

# MONTANA ADMINISTRATIVE REGISTER

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MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 11

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 The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

In the matter of soliciting applications	)	AMENDED NOTICE OF
for membership on a negotiated	)	NEGOTIATED RULEMAKING
rulemaking committee to amend ARM	)	
10.56.101 pertaining to the policies	)	
and procedures for standardized test	)	
administration using the required	)	
statewide assessments	)	

TO: All Concerned Persons

1. On May 25, 2018, the Office of Public Instruction published MAR Notice No. 10-1-130, regarding a Notice of Negotiated Rulemaking on page 998 of the Montana Administrative Register, Issue No. 10. Paragraph 2 of the notice contained incorrect information. The following is the correct language for paragraph 2:

"The independent negotiated rulemaking committee will consider issues for the purpose of reaching a consensus on the proposed rule amendment pertaining to policies and procedures for standardized test administration using the required statewide assessments."

2. All other paragraphs contained in the Notice of Negotiated Rulemaking remain unchanged.

/s/ Kyle A. Moen  
Kyle A. Moen  
Rule Reviewer

/s/ Elsie Arntzen  
Elsie Arntzen, Superintendent  
Office of Public Instruction

Certified to the Secretary of State, May 29, 2018.

BEFORE THE DEPARTMENT OF TRANSPORTATION  
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF PROPOSED
ARM 18.4.110, 18.4.111, and	)	AMENDMENT AND
18.4.112 and the repeal of ARM	)	REPEAL
18.4.101, 18.4.113, 18.4.114, and	)	
18.4.115 pertaining to electronic	)	NO PUBLIC HEARING
submission of transportation	)	CONTEMPLATED
construction bids		

TO: All Concerned Persons

1. On July 8, 2018, the Department of Transportation proposes to amend and repeal the above-stated rules.

2. The Department of Transportation 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 Transportation no later than 5:00 p.m. on June 29, 2018, to advise us of the nature of the accommodation that you need. Please contact Jake Goettle, Department of Transportation, Engineering Construction Contracting Bureau, P.O. Box 201001, Helena, Montana, 59620-1001; telephone (406) 444-6015; fax (406) 444-2486; TTY Service (406) 444-7696 or (800) 335-7592; or e-mail [jgoettle@mt.gov](mailto:jgoettle@mt.gov).

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

18.4.110 DEFINITIONS For the purposes of this subchapter, and unless the context expressly indicates otherwise:

~~(1) "Asymmetric cryptosystem" means a computer algorithm or series of algorithms which utilize two different keys with the following characteristics:~~

~~(a) one key signs a given message;~~

~~(b) one key verifies a given message; and~~

~~(c) the keys have the property that, knowing one key, it is computationally infeasible to discover the other key.~~

~~(2) "Certificate" means an electronic record that:~~

~~(a) identifies the certification authority issuing it;~~

~~(b) identifies its subscriber;~~

~~(c) contains a public key that corresponds to a private key under the control of the subscriber;~~

~~(d) specifies its operational period; and~~

~~(e) is digitally signed by the certification authority issuing it.~~

~~(3) "Certification authority" means a person or entity that issues a certificate, or in the case of certain certification processes, certifies amendments to an existing certificate.~~

- (4) (1) "Department" means the Montana Department of Transportation.
- (5) ~~"Digital signature" means a type of electronic signature that encrypts a record by using a cryptosystem in a manner that a person who has the unencrypted record, the encrypted record, and the signer's key can accurately determine:~~
- ~~(a) whether the encryption of the record to an electronic record was created using the private key that corresponds to the signer's public key; and~~
  - ~~(b) whether the record has been altered since the record was encrypted into an electronic record.~~
- (6) ~~"Digitally signed communication" is a message that has been processed by a computer in such a manner that legally ties the message to the individual that signed the message.~~
- (7) ~~"Identification" means the document or documents presented to a certification authority to establish the identity of a subscriber.~~
- (8) ~~"Key" means a password or table used to decipher encrypted electronic data.~~
- (9) ~~"Key pair" means a private key and its corresponding public key in a cryptosystem, as part of which the public key verifies the signature made by the private key.~~
- (10) ~~"Message" means a digital representation of information intended to serve as a written communication with the department.~~
- (11) ~~"Person" means a human being or any organization capable of signing a document, either legally or as a matter of fact.~~
- (12) ~~"Practice statement" means documentation of the practices, procedures and controls employed by a certification authority.~~
- (13) ~~"Private key" is a key of a key pair used to create a digital signature.~~
- (14) ~~"Public key" is the key of a key pair used to verify a digital signature.~~
- (15) ~~"Record" includes any paper, correspondence, form, book, photograph, microfilm, map, drawing, or other document, including a copy of any of them, that has been made or received by a state agency in connection with the transaction of the official business of that entity and all other documents required by law to be filed with or kept by that agency.~~
- (16) ~~"Proof of identification" means the document or documents presented to a certification authority to establish the identity of a subscriber.~~
- (17) ~~"Signer" means the person who signs a digitally acceptable technology to uniquely link the message with the person sending it.~~
- (18) ~~"State agency" means a department, board, commission, authority, or other governmental entity of the executive branch of state government, including the Montana university system.~~
- (19) ~~"Subscriber" means a person holding a private key that corresponds to a public key listed or identified in a certificate and who is the person to whom digitally signed records verified by reference to the certificate are to be attributed.~~
- (20) ~~"Technology" means the computer infrastructure hardware and/or software-based method or process used to create digital signatures.~~

~~(21) "Verify a digital signature" means to use the public key listed in a valid certificate, by means of a security procedure, to evaluate a digitally signed electronic record so that the evaluation concluded that:~~

~~(a) the digital signature was created using the private key corresponding to the public key listed in the certificate; and~~

~~(b) the electronic record has not been altered since its digital signature was created.~~

(2) "Electronic bid submission" means a bid submitted via an electronic process established by the department by which bidders submit proposals or bids for contracts using a secure bid service provider selected by the department.

AUTH: 30-18-118, 60-2-201, MCA

IMP: 30-18-104, 30-18-107, 30-18-109, 30-18-113, 30-18-114, 30-18-116, 30-18-117, 60-2-112, 60-2-113, 60-2-114, 60-2-201, MCA

REASON: The proposed amendments to ARM 18.4.110 are necessary to eliminate definitions of archaic terms that are no longer used throughout the administrative rules. The proposed amendment to (2) will add a definition of electronic bid submission as the term is used in the following proposed rule amendments. The proposed amendments to the authorizing and implementation statutory citations will add citations to the department's rule-making authority and statutes being implemented under Title 60, chapter 2, MCA.

