINATION AND ELECTION

(1) and (2) remain the same.

(3) The ~~original~~ petition and ~~three copies of the petition~~ shall be filed with the board.

(4) through (6) remain the same.

AUTH: 39-31-104, MCA

IMP: 39-31-207, MCA

REASON: The board believes there is reasonable necessity to amend this rule in order to eliminate for petitioners the unnecessary burden of filing three copies of a petition when a filing of only the original petition is necessary for the board's administrative purposes, and copies sent to board members can now be sent via secure electronic means.

24.26.614 EMPLOYER COUNTER PETITION (1) through (4) remain the same.

(5) A board agent shall have ten days to work with the parties to resolve issues raised in the counter petition. If the parties do not reach a resolution within ten days, the board agent shall transfer the counter petition to the Office of Administrative Hearings. A hearing examiner shall conduct an informal expedited hearing and issue a determination within 30 days of the counter petition's certification by the Office of Administrative Hearings. A hearing examiner may, at the hearing examiner's discretion or upon good cause shown by a party, extend the initial deadline for an additional period not to exceed a total of 60 days from the counter petition's certification by the Office of Administrative Hearings.

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

AUTH: 39-31-104, MCA

IMP: 39-31-207, MCA

REASON: The board believes there is reasonable necessity to amend this rule in order to eliminate unnecessary administrative delays in the processing of petitions for election and to conform the board's administrative process to recently adopted rules by the National Labor Relations Board. This amendment provides an opportunity for the parties to resolve pre-election disputes in accordance with the board's policy to "encourage the practice and procedure of collective bargaining to arrive at friendly adjustment of all disputes between public employers and their employees" under 39-31-101, MCA. In the event voluntary resolution is unsuccessful, this amendment establishes a timeframe for a hearing officer's determination as to the pre-election disputes, where no timeframe previously existed under this rule. The board believes establishing such a timeframe will prevent the unwarranted delay of elections and promote a healthy collective bargaining environment for public employers and their employees.

24.26.618 PETITION TO INTERVENE (1) Within ~~20~~ ten days from the first day of posting of the notice of unit determination proceedings, any labor organization or group of employees may file a petition to intervene.

(2) through (5) remain the same.

AUTH: 39-31-104, MCA

IMP: 39-31-207, MCA

REASON: The board believes there is reasonable necessity to amend this rule in order to eliminate unnecessary administrative delays in the processing of petitions for unit determinations, while the board is otherwise amending its procedural rules to generally streamline its processes.

24.26.643 PETITION FOR DECERTIFICATION (1) through (4) remain the same.

(5) The ~~original~~ petition ~~and three copies of the petition~~ shall be filed with the board.

(6) through (8) remain the same.

AUTH: 39-31-104, MCA
IMP: 39-31-207, MCA

REASON: The board believes there is reasonable necessity to amend this rule in order to eliminate for petitioners the unnecessary burden of filing three copies of a petition when a filing of only the original petition is necessary for the board's administrative purposes, and copies sent to board members can now be sent via secure electronic means.

24.26.680 COMPLAINT (1) remains the same.

(2) A complaint shall be in writing. The ~~original~~ complaint shall be signed and verified by the complainant or the authorized representative. The ~~original and three copies of the~~ complaint shall be filed with the board.

(3) through (5) remain the same.

AUTH: 39-31-104, MCA
IMP: 39-31-406, MCA

REASON: The board believes there is reasonable necessity to amend this rule in order to eliminate for complainants the unnecessary burden of filing three copies of a complaint when a filing of only the original complaint is necessary for the board's administrative purposes, and copies sent to board members can now be sent via secure electronic means.

4. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Amber Carpenter, Department of Labor of Industry, P.O. Box 201503, Helena, Montana, 59620-1503; telephone (406) 444-1376; fax (406) 444-7071; or e-mail acarpenter@mt.gov, and must be received no later than 5:00 p.m., April 13, 2018.

5. The department and the board maintain a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program or areas of law the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the Department of Labor and Industry, attention: Mark Cadwallader, 1315 E. Lockey Avenue, P.O. Box 1728, Helena, Montana 59624-1728, faxed to the department at (406) 444-1394, e-mailed to mcadwallader@mt.gov, or may be made by completing a request form at any rules hearing held by the agency.

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

7. With regard to the requirements of 2-4-111, MCA, the department, on behalf of the board, has determined that the amendment of the above-referenced

rules will not significantly and directly impact small businesses as the rules relate only to public sector employees.

8. The department's hearings bureau has been designated to preside over and conduct this hearing.

BOARD OF PERSONNEL APPEALS
ANNE L. MACINTYRE, CHAIRPERSON

/s/ Mark Cadwallader
Mark Cadwallader
Alternate Rule Reviewer

/s/ Galen Hollenbaugh
Galen Hollenbaugh
Commissioner
Department of Labor and Industry

Certified to the Secretary of State February 13, 2018.

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

In the matter of the amendment of	)	NOTICE OF PUBLIC HEARING ON
ARM 24.138.407 Functions for Dental	)	PROPOSED AMENDMENT AND
Hygienists, 24.138.425 Limited Access	)	ADOPTION
Permit Treatment Guidelines –)	
Practicing Under Public Health)	
Supervision, 24.138.509 Dental)	
Hygiene Limited Access Permit,)	
24.138.2102 Subject Matter)	
Acceptable for Dentist and Dental)	
Hygienist Continuing Education,)	
24.138.2104 Requirements and)	
Restrictions, and the adoption of New)	
Rule I Limited Prescriptive Authority –)	
Qualifications – Allowable Percentages)	
of Topical Agents)	

TO: All Concerned Persons

1. On March 16, 2018, at 10:00 a.m., a public hearing will be held in the Small Conference Room, 301 South Park Avenue, 4th Floor, Helena, Montana, to consider the proposed amendment and adoption of the above-stated rules.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Dentistry (board) no later than 5:00 p.m., on March 9, 2018, to advise us of the nature of the accommodation that you need. Please contact Dennis Clark, Board of Dentistry, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2390; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; or dlibsdden@mt.gov (board's e-mail).

3. GENERAL REASONABLE NECESSITY STATEMENT: The 2017 Montana Legislature enacted Chapter 288, Laws of 2017 (Senate Bill 120), an act to allow dental hygienists to administer local anesthetics under general supervision and allow limited prescriptive authority for topical agent prescriptions for specific fluoride agents, oral anesthetics, and nonsystemic oral antimicrobials. The bill was signed by the Governor on May 4, 2017, became effective immediately on signature, and is codified at 37-4-401 and 37-4-405, MCA. The board determined it is reasonably necessary to propose a new rule and amend certain existing rules to coincide with the 2017 legislative changes and implement the bill by determining the education and competency requirements, including continuing education, for dental hygiene prescriptive authority, and the percentage of active ingredients in fluoride agents,

topical oral anesthetic agents, and nonsystemic oral antimicrobials that may be prescribed by a dental hygienist.

Authority and implementation citations are being amended to accurately reflect all statutes implemented through the rule and provide the complete sources of the board's rulemaking authority.

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

24.138.407 FUNCTIONS FOR DENTAL HYGIENISTS (1) through (3)(b) remain the same.

(c) prescribing any drug except fluoride agents, topical oral anesthetic agents, and nonsystemic oral antimicrobials, under the general supervision of a licensed dentist or under public health supervision with a limited access permit, as per 37-4-401, MCA;

(d) administering or dispensing any drugs, without the prior authorization and direct supervision of the supervising dentist. This does not pertain to local anesthetic agents administered by a licensed dental hygienist qualified to administer the agents, topical agents, fluoride agents, topical oral anesthetic agents, nonsystemic oral antimicrobials, or ~~to~~ sulcular medicaments;

(e) through (8) remain the same.

AUTH: 37-1-131, 37-4-205, 37-4-401, 37-4-408, MCA

IMP: 37-1-131, 37-4-401, 37-4-405, 37-4-408, MCA

24.138.425 LIMITED ACCESS PERMIT TREATMENT GUIDELINES – PRACTICING UNDER PUBLIC HEALTH SUPERVISION (1) Pursuant to 37-4-405, MCA, the LAP dental hygienist practicing under public health supervision, including providing prescriptive services, shall adhere to the following medical health guidelines:

(a) through (2)(e)(iv) remain the same.

(v) dental hygiene preventative services provided; ~~and~~

(vi) any agent prescribed, administered, or dispensed including dose amount and refill, date of the action, and rationale for prescribing; and

(vi) remains the same but is renumbered (vii).

(f) remains the same.

AUTH: 37-1-131, 37-4-205, 37-4-401, 37-4-405, MCA

IMP: 37-1-131, 37-4-401, 37-4-405, MCA

24.138.509 DENTAL HYGIENE LIMITED ACCESS PERMIT (1) and (2) remain the same.

(3) A LAP dental hygienist shall maintain 48 hours of continuing education credits for each three-year cycle following initial issuance of a LAP. The 48 hours includes the 36 hours required for a dental hygiene license and an additional 12 hours required for the LAP. If the LAP dental hygienist qualifies for limited prescriptive authority pursuant to 37-4-405, MCA, and [NEW RULE I], the dental

hygienist shall maintain an additional three continuing education credits for each three-year cycle.

(4) and (5) remain the same.

AUTH: 37-4-205, 37-4-401, 37-4-405, MCA

IMP: 37-4-401, 37-4-405, MCA

24.138.2102 SUBJECT MATTER ACCEPTABLE FOR DENTIST AND DENTAL HYGIENIST CONTINUING EDUCATION (1) through (1)(a)(xvi) remain the same.

(xvii) practice management; ~~and~~
(xviii) dental anesthesiology; ~~and~~
(xix) pharmacology.

(b) through (d) remain the same.

AUTH: 37-1-319, 37-4-205, 37-4-401, MCA

IMP: 37-1-306, 37-1-319, 37-4-401, MCA

24.138.2104 REQUIREMENTS AND RESTRICTIONS (1) and (1)(a) remain the same.

(b) for dental hygienists, 36 per three-year cycle. Dental hygienists who have a limited access permit must complete an additional 12 continuing education hours pursuant to ARM 24.138.509. Dental hygienists who qualify for limited prescriptive authority pursuant to 37-4-401 and 37-4-405, MCA, must complete an additional three continuing education hours pursuant to [NEW RULE I]; or

(c) through (6) remain the same.

AUTH: 37-1-319, 37-4-205, 37-4-401, 37-29-201, MCA

IMP: 37-1-306, 37-1-319, 37-4-401, MCA

5. The proposed new rule is as follows:

NEW RULE I LIMITED PRESCRIPTIVE AUTHORITY – QUALIFICATIONS – ALLOWABLE PERCENTAGES OF TOPICAL AGENTS (1) Education and competency for dental hygiene prescriptive authority will be accomplished by:

(a) meeting the requirements of ARM 24.138.407(1)(a) and shall include a pharmacology course;

(b) maintaining three credit hours of continuing education each three-year renewal cycle to include courses in:

- (i) fluoride agents;
 - (ii) topical oral anesthetics; or
 - (iii) nonsystemic oral antimicrobials; and
- (c) meeting the requirements of ARM 24.138.2104.

(2) The hygienist shall attest they meet the qualifications for limited prescriptive authority on the initial application for licensure and the continuing education requirement on the annual license renewal application.

(3) Allowable percentages of prescribed agents are:

- (a) topical anti-caries treatments (using sodium fluoride unless otherwise stated):
 - (i) toothpastes - 1.1 percent (or stannous fluoride 0.4 percent);
 - (ii) topical gels - 1.1 percent (or stannous fluoride 0.4 percent);
 - (iii) oral rinses – 0.05 percent, 0.2 percent, 0.44 percent, or 0.5 percent, or oral rinse concentrate at 0.63 percent stannous fluoride;
 - (iv) fluoride varnish – 5 percent;
 - (v) prophylactic paste – 1.25 percent; and
 - (vi) fluoride paste – 5 percent;
- (b) topical oral anesthetic agents:
 - (i) up to 20 percent benzocaine;
 - (ii) up to 2 percent viscous lidocaine; and
 - (iii) cetacaine to include 14 percent benzocaine, 2 percent butamben, and 2 percent tetracaine hydrochloride; and
- (c) nonsystemic oral antimicrobials:
 - (i) chlorhexidine gluconate rinses – 0.12 percent.

AUTH: 37-1-131, 37-4-205, 37-4-401, 37-4-408, MCA

IMP: 37-1-131, 37-4-401, 37-4-405, 37-4-408, MCA

6. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Board of Dentistry, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or e-mail to dlibsdden@mt.gov, and must be received no later than 5:00 p.m., March 23, 2018.

7. An electronic copy of this notice of public hearing is available at www.dentistry.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.

8. The board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this board. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies 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 Dentistry, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; faxed to the office at (406) 841-2305; e-mailed to dlibsdden@mt.gov; or made by completing a request form at any rules hearing held by the agency.

9. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted on June 6, 2017, by telephone and by electronic mail.

10. Regarding the requirements of 2-4-111, MCA, the board has determined that the amendment of ARM 24.138.407, 24.138.425, 24.138.509, 24.138.2102, and 24.138.2104 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 RULE I will not significantly and directly impact small businesses.

Documentation of the board's above-stated determinations is available upon request to the Board of Dentistry, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2390; facsimile (406) 841-2305; or to dlibsdden@mt.gov.

11. Dennis Clark, Executive Officer, has been designated to preside over and conduct this hearing.

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 February 13, 2018.

BEFORE THE DEPARTMENT OF LIVESTOCK
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF PROPOSED
ARM 32.2.102 pertaining to board) AMENDMENT
oversight of agency actions)
) NO PUBLIC HEARING
) CONTEMPLATED

TO: All Concerned Persons

1. The Department of Livestock proposes to amend the above-stated rule.

2. The Department of Livestock will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Livestock no later than 5:00 p.m. on March 16, 2018 to advise us of the nature of the accommodation that you need. Please contact the Department of Livestock, 301 N. Roberts St., Room 308, P.O. Box 202001, Helena, MT 59620-2001; telephone: (406) 444-9321; TTD number: 1 (800) 253-4091; fax: (406) 444-1929; e-mail: MDOLcomments@mt.gov.

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

32.2.102 BOARD OVERSIGHT OF AGENCY EMPLOYEE ACTIONS

(1) When a ~~private citizen feels~~ person can demonstrate that a decision an action of an ~~agent~~ employee of the Department of Livestock is unfair and if carried to completion will result in unnecessary inconvenience or harm to ~~him, he may seek~~ the reversal of the decision by requesting the board of livestock in writing to stop the implementation of the decision, or to otherwise modify its impact. Upon receipt of the letter, the matter must be placed upon the agenda of the next regular meeting of the board ~~them, that person must appeal the action of the employee in writing to the~~ employee's immediate supervisor within 30 days of the action. Any subsequent appeal must be made to each successive immediate supervisor, up to an appeal to the board.

(2) ~~If the action complained of must be halted immediately in order to prevent irreparable harm, the person seeking relief must so state in his letter. In the event the board is not in session at the time the letter is received, the administrator of the division at which the complaint is directed must immediately contact the chairman of the board, or in his absence the vice chairman, who must appoint a member of the board to investigate the act upon the matter as follows:~~

(a) ~~He must meet as soon as possible with the person seeking relief and the division administrator at a time and place convenient to the parties involved. At the board member's option the meeting may be by conference telephone call.~~

(b) ~~To the extent that the action taken is discretionary and not required by law, the board member may, if satisfied the action is unfair and will cause~~

~~unnecessary inconvenience or harm, suspend implementation of the action until the next regular meeting of the board, at which time the full board must consider the matter. In the event the administrator wishes to challenge the decision at the next regular board meeting, he must immediately notify the person seeking relief so he may be present if he desires.~~

~~(c) When an administrator whose decision has been reversed by the board member feels the reversal will result in an immediate and serious peril to the public health, welfare or safety he may request an immediate meeting of the board to consider the action. The person seeking relief may also request a meeting with the board if he is dissatisfied with the board member's decision. Such a meeting may be conducted by conference telephone call, provided the person seeking relief is given the opportunity to participate.~~

AUTH: 2-4-201, MCA

IMP: 2-4-201, 2-15-3101, MCA

REASON: The department proposes to amend the rule to ensure that the department employees most familiar with the circumstances of an appeal will evaluate the appeal first. The amendment would provide that an appeal proceed up the chain of command prior to reaching the board, creating a record for the board to review. Providing an appeal up the chain of command is anticipated to reduce the department's initial response time to an appeal. Providing a timeline for filing the appeal is anticipated to ensure that appeals are presented timely. The requirement that appeals be in writing is retained from the current rule.

4. Concerned persons may submit their data, views, or arguments in writing concerning the proposed action to Department of Livestock, 301 N. Roberts St., Room 306, P.O. Box 202001, Helena, MT 59620-2001, by faxing to (406) 444-1929, or by e-mailing to MDOLcomments@mt.gov to be received no later than 5:00 p.m., March 23, 2018.

5. If persons who are directly affected by the proposed action wish to express their data, views, and arguments orally or in writing at a public hearing, they must make a written request for a hearing and submit this request along with any written comments they have to the same address as above. The written request for hearing must be received no later than 5:00 p.m., March 23, 2018.

6. If the department 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 public hearing will be held at a later date. Notice of the public hearing will be published in the Montana Administrative Register. Because the number of persons who are directly affected by the proposed action cannot be determined, for purposes of this rulemaking the department will schedule a hearing if requested by 25 or more persons.

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

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

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

/s/ Michael S. Honeycutt

Michael S. Honeycutt
Executive Officer
Board of Livestock
Department of Livestock

BY: /s/ Donna Wilham

Donna Wilham
Rule Reviewer

Certified to the Secretary of State February 13, 2018.

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

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 37.51.203, 37.51.310, and) PROPOSED AMENDMENT
37.51.1401 pertaining to foster care)
licensing requirements)

TO: All Concerned Persons

1. On March 15, 2018, at 10:00 a.m., the Department of Public Health and Human Services will hold a public hearing in Room 207 of the Department of Public Health and Human Services Building, 111 North Sanders, at Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Public Health and Human Services no later than 5:00 p.m. on March 2, 2018, to advise us of the nature of the accommodation that you need. Please contact Todd Olson, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-9503; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

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

37.51.203 YOUTH FOSTER HOMES: LICENSURE AND RENEWAL

(1) The department shall issue a youth foster home, kinship foster home, or therapeutic foster home license to any license applicant that the department determines meets all licensing requirements established by these rules. The initial license will expire one year from the date it is issued unless it is extended up to an additional 60 days pursuant to ~~(3)~~ (5).

(2) remains the same.

(3) The department shall renew a youth foster home or kinship home license biannually on the expiration date of the initial year's license if:

(a) the foster parents apply for renewal of the foster home license on a form provided by the department at least 30 days prior to the expiration date of the current license; and

(b) following completion of a relicensing study, the department determines that the foster home continues to meet all licensing requirements established by these rules.

~~(3)~~ (4) The department shall renew the therapeutic foster care licenses annually on the expiration date of the previous year's license if:

(a) and (b) remain the same.

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

AUTH: 52-1-103, 52-2-111, 52-2-601, 52-2-621, 52-2-622, MCA
IMP: 52-1-103, 52-2-111, 52-2-601, 52-2-621, 52-2-622, MCA

37.51.310 YOUTH FOSTER HOMES: CRIMINAL BACKGROUND CHECKS

(1) through (6) remain the same.

(7) ~~If an applicant has children,~~ A child protective services check will be requested from all states in which an applicant or any adult household member has lived ~~since the birth date of the applicant's oldest child~~ in the past five years.

~~(8) If an applicant does not have children, a child protective services check will be requested from all states in which the applicant has lived in the previous 15 years.~~

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

AUTH: 52-1-103, 52-2-111, 52-2-601, 52-2-621, 52-2-622, MCA
IMP: 52-1-103, 52-2-111, 52-2-601, 52-2-621, 52-2-622, MCA

37.51.1401 YOUTH FOSTER HOMES: REQUIRED TRAINING

(1) Each applicant shall attend ~~an orientation and~~ the required preservice training of not less than ~~48~~ eight hours prior to issuance of a regular license.

(2) The foster parents shall complete the resource parent online training within the first year of licensure. Verification of completion of the online training must be provided to the department.

~~(2)~~ (3) The foster parents must obtain a total of at least 15 hours of training annually for relicensure following the first year of licensure. Training must be documented on a form provided by the department.

(3) remains the same, but is renumbered (4).

AUTH: 52-1-103, 52-2-111, 52-2-601, 52-2-621, 52-2-622, MCA
IMP: 52-1-103, 52-2-111, 52-2-601, 52-2-621, 52-2-622, MCA

4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services, Child and Family Services Division (department) proposes to amend ARM 37.51.203, 37.51.310, and 37.51.1401 because the department has determined, upon a review of internal processes, that certain administrative rules timelines should be amended to increase department and provider efficiency while maintaining adequate safety standards for children in care.

Specifically, the department proposes to amend the above-referenced rules for the following reasons:

ARM 37.51.203

Currently, this rule, relating to timelines of licensure, require licenses to be renewed annually. The department proposes the rule be amended to allow for the approval of two-year licenses following an initial license, which includes completion of the pre-service training and the first year training modules. The amendment also allows the agency to limit licenses to one year as needed for specific families.

The department believes the proposed amendment necessary because shifting focus from annual renewals will allow department staff to focus on providing supportive relationships to regular youth foster homes (including kin), instead of continually processing license renewals.

ARM 37.51.310

The department proposes to amend ARM 37.51.310(7) and (8) requiring child protection services checks be obtained from every state in which an applicant or adults in their household have resided in for the past five years to create a timelier process of application for foster care, adoption and guardianship by more closely adhering to federal requirements for the process. The proposed rule changes are necessary to increase the retention of resource homes while continuing to ensure the safety of children.

The proposed rule changes are also necessary because federal requirements require Child Protective Services (CPS) checks for states the potential placement resources and their household members have lived in the past five years for emergency placements. The current administrative rule requires the checks to be requested anywhere from 15 to 50+ years. Inconsistent application of these criteria persists about which timelines are required for applicants. Many states are beginning to refuse requests for CPS check requests older than five years. This rule change will decrease staff time and resources necessary to obtain checks older than five years and decrease timelines for licensure and ultimately permanency while ensuring the safety of children.

ARM 37.51.1401

The department proposes to amend ARM 37.51.1401 relating to training hours. Currently, resource families being approved as regular youth foster homes (including kin) are required to complete 18 hours of training prior to being licensed.

The proposed rule changes are necessary because families have reported, and studies have shown, that the number of hours of training prior to placement does not significantly impact the ability of families to meet children's needs or their willingness to maintain licensure. Fewer initial training hours for regular youth foster families (including kin) will decrease the time it takes to obtain licensure - and ultimately permanency - for children. Additionally, families with increased skills have fewer disruptions and greater likelihood of continued licensure

The department recommends that families complete eight hours of training, which provides the basic information necessary to provide care for an abused or neglected child. Once families have completed the training, cleared background checks and home/family assessment, and are licensed, they will complete required training modules that will focus specifically on training designed to support their care of children by focusing on child development, grief and loss, adverse childhood experiences, and positive discipline. Families who receive training while children are in their care are more likely to use the skills successfully and maintain licensure.

