

# MONTANA ADMINISTRATIVE REGISTER

2018 ISSUE NO. 17  
SEPTEMBER 7, 2018  
PAGES 1762-1846



# MONTANA ADMINISTRATIVE REGISTER

## ISSUE NO. 17

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 The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

In the matter of the amendment of	)	NOTICE OF PUBLIC HEARING ON
ARM 6.6.8301 pertaining to	)	PROPOSED AMENDMENT
establishment, deletion, or revision of	)	
classifications for various industries	)	
for supplementing the NCCI Basic	)	
Manual for Workers' Compensation	)	
and Employers Liability	)	

TO: All Concerned Persons

1. On October 3, 2018, at 1:00 p.m., the Classification Review Committee will hold a public hearing in the 2nd Floor Conference Room, at the Office of the Montana State Auditor, Commissioner of Securities and Insurance, 840 Helena Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rule.

2. The Classification Review Committee 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 Classification Review Committee no later than 5:00 p.m. on September 18, 2018, to advise us of the nature of the accommodation that you need. Please contact Ramona Bidon, CSI, 840 Helena Avenue, Helena, Montana, 59601; telephone (406) 444-2726; TDD (406) 444-3246; fax (406) 444-3499; or e-mail rbidon@mt.gov.

3. The rule shown below was recently amended, and no changes will be made to the rule. However, the Basic Manual for Workers' Compensation and Employers Liability (Basic Manual) incorporated by reference in this rule is supplemented by classification codes that are established, deleted, or revised in accordance with (2) of the rule and 33-16-1023(3), MCA.

6.6.8301 ESTABLISHMENT OF CLASSIFICATION FOR COMPENSATION PLAN NO.2 AND PLAN NO.3 (1) and (2) remain the same.

AUTH: 33-16-1012, MCA  
IMP: 2-4-103, 33-1-115, 33-16-1012, MCA

REASON: It is necessary to supplement the NCCI Basic Manual incorporated by reference in ARM 6.6.8301, by establishing, deleting, or revising classification codes in the Basic Manual that apply to various industries through rulemaking procedures. The Classification Review Committee approved proceeding to rulemaking to supplement the Basic Manual with Item Filing B-1436- Revisions to Basic Manual Classifications and Appendix E—Classifications by Hazard Group, proposed to be effective July 1, 2019.

For additional details, see the classifications to be established, deleted or revised below and see the filing at: ([https://csimt.gov/wp-content/uploads/B-1436-for-MT-Committee\\_.pdf](https://csimt.gov/wp-content/uploads/B-1436-for-MT-Committee_.pdf))

#### Retirement Living Centers and Nursing Homes

- Elimination of Code 8825—Retirement Living Centers—Food Service Employees; these employees will be classified to Code 8826—Retirement, Care, Nursing, and Convalescent Centers—All Other Employees, Salespersons & Drivers. Code 8826 will be redefined to include all employees of RLCs and nursing homes, other than healthcare and clerical employees.

#### Unmanned Aircraft System or Drone Aircraft

- Drones weighing less than 55 pounds (including attached systems, payload, and cargo) will be assigned to the basic classification applicable to the overall business of the employer as a general inclusion.
  - Employers that provide drone piloting services to other businesses will be assigned to a new phraseology Code 8720—Unmanned Aircraft System or Drone Aircraft Operations NOC—Aircraft Weighing Less Than 55 Pounds.
- For drones weighing 55 pounds or more (including attached systems, payload, and cargo), classification assignment will be considered a general exclusion and separately rated to the appropriate aviation classification.

For drone aircraft manufacture, service, or repair, NCCI is proposing the following classification treatment

- Code 3685—Unmanned Aircraft System or Drone Aircraft Mfg., Service, or Repair—Aircraft Weighing Less Than 55 Pounds
- Code 3830—Unmanned Aircraft System or Drone Aircraft Mfg., Service, or Repair—Aircraft Weighing 55 Pounds or More

#### Automobile Body Repair and Mechanical Repair

NCCI proposes to allow Codes 8380 and 8393 to be assigned to a single business operation. Additionally, further clarification is needed for the assignment of service writers and estimators for these businesses. These proposals will allow Codes 8380 and 8393 to be assigned to the same business, regardless if the operations are conducted as separate and distinct businesses.

#### Limousine Companies

- Code 7370—Limousine Co.—All Other Employees & Drivers—Nonscheduled.
- Code 7382-Limousine Co.-All Other Employees & Drivers -Scheduled

NCCI proposes to remove nonscheduled limousine operations from Code 7370 - All limousine operations will be assigned to Code 7382, regardless of whether they are scheduled or nonscheduled.

NCCI also proposes to add references to Codes 7370 and 7382 to clarify the current national treatment that garage employees are to be separately rated to Code 8385—Limousine Co.—Garage Employees.

#### Photography and Document Scanning

- Revise the phraseology Code 4361—Photographer—All Employees & Clerical, Salespersons, Drivers to include photo developing or printing whether from film or digital media.
- Establish phraseology Code 8015—Document-Scanning Operations—All Employees & Clerical, Salespersons, Drivers—Applies to document-scanning operations for customers performed at the employer's or customer's location. Includes document storage and shredding operations performed at the employer's location only. Document shredding performed at the customer's location, including the bailing and transportation of those shredded documents, to be separately rated to Code 8264.
- Establish phraseology Code 8264—Document-Shredding Operations & Drivers—Applies to employers in the business of document-shredding only. Includes shredding at the employer's or customer's location, including the bailing and transportation of those shredded documents. Also includes all shredding at the customer's location when performed as part of a document-scanning operation.
- Revise the note of Code 8015—Quick Printing—Copying or Duplicating Service—All Employees & Clerical, Salespersons, Drivers to use plain language.
- Revise the notes of the following codes for plain language purposes and to replace the word "services" with "surfaces":
  - Code 4299—Sign Manufacturing—Plastic or Vinyl Computer-Generated Letters or Graphics—No Painting or Using Power Machinery
  - Code 9501—Sign Manufacturing—Plastic or Vinyl Computer-Generated Letters or Graphics—Painting or Using Power Machinery & Drivers

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 CR Committee attention of: Michael Craddock, Underwriting Dispute Consultant, NCCI, c/o Regulatory Assurance Department, 901 Peninsula Corporate Circle, Boca Raton FL 33487-1362; telephone (561) 893-3820; fax (561) 893-5365; or e-mail Michael\_Craddock@NCCI.com, and must be received no later than 5:00 p.m., MST, October 11, 2018.

5. Brett Olin, State Auditor's Office, has been designated to preside over and conduct this hearing.

6. The Classification Review Committee maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this committee. 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 committee.

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 Classification Review Committee has determined that the amendment of the above-referenced rule will not significantly and directly impact small businesses.

/s/ Brett Olin  
Brett Olin  
Rule Reviewer

/s/ Greg Rodifer  
Greg Rodifer  
Committee Chair

Certified to the Secretary of State August 28, 2018.

BEFORE THE DEPARTMENT OF JUSTICE  
OF THE STATE OF MONTANA

In the matter of the adoption of New )  
Rules I through XI pertaining to the )  
third-party CDL skills testing program )  
and the amendment of ARM 23.3.502 )  
pertaining to commercial driver's )  
license testing )

NOTICE OF PUBLIC HEARING ON  
PROPOSED ADOPTION AND  
AMENDMENT

TO: All Concerned Persons

1. On October 4, 2018, at 10:00 a.m., the Department of Justice will hold a public hearing in the auditorium of the Department of Public Health and Human Services, 111 North Sanders, at Helena, Montana, to consider the proposed adoption and amendment of the above-stated rules.

2. The Department of Justice 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 Justice Motor Vehicle Division no later than 5:00 p.m. on September 20, 2018, to advise us of the nature of the accommodation that you need. Please contact Michele Snowberger, Department of Justice Motor Vehicle Division, 302 North Roberts, P.O. Box 201430, Helena, Montana, 59620; telephone (406) 444-1776; fax (406) 444-2086; or e-mail [msnowberger@mt.gov](mailto:msnowberger@mt.gov).

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

NEW RULE I THIRD-PARTY CDL SKILLS TESTING PROGRAM

ELIGIBILITY (1) Entities as described in 61-5-118, MCA, are eligible to apply and enter into an agreement with the division to conduct skills testing for CDL applicants.

AUTH: 61-5-118, MCA

IMP: 61-5-118, MCA

NEW RULE II ACCEPTANCE OF THIRD-PARTY CDL SKILLS TESTING

RESULTS (1) The division will accept CDL skills test results conducted by division-trained and certified third-party testing examiners who work for a Montana certified third-party testing program.

(2) The division will accept valid testing results to satisfy an applicant's CDL skills tests as required under 49 CFR 383.

AUTH: 61-5-118, MCA

IMP: 61-5-118, MCA



NEW RULE III THIRD-PARTY CDL SKILLS TESTING PROGRAM

APPLICATION (1) Eligible entities must submit an application stating their desire to become a third-party CDL skills testing program.

(2) The applicant must:

(a) be an eligible third-party CDL skills testing program entity;

(b) provide the applicant's name, physical, mailing, and e-mail addresses, and phone number;

(c) provide a representative's name, physical, mailing, and e-mail addresses, and phone number who will represent the applicant during the application process;

(d) provide the location of the CDL skills testing and recordkeeping facilities. The facilities must be located within the state of Montana. The facilities where testing occurs must meet the standards of [NEW RULE VI]. The facilities where records are maintained must meet the standards of [NEW RULE VI];

(e) give a statement that, at the time of the agreement, the applicant will:

(i) cooperate with the division at all times, including inspection of facilities, auditing, and testing;

(ii) carry comprehensive commercial general liability insurance with limits of a minimum of \$1 million per occurrence for personal injury or property damage;

(iii) carry auto liability insurance if the testing program provides vehicles used in testing. The limits must not be less than \$1 million per occurrence for personal injury and property damage;

(iv) post a surety bond of \$10,000 to cover the costs associated with re-testing applicants who may have been improperly tested by a third-party CDL skills test examiner, or if skills test results were fraudulently obtained;

(v) comply with federal regulations, Montana state law, the Administrative Rules of Montana, and the division's policy and procedures governing the third-party CDL skills testing program;

(vi) pay the initial and renewal certification fees for a third-party CDL skills testing program and its examiners as outlined in 61-5-118, MCA;

(vii) only allow third-party CDL skills test examiners who have been trained and certified by the division as outlined in [NEW RULE VII];

(viii) comply with all federal and state nondiscrimination statutes, rules, and regulations;

(ix) provide workers' compensation as required under state law for employees covered under the agreement;

(x) implement all necessary administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of personally identifiable information in accordance with all applicable federal and state privacy protection requirements;

(xi) agree to use the CSTIMS to schedule and record CDL skills test results; and

(xii) use approved road test tablets to conduct and record CDL skills tests.

AUTH: 61-5-118, MCA

IMP: 61-5-118, MCA

NEW RULE IV THIRD-PARTY CDL SKILLS TESTING PROGRAM

AGREEMENT AND CERTIFICATION (1) The division administrator or designee is authorized to enter into an agreement and certify qualifying third-party CDL skills testing programs and to renew third-party CDL skills testing programs.

(2) Upon receipt of an application for certification or renewal, the administrator or designee must review the application for completeness.

(3) If the application is incomplete, the division administrator or designee may either:

(a) contact the applicant to request missing information. The applicant has 20 days to give the requested information or the division administrator or designee must deny the application; or

(b) return the incomplete application to the applicant with a notification to resubmit a completed application.