#### 18.4.111 SUBMISSION OF TRANSPORTATION CONSTRUCTION BID

~~(1) Any person may, but is not required to, Except as stated in (4), a person must submit a transportation construction bid to the department using a message and digitally signed communication so long as such bid conforms to the rules contained in this subchapter and any other applicable laws, rules and policies an electronic bid and the electronic bid submission process established by the department.~~

~~(2) The bid must be ~~received by~~ submitted to the department by the date and time specified in the notice of bid or other similar document.~~

~~(3) The bidder is solely responsible for ensuring the message and digitally signed communication are received by the department by the due date and time.~~

~~(4) Any person availing itself of these rules in order to submit a transportation construction bid agrees to all of the provisions of these rules.~~

(3) Technical difficulties in accessing or posting to the department's bid service do not excuse late electronic bid submission.

(4) The department may accept a non-electronic bid submission for specific projects as designated in the notice of bid or contract special provisions. The bidder is solely responsible for ensuring a non-electronic bid submission is received by the department by the due date and time.

AUTH: 30-18-118, 60-2-201, MCA

IMP: 30-18-104, 30-18-107, 30-18-109, 30-18-113, 30-18-114, 30-18-116, 30-18-117, 60-2-112, 60-2-113, 60-2-114, 60-2-201, MCA



REASON: The proposed amendment is necessary to implement a mandatory electronic bid submission process for all construction bids within the department's Engineering Division. An optional electronic bid submission process has been in place since 2004 and is now widely used by bidders to submit bids via the internet and the department's service provider Bid Express™. This process will remain the same but will be expanded to become mandatory for all bidders. The proposed amendment will also create an exception to allow non-electronic bid submissions for a small number of contracts through special provisions. The proposed amendment will also delete unnecessary and archaic language from the rule. The proposed amendments to the authorizing and implementation statutory citations will add citations to the department's rule-making authority and statutes being implemented under Title 60, chapter 2, MCA.

18.4.112 ELECTRONICALLY TRANSMITTED BID ELECTRONIC BID SUBMISSION (1) In order for an electronically transmitted electronic bid to be deemed properly submitted, the ~~message bid~~ must, ~~at a minimum,~~ contain the following: all information required in the bid package and a digital signature.

- ~~(a) name and address of the bidder;~~
- ~~(b) name and appropriate designation of the project being bid upon;~~
- ~~(c) all items required in the notice of bid; and~~
- ~~(d) the digitally signed communication of the person bidding.~~

~~(2) Any bidder wishing to bid by electronic transmission must be preapproved in writing to do so by the department.~~

~~(3) The electronically transmitted bid must be submitted using an acceptable technology as set forth in ARM 18.4.113.~~

(2) A bidder must be authorized by the department before submission of electronic bids.

(3) A bidder must use the secure electronic bid service selected by the department.

AUTH: 30-18-118, 60-2-201, MCA

IMP: 30-18-104, 30-18-107, 30-18-109, 30-18-113, 30-18-114, 30-18-116, 30-18-117, 60-2-112, 60-2-113, 60-2-114, 60-2-201, MCA

REASON: The proposed amendment is necessary to delete unnecessary and archaic language from the rule. The proposed amendment will also add updated language describing the electronic bid submission process which has been in use by the department since 2004 but will now become mandatory for use by all bidders. The proposed amendments to the authorizing and implementation statutory citations will add citations to the department's rule-making authority and statutes being implemented under Title 60, chapter 2, MCA.

4. The department proposes to repeal the following rules:

18.4.101 ADMINISTRATION OF ENGINEERING DIVISION RULES

AUTH: 2-4-103, 2-4-201, 2-4-202, MCA

IMP: 2-4-103, 2-4-201, 2-4-202, MCA

REASON: The department's biennial rule review identified this rule for repeal to remove outdated, archaic language that is no longer used by the department.

18.4.113 ACCEPTABLE TECHNOLOGY

AUTH: 30-18-118, MCA

IMP: 30-18-104, 30-18-107, 30-18-109, 30-18-113, 30-18-114, 30-18-116, 30-18-117, MCA

REASON: The department's biennial rule review identified this rule for repeal to remove outdated, archaic language that is no longer used by the department.

18.4.114 PRIVATE AND PUBLIC KEYS

AUTH: 30-18-118, MCA

IMP: 30-18-104, 30-18-107, 30-18-109, 30-18-113, 30-18-114, 30-18-116, 30-18-117, MCA

REASON: The department's biennial rule review identified this rule for repeal to remove outdated, archaic language that is no longer used by the department.

18.4.115 VERIFICATION

AUTH: 30-18-118, MCA

IMP: 30-18-104, 30-18-107, 30-18-109, 30-18-113, 30-18-114, 30-18-116, 30-18-117, MCA

REASON: The department's biennial rule review identified this rule for repeal to remove outdated, archaic language that is no longer used by the department.

5. Concerned persons may submit their data, views, or arguments concerning the proposed actions in writing to: Jake Goettle, Department of Transportation, Engineering Construction Contracting Bureau, P.O. Box 201001, Helena, Montana, 59620-1001; telephone (406) 444-6015; fax (406) 444-2486; TTY Service (406) 444-7696 or (800) 335-7592; or e-mail [jgoettle@mt.gov](mailto:jgoettle@mt.gov), and must be received no later than 5:00 p.m., July 6, 2018.

6. If persons who are directly affected by the proposed actions 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 Jake Goettle at the above address no later than 5:00 p.m., July 6, 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 7 persons based upon the 73 contractors who submitted bids in 2017.

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 paragraph 5 above or may be made by completing a request form at any rules hearing held by the department.

9. An electronic copy of this proposal notice is available on the Department of Transportation website at [www.mdt.mt.gov](http://www.mdt.mt.gov).

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

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

12. With regard to the requirements of 2-15-142, MCA, the department has determined that the amendment and repeal of the above-referenced rules will not have direct tribal implications.

/s/ Carol Grell Morris  
Carol Grell Morris  
Rule Reviewer

/s/ Pat Wise  
Pat Wise  
Deputy Director  
Department of Transportation

Certified to the Secretary of State May 29, 2018.