FISCAL IMPACT

For child placing agencies, the department expects that costs (both direct and those related to employee time) to complete background checks will decrease based on the limit to the number of years of history required for licensure.

5. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Todd Olson, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail dphslegal@mt.gov, and must be received no later than 5:00 p.m., March 23, 2018.

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

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

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

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.

/s/ Caroline Warne
Caroline Warne
Rule Reviewer

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

Certified to the Secretary of State February 13, 2018.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 42.15.219, 42.15.318,) PROPOSED AMENDMENT
42.15.403, 42.15.601, 42.15.602,)
42.15.603, and 42.15.605 pertaining)
to pension and annuity income)
exclusions, dependent exemptions,)
and medical care savings accounts)

TO: All Concerned Persons

1. On March 29, 2018, at 11 a.m., the Department of Revenue will hold a public hearing in the 3rd Floor Reception Conference Room of the Sam W. Mitchell Building, located at 125 North Roberts, Helena, Montana, to consider the proposed amendment of the above-stated rules. The hearing room is most readily accessed by entering through the east doors of the building facing Sanders Street.

2. The Department of Revenue 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 department no later than 5 p.m. on March 19, 2018, to advise us of the nature of the accommodation you need. Please contact Laurie Logan, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or e-mail lalogan@mt.gov.

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

42.15.219 PENSION AND ANNUITY INCOME EXCLUSION (1) For tax years beginning January 1, 2016, the pension and annuity exclusion is limited to the lesser of the pension and annuity income received or \$4,070 for a single person or married couple where only one person receives pension or annuity income.

(a) The exclusion is reduced \$2 for every \$1 ~~over~~ of federal adjusted gross income in excess of \$33,910 as shown on the taxpayer's return.

(b) By November 1 of each year, the department will multiply the exclusion amount and the federal adjusted gross income amount in (a) by the inflation figure for the taxable year as prescribed in 15-30-2110~~(14)~~, MCA.

(2) remains the same.

(3) When married taxpayers file separately, each spouse's exclusion and phase-out are computed independently and a spouse's exclusion begins to be phased out only when his or her federal adjusted gross income exceeds the amount allowed in (1)(a).

~~(4) Examples for tax years beginning on or after January 1, 2016, illustrating the application of (1) through (3) are:~~

(a) Jane, a single taxpayer, has federal adjusted gross income of \$30,000

which is made up of \$5,000 of pension income and \$25,000 of other income. ~~Her~~ In 2016, her pension and annuity exclusion for Montana purposes is limited to \$4,070.

(b) John, a married taxpayer, files separately from his spouse and has a federal adjusted gross income of \$35,000, which consists of \$17,000 of taxable pension income and \$18,000 of other income. In 2016, John's Montana pension exclusion is reduced to \$1,890 as a result of the limitation based on his federal adjusted gross income. $(\$4,070 - ((\$35,000 - \$33,910) \times 2))$.

~~(b)(c) Frank and Edith, a married couple, file a joint income tax return and both receive pension and annuity income. Frank's taxable pension included in federal adjusted gross income is \$10,000. Edith's taxable pension included in federal adjusted gross income is \$2,000. Their combined federal adjusted gross income is \$30,000. Their Montana pension and annuity exclusion is \$6,070 limited to their individual pensions. As a result, Frank receives (the maximum \$4,070 allowable in 2016 for Frank and the full taxable amount of pension and Edith received is receives \$2,000). Even though their combined federal adjusted gross income is below \$33,910, Edith is not entitled to a \$4,070~~ The total they can claim as Montana pension exclusion as the exclusion is limited to her taxable pension of \$2,000 on their 2016 Montana tax return is \$6,070.

~~(c) John, a single taxpayer, has federal adjusted gross income of \$35,000. This consists of \$17,000 of taxable pension income and \$18,000 of other income. John's Montana pension exclusion is \$1,890. $(\$4,070 - ((\$35,000 - \$33,910) \times 2))$.~~

~~(d) John and Barbara, a married couple, file a joint income tax return and both report federal taxable pension income. John's federal taxable pension is \$5,600 and Barbara's federal taxable pension income is \$3,000. Their combined federal adjusted gross income is \$37,500. Their combined Montana pension and annuity exclusion is \$960. $(\$8,140 - ((\$37,500 - \$33,910) \times 2))$.~~

(d) Assume the same facts as in (c), but Frank and Edith's 2016 federal adjusted gross income is \$35,000. The reduction based on federal adjusted gross income applies, and their combined Montana pension annuity exclusion is \$3,890. $(\$6,070 - ((\$35,000 - \$33,910) \times 2))$.

AUTH: 15-30-2620, MCA

IMP: 15-30-2110, MCA

REASON: The department proposes amending ARM 42.15.219 to correct a grammatical error, update a statutory reference, and rework the layout of the examples in the rule.

The department proposes the grammatical change in (1)(a) to make the sentence easier to understand. The department also proposes removing the section identifier in the statute referenced in (1)(b). The current correct section number is (16), not (14). The section numbering within 15-30-2110, MCA, changed after the reference to it was placed in this rule. Because the statute reference remains relevant without identifying a specific section, the department proposes striking rather than replacing the section number to prevent this situation from occurring again in the future. The department also proposes separating the examples in (3) into a new (4), and revising them for better clarity. The separation and modification of the examples serves three purposes: It makes it clear that the examples pertain

to all previous sections of the rule and not only to (3); it clarifies that the exclusion amount and the federal adjusted gross income limitation used in the examples are for 2016 only, as these thresholds are adjusted for inflation; and, it explains the methodology to be used by taxpayers when filing jointly.

The amendments being proposed for this rule are housekeeping in nature and unrelated to any new legislation being addressed in this same rulemaking notice.

42.15.318 MONTANA NET OPERATING LOSSES (1) through (4) remain the same.

(5) The election to waive the carryback of a net operating loss on the federal return does not waive the carryback for Montana purposes and a separate election must be made. A taxpayer may elect to waive the carryback of a net operating loss even if the taxpayer has not made the election to waive the carryback on the federal return. The election to waive the carryback is made on Form NOL, Montana Net Operating Loss forms provided by or authorized by the department.

(6) remains the same.

AUTH: 15-30-2620, MCA

IMP: 15-30-2119, MCA

REASON: The department proposes amending ARM 42.15.318 to change the reference to the form on which a taxpayer must elect to waive the carryback period of the net operating loss. The rule currently identifies Form NOL as the document on which to make this election. At the request of tax preparers' associations, and in the framework of electronic filing, this requirement has become increasingly more difficult to fulfill. Therefore, the department is being receptive to the practical comments from preparers and proactive in simplifying the reporting process and moving this election to the main long form filed by taxpayers. In addition, a specific nomination of a form in the rule would require a subsequent amendment if the filing format were to evolve again. As a result, the reference to a specific form to report the election in (5) is proposed to be replaced by a general reference to forms provided by the department. This proposed change ensures that the department must provide a location on a form for this election without specification.

The amendment being proposed for this rule is unrelated to any new legislation being addressed in this same rulemaking notice.

42.15.403 EXEMPTIONS FOR DEPENDENTS (1) Except as provided in (2), a taxpayer is allowed a dependent exemption for each dependent who receives over half of his or her total support from the taxpayer. This support test must be implemented like the support test in 152(d)(1)(C) of the Internal Revenue Code (IRC), and all related U.S. Treasury Department regulations about qualifying relatives.

(2) A dependent exemption is not allowed for an individual described in (1):

(a) who, during the calendar year, has gross income of more than the exemption amount allowed under 15-30-2114, MCA; unless the individual is the

taxpayer's "qualifying child," as defined in section 152 of the IRC, and meets the support test for "qualifying child" under 152(c)(1)(D), of the IRC;

(b) remains the same.

(3) ~~Except as provided in (6), in~~ In lieu of the dependent exemption described in (1), a taxpayer is allowed a ~~dependent disabled child an~~ exemption as provided in this section and (4), (5), (6), (7), and (8) equal in amount to twice the dependent exemption for a qualifying dependent child with disability. ~~The exemption is allowed for a child who receives over half of his or her support from the taxpayer if:~~

(a) A child, meaning an individual whose relationship to the taxpayer conforms with the requirements in 152(C)(2) of the IRC, qualifies as a dependent child with disability for the purpose of applying 15-30-214, MCA, if:

(i) the child receives over half of his or her support from the taxpayer, as in (1);

(a)(ii) the taxpayer's home is the dependent disabled child's principal place of abode; as determined by 152(c)(1)(B) of the IRC and related U.S. Treasury Department regulations; and

(b)(iii) a licensed physician has certified that the dependent child has a permanent disability constituting 50 percent or more of the body as a whole; and

~~(c) a licensed physician has certified the qualifying disability.~~

(4)(b) The taxpayer must have a provide the physician's certification of qualifying disability that they retain as a tax record and provide the department upon request. In addition, the taxpayer makes the following representations when filing a return claiming a dependent disabled child exemption with the first tax return on which they claim the disabled child exemption. If the taxpayer files electronically, and is unable to attach the certification to the electronic filing, it must be mailed to:

Department of Revenue
P.O. Box 5805
Helena, MT 59604-5805.

An exemption for dependent child with disability may be disallowed if the department has not received a copy of the physician's certification.

~~(a) if the taxpayer has filed the physician's certification with a prior year's return, the taxpayer represents there is no change in the dependent's physical circumstances to the extent the dependent no longer qualifies for the exemption; and~~

(c) To the extent the child continues to qualify as a dependent with disability, the taxpayer does not need to provide documentation with succeeding returns.

(d) The taxpayer must inform the department, in writing, of any change in the child's eligibility for this exemption, to be mailed to the address provided in (b). Any year the taxpayer does not claim this exemption on the return would satisfy this written obligation.

(e) In the instance that a child was no longer eligible for at least one year, and regains eligibility, the taxpayer must comply with the requirements in (b) with a new certification for the year the child qualifies again.

~~(b)(f) If, as of January 1, 2019, if the taxpayer has not filed joined the physician's certification with a prior year's return, the taxpayer represents they have a copy of the certification of a licensed physician of a qualifying disability and there is~~

no change in the dependent's physical circumstances to the extent the dependent no longer qualifies for the exemption and the child has continuously been eligible, the taxpayer must keep the certification in their records to be provided to the department upon request.

~~(5)(g) The dependent disabled child exemption may be claimed for a qualifying disabled child of any age and may be claimed for a qualifying disabled child who is 18 or older and has gross income equal to or more than the exemption amount allowed under 15-30-2114, MCA.~~

~~(6) A dependent disabled child exemption is not allowed for an individual who makes a joint return with his or her spouse.~~

~~(7) For all tax years the amount of the exemption, as adjusted for inflation for recent tax years, can be obtained by accessing past-year downloadable tax forms from the department's internet homepage web site located at: revenue.mt.gov.~~

~~(8) A taxpayer claiming a dependent disabled child deduction is required to notify the department if the child's physical circumstances have changed and the child no longer has a permanent disability constituting 50 percent or more of the whole body and of any other change in the child's eligibility for the dependent disabled child exemption. The notice must be in writing and mailed to:~~

~~Department of Revenue
P.O. Box 5805
Helena, MT 59604-5805~~

AUTH: 15-30-2620, MCA

IMP: 15-30-2114, 15-30-2115, 15-30-2116, 15-30-2152, MCA

REASON: The department proposes amending ARM 42.15.403 to consolidate the sections of the rule pertaining to the dependent child with disability exemption together, and conform the meaning of some of the terms and requirements to the terms and requirements used in section 152 of the Internal Revenue Code (IRC), where applicable. In addition, the process requiring the taxpayer to provide a certification by a licensed physician when claiming the exemption for dependent child with disability, and inform the department of any change, is proposed to be redesigned to comply more closely with statute and clarify what actions undertaken by the taxpayer are necessary to fulfill this statutory requirement.

Due to the practical difficulty of distinguishing which authorities must be used to apply the requirements for dependents and dependent child with disability, the department proposes amending the rule to reference the federal meaning and guidance wherever possible. As a result, the term "child" must be understood the same way as a qualifying child under section 152 of the IRC. The support test has the same meaning as the support test for qualifying relatives in section 152(d) of the IRC, as the language is identical. The residency test to apply for the dependent child with disability is the same residency test that is applied in section 152(c) of the IRC, and bears the same exceptions.

To conform with a formality in the statute and increase compliance, the department will no longer allow taxpayers the option of retaining the required medical certification in their records for presentation to the department upon request

and will instead require the certification to be submitted along with the first return on which the exemption is claimed, as proposed to be set forth in newly numbered (3)(b).

For simplification, the language in newly numbered (3)(d) provides for the department to deem a lapse in claiming the exemption for dependent child with disability as sufficient written notice that the child is no longer eligible for the double exemption. Should the taxpayer subsequently claim the exemption following an interruption of at least one tax year, they will be required to submit a new certification from a licensed physician, as proposed in newly numbered (3)(e).

The department proposes removing the language that provides where to find the amount of exemption adjusted for inflation because it has become common for many figures used to determine taxable income to be adjusted for inflation annually. Therefore, it is no longer necessary to include this instruction in the rule.

The department also proposes removing the language in (6), which places a limit on the exemption when a married child with disability files jointly with their spouse, because 15-30-2116, MCA, does not provide support for this limitation in its alternative list of requirements. This type of limitation would need to be enacted by the legislature.

The department further proposes updating the implementing citations by adding 15-30-2115, and 15-30-2116, MCA, in support of the rule content and removing 15-30-2152, MCA, because it is unnecessary.

The amendments being proposed for this rule are unrelated to any new legislation being addressed in this same rulemaking notice.

42.15.601 MEDICAL CARE SAVINGS ACCOUNT ADMINISTRATOR REGISTRATION (1) through (6) remain the same.

AUTH: 15-30-2620, MCA
IMP: 15-61-204, MCA

REASON: The department proposes amending ARM 42.15.601 to insert the word "care" into the catchphrase for the rule for consistency with the language in statute. No other changes are being proposed for this rule.

42.15.602 MEDICAL CARE SAVINGS ACCOUNT ADMINISTRATOR REPORTING AND PAYMENTS (1) A Montana medical care savings account (MSA) is subject to the following requirements:

(a) The MSA must have a unique account holder who is an individual and a resident of Montana. A jointly held account does not qualify. Regardless of income tax filing status, married taxpayers must each open an account to register as an account holder to be eligible to reduce their federal adjusted gross income by the amount of their allowable contributions.

(b) Annual interest or income earned in a Montana MSA is excluded from Montana adjusted gross income as long as it remains as a deposit in the account, is withdrawn from the account to pay for eligible medical expenses, is distributed to an immediate family member as provided in 15-61-202, MCA, or is used for paying the expenses of administering the account. Year-end interest or other income reports

provided to the taxing authorities and the account holder must be provided in such a manner that the interest or other income earned on the Montana MSA can be separately identified in order to remain exempt.

(c) A taxpayer who used a loss in the value of the investment contained in the MSA as a reduction of their federal adjusted gross income, must add this loss back to the federal adjusted gross income for the determination of the Montana taxable income.

(d) Beginning January 1, 2018, an account holder cannot contribute in excess of the contribution limit stated in 15-61-202, MCA. During the 2018 calendar year only, any contribution made before January 1, 2018, in excess of the principal, which is the sum of contributions deducted from adjusted gross income in all preceding tax years, can be used as deductible contribution, as eligible expenses, or withdrawn free of tax and penalties. After December 31, 2018, an account holder cannot exclude from adjusted gross income any contribution in excess of the principal remaining in the MSA, and all unqualified withdrawals must be taxed as ordinary income and subject to the penalty as provided in 15-61-203, MCA.

(e) Before receiving any exempted transfer of funds from a Montana MSA of an immediate family member, a transferee must establish his or her own account, provided he or she is eligible to be an account holder of a Montana MSA.

~~(1)~~(2) Every account holder of a self-administered account, or account administrator, is required to annually submit the following information regarding each medical savings account MSA:

(a) through (c) remain the same.

~~(d) deposits made during the tax year by~~ starting and ending balances of the account holder;

~~(e) contributions made during the tax year by the account holder;~~

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

~~(g)~~(h) interest or other income earned on the principal of the medical savings account MSA; and

(h) remains the same, but is renumbered (i).

~~(2)~~(3) The Each individual account holder of a self-administered account must also include file the information required in (2) on forms provided by or authorized by the department and be remitted with the individual income tax form for the corresponding tax year. The account holder must report the name and address where the account is established, and the account number, annually.

~~(3) Both the contributions and any interest or other income earned on the account of a medical savings account are to be segregated by the account holder or account administrator from all other accounts.~~

~~(4) Each individual account holder must:~~

~~(a) establish a separate medical savings account with a financial or other approved institution; and~~

~~(b) segregate the account from all other accounts.~~

~~(5) Jointly held accounts do not qualify, although each spouse may be an account holder, regardless of income tax filing status. Each spouse would be allowed, within certain limitations, to reduce the federal adjusted gross income by the maximum allowable reduction of \$3,000.~~

~~(6) Year-end interest reports provided to the taxing authorities and the~~

~~account holder must be provided in such a manner that the interest earned on that account can be separately identified.~~

~~(7) Annual interest earned on excess contributions and principal in a Montana medical care savings account is excluded from Montana adjusted gross income and may only be withdrawn from an account to pay for eligible medical expenses.~~

~~(8)(4) On or before January 31, an account administrator, other than an account holder, must file the information required under (1)(2) on forms provided by or authorized by the department.~~

~~(9) Each individual account holder must file the information required in (1) on forms provided by or authorized by the department and be remitted with the individual income tax form for the corresponding tax year.~~

~~(10)(5) Account holders or account administrators who withhold penalties on monies used for items other than eligible medical expenses or long-term care expenses unqualified withdrawals must submit the penalties to the department as follows:~~

~~(11) Account holders and account administrators must remit the penalties monthly by the 15th day of the following month when the total amount of penalties exceed \$500.~~

~~(12)(a) Account holders and account administrators whose total penalties withheld during the calendar year are less than \$500 must remit the penalties on or before January 31 of the following year to the department.~~

~~(b) Self-administered individual account holders must report and remit penalties with the individual income tax form for the corresponding tax year.~~

~~(13) remains the same, but is renumbered (6).~~

AUTH: 15-30-2620, MCA

IMP: 15-61-202, 15-61-203, 15-61-204, MCA

REASON: The department proposes amending ARM 42.15.602 to implement House Bill (HB) 175, L. 2017, which revised the tax exemptions and eligible withdrawals in the Montana medical care savings account (MSA) laws, and to reorganize the rule content into coherent and easy to read sections and eliminate redundancies. The department also proposes updating the catchphrase for the rule to better reflect the content as amended to include the filing and payment requirements for all accounts, not just accounts administered by a person other than the account holder.

Section (1) is proposed to be amended to compile the general requirements for all accounts together for ease of locating.

As proposed, new (1)(a) replaces current (4) and (5), pertaining to the requirement of having a unique distinct account per account holder. The new section stresses the importance of having one unique account per account holder. This is also true for married couples, so that each spouse may keep their account in case of divorce. It also facilitates the transfer of the account balance to another beneficiary than the spouse in case of death.

As proposed, new (1)(b) regroups current (3), (6), and (7), and pertains to the treatment of interest and other income yield by the funds on the account. The

reference to excess contribution proposed to be removed from (7) is now addressed in (1)(d).

As proposed, new (1)(c) provides that any loss from the investment reported for federal tax purposes must be added back to Montana adjusted gross income in accordance with 15-61-202, MCA.

As proposed, new (1)(d) transitions to the new provisions passed by the 2017 Legislature, which amended 15-61-202(2), MCA. The legislature substituted what was initially a deduction limit, with a contribution limit. By posing the principle of equivalence between contribution and deductibility, the legislature has leveled the playing field for all taxpayers regarding the deductibility of medical expenses. In addition, the provision formerly located in 15-61-202(4), MCA, allowing the deduction of excess contributions in future years, has been eliminated from the statutes. As a result, excess contributions which were not deducted before 2018 are at risk of being taxed twice, once before the contribution was made and a second time when withdrawing the funds from the account for other purposes than eligible expenses. Thus, a transition period must be introduced to provide a fair tax treatment for excess contributions for which the deduction was suspended to a future date. Section (1)(d) also provides for a period of one calendar year during which taxpayers can withdraw any excess contribution made before January 1, 2018, tax free. Account holders will still be allowed to either use all or part of this excess as a contribution deductible in 2018, or as a withdrawal to pay eligible medical expenses. After 2018, any withdrawal for purposes other than eligible expenses will be subject to the tax set forth in 15-61-203, MCA.

As proposed, new (1)(e) clarifies what a transferee must do to benefit from the exemption in case of a transfer to an immediate family member. Establishing an account as an eligible account holder avoids any reclassification of an account after the fact, which would constitute a breach of the reporting requirements.

As proposed, new (2) restates the filing requirements that are found in current (1). The proposed amendment adds the new requirement to annually report the starting balance and ending balance of a medical care saving account to the department, as enacted by HB 175 in 15-61-204(6), MCA.

As proposed, (3) regroups current (2) and (9), as they both pertain to account holders specifically.

As proposed, new (5) pertains to the remittance of penalty to the department by account administrators and account holders. This section regroups current (10) and (12). Current (11), which pertains to the payment of penalties over \$500 monthly, is proposed to be eliminated for simplification. Penalties of such amounts are extremely rare and, as a result, the cost incurred to provide a specific reporting requirement exceeds the benefits of collecting the penalty in advance of the yearly reporting required for administrators or account holders.

Current (8) and (13) remain the same but are being renumbered as (4) and (6), respectively, as part of the overall restructuring of the rule.

The department also proposes adding 15-61-203, MCA, as an implementing citation in support of the rule as amended.

42.15.603 MEDICAL CARE SAVINGS ACCOUNT - WITHDRAWALS, PENALTIES, AND TRANSFERS (1) The funds held in a Montana medical care

savings account (MSA) may be withdrawn by the account holder free of tax at any time during the year if they are qualified withdrawals for eligible medical expenses paid during that year. ~~Withdrawals for the purpose of paying eligible medical expenses shall not be subject to the 10 percent penalty.~~

(2) Except as provided in (7), qualified withdrawals include:

(a) eligible medical expenses, as defined in 15-61-102, MCA, paid during that year; or

(b) expenses incurred for administering the account.

(3) An unqualified withdrawal must be:

(a) included in the taxpayer's income tax return as ordinary income; and

(b) is subject to a penalty equal to 10 percent of the amount of the withdrawal from the account. An unqualified withdrawal made on the last business day of the business year, as set forth in 15-61-203, MCA, is not subject to this penalty but shall be taxed as ordinary income as provided in (a).