(4) If the application is complete, the third-party CDL skills testing program may pay the fees as outlined in 61-5-118, MCA, and enter into an agreement with the division.

(5) When all requirements are not met, the division shall deny the application and send a written notification of denial to the applicant by certified mail return receipt requested.

(6) Upon payment of the fees outlined in 61-5-118, MCA, and receipt of a signed agreement between the division and the third-party CDL skills testing program, the division will send a third-party CDL skills testing program certification to the applicant by certified mail return receipt requested.

(7) If an application is denied, the applicant must wait 90 days before submitting a new application.

(8) A certification is effective from the date stated on the letter and is valid for three years or until it is surrendered, decertified, or revoked.

AUTH: 61-5-118, MCA

IMP: 61-5-118, MCA

NEW RULE V THIRD-PARTY CDL SKILLS TESTING PROGRAM

AGREEMENT (1) The third-party CDL testing agreement must outline the requirements for the division and the third-party CDL testing program, including the certification requirements of [NEW RULE VI through NEW RULE XI].

(2) The third-party CDL testing program agreement must be signed by the division administrator or designee and the third-party CDL skills testing program owner or designee.

AUTH: 61-5-118, MCA

IMP: 61-5-118, MCA

NEW RULE VI THIRD-PARTY CDL SKILLS TESTING PROGRAM

CERTIFICATION (1) In order for a third-party CDL skills testing and recordkeeping facility to obtain and maintain division-approved certification, the facility must have, at a minimum, the following:

(a) a testing course approved by the division to conduct the same CDL skills test as conducted by state CDL skills test examiners, including:

(i) an area of sufficient size to conduct the vehicle inspection component of the CDL skills test as outlined in AAMVA's 2005 CDL Examiner's Manual;

(ii) a testing course of sufficient size to conduct the required parts of the basic control skills test component of the CDL skills test as outlined in AAMVA's 2005 CDL Examiner's Manual; and

(iii) a road test route that will meet all the minimum scoring requirements as outlined in AAMVA's 2005 CDL Examiner's Manual.

(b) a location to securely store all required records and documentation. The facility must have controls protecting all testing material, including all AAMVA testing documents, the road test tablets, testing results, forms, and reports. Testers are prohibited from publishing/distributing any materials relating to the CDL testing model to unauthorized persons or from publishing these materials to any public domain (in any format).

(2) The facility must obtain and maintain a road test tablet solution that has been tested and approved by the division. The tablets must interface with CSTIMS which requires the tablet solution to pass structure testing with AAMVA before it can be approved by the division.

(3) The facility must be made available to state and federal personnel for scheduled and unscheduled review during normal business hours.

(4) The facility must provide proof of liability insurance and a surety bond as described in the third-party CDL skills testing program's agreement.

(5) The facility must pay the following non-refundable third-party CDL skills testing program fees to the division:

(a) an initial or new certification fee in the amount outlined in 61-5-118, MCA.

(b) a three-year renewal fee in the amount outlined in 61-5-118, MCA.

(6) Only division-trained and certified CDL skills test examiners are allowed to conduct CDL skills tests.

(7) The facility must maintain a driver qualification file as outlined in 49 CFR 391.51 on all CDL skills test examiners.

(8) The facility must have a signed third-party CDL skills testing agreement with the division.

(9) The division cannot certify a third-party CDL skills testing program until an agreement is signed and the fees outlined in 61-5-118, MCA, are paid to the division.

AUTH: 61-5-118, MCA

IMP: 61-5-118, MCA

NEW RULE VII CERTIFICATION FOR EACH THIRD-PARTY CDL SKILLS TEST EXAMINER (1) Third-party CDL skills test examiners must meet the following minimum requirements:

(a) pass a fingerprint-based background check paid for by a third-party CDL testing entity. The results must be kept on file for review by the division or federal representative. The following events are disqualifying factors for a person to be a CDL skills test examiner:

- (i) any felony conviction within the last ten years; or
- (ii) any conviction involving fraudulent activities.
- (b) hold a valid Montana CDL with the class equivalent to, or higher than, the class of vehicle applicants are being tested for.
- (c) meet the medical standards outlined in 49 CFR 391.43. A CDL skills test examiner who is unable to fully meet the medical standards under 49 CFR 383.43 may still be certified if they can meet the state medical standards under ARM 23.3.506 and apply for a Montana medical certificate under ARM 23.3.507.
- (d) submit a driving record from each state where the examiner has been licensed for the past ten years.
- (e) an examiner cannot be certified if any of the following events have occurred:
  - (i) serious traffic violation as defined in 49 CFR 383.51 within the last three years;
  - (ii) major offense as defined in 49 CFR 383.51 within the last ten years;
  - (iii) any disqualifications as defined in 49 CFR 383.51 within the last ten years;
  - (iv) has ten or more habitual traffic offender points within the last three years;or
  - (v) a preventable crash involving a fatality or bodily injuries within the last three years.
- (f) pay the following non-refundable third-party CDL skills test examiner fees to the division:
  - (i) initial or new certification fee in the amount outlined in 61-5-118, MCA, which must be paid before the examiner can attend CDL skills test examiner training course conducted by the division; or
  - (ii) three-year renewal fee in the amount outlined in 61-5-118, MCA, which must be paid before CDL skills test examiner's certificate can be renewed.
- (g) obtain and maintain a state CDL skills test examiner's certificate by successfully completing a state-provided CDL skills test examiner training, with required refresher training.

AUTH: 61-5-118, MCA

IMP: 61-5-118, MCA

#### NEW RULE VIII CONDUCTING THIRD-PARTY CDL SKILLS TESTS

- (1) CDL skills tests must comply with the testing standard of 49 CFR 383. The following rules apply to conducting third-party CDL skills tests:
- (a) the same CDL skills testing model used by state examiners must be used, including the same instructions and scoring standards.
  - (b) third-party CDL skills test examiners must be trained and certified by the division.
  - (c) prior to conducting a CDL skills test, the CDL skills test examiner must ensure that the testing applicant:
    - (i) has a valid driver's license with an image that matches the applicant; and
    - (ii) has a valid CLP with the proper class, endorsements, and restrictions for the type of commercial motor vehicle being used for the CDL skills test, with an

image that matches the applicant and the applicant's driver's license. The CLP must have been issued at least 14 days before the CDL skills test.

(d) an electronic testing tablet approved by the division and successfully passed structure testing by AAMVA must be used to conduct all CDL skills tests, and at minimum record:

- (i) applicant information;
- (ii) vehicle data;
- (iii) CDL skills test examiner's information;
- (iv) approved test forms; and
- (v) all scoring items and scoring results.

(e) all primary and alternate backing skills test courses and road test routes must be approved by the division.

(f) any changes to any of the skills test courses or road test routes must be pre-approved by the division before a new course or route can be used.

(g) the CDL skills test examiner cannot be the same person that in any way trained or prepared the applicant to be tested for a commercial driver's license, or tested to upgrade their CDL, add a CDL endorsement, or to remove an air brake restriction.

(h) upon receipt of a fee in the amount outlined in 61-5-118, MCA, the division will accept CDL skills tests from the third-party CDL skills testing program and their examiners in lieu of administering its own CDL skills test for CDL applicants.

AUTH: 61-5-118, MCA

IMP: 61-5-118, MCA

NEW RULE IX TEST SCHEDULING, RECORDKEEPING, AND TRANSFERRING CDL SKILLS TEST RESULTS (1) Third-party CDL skills testing programs and their CDL skills test examiners must comply with the testing standard of 49 CFR Part 384.

(2) The examiner must, in CSTIMS:

(a) schedule each test applicant at least two days prior to conducting the initial CDL skills test and follow up CDL skills tests;

(b) confirm applicant CLP has the proper class and endorsements for the applicable test;

(c) record required information of the applicant and the commercial motor vehicle used for the test on the electronic testing tablet;

(d) electronically transfer CDL skills testing results to the division; and

(e) track pass/fail rates for each component must be recorded for each third-party CDL skills test examiner.

(3) The examiner must conduct the three components of the CDL skills test in proper sequence:

(a) first component--vehicle Inspection;

(b) second component--basic control skills test;

(c) third component--road test.

(4) The examiner must ensure the applicant uses the same commercial motor vehicle for each component of the CDL skills test.

(5) The examiner must ensure the applicant successfully completed the vehicle inspection component before conducting the basic control skills test component.

(6) The examiner must ensure the applicant successfully completed the vehicle inspection component and the basic control skills component before conducting the road test component.

(7) If an applicant does not successfully complete all components of the CDL skills test, the components that were successfully completed can be banked. The applicant does not have to retake successfully completed components unless their current CLP expires. Banked components cannot be carried over to a new or renewed CLP.

(8) The applicant must wait seven days before being eligible to retake any unsuccessfully completed component of the CDL skills test.

(9) The third-party CDL skills testing program must keep CDL skills testing examiner records, including:

- (a) background test results;
- (b) a copy of the Montana CDL;
- (c) Montana CDLIS MVR showing proof of a current medical examiner's certificate;
- (d) Montana CDL skills test examiner certificate; and
- (e) results of all CDL skills tests by component and scoring details.

(10) The third-party CDL skills testing program must maintain all CDL skills tests for a minimum of three years.

AUTH: 61-5-118, MCA

IMP: 61-5-118, MCA

#### NEW RULE X AUDITING AUTHORITY BY STATE OR FMCSA

REPRESENTATIVES (1) Personnel from the division and FMCSA are authorized to conduct scheduled and unscheduled overt and covert audits on third-party CDL skills test programs and CDL skills test examiners as follows:

(a) on-site inspections must be conducted at least twice a year with a focus on irregular test results that allow the division to audit CDL skills tests by any of the following three methods:

- (i) covertly take a test using a state employee as a test applicant;
  - (ii) have a state employee co-score a test to compare test results; or
  - (iii) retest a sample of drivers.
- (b) if an applicant is found not to possess the required skills to operate a commercial motor vehicle, the division may require the applicant to pass a CDL skills test by a state examiner.
- (c) review any electronic or hardcopy records relating to certification requirements or CDL skills tests; and
- (d) inspect CDL skills testing program's operation, facility, basic control skills test site, and road test routes.
- (e) inspect CDL skills testing program's vehicles and equipment.

AUTH: 61-5-118, MCA

IMP: 61-5-118, MCA

NEW RULE XI THIRD-PARTY CDL SKILLS TESTING PROGRAM AND CDL SKILLS TEST EXAMINER'S DECERTIFICATION AND RE-CERTIFICATION

(1) The division reserves the right to take prompt and appropriate remedial action against a third-party CDL skills testing program or CDL skills test examiner that fails to comply with state or federal standards for the CDL skills testing program, or with any other terms of the third-party agreement.

(2) The certification of a third-party CDL skills testing program or CDL skills test examiner may be revoked if the examiner:

(a) fails to follow 49 CFR 382, 383, 384, or 391; Title 61, chapter 5, MCA, or [NEW RULE I through NEW RULE XI];

(b) takes fraudulent actions relating to testing activity or recordkeeping;

(c) fails to pay fees;

(d) fails to maintain a bond required by this part;

(e) fails to maintain minimum liability insurance required by this part; or

(f) fails to abide by the third-party CDL skills testing program agreement.