BEFORE THE DEPARTMENT OF CORRECTIONS  
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF PUBLIC HEARING ON
ARM 20.7.901, 20.7.904, 20.7.907,	)	PROPOSED AMENDMENT AND
20.7.910, 20.7.913, and 20.7.919,	)	REPEAL
and the repeal of ARM 20.7.916	)	
pertaining to residential	)	
methamphetamine treatment	)	
programs	)	

TO: All Concerned Persons

1. On July 11, 2018, at 10:00 a.m., the Department of Corrections will hold a public hearing in the Small Meeting Room of the Lewis and Clark County Library, 120 S. Last Chance Gulch in Helena, Montana, to consider the proposed amendment and repeal of the above-stated rules.

2. The Department of Corrections 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 Corrections no later than 5:00 p.m. on July 3, 2018, to advise us of the nature of the accommodation that you need. Please contact Kim Morrison, Department of Corrections, P.O. Box 201301, Helena, Montana, 59620-1301; telephone (406) 444-3803; fax (406) 444-4551; or e-mail KMorrison@mt.gov.

3. GENERAL STATEMENT OF REASONABLE NECESSITY: The department is deleting 45-9-102, MCA, from the implementation citations for ARM 20.7.901, 20.7.904, 20.7.907, 20.7.910, 20.7.913, and 20.7.919 because the subsections of 45-9-102, MCA, that were implemented by the rules, were deleted from the statute by amendment in 2017 (HB 133). The department is adding 53-1-201, MCA, as an implementation citation for the above-referenced rules because 53-1-201(1), MCA, is directly on point and is implemented by these rules. Additional reasons for other proposed rule changes are set forth below.

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

20.7.901 DEFINITIONS As used in this subchapter, the following definitions apply:

(1) through (4) remain the same.

~~(5) "Eligible offender" means an offender who has been convicted and sentenced under 45-9-102(5)(a)(ii), MCA, for a second or subsequent offense of possession of methamphetamine.~~

(6) through (9) remain the same, but are renumbered (5) through (8).

AUTH: 53-1-203, MCA

IMP: ~~45-9-102~~, 53-1-201, 53-1-203, MCA

REASON: The definition of the term “eligible offender” is being deleted from the rule because the term is defined as someone convicted and sentenced under a specific subsection of 45-9-102, MCA, that was deleted by amendment in 2017 (HB 133).

20.7.904 ESTABLISHMENT OF A METHAMPHETAMINE TREATMENT PROGRAM (1) through (3) remain the same.

AUTH: 53-1-203, MCA  
IMP: ~~45-9-102~~, 53-1-201, 53-1-203, MCA

20.7.907 FACILITY REQUIREMENTS (1) through (4) remain the same.

AUTH: 53-1-203, MCA  
IMP: ~~45-9-102~~, 53-1-201, 53-1-203, MCA

20.7.910 POLICIES AND PROCEDURES (1) and (2) remain the same.

AUTH: 53-1-203, MCA  
IMP: ~~45-9-102~~, 53-1-201, 53-1-203, MCA

20.7.913 ADMISSION TO THE PROGRAM AND AFTERCARE (1) through (6) remain the same.

(7) Upon successful completion of the residential program ~~as determined in the discretion of the department and on the recommendation of a licensed clinical professional~~, the department ~~must place eligible offenders in one or more prerelease centers to complete the~~ may require an offender to complete community-based aftercare. ~~portion of the treatment program. The department will exercise its~~ At the discretion of the department, the department may to place other eligible offenders who have completed the residential program in a prerelease center to complete community-based aftercare or may identify an appropriate alternative placement.

AUTH: 53-1-203, MCA  
IMP: ~~45-9-102~~, 53-1-201, 53-1-203, MCA

REASON: It is necessary and reasonable to eliminate the mandatory nature of the aftercare program for offenders following completion of a residential methamphetamine treatment program. As amended the rule will give the department discretion to require placement in a prerelease center for completion of an aftercare program or to make an appropriate alternative placement.

The department believes that in some circumstances, as when an individual has a strong family and community support system and an employment opportunity awaiting them in the community, placement in a prerelease center for aftercare may not be needed. For others, an alternative post-residential treatment placement might better serve their needs. The amendment will give the department greater

flexibility to tailor programming to offenders' particular risks and needs and to use resources wisely.

Time spent in aftercare near the end of an offender's sentence can preclude that offender's admission to a more appropriate treatment program on the grounds the program could not be completed within the time remaining on the sentence.

20.7.919 EXPANSION (1) and (2) remain the same.

AUTH: 53-1-203, MCA

IMP: ~~45-9-102~~, 53-1-201, 53-1-203, MCA

5. The department proposes to repeal the following rule:

20.7.916 SENTENCE SUSPENSION

AUTH: 53-1-203, MCA

IMP: 45-9-102, 53-1-203, MCA

REASON: The department proposes to repeal ARM 20.7.916 because the rule implemented 45-9-102(5), MCA, which was repealed in 2017 by HB 133. The rule is no longer needed.

6. Concerned persons may submit their data, views, or arguments concerning the proposed actions either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Quality Assurance Office, Department of Corrections, P.O. Box 201301, Helena, Montana, 59620-1301; fax (406) 444-4920; or e-mail KAughney2@mt.gov, and must be received no later than 5:00 p.m., July 18, 2018.

7. Lorraine Schneider, Department of Corrections, has been designated to preside over and conduct this hearing.

8. The department maintains a list of interested persons who have requested to receive notices of rulemaking actions proposed by the department. A person may request that their name be added to the interested persons list by submitting to the contact person shown in paragraph 6, the requesting person's name, mailing and e-mail addresses, and preferred method of receiving rulemaking notices. If receipt by email is preferred, also specify whether, in lieu of receiving the notice as an attachment, consent is given for the department to send electronic notification including a link to the proposal notice on the department's website or a description of the means of locating where the notice is available on the website.

9. The bill sponsor contact requirements of 2-4-302, MCA, apply. The sponsor was contacted by email and regular mail on March 26, 2018.

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

/s/ Colleen E. Ambrose  
Attorney  
Rule Reviewer

/s/ Reginald D. Michael  
Director  
Department of Corrections

Certified to the Secretary of State May 29, 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 37.85.105 pertaining to ) PROPOSED AMENDMENT  
updating Medicaid fee schedules and )  
effective dates )

TO: All Concerned Persons

1. On June 28, 2018, at 1:30 p.m., the Department of Public Health and Human Services will hold a public hearing in the auditorium of the Department of Public Health and Human Services Building, 111 North Sanders, Helena, Montana, to consider the proposed amendment of the above-stated rule.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Public Health and Human Services no later than 5:00 p.m. on June 15, 2018, to advise us of the nature of the accommodation that you need. Please contact Todd Olson, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-9503; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

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

37.85.105 EFFECTIVE DATES, CONVERSION FACTORS, POLICY ADJUSTERS, AND COST-TO-CHARGE RATIOS OF MONTANA MEDICAID PROVIDER FEE SCHEDULES (1) and (2) remain the same.