(4) Withdrawals that do not meet the following requirements and exceptions are deemed unqualified:

(a) Withdrawals must be made by the account holder of a self-administered account, or on behalf of an account holder, by January 15 for the purpose of reimbursing eligible medical expenses paid during the previous year.

(b) Each account holder must maintain documentation of eligible expenses for a minimum of three years from the date the account holder filed a Montana income tax return for the year the expenses were incurred.

(2)(c) Requests In the case of requests made by account holders from account administrators for withdrawals to pay for eligible medical expenses, the expenses must be supported by an itemized statement of expenses that were either paid or charged by the account holder and the signature of the account holder attesting that these expenses are "eligible medical expenses." ~~An eligible medical expense means any medical expense that is deductible for purposes of section 213(d) of the IRC.~~

(3) The burden of proving that a withdrawal from a ~~medical savings account~~ an MSA was made for an eligible medical expense is upon the account holder and not upon the account administrator. ~~Each account holder must maintain documentation of eligible medical expenses.~~

(4) ~~There shall be a penalty for withdrawal of funds by the account holder for purposes other than the payment of eligible medical expenses except upon the death of the account holder. The penalty shall be 10 percent of the amount of the withdrawal from the account and, in addition, the amount withdrawn shall be taxed as ordinary income.~~

(5) ~~The direct transfer of funds from a medical savings account to a medical savings account with a different account administrator shall not be considered a withdrawal for purposes of this rule. A direct transfer is when monies in an account are transferred to a new account without the beneficiary or account holder receiving any funds.~~

(6) ~~Withdrawals made on the last weekday in December are not subject to the 10 percent penalty but shall be taxed as ordinary income.~~

(7) ~~Withdrawals made by January 15 by the account holder of a self-administered account for the purpose of reimbursing eligible medical expenses paid after December 1 of the previous year are qualifying withdrawals and are not subject to~~

tax or the 10 percent penalty.

~~(8)(d)~~ Except as provided in (9), all All payments made from a medical account an MSA must be made payable to the account holder, to the eligible medical provider, or to the estate, or to the legal guardian of the account holder, unless an agreement exists between the account holder and/or the account administrator and the payee to pay eligible medical expenses electronically.

~~(9)~~ If an agreement exists between the account holder, account administrator, and the payee, withdrawals for eligible medical expenses can be done electronically.

(5) An account holder who becomes a resident of another state is deemed to have made an unqualified withdrawal for the entire value of the balance contained in the account on the date the individual changed residency. The withdrawal is deemed to have been made on the last business day of the taxpayer's Montana residency, and is not subject to the 10 percent penalty provided in 15-61-206, MCA.

(6) The direct transfer of funds from a Montana MSA of an account holder to another Montana MSA is deemed an unqualified withdrawal to the transferor and ordinary income to the transferee, to the extent it is includable in the transferee's federal gross income, except when the funds are directly transferred to:

(a) another Montana MSA of the same account holder established to replace the initial one or with a different account administrator; or

(b) a Montana MSA held by an immediate family member of the account holder, to the extent it is not includable in the transferee's federal gross income.

(7) After the death of the account holder:

(a) any distribution or withdrawal of funds from the Montana MSA is deemed an unqualified withdrawal unless:

(i) the funds are distributed as an inherited account; or

(ii) the withdrawals are made during the 365 days following the death of the account owner, either by the estate of the deceased on an existing account, or by any account holder of an inherited account to pay for eligible expenses incurred by the deceased;

(b) inherited accounts are deductible from Montana adjusted gross income to the extent they are included in the federal adjusted gross income; and

(c) the 10 percent penalty for unqualified withdrawals does not apply to any distribution of funds to the heirs of the deceased whether or not the funds received qualify as an inherited account.

(8) Qualified withdrawals made with respect to a family leave expense, as defined in 15-61-102, MCA, are deemed to be in exchange of adequate consideration for loss of income and must be treated as ordinary income to the recipient, except when received by the account holder or the spouse of the account holder.

~~(10)(9)~~ All medical records and expenses provided by an account holder to an account administrator are to be kept confidential by the account administrator unless the account holder gives authorization to disclose them to a third party.

AUTH: 15-30-2620, MCA

IMP: 15-61-102, 15-61-202, 15-61-203, MCA

REASON: The department proposes amending ARM 42.15.603 to implement the changes made to the statute by House Bill (HB) 175, L. 2017, which revised the tax

exemptions and eligible expenses in the Montana medical care savings account (MSA) laws, and to reorganize the rule content to better clarify the treatment of funds in a Montana MSA when the account holder changes jurisdiction, in the case of transfer of the account assets in some circumstances, or passes away.

In the proposed reorganization, current (2), (3), (7), (8), and (9) will become new (4); current (4) and (6) will become new (3); current (5) will become new (6) and be expanded; and current (10) will become new (9).

This proposed reorganization of the rule content is intended to help taxpayers distinguish the sections pertaining to withdrawals, in general, from withdrawals stemming from the intention to transfer property from the account holder to another Montana MSA. Withdrawals are divided between qualified and unqualified withdrawals. This distinction drives the tax treatment of the withdrawals for the account holder or in case of transfer, for the transferee.

New (5) is proposed to be included in the rule to clarify the treatment of Montana MSAs owned by an individual who establishes residency in another state. This situation is covered by the statute indirectly. Section 15-61-102(2), MCA, provides that an account holder means an individual who is a resident of Montana. As a result, a nonresident cannot be an eligible account holder, and the account itself loses its Montana tax attributes under the statute. In other words, the account can no longer be regarded as a Montana MSA. When this is the case, the balance on the date the individual changes residency becomes an unqualified withdrawal, and the balance in the account must be reported as ordinary income.

This recapture is the consequence of the limits attached to Montana jurisdiction. When residents move to another state, earnings from investments are no longer Montana source income and their payments do not trigger any filing requirements in the state. As a result, Montana has no legal or administrative means to verify the use of the funds when received by a nonresident. Not recapturing the income previously deducted would result in a permanent exemption regardless of the usage of the funds after the change in residency and would introduce a double standard regarding eligible expenses.

Recognizing that the establishment of residency in another state is not motivated by the tax treatment of the exempted income contained in the Montana MSA, proposed new (4) exempts this recapture from the 10 percent penalty.

New (6), formerly (5), is proposed to be expanded to clarify the tax treatment of a transfer from a Montana MSA to another Montana MSA by means of a direct transfer. The newly numbered section, as amended, treats a direct transfer as an unqualified withdrawal, and therefore taxable and subject to the 10 percent penalty except when exempt.

To reflect the exemption for transfers of funds from one account holder to the MSA account of an immediate family member, as provided for in 15-61-202(4), MCA, (6) provides two exceptions reflecting the exemption provided in the statute. However, (6) also introduces a new limitation to the statutory exemption when the funds transferred from one account to the other represents payment of a taxable compensation to a family member. Essentially, the exemption provided by the statute must reflect treatment as a gift, not as a regular business transaction.

As proposed, new (7) lays out the tax treatment of withdrawals from an MSA after the death of the account holder. Section 15-61-202(7), MCA, does not exempt

the transfer of the funds after the death of the account holder; instead it exempts some transfers, when the account is transferred to an immediate family member, or when monies from the account are used to pay for eligible expenses incurred by the deceased. To avoid the situation in which funds would be kept purposely in an MSA to pay ineligible expenses after the death of the account holder, (7) assimilates transfers after the death of the account holder as an unqualified withdrawal that is taxable.

The transfer of an MSA to an immediate family member after the death of the first account holder is exempt for Montana tax purposes. This is consistent with 15-61-202(4), MCA, which already contained this exemption. However, this exemption also depends on the fact that the heir is a resident of Montana. When the recipient is a non-resident, regardless of whether it is an immediate family member or not, the exemption cannot apply because the heir cannot contribute the funds to a Montana MSA. As a result, the rule uses the definition of an inherited account provided in ARM 42.15.603 to limit the exemption to heirs that are eligible to open an MSA. A nonresident heir inheriting the content of an MSA is similar to having an account holder moving out of the state. As a result, the tax treatment remains consistent across the program.

A second exemption is included in 15-61-202(7), MCA, for the payment of medical expenses by the heir who is the account holder of an inherited account. This exemption is extended to the administrator of the estate of the deceased managing the account while the distribution of the estate is pending, regardless of whether the funds of the MSA would eventually be transferred as an inherited account or not, for simplicity. This allows the administrator of the estate to pay any medical debt before the effective distribution of the funds.

As proposed, new (7) keeps the principle already in force in current (4), according to which the transfer of an account for cause of death of the account holder is not subject to the 10 percent penalty.

As proposed, new (8) provides that when the account holder makes a qualified withdrawal with respect to a family leave expense, the funds received by the recipient, when it is neither the account holder nor the spouse of the account holder, is ordinary income. The statute remains silent regarding who applies to an FMLA leave, and only addresses the effect of such withdrawal for the account holder. Yet, for income tax purposes, such a transfer would be regarded as a gift if it was not for compensating a loss of revenue stemming from the FMLA leave. This payment is similar to an unemployment insurance compensation and is regarded as ordinary income. Montana statute does not provide for an exemption in this case.

The department further proposes updating the rule catchphrase to more accurately reflect the content of the rule as amended; and adding 15-61-102 and 15-61-202, MCA, as additional supportive implementing citations for the rule.

42.15.605 DEFINITIONS The following definitions apply to this subchapter:

(1) "Account administrator" means, in addition to the definition found in 15-61-102, MCA, any person, partnership, limited liability company, limited liability partnership, or corporation that acts as a ~~third party~~ third-party fiduciary to administer a medical care savings account and is either a bank, savings and loan, credit union, or trust company, a health care insurer, a certified public accountant, or an employer who is self-insured under ERISA.

(2) remains the same.

(3) "Direct transfer" means a withdrawal of all or part of a Montana medical care savings account (MSA) that is deposited in its entirety by means of an electronic bank transfer or by means of check into another Montana MSA.

(3) remains the same, but is renumbered (4).

~~(4) "Long-term care" means necessary or medically necessary diagnostic, preventive, therapeutic, rehabilitative, maintenance, or personal care provided for a period of no fewer than 12 consecutive months in a setting other than an acute care unit of a hospital.~~

~~(5) "Recovery" means the return or recoupment of amounts that were previously deducted in Montana taxable income or credited against Montana tax in any prior taxable year.~~

(5) "Inherited account" means funds coming from a Montana medical care savings account (MSA) of a deceased individual, inherited by an immediate family member and contributed to the heir's Montana MSA upon distribution of the estate or as pay-on-death beneficiary of the account.

~~(6) "Self-administered" refers to~~ means accounts that are administered by the account holder for their own benefit.

AUTH: 15-30-2620, MCA

IMP: ~~15-30-2114~~, 15-61-102, 15-61-201, MCA

REASON: The department proposes amending ARM 42.15.605 to implement the changes enacted by House Bill (HB) 175, L. 2017, which revised the tax exemptions and eligible expenses in the medical care saving account laws, and to apply the provisions in ARM 42.15.602 and 42.15.603, as proposed to be amended in this same rulemaking notice.

The department proposes striking (4), because HB 175 removed the term "long-term care" from statute because this type of care is covered in the federal statute as qualified expenses. Therefore, it no longer needs to be defined by rule. The department also proposes striking (5), because the term "recovery" is no longer used in any of the department's rules related to the Montana medical care savings account (MSA).

The department proposes defining the term "direct transfer," to simplify the description of transfers of funds from one MSA holder to another MSA holder, and the term "inherited account," to distinguish inherited accounts from direct transfers, because inherited funds must often transit through an account owned by the estate before being distributed to the heirs. Both terms are used in ARM 42.15.603, as proposed to be amended in this same rulemaking notice.

The department further proposes striking 15-30-2114, MCA, from the implementing citations for the rule because it is unnecessary.

4. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to: Laurie Logan, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or e-mail lalogan@mt.gov and must be received no later than April 11, 2018.

5. Laurie Logan, Department of Revenue, Director's Office, has been designated to preside over and conduct this hearing.

6. The Department of Revenue maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name and e-mail or mailing address of the person to receive notices and specifies that the person wishes to receive notice regarding a subject matter or matters. Notices will be sent by e-mail unless a mailing preference is noted in the request. A written request may be mailed or delivered to the person in 4 above or faxed to the office at (406) 444-3696, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

7. An electronic copy of this notice is available on the department's web site revenue.mt.gov, or on the Secretary of State's web site sos.mt.gov/ARM/register.

8. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary sponsor of House Bill 175, L. 2017, Representative Jim Hamilton, was contacted by regular mail on June 14, 2017, and January 24, 2018.

9. Regarding 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. Documentation of this determination is available at revenue.mt.gov or upon request from the person in 4.

/s/ Laurie Logan
Laurie Logan
Rule Reviewer

/s/ Mike Kadas
Mike Kadas
Director of Revenue

Certified to the Secretary of State February 13, 2018.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 42.17.114, 42.17.218,) PROPOSED AMENDMENT
42.17.602, 42.17.603, and 42.17.605)
pertaining to withholding taxes)

TO: All Concerned Persons

1. On March 29, 2018, at 9:30 a.m., the Department of Revenue will hold a public hearing in the 3rd Floor Reception Conference Room of the Sam W. Mitchell Building, located at 125 North Roberts, Helena, Montana, to consider the proposed amendment of the above-stated rules. The hearing room is most readily accessed by entering through the east doors of the building facing Sanders Street.

2. The Department of Revenue 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 department no later than 5 p.m. on March 19, 2018, to advise us of the nature of the accommodation you need. Please contact Laurie Logan, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or e-mail lalogan@mt.gov.

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

42.17.114 ANNUAL RECONCILIATION AND WAGE STATEMENTS (1) On or before ~~February 28~~ January 31 of each year, every employer must file with the department a Form MW-3, Montana Annual W-2 1099 Withholding Tax Reconciliation. Form MW-3 must be accompanied by the original copies of each employee's earnings statements on federal Form W-2.

(a) through (4) remain the same.

(5) The federal Form 1099R that has Montana state income tax withholding must be filed with the department in paper or electronic form by ~~February 28~~ January 31 following the year that the tax was withheld.

AUTH: 15-30-2620, MCA

IMP: 15-30-2506, 15-30-2507, MCA

REASON: The department proposes amending ARM 42.17.114 due to the enactment of House Bill 63, L. 2017, which revised the due date for filing the annual reconciliation and wage statements provided in 15-30-2507, MCA. As a result of the new legislation, Form MW-3, Montana Annual W-2 1099 Withholding Tax Reconciliation, is now due on or before January 31 instead of February 28 of each year, beginning in 2018. Therefore, the department proposes changing the dates in (1) and (5) to correspond with the revised date in statute.

42.17.218 EMPLOYER REGISTRATION (1) Every employer required to withhold Montana income tax must register for a Montana tax identification number on Form GenReg, ~~Registration/Application for Permit~~ Montana Department of Revenue Business Registration, which is provided by the department. A new employer who has acquired the business of another employer must not use the predecessor's identification number. Application for a Montana tax identification number shall be sent to:

Department of Revenue
P.O. Box 5805
Helena, Montana 59604-5805.

(2) and (3) remain the same.

AUTH: 15-30-2620, MCA
IMP: 15-30-2503, 15-30-2509, MCA

REASON: The department proposes amending ARM 42.17.218 to update the name of the "Form GenReg, Registration/Application for Permit" to "Form GenReg Montana Department of Revenue Business Registration," in (1), to correspond with the department's revision of the form name in the fall of 2017.

The department also proposes updating the implementing section of the rule to include 15-30-2503, MCA.

The proposed amendment of this rule is unrelated to any new legislation being addressed in this same rulemaking notice.

42.17.602 CLAIMING THE CREDIT FOR TAX WITHHELD (1) Claiming credit for the tax withheld shall be accomplished as follows:

(a) remains the same.

(b) ~~Taxpayers, excluding pass-through entities, who are shareholders in a corporation taxed under Subchapter S of the IRC doing business in this state must maintain a copy of federal that receive a Montana Schedule K-1 from a pass-through entity, as defined in 15-30-2101, MCA. They may claim a refundable credit for the amount shown as their percentage share of the tax withheld from Montana net royalty payments by the corporation, limited liability company, or partnership. Taxpayers that claim such a credit must keep copies of the federal and Montana Schedule K-1(s) in their records.~~

(c) Pass-through entities must determine the owner's distributive share of mineral royalty withholding in proportion of the owner's share of profit and loss from the pass-through entity.

(d) A pass-through entity may claim mineral royalty withholding tax paid on its behalf as a credit against pass-through withholding tax owed by the pass-through entity on behalf of an owner in proportion of the owner's distributive share of profit or loss.

(e) A pass-through entity must claim the mineral withholding tax paid on its behalf as a refundable credit against composite tax owed by the pass-through entity

on behalf of an owner in proportion of the owner's distributive share of income or loss.

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

AUTH: 15-30-2547, MCA

IMP: 15-30-2539, 15-30-3312, 15-30-3313, MCA

REASON: The department proposes amending ARM 42.17.602 to expand and better organize the rule as it currently only pertains to claiming refunds for mineral royalty withholding when received by an individual through an S corporation. As amended, the rule is expanded to apply to any taxpayers receiving mineral royalty withholding from all types of pass-through entities, as defined in 15-30-2101, MCA. The department proposes adding new language to provide the calculation required for allocating mineral royalty withholding between owners of a pass-through entity and to lay out the provisions allowing for pass-through entities to claim refund of mineral royalty withholding, as follows:

Section (1)(b), pertaining to mineral royalty withholding, is expanded to include mineral royalty withholding distributed by all types of pass-through entities to any type of owners, excluding pass-through entities. Like for shareholders of S corporations, a taxpayer that is not a pass-through entity and that directly owns interest in a partnership or a disregarded entity, is entitled to claim a refundable credit for mineral withholding paid to the extent that is reported by the entity on the Montana Schedule K-1.

New (1)(c) is being added to describe how a pass-through entity must allocate mineral royalty withholding to its owners in proportion of the owner's share of profit and loss. The intent behind this new language is to provide a calculation that remains simple and covers the majority of cases. The department acknowledges that, in theory, mineral royalty or mineral royalty withholding could be subject to a special allocation in the framework of a partnership agreement. In some cases, when the allocation of Montana source income defers from the federal allocation, this calculation may create discrepancies between the amounts of mineral royalty withholding applied to each owner and what partners may expect on their Schedule K-1 from special allocations. However, the department has determined that taking into account such allocations would create undue complications for most pass-through entities when they file their returns. In addition, when these situations do occur, mineral withholding remains refundable when received by a partner even if this partner has no mineral royalty income to report.

New (1)(d) is being added to describe one of two circumstances when the mineral royalty withholding can be claimed by a pass-through entity. A pass-through entity may claim a refund of excess mineral royalty withholding when it substitutes the mineral royalty withholding for pass-through withholding. This substitution may occur when the pass-through entity is required to calculate pass-through withholding on the owners' share of Montana source income. In general, such substitution does not lead to a refund but results in an additional amount of pass-through withholding owed because the owners' share of Montana source income is likely to equal or exceed the amount of mineral royalty income distributed to each owner. However, when the amount of Montana source income distributed is less than the amount of

mineral royalty, the amount of pass-through withholding may be less than the amount of mineral royalty withholding paid. When this is the case, the pass-through entity may claim the difference as a refund. This refund is allowed in order to keep the withholding amount as proportional as possible to the Montana tax that burdens the owners. Finally, a recalculation of the pass-through withholding tax by itself is not sufficient to make the pass-through entity eligible for the refund. The recalculation must result in an amount of pass-through withholding "owed" to make a substitution and the refund of the excess possible. In other words, refunds of mineral royalty withholding are allowed when a pass-through withholding tax is burdening the owners. When no withholding tax is owed, as when Montana source losses are in excess of Montana source income or when a pass-through withholding tax is not required, the substitution is not allowed and the mineral royalty withholding must be fully distributed to the owners.

New (1)(e) is being added to describe the second circumstance when a pass-through entity can claim the mineral royalty withholding. When an owner elects to pay composite tax, the pass-through entity must apply the distributive share of the owner's mineral royalty withholding against the composite tax, as no other tax derived from this pass-through income will be owed in Montana, provided the election is valid. The pass-through entity must then claim the refund of any excess mineral royalty withholding over the composite tax.

The language in newly numbered (1)(f), previously (1)(c), remains the same, which means that a trust or an estate must still bifurcate the credit between the portion it can claim against its own Montana tax and the portion that must be allocated to beneficiaries. Current (1)(d) and (e) also remain the same, but are renumbered as (1)(g) and (h) to accommodate the expansion of the rule content.

The proposed amendment of this rule is unrelated to any new legislation being addressed in this same rulemaking notice.

42.17.603 APPLICABLE THRESHOLDS - CHANGE OF OWNERSHIP - PUBLICLY TRADED PARTNERSHIPS - NONPROFIT ORGANIZATIONS - EXEMPT ROYALTY OWNERS (1) through (7) remain the same.

(8) The person described in (7) may not be required to withhold net royalty payments from their royalty interest owners if the person can provide information that satisfies the department that the net royalty payments are immaterial.

(a) The department has defined an entity that has immaterial net royalty payments as an entity that has production amounts for minerals, other than oil and gas, with a value less than \$5 million. The only filing requirement for this type of entity is the filing of the Form RW-3 by ~~February 28~~ January 31 of the following year along with a listing of all royalty recipients. The \$5 million value will be based on a three-year average of production value reported to the department's Business Tax and Valuation Bureau. For example, the department will calculate whether an entity is required to withhold from its royalty interest owners for ~~2015~~ 2017 by averaging the valuation reported for ~~2011, 2012, and 2013~~ 2013, 2014, and 2015.

(9) through (13) remain the same.

AUTH: 15-30-2547, MCA

IMP: 15-30-2538, 15-30-2539, 15-30-2540, 15-30-2541, 15-30-2542, 15-30-2543, 15-30-2544, 15-30-2545, 15-30-2546, 15-30-2547, ~~15-30-3540~~, 15-31-102, MCA

REASON: The department proposes amending ARM 42.17.603 due to the enactment of House Bill 63, L. 2017, which revised the due date for filing the annual royalty and tax statement provided in 15-30-2544, MCA. As a result of the new legislation, Form RW-3, Montana Annual Mineral Royalty Withholding Tax Reconciliation, is now due on or before January 31, instead of February 28, of each year beginning in 2018. Therefore, the department proposes changing the date in (8)(a) to correspond with the revised date in statute.

The department further proposes updating the years used in the example in (8)(a); and proposes correcting a typographical error in the implementing citations for the rule by striking the reference to 15-30-3540, MCA, and replacing it with 15-30-2540, MCA.

42.17.605 FILING REQUIREMENTS (1) The following forms are to be completed and filed in accordance with instructions provided by the department:

(a) and (b) remain the same.