(3) The certificate of a CDL skills test examiner may be revoked if:

(a) the examiner fails to conduct at least ten full skills tests or 30 individual skills test components in a 12-month period beginning on the date the examiner has been certified by the division;

(b) the examiner's Montana CDL has been suspended, revoked, canceled, disqualified, or has expired;

(c) the examiner fails to maintain a valid CDL or fails to remain medically qualified under 49 CFR 393.41; or

(d) the division has become aware either through an audit or investigation that the examiner has failed to properly conduct or record CDL skills tests.

(3) A third-party CDL skills test examiner may voluntarily surrender their certification and stop conducting skills tests. Any initial or renewal fees will not be refunded.

(4) A third-party CDL skills testing program or CDL skills test examiner may appeal the decertification in writing with the division within 30 days from being notified of the decertification.

(5) A third-party CDL skills testing program or CDL skills test examiner may apply for recertification with the division.

AUTH: 61-5-118, MCA

IMP: 61-5-118, MCA

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

23.3.502 DEFINITIONS Unless the context indicates otherwise, the words and phrases in this subchapter have the definitions set forth in this rule.

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

(2) "CDL skills test" means a test given to applicants for a commercial driver's license and commercial endorsements. A skills test is comprised of the following three components:

- (a) vehicle inspection test;
- (b) basic control skills; and
- (c) road test.

(3) remains the same, but is renumbered (1).

(4) remains the same, but is renumbered (14).

(9)(4) "Classifications-" means that each type 1 or type 2 endorsement CDL is classified as to the type class of vehicle authorized to be driven, as follows:

(a) remains the same.

(b) "Class B" authorizes driving any single vehicle in excess of 26,001 lbs. GVWR, or any such vehicle towing a vehicle not in excess of 10,000 lbs. GVWR, or any bus which exceeds 26,001 lbs. GVWR and is capable of carrying more than 15 passengers including the driver, and all vehicles under class C and vehicles authorized to be driven with a regular driver's license (Class D);

(c) "Class C" authorizes driving any single vehicle less than 26,001 lbs. GVWR or any such vehicle towing a vehicle not in excess of 10,000 lbs. GVWR when the vehicle(s) are or must be placarded for hazardous materials under the provisions of 49 C.F.R., part 172, or any bus or van in this weight class capable of carrying 16 or more than 15 passengers including the driver and any vehicle authorized to be driven with a regular driver's license (Class D).

(5) remains the same, but is renumbered (7).

(5) "Commercial driver's license (CDL)" means a license issued to an individual under or granted by the laws of this state which authorizes the individual to operate a class of a commercial motor vehicle. There are two types of CDLs:

(a) "Type I" allows the operation of a commercial motor vehicle for interstate commerce.

(b) "Type II" allows the operation of a commercial motor vehicle within the state of Montana.

(6) "Commercial learner's permit (CLP)" means a permit issued to an individual under or granted by the laws of this state which, when carried with a valid Class D license, authorizes the individual to operate a class of a commercial motor vehicle when accompanied by a holder of a valid CDL for purposes of behind-the-wheel training. When issued to a CDL holder, a CLP serves as authorization for accompanied behind-the-wheel training in a CMV for which the holder's current CDL is not valid.

(8) "Commercial Skills Test Information Management System (CSTIMS)" is an internet-based tool that provides a consistent way to track the scheduling and entry of test results for commercial skills tests by state and third-party examiners.

(6)(10) "Disqualification" is a status in which the holder of a commercial driver's license is no longer authorized to operate commercial vehicles as provided in 49 C.F.R., part 391.

(2)(11) "Division" means the division of motor vehicles division, unless otherwise specifically stated.

(7) remains the same but is renumbered (12).



~~(8)~~(13) "Endorsement" means an endorsement on a commercial driver's license indicating that the driver meets the qualifications required to operate a commercial motor vehicle that requires special knowledge and skill other than a normal passenger vehicle or light truck.

~~(a)~~ "Commercial vehicle operator's endorsements" are issued in two types as follows:

~~(i)~~ a "type 1 endorsement" authorizes operation of a commercial motor vehicle in interstate commerce;

~~(ii)~~ a "type 2 endorsement" authorizes operation of a commercial motor vehicle within the state of Montana but does not include vehicles operated solely within the state of Montana which are engaged in "interstate commerce" as defined in 49 C.F.R., part 391.

~~(e)~~(a) "Double/triple endorsement" is a an separate endorsement required of all drivers who pull double or triple trailers and may accompany a type 1 or type 2 endorsement in class A.

~~(b)~~ "Hazardous materials endorsement" is an a separate endorsement required of all drivers who operate a commercial motor vehicle that requires hazardous materials haulers and may accompany a type 1 or type 2 endorsement in class A, B or C; placards under the provisions of 49 CFR 172.

~~(d)~~(c) "Passenger endorsement" is a an separate endorsement required of all drivers who carry 16 or more passengers, including the driver, while operating buses as described in item (9) classifications herein, and may accompany a type 1 or type 2 endorsement in class A, B, or C; and a bus or van.

~~(d)~~ "School bus endorsement" is an endorsement required for all drivers who operate a school bus.

~~(e)~~(e) "Tank endorsement" is a an separate endorsement required of all drivers who transport bulk liquid materials in tanks permanently or temporarily attached to the vehicle with an individual rated capacity of more than 119 gallons and an aggregated but shall not include portable tanks having a rated capacity under of 1,000 gallons or more. The tank endorsement may accompany a type 1 or type 2 endorsement in class A, B, or C;

(15) and (16) remain the same, but are renumbered (20) and (21).

~~(21)~~(15) "Federal waiver or exemption" means the waiver or exemption described in federal regulations, 49 C.F.R., parts 391.49, and 391.61.

~~(44)~~(16) "Gross Combined Vehicle Weight Rating" (abbreviated GCVWR)" means the total of the combined manufacturer's weight ratings, or the total of the combined current registered gross vehicle weights, whichever is greater, of all vehicles operated as a combination unit.

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

~~(40)~~(17) "Gross Vehicle Weight Rating" (abbreviated GVWR)" means the manufacturer's rated capacity for the vehicle in question, or the current registered gross vehicle weight, whichever is greater.

(18) and (19) remain the same, but are renumbered (22) and (23).

~~(42)~~(18) "Hazardous material" means any material listed in the federal Hazardous Materials Tables, 49 C.F.R., part 172.

~~(44)~~(19) "Medical certificate" means the medical certificate described in federal regulations, 49 C.F.R., part 391.43.

(20) remains the same, but is renumbered (25).

~~(13)~~(24) "Placards, or hazardous materials placards" are defined and required as provided in the federal Hazardous Materials Communications Regulations, 49 C.F.R., part 172.

(26) "Third-party CDL skills test examiner" means an individual who has been trained and certified by the division to administer CDL skills tests.

(27) "Third-party CDL skills testing program" means an entity authorized by the motor vehicle division to operate a CDL skills testing program and provide third-party skills test examiner(s) to administer CDL skills tests.

AUTH: 61-5-112, ~~61-5-117~~, 61-5-125, MCA

IMP: 20-10-103, 61-5-102, 61-5-104, 61-5-105, 61-5-106, 61-5-106, 61-5-107, 61-5-108, 61-5-110, 61-5-111, 61-5-112, 61-5-113, 61-5-114, 61-5-115, 61-1-116, 61-5-305, 61-5-306, MCA

REASON: The 2017 Montana Legislature adopted Senate Bill 241, which generally authorized the Montana Department of Justice (DOJ) to create a program for third-party skills testing for individuals applying for a Montana commercial driver's license (CDL). The legislation authorized the new program, required that third-party test examiners administer the same tests used by DOJ, allowed DOJ to charge fees for the certification of third-party test examiners and, most importantly, authorized DOJ to adopt rules concerning the certification and monitoring of third-party testing programs and requiring the rules to comply with certain federal regulations. These proposed rules are advanced to comply with that statutory mandate.

New Rule I is proposed to define who is eligible to conduct third-party CDL testing. New Rule II is needed to define who DOJ may accept third-party CDL test results from. New Rule III is necessary to lay out the application process for potential third-party CDL testing entities. New Rule IV is needed to establish the need for third-party CDL testing agreements and certification of testing entities. New Rule V is necessary to lay out the specifics of what is required in third-party CDL testing agreements.

New Rule VI is needed to establish the specific requirements for an entity to become certified as a third-party CDL tester. New Rule VII is necessary to establish the standards which must be met by any individual third-party CDL tester. New Rule VIII is needed to establish the standards for any individual third-party CDL test. New Rule IX is necessary to establish standards for third-party CDL test scheduling, recordkeeping, and transferring test results. New Rule X is needed to provide audit authority for the division and the Federal Motor Carrier Safety Administration. New Rule XI is necessary to define the process for re-certification and decertification of both third-party CDL testing entities and individuals conducting such tests. Finally, ARM 23.3.502 needs to be amended to define terms used in the third-party CDL testing program in general.

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: Michele Snowberger, Department of Justice Motor Vehicle Division, 302 North Roberts, P.O. Box 201430, Helena, Montana, 59620; telephone (406) 444-1776; fax (406) 444-2086; or e-mail msnowerger@mt.gov, and must be received no later than 5:00 p.m., October 5, 2018.

6. Jeffrey M. Hindoien, Department of Justice, 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 2 above or may be made by completing a request form at any rules hearing held by the department.

8. According to 2-4-302(1)(c), MCA, the division is required to include "an estimate, if known, of: (i) the cumulative amount for all persons of the proposed increase, decrease, or new amount; and (ii) the number of persons affected." The division does not have any historical data to rely on in estimating the amount of fees because this is a new program. The division has received interest in this program and makes the following statement: Each third-party CDL skills testing program is required to pay a certification fee in the amount of \$5,000. Each certified third-party skills test examiner is required to pay a fee of \$500. Each CDL applicant is required to pay a fee for each successfully completed skills test in the amount of \$25.00. The division estimates a minimum of two third-party skills testing programs with a total of four third-party skills examiners for a total of \$12,000. The division estimates that 100 CDL applicants will successfully complete a skills test through the third-party skills testing program for a total of \$2,500, for a grand total of \$14,500.

9. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted by mail on July 25, 2018.

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

/s/ Matthew T. Cochenour  
Matthew T. Cochenour  
Rule Reviewer

/s/ Timothy C. Fox  
Timothy C. Fox  
Attorney General  
Department of Justice

Certified to the Secretary of State August 28, 2018.

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

In the matter of the amendment of ) NOTICE OF PUBLIC HEARING ON  
ARM 24.101.413 renewal dates ) PROPOSED AMENDMENT

TO: All Concerned Persons

1. On September 28, 2018, at 10:00 a.m., a public hearing will be held in the Large Conference Room, 301 South Park Avenue, 4th Floor, Helena, Montana, to consider the proposed amendment of the above-stated rule.

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 Nursing (board) no later than 5:00 p.m., on September 21, 2018, to advise us of the nature of the accommodation that you need. Please contact the Board of Nursing, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2380; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; or nurse@mt.gov (board's e-mail).

