

MONTANA ADMINISTRATIVE REGISTER

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MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 22

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 The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

In the matter of the adoption of New)	NOTICE OF PUBLIC HEARING ON
Rule I, amendment of ARM 4.10.101	)	PROPOSED ADOPTION,
through 4.10.103, and repeal of ARM	)	AMENDMENT, AND
4.10.108 pertaining to financial	)	REPEAL
responsibility)	

TO: All Concerned Persons

1. On December 11, 2018, at 1:00 p.m., the Department of Agriculture will hold a public hearing in Room 225 of the Scott Hart Building, 302 N. Roberts, Helena, Montana, to consider the proposed adoption, amendment, and repeal of the above-stated rules.

2. The Department of Agriculture will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Department of Agriculture no later than 5:00 p.m. on December 7, 2018, to advise us of the nature of the accommodation that you need. Please contact Cort Jensen, Department of Agriculture, P.O. Box 200201, Helena, Montana, 59620-0201; telephone (406) 444-3144; fax (406) 444-5409; or e-mail agr@mt.gov.

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

NEW RULE I REGULARLY ENGAGED IN THE BUSINESS (1) A farm applicator who receives over \$30,000 in compensation in any of the last five years for pesticide application or who advertises as a pesticide applicator is regularly engaged in the business of pesticide application and must license as a commercial applicator.

AUTH: 80-8-105, MCA

IMP: 80-8-209, MCA

REASON: The new rule determines the level of payment requiring a farm applicator to license as a commercial applicator. The original law was unclear, but this amount was deemed sufficient by the department and indicates a person should have the training and financial responsibility of other commercial applicators.

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

4.10.101 FINANCIAL RESPONSIBILITIES (1) Applicants applying for a commercial pesticide applicator's license shall must provide, on forms approved by the department, proof of insurance in the amount required under (a). ~~evidence of financial responsibility, establishing ability of applicant and/or his employees, to~~

~~respond to and indemnify any persons for all damages to their person or property arising out of the use, misuse, or attempted use of application of pesticides, within the financial limits set forth below. Provided, however, that this requirement for financial responsibility has no application to, and cannot be subjected to pay for any injury or damage to the person or property of the landowner hiring the pesticide application.~~

~~(a) The minimum insurance financial responsibility shall must be in the amount of \$50,000 one thousand five hundred dollars (\$1,500.00) for aerial applicators, and \$30,000 five hundred dollars (\$500.00) for all other applicators.~~

~~(b) The insurance must cover damages to third parties caused by the unintentional violations of FIFRA.~~

~~(2) The department may require each applicator that experiences or causes chemical accidents or occurrences during one or more licensing periods, to increase his financial responsibility requirement up to and including ten thousand dollars (\$10,000).~~

~~(3) An applicator possessing insurance coverage exceeding the requirements of this rule and its subsections, upon documentation approved by the department, shall be considered as meeting the requirements of this section.~~

~~(4)(2) Commercial seed treatment and elevator pest control applicators, whether at farm sites or their own business locations, vertebrate pest control applicators using ground applied baits, and public utility utilities, and non-commercial applicators applying pesticides in or on properties managed by them are exempt from the financial responsibilities required in ARM 4.10.101 through 4.10.103. Demonstration and research pest-control applicators may be exempt from the financial responsibilities required in ARM 4.10.101 through 4.10.103 upon appropriate application for exemption duly approved by the department. The department will evaluate each applicant's situation as shown on the waiver application considering particularly the following factors: actual pesticide applications used by the applicant, the use of co-operators, the size of plots, and the hazards and drift potential of pesticides utilized. All applicators shall comply with the requirements in ARM 4.10.104 through 4.10.108, inclusive.~~

~~(5) An applicator whose financial responsibility requirements has been increased, but who has, for two consecutive spray seasons, operated without any pesticide accidents or occurrences of pesticide damage, may make application to the department to be allowed to revert back to the minimum financial requirements of ARM 4.10.101.~~

AUTH: 80-8-105, MCA
IMP: 80-8-214, MCA

REASON: The amended rule transitions the department out of accepting certificate of deposits/bonds as proof of financial responsibility and into using insurance. This move will protect the farmers and their neighbors who contract for pesticide services. The move may increase the cost of being a commercial applicator if the applicator was not already insured, but the exact amount of the increase will depend on factors outside the department's control.

4.10.102 TYPES AND CONDITIONS OF FINANCIAL RESPONSIBILITY

~~(1) In meeting the financial responsibility requirements of ARM 4.10.101, applicant shall have the option to utilize and provide any one or more of the following means: (a) policy of liability insurance; or (b) a surety bond; or (c) by a deposit of cash, or certificate of deposit, or deposit of bond or other obligations for the payment of which the full faith and credit of the United States or of this state are pledged, and which has the capability of being directly converted to legal tender by this department, and approved by the department, conditioned to indemnify the people of the state of Montana for all damages to property and/or injury or death to any person or persons as set forth in ARM 4.10.101. After a deposit is made pursuant to (c) above, and after a license has been issued conditioned thereon, the deposit may not be withdrawn except with the prior written consent of the department and any unauthorized withdrawal or attempt to so withdraw may subject all persons involved with the withdrawal or any attempt thereof, to a charge violating section 80-8-306 (1) MCA.~~

~~(a)(1) The insurance policy or surety bond options shall only be approved if must be issued by an insurance company or bonding company currently qualified to do business in the state of Montana, and which provides for chemical damage responsibility for each and every chemical or pesticide the applicator may choose to apply.~~

~~(b) The total aggregate liability of each insurer or surety for claims shall be limited to the face amount of the policy or surety bond, and not exceeding the limits of each applicant under ARM 4.10.101 in the event the face amount of the policy or bond exceeds the required limits, for the current year together with all unresolved or unpaid claims, timely filed, pending from previous calendar years coverage.~~

~~(2) The department may accept a liability insurance policy in the proper face amount that contains a deductible clause in an amount not to exceed five hundred dollars (\$500.00) for all applicators. The department may allow a deductible greater than \$500 if an application submits documentation that a deductible of \$500 or less is not available from any insurer. This exception shall only must be based upon the lack of availability of the established deductible, not the increase or decrease in premium value of a higher deductible. When the deductible is greater than \$500, the applicator shall be required to obtain a bond or an indemnity as specified in ARM 4.10.102 (1) (c) for any amount greater than \$500. If the licensee has not satisfied the requirements of the deductible amount of any prior damage claim, such deductible clause in a currently submitted policy shall not be accepted by the department to satisfy the licensing requirements unless and until the application satisfies the prior damage claim. Insurance policies may have the pollution exclusion clause removed.~~

~~(3) The financial responsibility requirement imposed by ARM 4.10.101 must be maintained in full force and effect during each entire licensing period, except as provided in ARM 4.10.108. In the event of a lapse or termination in the means assuring financial responsibility, the applicator's license(s) shall will automatically terminate, coincidental in time with the lapse or termination of financial responsibility, and the licensee shall must immediately cease all applications of pesticides, and without further notice shall immediately return to the department, in person or by certified mail, all licenses issued to them him and/or their his employees for the~~

current calendar year, ~~and failure~~ Failure to ~~so~~ return shall constitute a violation under ARM 4.10.208. In the event a previously licensed applicator whose license(s) was terminated by the provisions of this rule desires to have their ~~his~~ license reissued for the balance of the calendar year, they must ~~he shall~~ file a new application, accompanied by a new filing fee, and demonstrate to the satisfaction of the department that they ~~he~~ once again meets the financial responsibility requirements of ARM 4.10.101, ~~and upon~~ Upon re-approval by the department, an applicator's ~~his~~ license(s) may be reissued unless some other legal or regulatory cause exists for non-issuance.

AUTH: 80-8-105, MCA
IMP: 80-8-214, MCA

REASON: The amended rule transitions the department out of accepting certificate of deposits/bonds as proof of financial responsibility and into using insurance. This move will protect the farmers and their neighbors who contract for pesticide services.

4.10.103 APPROVAL, MODIFICATION, AND CANCELLATION OF FINANCIAL RESPONSIBILITY ELEMENTS (1) The department ~~shall~~ must ascertain that the means establishing financial responsibility filed by the applicant fully complies with the act, and fully satisfies the rules adopted thereunder, prior to issuance of any license. The information demonstrating financial responsibility ~~shall~~ must be submitted on forms of the type approved by the department. ~~License application approval shall not be granted until a complete copy of the bond, verification of the indemnity trust fund deposit, or a certificate or binder of insurance coverage is filed along with the license application.~~ The licensee ~~shall~~ must provide a complete copy of the insurance policy upon written request ~~of~~ from the department. In the event the applicator options to utilize a liability insurance policy as the means of establishing financial responsibility, then and in that event, the applicator has the duty and responsibility, to ascertain that the policy proposed to be submitted provides chemical damage coverage for every pesticide proposed to be applied during the licensing period. In the event the applicator's proposed policy of insurance contains exclusions against coverage of one or more chemicals the applicator proposed to apply, then and in that event, the applicator may submit the proposed insurance policy to provide such coverage as it affords, ~~but the~~ The applicator must, in addition ~~thereto~~, provide evidence of financial responsibility to indemnify the public against chemical damage arising out of the use, misuse, or attempted use of each and every chemical proposed to be used or applied which is excluded from coverage of the proposed liability insurance policy. The amount of additional coverage ~~shall~~ must be in the minimum amount required under ARM 4.10.101 ~~and the means to be utilized shall be the options provided in ARM 4.10.102 (1) (b) or (c).~~

(2) The department ~~shall~~ must be notified by registered mail ten ~~(10)~~ days prior to any proposed modification of the liability insurance policy ~~or surety bond~~ requested by the licensee. Such modification must be approved by the department before the proposed modification can become final. Ten ~~(10)~~ days' notice by registered mail to the department is required prior to the ~~surety or~~ insurer cancelling

~~the licensee's surety bond or liability insurance, and prior to settlement of claims made against the licensee's bond or insurance. Modification of the indemnity trust fund, for any reason by any party, shall not be completed until the department has approved the proposed modification by written authorization to the licensee and the bank, trust, or other financial official or institution.~~

~~(a) If the financial responsibility is to be canceled, the requirements and procedures established in ARM 4.10.108 shall be followed.~~

AUTH: 80-8-105, MCA

IMP: 80-8-214, MCA

REASON: The amended rule transitions the department out of accepting certificate of deposits/bonds as proof of financial responsibility and into using insurance. This move will protect the farmers and their neighbors who contract for pesticide services.

5. The department proposes to repeal the following rule:

4.10.108 LICENSING PERIOD

AUTH: 80-8-105, MCA

IMP: 80-8-214, MCA

REASON: This rule defined how to handle certificate of deposits and bonds after a licensing period expired. It is no longer necessary and has no fiscal impact.

6. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Cort Jensen, Department of Agriculture, P.O. Box 200201, Helena, Montana, 59620-0201; telephone (406) 444-3144; fax (406) 444-5409; or e-mail agr@mt.gov, and must be received no later than 5:00 p.m., December 31, 2018.

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

8. 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 6 above 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. With regard to the requirements of 2-4-111, MCA, the department has determined that the adoption, amendment, and repeal of the above-referenced rules

will significantly and directly impact small businesses. The rules proposed for amendment (ARM 4.10.101, 4.10.102, and 4.10.103) will increase the cost of being a commercial applicator if the applicator was not already insured, but the exact amount of the increase will depend on factors outside the department's control.

/s/ Cort Jensen

Cort Jensen
Rule Reviewer

/s/ Ben Thomas

Ben Thomas
Director
Agriculture

Certified to the Secretary of State November 7, 2018.