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

(a) through (k) remain the same.

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

(m) through (y) remain the same.

(z) The private duty nursing fee schedule, as provided in ARM 37.86.2207(2), is effective July 1, 2018.

(4) remains the same.

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

(a) remains the same.



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

(c) and (6) remain the same.

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

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

#### 4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) has determined that an increase to the private duty nursing fees is necessary to serve high-needs Montana Medicaid members in the least costly setting. According to the Montana Medicaid 2017 Access Monitoring Plan, one private duty nursing provider withdrew as a Medicaid provider between state fiscal years 2016 and 2017, leaving four providers available to serve Montana's Medicaid population. In 2018, one of the four remaining providers notified the department that it could no longer provide private duty nursing at the reimbursement rate currently paid by the Medicaid program and that it would discontinue services within three months. In response, the department analyzed the Medicaid population served, the number of private duty nursing agencies across the state, the existing labor market for nurses, the cost of providing private duty nursing benefits to Medicaid members, and the higher level of care costs avoided by providing the private duty nursing benefit. Therefore, the department now proposes to reimburse private duty nursing providers at the rates of \$8.95 per 15 minutes of care by a licensed practical nurse (LPN) and \$11.28 per 15 minutes by a registered nurse (RN). The rates are currently \$7.38 for LPN services and \$8.69 for RN services.

In the interest of clarity, the department proposes to make this change by creating a new subsection for private duty nursing services within the section of the rule that relates to the Health Resources Division (HRD).

In addition to changing the HRD fee schedule, the department will also amend the fee schedule for private duty nursing under the home and community based services for adults with severe disabling mental illness within the Addictive and Mental Disorders Division.

The department intends to make these amendments effective July 1, 2018. The dates for both of these fee schedules were recently changed to July 1, 2018, in MAR Notice No. 37-838. Therefore, the dates for both of these fee schedules will remain July 1, 2018.

#### FISCAL IMPACT

In the Health Resources Division, the expected fiscal impact is \$393,600.02 in state general fund dollars and \$764,730.14 in federal funding. In the Addictive and Mental

Disorders Division, the expected fiscal impact is \$8,411, state general fund, and \$16,344, federal funding.

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

11. The department will apply these rule amendments retroactively to July 1, 2018. A retroactive application of the proposed rule amendments does not result in a negative impact to any affected party.

/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 May 29, 2018.

BEFORE THE BOARD OF COUNTY PRINTING  
OF THE STATE OF MONTANA

In the matter of the amendment of ) NOTICE OF AMENDMENT  
ARM 2.67.303 pertaining to rates for )  
county legal advertising )

TO: All Concerned Persons

1. On February 9, 2018, the Board of County Printing published MAR Notice No. 2-67-569 regarding a public hearing on the proposed amendment of the above-stated rule at page 230 of the 2018 Montana Administrative Register, Issue Number 3. On March 30, 2018, the Board of County Printing published MAR Notice No. 2-67-569 rescheduling the public hearing on the proposed amendment of the above-stated rule at page 610 of the 2018 Montana Administrative Register, Issue Number 6.

2. No comments or testimony were received.

3. The board has amended ARM 2.67.303 exactly as proposed.

By: /s/ Roger Wagner  
Roger Wagner, Chair  
Board of County Printing

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

Certified to the Secretary of State May 29, 2018.

BEFORE THE DEPARTMENT OF AGRICULTURE  
OF THE STATE OF MONTANA

In the matter of the adoption of New ) CORRECTED NOTICE OF  
Rules I through XV and the repeal of ) ADOPTION AND REPEAL  
ARM 4.6.401 through 4.6.404 )  
pertaining to the Montana Pulse Crop )  
Committee )

TO: All Concerned Persons

1. On December 22, 2017, the Department of Agriculture published MAR Notice No. 4-17-243 pertaining to the public hearing on the proposed adoption and repeal of the above-stated rules at page 2373 of the 2017 Montana Administrative Register, Issue Number 24. On February 9, 2018, the department published the notice of adoption and repeal of the above-stated rules at page 301 of the 2018 Montana Administrative Register, Issue Number 3. On April 27, 2018, the department published a corrected notice of adoption and repeal of the above-stated rules at page 823 of the 2018 Montana Administrative Register, Issue Number 8.

2. A grammatical error was made on the original rule submission and has been corrected. The rule, as amended in corrected form, reads as follows, deleted matter interlined, new matter underlined:

4.21.304 NOTIFICATION OF AWARDS (1) Grant applicants shall be notified within 60 days after the committee's budget meeting as to whether or not their application(s) have been granted. ~~Applications~~ Applicants shall also be notified of the amount to be funded for each approved project.

3. The replacement pages for this corrected notice were submitted to the Secretary of State on March 31, 2018.

/s/ Zach Coccoli  
Zach Coccoli  
Rule Reviewer

/s/ Ben Thomas  
Ben Thomas  
Director  
Agriculture

Certified to the Secretary of State May 29, 2018.

BEFORE THE COMMISSIONER OF SECURITIES AND INSURANCE  
MONTANA STATE AUDITOR

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

TO: All Concerned Persons

1. On February 23, 2018, the Commissioner of Securities and Insurance, Montana State Auditor published MAR Notice No. 6-243 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 369 of the 2018 Montana Administrative Register, Issue Number 4.

2. The department has amended the following rules as proposed: ARM 6.6.2504 and 6.6.2505.

3. After consideration of the comments received, the department amends the following rules as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

6.6.2503 DEFINITIONS (1) and (2) remain as proposed.

(3) "Emergency care services" means: the same as "emergency services," and incorporating "emergency medical condition," as defined in 33-36-103, MCA.

~~(a) if within the service area:~~

~~(i) covered health care services rendered by affiliated providers under unforeseen conditions that require immediate medical attention; and~~

~~(ii) covered health care services from non-affiliated providers under unforeseen conditions that require immediate medical attention, but only when delay in receiving care from the health maintenance organization could reasonably be expected to cause severe jeopardy to the enrollee's condition; and~~

~~(b) medically necessary health care services that are immediately required because of unforeseen illness or injury while the enrollee is outside the service area.~~

(4) through (12) remain as proposed.

6.6.2506 REQUIREMENTS FOR CONTRACTS AND EVIDENCES OF COVERAGE (1) and (2) remain as proposed.

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

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

(b) remains as proposed, but is renumbered (a).