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

24.101.413 RENEWAL DATES AND REQUIREMENTS (1) through (5)(s) remain the same.

	BOARD OR PROGRAM JURISDICTION	LICENSE CATEGORY	FREQUENCY	RENEWAL DATE
(t)	Nursing	Clinical Nurse Specialist	Biennially, <del>Even Numbered Years</del>	December 31
		Nurse Anesthetist	Biennially, <del>Even Numbered Years</del>	December 31
		Nurse Midwife	Biennially, <del>Even Numbered Years</del>	December 31
		Nurse Practitioner	Biennially, <del>Even Numbered Years</del>	December 31
		APRN Prescriptive Authority	Biennially, <del>Even Numbered Years</del>	December 31
		Practical Nurse - Licensed	Biennially, <del>Even Numbered Years</del>	December 31
		Professional Nurse -Registered	Biennially, <del>Even Numbered Years</del>	December 31
		Medication Aide	Annually	March 31

(u) through (7) remain the same.

AUTH: 37-1-101, 37-1-141, MCA

IMP: 37-1-101, 37-1-141, MCA

REASON: Currently, the department is preparing for the biennial renewal of nursing licenses at the end of 2018. With over 22,000 licensees associated with the board, nursing renewals involve a significant effort in a short amount of time, requiring reassignment of licensing staff and resulting in delayed licensure time and stress on both staff and the telephone system. To improve the renewal experience for licensees and ensure more efficient workflow, the board and the department have determined it is reasonably necessary to split licensees into two groups to allow the burden of renewal to be balanced between even- and odd-numbered years. Therefore, the board and department are amending this rule now to allow biennial renewal groups for even- and odd-numbered years and to have this change in effect by the 2018 renewal period. The board is working with the department to implement this transition by clearly communicating to licensees what to expect especially during the first renewal period following the rule changes.

4. 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 Nursing, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or e-mail to nurse@mt.gov, and must be received no later than 5:00 p.m., October 5, 2018.

5. An electronic copy of this notice of public hearing is available at nurse.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.

6. 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 Nursing, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; faxed to the office at (406) 841-2305; e-mailed to nurse@mt.gov; or made by completing a request form at any rules hearing held by the agency.

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

8. Regarding the requirements of 2-4-111, MCA, the board has determined that the amendment of ARM 24.101.413 will not significantly and directly impact small businesses.

Documentation of the board's above-stated determination is available upon request to the Board of Nursing, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2380; facsimile (406) 841-2305; or to nurse@mt.gov.

9. Missy Poortenga, Executive Officer, has been designated to preside over and conduct this hearing.

BOARD OF NURSING  
SHARON SWEENEY FEE, RN  
PRESIDENT

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

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

Certified to the Secretary of State August 28, 2018.

BEFORE THE DEPARTMENT OF NATURAL RESOURCES  
AND CONSERVATION OF THE STATE OF MONTANA

In the matter of the adoption of New Rule I ) NOTICE OF PUBLIC HEARING ON  
regarding the Burlington Northern and Santa ) PROPOSED ADOPTION  
Fe Somers Site Controlled Groundwater )  
Area )

To: All Concerned Persons

1. On October 16, 2018, at 1:30 p.m., the Department of Natural Resources and Conservation will hold a public hearing at the Department of Natural Resources and Conservation, North Western Land Office (NWLO) Conference Room (Room 149), 655 Timberwolf Parkway, Kalispell, Montana, to consider the proposed adoption of the above-stated rule.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m. on September 28, 2018, to advise us of the nature of the accommodation that you need. Please contact Millie Heffner, Department of Natural Resources and Conservation, PO Box 201601, 1424 Ninth Avenue, Helena, MT 59620-1601; telephone (406) 444-0581; fax (406) 444-0533; or e-mail mheffner@mt.gov.

3. The department proposes to adopt the following rule:

NEW RULE I BURLINGTON NORTHERN AND SANTA FE RAILWAY  
COMPANY'S SOMERS RAILYARD SITE CONTROLLED GROUNDWATER AREA

(1) There is designated a Burlington Northern and Santa Fe Railway Company's Somers Railyard Controlled Groundwater Area (BNSF Somers CGWA). The BNSF Somers CGWA means an area of approximately 86.4 acres located in the unincorporated town of Somers, Montana, and is generally described as follows:

(a) the proposed BNSF Somers CGWA covers an area approximately 0.135 square miles and is generally located in the unincorporated town of Somers. The boundaries are wholly within: SW Section 24, T27N, R21W; and NW Section 25, T27N, R21W and further described as:

A parcel of land located in the Southwest quarter of Section 24 and in the Northwest quarter of Section 25, Township 27 North, Range 21 West, P.M., M., Flathead County, Montana, being more particularly described as follows: Commencing at the Northeast corner of the Southwest quarter of the Southwest quarter of said Section 24 and the POINT-OF-BEGINNING; thence S 03°25'04" W a distance of 153.61 feet; thence S 86°27'32" E a distance of 188.36 feet; thence S 28°32'30" E a distance of 492.78 feet; thence S 09°32'26" E a distance of 763.33 feet; thence S 03°25'56" W a distance of 663.91 feet; thence N 86°30'48" W a distance of 593.14 feet; thence S 02°38'58" W a distance of 730.90 feet; thence S 61°40'25" E a distance of 210.96 feet; thence S 06°10'44" E a distance of 47.13 feet;

thence S 65°31'51" W a distance of 541.91 feet; thence S 55°10'30" W a distance of 88.93 feet; thence N 01°28'21" E a distance of 436.94 feet; thence N 04°09'55" E a distance of 81.46 feet; thence N 08°26'19" W a distance of 81.44 feet; thence N 20°52'32" W a distance of 67.04 feet; thence N 28°38'20" W a distance of 74.04 feet; thence N 29°37'53" W a distance of 73.85 feet; thence N 20°06'06" W a distance of 106.72 feet; thence N 18°48'22" W a distance of 227.77 feet; thence N 17°03'46" W a distance of 344.14 feet; thence N 08°00'21" W a distance of 83.55 feet; thence N 06°12'39" W a distance of 80.22 feet; thence with a curve turning to the right with a delta angle of 05°05'40", with an arc length of 19.39 feet, with a radius of 218.11 feet, with a chord bearing of N 74°31'22" W, with a chord length of 19.39 feet; thence N 71°58'32" W a distance of 102.00 feet; thence with a curve turning to the right with a delta angle of 08°07'00", with an arc length of 157.94 feet, with a radius of 1114.92 feet, with a chord bearing of N 67°55'02" W, with a chord length of 157.81 feet; thence N 63°51'32" W a distance of 108.50 feet; thence with a curve turning to the left with a central angle of 05°59'28", with an arclength of 86.46 feet, with a radius of 826.85 feet, with a chord bearing of N 66°51'16" W, with a chord length of 86.42 feet; thence N 04°51'10" E a distance of 55.89 feet; thence N 57°40'48" W a distance of 157.39 feet; thence N 03°25'15" E a distance of 1497.92 feet; thence S 42°24'16" E a distance of 11.60 feet; thence S 03°51'59" W a distance of 15.18 feet; thence S 60°44'54" E a distance of 395.49 feet; thence S 86°08'05" E a distance of 950.31 feet to the POINT-OF-BEGINNING, containing 86.491 acres.

(b) a map of the area within the BNSF Somers CGWA described in (1)(a) is posted at <http://dnrc.mt.gov/divisions/water/water-rights/controlled-ground-water-areas/burlington-northern-and-santa-fe-railway-companys-somers-railyard>.

(2) No new groundwater appropriations or changes to existing groundwater appropriations are allowed within the lateral boundaries of the BNSF Somers CGWA as shown above.

(3) New and existing groundwater monitoring wells and remediation wells approved by the United States Environmental Protection Agency are allowed within the boundaries of the BNSF Somers CGWA. New and existing monitoring wells and remediation wells within the BNSF Somers CGWA must comply with the well construction standards set forth in ARM Title 36, chapter 21.

(4) Recorded deed restrictions to replace the prior deed notifications, and to restrict use of all property within the subject area will be done by BNSF.

(5) Once the site is remediated, and the groundwater is restored to acceptable conditions, the petitioner or other qualifying petitioners may request the CGWA designation be lifted or changed in size.

(6) This rule revokes and replaces the department's May 9, 2003 Order Designating Controlled Groundwater Area In the Matter of Petition No. 76LJ-30005258.

AUTH: 85-2-506, 85-2-508, MCA  
IMP: 85-2-506, 85-2-508, MCA

REASONABLE NECESSITY: Section 85-2-506, MCA, authorizes the department to designate temporary or permanent controlled groundwater areas. A petition to designate a controlled groundwater area was filed with the department by



the Flathead City-County Board of Health (Petitioner). The Petitioner proposes to revise a permanent CGWA boundary and add more restrictive groundwater withdrawals for the Burlington Northern Santa Fe Railway Company's Somers site, a former tie treating plant, due to water quality concerns. The purpose of the original CGWA approved by the department in 2003, was to restrict groundwater withdrawals from the alluvial aquifer for any purpose other than remediation to protect human health. Data collected since the original CGWA designation show exceedance levels of constituents of concern (COC). A groundwater plume comprised of polycyclic aromatic hydrocarbons (PAH), phenolic constituents, and benzene extends from the former Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) lagoon source in a northeasterly to easterly direction. A second groundwater plume of PAH and benzene with phenol constituents below Record of Decision (ROD) cleanup levels extends north from the aboveground storage tanks (AST) area. The petition states that the plumes are stable overall under non-pumping conditions and concentrated near source areas where non-aqueous phase liquid (NAPL) remains as intermittent and disconnected small lenses and stringers up to 60 feet beneath the two source areas in the alluvial aquifer.

The proposed restrictions on groundwater development are needed to protect human health and safety.

A determination to initiate rulemaking proceedings was issued by the department on May 21, 2018.

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 in writing to Millie Heffner, Department of Natural Resources and Conservation, P.O. Box 201601, 1424 Ninth Avenue, Helena, MT 59620; fax (406) 444-0533; or e-mail [mheffner@mt.gov](mailto:mheffner@mt.gov), and must be received no later than 5:00 p.m. on October 16, 2018.

5. James D. Ferch, Department of Natural Resources and Conservation, 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 Aliselina Strong, P.O. Box 201601, 1539 Eleventh Avenue, Helena, MT 59620; fax (406) 444-2684; e-mail [astrong@mt.gov](mailto:astrong@mt.gov); 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 adoption of the above-referenced rule will not significantly and directly impact small businesses.

/s/ John E. Tubbs  
JOHN E. TUBBS  
Director  
Natural Resources and Conservation

/s/ Barbara Chillcott  
BARBARA CHILLCOTT  
Rule Reviewer

Certified to the Secretary of State August 28, 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 37.34.3005, 37.40.830, ) PROPOSED AMENDMENT  
37.85.104, 37.85.105, 37.85.106, )  
37.86.705, 37.86.805, 37.86.1006, )  
37.86.1101, 37.86.1105, 37.86.1406, )  
37.86.1807, 37.86.2005, 37.86.2605, )  
37.86.2803, 37.86.2806, 37.86.2905, )  
37.86.2912, 37.86.3007, 37.86.3109, )  
and 37.86.3205, pertaining to )  
updating the effective dates of non- )  
Medicaid and Medicaid fee schedules )

TO: All Concerned Persons

1. On September 27, 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 September 14, 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 rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

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

(2) The department adopts and incorporates by this reference the rates of reimbursement for the delivery of services and items available through each Home and Community-Based Services Waiver Program as specified in the Montana Developmental Disabilities Program Manual of Service Rates and Procedures of Reimbursement for Home and Community-Based Services (HCBS) 1915c, 0208, and 0667 Waiver Programs, effective July 1, 2018, as revised and labeled "version 2." A copy of the manual may be obtained through the Department of Public Health and Human Services, Developmental Services Division, Developmental Disabilities

Program, 111 N. Sanders, P.O. Box 4210, Helena, MT 59604-4210 and at <http://dphhs.mt.gov/dsd/developmentaldisabilities/DDPratesinf>.