BEFORE THE DEPARTMENT OF COMMERCE
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF PUBLIC HEARING ON
ARM 8.94.3729 pertaining to the	)	PROPOSED AMENDMENT
administration of the 2018 and 2019)	
Program Year Federal Community)	
Development Block Grant (CDBG))	
Program – Public Facilities Projects)	
and ARM 8.94.3730 pertaining to the)	
administration of the 2018 and 2019)	
Program Year Federal Community)	
Development Block Grant (CDBG))	
Program – Affordable Housing)	
Projects)	

TO: All Concerned Persons

1. On December 6, 2018, at 10:00 a.m., the Department of Commerce will hold a public hearing in Room 268 of the Park Avenue Building at 301 South Park Avenue, in Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Department of Commerce 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 Commerce no later than 5:00 p.m., December 4, 2018, to advise us of the nature of the accommodation that you need. Please contact Bonnie Martello, Department of Commerce, 301 South Park Avenue, P.O. Box 200501, Helena, Montana 59620-0523; telephone (406) 841-2596; TDD 841-2702; fax (406) 841-2771; or e-mail bmartello@mt.gov.

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

8.94.3729 INCORPORATION BY REFERENCE OF RULES FOR THE APPLICATION AND ADMINISTRATION OF THE COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) – PUBLIC FACILITIES PROJECTS (1) The Department of Commerce adopts and incorporates by reference the ~~2017-2018~~ 2018-2019 Application and Administrative Guidelines for Public Facilities Projects Grants as rules for the administration of the ~~2017-2018~~ 2018-2019 Community Development Block Grant (CDBG) Program.

(2) The rules incorporated by reference in (1) relate to the scope and procedures for the award, administration, monitoring, and close-out of matching planning grants to cities, towns, counties, and consolidated governments.

(3) Copies of the regulations adopted by reference in (1) may be obtained from the Department of Commerce, ~~Grants Bureau~~ Community Development

Divison, 301 South Park Avenue, P.O. Box 200523, Helena, Montana 59620-0523, or on the Grants Bureau Community Development Division's web site at <http://comdev.mt.gov/Programs/CDBG/Facilities/Overview>.

AUTH: 90-1-103, MCA

IMP: 90-1-103, MCA

REASON: It is reasonably necessary to adopt this rule because the federal regulations governing the state's administration of the Community Development Block Grant Program (CDBG) and 90-1-103, MCA, require the department to adopt rules to implement the program.

8.94.3730 INCORPORATION BY REFERENCE OF RULES FOR THE APPLICATION AND ADMINISTRATION OF THE COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) – AFFORDABLE HOUSING DEVELOPMENT PROJECTS

(1) The Department of Commerce adopts and incorporates by reference the ~~2017-2018~~ 2018-2019 Application and Administrative Guidelines for Affordable Housing Development Projects as rules for the administration of the ~~2017-2018~~ 2018-2019 Community Development Block Grant (CDBG) Program.

(2) The rules incorporated by reference in (1) relate to the scope and procedures for the award, administration, monitoring, and close-out of matching project grants to cities, towns, counties, and consolidated governments.

(3) Copies of the regulations adopted by reference in (1) may be obtained from the Department of Commerce, Grants Bureau Community Development Divison, 301 South Park Avenue, P.O. Box 200523, Helena, Montana 59620-0523, or on the Grants Bureau Community Development Division's web site at <http://comdev.mt.gov/Programs/CDBG/Housing/Overview>.

AUTH: 90-1-103, MCA

IMP: 90-1-103, MCA

REASON: It is reasonably necessary to adopt this rule because the federal regulations governing the state's administration of the Community Development Block Grant Program (CDBG) and 90-1-103, MCA, require the department to adopt rules to implement the program.

4. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Department of Commerce, Legal Department, 301 South Park Avenue, P.O. Box 2002501, Helena, Montana 59620-0523; telephone (406) 841-2596; TDD 841-2702; fax (406) 841-2771; or e-mail DOCAAdministrativeRules@mt.gov, and must be received no later than 5:00 p.m., December 14, 2018.

5. Bonnie Martello, Paralegal, Department of Commerce, has been designated to preside over and conduct this hearing.

6. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies 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 listed in 4 above or may be made by completing a request form at any rules hearing held by the department.

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 not significantly and directly impact small businesses.

/s/ Marty Tuttle

Marty Tuttle
Rule Reviewer

/s/ Pam Haxby-Cote

Pam Haxby-Cote
Director
Department of Commerce

Certified to the Secretary of State November 7, 2018.

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

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 24.17.127, pertaining to) PROPOSED AMENDMENT
prevailing wage rates for public works)
projects)

TO: All Concerned Persons

1. On December 7, 2018, at 10:00 a.m., the Department of Labor and Industry (department) will hold a public hearing in the basement auditorium at the DPHHS building, 111 North Sanders Street, Helena, Montana, to consider the proposed amendment of the above-stated rule.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m., on November 30, 2018, to advise us of the nature of the accommodation that you need. Please contact the Labor Standards Bureau, Employment Relations Division, Department of Labor and Industry, Attn: Mike Smith, P.O. Box 201503, Helena, MT 59620-1503; telephone (406) 444-1741; fax (406) 444-7071; TDD (406) 444-0532; or e-mail MSmith3@mt.gov.

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

24.17.127 ADOPTION OF STANDARD PREVAILING RATE OF WAGES

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

(e) The current building construction services rates are contained in the ~~2018~~ 2019 version of the "Montana Prevailing Wage Rates for Building Construction Services" publication.

(f) The current nonconstruction services rates are contained in the ~~2018~~ 2019 version of the "Montana Prevailing Wage Rates for Nonconstruction Services" publication.

(g) The current heavy construction services rates are contained in the ~~2018~~ 2019 version of the "Montana Prevailing Wage Rates for Heavy Construction Services" publication.

(h) The current highway construction services rates are contained in the ~~2018~~ 2019 version of the "Montana Prevailing Wage Rates for Highway Construction Services" publication.

(2) and (3) remain the same.

AUTH: 2-4-307, 18-2-409, 18-2-431, MCA

IMP: 18-2-401, 18-2-402, 18-2-403, 18-2-406, 18-2-411, 18-2-412, 18-2-413, 18-2-414, 18-2-415, 18-2-422, 18-2-431, MCA

REASON: There is reasonable necessity to update the prevailing wage rates for building construction services, heavy construction services, highway construction services, and nonconstruction services following the annual survey of wages that is provided for in 18-2-413, 18-2-414, and 18-2-415, MCA, respectively. The department surveys employers and applies the methodologies provided by ARM 24.17.119 through 24.17.122 to determine those prevailing wage rates.

4. Copies of the proposed 2019 publications, identified as "preliminary building construction rates," "preliminary highway construction rates," "preliminary heavy construction rates," and "preliminary nonconstruction rates" are available and can be accessed online at: <http://erd.dli.mt.gov/labor-standards>.

5. A printed version of the proposed 2019 publications is also available by contacting Mike Smith at the address and e-mail listed in paragraph 2 of this notice.

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: Labor Standards Bureau, Employment Relations Division, Department of Labor and Industry, Attn: Mike Smith, P.O. Box 201503, Helena, MT 59620-1503; fax (406) 444-7071; or e-mailed to MSmith3@mt.gov, and must be received no later than 5:00 p.m., December 14, 2018.

7. An electronic copy of this notice of public hearing is available through the department's web site at <http://dli.mt.gov/events/calendar.asp>, under the Calendar of Events, Administrative Rules Hearings Section. The department strives to make its electronic copy of this notice of public hearing conform to the official version of the notice, as published in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy, only the official text will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems, and that a person's difficulties in sending an e-mail do not excuse late submission of comments.

8. 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 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.

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

10. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of the above-referenced rule may significantly and directly impact small businesses. The proposed amendments will have an impact on some, but not all, small businesses (those with less than 50 full-time employees). The proposed amendments directly affect the wages that must be paid for work on Montana public works contracts. The types of businesses affected are primarily those in the construction industry, but the rule only affects those businesses that perform (or seek to perform) work on public works projects. In addition, there are businesses that provide certain types of nonconstruction services to state and local government agencies that are subject to payment of the prevailing wage rate. The types of nonconstruction service businesses that potentially are subject to the award of a public works contract are listed in 18-2-401(9), MCA.

There is no single effect on small businesses as a result of the proposed amendments. Some employers may have to pay higher wages as a result of changes to the prevailing wage rates; other employers may have a wage structure that is the same as or higher than the prevailing wage rate. Historically, some employers have stated that the prevailing wage rates are set too high, while other employers have stated that the rates are too low. In certain cases the difference between the established prevailing wage rate and the employer's customary wage rate may be significant, but it is unclear whether that difference will result in a significant change to the profitability of any given small business, as there are many other economic factors at play.

Montana law requires that prevailing wage rates be set following an annual survey of wages. There is an established statutory and administrative formula that establishes the prevailing wage rate for each work classification, based on the data and information gathered. The alternative to amending the wage rates is to not amend the rate, thus freezing the wage rate at the last-adopted level. Some employers would probably be adversely affected by the failure to adopt new prevailing wage rates. The department believes that under either alternative, some small businesses will be adversely affected by the selected alternative. The small businesses likely to be adversely affected by adoption of new rates are probably not the same as those that are likely to be adversely affected by not adopting new rates.

11. The department's Hearings Bureau has been designated to preside over and conduct this hearing.

/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 November 7, 2018.

BEFORE THE BOARD OF OCCUPATIONAL THERAPY PRACTICE
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 24.165.401 fees, 24.165.2101) PROPOSED AMENDMENT AND
continuing education, 24.165.2301) REPEAL
unprofessional conduct, and the)
repeal of 24.165.411 board filing)
practices, 24.165.2115 renewals)

TO: All Concerned Persons

1. On December 13, 2018, at 10:30 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 repeal of the above-stated rules.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Occupational Therapy Practice (board) no later than 5:00 p.m., on December 6, 2018, to advise us of the nature of the accommodation that you need. Please contact L'Joy Griebenow, Board of Occupational Therapy Practice, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2258; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; or dlibsdotp@mt.gov (board's e-mail).

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

24.165.401 FEES (1) through (1)(f) remain the same.
(g) Provider request for approval of continuing education
program or course 150
(2) and (3) remain the same.

AUTH: 37-1-131, 37-1-134, 37-24-201, 37-24-202, 37-24-310, MCA
IMP: 37-1-134, 37-1-141, 37-24-306, 37-24-310, MCA

REASON: The board is amending this rule to set a fee for continuing education (CE) providers to request approval of programs or courses to address the costs associated with this process. Rather than increase the licensees' fees, the board deemed it prudent to assess CE providers, since they typically charge a fee for their courses and have a marketing incentive to provide approved courses. Several other boards charge various fees for CE course/provider requests. The board estimates there will be approximately 35 provider requests for course or program approval, resulting in a \$5,250 increase in annual revenue.

24.165.2101 CONTINUING EDUCATION (1) through (6) remain the same.

(7) ~~Subject to board approval, continuing~~ Continuing education may be earned:

(a) through (b)(ii) remain the same.

(iii) the course must be ~~addressed to health professionals or a community service organization~~ germane to the profession;

(iv) through (8) remain the same.

AUTH: 37-1-131, 37-1-319, 37-24-202, MCA

IMP: 37-1-131, 37-1-306, 37-1-319, 37-24-202, MCA

REASON: The board determined it reasonable to amend this rule to allow staff more discretion in approving CE courses that are not affiliated with the current approved providers listed in this rule. The board intends for this amendment to create efficiencies in the CE review process due to less board time spent reviewing courses. Any course that cannot be determined to be acceptable by staff will be reviewed by the board at their next meeting.

Implementation citations are being amended to accurately reflect all statutes implemented through the rule.

24.165.2301 UNPROFESSIONAL CONDUCT (1) through (1)(y) remain the same.

~~(z) accepting, directly or indirectly, employment from any person who is not licensed to practice the profession or occupation, or who is not licensed or authorized to operate a professional practice or business;~~

(aa) through (am) remain the same but are renumbered (z) through (al).