(4) through (6) remain as proposed.

(7) A contract or evidence of coverage delivered or issued for delivery to any person by a health maintenance organization required to obtain a certificate of authority in this state may not contain any definitions that extend, modify, or conflict with those definitions contained in the Montana Health Maintenance Organization Act or ARM ~~6.6.2503~~ ~~6.10.2503~~. A contract or evidence of coverage may include definitions of additional terms, so long as those additional definitions do not extend, modify, or conflict with the definitions contained in the Montana Health Maintenance Organization Act or ARM 6.6.2503. In addition, all definitions used in the contract and evidence of coverage must be in alphabetical order.

6.6.2507 PROHIBITED PRACTICES (1) through (4) remain as proposed.

AUTH: 33-31-103, MCA

IMP: 33-18-203, ~~33-22-1811~~, 33-31-111, 33-31-301, 33-31-312, MCA

6.6.2508 SERVICES (1) through (5) remain as proposed.

(6) When an enrollee is traveling or temporarily residing out of a health maintenance organization's service area, the health maintenance organization must provide benefits for reimbursement for emergency care services, without regard to whether the health care provider furnishing the emergency care services is a participating network provider with respect to the emergency care services. ~~and transportation that is medically necessary and appropriate under the circumstances to return the enrollee to a health maintenance organization provider. These out-of-area emergency care services and transportation may only be subject to some or all of the following requirements:~~

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

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

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

(7) remains as proposed.

6.6.2509 OTHER REQUIREMENTS (1) through (3) remain as proposed.

(4) Health maintenance organizations, unless operated by an insurer or a health service corporation as a plan, are required to file annual audited financial reports, as set forth in ARM 6.6.3501 through 6.6.3521.

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

COMMENT No. 1: The commenter requested that the definition of "emergency care services" be struck and the definitions of "emergency services" and "emergency medical condition" as defined in 33-36-103, MCA, be used in its place. The commenter noted that the definition of "emergency care services" was old language from the 1990's. The commenter argued that since multiple current state and federal

requirements use definitions more similar to 33-36-103, MCA, for consistency with other health plans it would be better to use the more current definitions.

RESPONSE No. 1: The CSI agrees with this comment; however the term "emergency care services" is used in multiple rules in this subchapter, and some of those rules were not being amended by this notice. So for internal consistency, the CSI has kept the phrase "emergency care services," but has adopted the more current definition used in the Insurance Code.

COMMENT No. 2: The commenter requested the removal of proposed new subsection (3)(a) in ARM 6.6.2506, because it required group health contract language from a statute that the legislature has not applied to health maintenance organizations.

RESPONSE No. 2: The CSI agrees with this comment, and has removed proposed ARM 6.6.2506(3)(a).

COMMENT No. 3: The commenter objected to the removal of language in previous ARM 6.6.2506(2)(m) allowing a limitation of hospital or inpatient benefits if disclosed in the group contract. The commenter stated that the reasonable necessity statement did not properly explain the substantive change, and requested that the provision stay the same.

RESPONSE No. 3: The CSI disagrees with this comment, but does acknowledge that the reasonable necessity statement could have been confusing. To remove any doubt, the deletion of the clause allowing the limitation on hospital or inpatient benefits was intentional. The justification that the change "was to conform to NAIC model law" in the reasonable necessity statement was meant to apply to both changes to proposed ARM 6.6.2506(3).

COMMENT No. 4: The commenter requested additional language be included in proposed ARM 6.6.2506(7) to make clear that HMO policy contracts may define additional terms, so long as they do not conflict with the definitions provided in rule.

RESPONSE No. 4: The CSI believes that was implied in the proposed language, but has added a clarifying sentence for the removal of any doubt.

COMMENT No. 5: The commenter noted that ARM 6.6.2507 as proposed cited to 33-22-1811, MCA, even though that statute does not apply to HMOs.

RESPONSE No. 5: The CSI agrees with this comment, and has removed the reference to 33-22-1811, MCA.

COMMENT No. 6: The commenter requested removal of proposed language in 6.6.2508(6) because it was different from current Montana and federal requirements for "emergency services," similar to comment 1.



RESPONSE No. 6: The CSI agrees that these requirements should be consistent, and has modified the language in ARM 6.6.2508(6) accordingly.

COMMENT No. 7: The commenter requested the addition of language to proposed ARM 6.6.2509(4) that was in 33-31-211, MCA.

RESPONSE No. 7: The CSI agrees with this comment, and has modified ARM 6.6.2509(4) accordingly.

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

/s/ Kristin Hansen  
Kristin Hansen  
Chief Counsel

Certified to the Secretary of State May 29, 2018.

BEFORE THE DEPARTMENT OF FISH, WILDLIFE AND PARKS  
OF THE STATE OF MONTANA

In the matter of the adoption of an ) NOTICE OF ADOPTION OF AN  
emergency rule closing a portion of ) EMERGENCY RULE  
Noxon Reservoir in Sanders County )

TO: All Concerned Persons

1. The Department of Fish, Wildlife and Parks (department) has determined the following reasons justify the adoption of an emergency rule:

(a) The combination of dangerous conditions includes high water levels, fast moving currents, and compromised safety infrastructures that usually prevent recreationists from going over the dam.

(b) Persons recreating on the reservoir are at risk of:

(i) collisions with debris and other hazards due to strong currents;

(ii) injury or drowning.

(c) Therefore, as this situation constitutes an imminent peril to public health, safety, and welfare, and this threat cannot be averted or remedied by any other administrative act, the department adopts the following emergency rule. The emergency rule will be sent as a press release to newspapers throughout the state. Also, signs informing the public of the closure will be posted at access points. The rule will be sent to interested parties, and published as an emergency rule in Issue No. 11 of the 2018 Montana Administrative Register.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of the notice. If you require an accommodation, contact the department no later than 5:00 p.m. on June 29, 2018, to advise us of the nature of the accommodation that you need. Please contact Kaedy Gangstad, Fish, Wildlife and Parks, 1420 East Sixth Avenue, P.O. Box 200701, Helena, MT 59620-0701; telephone (406) 444-4594; or e-mail kgangstad@mt.gov.

3. The emergency rule is effective May 18, 2018, when this rule notice is filed with the Secretary of State.

4. The text of the emergency rule provides as follows:

NEW RULE I NOXON RESERVOIR EMERGENCY CLOSURE (1) Noxon Reservoir is located in Sanders County.

(2) All surface waters of Noxon Reservoir are closed to public occupation from the mouth of Blacktail Creek downstream to Noxon Rapids Dam.