(c) Form RW-3, Montana Annual Mineral Royalty Withholding Tax Reconciliation, must be filed on or before ~~February 28~~ January 31 of each year. Form RW-3 must be accompanied by copies of each royalty owner's withholding statements on federal form 1099-MISC, Miscellaneous Income, or Form 1042-S, Foreign Person's U.S. Source Income Subject to Withholding;

(d) remains the same.

(e) Each remitter that is exempt from withholding is still required to file the Form RW-3 with the department along with a copy of Form 1099-MISC, Miscellaneous Income, or Form 1042-S, Foreign Person's U.S. Source Income Subject to Withholding, for every recipient of royalties. These reports are due on or before ~~February 28~~ January 31 of each year; and

(f) through (3) remain the same.

AUTH: 15-30-2547, MCA

IMP: 15-30-2538, 15-30-2539, 15-30-2541, 15-30-2543, 15-30-2544, MCA

REASON: The department proposes amending ARM 42.17.605 due to the enactment of House Bill 63, L. 2017, which revised the due date for filing the annual royalty and tax statement provided in 15-30-2544, MCA. As a result of the new legislation, Form RW-3, Montana Annual Mineral Royalty Withholding Tax Reconciliation, is due on or before January 31, instead of February 28, of each year beginning in 2018. Therefore, the department proposes changing the dates in (1)(c) and (1)(e) to correspond with the revised date in statute.

4. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to: Laurie Logan, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696;

or e-mail lalogan@mt.gov and must be received no later than April 11, 2018.

5. Laurie Logan, Department of Revenue, Director's Office, has been designated to preside over and conduct this hearing.

6. The Department of Revenue maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name and e-mail or mailing address of the person to receive notices and specifies that the person wishes to receive notice regarding a subject matter or matters. Notices will be sent by e-mail unless a mailing preference is noted in the request. A written request may be mailed or delivered to the person in 4 above or faxed to the office at (406) 444-3696, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

7. An electronic copy of this notice is available on the department's web site revenue.mt.gov, or on the Secretary of State's web site sos.mt.gov/ARM/register.

8. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary sponsor of House Bill 63, Representative Jim Hamilton, was contacted by regular mail on June 14, 2017, and January 26, 2018.

9. Regarding 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. Documentation of this determination is available at revenue.mt.gov or upon request from the person in 4.

/s/ Laurie Logan
Laurie Logan
Rule Reviewer

/s/ Mike Kadas
Mike Kadas
Director of Revenue

Certified to the Secretary of State February 13, 2018.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the adoption of New) NOTICE OF PUBLIC HEARING ON
Rules I and II and the amendment of) PROPOSED ADOPTION AND
ARM 42.9.107 and 42.15.120) AMENDMENT
pertaining to the apportionment and)
allocation of income reported by)
pass-through entities and guaranteed)
payments to individual partners)

TO: All Concerned Persons

1. On March 29, 2018, at 1 p.m., the Department of Revenue will hold a public hearing in the 3rd Floor Reception Conference Room of the Sam W. Mitchell Building, located at 125 North Roberts, Helena, Montana, to consider the proposed adoption and amendment of the above-stated rules. The hearing room is most readily accessed through the east doors of the building facing Sanders Street.

2. The Department of Revenue 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 department no later than 5 p.m. on March 19, 2018, to advise us of the nature of the accommodation you need. Please contact Laurie Logan, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or e-mail lalogan@mt.gov.

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

NEW RULE I APPORTIONABLE AND NONAPPORTIONABLE INCOME – APPORTIONMENT OR ALLOCATION – PASS-THROUGH ENTITIES (1) For purposes of the reporting requirements for pass-through entities that have Montana apportionable or nonapportionable income and determining their Montana source income and Montana tax liability, the department adopts by reference the following rules contained in ARM Title 42, chapter 26 - Corporate Multistate Activities, subchapters:

- (a) 1 - General Provisions;
- (b) 2 - Income Allocation and Apportionment, except ARM 42.26.204, 42.26.228, 42.26.229, and 42.26.260;
- (c) 4 - Special Rules Related to Installment Sales;
- (d) 6 - Railroads;
- (e) 7 - Trucking;
- (f) 8 - Airlines;
- (g) 9 - Special Rules for Construction Contracts;
- (h) 10 - Publishing Companies - Apportionment;
- (i) 11 - Television and Radio Broadcasting;
- (j) 12 - Telecommunication Services for Corporate Income Taxes; and

(k) 13 - Financial Institutions.

(2) The pass-through entity may petition for or the department may require an alternative method of reporting activity in the state as provided in 15-1-601, MCA.

(3) When applying the rules referred to in (1), the term "entity" replaces the term "corporation," and the provisions of Title 15, chapter 30, MCA, replace references to Title 15, chapter 31, MCA.

(4) The reporting requirements in ARM 42.9.107 are in addition to and not in lieu of any rules referred to in (1) and the provisions of the Multistate Tax Compact, as adopted in 15-1-601, MCA.

(5) A partnership whose operations are unitary with the business operations of a direct or indirect corporate partner and whose apportionment factors are included in the computation of that corporate partner's apportionment factors, pursuant to ARM 42.26.228, are considered a part of the corporate group for the purpose of applying the Finnigan Rule described in ARM 42.26.260.

AUTH: 15-30-2620, MCA

IMP: 15-1-601, 15-30-2111, 15-30-3302, 15-31-301, 15-31-305, MCA

REASON: The department proposes adopting New Rule I to provide for the apportionment and allocation of apportionable and nonapportionable income, within ARM Title 42, chapter 9, which contains rules specific to pass-through entities, to make this information easier for taxpayers to locate. The proposed rule is modelled after the language in ARM 42.15.120, which provides for the apportionment and allocation of apportionable and nonapportionable income as it pertains to individuals, estates, and trusts. That rule is also proposed to be amended in this same notice, including an update to the catchphrase of the rule to specifically identify who the rule pertains to.

The department's goal in proposing to adopt this new rule is to provide information pertaining to the apportionment and allocation of apportionable and nonapportionable income, as it pertains to pass-through entities, separately from ARM 42.15.120, for ease of locating when searching for specific reporting and filing requirements for pass-through entities, in general. The requirements, as they pertain to pass-through entities, are less transparent when located only in a chapter of rules that addresses individual income tax requirements.

Additionally, because the rules for pass-through entities are slightly different than the rules for individuals, estates, or trusts, the department believes having a separate but similar rule within each chapter will make the differences clearer. The language proposed for New Rule I is the same language as found in ARM 42.15.120, as proposed to be amended in this same notice, but without the references to taxpayers that are not pass-through entities.

The department proposes including the language in (5) to clarify that partnerships that are unitary with the business operations of a corporate partner are considered a part of the corporate group with respect to the application of the Finnigan Rule, provided in ARM 42.26.260. This means that a group of corporations engaged in a unitary business, as defined in 15-31-301, MCA, shall include Montana property, payroll, and receipts from all members of the unitary group if a unitary

partnership, whose interest is directly or indirectly held by a member of the corporate group, has nexus with Montana.

NEW RULE II GUARANTEED PAYMENTS TO INDIVIDUAL PARTNERS-SOURCING, APPORTIONMENT, AND ALLOCATION (1) Except as provided in (2) and (3), guaranteed payments made to individual partners pursuant to section 707 of the Internal Revenue Code, 26 U.S.C. 707, are sourced to Montana based upon the Montana apportionment factor of the partnership. For example:

(a) A nonresident taxpayer's federal adjusted gross income includes three hundred thousand dollars (\$300,000) of guaranteed payments for a designated use of capital received from a partnership that has a fifty percent (50%) Montana apportionment factor. One hundred and fifty thousand dollars (\$150,000) of the guaranteed payments are included in the partner's gross income from Montana sources based on the apportionment factor of the partnership.

(2) Guaranteed payments made to a retired partner, per 4 U.S.C., section 114(b)(1)(I), are sourced to the recipient's state of domicile.

(3) Guaranteed payments made to an individual partner as compensation for services are sourced to Montana if the services provided by the individual partner are performed in the state. For example:

(a) A nonresident taxpayer's federal adjusted gross income includes five thousand dollars (\$5,000) of guaranteed payments for services performed outside of Montana received from a partnership that has a fifty percent (50%) Montana apportionment factor. None of the guaranteed payments are included in the partner's gross income from Montana sources because the services were performed outside of Montana.

(b) A nonresident taxpayer's federal adjusted gross income includes five thousand dollars (\$5,000) of guaranteed payments for services performed in Montana received from a partnership that has a fifty percent (50%) Montana apportionment factor. All of the guaranteed payments are included in the partner's gross income from Montana sources because the services were performed in Montana.

AUTH: 15-30-2620, MCA

IMP: 15-30-2101, 15-30-2110, 15-30-3302, 15-30-3311, MCA

REASON: The department proposes adopting New Rule II to provide guidance on how guaranteed payments made to an individual partner are sourced to the state.

In general, guaranteed payments are regarded as a partner's distributive share of ordinary income for most purposes (see Treas. Reg. 1.707(c).) Logically, the portion of the income produced by the individual efforts of the partners should be treated, both to the partnership and to the individual partner, as compensation for services and it should be treated as income sourced in the state where the services were performed.

The remaining portion of each partner's income, attributable to partnership capital and the efforts of nonpartner employees, should logically be treated as a share of the profits from the partnership's business activities generally. This portion

should therefore be apportioned according to the partnership's property, payroll, and sales factors.

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

42.9.107 MULTI-TIERED PASS-THROUGH ENTITY STRUCTURES WITH MONTANA SOURCE INCOME – REPORTING REQUIREMENTS (1) A pass-through entity may have, in addition to income from its own operations or activities, income from one or more other pass-through entities. This rule describes how the pass-through entity must classify its income from its own operations or activities as ~~business or nonbusiness~~ apportionable or nonapportionable income and how it must report its income from other pass-through entities. For purposes of this rule, "operations income" means the income of a pass-through entity from its own operations or activities and "flow-through income" means its separately and nonseparately stated distributable share of income from other pass-through entities.

(2) Except as provided in (5), each pass-through entity has to separately determine whether its operations income is ~~business or nonbusiness~~ apportionable or nonapportionable income as those terms are defined in ARM 42.26.206. Once a pass-through entity determines the ~~business or nonbusiness~~ apportionable or nonapportionable character of its operations income, the entity must then determine what part of this ~~business and/or nonbusiness~~ apportionable and/or nonapportionable income is Montana source income. Except as provided in (5) and (6), the operations income retains its character as ~~business or nonbusiness~~ apportionable or nonapportionable income and as Montana source income regardless of how many other tiers of pass-through entities through which the income is passed.

(3) Except as provided in (5) and (6), flow-through income of a pass-through entity, determined as provided in (1), retains its character as ~~business and/or nonbusiness~~ apportionable and/or nonapportionable income and its character as Montana source income.

(4) An entity in a multi-tiered pass-through entity structure may have flow-through income sourced to Montana under the subsections of the definition of "Montana source income" in 15-30-2101, MCA, that address partnership or S corporation income derived from Montana activity or property, reportable on Montana Schedule K-1, and also operations income sourced to Montana as a result of its own business activity under other subsections of that definition of "Montana source income," such as net income from a business, profession, or farming activities carried on in the state. If this occurs the entity must allocate to Montana the flow-through income sourced to Montana and the entity must determine the portion of its operations income that is sourced to Montana as provided in (1) and allocate or apportion that Montana source income under the provisions of ~~ARM 42.15.120~~ [NEW RULE I].

(5) remains the same.

(6) Nothing in this rule prevents the department from determining the ~~business or nonbusiness~~ apportionable or nonapportionable character of an entity's

operations income or the Montana source character of its Montana flow-through income sourced to Montana.

AUTH: 15-1-201, MCA

IMP: 15-1-601, 15-30-3302, 15-30-3311, 15-31-301, MCA

REASON: The department proposes amending ARM 42.9.107 to update the reference in (4) from ARM 42.15.120 to New Rule I. This will capture a change being proposed by the department in this same notice to adopt the new rule and place it in ARM Title 42, chapter 9, which specifically covers rules pertaining to pass-through entities. As proposed to be adopted, New Rule I is essentially the same rule as ARM 42.15.120; however, it will specifically apply to pass-through entities.

The department also proposes amending the rule to implement House Bill 511, L. 2017, which changed the term "business income" to "apportionable income," and the term "nonbusiness income" to "nonapportionable income." The department proposes striking the old terms and replacing them with the new terms, where applicable, to align the rule with the revised statute.

42.15.120 BUSINESS AND NONBUSINESS APPORTIONABLE AND NONAPPORTIONABLE INCOME - APPORTIONMENT OR ALLOCATION - INDIVIDUALS, ESTATES, AND TRUSTS (1) For purposes of the reporting requirements for individuals, trusts, and estates, and pass-through entities that have Montana ~~business or nonbusiness~~ apportionable or nonapportionable income and determining their Montana tax liability, the department adopts by reference the following rules contained in ARM Title 42, chapter 26 – Corporate Multistate Activities subchapters:

- (a) 1 - General Provisions, ~~as it existed on December 21, 2001;~~
 - (b) 2 - Income Allocation and Apportionment, ~~as they existed on December 27, 2002,~~ except ARM 42.26.204, 42.26.228, ~~and 42.26.229, and 42.26.260;~~
 - (c) 4 - Special Rules Related to Installment Sales, ~~as they existed on December 21, 2001;~~
 - (d) 6 - Railroads, ~~as they existed on December 21, 2001;~~
 - (e) 7 - Trucking, ~~as they existed on December 21, 2001;~~
 - (f) 8 - Airlines, ~~as they existed on December 21, 2001;~~
 - (g) 9 - Special Rules for Construction Contracts, ~~as they existed on December 21, 2001;~~
 - (h) 10 - Publishing Companies - Apportionment, ~~as they existed on April 23, 2004; and;~~
 - (i) 11 - Television and Radio Broadcasting, ~~as they existed on April 23, 2004;~~
 - (j) 12 – Telecommunication Services for Corporate Income Taxes; and
 - (k) 13 - Financial Institutions.
- (2) remains the same.
- (3) When applying the rules referred to in (1), the terms "individual," "trust," or "estate," or "entity" replace the term "corporation," and the provisions of Title 15, chapter 30, MCA, replace references to Title 15, chapter 31, MCA.

~~(4) The reporting requirements in ARM 42.9.107 are in addition to and not in lieu of any rules referred to in (1) and the provisions of the Multistate Tax Compact as adopted in 15-1-601, MCA.~~

AUTH: 15-30-2620, MCA

IMP: 15-1-601, 15-30-2111, MCA

REASON: The department proposes amending ARM 42.15.120 to remove references to pass-through entities from the rule, because the department is proposing to adopt a separate but similar rule, in this same notice, that pertains specifically to pass-through entities. When adopted, the new rule will be located in ARM Title 42, chapter 9, Pass-Through Entities.

Because the requirements for pass-through entities are slightly different than the requirements for individuals, estates, or trusts, the department believes providing two separate rules will make these differences clearer and easier for taxpayers to locate within the applicable chapters of ARM Title 42.

Since this rule was last amended, some of the ARM Title 42, chapter 26 rules referenced in (1) have been revised. Therefore, the department proposes removing the term "as they existed on" and the specific references to dates from the rule after determining that this language is unnecessary and potentially results in an inconsistent application of the apportionment rules between pass-through entities and corporations when the intention is to maintain consistency. The department is including recently adopted ARM 42.26.260, as an exception to the ARM Title 42, chapter 26, subchapter 2 rules referenced under (1)(b), because it is a rule that only applies to the corporate tax filing of a combined unitary group. The department also proposes adding a reference to subchapter 12, as (1)(j), to include new rules that have been added to ARM Title 42, chapter 26. The department further proposes adding a reference to new subchapter 13, as (1)(k), to include three recently adopted rules specific to financial institutions, ARM 42.26.1301, 42.26.1302, and 42.26.1303.

The department proposes eliminating the language in (4), because it is specific to the filing requirements of multi-tier pass-through entities with sourcing rules from these entities. Accordingly, the department proposes relocating this same language to its proposed New Rule I in this notice. With the enactment of the new, similar rule specific to pass-through entities, this language no longer needs to remain in this rule pertaining to individuals, estates, and trusts.

The department further proposes amending the rule to implement House Bill 511, L. 2017, which changed the term "business income" to "apportionable income," and the term "nonbusiness income" to "nonapportionable income." The department proposes striking the old terms and replacing them with the new terms where applicable in the rule and also in the catchphrase. The department also proposes adding the words "individuals, estates, and trusts" to the catchphrase to better reflect the content of the rule as amended.

5. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to: Laurie Logan, Department of Revenue, Director's Office, P.O. Box

7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or e-mail lalogan@mt.gov and must be received no later than April 11, 2018.

6. Laurie Logan, Department of Revenue, Director's Office, has been designated to preside over and conduct this hearing.

7. The Department of Revenue maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name and e-mail or mailing address of the person to receive notices and specifies that the person wishes to receive notice regarding a subject matter or matters. Notices will be sent by e-mail unless a mailing preference is noted in the request. A written request may be mailed or delivered to the person in 5 above or faxed to the office at (406) 444-3696, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

8. An electronic copy of this notice is available on the department's web site revenue.mt.gov, or on the Secretary of State's web site sos.mt.gov/ARM/register.

9. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary sponsor of House Bill 511, Representative Rob Cook, was contacted by regular mail on June 14, 2017, and September 22, 2017.

10. Regarding the requirements of 2-4-111, MCA, the department has determined that the adoption and amendment of the above-referenced rules will not significantly and directly impact small businesses. Documentation of this determination is available at revenue.mt.gov or upon request from the person in 5.

/s/ Laurie Logan
Laurie Logan
Rule Reviewer

/s/ Mike Kadas
Mike Kadas
Director of Revenue

Certified to the Secretary of State February 13, 2018.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the amendment of ARM) NOTICE OF AMENDMENT
2.2.101 pertaining to procedural rules)

TO: All Concerned Persons

1. On January 12, 2018, the Department of Administration published MAR Notice No. 2-2-568 pertaining to the proposed amendment of the above-stated rule at page 1 of the 2018 Montana Administrative Register, Issue No. 1.

2. No comments were received.

3. The department has amended ARM 2.2.101 exactly as proposed.

By: /s/ John Lewis
John Lewis, Director
Department of Administration

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

Certified to the Secretary of State February 13, 2018.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the adoption of New) NOTICE OF ADOPTION
Rules I through VIII pertaining to Public)
Safety Answering Point certification,)
funding, and monitoring)

TO: All Concerned Persons

1. On December 22, 2017, the Department of Administration published MAR Notice No. 2-13-566 pertaining to the public hearing on the proposed adoption of the above-stated rules at page 2363 of the 2017 Montana Administrative Register, Issue Number 24.

2. The department has adopted New Rule VIII (2.13.320) exactly as proposed.

3. The department is not adopting New Rule VII in this notice.

4. 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 (2.13.301) DEFINITIONS (1) remains as proposed.

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

(3) through (6) remain as proposed, but are renumbered (2) through (5).

NEW RULE II (2.13.304) PSAP CERTIFICATION (1) through (2) remain as proposed; however, the implementation citation is amended as follows:

IMP: 10-4-103, 10-4-107, 10-4-305, MCA

NEW RULE III (2.13.305) APPLICATION FOR CERTIFICATION (1) through (3) remain as proposed.

(a) the local government entities must have entered into an interlocal agreement under 7-11-104, MCA, or other agreement addressing the criteria set forth in 7-11-104, MCA, defining the terms of the parties' participation in the 9-1-1 system; and

(b) the declaration required in (2)(a) must be signed by an official authorized to act on behalf of each local government entity participating in the PSAP and must include an acknowledgment that the participating entities have entered into an interlocal agreement or other agreement addressing the criteria set forth in 7-11-104, MCA.

(4) If a tribal government is participating in a 9-1-1 system and PSAP with a local government entity that hosts a PSAP, and the tribal government will receive

distributions from a distribution of funds for 9-1-1 purposes from the local government entity receiving payments made under 10-4-305, MCA:

(a) through (5) remain as proposed.

(6) To receive payments under 10-4-305, MCA, in state fiscal year 2019, a local government entity shall apply for certification on or before May 1, 2018. To receive payments in subsequent fiscal years, a local government entity that hosts a PSAP shall apply for certification biennially on or before April 1, 2023, and every five years following. In the interim, a certified PSAP shall advise the department of any changes that may affect PSAP certification requirements.

NEW RULE IV (2.13.306) CERTIFICATION PROCESS (1) through (4) remain as proposed.

(a) deny the application; or

~~(b)~~ grant conditional PSAP certification; and

~~(c)~~ (b) provide the applicant notice and an opportunity for hearing.

(5) through (8) remain as proposed.

NEW RULE V (2.13.310) DECERTIFICATION AND FUNDING REDUCTION (1) through (8)(c) remain as proposed; however, the implementation citation is amended as follows:

IMP: 10-4-107, 10-4-108, 10-4-109, 10-4-305, MCA

NEW RULE VI (2.13.313) ALLOCATION OF FUNDS (1) through (3) remain as proposed; however, the implementation citation is amended as follows:

IMP: 10-4-107, 10-4-201, 10-4-305, MCA

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: The department received a request to clarify the definition of "department" in New Rule I in light of a discrepancy with the text in 10-4-101(4), MCA.

Response #1: The department has determined that the definition of "department" in New Rule I is unnecessary because "department" is defined in 10-4-101, MCA, and has removed the definition.

Comment #2: The department received a comment suggesting that 10-4-103, MCA, be listed as a statute implemented by New Rule II.

Response #2: The department agrees and has added the citation.

Comment #3: The department was asked to consider broadening the forms of acceptable documentation of agreements among local government entities beyond

the interlocal agreements required by the original proposal. The commenter explained less formality may benefit jurisdictions that do not have the resources to put together more formal interlocal agreements as part of the PSAP certification process.

Response #3: The department will accept alternative forms of agreement, provided that the agreement, at minimum, addresses the criteria set forth in 7-11-105, MCA. The department believes comprehensive agreements addressing these requirements are less likely to result in disputes. The department has amended New Rule III accordingly.

Comment #4: The department was asked to clarify whether a tribal government can receive direct distributions from the department under 10-4-305, MCA.

Response #4: Under 10-4-305, MCA, only a local government entity hosting a public safety answering point may receive payments directly from the 9-1-1 systems account. To the extent that a tribal government participating in a PSAP is eligible to receive 9-1-1 funds, the tribal government must obtain distributions from the local government entity that receives payments from the 9-1-1 systems account. The department has amended New Rule III(4) to clarify that the department cannot make payments directly to a tribal government.

Comment #5: A discrepancy was noted between the PSAP Certification Form posted on the department's website and New Rule III. The Certification Form appears to require submission of an interlocal agreement with every application, while the rule requires submission of an agreement only when multiple local government entities or a local government entity and a tribal government are participating together in a certified PSAP.