AUTH: 37-1-131, 37-1-136, 37-1-319, 37-24-201, 37-24-202, MCA

IMP: 37-1-136, 37-1-307, 37-1-308, 37-1-309, 37-1-311, 37-1-312, 37-1-316, 37-24-106, 37-24-107, 37-24-202, MCA

REASON: The board is amending this rule to address inquiries from individuals intending to start occupational therapy businesses in Montana or wanting to hire occupational therapists for existing Montana businesses. Following discussion, the board concluded that because licensees practice within a code of ethics, it is not necessary to prohibit licensee employment by non-licensees and the public is not afforded greater protection by doing so. It is reasonably necessary to amend this rule to address confusion on the part of businesses, licensees, and the public.

4. The rules proposed to be repealed are as follows:

24.165.411 BOARD FILING PRACTICES

AUTH: 37-24-201, 37-24-202, MCA

IMP: 37-24-202, MCA

REASON: The board is repealing this rule as unnecessary and outdated because all correspondence and submissions to the boards are processed via standardized department procedures as part of the department's administrative services.

24.165.2115 RENEWALS

AUTH: 37-1-141, 37-24-201, 37-24-202, MCA

IMP: 37-1-141, 37-24-102, 37-24-301, 37-24-306, MCA

REASON: The board is repealing this unnecessary rule because the department administers a standardized renewal process for all professional and occupational licensure boards, and this rule merely references the department rules on renewals.

5. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Board of Occupational Therapy Practice, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or e-mail to dlibsdotp@mt.gov, and must be received no later than 5:00 p.m., December 14, 2018.

6. An electronic copy of this notice of public hearing is available at www.ot.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.

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

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

9. Regarding the requirements of 2-4-111, MCA, the board has determined that the amendment of ARM 24.165.401, 24.165.2101, and 24.165.2301 will not significantly and directly impact small businesses.

Regarding the requirements of 2-4-111, MCA, the board has determined that the repeal of ARM 24.165.411 and 24.165.2115 will not significantly and directly impact small businesses.

Documentation of the board's above-stated determinations is available upon request to the Board of Occupational Therapy Practice, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2258; facsimile (406) 841-2305; or to dlibsdotp@mt.gov.

10. L'Joy Griebenow, Executive Officer, has been designated to preside over and conduct this hearing.

BOARD OF OCCUPATIONAL THERAPY
PRACTICE
BRENDA TONER
INTERIM PRESIDING OFFICER

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

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

Certified to the Secretary of State November 7, 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 37.40.701, 37.40.702, and) PROPOSED AMENDMENT
37.40.705 pertaining to home health)
program)

TO: All Concerned Persons

1. On December 6, 2018, at 3:00 p.m., the Department of Public Health and Human Services will hold a public hearing in the auditorium of the Department of Public Health and Human Services Building, 111 North Sanders, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Public Health and Human Services no later than 5:00 p.m. on November 26, 2018, to advise us of the nature of the accommodation that you need. Please contact Gwen Knight, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

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

37.40.701 HOME HEALTH SERVICES, DEFINITIONS (1) ~~"Home bound status" means that a recipients:~~ "Home health agency" means an entity licensed by the Montana Department of Public Health and Human Services, certified by Medicare, and enrolled as a Medicaid provider.

~~(a) is confined on a full time, part time or intermittent basis to the person's place of residence for medical reasons;~~

~~(b) is unable to obtain required medical services without demonstrated taxing effort; or~~

~~(c) cannot reasonably obtain medical services other than through a home health agency.~~

(2) "Home health aide services" means services of an appropriately trained individual to assist with routine ~~a recipient in the activities of daily living and the care not requiring specialized nursing skills and supervised by a licensed registered nurse of the household.~~

(3) "Home health services" means services provided by a licensed home health agency to a member, on a part-time or intermittent basis ~~recipient considered homebound in the recipient's place of residence~~ for the purposes of postponing or preventing institutionalization.

- (a) Home health services include:
- (i) through (iv) remain the same.
 - (v) speech therapy services; and
 - (vi) disposable medical supplies for the purposes of the visit; and
 - ~~(vi)~~ (vii) medical supplies and, equipment, and appliances suitable for use in any setting in which normal life activities take place and as provided in ARM 37.86.1801 the home.
- (b) Home health services do not include:
- (i) personal care services as provided at ARM 37.40.1101, et seq. Title 37, chapter 40, subchapter 11;
 - (ii) Community First Choice services provided in ARM Title 37, chapter 40, subchapter 10;
 - ~~(ii)~~ (iii) visits made by a registered nurse for evaluating the home health needs of a recipient member or to review the provision of home health services by a home health aide or a licensed practical nurse; and
 - ~~(iii)~~ (iv) maintenance therapy as provided at ARM 37.86.601, et seq. Title 37, chapter 86, subchapter 6.
- (4) "Home health services visit" means a personal contact with the member in the place of residence of a place of service recipient made for the purpose of providing a covered home health service.
- (5) "Place of residence service" means the residential setting in which normal life activities take place the recipient generally resides.
- ~~(a) Place of residence includes a recipient's own home, a personal care facility, a foster home, a community home or other residential setting for persons who have a developmental disability or a physical disability, a rooming house or a retirement home.~~
- ~~(b) (a) Place of residence service does not include a hospital, a nursing facility, an adult day care center, or a day habilitation facility providing developmental disabilities services or an intermediate care facility for individuals with intellectual disabilities.~~
- (6) "Skilled nursing services" means professional nursing services, as defined in the Montana Nurse Practice Act, that are medically necessary to treat health care problems, provide health teaching, and/or provide health counseling provided on an intermittent or part time basis to meet the medical needs of a recipient who needs nursing procedures.

AUTH: 53-6-113, MCA

IMP: 53-6-101, 53-6-131, ~~53-6-141~~, MCA

37.40.702 HOME HEALTH SERVICES, REQUIREMENTS (1) through (3) remain the same.

- (4) Home health services must be:
- (a) ordered by the recipient's member's attending physician;
 - (b) remains the same.
 - (c) reviewed and renewed by the recipient's member's attending physician at a minimum of 60 day intervals.

~~(5) The provider must maintain documentation that the recipient meets the homebound definition.~~

(5) A written plan of care must include:

(a) how care is to be provided;

(b) a summary of the member's condition;

(c) documentation of the medical necessity;

(d) rationale for the required skill level;

(e) treatment plans;

(f) discharge goals; and

(g) certification by the member's physician.

(6) A member's need for medical supplies, equipment, and appliances must be reviewed annually by the member's attending physician.

~~(6) (7) Written physician orders, care plans and other recipient~~ All member records related to the delivery of home health services must be current and available upon request of the department or its designated representative.

(8) For the initiation of home health services, the department requires an initial face-to-face encounter which must be related to the primary reason the member requires home health services and must occur within 90 days before or within 30 days after the start of care.

(a) The face-to-face encounter shall be conducted by the certifying physician, an authorized non-physician practitioner (NPP), or an attending or post-acute physician when the member is being admitted to home health services immediately following an acute or post-acute stay.

(b) NPPs authorized to perform the face-to-face encounters for home health services are:

(i) a nurse practitioner;

(ii) a certified nurse midwife;

(iii) a clinical nurse specialist working with a physician; or

(iv) a physician assistant working under the supervision of a physician.

(c) If a NPP performs the face-to-face encounter, findings must be communicated to the certifying physician and included in the member's record.

(9) For the initiation of medical supplies, equipment, and appliances, a face-to-face encounter related to the reason the member requires medical equipment is required and must occur within six months prior to the start of the services.

(a) The face-to-face encounter for medical equipment shall be conducted by the certified physician or an authorized NPP, with the exception of a certified nurse midwife.

~~(7) (10) Home health services, except skilled nursing services, are limited to a combined maximum of 100 visits per recipient per fiscal year. Skilled nursing services are limited to 75 visits~~ 180 visits per recipient per fiscal year within 365 days from the day of the first authorized visit.

(a) remains the same.

~~(8) (11)~~ Home health aide services are subject to the following limitations:

(a) remains the same.

(b) Home health aide services must be provided under the supervision of a registered professional nurse and in accordance with a written plan of treatment established certified by a physician.

(c) A person receiving personal care attendant services or Community First Choice services may not receive home health aide services.

AUTH: 53-6-113, MCA

IMP: 53-6-101, 53-6-131, ~~53-6-141~~, MCA

37.40.705 HOME HEALTH SERVICES, REIMBURSEMENT

(1) remains the same.

(2) Home health services reimbursement includes the following services:

(a) and (b) remain the same.

(c) medical supplies, and equipment, and appliances suitable for use in any setting in which normal life activities take place ~~the home~~.

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

IMP: 53-6-101, 53-6-111, 53-6-131, ~~53-6-141~~, MCA

4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) proposes to amend ARM 37.40.701, 37.40.702, and 37.40.705. These amendments are necessary to incorporate changes made to the Code of Federal Regulations (CFR), specifically 42 CFR 440.70, as amended February 2, 2016, dealing with standards for home health services. Under the amended federal regulation, home health services cannot be restricted to individuals who are homebound or to services furnished solely in the home. The amended federal regulation also implements new face-to-face encounter requirements for initiation of home health services. Additionally, the federal regulation clarifies when medical supplies, equipment, and appliances are covered.

In order to maintain compliance with federal regulations, the home health services program rules must be updated to conform with 42 CFR 440.70. Failure to update these rules will result in the home health services program being out of compliance with federal regulations.

The department is proposing to amend ARM 37.40.702 to increase the allowable number of home health visits. This change is necessary to set service availability at levels that reflect the characteristics and, therefore, the service needs of persons for whom home health services are most appropriate.

The department is also proposing to make stylistic and organizational changes to ARM 37.40.701, 37.40.702, and 37.40.705 to make the rules clearer. These changes are necessary to improve administration of the program and comprehension of the rules.

ARM 37.40.701

The department has removed the "home-bound status" definition. The department added a definition to define the term "home health agency." The department has revised the rule to more clearly define the types of services that fall under the home health services program and training requirements applicable to home health service providers. References to the term "recipient" have been changed to "member" so that the rules consistently use the same term to identify persons receiving home health services.

ARM 37.40.702

The department has added language to clarify what must be contained in a written plan of care. The department has implemented the federal requirement for a face-to-face encounter to initiate home health services and identified the non-physician practitioners authorized to perform face-to-face encounters. The department has revised the rule to clarify coverage for medical supplies, equipment, and appliances. The department has also revised the rule to increase the allowable number of home health visits to 180 visits and to change the applicable time period from fiscal year to one year from the date of the first authorized visit. References to the term "recipient" have been changed to "member" so that the rules consistently use the same term to identify persons receiving home health services.

ARM 37.40.705

The department has revised this rule to remove reference to a home based requirement for receipt of home health services and to clarify coverage for medical supplies, equipment, and appliances.

Fiscal Impact

These rule amendments will increase the number of beneficiaries who are eligible for home health services due to the removal of the home bound status requirement and the expansion of service delivery locations. This may lead to a cost shift for programs that currently provide services to medically needy populations. The 1915(c) HCBS Big Sky Waiver and 1915(c) Waiver for Individuals with Severe Disabling Mental Illness programs provide private-duty nursing services to 257 Medicaid members who could be eligible for home health services depending on the care they need. The expected shift in services could lead to an increase in home health services expenses. The total estimated annual fiscal impact for the home health services amendment is \$1.1 million.

Funds impacted will be from federal Medicaid fund source 03583 and general fund source 01100. The department is unable to ascertain the exact fiscal impact to the home health services program at this point due to lack of available data. In FY 2018, approximately 331 Medicaid members received the home health services benefit. The annual operating budget for FY 2018 was \$476,847.00.

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: Gwen Knight, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail dphhslegal@mt.gov, and must be received no later than 5:00 p.m., December 14, 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.