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

37.40.830 HOSPICE, REIMBURSEMENT (1) through (11) remain the same.

(12) The hospice fee schedules are effective ~~January 1, 2018~~ July 1, 2018.

Copies of the department's current fee schedules are posted at <http://medicaidprovider.mt.gov> and may be obtained from the Department of Public Health and Human Services, Health Resources Division, 1401 East Lockey, P.O. Box 202951, Helena, MT 59602-2951.

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

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

(a) Mental health services plan provider reimbursement, as provided in ARM 37.89.125, is effective July 1, 2018, as revised and labeled "version 2."

(b) 72-hour presumptive eligibility for adult-crisis stabilization services reimbursement for services, as provided in ARM 37.89.523, is effective July 1, 2018, as revised and labeled "version 2."

(c) Youth respite care services, as provided in ARM 37.87.2203, is effective July 1, 2018, as revised and labeled "version 2."

(d) Substance use disorder services provider reimbursement, as provided in ARM 37.27.905, is effective July 1, 2018, as revised and labeled "version 2."

(2) remains the same.

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

37.85.105 EFFECTIVE DATES, CONVERSION FACTORS, POLICY ADJUSTERS, AND COST-TO-CHARGE RATIOS OF MONTANA MEDICAID PROVIDER FEE SCHEDULES (1) The Montana Medicaid Program establishes provider reimbursement rates for medically necessary, covered services based on the estimated demand for services and the legislative appropriation and federal matching funds. Provider reimbursement rates are stated in fee schedules for covered services applicable to the identified Medicaid program. New rates are established by revising the identified program's fee schedule and adopting the new fees as of the stated effective date of the schedule. Copies of the department's current fee schedules are posted at <http://medicaidprovider.mt.gov> and may be obtained from the Department of Public Health and Human Services, Health Resources Division, 1401 East Lockey, P.O. Box 202951, Helena, MT 59620-2951.

A description of the method for setting the reimbursement rate and the administrative rules applicable to the covered service are published in the chapter or subchapter of this title regarding that service. The department will make quarterly periodic updates, as necessary, to the fee schedules noted in this rule to include new procedure codes and applicable rates and removal of terminated procedure codes.

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

(a) remains the same.

(b) Fee schedules are effective July 1, 2018, as revised and labeled "version 2." The conversion factor for physician services is ~~\$36.68~~ \$37.81. The conversion factor for allied services is ~~\$22.96~~ \$23.67. The conversion factor for mental health services is ~~\$23.20~~ \$23.92. The conversion factor for anesthesia services is ~~\$28.87~~ \$29.76.

(c) remains the same.

(d) The payment-to-charge ratio is effective ~~January 1, 2018~~ July 1, 2018 and is ~~45.59%~~ 47% of the provider's usual and customary charges.

(e) through (h) remain the same.

(i) Reimbursement for physician-administered drugs described in ARM 37.86.105 is determined in 42 CFR 414.904 (2016). The department adopts ~~402.83%~~ 106% of the Average Sale Price (ASP), effective ~~January 1, 2018~~ July 1, 2018.

(j) Reimbursement for vaccines described at ARM 37.86.105 is effective July 1, 2018, as revised and labeled "version 2."

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

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

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

(ii) the Montana Medicaid APR-DRG relative weight values, average national length of stay (ALOS), outlier thresholds, and APR grouper version ~~34~~ 35 are contained in the APR-DRG Table of Weights and Thresholds effective ~~March 1, 2018~~ July 1, 2018. The department adopts and incorporates by reference the APR-DRG Table of Weights and Thresholds effective ~~March 1, 2018~~ July 1, 2018.

(b) The outpatient hospital services fee schedules including:

(i) remains the same.

(ii) the conversion factor for outpatient services on or after ~~March 1, 2018~~ July 1, 2018 is ~~\$49.46~~ \$50.98;

(iii) remains the same.

(iv) the bundled composite rate of ~~\$244.47~~ \$252.00 for services provided in an outpatient maintenance dialysis clinic effective on or after ~~January 1, 2018~~ July 1, 2018.

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

(d) The Relative Values for Dentists, as provided in ARM 37.86.1004, reference published in ~~2017~~ 2018 resulting in a dental conversion factor of ~~\$32.77~~ \$33.78 and fee schedule is effective ~~March 1, 2018~~ July 1, 2018.

(e) The dental services covered procedures, the Dental and Denturist Program Provider Manual, as provided in ARM 37.86.1006, is effective ~~March 1, 2018~~ July 1, 2018.

(f) The outpatient drugs reimbursement, dispensing fees range as provided in ARM 37.86.1105(3)(b) is effective July 1, 2018, as revised and labeled "version 2":

(i) for pharmacies with prescription volume between 0 and 39,999, the minimum is \$2.75 and the maximum is ~~\$14.55~~ \$15.00;

(ii) for pharmacies with prescription volume between 40,000 and 69,999, the minimum is \$2.75 and the maximum is ~~\$12.64~~ \$13.00; or

(iii) for pharmacies with prescription volume greater than 70,000, the minimum is \$2.75 and the maximum is ~~\$10.67~~ \$11.00.

(g) remains the same.

(h) The outpatient drugs reimbursement, vaccine administration fee as provided in ARM 37.86.1105(6), will be ~~\$20.68~~ \$21.32 for the first vaccine and ~~\$13.42~~ \$13.83 for each additional administered vaccine, effective July 1, 2018, as revised and labeled "version 2."

(i) remains the same.

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

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

(l) Fee schedules for nutrition, children's special health services, and orientation and mobility specialists as provided in ARM 37.86.2207(2), are effective July 1, 2018, as revised and labeled "version 2."

(m) and (n) remain the same.

(o) The ambulance services fee schedule, as provided in ARM 37.86.2605, is effective July 1, 2018, as revised and labeled "version 2."

(p) The audiology fee schedule, as provided in ARM 37.86.705, is effective July 1, 2018, as revised and labeled "version 2."

(q) The therapy fee schedules for occupational therapists, physical therapists, and speech therapists, as provided in ARM 37.86.610, are effective July 1, 2018, as revised and labeled "version 2."

(r) The optometric fee schedule provided in ARM 37.86.2005, is effective July 1, 2018, as revised and labeled "version 2."

(s) The chiropractic fee schedule, as provided in ARM 37.85.212(2), is effective July 1, 2018, as revised and labeled "version 2."

(t) The lab and imaging fee schedule, as provided in ARM 37.85.212(2) and 37.86.3007, is effective July 1, 2018, as revised and labeled "version 2."

(u) remains the same.

(v) The Targeted Case Management for Children and Youth with Special Health Care Needs fee schedule, as provided in ARM 37.86.3910, is effective ~~March 4, 2018~~ July 1, 2018.

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

(x) The mobile imaging fee schedule, as provided in ARM 37.85.212, is effective July 1, 2018, as revised and labeled "version 2."

(y) The licensed direct entry midwife fee schedule, as provided in ARM 37.85.212, is effective July 1, 2018, as revised and labeled "version 2."

(z) remains the same.

(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 15, 2018~~ July 1, 2018.

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

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

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

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

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

(a) Mental health center services for adults reimbursement, as provided in ARM 37.88.907, is effective July 1, 2018, as revised and labeled "version 2."

(b) Home and community-based services for adults with severe disabling mental illness, reimbursement, as provided in ARM 37.90.408, is effective ~~July 15, 2018~~ July 1, 2018.

(c) Substance use disorder services reimbursement, as provided in ARM 37.27.905, is effective July 1, 2018, as revised and labeled "version 2."

(6) The department adopts and incorporates by reference, the fee schedule for the following program within the Developmental Services Division, on the date stated: Mental health services for youth, as provided in ARM 37.87.901 in the Medicaid Youth Mental Health Services Fee Schedule, is effective July 1, 2018, as revised and labeled "version 2."

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

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

37.85.106 MEDICAID BEHAVIORAL HEALTH TARGETED CASE MANAGEMENT FEE SCHEDULE (1) remains the same.

(2) The Department of Public Health and Human Services (department) adopts and incorporates by reference the Medicaid Behavioral Health Targeted

Case Management Fee Schedule effective ~~January 1, 2018~~ July 1, 2018, as revised and labeled "version 2" for the following programs within the Developmental Services Division (DSD) and the Addictive and Mental Disorders Division (AMDD):

(a) through (3) remain the same.

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

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

37.86.705 AUDIOLOGY SERVICES, REIMBURSEMENT (1) remains the same.

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

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

(i) and (ii) remain the same.

(iii) ~~97.04%~~ 100% of the Medicare Region D allowable fee; or

(iv) remains the same.

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

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

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

(a) and (b) remain the same.

(c) ~~97.04%~~ 100% of the Medicare Region D allowable fee.

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

(a) remains the same.

(b) For supplies or equipment, reimbursement will be set at ~~72.8%~~ 75% of the manufacturer's suggested retail price. For items without a manufacturer's suggested retail price, the charge will be considered reasonable if the provider's acquisition cost from the manufacturer is at least 50% of the charge amount. For items that are custom-fabricated at the place of service, the amount charged will be considered reasonable if it does not exceed the average charge of all Medicaid providers by more than 20%.

(c) and (3) remain the same.

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

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

37.86.1006 DENTAL SERVICES, COVERED PROCEDURES (1) through (4) remain the same.

(5) Covered services for adults age 21 and over include:

(a) and (b) remain the same.

(c) basic restorative services including prefabricated crown; and

(d) extractions; and



(e) porcelain fused to base metal crowns with prior authorization, limited to two per person per year, total. For second molars, base metal crowns only.

(6) remains the same.

(7) Full maxillary and full mandibular dentures are a Medicaid-covered service. Coverage is limited to one set of dentures every ten years. Only one lifetime exception to the ten-year time period is allowed per person if one of the following exceptions is authorized by the department:

(a) The dentures are no longer serviceable and cannot be relined or rebased;  
or

(b) The dentures are lost, stolen, or damaged beyond repair.

(8) Maxillary partial dentures and mandibular partial dentures are a Medicaid-covered service. Coverage is limited to one set of partial dentures every five years. Only one lifetime exception to the five-year limit is allowed per person if one of the following exceptions is authorized by the department:

(a) The partial dentures are no longer serviceable and can no longer be relined or rebased; or

(b) The partial dentures are lost, stolen, or damaged beyond repair.

(9) The limits on coverage of denture replacement may be exceeded when the department determines that the existing dentures are causing the person serious physical health problems. The dentist or denturist should indicate "replacement dentures" on the request for prior authorization of replacement dentures and document the medical necessity for the replacement.

(10) Coverage of all denture services is subject to the following requirements and limitations:

(a) A denturist may provide initial immediate full prosthesis and initial immediate partial prosthesis only when prescribed in writing by a dentist. The prescription must be signed and dated within 90 days of the order and must be maintained in the patient file.

(b) Requests for full prosthesis must show the approximate date of the most recent extractions, and/or the age and type of the present prosthesis.

(7) through (13) remain the same, but are renumbered (11) through (17).

~~(14) (18) All crowns Porcelain/ceramic crowns, noble metal crowns,~~ and bridges are not covered benefits of the Medicaid program for individuals age 21 and over.