Response #5: The department regrets the discrepancy and has modified the Certification Form to clarify that an interlocal agreement or similar document is only required when two or more local government entities or a local and tribal government are applying together as part of a single certified PSAP.

Comment #6: Some commenters requested clarification that New Rule III allows local government entities to submit agreements with a duration exceeding the two-year certification period for a certified PSAP.

Response #6: New Rule III does not specify a duration for agreements submitted by local government entities in support of an application for certification. The department acknowledges longer-term agreements promote investment in larger capital expenditures and significant upgrades. Local government entities should take care to maintain certification and keep agreements up to date for as long as necessary to ensure longer-term projects continue to receive funding from the department.

Comment #7: The department was asked to extend PSAP certification beyond two years. The commenter noted that developing 9-1-1 infrastructure and cooperation between jurisdictions may require a longer timeframe.

Response #7: The department has amended New Rule III to allow a five-year certification period. The 9-1-1 Advisory Council chose five years to strike a balance between the department's need to receive updates from the PSAPs and the PSAPs' desire for less paperwork and bureaucracy.

Due to the extended certification period, the department added a statement reminding PSAPs to provide notice of changes that may affect certification.

Comment #8: A commenter noted that New Rule IV(4), as proposed, appears to require notice and hearing only for conditional certification and is ambiguous as to whether notice and hearing are required when an application is denied.

Response #8: The department agrees and has amended (4) to clarify that notice and hearing are required both when an application is denied and when an application is granted conditionally.

Comment #9: The department received a comment suggesting that 10-4-108, MCA, be listed as a statute implemented by New Rule V.

Response #9: The department agrees and has added the citation.

Comment #10: The department received a comment suggesting that 10-4-201, MCA, be listed as a statute implemented by New Rule VI.

Response #10: The department agrees and has added the citation.

Comment #11: The department received a comment indicating the list of allowable uses adopted and incorporated by reference in New Rule VII was not available on the main page at sitsd.mt.gov/PublicSafetyCommunications as indicated in the rule.

Response #11: The list of allowable uses was originally posted in a subdirectory of the public safety communications bureau's website. The list of allowable uses was reposted to sitsd.mt.gov/PublicSafetyCommunications on January 4, 2018. In the interest of providing a full opportunity to comment on the list of allowable uses, the department will not adopt New Rule VII during this rulemaking but is proposing the same rule in MAR Notice No. 2-13-574 in this issue of the Montana Administrative Register.

Comment #12: One commenter asked the department what rules will govern reimbursement of PSAPs if the department does not adopt rules regarding allowable uses of funds prior to July 1, 2018.

Response #12: In the absence of administrative rules, the department is required to administer funds based solely on statute; however, the department intends to make the rule regarding acceptable use of funds effective prior to July 1, 2018.

Comment #13: The department received a comment regarding discretionary approval of allowable uses contemplated by proposed New Rule VII.

Response #13: Because New Rule VII has been removed from the scope of this rulemaking, the department will not respond to these comments at this time.

Comment #14: The department received comments addressing use of funds from the 9-1-1 systems account for operating expenses.

Response #14: Because New Rule VII has been removed from the scope of this rulemaking, the department will not respond to these comments at this time.

Comment #15: The department was urged to adopt rules to implement 10-4-306, MCA, pertaining to the 9-1-1 grant program to ensure there is no gap in funding for the grant program and telecommunications providers and to allow grants to be distributed beginning July 1, 2018.

Response #15: The department is working with the 9-1-1 Advisory Council to create rules to implement 10-4-306, MCA, in anticipation of meeting the statutory timeline.

Comment #16: The department received a comment encouraging the department to address the statewide 9-1-1 plan in New Rules I through VIII and in the rules implementing the grant program described in 10-4-306, MCA, when the plan has been completed and adopted.

Response #16: The department anticipates that references to the statewide 9-1-1 plan will be added to these rules and the grant program rules when the plan has been completed.

Comment #17: A commenter requested clarification of the process for amending a document that is adopted and incorporated by reference.

Response #17: A document incorporated by reference in administrative rules must exist at the time of a proposed rulemaking and be available for public comment. Under 2-4-307, MCA, later editions of a publication may only be adopted by reference by following the rulemaking procedure in Title 2, chapter 4, part 3, MCA. Should it become necessary to amend a document incorporated by reference, the department is required to amend the rule to update the reference to the latest edition of the document before those changes may be implemented.

Comment #18: The department received a comment expressing general concern regarding the incorporation by reference of materials in administrative rules, and in particular, the incorporation by reference of the list of allowable uses as proposed in

New Rule VII. A commenter requested that materials adopted by reference be located in the same place as other administrative rules pertaining to the same subject.

Response #18: Incorporation by reference is often used by the department and other agencies to adopt lists and standards that are so lengthy that publication of the full text in the administrative rules could lead to confusion. The department has been advised that local governments may use the list of allowable uses in their budgeting and accounting processes. The department believes publication of a table adopted by reference will be more convenient than including a large table in rule. The department will post these PSAP certification rules on the program's website to make all materials, including the list of allowable uses, available in one place. As previously noted, New Rule VII is not being adopted in this notice, but is included in MAR Notice No. 2-13-574 in this issue of the Register.

Comment #19: A commenter thanked the department for its effort to explain the rationale underlying the proposed rules.

Response #19: The department appreciates the comment.

Comment #20: The department received a comment indicating the proposed rules were an essential first step in the implementation of 2017 HB 61, provided clarity to local governments, and adopted existing practice in relation to distribution of 9-1-1 system funds.

Response #20: The department appreciates the comment.

Comment #21: A commenter noted this proposal is the first in a series of rulemakings intended to implement 2017 HB 61.

Response #21: The department acknowledges additional rulemaking will be necessary to implement the legislation. The department appreciates the comment and the participation of interested persons in this and future rulemaking efforts.

By: /s/ John Lewis
John Lewis, Director
Department of Administration

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

Certified to the Secretary of State February 13, 2018.

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

In the matter of the amendment of	)	NOTICE OF AMENDMENT
ARM 2.43.3501 and 2.43.5101)	
pertaining to the adoption by)	
reference of the State of Montana)	
Public Employee Defined)	
Contribution Plan Document and the)	
State of Montana Public Employee)	
Deferred Compensation (457) Plan)	
Document)	

TO: All Concerned Persons

1. On January 12, 2018, the Public Employees' Retirement Board published MAR Notice No. 2-43-564 pertaining to the proposed amendment of the above-stated rules at page 4 of the 2018 Montana Administrative Register, Issue Number 1.

2. The Public Employees' Retirement Board amended the above-stated rules as proposed.

3. No comments or testimony were received.

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

/s/ Maggie Peterson
 Maggie Peterson
 Vice President
 Public Employees' Retirement Board

Certified to the Secretary of State February 13, 2018.

BEFORE THE FISH AND WILDLIFE COMMISSION
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT AND
ARM 12.11.610 and adoption of NEW) ADOPTION
RULES I through III pertaining to)
recreational use on the Bitterroot)
River)

TO: All Concerned Persons

1. On September 8, 2017, the Fish and Wildlife Commission (commission) published MAR Notice No. 12-475 pertaining to the public hearings on the proposed amendment and adoption of the above-stated rules at page 1451 of the 2017 Montana Administrative Register, Issue Number 17.

2. The commission has adopted NEW RULE III (ARM 12.11.613) to address concerns presented during public comment.

NEW RULE III (ARM 12.11.613) REVIEW OF RIVER RECREATION RULES FOR BITTERROOT RIVER (1) The commission shall review the rules governing recreational use on the Bitterroot River every five years starting in 2024.

AUTH: 87-1-303, MCA
IMP: 87-1-303, MCA

3. The commission has amended ARM 12.11.610 as proposed. The commission has adopted the following rules as proposed: New Rule I (ARM 12.11.611) and New Rule II (12.11.612).

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

Comment 1: The commission received multiple comments in support of the rule language as proposed.

Response 1: The commission appreciates the participation and support in the rulemaking process.

Comment 2: The commission received several comments opposed to the rules stating it would damage the economy.

Response 2: An environmental assessment was completed evaluating any potential impacts of this rule proposal including economic impacts. No economic impacts were identified because commercial operators are still able to operate on the river.

Comment 3: The commission received a few comments opposing the rules because they unfairly target outfitters.

Response 3: The department conducted multiple surveys indicating that users identified crowding due to commercial use as a problem on the Upper and West Fork of the Bitterroot River displacing local users and noncommercial users from the river. The commission recognizes that the public prefers to recreate on rivers without controls on their recreational experience; however the commission also seeks to provide a full variety of quality recreation for a diverse public and has identified a need for management intervention to maintain the quality of the recreational experience on the Bitterroot River for all user groups. The rules do apply to commercial operators in order to address the problem of overcrowding and displacement due to high commercial use in this portion of the Bitterroot River as identified by surveys and data collection by the department.

Comment 4: The commission received a few comments that opposed the rules due to the dates proposed for the regulation.

Response 4: The dates established in the rules are consistent with data showing the high use months in this area. Seasonal factors, such as average water flows and average water temperatures, were also considered when setting these dates.

Comment 5: The commission received a few comments opposing the rules because of safety aspects.

Response 5: Safety is critical but it is the responsibility of the user to assess their experience level and choose the appropriate river and section of the river they use to recreate. Our river recreation rulemaking does not require a determination of safety.

Comment 6: The commission received a few comments stating that the rules will not address the overcrowding due to commercial use identified in the surveys.

Response 6: The department will be continually monitoring the use and conditions of the river. Information will be compiled and a mandatory review of these rules will occur every 5 years. These rules may be amended if necessary to address any further issues that are identified.

Comment 7: The commission received a few comments against the rules because they don't consider historical use.

Response 7: The commission adopted rules restricting the use of the upper Bitterroot River and West Fork of the Bitterroot River based on historic use of the river using outfitter logs instead of allocating specific number of days.

Comment 8: The commission received a few comments opposing the rules because they were based on invalid data.

Response 8: The data collection and surveys were done as scientifically valid as possible, with each survey using a sample size of 3,000 licensed anglers.

Comment 9: The commission received some comments opposing the rules because they will move the crowding around, not solve it.

Response 9: Monitoring will be conducted on regulated and unregulated sections to see if use patterns have changed or negatively impact other sections or rivers. If it is determined that crowding remains an issue, it can be addressed at a future time.

Comment 10: The commission received a comment opposing the rules because if hoot owl restrictions are placed on the main river, commercial operators cannot use the lower stretch of the river leaving outfitters with nowhere to float.

Response 10: People can still float until 2:00 p.m. every day during hoot owl restrictions. The West Fork of the Bitterroot would not be affected. Hoot owl restrictions are rare on the upper river having only occurred on two occasions, 2013 and 2015. Usually, hoot owl restrictions only apply below Bell Crossing Fishing Access Site.

Comment 11: The commission received some comments opposing the rules because the Forest Service already issues permits for commercial use on the West Fork of the Bitterroot River.

Response 11: The Forest Service regulates launching from their access sites only. The current system used by the Forest Service has not been enough to address the crowding and other issues identified by the department.

Comment 12: The commission received a few comments opposing the rules because they feel the social conflicts are exaggerated.

Response 12: Many people we have heard from agree that the river is crowded, and the data collected also indicates river crowding and user displacement.

Comment 13: The commission received a few comments questioning illegal outfitting on the upper Bitterroot River.

Response 13: It is unlikely that illegal outfitting is a major source of the crowding on the West Fork. The Forest Service has records of trips by licensed outfitters. When floaters were interviewed on the West Fork, it was not apparent that many were not licensed.

Comment 14: The commission received a few comments opposing the rules because there is not enough data.

Response 14: There is enough data to enact the regulation and data will continue to be collected through monitoring. The data will be analyzed and reported on an annual basis.

Comment 15: The commission received some comments about the need for barbless hooks on the Bitterroot.

Response 15: This is outside the scope of this rulemaking process.

Comment 16: The commission received two comments opposed to the rules because they unfairly affect resident floaters on Fridays.

Response 16: ARM 12.11.610 prohibits all users from floating between Painted Rocks Forest Service Site and Applebury Forest Service Site on Fridays providing a wade angling section one day a week. This rule does not apply to resident floaters only.

/s/ Rebecca Dockter
Rebecca Dockter
Rule Reviewer

/s/ Dan Vermillion
Dan Vermillion
Chair
Fish and Wildlife Commission

Certified to the Secretary of State February 13, 2018.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF AMENDMENT
ARM 17.8.102, 17.8.103, 17.8.202,)	
17.8.302, 17.8.602, 17.8.767,	)	(AIR QUALITY)
17.8.802, 17.8.902, 17.8.904,)	
17.8.1002, 17.8.1102, 17.8.1202,)	
17.8.1302, 17.8.1402, and 17.8.1502)	
pertaining to incorporation by)	
reference, definitions, applicability,)	
operating permit program overview)	
and applicability of air quality rules)	

TO: All Concerned Persons

1. On October 27, 2017, the Board of Environmental Review published MAR Notice No. 17-393 regarding the proposed amendments of the above-stated rules at page 1933, 2017 Montana Administrative Register, Issue Number 20.

2. The board has amended the rules exactly as proposed.

3. No public comments were received and the department submitted comments in support of the proposed amendments.

Reviewed by: BOARD OF ENVIRONMENTAL REVIEW

/s/ John F. North
JOHN F. NORTH
Rule Reviewer

By: /s/ Christine Deveny
CHRISTINE DEVENY,
Chairman

Certified to the Secretary of State, February 13, 2018.

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

In the matter of the amendment of	)	NOTICE OF AMENDMENT AND
ARM 24.16.102, 24.16.211,	)	REPEAL
24.16.1010, 24.16.1508, 24.16.7514,)	
24.16.7517, 24.16.7520, 24.16.7521,)	
and 24.16.7527 and repeal of ARM)	
24.16.2301, 24.16.6501, 24.16.6701,)	
and 24.16.7547 all relating to)	
payment of wages, minimum wage,)	
and overtime)	

TO: All Concerned Persons

1. On January 12, 2018, the Department of Labor and Industry published MAR Notice No. 24-16-331 pertaining to the public hearing on the proposed amendment and repeal of the above-stated rules at page 25 of the 2018 Montana Administrative Register, Issue Number 1.

2. The department has amended the following rules as proposed: ARM 24.16.102, 24.16.211, 24.16.1010, 24.16.1508, 24.16.7514, 24.16.7517, 24.16.7520, 24.16.7521, and 24.16.7527.

3. The department has repealed the following rules as proposed: ARM 24.16.2301, 24.16.6501, 24.16.6701, and 24.16.7547.

4. The department did not receive public comment pertaining to the above-stated rules.

/s/ Mark Cadwallader
Rule Reviewer

/s/ Galen Hollenbaugh
Commissioner
Department of Labor & Industry

Certified to the Secretary of State February 13, 2018.

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

In the matter of the amendment of	)	NOTICE OF AMENDMENT,
ARM 24.147.302 funeral service	)	AMENDMENT AND TRANSFER,
definitions, 24.147.403 inspections –	)	ADOPTION, AND REPEAL
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)	

TO: All Concerned Persons

1. On December 8, 2017, the Board of Funeral Service (board) published MAR Notice No. 24-147-39 regarding the public hearing on the proposed amendment, amendment and transfer, adoption, and repeal of the above-stated rules, at page 2251 of the 2017 Montana Administrative Register, Issue No. 23.

2. On January 4, 2018, a public hearing was held on the proposed amendment, amendment and transfer, adoption, and repeal of the above-stated rules in Helena. Two comments were received by the January 5, 2018, deadline.

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

COMMENT 1: Section 50-15-405, MCA, which is referenced in ARM 24.147.408(1), also allows advanced practice registered nurses to authorize removal from the place of death. A typographical error was made by omitting that language from the proposed rule and the board should amend the rule to align with the statutory language.

RESPONSE 1: The board agrees and is amending the rule accordingly.

COMMENT 2: An incorrect statute is referenced in ARM 24.147.408(5). "Authorizing agent" is not defined in 50-15-101, MCA. Rather, it is actually defined in 37-19-101, MCA. The board should correct this error and amend the rule so the proper statute is referenced in (5).

RESPONSE 2: The board agrees and is amending the rule accordingly.

4. The board has amended ARM 24.147.302, 24.147.403, 24.147.501, 24.147.901, 24.147.904, 24.147.1101, 24.147.2101, and 24.147.2301 exactly as proposed.

5. The board has amended and transferred ARM 24.147.402 (24.147.507), 24.147.405 (24.147.509), and 24.147.903 (24.147.407) exactly as proposed.

6. The board has adopted New Rules I (24.147.409) and II (24.147.410) exactly as proposed.

7. The board has repealed ARM 24.147.2102 exactly as proposed.

8. The board has amended ARM 24.147.408 with the following changes, stricken matter interlined, new matter underlined:

24.147.408 TRANSPORTATION AND CUSTODY OF HUMAN REMAINS

(1) Authorization to remove and transport a body from place of death must be made by a physician, physician designee, advanced practice registered nurse, coroner, or mortician per 50-15-405, MCA.

(2) through (4) remain as proposed.

(5) An authorizing agent, as defined in ~~50-15-101~~ 37-19-101, MCA, can only delegate the activities set forth in (4) to a mortician employed by a mortuary.

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 February 13, 2018.

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

In the matter of the amendment of ARM) CORRECTED NOTICE OF
24.168.402 licensure requirements,) AMENDMENT AND REPEAL
24.168.406 military training or)
experience, 24.168.411 general)
practice requirements, 24.168.2301)
unprofessional conduct, and)
24.168.2307 screening panel, and the)
repeal of 24.168.711 ophthalmological)
diagnostic permissible drugs)

TO: All Concerned Persons

1. On September 8, 2017, the Board of Optometry published MAR Notice No. 24-168-43 regarding the public hearing on the proposed amendment and repeal of the above-stated rules, at page 1474 of the 2017 Montana Administrative Register, Issue No. 17. On February 9, 2018, the board published the notice of amendment and repeal at page 307 of the 2018 Montana Administrative Register, Issue No. 3.

2. In preparing replacement pages for the first quarter of 2018, it was discovered that one occurrence of the term "chairperson" was overlooked when the board amended to the correct statutory term "board president" in this rule. The rule as amended in corrected form reads as follows, deleted matter interlined, new matter underlined:

24.168.2307 SCREENING PANEL (1) The board screening panel shall consist of three board members including the optometrist board member who has served longest on the board, and the public member of the board. The board president may reappoint screening panel members, or replace screening panel members as necessary at the ~~chairperson's~~ board president's discretion.

BOARD OF OPTOMETRY
DOUG KIMBALL, O.D., 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 February 13, 2018.

BEFORE THE BOARD OF PHYSICAL THERAPY EXAMINERS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT AND
ARM 24.177.503 military training or) REPEAL
experience, 24.177.510 foreign-)
trained physical therapist applicants,)
and 24.177.2105 continuing)
education, and the repeal of ARM)
24.177.410 list of licensed physical)
therapists)

TO: All Concerned Persons

1. On October 13, 2017, the Board of Physical Therapy Examiners (board) published MAR Notice No. 24-177-34 regarding the public hearing on the proposed amendment and repeal of the above-stated rules, at page 1748 of the 2017 Montana Administrative Register, Issue No. 19.

2. On November 7, 2017, a public hearing was held on the proposed amendment and repeal of the above-stated rules in Helena. No comments were received by the November 13, 2017, deadline.

3. The board has amended ARM 24.177.503, 24.177.510, and 24.177.2105 exactly as proposed.

4. The board has repealed ARM 24.177.410 exactly as proposed.

BOARD OF PHYSICAL THERAPY
EXAMINERS
KELSEY WADSWORTH, PT, DPT, OCS
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 February 13, 2018.

BEFORE THE BOARD OF BEHAVIORAL HEALTH
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the adoption of New) NOTICE OF ADOPTION
Rules I through XIV pertaining to)
certification of behavioral health peer)
support specialists (CBHPSS))

TO: All Concerned Persons

1. On October 13, 2017, the Board of Behavioral Health (board) published MAR Notice No. 24-219-31 regarding the public hearing on the proposed adoption of the above-stated rules, at page 1757 of the 2017 Montana Administrative Register, Issue No. 19.

2. On November 3, 2017, a public hearing was held on the proposed adoption of the above-stated rules in Helena, Montana. Several comments were received by the November 13, 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: Several commenters opposed the application and renewal fees proposed in NEW RULE II, stating they will create a hardship for certificate holders as well as agencies who potentially pay the fees for certification and renewal. Commenters believed the fees are more in line with clinical licensure by the board.

RESPONSE 1: While the board recognizes the fees are high, the fees are not set arbitrarily and must provide the amount of money usually needed to administer the certification process. The fees reflect the amount of money necessary for the initial rulemaking, programming, and the ongoing costs to administer the CBHPSS certification.

COMMENT 2: Numerous commenters opposed the supervisor qualifications in NEW RULE IV, stating that CBHPSS need not be supervised by already overloaded clinical staff. The commenters suggested that master's and bachelor-level staff, agency program managers, and nonclinical staff could supervise certificate holders.

RESPONSE 2: The legislature, not the board, set the requirement that CBHPSS must be supervised by a competent mental health professional, and then defined these professionals to include licensed physicians, psychologists, social workers, professional counselors, advanced practice registered nurses with a clinical specialty in psychiatric mental health nursing, marriage and family therapists, and licensed addiction counselors. The commenters' suggestions would require a statutory change by the legislature, and cannot be done via rulemaking.

COMMENT 3: Numerous commenters objected that certificate holders are limited to only those with a mental health disorder. The commenters suggest that friends and family members should be able to apply for certification based on "lived experience."

RESPONSE 3: The legislature set the requirement of a diagnosed behavioral health disorder in 37-38-202(1)(a), MCA, thus the suggested change is not within the board's rulemaking power.

COMMENT 4: One commenter questioned the nature of the attestation and the additional documentation required in the application process.

RESPONSE 4: The board strives for the application processes to be as uniform as possible for each license and certification. An applicant must attest to meeting the qualifications for certification in 37-38-202, MCA, by signing the application. The application requirements are set out in proposed NEW RULE V. Additional documentation may include the behavioral health disorder diagnosis and any treatment plans the applicant may have.

COMMENT 5: Numerous commenters opposed the requirement in NEW RULE V that applicants must be in recovery for at least two years, stating that assigning a timeframe is restrictive and discriminatory based on current recovery and relapse models and practices. Commenters believed that the two-year requirement will discourage peer supporters from seeking help earlier in a relapse out of fear of losing certification. Two commenters stated that fitness to provide services should be the role of the supervisor and not the board because supervisors are in a better position to determine recovery and when a peer supporter is ready to return to the role of peer support specialist. One commenter suggested that instead of defining a timeframe, the board should use language from Washington State that "an applicant must be well-grounded in their own mental health recovery for at least one year."