10. Section 53-6-196, MCA, requires that the department, when adopting by rule proposed changes in the delivery of services funded with Medicaid monies, make a determination of whether the principal reasons and rationale for the rule can be assessed by performance-based measures and, if the requirement is applicable, the method of such measurement. The statute provides that the requirement is not applicable if the rule is for the implementation of rate increases or of federal law.

The department has determined that the proposed program changes presented in this notice are not appropriate for performance-based measurement and therefore are not subject to the performance-based measures requirement of 53-6-196, MCA.

/s/ Robert Lishman

Robert Lishman
Rule Reviewer

/s/ Sheila Hogan

Sheila Hogan, Director
Public Health and Human Services

Certified to the Secretary of State November 7, 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 37.81.104, 37.81.304, and) PROPOSED AMENDMENT
37.81.322 pertaining to Big Sky Rx)

TO: All Concerned Persons

1. On December 6, 2018, at 10:00 a.m., the Department of Public Health and Human Services will hold a public hearing in the auditorium of the Department of Public Health and Human Services Building, 111 North Sanders, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Public Health and Human Services no later than 5:00 p.m. on November 21, 2018, to advise us of the nature of the accommodation that you need. Please contact Gwen Knight, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

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

37.81.104 DEFINITIONS In addition to the definitions in 53-6-1001, MCA, the following definitions apply to this chapter:

(1) through (27) remain the same.

(28) "Renewal" means the process of verification ~~for applicants to return their prepopulated application timely~~ to remain eligible for Big Sky Rx benefits.

(29) through (33) remain the same.

AUTH: 53-2-201, 53-6-1004, MCA

IMP: 53-2-201, 53-6-1001, 53-6-1004, 53-6-1005, MCA

37.81.304 AMOUNT OF THE BIG SKY RX BENEFIT (1) An applicant eligible for the Big Sky Rx PDP premium assistance may receive a benefit not to exceed ~~\$34.00~~ \$35.80 per month. The benefit amount will not exceed ~~\$34.00~~ \$35.80 regardless of the cost of the premium for the PDP the individual chooses.

(a) If a portion of the applicant's PDP premium is paid through the Extra Help Program, the Big Sky Rx Program will pay the applicant's portion of the PDP premium up to ~~\$34.00~~ \$35.80 per month.

(b) remains the same.

(c) All expenditures are contingent on legislative appropriation. The amount of the monthly benefit, ~~\$34.00~~ \$35.80, extends the Social Security Extra Help benefit amount to Montana residents with income up to 200% FPL. The department's total expenditure for the program will be based on appropriation and the number of enrolled applicants.

AUTH: 53-2-201, 53-6-1004, MCA

IMP: 53-2-201, 53-6-1001, 53-6-1004, 53-6-1005, MCA

37.81.322 BIG SKY RX APPLICATION RENEWAL (1) Sixty days prior to the end of the 12-month eligibility period, a prepopulated notice will automatically be generated and mailed to the client. This notice is generated based on the client's eligibility enrollment determination date.

(2) The client must ~~verify the program~~ review the information on the notice by ~~noting any changes on the application and returning it to the department before the eligibility period ends~~ to ensure the information is accurate including, but not limited to, information about income, assets, dependent family members, and contact information.

(a) ~~The enrollee's renewal application will be processed as a renewal application when received by the department.~~ If the notice has incorrect information, the client must write the correct information on the notice and return the corrected notice to the department before the eligibility period ends.

(b) ~~The application will be processed according to ARM 37.81.318.~~ If the client has verified the information on the notice is correct, the client does not need to return it or take any other action.

(3) The department will process the enrollee's returned notice with corrected information as a renewal application in accordance with ARM 37.81.318.

AUTH: 53-2-201, 53-6-1004, MCA

IMP: 53-2-201, 53-6-1001, 53-6-1004, 53-6-1005, MCA

4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services Health Resources Division (department) is proposing to amend ARM 37.81.104, 37.81.304, and 37.81.322 pertaining to Big Sky Rx.

ARM 37.81.104

The department is proposing to amend ARM 37.81.104(28), the definition of "renewal," to reflect changes in the renewal process for recipients of the Big Sky Rx Program. The proposed definition eliminates reference to the requirement to return a renewal application in order to remain eligible for the program. The proposed definition provides for verification of the client's personal information. The reasonable necessity for this change is to coordinate with the changes proposed in ARM 37.81.322, which is explained below.

ARM 37.81.304

The Big Sky Rx program contributes to the cost of an eligible Montana resident's premium payment in a federally approved Medicare Prescription Drug Plan (PDP). This rule proposal, if adopted, will increase the maximum amount that Big Sky Rx will contribute to pay the eligible enrollee's monthly premium for a PDP program from \$34.00 per month to \$35.80 per month. The department is proposing this change to match the federally established Low Income Subsidy (LIS) monthly benefit benchmark.

This rule proposal will affect 2,427 Montanans, who will see an increase in the amount of monetary assistance from Big Sky Rx for their monthly PDP premium.

This rule proposal will increase (state and/or federal) spending by \$4,368.60 per month or \$52,423.20 on an annual basis.

ARM 37.81.322

The department is proposing to amend ARM 37.81.322 to reflect changes in the renewal process for members who receive services through the Big Sky Rx Program. The proposed amendment would require members to verify the accuracy of personal information contained on a notice sent to them by the department. Members would be required to return the notice only if information on the notice was incorrect and provide corrected information. If the information on the notice is correct, members need not return the notice to the department.

The reasonable necessity for this proposed change is to reduce the program's administrative burden by reducing the amount of data processing required of department employees. The change will reduce the number of returned notices and eliminate data processing for members who have had no change in their personal information. The department will be able to redirect program staff to other areas of the department to increase efficiencies. The change will also benefit members by eliminating the burden of returning the notice if there are not any changes to their personal information.

Fiscal Impact

There is no fiscal impact associated with this rulemaking.

The department intends these amendments to be effective January 1, 2019.

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: Gwen Knight, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail dphhslegal@mt.gov, and must be received no later than 5:00 p.m., December 14, 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.

10. Section 53-6-196, MCA, requires that the department, when adopting by rule proposed changes in the delivery of services funded with Medicaid monies, make a determination of whether the principal reasons and rationale for the rule can be assessed by performance-based measures and, if the requirement is applicable, the method of such measurement. The statute provides that the requirement is not applicable if the rule is for the implementation of rate increases or of federal law.

The department has determined that the proposed program changes presented in this notice are not appropriate for performance-based measurement and therefore are not subject to the performance-based measures requirement of 53-6-196, MCA.

/s/ Brenda K. Elias

Brenda K. Elias
Rule Reviewer

/s/ Sheila Hogan

Sheila Hogan, Director
Public Health and Human Services

Certified to the Secretary of State November 7, 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 37.40.830 pertaining to hospice) PROPOSED AMENDMENT
reimbursement)

TO: All Concerned Persons

1. On December 6, 2018, at 11:00 a.m., the Department of Public Health and Human Services will hold a public hearing in the auditorium of the Department of Public Health and Human Services Building, 111 North Sanders, Helena, Montana, to consider the proposed amendment of the above-stated rule.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Public Health and Human Services no later than 5:00 p.m. on November 21, 2018, to advise us of the nature of the accommodation that you need. Please contact Gwen Knight, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

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

37.40.830 HOSPICE, REIMBURSEMENT (1) through (8) remain the same.

(9) The department adopts and incorporates by reference 42 CFR 418.309, as amended August 6, ~~2015~~ 2018, which sets forth Medicare's methodology for calculating the hospice cap amount. Copies of 42 CFR 418.309 are available at the federal web site: <http://cms.hhs.gov/Medicare/Medicare-Fee-for-Service-Payment/Hospice/index.html>.

(10) and (11) remain the same.

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

AUTH: 53-6-113, MCA

IMP: 53-6-101, MCA

4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) proposes to amend ARM 37.40.830 to update its Medicaid hospice reimbursement fee schedule referenced in (12), effective October 1, 2018, in accordance with changes in federal hospice reimbursement rates set by the Centers for Medicare and Medicaid Services (CMS) in the Federal Register effective October 1, 2018. The department also proposes to amend ARM 37.40.830 to update the reference to 42 CFR 418.309 in (9) to the most recent version.

The proposed fee schedule implements an approximate, aggregate reimbursement rate increase of 1.8%, as computed and published by CMS, which will apply to providers in all 56 counties. Montana hospice rates are affected by a wage index applied geographically by county. The FY 2019 wage index has increased for Carbon, Yellowstone, and Golden Valley Counties by approximately 1.5%. Cascade and Missoula Counties' wage indexes each increased by approximately 3.5%. All other Montana counties are subject to the Montana rural wage index rate which decreased by approximately .5%. Additionally, two hospice providers will see a hospice reimbursement rate decrease of 2% for failure to comply with the federal quality data submission requirements during the prior fiscal year. A copy of the proposed hospice fee schedule can be found at www.Medicaidprovider.mt.gov/proposedfs.

The proposed rule amendments are necessary to pay Medicaid providers according to the current Medicare fee schedule effective October 1, 2018, and to adopt by reference the current applicable federal regulations related to determination of payment rates. In order to pay Medicaid hospice providers according to the Medicare fee schedule and rate methodology, the rules must be updated to provide adoption and incorporation of current federal regulations. Failure to update these rules will result in hospice reimbursement rates no longer staying current with federal changes and providers not having clarity on which federal regulations are applicable for Medicaid hospice services and reimbursement.

The increase in hospice rates will be retroactive to October 1, 2018. Any decreases in hospice rates will not be applied retroactively and would be effective upon adoption of the proposed rule amendment.

Fiscal Impact

The ARM 37.40.830 update will have a fiscal impact on the hospice program. Funds impacted will be from federal Medicaid fund source (03585) and general fund source (01100). In FY 2018, approximately 340 Medicaid recipients received the hospice benefit.

A majority of the Medicaid hospice program's approximately \$3.2 million budget provides reimbursement for hospice services provided in nursing facilities in the form of room and board for inpatient nursing facility hospice.

CMS has provided a 1.8% increase to the Hospice Medicaid rates across the country. Montana hospice rates are affected by a wage index applied geographically by county. The FY 2019 wage index has increased for Carbon, Yellowstone and Golden Valley Counties by approximately 1.5% percent. Cascade and Missoula Counties wage indexes have each increased by approximately 3.5%. All other Montana counties are subject to the Montana rural wage index rate which decreased by approximately .5%.

CMS provided verification that two Montana hospices failed to comply with quality data reporting requirements in FY 2018. The two hospices will see a rate reduction of 2 percentage points for failure to comply with the quality data submission requirements during this fiscal year.

5. The department proposes to apply increases in the hospice reimbursement rates retroactively to October 1, 2018. The implementation date of the rate increase is consistent with the federal approval of the hospice reimbursement rate fee increase and the effective dates of the promulgated federal regulations. Decreases in hospice rates would not be applied retroactively, but would be effective upon adoption of the proposed rule amendment.

6. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Gwen Knight, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail dphhslegal@mt.gov, and must be received no later than 5:00 p.m., December 14, 2018.

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

8. 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 6 above 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. 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.

11. Section 53-6-196, MCA, requires that the department, when adopting by rule proposed changes in the delivery of services funded with Medicaid monies,

make a determination of whether the principal reasons and rationale for the rule can be assessed by performance-based measures and, if the requirement is applicable, the method of such measurement. The statute provides that the requirement is not applicable if the rule is for the implementation of rate increases or of federal law.

The department has determined that the proposed program changes presented in this notice are not appropriate for performance-based measurement and therefore are not subject to the performance-based measures requirement of 53-6-196, MCA.

/s/ Robert Lishman

Robert Lishman
Rule Reviewer

/s/ Sheila Hogan

Sheila Hogan, Director
Public Health and Human Services

Certified to the Secretary of State November 7, 2018.