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

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

37.86.1101 OUTPATIENT DRUGS, DEFINITIONS (1) and (2) remain the same.

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

(4) through (15) remain the same.

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

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

37.86.1105 OUTPATIENT DRUGS, REIMBURSEMENT (1) through (12) remain the same.

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

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

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

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

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

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

(a) ~~97.01%~~ 100% of the Medicare allowable amount. For purposes of determining the Medicare allowable amount for ASC services to Medicaid members under this rule, the department adopts and incorporates by reference the methodology at 42 CFR part 416, subpart F, and the schedule listing the allowable amounts for ASC services in the Medicare Claims Processing Manual. The cited authorities are federal regulations and manuals specifying the methods and rules used to determine reasonable cost for purposes of the Medicare program. The Medicare Claims Processing Manual can be found on the Centers for Medicare and Medicaid website at [www.cms.gov](http://www.cms.gov). The Code of Federal Regulations can be found at [www.gpo.gov](http://www.gpo.gov).

(i) through (2) remain the same.

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

IMP: 53-6-101, ~~53-6-144~~, MCA

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

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

(a) ~~97.01%~~ 100% of the Medicare region D allowable fee;

(b) remains the same.

(c) Except as provided in (4), for all items for which no Medicare or Medicaid allowable fee is available, the department's fee schedule amount will be ~~72.8%~~ 75% of the provider's usual and customary charge.

(i) remains the same.

(ii) Items having no product retail list price, such as items customized by the provider, will be reimbursed at ~~72.8%~~ 75% of the provider's usual and customary charge as defined in (3)(b)(i).

(4) The department's DMEPOS Fee Schedule, referred to in ARM 37.86.1807(2), for items billed under generic or miscellaneous codes as described in (1) will be ~~72.8%~~ 75% of the provider's usual and customary charge as defined in (3)(b)(i).

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

IMP: 53-2-201, 53-6-101, 53-6-111, 53-6-113, ~~53-6-144~~, MCA

37.86.2005 OPTOMETRIC SERVICES, REIMBURSEMENT (1) remains the same.

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

(a) remains the same.

(b) For supplies or equipment, reimbursement will be set at ~~72.8%~~ 75% of the manufacturer's suggested retail price. For items without a manufacturer's suggested retail price, the charge will be considered reasonable if the provider's acquisition charge from the manufacturer is at least 50% of the charge amount. For items that are custom-fabricated at the place of service, the amount charged will be considered reasonable if it does not exceed the average charge of all Medicaid providers by more than 20%.

(c) and (3) remain the same.

AUTH: 53-6-113, MCA

IMP: 53-6-101, 53-6-113, ~~53-6-144~~, MCA

37.86.2605 AMBULANCE SERVICES, REIMBURSEMENT (1) through (3) remain the same.

(4) For supplies or equipment, where there is no Medicare or Medicaid set fee, the provider's usual and customary charge in (1)(a) will be considered reasonable if set at ~~72.8%~~ 75% of the manufacturer's suggested retail price. For items without a manufacturer's suggested retail price, the charge will be considered reasonable if the provider's acquisition cost from the manufacturer is at least 50% of the charge amount.

(5) remains the same.

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

IMP: 53-6-101, 53-6-113, ~~53-6-144~~, MCA

37.86.2803 ALL HOSPITAL REIMBURSEMENT, COST REPORTING

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

(a) through (d) remain the same.

(e) For cost report periods ending ~~on or after~~ January 1, 2018 through June 30, 2018, for each hospital which is a critical access hospital, as defined in ARM 37.86.2901, reimbursement for reasonable costs of inpatient and outpatient hospital services will be limited to 97.98% of allowable costs, as determined in accordance with (1).

(f) For cost report periods ending on or after July 1, 2018, for each hospital which is a critical access hospital, as defined in ARM 37.86.2901, reimbursement for reasonable costs of inpatient and outpatient hospital services will be limited to 101% of allowable costs, as determined in accordance with (1).

(2) and (3) remain the same.

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

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

37.86.2806 COST-BASED HOSPITAL, GENERAL REIMBURSEMENT

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

(a) Critical access hospital (CAH) interim reimbursement is based on a hospital specific Medicaid inpatient cost-to-charge ratio (CCR), not to exceed 100%. For dates of service ~~on or after~~ January 1, 2018 through June 30, 2018, ~~critical access hospital (CAH)~~ interim reimbursement is based on a hospital-specific Medicaid inpatient cost-to-charge ratio (CCR), less 2.99%, not to exceed 100%.

(b) For cost report periods ending on or prior to December 31, 2017, CAH final reimbursement is for reasonable costs of hospital services limited to 101% of allowable costs, as determined in accordance with ARM 37.86.2803(1). For cost report periods ending ~~on or after~~ January 1, 2018 through June 30, 2018, CAH final reimbursement is for reasonable costs of hospital services limited to 97.98% of allowable costs as determined in accordance with ARM 37.86.2803(1). For cost report periods ending on or after July 1, 2018, CAH final reimbursement is for reasonable costs of hospital services limited to 100% of allowable costs as determined in accordance with ARM 37.86.2803(1).

(2) through (8) remain the same.

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

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

37.86.2905 INPATIENT HOSPITAL SERVICES, GENERAL REIMBURSEMENT (1) remains the same.

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

periods ending on or after July 1, 2018 final cost settlements for CAH facilities will be reimbursed at 101% of allowable costs.

(3) through (5) remain the same.

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

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

37.86.2912 INPATIENT HOSPITAL PROSPECTIVE REIMBURSEMENT, CAPITAL-RELATED COSTS (1) remains the same.

(2) The interim payment made to CAHs is based on the hospital-specific cost-to-charge ratio and includes capital costs. For dates of service ~~on or after~~ January 1, 2018 ~~through June 30, 2018~~, the interim payment made is based on the hospital-specific cost-to-charge ratio, less 2.99%, and includes capital costs. For dates of service on or after July 1, 2018, the interim payment made is based on the hospital-specific cost-to-charge ratio, and includes capital costs.

(3) remains the same.

AUTH: 2-4-201, 53-2-201, 53-6-113, MCA

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

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

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

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

(i) ~~58.206%~~ 60% of the prevailing Medicare fee schedule for a birthing center or where a hospital laboratory acts as an independent laboratory, i.e., performs tests for persons who are nonhospital patients;

(ii) ~~60.1462%~~ 62% of the prevailing Medicare fee schedule for a hospital designated as a sole community hospital as defined in ARM 37.86.2901; or

(iii) ~~58.206%~~ 60% of the prevailing Medicare fee schedule for a hospital that is not designated as a sole community hospital as defined in ARM 37.86.2901.

(b) and (c) remain the same.

(2) For purposes of this rule, clinical diagnostic laboratory services include the laboratory tests listed in codes defined in the HCPCS and listed in the Clinical Diagnostic Fee Schedule (CLAB) published ~~January 1, 2017~~ January 1, 2018.

(3) remains the same.

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

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

37.86.3109 OUTPATIENT CARDIAC AND PULMONARY REHABILITATION REIMBURSEMENT (1) Critical access hospital (CAH) interim reimbursement is based on a hospital-specific Medicaid outpatient cost-to-charge ratio, not to exceed

100%. For dates of service ~~on or after~~ January 1, 2018 through June 30, 2018, the interim reimbursement is based on the hospital specific Medicaid outpatient cost-to-charge ratio (CCR), less 2.99% not to exceed 100%. For dates of service on or after July 1, 2018, the interim reimbursement is based on the hospital-specific Medicaid outpatient cost-to-charge ratio. CAHs will be reimbursed their actual allowable costs determined according to ARM 37.86.2803.

(2) and (3) remain the same.

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

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

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

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

(a) remains the same.

(b) ~~58.206%~~ 60% of the Medicare fee schedule for physician offices and independent labs and hospitals functioning as independent labs; or

(c) remains the same.

AUTH: 53-6-113, MCA

IMP: 53-6-113, ~~53-6-144~~, MCA

#### 4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) administers the Montana Medicaid and non-Medicaid programs to provide health care to Montana's qualified low income, elderly, and disabled residents. Medicaid is a public assistance program paid for with state and federal funds appropriated to pay health care providers for the covered medical services they deliver to Medicaid members. Pursuant to 53-6-113(3), MCA, the legislature has delegated authority to the department to set by rule, the reimbursement rates that Medicaid pays to providers for covered services.

The purpose of the proposed rule amendments is to: 1) increase provider rates effective July 1, 2018; 2) reflect the rebasing of the All Patient Refined Diagnosis Related Groups (APR-DRG) reimbursement methodology for inpatient services used by several divisions in the department which is necessary to stay within legislative appropriation; and 3) modify the adult benefit package for restoring certain high cost, extensive dental procedures and dentures.

These rules apply to services for all people and eligibility categories for Montana Medicaid, including the Montana Medicaid Health and Economic Livelihood Partnership (HELP) Program that serves the Medicaid Expansion population.

#### Proposed Provider Rate Increases

The department is proposing a number of provider rate increases effective July 1, 2018. The rate increases reverse across-the-board Medicaid provider rate reductions implemented in state fiscal year 2018. The provider rate increases are expected to distribute the following funds in state fiscal year (SFY) 2019.

	State Funds	Federal Funds	Total Funds
House Bill 2 Appropriations	\$4,493,277	\$8,835,270	\$13,031,547
Budget Restoration Appropriations	\$4,493,277	\$8,835,270	\$13,031,547
Statutory Appropriations	\$1,047,697	\$14,427,887	\$15,475,584
	\$10,034,252	\$31,504,426	\$41,538,678

As a part of the SFY 2019 budget restoration project, the department initially planned on raising rates prospectively. On July 31, 2018, the department filed with the Secretary of State's Office a Notice of Public Hearing on Proposed Amendment, which proposed increasing Medicaid provider rates across-the-board by 3.56% effective September 1, 2018. Over the remaining 10 months of state fiscal year 2019, a rate increase of 3.56% would have ensured providers received the equivalent of a 12-month 2.99% provider increase. That notice, MAR Notice No. 37-859, was published by the Secretary of State on August 10, 2018.

Subsequent to the filing of MAR Notice No. 37-859, the department was served a complaint and temporary restraining order requiring the department raise rates effective August 2, 2018. The department complied with the temporary restraining order, but remains concerned about the long-term impact to providers. Increasing provider rates temporarily under the direction of a restraining order may result in overpayments and require providers to refund portions of past payments to the Medicaid program.

In addition, as department staff prepared draft federal reports related to the proposed rate change, an error was noted in the fiscal impact section. The department withdrew MAR Notice No. 37-859 and prepared this replacement rule notice filing, MAR Notice No. 37-863.

The proposed rate changes accomplish the following objectives: 1) utilize \$5 million of the Senate Bill 9 department budget restoration to raise provider rates as early as possible in SFY 2019; and 2) ensure that providers will not have to return the across the board temporary rate increases if the department prevails in the aforementioned lawsuit.

The department has determined the new proposed provider rates are consistent with the efficiency, economy, and quality of care. The department believes these rates

are sufficient to enlist enough providers so that care and services are available to the general population in the geographic area.

The department has posted proposed fee schedules to <http://medicaidprovider.mt.gov/proposedfs>.

The department has posted the Montana Developmental Disabilities Program Manual of Service Rates and Procedures of Reimbursement for Home and Community-Based Services (HCBS) 1915c, 0208, and 0667 Waiver Programs Manual (Manual) at <http://dphhs.mt.gov/dsd/developmentaldisabilities/DDPratesinf>.