RESPONSE 5: The board has an obligation to protect the public by adopting administrative rules regarding certification. In deciding on a two-year requirement, the board reviewed requirements from each state that regulates peer support specialists, and concluded that two years is an appropriate time for applicants to be well-grounded in recovery. The board did establish exceptions to allow those in recovery to seek help if needed without jeopardizing eligibility for certification.

COMMENT 6: One commenter stated that NEW RULE V fails to address what would happen to a currently certified peer support specialist who requires inpatient hospitalization for mental illness.

RESPONSE 6: NEW RULE V sets forth the application requirements. The situation described by the commenter would be covered in the statutes and rules governing ability to practice and conduct of a CBHPSS, including 37-1-316, MCA, and NEW RULE X. Once an applicant is certified, the certificate holder has due process rights to the certificate holder's certification, and the board cannot revoke the certification without following the established disciplinary processes.

COMMENT 7: Two commenters stated that applicants for CBHPSS should be granted education credit for on-the-job training. The commenters pointed out that military on-the-job-training is accepted while civilian training is not, and stated that NEW RULE V is not supportive or representative of the meaning behind the position.

RESPONSE 7: The board does not accept any on-the-job training hours in lieu of academic hours as relevant for certification, military or civilian.

COMMENT 8: One commenter noted an error in the CBHPSS application process in NEW RULE V(6), and suggested the board change "complete" to "incomplete."

RESPONSE 8: The board agrees and is amending the rule accordingly.

COMMENT 9: A commenter opposed the 40-hour training course required in NEW RULE VI, as it seems more in line with the education requirements for clinical practitioners. The commenter supported receiving credit for on-the-job training and suggested that agencies conduct inter-agency trainings by licensed staff to meet the certification education requirements.

RESPONSE 9: The board conducted a thorough review of education and training requirements in other states, and noted that 40-hour training programs are common. The board appreciates the suggestion of inter-agency trainings and encourages agencies to develop training programs and submit for board approval. The board previously addressed on-the-job training in RESPONSE 7.

COMMENT 10: Numerous commenters opposed the post-certification supervision requirements in NEW RULE VII, stating they are exorbitant, unreasonable, excessive, overreaching, and burdensome. Commenters suggested the board be more flexible in the supervision requirements by allowing supervisors to determine the need for and methods of supervision.

RESPONSE 10: The board conducted thorough research on other states, and concluded that these standards are common to other states and reflective of the board's responsibility to protect the public. The board has provided flexibility in the method of supervision, but determined that it is necessary to establish a certain amount of required supervision.

COMMENT 11: Numerous commenters suggested the board change "work experience" to "direct contact" in NEW RULE VII(2)(c) to compensate for other tasks of peer supporters that don't involve working with clients, such as outreach, training, support group preparation, and staff meetings.

RESPONSE 11: The board acknowledges the suggestion, but is adopting the rule exactly as proposed.

COMMENT 12: Several commenters suggested the board allow direct supervision to occur over video, WebEx/WebCam, etc.

RESPONSE 12: The board agrees that supervision, so long as the parties can see and interact with each other, may occur using various electronic means.

COMMENT 13: Multiple commenters believed the term "clinical supervision" should not be used, as CBHPSS are not clinicians and do not provide clinical services such as therapy.

RESPONSE 13: The board acknowledges the comment, but is adopting the rule exactly as proposed.

COMMENT 14: One commenter noted the lack of reasonable necessity statements for NEW RULE V and NEW RULE VII.

RESPONSE 14: The board was required to adopt rules regarding the application procedures and the supervision requirements to implement the provisions of Senate Bill 62, as explained in the general reasonable necessity statement. A separate reasonable necessity statement is not required for these two rules.

COMMENT 15: One commenter stated that the required education in NEW RULE VI should include education on conditions that require legal reporting, since NEW RULE X(2)(o) requires confidentiality of clients except when required by law.

RESPONSE 15: Section 37-38-106, MCA, sets specific standards for privileged communications which CBHPSS are required to follow. The board's education requirements include training on confidentiality and ethics. The board concluded that the statutory language, combined with the educational requirements in rule, are sufficient to address the commenter's concern.

COMMENT 16: One commenter recommended the board amend NEW RULE XI(3) to clarify that the situation only applies in the first year of certification and avoid confusion among certificate holders and the public.

RESPONSE 16: The board agrees and is amending the rule to specify that the dates apply only in the first year of certification.

COMMENT 17: Several commenters opposed the 20 hours of continuing education (CE) required for certification renewal in NEW RULE XI, stating that the requirement is excessive and expensive in relationship to the income earned by CBHPSS.

RESPONSE 17: The board disagrees with the commenters. In considering CE requirements, the board looked at other states and determined 20 hours is an appropriate requirement. Additionally, the board created enough flexibility in the rule to allow CBHPSS to gain CE in a number of ways.

COMMENT 18: One commenter suggested the board amend NEW RULE XII(5) to clarify that the board may direct staff, rather than delegate authority to staff, to determine compliance with CE standards.

RESPONSE 18: The board agrees and is amending the rule accordingly.

4. The board has adopted NEW RULE I (24.219.901), II (24.219.905), III (24.219.903), IV (24.219.902), VI (24.219.912), VII (24.219.916), VIII (24.219.921), IX (24.219.923), X (24.219.925), XIII (24.219.931), and XIV (24.219.933) exactly as proposed.

5. The board has adopted NEW RULE V (24.219.907), XI (24.219.927), and XII (24.219.929) with the following changes, stricken matter interlined, new matter underlined:

NEW RULE V (24.219.907) CBHPSS APPLICATION PROCEDURES

(1) through (5) remain as proposed.

(6) If the applicant fails to satisfy the requirements for certification within one year of the date the application is determined by the department to be ~~complete~~ incomplete, the application will expire, the application fee will be forfeited, and a new completed application and application fee will be required.

NEW RULE XI (24.219.927) CONTINUING EDUCATION HOURS AND CREDITS (1) and (2) remain as proposed.

(3) CBHPSSs certified before July 1 of the renewal year will be required to fulfill the 20-hour requirement. Those certified July 1 through October 1 are required to obtain one-half of the 20-hour requirement. Those certified after October 1 will not be required to obtain continuing education credits for renewal. These dates apply only in the first year of certification.

NEW RULE XII (24.219.929) CONTINUING EDUCATION STANDARDS

(1) through (4) remain as proposed.

(5) Continuing education courses offered by providers not on the list will be accepted if all criteria listed in (1) are met. The board may ~~delegate authority to~~ direct staff to determine compliance with criteria.

BOARD OF BEHAVIORAL HEALTH
DR. PETER DEGEL, LCPC
CHAIRPERSON

/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 February 13, 2018.

BEFORE THE DEPARTMENT OF LIVESTOCK
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 32.2.401 department of)
livestock animal health division fees)

TO: All Concerned Persons

1. On January 12, 2018, the Department of Livestock published MAR Notice No. 32-17-287 regarding the proposed amendment of the above-stated rule at page 59 of the 2018 Montana Administrative Register, Issue Number 1.

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

3. No comments or testimony were received.

BY: /s/ Michael S. Honeycutt
Michael S. Honeycutt
Executive Officer
Board of Livestock
Department of Livestock

BY: /s/ Cinda Young-Eichenfels
Cinda Young-Eichenfels
Rule Reviewer

Certified to the Secretary of State February 13, 2018.

BEFORE THE BOARD OF MILK CONTROL
AND THE DEPARTMENT OF LIVESTOCK
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 32.24.450 milk control)
assessments)

TO: All Concerned Persons

1. On January 12, 2018, the Department of Livestock published MAR Notice No. 32-18-288 pertaining to the proposed amendment of the above-stated rule at page 62 of the 2018 Montana Administrative Register, Issue Number 1.
2. The department has amended the above-stated rule as proposed.
3. No comments or testimony were received.
4. This rule amendment is effective July 1, 2018.

/s/ W. Scott Mitchell
W. Scott Mitchell
Chair
Board of Milk Control

/s/ Michael S. Honeycutt
Michael S. Honeycutt
Executive Officer
Board of Livestock
Department of Livestock

/s/ Cinda Young-Eichenfels
Cinda Young-Eichenfels
Rule Reviewer

Certified to the Secretary of State February 13, 2018.

BEFORE THE DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 36.12.101, 36.12.105,) AND REPEAL
36.12.107, 36.12.117, 36.12.121,)
36.12.1301, 36.12.1501, 36.12.1702,)
and 36.12.1801 and the repeal of)
ARM 36.12.106 pertaining to water)
right permitting)

TO: All Concerned Persons

1. On September 8, 2017, the Department of Natural Resources and Conservation (department) published MAR Notice No. 36-22-196 pertaining to the public hearing on the proposed amendment and repeal of the above-stated rules at page 1485 of the 2017 Montana Administrative Register, Issue Number 17. On September 22, 2017, the department published a notice of extension of comment period on the proposed amendment and repeal of the above-stated rules at page 1608 of the 2017 Montana Administrative Register, Issue Number 18.

2. The department has amended the following rules as proposed: ARM 36.12.101, 36.12.105, 36.12.117, 36.12.121, 36.12.1301, 36.12.1702, and 36.12.1801. The department has repealed the following rule as proposed: ARM 36.12.106.

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:

36.12.107 FILING FEE REFUNDS (1) through (4) remain as proposed.
(5) If a deficiency letter is not sent, no refund will be authorized once the public notice of the application has been initiated.
(6) through (9) remain as proposed.

36.12.1501 PERMIT AND CHANGE APPLICATION DEFICIENCY LETTER AND TERMINATION (1) remains as proposed.

(2) The priority date on a permit application or the date received on a change application will not be changed if:

(a) all of the requested information in the deficiency letter is postmarked ~~and~~ or submitted to the department within 30 days of the date of the deficiency letter; or
(b) remains as proposed.

(3) The permit application priority date or change application date received will be changed to the date when the department receives all of the requested information if:

(a) all of the requested information in the deficiency letter is postmarked ~~and~~ or submitted between 31 and 90 days of the date of the deficiency letter; or

(b) and (4) remain 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: The proposed use of the "department's judgement" in the definition gives the department too broad of discretion, and it is inappropriate for the department to grant its own authority of discretion. The proposed definition of "combined appropriation" hinges on ambiguous, undefined, and indiscriminate "department judgement." The department is not allowed to adopt rules that subject applications or applicants to unchecked agency decision making.

COMMENT 2: The proposed rule is too broad and not appropriate. Commenter voiced concerns as a senior water right holder of being limited on ability to develop his property into residential area in the future which could affect property values. The department should be considering in rule changes how the conversion from flood to sprinkler irrigation has dropped water tables and the lack of recharge is more important than small effects from these domestic wells. Commenter gave example of thinning forest to raise water table and streamflow.

COMMENT 3: The department guidance on implementing the proposed definition of combined appropriation is extensive and substantive and raises the question of whether the guidance should go through rulemaking to allow public notice and comment. Several elements in the guidance document have legal consequences and require analyses that effectively makes the guidance a rule, without the required Montana Environmental Policy Act (MEPA) notice and comment. The guidance document's elements of analyzing what constitutes a "project or development," "same source aquifer" and "could the development be accomplished by a single appropriation," are rule-like in character and therefore the guidance document should go through the rule making process in compliance with the Montana Administrative Procedures Act (MAPA).

COMMENT 4: Without defining "same source aquifer," the Gallatin valley might be considered one large aquifer or "same source aquifer" which could be very limiting and detrimental to large number of properties. Also, depending on a parcels configuration, application of the proposed definition could be too restrictive for water use. The definition states springs and wells, clarification is needed to determine if "pit (ponds)" are considered "groundwater development" in this rule change.

COMMENT 5: Given the court decisions over the last decade, it is the Legislature's prerogative to define the term "combined appropriation" in the Water Use Act. The defining of "combined appropriation" will have a substantial impact and should be subject to the legislative policymaking process. The proposed definition is inflexible and will pose difficulties for developers. The definition also gives the department too much discretion and different individuals within the department may apply that discretion differently, which may lead to unpredictability and uncertainty. This is an

inappropriate grant of authority to an executive agency that does not comport with the Water Use Act.

COMMENT 6: The definition proposed is too vague and difficult to interpret, and the current guidance document for implementation is not a workable, long term, statewide solution. The proposed definition and current guidance document are difficult for well drillers to determine where to drill a well to be exempt from the permitting process and does not work on the ground. A process for a property owner to inquire with the department to determine if a permit will be required, prior to drilling their well, would be needed; which is inconsistent with the purpose and intent of exempt wells. The existing definition for "project" in ARM 36.12.101(61) states a "project is a place of use, that has its own identifiable flow rate, volume and means of diversion," which doesn't seem to fit with how it is used in the proposed definition for combined appropriation. The court ruling invalidated the 1993 rule and defaulted to the prior rule, it did not state the department was to permanently adopt the 1987 rule. The department should consider a rule that includes enough guidance and direction that a driller and property owner could easily determine if their well is exempt from permitting or not.

COMMENT 7: While the Montana Supreme Court did invalidate the 1993 rule which reverts back to the 1987 rule, the Court held that "it is up to the DNRC to determine whether initiating rulemaking to change the reinstated 1987 rule is appropriate" not that the department had to adopt the language of the 1987 rule. The department guidance document for implementing the Court's decision was issued without any notice or public comment pursuant to MAPA. Without defining "project or development," the vague wording of the definition of combined appropriation gives the department too broad of discretion, leaving water users at the mercy of the department, and could have substantial impact on property values. When the Montana Supreme Court issued its ruling, it was emphasized the need to protect existing water right holders from adverse effect caused by new appropriations, while through 85-2-306(a), MCA, the Montana Legislature already decided exempt wells did not raise adverse effect concerns. To address adverse effect, any definition of combined appropriations needs to take into consideration site-specific hydrology and other water conditions to determine whether existing water rights will be adversely affected. The terms "project or development" and "same source aquifer" need to be defined in applicable rules or statutes.

COMMENT 8: The use of "department's judgement" in determining what could have been accomplished by a "single appropriation" provides significant exposure to the department for litigation. It should be in rule what analysis the department will use to make the determination of what could be accomplished by a "single appropriation." The proposed definition uses the term "project" and seems to be a conflict how project is defined in ARM 36.12.101(61). The department needs to review and define "project" in a way that existing water rights are not harmed by the concentrated use of exempt wells.

RESPONSE TO COMMENTS 1-8: The department is not adopting a new rule. As stated in the reasonable necessity of proposal notice No. 36-22-196, published September 8, 2017, at page 1485 of the 2017 Montana Administrative Register, Issue Number 17, the Montana Supreme Court invalidated the 1993 rule defining "combined appropriation" and reinstated the 1987 rule. The department is proposing to amend the Administrative Rules of Montana (ARM) in order to reflect the Montana Supreme Court's decision. Currently, individuals reviewing the official ARM published by the Secretary of State's office would see the invalidated 1993 rule only. They would not see the 1987 rule as reinstated by the Montana Supreme Court, and therefore would be misinformed regarding the current law. The Secretary of State's office does not automatically update the official ARM record to reflect court orders. The process the department is following is the only process available to reflect the Montana Supreme Court's reinstatement of the 1987 rule in ARM.

The intent of the proposed rulemaking is only to reflect the reinstatement of the 1987 rule as ordered by the Montana Supreme Court. There is no intent at this time to propose anything new or different. The department will continue to implement the 1987 rule as it has done since the 2014 district court decision. If the department considers proposing anything new or different, the department will take these comments into consideration during any formal rulemaking process.

COMMENT 9: Commenter suggests the department adopt animal unit equivalent to the standards used by Natural Resource Conservation Service (NRCS). The NRCS numbers and the concessions they make for larger animals are more reflective of the animal unit.

RESPONSE TO COMMENT 9: The department will take the comment into consideration. While there is merit in the comment, a change to the proposed rule amendment at this time would require a new proposed amendment notice. The department will proceed with the amendments as proposed.

COMMENT 10: The proposed language in ARM 36.12.107 appears to create conflict or confusion between which deadline applies to whether a refund will be issued. It is suggested that the old subsection (4) be amended to state "(5) in the event a deficiency letter is not sent no refund will be authorized once the public notice of the application has been initiated."

RESPONSE TO COMMENT 10: The only time renumbered (5) would be in effect is in the event a deficiency letter is not sent. To clarify the rule, the department amends renumbered (5) to read:

(5) If a deficiency letter is not sent, no refund will be authorized once the public notice of the application has been initiated.

COMMENT 11: Commenter requests clarification as to why the proposed rule changes to ARM 36.12.117 now when the statute, 85-2-308(5), MCA already requires this information. Commenter wants to be sure all water right holders, not just instream flow rights, are held to the same standard when objecting to protect

their water rights. Commenter also questions the timing of including this in the rule now when the language has been in statute for many years.

RESPONSE TO COMMENT 11: As stated in the reasonable necessity of the proposed amendments to the rule, the statutory language under 85-2-308(5), MCA, expressly requires the language be in rule. In reviewing the statute, the department realized the language was not included in the rule as required, and is rectifying this oversight.

COMMENT 12: With the proposed addition of "the discharge rate may be less than the proposed rate if the application is for multiple wells and the total proposed rate cannot be obtained from a single well" to ARM 36.12.121, it is recommended a required 1000 minute draw down test as opposed to the 8-hour test because a test of short duration and low discharge rate may not fully characterize the aquifer.

RESPONSE TO COMMENT 12: The purpose of an 8-hour test is only to demonstrate physical availability and adequacy of diversion, and generally is not intended to be used to evaluate aquifer characteristics. The data may be useful, or used to support other data on aquifer characteristics, but that is not the main purpose.

COMMENT 13: Commenter recommends the "and" in the following should be replaced with "OR," "the deficiency letter is postmarked AND submitted" in the proposed ARM 36.12.1501.

RESPONSE TO COMMENT 13: The department agrees. A deficiency response must be submitted to the department or postmarked by the appropriate deadline. The department has amended the rule accordingly.

COMMENT 14: While the commenter appreciates DNRC's proposed amendment to ARM 36.12.1501, the commenter recommends the following alternative wording: (2) The priority date on a permit application or the date received on a change application will not be changed if all of the requested information in the deficiency letter is postmarked and submitted to the department: (a) within 30 days of the date of the deficiency letter; or (b) under an extension granted by the department, within 45 days of the date of the deficiency letter. The department may only grant an extension if the applicant submits a written request for an extension within 30 days of the date of the deficiency letter.

RESPONSE TO COMMENT 14: The language proposed by the commenter seems to imply that an extension could be granted within 45 days. The extension request must be made within 30 days. The priority date will not change if an extension request made within 30 days has been granted and the information is postmarked or submitted within 45 days.

COMMENT 15: Commenter expresses concerns over the discretionary "may" language in ARM 36.12.1702(4)(b) as it could leave applicant in a position where

they cannot take the measurements as per DNRC standards and cannot obtain a variance from the standards.

RESPONSE TO COMMENT 15: The department's intent with the proposed language change is to allow for more flexibility for the applicant and the department for fact specific cases. Without the proposed amendments, the rule only allows for a variance from taking measurements on non-perennial sources. The proposed rule allows source conditions and other measurement information to be taken into consideration when determining what, if any, measurements may be needed to provide correct and complete information for physical availability.

/s/ Barbara Chillcott
BARBARA CHILLCOTT
Rule Reviewer

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

Certified to the Secretary of State February 13, 2018.

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

In the matter of the amendment of	)	NOTICE OF AMENDMENT
ARM 37.80.101, 37.80.102,)	
37.80.201, 37.80.202, 37.80.203,)	
37.80.205, 37.80.301, 37.80.316,)	
37.80.317, and 37.80.501 pertaining)	
to the Child Care Assistance)	
Program's implementation of)	
amendments to the Child Care and)	
Development Block Grant Act and)	
Final Rules at 45 CFR Part 98)	

TO: All Concerned Persons

1. On December 22, 2017, the Department of Public Health and Human Services published MAR Notice No. 37-827 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 2418 of the 2017 Montana Administrative Register, Issue Number 24.

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

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

COMMENT #1: One commenter stated they support 12-month eligibility for TANF and graduated eligibility families and a child care provider expulsion plan.

RESPONSE #1: The department agrees with the comment.

/s/ Geralyn Driscoll
Geraldyn Driscoll, Attorney
Rule Reviewer

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

Certified to the Secretary of State February 13, 2018.

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

In the matter of the amendment of	)	NOTICE OF AMENDMENT AND
ARM 37.27.905, 37.85.104,	)	REPEAL
37.85.105, 37.85.106, 37.85.406,)	
37.86.105, 37.86.205, 37.86.506,)	
37.86.1006, 37.86.1807, 37.86.2002,)	
37.86.2102, 37.86.2803, 37.86.2918,)	
37.86.3001, 37.86.3025, 37.86.3902,)	
37.86.3906, 37.87.903, 37.87.1226,)	
37.87.1401, 37.88.206, 37.88.306,)	
37.88.606, and repeal of ARM)	
37.86.3031, 37.86.3033, 37.86.3035,)	
37.86.3037, pertaining to Medicaid)	
rate, service, and benefit changes)	

TO: All Concerned Persons

1. On January 12, 2018, the Department of Public Health and Human Services published MAR Notice No. 37-828 pertaining to the public hearing on the proposed amendment and repeal of the above-stated rules at page 67 of the 2018 Montana Administrative Register, Issue Number 1.

2. The department has amended the following rules as proposed: ARM 37.27.905, 37.85.104, 37.85.106, 37.85.406, 37.86.105, 37.86.205, 37.86.506, 37.86.1006, 37.86.1807, 37.86.2002, 37.86.2102, 37.86.2803, 37.86.2918, 37.86.3001, 37.86.3025, 37.86.3906, 37.87.903, 37.87.1226, 37.88.206, 37.88.306, and 37.88.606. The department has repealed the following rules as proposed: ARM 37.86.3031, 37.86.3033, 37.86.3035, and 37.86.3037

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

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 ~~March 1, 2018~~ January 1, 2018. The conversion factor for physician services is \$36.53. The conversion factor for allied services is \$24.29. The conversion factor for mental health services is \$24.07. The conversion factor for anesthesia services is \$28.87.

(c) through (6) remain as proposed.

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

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

37.86.3902 TARGETED CASE MANAGEMENT SERVICES FOR CHILDREN WITH SPECIAL HEALTH CARE NEEDS, ELIGIBILITY (1) A child who is receiving Medicaid or is presumptively eligible for Medicaid is eligible for targeted case management services for children and youth with special health care needs if the child meets all of the following: one of the requirements in (a) or (b) and meets one of the requirements in (c).

~~(a) is receiving Medicaid or is presumptively eligible for Medicaid;~~

(a) The child is under the age of one and meets one of the following:

(i) was born to a mother who abused drugs or alcohol during her pregnancy;

(ii) was born prior to 37 weeks gestation;

(iii) was born at a birth weight of less than 2500 grams; or

(iv) the department has care and placement authority, a voluntary services agreement, an in-home service agreement or a voluntary placement agreement with the parent/guardians.