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

In the matter of the amendment of) NOTICE OF PROPOSED
ARM 37.111.339 pertaining to pools,) AMENDMENT
spas, and other water features)
) NO PUBLIC HEARING
) CONTEMPLATED

TO: All Concerned Persons

1. On January 1, 2019, the Department of Public Health and Human Services proposes to amend the above-stated rule.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Public Health and Human Services no later than 5:00 p.m. on November 27, 2018, to advise us of the nature of the accommodation that you need. Please contact Gwen Knight, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena MT 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

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

37.111.339 POOLS, SPAS, AND OTHER WATER FEATURES (1) Any swimming pool, spa, or other water feature that exists in a bed and breakfast establishment for guest use must be constructed and operated in compliance with Title 50, chapter 53, MCA, and ARM ~~Title 37, chapter 115, subchapters 1 through 22~~ 37.115.102, 37.115.103, and 37.115.106.

(2) and (3) remain the same.

(4) Copies of ARM ~~Title 37, chapter 115, subchapters 1 through 22~~ 37.115.102, 37.115.103, and 37.115.106 may be obtained from the Department of Public Health and Human Services, Public Health and Safety Division, Food and Consumer Safety Section, P.O. Box 202951, Helena, MT 59620-2951.

AUTH: 50-51-103, 50-51-108, MCA
IMP: 50-51-103, MCA

4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) is proposing to amend ARM 37.111.339. The department recently adopted new rules ARM 37.115.102, 37.115.103, and 37.115.106 in MAR Notice No. 37-850. These new

rules contain the most recent health and safety information relating to public swimming pools and removed building code requirements that were interspersed throughout the old rules. The department is proposing amendments to ARM 37.111.339 in order to correctly cite to the new rules.

ARM 37.111.339

The proposed amendments to ARM 37.111.339 will correctly reference the new rules.

Fiscal Impact

The proposed amendment should not have a fiscal impact.

5. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to: Gwen Knight, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena MT 59604-4210, no later than 5:00 p.m. on December 14, 2018. Comments may also be faxed to (406) 444-9744 or e-mailed to dphhslegal@mt.gov.

6. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to Gwen Knight at the above address no later than 5:00 p.m., December 14, 2018.

7. If the agency receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 14 persons based on the department's determination that there are 141 licensed bed and breakfast establishments in Montana.

8. 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 6 above 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. 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/ Robert Lishman
Robert Lishman
Rule Reviewer

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

Certified to the Secretary of State November 7, 2018.

BEFORE THE COMMISSIONER OF POLITICAL PRACTICES
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF PROPOSED
ARM 44.12.204 pertaining to the	)	AMENDMENT
payment threshold--inflation)	
adjustment for lobbyists	)	NO PUBLIC HEARING
	)	CONTEMPLATED

TO: All Concerned Persons

1. On December 17, 2018, the Commissioner of Political Practices proposes to amend the above-stated rule.

2. The Commissioner of Political Practices 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 Commissioner of Political Practices no later than 5:00 p.m. on December 11, 2018, to advise us of the nature of the accommodation that you need. Please contact Scott Cook, Commissioner of Political Practices, P.O. Box 202401, 1209 Eighth Avenue, Helena, Montana, 59620-2401; telephone (406) 444-2942; fax (406) 444-1643; or e-mail scook3@mt.gov.

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

44.12.204 PAYMENT THRESHOLD--INFLATION ADJUSTMENT

(1) Pursuant to the operation specified in 5-7-112, MCA, the adjusted payment threshold for calendar years ~~2017 and 2018 is \$2,550~~ 2019 and 2020 is \$2,600.

AUTH: 5-7-111, MCA
IMP: 5-7-112, MCA

Reasonable Necessity: Section 5-7-112, MCA, requires the Commissioner of Political Practices, following the general election, to adjust the payment threshold amount for reporting of lobbying-related expenses based on application of an inflation factor specified in that statute. There is reasonable necessity for the amendment of the rule because 5-7-112, MCA, requires the Commissioner of Political Practices to publish the revised threshold as a rule.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to Scott Cook, Commissioner of Political Practices, P.O. Box 202401, 1209 Eighth Avenue, Helena, Montana, 59620-2401; telephone (406) 444-2942; fax (406) 444-1643; or e-mail scook3@mt.gov, and must be received no later than 5:00 p.m., December 14, 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 Scott Cook at the above address no later than 5:00 p.m., December 11, 2018.

6. If the agency receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 41 persons based on the 410 lobbyists who registered to lobby in 2017-2018.

7. The commissioner 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. An electronic copy of this proposal notice is available on the Commissioner of Political Practice's website at politicalpractices.mt.gov or through the Secretary of State's website at <http://sosmt.gov/ARM/Register>.

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

10. 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/ Jaime MacNaughton
Jaime MacNaughton
Rule Reviewer

/s/ Jeffrey Mangan
Jeffrey Mangan
Commissioner

Certified to the Secretary of State November 7, 2018.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
AND THE BOARD OF SPEECH-LANGUAGE
PATHOLOGISTS AND AUDIOLOGISTS
STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF AMENDMENT AND
ARM 24.101.413 renewal dates and	)	REPEAL
requirements, 24.222.301 definitions,)	
24.222.701 supervisor responsibility,)	
24.222.703 functions of speech-)	
language pathology aides or)	
assistants, 24.222.706 functions of)	
audiology aides or assistants,)	
24.222.910 delivery of telepractice)	
services, 24.222.2102 continuing)	
education – speech-language)	
pathologists and audiologists,)	
24.222.2402 screening panel, and the)	
repeal of 24.222.514 license renewal,)	
24.222.702 schedule of supervision -)	
contents, 24.222.901 definitions)	

TO: All Concerned Persons

1. On July 20, 2018, the Board of Speech-Language Pathologists and Audiologists (board) published MAR Notice No. 24-222-28 regarding the public hearing on the proposed amendment and repeal of the above-stated rules, at page 1368 of the 2018 Montana Administrative Register, Issue No. 14.

2. On August 16, 2018, a public hearing was held on the proposed amendment and repeal of the above-stated rules in Helena. Several comments were received by the August 17, 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: Many commenters generally supported the proposed rule changes, stating they are reasonable and appropriate to regulate speech-language pathology and audiology and ensure clients receive quality services.

RESPONSE 1: The board appreciates all comments received in the rulemaking process.

ARM 24.222.301:

COMMENT 2: Several commenters supported the amendments to the telepractice definitions of "asynchronous" and "synchronous" in ARM 24.222.301. The

commenters believed the clarification will help in regulating both telepractice and telesupervision.

RESPONSE 2: The board appreciates all comments received in the rulemaking process.

COMMENT 3: Several commenters opposed allowing completion of a post-baccalaureate program in communication sciences and disorders to qualify as speech-language aides/assistants. The commenters suggested the board amend ARM 24.222.301(5)(a) to require either a bachelor's or associate degree for support individuals.

RESPONSE 3: The university system currently offers bachelor's and graduate degrees and post-baccalaureate certificates in communication sciences and disorders, but not an associate degree. Because of this and to keep more options open for future licensees, the board is amending this rule exactly as proposed.

ARM 24.222.701, ARM 24.222.703, and ARM 24.222.706:

COMMENT 4: Many commenters supported the amendments to ARM 24.222.701, 24.222.703, and 24.222.706 regarding speech-language pathology and audiology aides/assistants. The commenters specifically favored the limit on supervising up to three aides/assistants and only listing those services prohibited to aides/assistants. The commenters requested the board clarify that the board has authority to regulate and discipline aides/assistants, even though they are not licensed by the board.

RESPONSE 4: While the board appreciates all comments received in the rulemaking process, it is incorrect that the board has regulatory authority over unlicensed aides/assistants.

COMMENT 5: Several commenters opposed the amendments to ARM 24.222.701(3) to require that supervisors provide at least ten percent of services to each client. The commenters requested the board reverse this change to require at least 30 percent supervision for the first 90 workdays, including at least 20 percent direct and 10 percent indirect weekly supervision. The commenters suggested additional situations that would allow adjustment of supervision and recommended requiring 100 percent direct supervision when aides/assistants provide services to medically fragile students, patients, or clients.

RESPONSE 5: The board disagrees with the comment, as the referenced provision provides the minimum amount of client services provided by aide/assistant supervisors, and not a minimum supervision amount. The board intends for the ten percent services requirement to be a minimum standard that will allow supervisors to adjust according to individual supervision and client situations. While the commenters' suggestions may be based on hospital vs. school models, the board concluded that because a large part of supervision is knowing which clients can be

seen by aides, the suggested strict guidelines are less effective in individual treatment programs.

COMMENT 6: Several commenters opposed allowing speech-language pathologists and audiologists to supervise aides/assistants after only one year of licensure. The commenters asserted that a minimum of two years of licensure is necessary due to the complex nature and variety of disorders these licensees address and requested the board further amend ARM 24.222.701(4).

RESPONSE 6: While the rule requires one year of full licensure prior to supervising, the board points out that it is actually two years with the initial limited license period. Further, the board notes that this is not a new requirement, as the provision is only being renumbered and reorganized within the rule.

COMMENT 7: Many commenters objected to amending ARM 24.222.701(5) to allow supervisors to supervise three full-time equivalent aides/assistants and recommended limiting supervisors to no more than two aides/assistants.

RESPONSE 7: The board notes that the amendment does not increase the number of allowable supervisees, but provides a firm limit of three per supervisor. The board concluded there are very few situations where a licensee would supervise even three aides/assistants, and notes that other client safeguards are in place, such as minimum supervisor contact time.

COMMENT 8: Not specifically opposing or supporting ARM 24.222.703, several commenters stated speech-language pathology aides/assistants should be prohibited from providing certain services and provided specific language for inclusion in the rule.

RESPONSE 8: Noting that many of the suggested prohibited services are included in ARM 24.222.703, the board is amending the rule exactly as proposed. The board concluded it is unduly cumbersome to continually amend the rule to accommodate new aide/assistant tasks and believes that tasks should be assigned and monitored under the professional and ethical direction of the supervisor.

COMMENT 9: Numerous commenters objected to ARM 24.222.703(2)(b) which allows speech-language pathology aides/assistants I to perform diagnostic evaluations under supervision once the aide/assistant I has completed 100 graduate-level clinical clock hours or ten semester hours of graduate credits. The commenters suggested the board amend (2)(b)(i) to require a minimum of 100 hours of supervised fieldwork experience, and to strike (2)(b)(ii) entirely. The commenters further opined that licensed assistants should maintain their credential by fulfilling CE like audiologists and speech-language pathologists.

RESPONSE 9: The board notes that most aides/assistants I are on track to become licensed in Montana, and that supervisors ultimately approve all evaluations as the aides/assistants only perform the testing. Additionally, students perform the same

work with clients, and are also under a supervisor's direction and monitoring. The board further notes that aides/assistants are not currently licensed in Montana.

COMMENT 10: Not specifically opposing or supporting ARM 24.222.706, several commenters stated audiology aides/assistants should be prohibited from providing certain services and provided specific language for inclusion in the rule.

RESPONSE 10: Noting that many of the suggested prohibited services are included in ARM 24.222.706, the board is amending the rule exactly as proposed.

ARM 24.222.2102:

COMMENT 11: Several commenters supported the proposed changes to continuing education (CE) at ARM 24.222.2102, believing they will save administrative time and effort. The commenters encouraged the board to audit the allowable 50 percent of renewed licensees to ensure compliance with CE requirements.

RESPONSE 11: The board has a reasonable expectation of 100 percent audit compliance, which was achieved this last audit of 10 percent of renewed licensees. With this amendment, the board can utilize the flexibility to audit a higher percentage if desired.