(3) This rule is effective as long as the dangerous conditions exist.

(4) This rule will expire as soon as the department determines the reservoir is again safe for occupation and recreation. This will depend on the extent and duration of the conditions. Signs closing the reservoir will be removed when the rule is no longer effective.

AUTH: 2-4-303, 87-1-202, MCA  
IMP: 2-4-303, 87-1-202, MCA

5. The rationale for the emergency rule is as set forth in paragraph 1.

6. Concerned persons are encouraged to submit their comments during the upcoming standard rulemaking process. If concerned persons wish to be personally notified of that rulemaking process, they should submit their names and addresses to: Kaedy Gangstad, Department of Fish, Wildlife and Parks, P.O. Box 200701, Helena, MT, 59602-0701; e-mail [kgangstad@mt.gov](mailto:kgangstad@mt.gov). Any comments must be received no later than July 8, 2018.

7. The department maintains a list of interested persons who wish to receive notice of rulemaking actions proposed by the department or commission. Persons who wish to have their name added to the list shall make written request that includes the name and mailing address of the person to receive the notice and specifies the subject or subjects about which the person wishes to receive notice. Such written request may be mailed or delivered to Fish, Wildlife and Parks, Legal Unit, P.O. Box 200701, 1420 East Sixth Avenue, Helena, MT 59620-0701, faxed to the office at (406) 444-7456, or may be made by completing the request form at any rules hearing held by the department.

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

/s/ Martha Williams  
Martha Williams  
Director  
Department of Fish, Wildlife and Parks

/s/ Aimee Hawkaluk  
Aimee Hawkaluk  
Rule Reviewer

Certified to the Secretary of State May 18, 2018.

BEFORE THE DEPARTMENT OF FISH, WILDLIFE AND PARKS  
OF THE STATE OF MONTANA

In the matter of the adoption of an ) NOTICE OF ADOPTION OF AN  
emergency rule closing the Dunes ) EMERGENCY RULE  
Fishing Access Site in Cascade )  
County )

TO: All Concerned Persons

1. The Department of Fish, Wildlife and Parks (department) has determined the following reasons justify the adoption of an emergency rule:

(a) The dangerous conditions include high water levels which have flooded the only accessible roadway in and out of the Dunes Fishing Access Site, making it impassable and unsafe for vehicle and pedestrian travel.

(b) Persons recreating in the flooded portions of the site are at risk of:

(i) injury or drowning due to unexpected changes to topography obscured by flood waters.

(c) Therefore, as this situation constitutes an imminent peril to public health, safety, and welfare, and this threat cannot be averted or remedied by any other administrative act, the department adopts the following emergency rule. The emergency rule will be sent as a press release to newspapers throughout the state. Also, signs informing the public of the closure will be posted at access points. The rule will be sent to interested parties, and published as an emergency rule in Issue No. 11 of the 2018 Montana Administrative Register.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of the notice. If you require an accommodation, contact the department no later than 5:00 p.m. on June 22, 2018, to advise us of the nature of the accommodation that you need. Please contact Kaedy Gangstad, Fish, Wildlife and Parks, 1420 East Sixth Avenue, P.O. Box 200701, Helena, MT 59620-0701; telephone (406) 444-4594; or e-mail kgangstad@mt.gov.

3. The emergency rule is effective May 21, 2018, when this rule notice is filed with the Secretary of State.

4. The text of the emergency rule provides as follows:

NEW RULE I DUNES FISHING ACCESS SITE EMERGENCY CLOSURE

(1) The Dunes Fishing Access Site is located in Cascade County.

(2) The Dunes Fishing Access Site is closed to all public occupation and recreation as signed.

(3) This rule is effective as long as water is flooding the fishing access site.

(4) This rule will expire as soon as the department determines the fishing access site is again safe for occupation and recreation. This will depend on the

extent and duration of the flooding in the area. Signs closing the fishing access site will be removed when the rule is no longer effective.

AUTH: 2-4-303, 87-1-202, MCA

IMP: 2-4-303, 87-1-202, MCA

5. The rationale for the emergency rule is as set forth in paragraph 1.

6. Concerned persons are encouraged to submit their comments to the department. Please submit comments along with names and addresses to: Kaedy Gangstad, Department of Fish, Wildlife and Parks, P.O. Box 200701, Helena, MT, 59602-0701; e-mail kgangstad@mt.gov. Any comments must be received no later than July 6, 2018.

7. The department maintains a list of interested persons who wish to receive notice of rulemaking actions proposed by the department or commission. Persons who wish to have their name added to the list shall make written request that includes the name and mailing address of the person to receive the notice and specifies the subject or subjects about which the person wishes to receive notice. Such written request may be mailed or delivered to Fish, Wildlife and Parks, Legal Unit, P.O. Box 200701, 1420 East Sixth Avenue, Helena, MT 59620-0701, faxed to the office at (406) 444-7456, or may be made by completing the request form at any rules hearing held by the department.

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

/s/ Martha Williams

Martha Williams

Director

Department of Fish, Wildlife and Parks

/s/ Aimee Hawkaluk

Aimee Hawkaluk

Rule Reviewer

Certified to the Secretary of State May 21, 2018.

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY  
OF THE STATE OF MONTANA

In the matter of the amendment of ARM )  
17.30.660 pertaining to nutrient standard )  
variances )

NOTICE OF AMENDMENT  
  
(WATER QUALITY)

TO: All Concerned Persons

1. On February 23, 2018, the Department of Environmental Quality published MAR Notice No. 17-396, pertaining to the public hearings on the proposed amendment of the above-stated rule at page 377 of the 2018 Montana Administrative Register, Issue No. 4.

2. The department has amended ARM 17.30.660 as proposed and the individual variance sections of Department Circular DEQ-12B but with changes to the individual variance sections of Department Circular DEQ-12B in response to public comments as further explained below. Comments received were regarding Department Circular DEQ-12B and specific changes are reflected in the Circular.

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

COMMENT NO. 1: The City of Whitefish (Whitefish) supports the rule change.

RESPONSE: The department appreciates the comment.

COMMENT NO. 2: The department should clarify how Whitefish's individual variance limits of 1 mg TP/L and 10 mg TN/L will be implemented in permits; specifically, what will be the basis of the averaging period.