(b) The child is birth through 18 years of age and meets one of the following;:

~~(c) has one or more of the following physical health conditions that is expected to last at least 12 months:~~

~~(i) through (iv) remain as proposed.~~

~~(v) has been diagnosed with a condition that causes paraplegia or quadriplegia; or~~

~~(vi) has been diagnosed with another chronic physical health condition that is expected to last at least 12 months and causes difficulty performing activities of daily living; and or~~

~~(vii) has been diagnosed with failure to thrive in the past year.~~

~~(d) (c) The child is at high risk for medical compromise due to one of the following:~~

~~(i) remains as proposed.~~

~~(ii) noncompliance with their prescribed medication regime; or~~

~~(iii) an inability to coordinate multiple medical, social, and other services; or~~

~~(iv) a lack of community support system to assist in appropriate follow-up care at home.~~

~~(2) The member is not eligible for targeted case management services if enrolled in a Medicaid Patient Centered Medical Home (PCMH) program, Comprehensive Primary Care Plus (CPC+), or Health Improvement Program (HIP).~~

~~(3) remains as proposed, but is renumbered (2).~~

AUTH: 53-6-113 MCA

IMP: 53-6-101 MCA

37.87.1401 HOME SUPPORT SERVICES AND THERAPEUTIC FOSTER CARE, SERVICES REIMBURSEMENT (1) and (2) remain as proposed.

(3) HSS and TFC providers are reimbursed a daily rate.

(a) To receive the daily rate for HHS, the provider must have contact as described in ARM 37.87.1410(6). The department will not reimburse the daily rate for any telephone contacts that exceed the number of face-to-face contacts reimbursed for in a four-week period. Reimbursement is limited to one contact per day.

(b) For TFC services, the department will reimburse providers the daily rate for every day of a four-week period if the provider meets the minimum number of contacts as described in ARM 37.87.1410(6) during the four-week period.

(4) remains as proposed.

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

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

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

GENERAL COMMENTS AND RESPONSES

COMMENT #1: The department received many comments opposing the proposed spending reductions, which are intended to address the reduction to the department's budget of \$49 million general fund dollars.

RESPONSE #1: The department recognizes the impact the reductions may have on Medicaid providers and vulnerable Montanans. All Medicaid budget reductions cause concern, however; these reductions are necessary to allow the department to stay within its authorized appropriation while maintaining the core Medicaid services required by the federal government and optional community based service programs such as the Home and Community Based Waivers.

COMMENT #2: The department received many comments opposing the proposed spending reductions, stating that providers will have to eliminate services they provide to at-risk children and families.

RESPONSE #2: The department has updated the eligibility criteria for targeted case management (TCM) for Children and Youth with Special Health Care Needs, to ensure the most vulnerable children and infants continue to receive TCM. This change expands the eligibility criteria for TCM services. Also, the department has amended the proposed rule change to exclude therapeutic foster care (TFC) from the change in rate structure. These changes are explained more fully below.

COMMENT #3: The department received several comments stating that the rate reductions will cause providers, such as dentists, to refuse to serve Medicaid members or cause social service providers to eliminate programs for at-risk children and families and adults receiving services for substance use disorder.

RESPONSE #3: While these rate changes may impact providers and Medicaid members who rely on these services, these reductions are necessary so the department can implement spending reductions mandated by the 2017 special legislative session to make up the department's \$49 million budget shortfall. As part of its agreement with the Centers for Medicare and Medicaid Services (CMS), the department is required to ensure provider access. The department will monitor the current number of provider enrollments and compare against previous state fiscal year provider enrollment to determine whether there has been a significant reduction of providers. If the provider network decreases by 10 percent, the department must complete a corrective action plan to identify to CMS how the department will work to increase provider network.

COMMENT #4: Several commenters asked questions, sought data, or asked that studies be conducted relating to information that did not relate to the proposed rule changes.

RESPONSE #4: The department appreciates the comments and requests; however, these questions and requests cannot be addressed in this notice because they do not relate to the proposed rule changes.

Establishment of Incontinence Supply Reimbursement Rates:

COMMENT #5: Several commenters expressed concern that a reduction in Durable Medical Equipment (DME) rates might cause DME suppliers to close their doors. A commenter requested the department reconsider the decision to adopt the 2018 Medicare Fee Schedule.

RESPONSE #5: The adoption of the Calendar Year 2018 Medicare Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS) fee schedule was not a part of this MAR notice.

COMMENT #6: A commenter is concerned about losing access to incontinence supplies due to the budget cuts.

RESPONSE #6: The rule establishes the reimbursement fees for incontinence supplies but did not make any changes to member benefits.

COMMENT #7: Commenters expressed concern that DME providers will supply cheaper or inferior products and products that don't meet special needs, which could result in negative medical outcomes and lead to costly visits to the doctor or specialty clinics. A commenter asked that the proposed fee schedule be delayed so that a clinical trial can be performed.

RESPONSE #7: The proposed change applies only to rate of reimbursement for incontinence supplies and does not make changes to member benefits. The department recommends members talk to multiple providers to ensure they are getting the product that best meets their needs.

COMMENT #8: A commenter suggested that the department find other items on the DME fee schedule for comparison to determine the fees for incontinence supplies. Other commenters believed the department's rate setting methodology to be flawed.

RESPONSE #8: The department's research into rates for incontinence supplies considered retail pricing and reimbursement rates of at least 15 other states and provided valuable data on pricing for incontinence supplies. The department based its proposed rates on the average of Wyoming and Idaho's fee schedules due to their geographic and demographic similarity to Montana and because those states offer similar incontinence supply benefit to their members. The department considered only incontinence supply pricing because of the unique characteristics of these items.

Adult Dental Reductions:

COMMENT #9: Several commenters opposed the reduced dental benefit, orthodontic restrictions, and elimination of the denture benefit. Commenters also expressed concern about employment implications for Medicaid members who cannot get dentures, noting that the federal government may impose work requirements for Medicaid members. Other commenters expressed concern about health implications for members who do not have teeth, including inadequate nutrition due to inability to properly masticate food, oral bone loss, and lack of support for facial muscles. A commenter stated that providing patients with dentures is essential to healthier living and avoiding major costs to the department at a later date. Commenters stated dentures are a cost-effective treatment option when weighed with the alternatives and said dentures are essential for overall health and well-being, not a cosmetic frivolity.

RESPONSE #9: The department is statutorily required to keep expenditures within its legislative appropriation. Under federal law, Medicaid states are not required to provide any dental services as part of its Medicaid program. Rather, the federal government considered dental coverage an optional service. Although not required by the federal government, Montana recognizes the need for good oral health and will continue to offer adults a preventive, diagnostic, and minor restoration dental benefit. Due to budget constraints, however, the department can no longer afford to continue to cover high cost and extensive dental procedures.

COMMENT #10: A dental provider commented that Montana should eliminate the dental benefit entirely for "able-bodied" adults and should maintain the benefit for disabled adults only. The commenter characterized reimbursements for dental services as inadequate and said dentists end up subsidizing care for "able-bodied" Medicaid members.

RESPONSE #10: Medicaid members who are categorically eligible as aged, blind, or disabled will continue to have a preventive, diagnostic, and minor restoration dental benefit above the \$1,125 limit.

COMMENT #11: A commenter stated they were outraged there was any dental coverage for Medicaid members and said there should be no coverage at all.

RESPONSE #11: The department considers dental coverage an important health benefit and will continue to offer the dental benefit to its members within its legislative appropriations.

COMMENT #12: Several commenters proposed maintaining the dental benefits but suggested charging Medicaid members up to 10 percent of the cost of service or paying a sliding scale copayment based on an individual's ability to pay and disability.

RESPONSE #12: Federal regulations limit member copayments depending on income, and the department is currently charging the maximum allowable copayments permitted by federal regulation. The department has determined that eliminating high cost and extensive dental treatment while offering adults a preventive, diagnostic, and minor restoration dental benefit will keep the department within its legislative appropriation.

COMMENT #13: A commenter was concerned about access to dental services for those who recently received access to dental care with the implementation of Medicaid expansion in Montana.

RESPONSE #13: Access high cost and extensive dental services are reduced for all adults. Adult members will continue to be eligible to receive a preventive, diagnostic, and minor restoration dental benefit.

COMMENT #14: A commenter offered the department several suggestions for procedures within the dental program that can be added, eliminated, or reduced that will ultimately reduce costs.

RESPONSE #14: The department will evaluate these suggested code additions and other changes to determine their feasibility and will implement if appropriate at a later date.

COMMENT #15: Commenters expressed concern that provider rate reductions combined with reductions in dental services will result in reduced access to care, layoffs of staff, closure of satellite clinics, and a cost shift to emergency rooms. Another commenter suggested the department allow the dentist to decide the codes that benefit the member most up to the \$1,125 limit. A commenter also questioned how the department made its decision regarding reductions in dental services.

RESPONSE #15: Federal regulations consider the adult dental benefit in Medicaid as optional, and therefore the department is not required to offer any dental benefit to members. The department's proposal is intended to maintain preventive,

diagnostic, and minor restoration benefits for members while staying within the department's budget appropriation.

COMMENT #16: Several commenters expressed concern about the timing of the rule and the denture manufacturing process in that it could take up to a year to properly fit a denture, possibly leading to the need of a rebuild or refit to the new healed shape of the mouth.

RESPONSE #16: The department will consider the impression date as the date of service for those members currently in process. Rebuilds and refits will not be a covered service.

COMMENT #17: A commenter questioned how the department decided to make the proposed reductions to dental services, what criteria the department used in making the proposal, and what alternatives were considered.

RESPONSE #17: Please see response #11. Recognizing the need for good oral health, the department will continue to provide adults a preventive, diagnostic and minor restoration dental benefit.

COMMENT #18: A commenter requested the department issue a request for proposal (RFP) to see what a private dental third-party administrator could save the department.

RESPONSE #18: The department will evaluate the request and decide whether to move forward on this suggestion at a later date.

Reductions to the member eye exam and eyeglass benefit:

COMMENT #19: A commenter expressed support for the department's proposal to limit eye exams and eyeglasses for adults to no more than one exam and one set of eyeglasses every two years as it aligns with current practice standards for healthy eyes.

RESPONSE #19: The department appreciates the comment.

COMMENT #20: A commenter expressed concern with the limits placed on eyeglasses and exams for adults.

RESPONSE #20: The department worked with the Montana Optometric Association to align the Medicaid policy with the practice standards for prescription eyewear. The proposed rules provide that when an eyeglass prescription changes and meets the amount of change as defined in ARM 37.86.2102, a member may be eligible to receive an additional pair of eyeglasses before the 730-day period is reached.

Hospital Reductions:

COMMENT #21: The department received comments questioning the manner in which the department is eliminating the provider based billing component, noting that there is no need to change the physician fee schedule in order to effectuate change for provider based clinics.

RESPONSE #21: After further analysis, the department agrees and will not be updating the physician fee schedule. The January 1, 2018 Physician Fee Schedule provides for reimbursement within a clinic or facility based on the place of service billed. For purposes of provider based clinics, Montana Medicaid will recognize the place of service for clinics as appropriate for provider based clinics.

COMMENT #22: The department received several detailed questions surrounding provider based billing with the repeal of ARM 37.86.3031, 37.86.3033, 37.86.3035, and 37.86.3037.

RESPONSE #22: The department held a teleconference with several provider-based clinics and hospitals on February 6, 2018, to answer outstanding questions. In addition, the department will post a detailed provider notice, outlining expectations surrounding billing for provider-based clinics.

COMMENT #23: The department received comments stating that the reimbursement reductions to hospitals and the elimination of the provider based clinic status results in an increased struggle for providers to maintain reasonable financial health.

RESPONSE #23: The department's proposed spending reductions for hospitals were part of budget reductions as a result of the special legislative session in November 2017. The department is required to administer the Medicaid program within its budgetary authority.

COMMENT #24: The department received several comments expressing concern about the potential for increased administrative burden associated with prior authorization of outpatient radiology services, physician administered drugs, and genetic testing.

RESPONSE #24: The addition of prior authorizations was not a part of this rulemaking. Prior authorization is one avenue the department has to ensure services are medically necessary and that more appropriate options have been considered prior to service delivery. The department understands that prior authorization does impact our provider network, as well as our Medicaid population; however, prior authorization is necessary to ensure services provided meet medical criteria.

COMMENT #25: The department received comments requesting a two-year suspension of the supplement disproportionate share hospitals payment in order to increase the supplemental payment associated with the Hospital Utilization Fee.

RESPONSE #25: The department will evaluate this request and determine whether to move forward on this suggestion at a later date.

Targeted Case Management for Children and Youth with Special Health Care Needs
Comments:

COMMENT #26: Several comments expressed concern regarding the removal of the dietician as part of the required care team for Targeted Case Management (TCM) for Children and Youth with Special Health Care Services.

RESPONSE #26: The department made the decision to remove dieticians as they are a covered direct care service for children age 20 and under. Therefore, the services currently being provided by the dieticians will continue to be reimbursed separate from TCM.

COMMENT #27: Several comments were received regarding dieticians being able to provide services in the home setting.

RESPONSE #27: Direct care services covered on the dietician fee schedule are allowed in many different settings, including the member's home.

COMMENT #28: Commenters expressed concern on the limitations to the eligible populations and that many needy children will not fit into these limitations but still need TCM services.

RESPONSE #28: To ensure the most vulnerable Medicaid children receive necessary medical services, the department has updated the eligibility criteria in ARM 37.86.3902 (see above in ARM 37.86.3902 revisions). The purpose of the change was to expand TCM eligibility to the most vulnerable Montana children.

COMMENT #29: Several comments requested the department keep funding for TCM for Children and Youth with Special Health Care Needs.

RESPONSE #29: The department must administer Medicaid healthcare programs within the legislative appropriation and recognizes the importance of TCM. The department is continuing to cover TCM for Children and Youth with Special Health Care Needs; however, reductions to eligible populations and reimbursement are required.

COMMENT #30: Commenters questioned whether the proposed reduction to TCM services conflicted with the requirements of 50-19-311, MCA, which is the Montana Initiative for the Abatement of Mortality in Infants.

RESPONSE #30: The department has multiple programs that meet the requirements in 50-19-311, MCA. The updates to the TCM for Children and Youth with Special Health Care Needs still aim to reduce the infant mortality rates in Montana.

COMMENT #31: Multiple commenters expressed concern that the rule excludes members from TCM services when the member is enrolled in medical home programs, as the services provided differ from those in TCM.

RESPONSE #31: The adoption of the exclusion of TCM if the member is enrolled in medical home programs was not a part of this MAR notice. However, in response, the department has removed the exclusion of the medical home programs from being eligible for TCM.

COMMENTS TO THE ADDICTIVE AND MENTAL DISORDERS DIVISION (AMDD)

COMMENT #32: The department received many comments expressing concern about the requirements in ARM 37.27.138(2), which states that eligibility for intensive outpatient therapy (IOP) requires at least three cross-referenced diagnostic/assessment tools confirming a determination of chemical dependency and generally outlines the therapeutic requirements for IOP.

RESPONSE #32: In MAR Notice No. 37-835, published February 9, 2018, and proposed to be effective April 9, 2018, the department is proposing to remove the language in ARM 37.27.138 pertaining to IOP and is proposing amendments which move substance use disorder treatment practice to the American Society of Addiction Medicine (ASAM) Criteria for IOP. The ASAM Criteria for IOP is nine or more hours of services per week for adults and six or more hours per week for adolescents. The hours may include skilled treatment services, such as individual counseling, group counseling, family therapy, medication management, educational groups, occupational and recreational therapy, and other therapies. It is the department's intent with the proposed amendments in MAR Notice No. 37-835 that individualized care is provided to individuals that is more consistent with the ASAM Criteria. The department does not intend to enforce the requirements in ARM 37.27.138 during the one month between the promulgation of the rules in MAR Notice No. 37-828 and MAR Notice No. 37-835, allowing providers that time to adapt their treatment programs to be consistent with the ASAM Criteria.

COMMENT #33: The department received many comments expressing concern about the effect of the proposed amendment on the provision of substance use disorder (SUD) treatment. Providers expressed concern that the proposed amendment would cause them to eliminate group therapy as the standard of care for SUD treatment and they would not be able to provide SUD assessments with the proposed rate. Members expressed concern that the proposed amendment would essentially cut group therapy as an option for SUD treatment.

RESPONSE #33: In Montana, Medicaid sets rates for all health professionals using the resource-based relative value scale (RBRVS). Historically, substance abuse providers had a fee schedule that was not connected to RBRVS; therefore SUD providers were following a different set of rates than all other healthcare providers who bill Montana Medicaid. The proposed amendment does not eliminate individual

therapy, group therapy, or assessments from the SUD treatment array. Rather, the proposed amendment aligns these reimbursement codes with equitable codes used by other healthcare providers in the RBRVS fee schedule.

COMMENTS TO CHILDREN'S MENTAL HEALTH SERVICES BUREAU (CMHB)

COMMENT #34: Some commenters said the proposed reimbursement restructure is a fee decrease that is not based on a cost study or analysis taking into consideration costs that are incurred by providers when delivering the service, particularly in rural areas. Commenters said the proposed reimbursement will force providers to discontinue community-based services which will result in youth with a severe emotional disturbance being treated in costly higher levels of care, child protection services, and the criminal justice system. Commenters said the rate cut will cost the state more in the long term.

RESPONSE #34: The proposed reimbursement structure is intended to cover reasonable provider costs. The department has estimated that a Home Support Services and Targeted Case Management (HSS/TFC) employee who earns \$16 per hour receives a salary of approximately \$33,280 per year. With benefits at 27%, the cost of the employee's salary to the provider is \$42,266. The department factored in an additional 65% to cover expenses such as mileage, computers, and office supplies, bringing the overall cost to the provider to \$69,738. With an allowable caseload of 10 and assuming the HSS/TFC worker provides 1.5 face-to-face contacts and 1.5 phone contacts per week with each youth and family on their caseload, then the annual reimbursement from Medicaid would be \$74,225.

COMMENT #35: Many commenters spoke specifically about the value of TFC. Foster parents stated they have personally benefited from the service which has permitted them to successfully adopt a child because of the training and support TFC provides. Several commenters stated foster children have multiple complex needs just by the nature of being in child protective services (CPS) custody and most have experienced severe abuse and neglect. Agencies and families rely on TFC to provide foster families education and support to safely care for complex youth. Child-placing agencies are required to provide extensive documentation to meet licensing requirements such as family studies and training of foster parents. Additionally, at least one commenter noted that the governor's proposed budget reductions did not include TFC, only HSS.

RESPONSE #35: Based on the comments received about the value of TFC, the department is amending the proposal to exclude TFC from the rate restructure. The department understands youth in foster care have complex needs given the traumatic nature of being removed from their home.

COMMENT #36: Many commenters asked the department to delay implementation of the HSS/TFC reimbursement restructure to work with providers on other alternatives and suggested the following alternatives to the rate restructure: not requiring HSS/TFC specialists to have Bachelor's degrees; removing the caseload

and supervision caps; not allowing Targeted Case Management concurrent with HSS/TFC and; separating HSS and TFC in rule to distinguish the difference between the services asserting TFC services vary greatly from HSS in intensity, focus, needs, and challenges.

RESPONSE #36: The department thanks the commenters for the suggestions and will consider them when proposing future rule changes. In order to keep expenditures within the authorized appropriation, however, the department is unable to delay implementation.

COMMENT #37: One commenter opposes decreasing the review interval for prior authorization for Therapeutic Youth Group Home services from 180 days to 120 days. The commenter said the proposal will not save the state money because additional numbers of youth will meet continued stay criteria at 120 days than at 180 days.

RESPONSE #37: The department's fiscal impact analysis factored in the assumption that additional youth will likely meet medical necessity at 120 days than compared to 180 days. The department's analysis determined there are cost savings by changing the interval to 120 days.

COMMENT #38: One commenter opposes utilization review for genetic testing for youth who are prescribed medication for a mental health diagnosis. The commenter believes that it would be cost effective to conduct the testing when a person is young and potentially prevent years of medication trials that don't yield positive outcomes. The commenter asked: What type of clinical features would a prescriber observe in order to document changes in the CYP2D6 and CYP2C19 enzymes which metabolize numerous antipsychotics and antidepressants?

RESPONSE #38: In its research into the efficacy of genetics testing for prescribing psychotropic medications, the department consulted with a board-certified psychiatrist about this proposed change. The psychiatrist advised that best practice for prescribing psychotropic medications to youth would include titration, regardless of the result of genetic testing. Also, the department reviewed four other insurance plans. Most insurers cover genetic testing for limited physical health conditions. None of the plans cover genetics testing to inform psychotropic drug doses. Premera Blue Cross, Aetna, and Medicare state in coverage policy that genetic testing is considered investigational and not medically necessary. Additionally, the proposed rule change does not eliminate this service. Rather, the clinical criteria in the prior authorization process will require a physician-to-physician review of why the expensive genetic test is critical to the clinical outcome of a youth.

COMMENT #39: One commenter, a provider, stated that in 2013 department staff reviewed provider records and interviewed direct care staff and youth and parents/guardians receiving HSS through the provider. The commenter believed that the 2013 review was used to establish rates of reimbursement.

RESPONSE #39: The commenter is mistaken. The service reviews conducted in 2013 were not used to establish rates. The review was intended to inform rule changes to update outdated rules.

5. These rule amendments and repeals are effective March 1, 2018.

/s/ Brenda Elias
Brenda Elias, Attorney
Rule Reviewer

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

Certified to the Secretary of State February 13, 2018.

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.

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EXECUTIVE BRANCH APPOINTEES AND VACANCIES

Section 2-15-108, MCA, passed by the 1991 Legislature, directed that all appointing authorities of all appointive boards, commissions, committees, and councils of state government take positive action to attain gender balance and proportional representation of minority residents to the greatest extent possible.

One directive of 2-15-108, MCA, is that the Secretary of State publish monthly in the ***Montana Administrative Register*** a list of executive branch appointees and upcoming vacancies on those boards and councils.

In this issue, appointments effective in January 2018 appear. Potential vacancies from March 1, 2018 through May 31, 2018, are also listed.

IMPORTANT

Membership on boards and commissions changes constantly. The following lists are current as of February 1, 2018.

For the most up-to-date information of the status of membership, or for more detailed information on the qualifications and requirements to serve on a board, contact the appointing authority.