4. The department has amended ARM 24.101.413 exactly as proposed.

5. The board has amended ARM 24.222.301, 24.222.701, 24.222.706, 24.222.910, 24.222.2102, and 24.222.2402 exactly as proposed.

6. The board has repealed ARM 24.222.514, 24.222.702, and 24.222.901 exactly as proposed.

7. A non-substantive drafting error was discovered in the amendments to ARM 24.222.703(3). Subsection (3)(a) is repeated in (e), and (3)(b) is repeated in (i). To correct this inadvertent duplication of two identical prohibited functions for speech-language pathology aides/assistants II, the board has amended ARM 24.222.703 with the following changes, stricken matter interlined, new matter underlined:

24.222.703 PROHIBITED SERVICES – SPEECH-LANGUAGE PATHOLOGY AIDES/ASSISTANTS (1) and (2) remain as proposed.

(3) Speech-language pathology aides/assistants II are not allowed to:

~~(a) transmit clinical information to anyone other than the aide/assistant supervisor directly supervising the aide/assistant;~~

~~(b) refer clients to outside professionals;~~

(c) through (i) remain as proposed but are renumbered (a) through (g).

BOARD OF SPEECH-LANGUAGE
PATHOLOGISTS AND AUDIOLOGISTS
LUCY HART PAULSON, Ed.D., CCC-SLP
PRESIDING OFFICER

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

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

Certified to the Secretary of State November 7, 2018.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the adoption of New Rule I pertaining to the deduction provided under IRC 199A - not allowed for the determination of Montana net income) NOTICE OF ADOPTION
)
)
)
)

TO: All Concerned Persons

1. On June 22, 2018, the Department of Revenue published MAR Notice No. 42-2-995 pertaining to the public hearing on the proposed adoption of the above-stated rule at page 1153 of the 2018 Montana Administrative Register, Issue Number 12.

2. On July 23, 2018, a public hearing was held to consider the proposed adoption; no proponents or opponents were present and no oral testimony was received. The department received written comments from Walter J. Kero, CPA, of Kero, Byington & Associates, CPAs.

3. The department adopts New Rule I (42.15.527) as proposed.

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

COMMENT #1: Mr. Kero's initial comments involve statements of opinion that the department is incorrect in its interpretation that the Qualified Business Income (QBI) reduction, found in Section 199A (§ 199A) of the Internal Revenue Code (IRC), as amended by the United States Congress (Congress) under the Tax Cuts and Jobs Act of 2017 (TCJA), is not allowed in the determination of Montana net income. Mr. Kero states that his comments are a formulation of his opinion on the effects that § 199A will have on Montana taxpayers.

RESPONSE #1: The department thanks Mr. Kero for providing the context and background for his opinion, but disagrees that the department's interpretation of the effects of the TCJA is incorrect.

COMMENT #2: Mr. Kero comments that the disallowing the § 199A reduction on state tax returns will have a significant impact on taxpayers' tax liability and that the reduction should be allowed under existing Montana laws and regulations.

RESPONSE #2: The department thanks Mr. Kero for his comments regarding the significance of disallowing the § 199A reduction on taxpayers' tax liability. Whether the impact is significant or not is dependent on each taxpayer and that taxpayer's tax situation.

The department disagrees that existing Montana law provides support for § 199A. Section 15-30-2620(2), MCA, indicates: "If a term is not defined in this chapter, the term has the same meaning as it does when used in a comparable context in the Internal Revenue Code." For the department to apply § 199A as Congress defined it, there would have to be a comparable context to which it can be applied. Prior to the TCJA, Montana had two types of below-the-line deductions: (1) deductions allowed in computing net income (15-30-2131, MCA); and (2) the standard deduction (15-30-2132, MCA). The TCJA creates a new deduction that is specifically excepted from IRC § 63 itemized deductions. This new deduction is not present in Montana law; therefore, there is no "comparable context" to which the department can apply the definition. For this reason, the department finds it necessary to adopt New Rule I.

COMMENT #3: Mr. Kero objects to the department's interpretation of federal language which the department states in the reasonable necessity for the rulemaking. Mr. Kero believes "impacts" is not correct, and that "conflict" is more appropriate regarding the federal law's influence upon Montana.

Mr. Kero further commented that Congress intended IRC § 63 to allow the states "to adopt 199A or not adopt 199A" and to provide "a choice regarding the business deduction." In other words, whether to allow the deduction should be an action of the Montana Legislature.

RESPONSE #3: The department disagrees with Mr. Kero's interpretation of what words to use in the statement of reasonable necessity and opines its interpretation is correct, that Congress intended § 199A to apply initially to federal returns, and the department appropriately stated the rule's necessity ". . . because the deduction was placed under IRC Section 63 as a standalone reduction of federal taxable income, and was not intended to impact states that use federal adjusted gross income as a starting point for calculating state individual income tax."

However, the department agrees that the Legislature may take up the issue of interpretation of § 199A if it determines the language Congress provided to the states is ambiguous.

As for Mr. Kero's other comments regarding congressional intent in adopting the new federal law, the department will not address those matters here as they fall outside the scope of this rulemaking.

COMMENT #4: Mr. Kero commented that the rule is not supported by, or agrees with, any existing law and does the opposite of 15-30-2602, MCA.

RESPONSE #4: The department does not agree. See Response #2, paragraph 2.

COMMENT #5: Mr. Kero comments that IRC § 199A is a business deduction, not a "personal, itemized deduction."

RESPONSE #5: While the QBI is termed a "deduction," the department has concluded that it operates as an exemption from income. In his letter, Mr. Kero

asserts that QBI is not a "personal, itemized deduction," yet he agrees with the department that it functions as an exemption. If the department were to adopt the interpretation that QBI should be treated as a deduction, this would be substituting form over substance. Further, if QBI is applied as a deduction, all expenses associated with the production of exempt income would have to be disallowed, which may leave Montana taxpayers in a worse situation than if they had not claimed a deduction. It is the conclusion of the department, therefore, that the QBI should be treated as an exemption.

COMMENT #6: Mr. Kero made several comments and statements of opinion regarding his review of a department legal memorandum regarding the department's review, interpretation, and guidance regarding the implementation of the TCJA and § 199A. The memorandum-based comments are a combination of agreement or acknowledgement of the department's conclusions and disagreement, primarily, with the department's final memorandum conclusion ". . . that the history of adoption of the federal definition for 'itemized deductions' in § 63(d), as applied to Montana, would disallow IRC 199A deductions for state tax purposes."

RESPONSE #6: The department appreciates the comments and opinions expressed by Mr. Kero, as well as his extensive tax and accounting experience. However, the department contends these tertiary comments have been discussed above, and the department will not address other comments that fall outside the scope of the rulemaking.

/s/ Todd Olson
Todd Olson
Rule Reviewer

/s/ Gene Walborn
Gene Walborn
Director of Revenue

Certified to the Secretary of State November 7, 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 recent rulemaking 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.

RECENT RULEMAKING BY AGENCY

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 June 30, 2018. This table includes notices in which those rules adopted during the period April 27, 2018, through October 19, 2018, occurred 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 June 30, 2018, this table, and the table of contents of this issue of the Register.

This table indicates the department name, title number, notice numbers in ascending order, the subject matter of the notice, and the page number(s) at which the notice is published in the 2018 Montana Administrative Registers.

To aid the user, this 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 October 2018 appear. Potential vacancies from December 1, 2018 through February 28, 2019, are also listed.

IMPORTANT

Membership on boards and commissions changes constantly. The following lists are current as of November 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 OCTOBER 2018

<u>Appointee</u>	<u>Appointed By</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Board of Athletic Trainers			
Mr. John Curtis Weida	Governor	Borst	10/12/2018
Missoula			10/1/2019
Qualifications (if required): Athletic Trainer			
Board of Nursing			
Mr. Tom Glover	Governor	Reappointed	10/12/2018
Great Falls			7/1/2022
Qualifications (if required): Public member			
Ms. Deborah L. Johnson	Governor	Kohn	10/12/2018
Helena			7/1/2022
Qualifications (if required): Public member			
Ms. Darlene Schulz	Governor	Reappointed	10/12/2018
Deer Lodge			7/1/2022
Qualifications (if required): Licensed Practical Nurse			
Ms. Sharon Sweeney Fee	Governor	Reappointed	10/12/2018
Livingston			7/1/2021
Qualifications (if required): Registered Nurse			

EXECUTIVE BRANCH APPOINTEES FOR OCTOBER 2018

<u>Appointee</u>	<u>Appointed By</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Board of Occupational Therapy Practice			
Ms. Twylla Kirchen Shepherd	Governor	Naprstek	10/12/2018 12/31/2022
Qualifications (if required): Occupational Therapist			
Mrs. Deborah Swingley Helena	Governor	Reappointed	10/12/2018 12/31/2022
Qualifications (if required): Member of the general public			
Board of Professional Engineers and Professional Land Surveyors			
Mr. Ronald Drake Helena	Governor	Reappointed	10/12/2018 7/1/2022
Qualifications (if required): Professional Chemical Engineer			
Mr. Troy Soren Jensen Sidney	Governor	None Stated	10/12/2018 7/1/2022
Qualifications (if required): Professional and practicing land surveyor for at least 12 years			
Ms. Tracy Worley Missoula	Governor	Jacobsen	10/12/2018 6/1/2022
Qualifications (if required): Representative of the public			

EXECUTIVE BRANCH APPOINTEES FOR OCTOBER 2018

<u>Appointee</u>	<u>Appointed By</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Board of Radiologic Technologists			
Ms. Barbara Anderson Culbertson Qualifications (if required): Licensed radiologic technologist	Governor	Reappointed	10/12/2018 7/1/2020
Mr. Daniel Funsch Missoula Qualifications (if required): Licensed Radiologic Technologist	Governor	Reappointed	10/12/2018 7/1/2021
Ms. Robin Johnson Dillon Qualifications (if required): Licensed radiologic technologist	Governor	Reappointed	10/12/2018 7/1/2021
Mr. Jeffry Lindenbaum Billings Qualifications (if required): Radiologist	Governor	Reappointed	10/12/2018 7/1/2020
Mr. Nathan David Richardson Kalispell Qualifications (if required): Licensed radiologic technologist	Governor	Fuller	10/12/2018 7/1/2020

EXECUTIVE BRANCH APPOINTEES FOR OCTOBER 2018

<u>Appointee</u>	<u>Appointed By</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Family Support Services Advisory Council			
Ms. Bonnie Lesley Ramage Billings	Governor	Vavak	10/12/2018 4/1/2020
Qualifications (if required): Parent Representative			
Judicial Standards Commission			
Ms. Jenny Eck Helena	Governor	Dugan	10/12/2018 7/1/2019
Qualifications (if required): Citizen			
State Historical Preservation Review Board			
Dr. Cynthia Riley Auge Missoula	Governor	Reappointed	10/1/2018 10/1/2022
Qualifications (if required): History Professional (Historical Researcher)			
Mr. Marvin Keller Billings	Governor	Fulbright	10/1/2018 10/1/2022
Qualifications (if required): History Professional (Historic Preservation)			
Underground Facility Protection Advisory Council			
Mr. John Bemis Helena	Governor	Moothart	10/12/2018 7/1/2019
Qualifications (if required): Member representing a telecommunications provider			

EXECUTIVE BRANCH APPOINTEES FOR OCTOBER 2018

<u>Appointee</u>	<u>Appointed By</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Upper Clark Fork River Basin Remediation and Restoration Advisory Council			
Ms. Susan Peterson	Governor	Sweeney	10/12/2018
Drummond			9/1/2019
Qualifications (if required): Citizen voting member			
Western Interstate Commission on Higher Education			
Representative Laurie Bishop	Governor	Wilmer	10/12/2018
Livingston			7/1/2022
Qualifications (if required): State Legislator			
Ms. Sheila Stearns	Governor	Williams	10/12/2018
Missoula			7/1/2019
Qualifications (if required): Member who is engaged in a professional occupation			