### Hospital Rates

The department proposes to adopt a new version of the APR-DRG grouper effective July 1, 2018. Version 35 of the APR-DRG grouper contains changes to DRG weights, average length of stays, and adds new DRGs. Hospital base rates are proposed to increase to meet the appropriated budget for inpatient hospitals. In addition, an increase in the conversion factor for outpatient hospitals is proposed to implement the provider rate increases outlined in the preceding section titled Proposed Provider Rate Increases. This increase applies to free-standing birthing centers as they are paid under the outpatient hospital reimbursement methodology.

### Fee Schedules

The department is proposing the adoption of fee schedules effective July 1, 2018, as revised and labeled "version 2." The rates contained within these proposed fee schedules were modified to implement the provider rate increases discussed in the preceding section titled Proposed Provider Rate Increases.

### Conversion Factor

The department is proposing an increase of 3.08% to the conversion factors utilized within the Resource Based Relative Value Scale (RBRVS) reimbursement methodology, to implement the provider rate increases outlined in the preceding section titled Proposed Provider Rate Increases.

### Medicare Rates

Many Montana Medicaid programs utilize Medicare rates for fee schedules, cost settlements, and reimbursements. The proposed rule changes will increase reimbursement at posted Medicare rates for applicable codes. The July 1, 2018, proposed fee schedules reflect the rate increase, Medicare updates, and procedure code changes. The changes are proposed to implement the provider rate increases outlined in the preceding section titled Proposed Provider Rate Increases.

### Durable Medical Equipment



CMS published a final rule (CMS 1687-IFC) on May 11, 2018, that increases the Medicare fee schedule rates for certain durable medical equipment to safeguard beneficiary access for necessary items and services furnished in rural areas.

The CMS rule increases the fee schedule amounts for certain DME items in rural areas effective June 1, 2018. In order to align the fee schedule effective date with the State Plan Amendment – Introduction Page, Attachment 4, 19B, the department is proposing an effective date of July 1, 2018.

ARM 37.34.3005

The department proposes to amend this rule to incorporate a new edition of the Montana Developmental Disabilities Program Manual of Service Rates and Procedures of Reimbursement for Home and Community-Based Services (HCBS) 1915c, 0208, and 0667 Waiver Programs (Manual), effective July 1, 2018, which includes increases in the rates of reimbursement for Medicaid-funded home and community services. The changes are proposed to implement the provider rate increases outlined in the preceding section titled Proposed Provider Rate Increases.

In addition to the HCBS waiver rate increase, the department proposes changes to the manual as follows:

- (1) Remove on pages 24 through 26 an incorrect reference to self-directed services for all day supports and activities. The correction is necessary because the waiver renewal, effective July 1, 2018, does not include self-direct service delivery for the day supports and activities waiver service.
- (2) On page 33, correct the face-to-face documentation requirement reference to remove an inconsistency in the manual.

ARM 37.40.830

The department proposes to increase the hospice program rates by 3.08% and update the fee schedule date to July 1, 2018. The changes are proposed to implement the provider rate increases outlined in the preceding section titled Proposed Provider Rate Increases.

ARM 37.85.104(1)(a), (b), and (d)

The department proposes updating the effective date of the mental health services plan, the 72-hour presumptive eligibility for adult crisis stabilization services, and substance use disorder services fee schedules to July 1, 2018, version 2. The changes are proposed to implement the provider rate increases outlined in the preceding section titled Proposed Provider Rate Increases.

ARM 37.85.104(1)(c)

The department proposes to amend the Medicaid Youth Mental Health Fee Schedule to update the effective date to July 1, 2018.

ARM 37.85.105(2)(b)

The department proposes to update the following conversion factors in the following amounts to implement the provider rate increases outlined in the preceding section titled Proposed Provider Rate Increases: physician services conversion factor from \$36.68 to \$37.81; allied services conversion factor from \$22.96 to \$23.67; mental health services conversion factor from \$23.20 to \$23.92; and anesthesia services conversion factor from \$28.87 to \$29.76. These changes will be effective on July 1, 2018, and therefore the RBRVS fee schedules will be made effective on that date.

ARM 37.85.105(2)(d)

The department is proposing to reinstate the provider payment to charge percentage to 47%. The changes are proposed to implement the provider rate increases outlined in the preceding section titled Proposed Provider Rate Increases.

ARM 37.85.105(2)(i)

The department proposes to update reimbursement for physician-administered drugs as determined at 42 CFR 414.904 (2016). The department is proposing an increase in the percentage of average sales price (ASP) paid for physician-administered drugs. This increase is to reinstate the Medicare reimbursement of 106% of ASP. The changes are proposed to implement the provider rate increases outlined in the preceding section titled Proposed Provider Rate Increases.

ARM 37.85.105(2)(j)

The department proposes to increase the fee schedule for vaccines effective July 1, 2018, by 3.08%, to implement the provider rate increases outlined in the preceding section titled Proposed Provider Rate Increases.

ARM 37.85.105(3)(a)(i)

The department proposes to update and revise the APR-DRG fee schedule for inpatient hospitals as provided in ARM 37.86.2907 effective July 1, 2018. The base rates will be increased to implement the provider rate increases outlined in the preceding section titled Proposed Provider Rate Increases.

ARM 37.85.105(3)(a)(ii)

The department adopts and incorporates by reference the APR-DRG Table of Weights and Thresholds effective July 1, 2018, and updates the APR-DRG grouper version 34 to version 35. The department proposes these changes to include the revisions to the weights, thresholds, and DRGs proposed in version 35 of the APR-

DRG grouper. The changes are proposed to implement the provider rate increases outlined in the preceding section titled Proposed Provider Rate Increases.

ARM 37.85.105(3)(b)(ii)

The department proposes to revise the conversion factor for outpatient hospital services on or after July 1, 2018, from \$49.46 to \$50.98. The conversion factor for outpatient hospital services is being increased to implement the provider rate increases outlined in the preceding section titled Proposed Provider Rate Increases.

ARM 37.85.105(3)(b)(iv)

The department proposes to revise the composite Rate for Dialysis from \$244.47 to \$252.00 effective July 1, 2018. The change is proposed to implement the provider rate increases outlined in the preceding section titled Proposed Provider Rate Increases.

ARM 37.85.105(3)(c)

The department proposes to increase the hearing aid services fee schedule by 3.08% effective July 1, 2018, to implement the provider rate increases outlined in the preceding section titled Proposed Provider Rate Increases.

ARM 37.85.105(3)(d)

The department proposes to revise the relative value for dentists publish date to 2018 and revise the fee schedule effective date to July 1, 2018. This change is required to incorporate the most recently published relative value units for dentists. In addition, the department proposes to increase the dental conversion factor from \$32.77 to \$33.78. The changes are proposed to implement the provider rate increases outlined in the preceding section titled Proposed Provider Rate Increases.

ARM 37.85.105(3)(e)

The department proposes to update the fee schedules for dental services to reinstate coverage of certain high cost, extensive dental procedures, and dentures for adults. These reinstated dental services are effective on October 1, 2018, and thus providers will be reimbursed for these reinstated services only after that date. The department proposes to update the Dental and Denturist Program Provider Manual effective October 1, 2018, to reflect changes outlined in ARM 37.86.1006.

ARM 37.85.105(3)(f)

The department proposes to revise the effective date regarding the outpatient drugs reimbursement dispensing fee ranges to July 1, 2018. The department is increasing the maximum dispensing fees by 3.08%. The change is proposed to implement the

provider rate increases outlined in the preceding section titled Proposed Provider Rate Increases.

ARM 37.85.105(3)(f)(i)

The department proposes to revise the maximum dispensing fees for pharmacies with prescription volumes between 0 and 39,999 from \$14.55 to \$15.00. The change is proposed to implement the provider rate increases outlined in the preceding section titled Proposed Provider Rate Increases.

ARM 37.85.105(3)(f)(ii)

The department proposes to revise the maximum dispensing fee for pharmacies with prescription volumes between 40,000 and 69,999 from \$12.61 to \$13.00. The change is proposed to implement the provider rate increases outlined in the preceding section titled Proposed Provider Rate Increases.

ARM 37.85.105(3)(f)(iii)

The department proposes to revise the maximum dispensing fee for pharmacies with prescription volumes greater than 70,000 from \$10.67 to \$11.00. The change is proposed to implement the provider rate increases outlined in the preceding section titled Proposed Provider Rate Increases.

ARM 37.85.105(3)(h)

The department proposes to revise the outpatient drugs reimbursement vaccine administration fee, as provided in ARM 37.86.1105(6), from \$20.68 to \$21.32 for the first vaccine, and from \$13.42 to \$13.83, for each additional administered vaccine effective July 1, 2018. These changes are proposed to implement the provider rate increases outlined in the preceding section titled Proposed Provider Rate Increases.

ARM 37.85.105(3)(j)

The department proposes to revise the effective date of the home infusion therapy services fee schedule to July 1, 2018 increasing rates by 3.08%. These changes are proposed to implement the provider rate increases outlined in the preceding section titled Proposed Provider Rate Increases.

ARM 37.85.105(3)(k)

The department proposes to revise the effective date of the reference to the Region D Supplier Manual to July 1, 2018. The department will remove the 2.99% reductions to the 2018 Medicare rates, department set fees, and MSRP rates. Effective date of the revised fee schedule is July 1, 2018. These changes are proposed to implement the provider rate increases outlined in the preceding section titled Proposed Provider Rate Increases.

ARM 37.85.105(3)(l)

The department proposes to revise the effective date regarding the Early Periodic Screening, Diagnostic, and Treatment (EPSDT) fee schedule for nutrition, and orientation and mobility specialists to July 1, 2018. A rate increase of 3.08% is proposed. These changes are proposed to implement the provider rate increases outlined in the preceding section titled Proposed Provider Rate Increases.

ARM 37.85.105(3)(o)

The department proposes to revise the effective date regarding the ambulance services fee schedule to July 1, 2018. A rate increase of 3.08% is proposed. These changes are proposed to implement the provider rate increases outlined in the preceding section titled Proposed Provider Rate Increases.

ARM 37.85.105(3)(p)

The department proposes to revise the effective date for the audiology services fee schedule to July 1, 2018. A rate increase of 3.08% is proposed. These changes are proposed to implement the provider rate increases outlined in the preceding section titled Proposed Provider Rate Increases.

ARM 37.85.105(3)(q)

The department proposes to revise the effective date of the fee schedule for occupational therapists, physical therapists, and speech therapists to July 1, 2018. A rate increase of 3.08% is proposed. These changes are proposed to implement the provider rate increases outlined in the preceding section titled Proposed Provider Rate Increases.

ARM 37.85.105(3)(r)

The department proposes to revise the effective date of the optometric fee schedule to July 1, 2018. A rate increase of 3.08% is proposed. These changes are proposed to implement the provider rate increases outlined in the preceding section titled Proposed Provider Rate Increases.

ARM 37.85.105(3)(s)

The department proposes to revise the effective date of the chiropractic fee schedule to July 1, 2018. A rate increase of 3.08% is proposed. These changes are proposed to implement the provider rate increases outlined in the preceding section titled Proposed Provider Rate Increases.

ARM 37.85.105(3)(t)

The department proposes to revise the effective date of the lab and imaging fee schedule to July 1, 2018. A rate increase of 3.08% is proposed. These changes are proposed to implement the provider rate increases outlined in the preceding section titled Proposed Provider Rate Increases.