EXECUTIVE BRANCH APPOINTEES FOR JANUARY 2018

<u>Appointee</u>	<u>Appointed By</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Board of Athletic Trainers			
Ms. Kylie McKinney	Governor	Meredith	1/19/2018
Billings			10/1/2021
Qualifications (if required): Athletic trainer employed in or retired from a secondary school in Montana			
Ms. Janet Trethewey	Governor	Reappointed	1/19/2018
Havre			10/1/2021
Qualifications (if required): Member of public not engaged in or directly connected with practice of athletic training			
Board of Medical Examiners			
Mr. Brian J. Reed	Governor	Farmer	1/19/2018
Rollins			9/1/2021
Qualifications (if required): None Stated			
Board of Nursing Home Administrators			
Mr. Ryan Gregory Tooke	Governor	Brown	1/19/2018
Forsyth			6/1/2022
Qualifications (if required): Nursing Home Administrator			
Board of Public Accountants			
Mr. John W. Jacobsen	Governor	Hintz	1/5/2018
Billings			7/1/2018
Qualifications (if required): Licensed Certified Public Accountant			

EXECUTIVE BRANCH APPOINTEES FOR JANUARY 2018

<u>Appointee</u>	<u>Appointed By</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Board of Public Education			
Mr. Jesse Miles Barnhart Broadus Qualifications (if required): District 2, Republican	Governor	Reappointed	1/26/2018 2/1/2024
Board of Speech Language Pathologists and Audiologists			
Dr. Gene W. Bukowski Billings Qualifications (if required): Audiologist	Governor	Jacobsen	1/26/2018 12/31/2020
Dr. Kelsey Mann Billings Qualifications (if required): Audiologist	Governor	Berg	1/26/2018 12/31/2020
Coal Board			
Ms. Amber Lynn Henning Missoula Qualifications (if required): Attorney, District 1	Governor	Fitch	1/26/2018 1/1/2021
Education Commission of the States			
Governor Steve Bullock Helena Qualifications (if required): Governor	Governor	Reappointed	1/19/2018 1/1/2021

EXECUTIVE BRANCH APPOINTEES FOR JANUARY 2018

<u>Appointee</u>	<u>Appointed By</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Education Commission of the States Cont.			
Ms. Elly Driggers Helena	Governor	Reappointed	1/19/2018 1/1/2021
Qualifications (if required): Educator engaged in K-12 Education			
Ms. Alison Harmon Bozeman	Governor	Taylor	1/19/2018 1/1/2021
Qualifications (if required): Educator engaged in the field of higher education			
Ms. Darlene Schottle Bigfork	Governor	Thiel	1/19/2018 1/1/2021
Qualifications (if required): Educator in K-12 education			
Flathead Basin Commission			
Mr. Stephen Frye West Glacier	Governor	Cartwright	1/26/2018 6/30/2021
Qualifications (if required): Industrial, environmental and other interests			
Mr. Patrick Holmes Helena	Governor	None Stated	1/26/2018 1/1/2021
Qualifications (if required): Governor's Staff			

EXECUTIVE BRANCH APPOINTEES FOR JANUARY 2018

<u>Appointee</u>	<u>Appointed By</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Flathead Basin Commission Cont.			
Mr. Mike Koopal Whitefish	Governor	Smith	1/26/2018 6/30/2021
Qualifications (if required): Industrial, environmental and other interests			
Mr. Ed Lieser Whitefish	Governor	Metzmaker	1/26/2018 6/30/2021
Qualifications (if required): Industrial, environmental and other interests			
Invasive Species Council			
Ms. Dona Lynn Rutherford Browning	Governor	New	1/5/2018 5/9/2018
Qualifications (if required): Representative of the Blackfeet Nation and is an addition to the Council			
Ms. Gail Whiteman Crow Agency	Governor	New	1/5/2018 5/9/2018
Qualifications (if required): Representative of Crow Nation and is an addition to the Council			
Judicial Nominations Commission			
Mrs. Nancy Zadick Great Falls	Governor	Reappointed	1/1/2018 1/1/2022
Qualifications (if required): Lay member who is not a judge or attorney, active or retired			

EXECUTIVE BRANCH APPOINTEES FOR JANUARY 2018

<u>Appointee</u>	<u>Appointed By</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Montana Council on Developmental Disabilities			
Mr. Trenton Butler	Governor	Reappointed	1/5/2018
Big Sandy			1/1/2021
Qualifications (if required): Self-Advocate			
Montana Parks in Focus Commission			
Mr. Mark Aagenes	Governor	None Stated	1/19/2018
Helena			12/31/2018
Qualifications (if required): Member			
Ms. Lise Aangeenbrug	Governor	None Stated	1/19/2018
Golden, CO			12/31/2018
Qualifications (if required): Member			
Mr. Shane Doyle	Governor	None Stated	1/19/2018
Bozeman			12/31/2018
Qualifications (if required): Member			
Mr. Dave Galt	Governor	None Stated	1/19/2018
Helena			12/31/2018
Qualifications (if required): Member			

EXECUTIVE BRANCH APPOINTEES FOR JANUARY 2018

<u>Appointee</u>	<u>Appointed By</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Montana Parks in Focus Commission Cont.			
Ms. Angie Grove Helena Qualifications (if required): Chair	Governor	None Stated	1/19/2018 12/31/2018
Mr. Stace Lindsay Bozeman Qualifications (if required): Member	Governor	None Stated	1/19/2018 12/31/2018
Ms. Norma Nickerson Missoula Qualifications (if required): Member	Governor	None Stated	1/19/2018 12/31/2018
Mr. Michael Punke Missoula Qualifications (if required): Member	Governor	None Stated	1/19/2018 12/31/2018
Mr. Lance Trebesch Bozeman Qualifications (if required): Member	Governor	None Stated	1/19/2018 12/31/2018
Representative Chas V. Vincent Libby Qualifications (if required): Member	Governor	None Stated	1/19/2018 12/31/2018

EXECUTIVE BRANCH APPOINTEES FOR JANUARY 2018

<u>Appointee</u>	<u>Appointed By</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Montana Parks in Focus Commission Cont.			
Mr. Jeffrey Welch Livingston Qualifications (if required): Member	Governor	None Stated	1/19/2018 12/31/2018
Mr. Aaron Wernham Bozeman Qualifications (if required): Member	Governor	None Stated	1/19/2018 12/31/2018
Montana Supreme Court Associate Justice			
Judge Ingrid Gayle Gustafson Billings Qualifications (if required): None Stated	Governor	Wheat	1/5/2018 1/1/2023
Private Land Public Wildlife Committee			
Representative Duane Ankney Colstrip Qualifications (if required): Landowner and Legislator	Governor	Reappointed	1/19/2018 8/1/2019
Mr. Edward Beall Helena Qualifications (if required): Sportsman	Governor	Reappointed	1/19/2018 8/1/2019

EXECUTIVE BRANCH APPOINTEES FOR JANUARY 2018

<u>Appointee</u>	<u>Appointed By</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Private Land Public Wildlife Committee Cont.			
Representative Zach Brown Bozeman	Governor	Reappointed	1/19/2018 8/1/2019
Qualifications (if required): Sportsperson and Legislator			
Mr. Ralph E. Bukoskey Rosebud	Governor	Reappointed	1/19/2018 8/1/2019
Qualifications (if required): Sportsperson			
Ms. Cynthia Cohan Butte	Governor	Reappointed	1/19/2018 8/1/2019
Qualifications (if required): Sportsperson			
Mr. M. Lee Cornwell Glasgow	Governor	Reappointed	1/19/2018 8/1/2019
Qualifications (if required): Landowner			
Mr. Dusty Crary Choteau	Governor	Reappointed	1/19/2018 8/1/2019
Qualifications (if required): Outfitter			
Mr. Daniel R. Fiehrer Helena	Governor	Reappointed	1/19/2018 8/1/2019
Qualifications (if required): Sportsperson			

EXECUTIVE BRANCH APPOINTEES FOR JANUARY 2018

<u>Appointee</u>	<u>Appointed By</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Private Land Public Wildlife Committee Cont.			
Mr. William Geer Lolo Qualifications (if required): Sportsman	Governor	Reappointed	1/19/2018 8/1/2019
Representative Denley Loge St. Regis Qualifications (if required): Landowner and Legislator	Governor	Reappointed	1/19/2018 8/1/2019
Mr. Joe L. Perry Brady Qualifications (if required): Sportsman	Governor	Reappointed	1/19/2018 8/1/2019
Mr. Richard Louis Stuker Chinook Qualifications (if required): Landowner	Governor	Reappointed	1/19/2018 8/1/2019
Mr. Carl Zabrocki Billings Qualifications (if required): Sportsman	Governor	Reappointed	1/19/2018 8/1/2019

EXECUTIVE BRANCH APPOINTEES FOR JANUARY 2018

<u>Appointee</u>	<u>Appointed By</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
State Electrical Board			
Mr. James P. Reardon Helena	Governor	Simendinger	1/5/2018 7/1/2022
Qualifications (if required): Member representing the public			
State Historical Preservation Review Board			
Ms. Carol Bronson Great Falls	Governor	Reappointed	1/5/2018 10/1/2021
Qualifications (if required): Member of the public who represents a broad spectrum of Montana society			
State Workforce Innovation Board			
Mr. Loren Rose Seeley Lake	Governor	New	1/5/2018 7/27/2019
Qualifications (if required): None Stated			
Traumatic Brain Injury Advisory Council			
Mrs. Jessica Boyer Great Falls	Governor	Reappointed	1/5/2018 1/1/2018
Qualifications (if required): Survivor or family member of a survivor of traumatic brain injury			
Mrs. Teresa McKeon Malta	Governor	Reappointed	1/5/2018 1/1/2021
Qualifications (if required): Survivor or Family Member of a Survivor of Traumatic Brain Injury			

EXECUTIVE BRANCH APPOINTEES FOR JANUARY 2018

<u>Appointee</u>	<u>Appointed By</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Underground Facility Protection Advisory Council			
Mr. Corey Sell	Governor	None Stated	1/26/2018
Billings			7/1/2020
Qualifications (if required): Member representing excavators			

EXECUTIVE BRANCH VACANCIES – MARCH 1, 2018 THROUGH MAY 31, 2018

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
Board of Architects and Landscape Architects Mr. Dale S. Nelson, Ronan Qualifications (if required): Licensed Architect	Governor	4/1/2018
Board of Dentistry Dr. Dale R. Chamberlain, Lewistown Qualifications (if required): Dentist	Governor	4/1/2018
Ms. Diane Klemann, Billings Qualifications (if required): Dental Hygienist	Governor	4/1/2018
Board of Hail Insurance Mrs. Judy P. Tureck, Coffee Creek Qualifications (if required): Public Member	Governor	5/1/2018
Board of Nursing Home Administrators Mr. Thomas Klotz, Glasgow Qualifications (if required): Nursing Home Administrator	Governor	5/28/2018
Board of Pardons and Parole Commissioner Michael McGinley, Dillon Qualifications (if required): Public Representative	Governor	4/1/2018
Mrs. Sheena Wilson, Helena Qualifications (if required): Retired Public Employee	Governor	4/1/2018

EXECUTIVE BRANCH VACANCIES – MARCH 1, 2018 THROUGH MAY 31, 2018

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
Board of Plumbers		
Mr. Timothy E. Regan, Miles City Qualifications (if required): Master Plumber	Governor	5/1/2018
Mr. Sean Smith, Anaconda Qualifications (if required): Journeyman Plumber	Governor	5/1/2018
Board of Real Estate Appraisers		
Mr. Timothy Peter McGinnis, Polson Qualifications (if required): Licensed or Certified Real Estate Appraiser	Governor	5/1/2018
Mr. Frank Schoenen Jr., Great Falls Qualifications (if required): Representative of the public not engaged in the occupation of real estate appraisal	Governor	5/1/2018
Board of Dentistry		
Dr. Aimee R. Ameline, Great Falls Qualifications (if required): Dentist	Governor	3/29/2018
Commission on Practice of the Supreme Court		
Ms. Tracy Axelberg, Kalispell Qualifications (if required): None Stated	Elected	4/1/2018
Mr. Daniel McLean, Helena Qualifications (if required): None Stated	Elected	4/1/2018

EXECUTIVE BRANCH VACANCIES – MARCH 1, 2018 THROUGH MAY 31, 2018

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
Family Support Services Advisory Council		
Mr. David Munson, Helena Qualifications (if required): Provider of Part C Services	Governor	4/1/2018
Ms. Danielle McCarthy, Helena Qualifications (if required): Agency Representative OPI Part B	Governor	4/1/2018
Representative Jean Price, Great Falls Qualifications (if required): State Legislator	Governor	4/1/2018
Ms. Lucy Hart-Paulson, Missoula Qualifications (if required): Speech Language Therapists Association Representative	Governor	4/1/2018
Mr. Jesse Slaughter, Great Falls Qualifications (if required): Parent Representative At-Large	Governor	4/1/2018
Ms. Ryane Holzwarth, Laurel Qualifications (if required): Agency Representative	Governor	4/1/2018
Ms. Jody Jones, Ronan Qualifications (if required): Head Start Representative	Governor	4/1/2018
Dr. Christine Lux, Bozeman Qualifications (if required): Personnel Preparation Representative	Governor	4/1/2018
Ms. Chelsie Guilford, Billings Qualifications (if required): Provider of Part C Services	Governor	4/1/2018

EXECUTIVE BRANCH VACANCIES – MARCH 1, 2018 THROUGH MAY 31, 2018

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
Family Support Services Advisory Council Cont. Ms. Meaghan Kolar, Helena Qualifications (if required): Agency Representative	Governor	4/1/2018
Ms. Rebecca Bogden-Richards, Great Falls Qualifications (if required): Public Awareness and Education Organization Representative	Governor	4/1/2018
Ms. Catherine Murphy, Helena Qualifications (if required): Agency Representative DPHHS Developmental Disabilities Program	Governor	4/1/2018
Ms. Latosha Vavak, Columbus Qualifications (if required): Parent Representative Region 3	Governor	4/1/2018
Ms. Amber Bell, Helena Qualifications (if required): Agency Representative	Governor	4/1/2018
Ms. Hollin Marie Buck, Missoula Qualifications (if required): Provider of Part C Services	Governor	4/1/2018
Ms. Melanie Ruth Bush, Great Falls Qualifications (if required): Provider of Part C Services	Governor	4/1/2018
Ms. Patty Butler, Helena Qualifications (if required): Agency Representative	Governor	4/1/2018
Ms. Dianna Frick, Helena Qualifications (if required): Agency Representative	Governor	4/1/2018

EXECUTIVE BRANCH VACANCIES – MARCH 1, 2018 THROUGH MAY 31, 2018

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
Family Support Services Advisory Council Cont.		
Ms. Sarah Odette Goldsmith, Great Falls Qualifications (if required): Parent Representative Region 2	Governor	4/1/2018
Ms. Kari Ann Hoover, Shelby Qualifications (if required): Provider of Part C Services	Governor	4/1/2018
Ms. Kari Ann Hoscheid, Anaconda Qualifications (if required): Special Education	Governor	4/1/2018
Ms. Cathy Jury, Arlee Qualifications (if required): Representative for the Montana School for the Deaf and Blind	Governor	4/1/2018
Ms. Tari Nyland, Helena Qualifications (if required): Agency Representative	Governor	4/1/2018
Governor's Council on Healthcare Innovation		
Ms. Cindy Stergar, Butte Qualifications (if required): Healthcare providers	Governor	4/1/2018
Ms. Mary Dalton, Helena Qualifications (if required): Government Official	Governor	4/1/2018
Mr. Todd Lovshin, Helena Qualifications (if required): Public and private payers	Governor	4/1/2018

EXECUTIVE BRANCH VACANCIES – MARCH 1, 2018 THROUGH MAY 31, 2018

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
Governor's Council on Healthcare Innovation Cont.		
Mr. L. Jace Killsback, Lame Deer Qualifications (if required): American Indian health representative	Governor	4/1/2018
Ms. Maria Clemons, Libby Qualifications (if required): Healthcare providers	Governor	4/1/2018
Mr. Jonathan Weisul, Missoula Qualifications (if required): Public and private payers	Governor	4/1/2018
Dr. Bill Gallea, Helena Qualifications (if required): Healthcare providers	Governor	4/1/2018
Dr. Janice Gomersall, Missoula Qualifications (if required): Healthcare providers	Governor	4/1/2018
Mr. Matt Kuntz, Helena Qualifications (if required): Consumer	Governor	4/1/2018
Mr. Eric Arzubi, Billings Qualifications (if required): Healthcare providers	Governor	4/1/2018
Mr. John Felton, Billings Qualifications (if required): Healthcare providers	Governor	4/1/2018
Ms. Lenette Kosovich, Billings Qualifications (if required): Healthcare providers	Governor	4/1/2018

EXECUTIVE BRANCH VACANCIES – MARCH 1, 2018 THROUGH MAY 31, 2018

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
Governor's Council on Healthcare Innovation Cont.		
Mr. Michael Vlases, Bozeman Qualifications (if required): Healthcare providers	Governor	4/1/2018
Mr. Aaron Wernham, Bozeman Qualifications (if required): Healthcare providers	Governor	4/1/2018
Dr. Monica Berner, Helena Qualifications (if required): Public and private payers	Governor	4/1/2018
Ms. LeeAnn Bruised Head, Missoula Qualifications (if required): American Indian health representative	Governor	4/1/2018
Ms. Marilyn Bartlett, Helena Qualifications (if required): Government Official	Governor	4/1/2018
Ms. Sydney Blair, Great Falls Qualifications (if required): Healthcare providers	Governor	4/1/2018
Ms. Annie Browne, Great Falls Qualifications (if required): Healthcare providers	Governor	4/1/2018
Ms. Dorothy Dupree, Billings Qualifications (if required): American Indian health representative	Governor	4/1/2018
Mr. John McNeece, Anaconda Qualifications (if required): Healthcare providers	Governor	4/1/2018

EXECUTIVE BRANCH VACANCIES – MARCH 1, 2018 THROUGH MAY 31, 2018

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
Governor's Council on Healthcare Innovation Cont.		
Mr. Larry Robert Turney, Helena Qualifications (if required): Public and private payers	Governor	4/1/2018
Ms. Susan Witte, Helena Qualifications (if required): Government Official	Governor	4/1/2018
Invasive Species Council		
Ms. Dona Lynn Rutherford, Browning Qualifications (if required): Representative of the Blackfeet Nation and is an addition to the Council	Governor	5/9/2018
Ms. Gail Whiteman, Crow Agency Qualifications (if required): Representative of the Crow Nation and is an addition to the Council	Governor	5/9/2018
Montana Heritage Preservation and Development Commission		
Mr. F. W. "Bill" Howell, West Yellowstone Qualifications (if required): Experience managing facilities that cater to the needs of tourists	Governor	5/1/2018
Ms. Barbie Durham, Cameron Qualifications (if required): Broad experience in Business	Governor	5/1/2018
Potato Commodity Advisory Committee		
Mr. Tim Lake, Polson Qualifications (if required): Potato Producer	Governor	3/1/2018

EXECUTIVE BRANCH VACANCIES – MARCH 1, 2018 THROUGH MAY 31, 2018

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
Potato Commodity Advisory Committee Cont. Mr. Jack Meyer, Manhattan Qualifications (if required): Potato Producer	Governor	3/1/2018
Temporary Assistance for Needy Families Ms. Arlene Templar, Pablo Qualifications (if required): Representative of CSKT Tribal Employment Program	Director	3/1/2018
Representative Mary M. Caferro, Helena Qualifications (if required): Public Representative and former TANF Parent	Director	3/1/2018
Ms. Heather O'Loughlin, Helena Qualifications (if required): Representative of a statewide research organization	Director	3/1/2018
Ms. Pamela Carlson, Helena Qualifications (if required): Representative of TANF WoRC Consortium	Director	3/1/2018
Mr. Patrick Sweeney, Billings Qualifications (if required): Representative of past TANF Recipient	Director	3/1/2018
Ms. Lorianne Burhop, Missoula Qualifications (if required): Representative of a statewide food program	Director	3/1/2018
Ms. Lucinda Burns, Lame Deer Qualifications (if required): None Stated	Director	3/1/2018

EXECUTIVE BRANCH VACANCIES – MARCH 1, 2018 THROUGH MAY 31, 2018

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
Temporary Assistance for Needy Families Cont.		
Ms. Barbara Burton, Helena Qualifications (if required): Representative of a youth related advocacy organization	Director	3/1/2018
Ms. Erin Irvine, Ronan Qualifications (if required): Public Representative/single mother and current college student	Director	3/1/2018
Ms. Veronica Moldenhauer, Great Falls Qualifications (if required): Representative of an early childhood education organization	Director	3/1/2018
Ms. Jaymie Sheldahl, Helena Qualifications (if required): Representing Head Start	Director	3/1/2018
Ms. Karen Vanni, Great Falls Qualifications (if required): Representative of a nonprofit organization working with low income clients	Director	3/1/2018
Ms. Pam Watson, Helena Qualifications (if required): Representing Montana Department of Labor and Industry	Director	3/1/2018
Ms. Kelsen Young, Helena Qualifications (if required): Representative of a statewide advocacy program	Director	3/1/2018
Youth Justice Council		
Sheriff Craig Anderson, Glendive Qualifications (if required): Competence in addressing problems related to school violence and vandalism	Governor	3/1/2018

EXECUTIVE BRANCH VACANCIES – MARCH 1, 2018 THROUGH MAY 31, 2018

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
Youth Justice Council Cont.		
Commissioner Laura Obert, Townsend Qualifications (if required): Local Government and Board of Crime Control Member	Governor	3/1/2018
Mr. Tim Brurud, Havre Qualifications (if required): Private Non-Profit	Governor	3/1/2018
Judge Mary Jane Knisely, Billings Qualifications (if required): Law Enforcement and Juvenile Justice Agencies	Governor	3/1/2018
Mr. Randy Shipman, Dillon Qualifications (if required): Public Agency concerned with Delinquency Prevention or Treatment	Governor	3/1/2018
Mr. Dave Bailon, Kalispell Qualifications (if required): Volunteer who works with Delinquents or Potential Delinquents	Governor	3/1/2018
Mr. Peter Ohman, Bozeman Qualifications (if required): Public Agency concerned with Delinquency Prevention or Treatment	Governor	3/1/2018
Mr. Braeden Quinn, Missoula Qualifications (if required): Under the age of 24	Governor	3/1/2018
Ms. Geri Small, Lame Deer Qualifications (if required): Competence in addressing problems related to school violence and vandalism	Governor	3/1/2018
Ms. Tara French, Billings Qualifications (if required): Law Enforcement and Juvenile Justice Agencies	Governor	3/1/2018

EXECUTIVE BRANCH VACANCIES – MARCH 1, 2018 THROUGH MAY 31, 2018

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
Youth Justice Council Cont.		
Ms. Marilyn Helen King, Bozeman Qualifications (if required): Competence in addressing problems related to school violence and vandalism	Governor	3/1/2018
Ms. Haley Cox, Bozeman Qualifications (if required): Under the age of 24	Governor	3/1/2018
Ms. Abigail Helland, Bozeman Qualifications (if required): Under the age of 24	Governor	3/1/2018
Ms. Isabel Hamilton, Missoula Qualifications (if required): Under the age of 24	Governor	3/1/2018
Ms. Kristina Lucero, Missoula Qualifications (if required): Competence in addressing problems related to school violence and vandalism	Governor	3/1/2018

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SECRETARY OF STATE

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