EXECUTIVE BRANCH VACANCIES – DECEMBER 1, 2018 THROUGH FEBRUARY 28, 2019

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
13th Judicial District Judge		
Mr. Donald L. Harris, Billings Qualifications (if required): None Stated	Governor	1/1/2019
Ms. Jessica Teresa Fehr, Billings Qualifications (if required): None Stated	Governor	1/1/2019
Board of Aeronautics		
Mr. Fred Lark, Lewistown Qualifications (if required): Representative of the General Public	Governor	1/1/2019
Mr. A. Christopher Edwards, Billings Qualifications (if required): Active Fixed Base Operator	Governor	1/1/2019
Board of Athletic Trainers		
Dr. John David Michelotti, Helena Qualifications (if required): Licensed Physician	Governor	1/1/2019
Board of Behavioral Health		
Ms. Mona Summer, Billings Qualifications (if required): Licensed Addiction Counselor	Governor	1/1/2019
Mr. Durand T. Bear Medicine, Browning Qualifications (if required): Licensed Addiction Counselor	Governor	1/1/2019

EXECUTIVE BRANCH VACANCIES – DECEMBER 1, 2018 THROUGH FEBRUARY 28, 2019

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
Board of Chiropractors		
Dr. Gregory L. Pisk, Kalispell Qualifications (if required): Chiropractor	Governor	1/1/2019
Board of Crime Control		
Representative Angela Russell, Lodge Grass Qualifications (if required): Public Representative	Governor	1/1/2019
Mr. Richard Kirn, Poplar Qualifications (if required): Tribal Government Representative	Governor	1/1/2019
Ms. Beth McLaughlin, Helena Qualifications (if required): Judiciary Representative	Governor	1/1/2019
Ms. Brenda C. Desmond, Missoula Qualifications (if required): Judiciary Representative	Governor	1/1/2019
Mr. Mike Batista, Helena Qualifications (if required): Law Enforcement Representative	Governor	1/1/2019
Mr. William Hooks, Helena Qualifications (if required): Criminal Justice Agency Representative	Governor	1/1/2019
Ms. Roxanne Ross, Helena Qualifications (if required): Public Representative	Governor	1/1/2019

EXECUTIVE BRANCH VACANCIES – DECEMBER 1, 2018 THROUGH FEBRUARY 28, 2019

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
Board of Crime Control Cont.		
Mrs. Adrienne Cotton, Helena Qualifications (if required): Law Enforcement Representative	Governor	1/1/2019
Mr. Derek J. VanLuchene, Helena Qualifications (if required): Public Representative	Governor	1/1/2019
Director Reginald D. Michael, Helena Qualifications (if required): Law Enforcement Representative	Governor	1/1/2019
Mr. Peter Ohman, Butte Qualifications (if required): Criminal Justice Agency	Governor	1/1/2019
Board of Environmental Review		
Representative Michele Reinhart, Missoula Qualifications (if required): Public Representative	Governor	1/1/2019
Dr. Robert Byron, Hardin Qualifications (if required): Expertise or background as a county health officer	Governor	1/1/2019
Mr. Roy Sayles O'Connor, Missoula Qualifications (if required): Public Representative	Governor	1/1/2019
Mr. John Felton, Billings Qualifications (if required): Expertise or background as county health officer or as a medical doctor	Governor	1/1/2019

EXECUTIVE BRANCH VACANCIES – DECEMBER 1, 2018 THROUGH FEBRUARY 28, 2019

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
Board of Environmental Review Cont.		
Mr. Tim Warner, Bozeman Qualifications (if required): Public Representative	Governor	1/1/2019
Ms. Hillary Hanson, Kalispell Qualifications (if required): Public Representative	Governor	1/1/2019
Board of Horse Racing		
Senator Dale Mahlum, Missoula Qualifications (if required): Horse racing industry	Governor	1/1/2019
Mr. Gary William Koepplin, Florence Qualifications (if required): District 5	Governor	1/1/2019
Mr. Shawn Real Bird, Crow Agency Qualifications (if required): District 2	Governor	1/1/2019
Board of Housing		
Representative Sheila Rice, Great Falls Qualifications (if required): Public Representative	Governor	1/1/2019
Representative Jeanette S. McKee, Hamilton Qualifications (if required): Public Representative	Governor	1/1/2019
Mr. Robert Gauthier, Ronan Qualifications (if required): Public Representative	Governor	1/1/2019

EXECUTIVE BRANCH VACANCIES – DECEMBER 1, 2018 THROUGH FEBRUARY 28, 2019

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
Board of Investments		
Mr. Karl Englund, Missoula Qualifications (if required): Attorney	Governor	1/1/2019
Ms. Diane Fladmo, Helena Qualifications (if required): Representative of Labor	Governor	1/1/2019
Mr. Jon Satre, Helena Qualifications (if required): Representative of Small Business	Governor	1/1/2019
Mr. Quinton Edward Nyman, Helena Qualifications (if required): Representative of Labor	Governor	1/1/2019
Ms. Teresa Olcott, Helena Qualifications (if required): Representative of the Financial Community	Governor	1/1/2019
Board of Labor Appeals		
Mr. Jerry Driscoll, Billings Qualifications (if required): Public Representative	Governor	1/1/2019
Board of Livestock		
Mr. John Scully, Bozeman Qualifications (if required): Cattle Producer	Governor	1/1/2019
Ms. Elaine Allestad, Big Timber Qualifications (if required): Livestock Industry	Governor	1/1/2019

EXECUTIVE BRANCH VACANCIES – DECEMBER 1, 2018 THROUGH FEBRUARY 28, 2019

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
Board of Livestock Cont.		
Mr. John Lehfelddt, Lavina Qualifications (if required): Sheep Producer	Governor	1/1/2019
Mr. Larry Trexler, Hamilton Qualifications (if required): Livestock Industry	Governor	1/1/2019
Board of Milk Control		
Mr. Jerrold A. Weissman, Great Falls Qualifications (if required): Republican	Governor	1/1/2019
Mr. W. Scott Mitchell, Billings Qualifications (if required): Attorney, Democrat	Governor	1/1/2019
Board of Occupational Therapy Practice		
Mrs. Deborah Swingley, Helena Qualifications (if required): Member of the general public with an interest in the rights of consumers	Governor	12/31/2018
Mr. Nathan Stevens Naprstek, Bozeman Qualifications (if required): Occupational Therapist	Governor	1/1/2019
Board of Oil and Gas Conservation		
Mr. Paul Gatzemeier, Billings Qualifications (if required): Landowner residing in oil or gas producing county but not involved in industry	Governor	1/1/2019

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<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
Board of Oil and Gas Conservation Cont.		
Mr. Ron Efta, Wibaux Qualifications (if required): Attorney	Governor	1/1/2019
Mr. Steven D. Durrett, Billings Qualifications (if required): Oil and gas industry representative	Governor	1/1/2019
Board of Pardons and Parole		
Mr. Mike Batista, Helena Qualifications (if required): Extensive experience in the criminal justice system	Governor	1/1/2019
Mr. Mark Staples, Helena Qualifications (if required): Public Representative	Governor	1/1/2019
Representative Bill McChesney, Miles City Qualifications (if required): Public Representative	Governor	1/1/2019
Ms. Kristina Lucero, Missoula Qualifications (if required): Extensive experience in criminal justice system and knowledge of American Indian culture	Governor	1/1/2019
Mr. Darrell Bell, Billings Qualifications (if required): Extensive experience in the criminal justice system	Governor	1/1/2019

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<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
Board of Personnel Appeals		
Mr. Steven Johnson, Missoula	Governor	1/1/2019
Qualifications (if required): Management Employee in organization with collective bargaining		
Mr. Jerry Rukavina, Great Falls	Governor	1/1/2019
Qualifications (if required): Alternate member who is full-time employee or elected official of a labor union		
Mr. LeRoy Schramm, Helena	Governor	1/1/2019
Qualifications (if required): Substitute having general labor-management experience		
Ms. Amy Verlanic, Anaconda	Governor	1/1/2019
Qualifications (if required): Represents management in collective bargaining activities		
Mr. James D. Soumas, Billings	Governor	1/1/2019
Qualifications (if required): Employee or elected official of a Labor Union or Association recognized by the Board		
Mr. Mario Valdez Martinez, Great Falls	Governor	1/1/2019
Qualifications (if required): Alternative member who is a full-time employee or elected official of a labor union		
Board of Public Assistance		
Ms. Helen Schmitt, Sidney	Governor	1/1/2019
Qualifications (if required): Public Representative		
Board of Public Education		
Ms. Sharon Carroll, Ekalaka	Governor	2/1/2019
Qualifications (if required): Resident of District 2 and identifies herself as an Independent		

EXECUTIVE BRANCH VACANCIES – DECEMBER 1, 2018 THROUGH FEBRUARY 28, 2019

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
Board of Regents of Higher Education		
Mr. Pat Williams, Missoula Qualifications (if required): Resident of District 1 (Democrat)	Governor	2/1/2019
Ms. Fran Maronick Albrecht, Missoula Qualifications (if required): District 1 Independent	Governor	2/1/2019
Board of Respiratory Care Practitioners		
Mr. William Carmichael, Great Falls Qualifications (if required): Respiratory Care Practitioner	Governor	1/1/2019
Mr. Justin Lyle O'Brien, Libby Qualifications (if required): Member of the public who is not a member of a health care profession	Governor	1/1/2019
Board of Behavioral Health		
Mr. Peter Degel, Helena Qualifications (if required): Professional Counselor	Governor	1/1/2019
Mr. B.A. "Doc" Tweedy, Helena Qualifications (if required): Public Representative	Governor	1/1/2019
Ms. Carol Staben Burroughs, Bozeman Qualifications (if required): Professional Counselor	Governor	1/1/2019

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<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
Coal Board		
Representative Ralph L. Lenhart, Glendive Qualifications (if required): Optometrist	Governor	1/1/2019
Ms. Marianne Roose, Eureka Qualifications (if required): District 1	Governor	1/1/2019
Mr. Tim Schaff, Fishtail Qualifications (if required): District 2, expertise in education	Governor	1/1/2019
Mrs. Veronica Small-Eastman, Lodge Grass Qualifications (if required): District 2 and expertise in education	Governor	1/1/2019
Commission for Human Rights		
Ms. Sheri Sprigg, Helena Qualifications (if required):	Governor	1/1/2019
Ms. Eldena Bear Don't Walk, Saint Ignatius Qualifications (if required): Public Representative	Governor	1/1/2019
District Court Judge District 17 Department 1		
Judge Yvonne Laird, Chinook Qualifications (if required): None Stated	Governor	1/1/2019

EXECUTIVE BRANCH VACANCIES – DECEMBER 1, 2018 THROUGH FEBRUARY 28, 2019

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
District Court Judge District 5 Department 1 Judge Luke Michael Berger, Helena Qualifications (if required): None Stated	Governor	1/1/2019
District Court Judge, District 18, Department 2 Judge Rienne Hartman McElyea, Bozeman Qualifications (if required): None Stated	Governor	1/1/2019
Economic Development Advisory Council Ms. Shalon Hastings, Helena Qualifications (if required): Montana Business Assistance Connection Region Representative	Governor	1/1/2019
Fish and Wildlife Commission Mr. Logan Brower, Scobey Qualifications (if required): District 4	Governor	1/1/2019
Mr. Richard Kerstein, Billings Qualifications (if required): District 4 representative	Governor	1/1/2019
Mr. Dan Vermillion, Livingston Qualifications (if required): District 2 representative	Governor	1/1/2019
Hard-Rock Mining Impact Board Ms. Marianne Roose, Eureka Qualifications (if required): District 1 impact area	Governor	1/1/2019