RESPONSE: Variance limits will be expressed in the permit as an average monthly limit, as a load. Regarding the averaging period, the department considers variance treatment requirements (1 mg TP/L and 10 mg TN/L in this case) to be averages achieved over the long-term (long-term averages; LTA). As such, a variance limit is computed as follows:  $LTA \times \text{Table 5-2 value} \times \text{design flow} \times \text{conversion factors} = \text{average monthly limit (lb/day)}$ . The Table 5-2 value is from the EPA permitting guidance that the department uses and is based on the coefficient of variation (CV) of the quality of the facility's discharge. A CV of 0.6 may be used for computing Whitefish's variance limit as noticed in this rulemaking (see Table 12B-3 in Department Circular DEQ-12B). The Whitefish permit also includes a TP limit based upon Montana's Nondegradation Policy. When updating permit requirements, the department includes the most stringent applicable requirement. For Whitefish, based upon current information, the most stringent requirement is the nondegradation-based TP limit. No modification to Department Circular DEQ-12B was made as a result of this comment.

COMMENT NO. 3: To comply with the triennial review requirement of the federal Clean Water Act, it is recommended that the department modify Whitefish's individual variance start date to 2018 or 2020 instead of the currently proposed 2022.

RESPONSE: Whitefish is currently authorized to discharge under the terms of a state-issued discharge permit and a general nutrient standards variance has been implemented therein. Whitefish's current discharge permit expires on 7/31/2020. The department agrees with the recommendation and will modify the start date in Table 12B-3 of Department Circular DEQ-12B to 8/1/2020. In the proposed rule, the department had established the start date as 8/1/2022 to account for the expected start-up of Whitefish's new facility.

COMMENT NO. 4: The department should provide documentation rationalizing the term of the individual variance for Whitefish.

RESPONSE: Per response to Comment No. 3, the individual variance start date for Whitefish will be modified to begin 8/1/2020. The new plant is not expected to be operational until mid- to late 2021, at the earliest. There will be a one-year period during which operational adjustments are made as operators become familiar with the system. Following plant stabilization, a pollutant minimization program (which includes optimization through advanced operational strategies) will be identified and developed through 2025. The pollutant minimization program will be submitted to the department and, upon approval, will be included as a condition of permit renewal. By 2029, the improvements to effluent quality should be evident and the department will have sufficient data to be able to compute a representative long-term average for the facility's effluent and expects Whitefish to be meeting the HAC requirements. See response to Comment No. 2 for details on long-term averages. No modification to Department Circular DEQ-12B was made as a result of this comment.

COMMENT NO. 5: The department's work to align the individual variance language of Department Circular DEQ-12B with federal requirements at 40 CFR 131.14 is appreciated.

RESPONSE: The department appreciates the comment.

4. The proposed changes to Department Circular DEQ-12B also included several non-substantive clerical changes to the general variance sections. Because the proposed changes were not explained in the reasonable necessity statement, the department has determined it will not adopt these changes. This amendment, therefore, makes no change to the general variance sections of Department Circular DEQ-12B.

Reviewed by:

DEPARTMENT OF ENVIRONMENTAL  
QUALITY

/s/ Edward Hayes

EDWARD HAYES

Rule Reviewer

BY: /s/ Tom Livers

TOM LIVERS, Director

Certified to the Secretary of State May 29, 2018.



BEFORE THE DEPARTMENT OF CORRECTIONS  
OF THE STATE OF MONTANA

In the matter of the transfer of ARM ) NOTICE OF TRANSFER  
Title 23, chapter 14, pertaining to the )  
Board of Crime Control to the )  
Department of Corrections )

TO: All Concerned Persons

1. The Department of Justice transfers the above-stated rules to the Department of Corrections, Title 20, chapter 24.

2. This transfer is required because the 2017 Legislature transferred the administrative function and responsibilities of the program from the Department of Justice to the Department of Corrections in Senate Bill 95 and House Bill 650, Ch. 416, L. 2017.

3. The transferred rules are assigned the following numbers under the Department of Corrections:

<u>OLD</u>	<u>NEW</u>	
23.14.101	20.24.101	BOARD OF CRIME CONTROL FUNCTIONS
23.14.201	20.24.201	INCORPORATION OF MODEL RULES
23.14.202	20.24.202	MAINTENANCE OF POLICY AND PROCEDURE MANUAL FOR INTERNAL MANAGEMENT
23.14.203	20.24.203	APPLICATIONS FOR FINANCIAL ASSISTANCE
23.14.301	20.24.301	MATCHING RATIOS
23.14.302	20.24.302	MATCHING REQUIREMENTS
23.14.303	20.24.303	BUDGET REQUIREMENTS
23.14.304	20.24.304	GENERAL REQUIREMENTS
23.14.305	20.24.305	APPLICANTS AGREEMENT
23.14.306	20.24.306	NON-SUPPLANTING REQUIREMENT
23.14.601	20.24.601	GENERAL DEFINITIONS
23.14.602	20.24.602	REGIONAL PLANNING BOARDS
23.14.603	20.24.603	REGIONAL PLAN
23.14.604	20.24.604	PLAN APPROVAL PROCESS
23.14.605	20.24.605	AMENDMENTS TO THE REGIONAL PLAN
23.14.606	20.24.606	REPORTS
23.14.607	20.24.607	REGIONAL DETENTION TASK FORCE
23.14.608	20.24.608	REIMBURSEMENTS TO COUNTIES FOR TRIBAL USE OF DETENTION SERVICES
23.14.1001	20.24.1001	DEFINITIONS
23.14.1002	20.24.1002	PURPOSE
23.14.1003	20.24.1003	APPEAL REVIEW COMMITTEE
23.14.1004	20.24.1004	RIGHT TO APPEAL
23.14.1005	20.24.1005	RECORD OF PROCEEDINGS

23.14.1006	20.24.1006	NOTICE OF REVIEW
23.14.1007	20.24.1007	COMMITTEE REVIEW PROCEDURE
23.14.1008	20.24.1008	RECOMMENDATION OF THE APPEAL REVIEW COMMITTEE
23.14.1009	20.24.1009	BOARD FINAL DECISION

4. Several of the above-stated rules refer to 44-4-301, MCA, which was renumbered 44-7-101, MCA in 2017. Other rules refer to statutes that were renumbered in previous legislative sessions. The statutory renumbering and any other amendments deemed necessary by the Board of Crime Control will be addressed in future rulemaking.

/s/ Colleen E. Ambrose  
Colleen E. Ambrose  
Rule Reviewer

/s/ Reginald D. Michael  
Reginald D. Michael  
Director  
Department of Corrections

Certified to the Secretary of State May 29, 2018.