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<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
Hard-Rock Mining Impact Board Cont. Commissioner Dolores Plumage, Chinook Qualifications (if required): District 2 impact area	Governor	1/1/2019
Ms. Donna von Nieda, Nye Qualifications (if required): District 1 impact area	Governor	1/1/2019
Ms. Jane Weber, Great Falls Qualifications (if required): Person when appointed to the board is an elected County Commissioner	Governor	1/1/2019
Information Technology Board Commissioner Chris Mehl, Bozeman Qualifications (if required): Member representing local government	Governor	1/1/2019
Commissioner Galen Hollenbaugh, Helena Qualifications (if required): Director of a State Agency	Governor	1/1/2019
Interstate Compact on Educational Opportunity for Military Children Captain Michelle Bogden, Fort Harrison Qualifications (if required): Executive Branch Representative	Governor	2/5/2019
Judicial Nomination Commission Representative Hal Harper, Helena Qualifications (if required): Public Representative	Governor	1/1/2019

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<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
Labor-Management Advisory Council		
Lt. Governor Mike Cooney, Helena Qualifications (if required): None Stated	Governor	12/31/2018
Mr. Don Judge, Helena Qualifications (if required): Representing employees	Governor	12/31/2018
Mr. Bill Dahlgren, Missoula Qualifications (if required): Montana Chamber of Commerce	Governor	12/31/2018
Mr. Larry Jones, Missoula Qualifications (if required): Representative of employers	Governor	12/31/2018
Mr. Doug Buman, Seattle, WA Qualifications (if required): Representing Employees	Governor	12/31/2018
Ms. Annette Hoffman, Billings Qualifications (if required): Representing employers	Governor	12/31/2018
Mr. Chris Cavazos, Helena Qualifications (if required): Representing employees	Governor	12/31/2018
Mr. Eric Strauss, Helena Qualifications (if required): Ex-officio Member	Governor	12/31/2018
Mr. Lance Zanto, Helena Qualifications (if required): Representing employers	Governor	12/31/2018

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<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
Labor-Management Advisory Council Cont.		
Mr. Marvin Jones, Great Falls Qualifications (if required): Employer representing self-insurers	Governor	12/31/2018
Mr. Jim Larson, Billings Qualifications (if required): Representing employees	Governor	12/31/2018
Mr. Al Smith, Helena Qualifications (if required): Employee chosen by the Montana Trial Lawyers Association	Governor	12/31/2018
Mr. Alan Ekblad, Helena Qualifications (if required): Employers	Galen Hollenbaugh	12/31/2018
Ms. Vicki Evans, Great Falls Qualifications (if required): Self-Insurers	Governor	12/31/2018
Mr. Adam Haight, Helena Qualifications (if required): Employees	Governor	12/31/2018
Montana Alfalfa Seed Committee		
Mr. Dallas Steiger, Hysham Qualifications (if required): Actively engaged in the growing of alfalfa seed	Governor	12/1/2018
Dr. Laura Burkle, Bozeman Qualifications (if required): Actively engaged in the growing of alfalfa seed	Governor	12/1/2018

EXECUTIVE BRANCH VACANCIES – DECEMBER 1, 2018 THROUGH FEBRUARY 28, 2019

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
Montana Children's Trust Fund Board		
Ms. Tracy Moseman, Helena Qualifications (if required): State government agency involved in education	Governor	1/1/2019
 Mr. James Scott Wheeler, Kalispell Qualifications (if required): Public Member	Governor	1/1/2019
Montana Council on Developmental Disabilities		
Ms. Connie Wethern, Glasgow Qualifications (if required): Secondary consumer	Governor	1/1/2019
 Ms. Janet Carlson, Malta Qualifications (if required): Primary Consumer	Governor	1/1/2019
 Ms. Tarra Thomas, Billings Qualifications (if required): Secondary Consumer	Governor	1/1/2019
 Ms. Heather Juvan, Livingston Qualifications (if required): Primary Consumer	Governor	1/1/2019
Montana Facility Finance Authority		
Mr. Joe Quilici, Butte Qualifications (if required): Public Representative	Governor	1/1/2019

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<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
Montana Facility Finance Authority Cont.		
Mr. Matthew B. Thiel, Missoula Qualifications (if required): Attorney	Governor	1/1/2019
Ms. Kimberly Rickard, Helena Qualifications (if required): Public Representative	Governor	1/1/2019
Mr. Paul James Komlosi, White Sulphur Springs Qualifications (if required): Public Representative	Governor	1/1/2019
Montana Parks in Focus Commission		
Representative Chas V. Vincent, Libby Qualifications (if required): Member	Governor	12/31/2018
Mr. Jeffrey Welch, Livingston Qualifications (if required): Member	Governor	12/31/2018
Ms. Angie Grove, Helena Qualifications (if required): Chair	Governor	12/31/2018
Mr. Mark Aagenes, Helena Qualifications (if required): Member	Governor	12/31/2018
Ms. Lise Aangeenbrug, Golden Qualifications (if required): Member	Governor	12/31/2018

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<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
Montana Parks in Focus Commission Cont.		
Mr. Shane Doyle, Bozeman Qualifications (if required): Member	Governor	12/31/2018
Mr. Dave Galt, Helena Qualifications (if required): Member	Governor	12/31/2018
Mr. Stace Lindsay, Bozeman Qualifications (if required): Member	Governor	12/31/2018
Ms. Norma Nickerson, Missoula Qualifications (if required): Member	Governor	12/31/2018
Mr. Michael Punke, Missoula Qualifications (if required): Member	Governor	12/31/2018
Mr. Lance Trebesch, Bozeman Qualifications (if required): Member	Governor	12/31/2018
Mr. Aaron Wernham, Bozeman Qualifications (if required): Member	Governor	12/31/2018
Off-Highway Vehicle Advisory Committee		
Mr. Brad Colin, Billings Qualifications (if required): None Stated	Governor	12/31/2018

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<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
Off-Highway Vehicle Advisory Committee Cont.		
Mr. Russ Ehnes, Great Falls Qualifications (if required): None Stated	Governor	12/31/2018
Mr. Mark Klemencic, Great Falls Qualifications (if required): None Stated	Governor	12/31/2018
Ms. Jody Loomis, Helena Qualifications (if required): None Stated	Governor	12/31/2018
Ms. Jennifer Schofield, East Helena Qualifications (if required): None Stated	Governor	12/31/2018
Mr. Bob Walker, Clancy Qualifications (if required): None Stated	Governor	12/31/2018
Mr. Kent Wellner, Missoula Qualifications (if required): None Stated	Governor	12/31/2018
Public Safety Officers Standards and Training (POST) Council		
Sergeant James D. Wells, Great Falls Qualifications (if required): Local law enforcement officer	Governor	1/1/2019
Mr. Lewis K. Smith, Deer Lodge Qualifications (if required): County Attorney	Governor	1/1/2019

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<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
Public Safety Officers Standards and Training Council		
Mr. Kevin Olson, Helena Qualifications (if required): Department of Corrections Representative	Governor	1/1/2019
Mr. William Dial, Whitefish Qualifications (if required): Board of Crime Control Representative	Governor	1/1/2019
Mr. Lewis G. Matthews, Wolf Point Qualifications (if required): Tribal Law Enforcement	Governor	1/1/2019
Mr. Jesse Slaughter, Great Falls Qualifications (if required): Local Law Enforcement	Governor	1/1/2019
Ms. Tia Rikel Robbin, Kalispell Qualifications (if required): Citizen At-Large	Governor	1/1/2019
Ms. Gina Dahl, Havre Qualifications (if required): County Attorney	Governor	1/1/2019
Mr. Ryan L. Oster, Hamilton Qualifications (if required): Chief of Police	Governor	1/1/2019
Pulse Crop Commodity Advisory Committee		
Mr. Jon Stoner, Havre Qualifications (if required): General member	Governor	2/1/2019

EXECUTIVE BRANCH VACANCIES – DECEMBER 1, 2018 THROUGH FEBRUARY 28, 2019

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
Pulse Crop Commodity Advisory Committee Cont.		
Mr. Dustin Kreger, Great Falls Qualifications (if required): General member	Governor	2/1/2019
Mr. Roger Sammons, Cut Bank Qualifications (if required): Producer	Governor	2/1/2019
Rail Service Competition Council		
Mr. Dylan Boyle, Whitefish Qualifications (if required): Person with substantial knowledge/experience related to rail passenger service by Amtrak	Governor	1/1/2019
Mr. Craig A. Gilchrist, Glasgow Qualifications (if required): Substantial knowledge and experience related to Class II railroads	Governor	1/1/2019
State Employee Group Benefits Advisory Council		
Mr. Doug Mitchell, Helena Qualifications (if required): State Employee Representative	Director (Commerce)	12/31/2018
Ms. Mary Dalton, Helena Qualifications (if required): State Employee Representative	Director (DPHHS)	12/31/2018
Ms. Diane Fladmo, Helena Qualifications (if required): State Employees and Labor Organizations	Director (MEA-MFT)	12/31/2018

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<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
State Employee Group Benefits Advisory Council Cont.		
Mr. John McEwen, Helena Qualifications (if required): Retired State Employee's Representative	Director	12/31/2018
Mr. Rex Renk, Helena Qualifications (if required): Judiciary Branch Agencies	Director (Judiciary)	12/31/2018
Senator Jim Keane, Butte Qualifications (if required): Legislature Representative	Director (Legislature)	12/31/2018
Ms. Amy Sassano, Helena Qualifications (if required): State Employee Representative	Director (Gov's Office)	12/31/2018
Mr. Quinton Edward Nyman, Helena Qualifications (if required): State Employees and Labor Organizations	Director (MPEA)	12/31/2018
Ms. Marilyn Bartlett, Helena Qualifications (if required): Ex-officio Member Representing the Department of Administration	Director (Administration)	12/31/2018
Ms. Julie Flynn, Helena Qualifications (if required): State Employee Representative	Director (Commerce)	12/31/2018
Ms. Susan Fox, Helena Qualifications (if required): Legislative Branch Agencies	Director (Leg. Branch)	12/31/2018
Ms. Tami Gunlock, Helena Qualifications (if required): State Employees and Labor Organizations	Director (Administration)	12/31/2018

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<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
State Employee Group Benefits Advisory Council Cont. Ms. Peggy MacEwen, Helena Qualifications (if required): State Employee Representative	Director (DEQ)	12/31/2018
Ms. Connie Winner, Helena Qualifications (if required): State Employee Representative	Director	12/31/2018
State Lottery Commission Mr. Leo Prigge, Butte Qualifications (if required): Certified Public Accountant	Governor	1/1/2019
State Parks and Recreation Board Senator Thomas E. "Tom" Towe, Billings Qualifications (if required): District 5	Governor	1/1/2019
Director Mary Sexton, Helena Qualifications (if required): District 3	Governor	1/1/2019
Mr. Rockwood Scott Brown, Billings Qualifications (if required): District 5 member	Governor	1/1/2019
State Tax Appeal Board Mr. Dave McAlpin, Missoula Qualifications (if required): Public Representative	Governor	1/1/2019

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<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
Statewide Independent Living Council		
Ms. Barbara Louise Davis, Missoula Qualifications (if required): Public Representative	Governor	12/1/2018
Mr. Mitchell Ray McCabe, Missoula Qualifications (if required): Person with a disability employed by state agency or Center for Independent Living	Governor	12/1/2018
Dr. Julie Melissa Lane Tudor, Three Forks Qualifications (if required): Person with a disability	Governor	12/1/2018
Transportation Commission		
Representative Carol Lambert, Broadus Qualifications (if required): District 4 Representative	Governor	1/1/2019
Mr. Daniel Belcourt, Missoula Qualifications (if required): District 1 Representative	Governor	1/1/2019
Unemployment Insurance Appeals Board		
Mr. Bruce Campbell, Helena Qualifications (if required): Public Representative	Governor	1/1/2019

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COREY STAPLETON
SECRETARY OF STATE

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