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

In the matter of the adoption of NEW	)	CORRECTED NOTICE OF
RULES I through IV, the amendment	)	ADOPTION, AMENDMENT, AND
of ARM 37.95.102, 37.95.103,	)	REPEAL
37.95.106, 37.95.108, 37.95.117,	)	
37.95.121, 37.95.127, 37.95.139,	)	
37.95.141, 37.95.160, 37.95.161,	)	
37.95.162, 37.95.172, 37.95.173,	)	
37.95.183, 37.95.184, 37.95.602,	)	
37.95.606, 37.95.622, 37.95.623,	)	
37.95.703, 37.95.705, 37.95.706,	)	
37.95.730, and 37.95.1005, and the	)	
repeal of ARM 37.95.145, 37.95.150,	)	
37.95.166, and 37.95.174 pertaining	)	
to the federal Child Care and	)	
Development Block Grant	)	
Reauthorization Act, disaster and	)	
emergency planning, and health and	)	
safety requirements for child care	)	
facilities	)	

TO: All Concerned Persons

1. On November 24, 2017, the Department of Public Health and Human Services published MAR Notice No. 37-811 pertaining to the public hearing on the proposed adoption, amendment, and repeal of the above-stated rules at page 2141 of the 2017 Montana Administrative Register, Issue Number 22. On February 9, 2018, the department published the notice of adoption, amendment, and repeal at page 308 of the 2018 Montana Administrative Register, Issue Number 3.

2. In the department's amendments to ARM 37.95.705, the department inadvertently omitted the renumbering of (11). The rule, as amended in corrected form, reads as follows:

37.95.705 GROUP AND FAMILY CHILD CARE FACILITIES: BUILDING REQUIREMENTS (1) through (9) remain as adopted.  
(11) remains as adopted, but is renumbered (10).

/s/ Flint Murfitt  
Flint Murfitt  
Rule Reviewer

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

Certified to the Secretary of State May 29, 2018.

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

In the matter of the amendment of ) NOTICE OF AMENDMENT  
ARM 37.85.104, 37.85.105, )  
37.86.2907, 37.87.903, and )  
37.90.408 pertaining to updating )  
Medicaid fee schedules with )  
Medicare rates and updating effective )  
dates )

TO: All Concerned Persons

1. On April 27, 2018, the Department of Public Health and Human Services published MAR Notice No. 37-838 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 798 of the 2018 Montana Administrative Register, Issue Number 8.

2. The department has amended the following rules as proposed: ARM 37.85.104, 37.86.2907, 37.87.903, and 37.90.408.

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

37.85.105 EFFECTIVE DATES, CONVERSION FACTORS, POLICY ADJUSTERS, AND COST-TO-CHARGE RATIOS OF MONTANA MEDICAID PROVIDER FEE SCHEDULES (1) through (3) remain as proposed.

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

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

(b) through (6) remain as proposed.

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

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

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

COMMENT #1: A commenter opposes the amended ARM 37.85.105 and contends that 37-10-104, MCA, requires the department to reimburse optometrists using the same rate as doctors of medicine (MD) and doctors of osteopathy (DO). The

commenter requested the department change Medicaid reimbursement so that optometrists are reimbursed at the same rate as MDs and DOs.

RESPONSE #1: The department must follow Montana law. Section 53-6-125, MCA, requires the department to reimburse physicians with doctor of medicine (MD) or doctor of osteopathy (DO) degrees using a conversion factor different from other healthcare professionals, including optometrists. However, the department uses the same resource-based relative value scale (RBRVS) methodology in determining reimbursement rates for ophthalmologists and optometrists and thus they are reimbursed in the same manner. Prior to 2008, optometrists were reimbursed using the same conversion factor as physicians. In 2007, the 60th Montana Legislature passed Senate Bill 354 (SB 354), which defined and clarified the Medicaid reimbursement conversion factor for physicians. SB 354 which was codified as 53-6-124 and 53-6-125, MCA, defined "physician" as a person who holds an MD or DO degree and who has a valid license to practice medicine or osteopathic medicine in Montana. It must be presumed that the Legislature in 2007 was aware of 37-10-104, MCA, cited by the commenters, because that statute has been in existence since 1959. Also, if the Legislature in 2007 intended for the physician conversion factor to apply to optometrists, it would have included them in the definition of "physician" but did not. The department does not agree with the commenter's assertion regarding 37-10-104, MCA.

COMMENT #2: Commenters at the administrative rules hearing commented that Medicaid reimbursement rates for private duty nursing services are inadequate to ensure providers can continue to provide the service to Medicaid members.

RESPONSE #2: This rule amendment did not propose any change to the reimbursement rate for private duty nursing. However, the department is addressing private duty nursing reimbursement rates in another rule notice, MAR Notice No. 37-851, which is being filed concurrently with the filing of this Notice of Amendment.

COMMENT #3: One commenter asked if the proposed rulemaking applies to substance abuse providers. The commenter asks whether the previous rates for substance abuse providers are reinstated if the proposed effective date is July 1, 2018.

RESPONSE #3: The proposed rulemaking in MAR Notice No. 37-838, which updates the effective date of the RBRVS fee schedule to July 1, 2018, applies to all provider types, including Provider Type 32, state-approved chemical dependency providers. It does not reinstate previous reimbursement rates for Provider Type 32.

COMMENT #4: A commenter noted that she is unable to find the proposed July 1, 2018, fee schedule for home and community-based services, as contemplated in this rule notice.

RESPONSE #4: The department acknowledges that the July 1, 2018, fee schedule was not posted to the DPHHS website in a manner that gives adequate notice to

interested parties and the public at large about the department's proposed changes for home and community-based services. Therefore, the department is withdrawing the proposed amendment to ARM 37.85.105(4)(a).

COMMENT #5: A commenter states that the department is saving "twice as much money as anticipated" by maintaining rates for home and community-based services for elderly and physically disabled persons. The commenter requested the department increase the rates in the fee schedule for home and community-based services.

RESPONSE #5: Rate changes that were adopted in an earlier rule notice and made effective January 1, 2018, must be maintained in order to meet and not exceed the budgetary appropriation passed by the Montana Legislature. The only change proposed in the fee schedule related to removing a service from the fee schedule that is no longer used because the sole provider of that service had notified the department that it will no longer provide the service.

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

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

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

Certified to the Secretary of State May 29, 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.<br>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 December 31, 2017. This table includes notices in which those rules adopted during the period September 30, 2017, through December 31, 2017, 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 December 31, 2017, 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 2017 and 2018 Montana Administrative Registers.

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MONTANA ADMINISTRATIVE  
REGISTER

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