ARM 37.85.105(3)(v)

The department proposes to revise the effective date of the Targeted Case Management for Children and Youth with Special Health Care Needs fee schedule to July 1, 2018. A rate increase of 3.08% is proposed. These changes are proposed to implement the provider rate increases outlined in the preceding section titled Proposed Provider Rate Increases.

ARM 37.85.105(3)(w)

The department proposes to revise the effective date of the Targeted Case Management for High Risk Pregnant Women fee schedule to July 1, 2018. A rate increase of 3.08% is proposed. These changes are proposed to implement the provider rate increases outlined in the preceding section titled Proposed Provider Rate Increases.

ARM 37.85.105(3)(x)

The department proposes to revise the effective date of the mobile imaging fee schedule to July 1, 2018. A rate increase of 3.08% is proposed. These changes are proposed to implement the provider rate increases outlined in the preceding section titled Proposed Provider Rate Increases.

ARM 37.85.105(3)(y)

The department proposes to revise the effective date of the licensed direct entry midwife fee schedule to July 1, 2018. A rate increase of 3.08% is proposed. These changes are proposed to implement the provider rate increases outlined in the preceding section titled Proposed Provider Rate Increases.

ARM 37.85.105(4)(a)

The department proposes to increase the fee schedule date for Home and Community Based Services (HCBS) Waiver program to July 1, 2018. A rate increase (excluding member mileage) of 3.08% is proposed. These changes are proposed to implement the provider rate increases outlined in the preceding section titled Proposed Provider Rate Increases.

ARM 37.85.105(4)(b)

The department proposes to update the fee schedule date for Home Health Services to July 1, 2018. A rate increase of 3.08% is proposed. These changes are

proposed to implement the provider rate increases outlined in the preceding section titled Proposed Provider Rate Increases.

ARM 37.85.105(4)(c) and (d)

The department proposes to update the fee schedule date for Personal Assistance and Self-directed Personal Assistance Services to July 1, 2018. A rate increase of 3.08% is proposed. These changes are proposed to implement the provider rate increases outlined in the preceding section titled Proposed Provider Rate Increases.

ARM 37.85.105(4)(e)

The department proposes to update the fee schedule date for Community First Choice program services to July 1, 2018. A rate increase of 3.08% is proposed. These changes are proposed to implement the provider rate increases outlined in the preceding section titled Proposed Provider Rate Increases.

ARM 37.85.105(5)(a)

The department proposes to update the fee schedule date for mental health center services to July 1, 2018. A rate increase of 3.08% is proposed. These changes are proposed to implement the provider rate increases outlined in the preceding section titled Proposed Provider Rate Increases.

ARM 37.85.105(5)(b)

The department proposes to update the fee schedule date for home and Community-based services to July 1, 2018. A rate increase of 3.08% is proposed. These changes are proposed to implement the provider rate increases outlined in the preceding section titled Proposed Provider Rate Increases.

ARM 37.85.105(5)(c)

The department proposes to update the fee schedule for a reference for substance use disorder services reimbursement with an effective date of July 1, 2018. A rate increase of 3.08% is proposed. These changes are proposed to implement the provider rate increases outlined in the preceding section titled Proposed Provider Rate Increases.

ARM 37.85.105(6)

The department proposes to update the fee schedule date to July 1, 2018. A rate increase of 3.08% is proposed. It is necessary for the department to incorporate new assigned relative values to implement rates set by Montana Medicaid's RBRVS reimbursement for psychologists, social workers, and professional counselors. The RBRVS is located in ARM 37.85.212.

These changes are proposed to implement the provider rate increases outlined in the preceding section titled Proposed Provider Rate Increases.

ARM 37.85.106(2)

The department proposes to amend this rule and update the fee schedule for targeted case management for adult and children's mental health services. The updated provider rates reflect a 3.08% increase to implement the provider rate increases outlined in the section titled Proposed Provider Rate Increases.

ARM 37.86.705 and 37.86.805

The department is proposing that the Montana Medicaid program pays the following for audiology and hearing aid services: the lowest of 1) the provider's usual and customary charge for the service; 2) the department fee schedule for each respective service; or 3) 100% of the Medicare Region D allowable fee.

This change is proposed to implement the provider rate increases outlined in the preceding section titled Proposed Provider Rate Increases.

ARM 37.86.1006

The department proposes to reinstate dental coverage of certain high cost, extensive dental procedures, and dentures for the adult Medicaid population. These reinstated dental services are effective on October 1, 2018, and thus providers will be reimbursed for these reinstated services only after that date. The Dental and Denturist Program Provider Manual informs providers of the requirements applicable to the delivery of services. Copies of the manual are available on the Montana Medicaid provider web site at <http://medicaidprovider.mt.gov> and from the Department of Public Health and Human Services, Health Resources Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

ARM 37.86.1101

The department proposes to eliminate the 2.99% reduction to Wholesale Acquisition Cost (WAC) reimbursements made when Average Acquisition Cost (AAC) is not available. This change is proposed to implement the provider rate increases outlined in the preceding section titled Proposed Provider Rate Increases.

ARM 37.86.1105

The department proposes to eliminate the 2.99% reduction to WAC, within the clotting factor reimbursement calculation when dispensed by specialty pharmacies, hemophilia treatment centers, or centers of excellence. This increase is to both 340B and non-340B dispensed drugs. This change is proposed to implement the provider rate increases outlined in the preceding section titled Proposed Provider Rate Increases.



ARM 37.86.1406

The department proposes to reinstate reimbursement for ambulatory surgical centers services at 100% of the Medicare allowable amount. This change is proposed to implement the provider rate increases outlined in the preceding section titled Proposed Provider Rate Increases.

ARM 37.86.1807

The department proposes to modify the department's DMEPOS Fee Schedule for items other than those billed under generic or miscellaneous to 100% of the Medicare region D allowable fee. The department proposes to multiplicatively modify the Medicaid fee for all items for which there is no Medicare allowable fee available. The department is modifying the reimbursement percentage of the provider's usual and customary charge to 75%, effective July 1, 2018. In addition, for items that have no product retail list price, the department is proposing a reimbursement of 75% of the provider's usual and customary charge, effective July 1, 2018. These changes are proposed to implement the provider rate increases outlined in the preceding section titled Proposed Provider Rate Increases.

ARM 37.86.805, 37.86.2005, and 37.86.2605

The department proposes to change the percentage of the manufacturer's suggested retail price that is considered reasonable when there is no established Medicare or Medicaid fee to 75%. For items without a manufacturer's suggested retail price, the charge will be considered reasonable if the provider's acquisition cost from the manufacturer is at least 50% of the charge amount effective July 1, 2018. These changes are proposed to implement the provider rate increases outlined in the preceding section titled Proposed Provider Rate Increases.

ARM 37.86.2803, 37.86.2806, 37.86.2905, 37.86.2912, and 37.86.3109

The department proposes to increase the final cost settlement for critical access hospitals amount to 101%. In addition, the department proposes to increase the interim payment for all Critical Access Hospitals (CAHs) to their individual cost to charge ratios. These changes are proposed to implement the provider rate increases outlined in the preceding section titled Proposed Provider Rate Increases.

ARM 37.86.3007

The department proposes to increase the percentage of the prevailing Medicare fee schedule for clinical diagnostic laboratory services. The revised percentages are as follows: 60% for a birthing center or where a hospital laboratory acts as an independent laboratory; 62% for a hospital designated as a sole community hospital; and 60% for a hospital that is not designated as a sole community hospital. These

changes are proposed to implement the provider rate increases outlined in the preceding section titled Proposed Provider Rate Increases.

ARM 37.86.3205

The department proposes to increase the percentage of the Medicare fee schedule for nonhospital laboratory services to 60%. This change is proposed to implement the provider rate increases outlined in the preceding section titled Proposed Provider Rate Increases.

FISCAL IMPACT

The following table displays the fiscal impact as well as number of providers affected by the proposed changes.

<b>Provider Type</b>	<b>Annual Estimated Fiscal Impact</b>	<b>Enrolled Provider Count</b>
HOSPITAL - INPATIENT (PT01)	\$6,111,324	376
HOSPITAL - OUTPATIENT (PT02)	\$4,013,366	315
CRITICAL ACCESS HOSPITAL (PT74)	\$4,144,475	50
PHYSICIAN (PT27)	\$4,380,216	8,830
PHARMACY DISPENSING FEE (PT19)	\$950,176	425
PHARMACY WAC (PT19)	\$1,685,357	425
DENTAL (PT18)	\$2,098,316	584
AUDIOLOGIST (PT08)	\$4,950	59
LICENSED PROFESSIONAL COUNSELOR (PT58)	\$67	657
PHYSICAL THERAPIST (PT06)	\$243,940	634
PODIATRIST (PT05)	\$71,801	67
PRIVATE DUTY NURSING AGENCY (PT14)	\$98,629	4
PSYCHIATRIST (PT65)	\$16,176	260
PSYCHOLOGIST (PT17)	\$43	192
OCCUPATIONAL THERAPIST (PT10)	\$84,907	155
SOCIAL WORKER (PT42)	\$1,112	454
SPEECH PATHOLOGIST (PT07)	\$85,373	171
AMBULANCE (PT25)	\$344,052	160
AMBULATORY SURGICAL CENTER (PT15)	\$281,726	23
CASE MNGMNT - TARGETED Preg. Women (PT29)	\$8,990	15

CHILDREN'S SPECIAL HEALTH SVCS (PT70)	\$2,682	3
CHIP DENTAL (PT66)	\$30	584
CHIROPRACTOR (QMB SVCS ONLY) (PT50)	\$904	208
DENTURIST (PT43)	\$112,540	19
DIALYSIS CLINIC (PT52)	\$124,317	21
DURABLE MEDICAL EQUIPMENT (PT20)	\$711,136	443
FREE STANDING BIRTHING CLINICS	\$840	2
HEARING AID DISPENSER (PT09)	\$21,639	35
HOME INFUSION THERAPY (PT46)	\$40,212	15
INDEP DIAG TESTING FACILITY (PT72)	\$45,551	19
LABORATORY (PT40)	\$555,083	161
MID-LEVEL PRACTITIONER (PT44)	\$1,085,301	3,127
NUTRITIONIST/DIETICIAN (PT35)	\$1,432	62
OPTICIAN (PT22)	\$4,733	34
OPTOMETRIST (PT21)	\$217,786	195
ORIENTATION AND MOBILITY	\$1,356	3
<b>Health Resources Division Subtotal</b>	<b>\$27,550,538</b>	

<b>Provider Type</b>	<b>Annual Estimated Fiscal Impact</b>	<b>Enrolled Provider Count</b>
HOME HEALTH AGENCY (PT53)	\$11,109	26
HOSPICE (PT54)	\$98,327	30
PERSONAL CARE AGENCY (PT12)	\$23,442	71
PERSONAL CARE AGENCY (PT12) Adult MH	\$3,076	71
COMMUNITY FIRST CHOICE (PT12)	\$1,319,061	71
HOME & COMM BASED SERVICES (PT28)	\$1,383,306	583
<b>Senior and Long Term Care (SLTC) Subtotal</b>	<b>\$2,838,321</b>	

<b>Provider Type</b>	<b>Annual Estimated Fiscal Impact</b>	<b>Enrolled Provider Count</b>
CASE MANAGEMENT - MENTAL HEALTH (PT60)	\$209,849	19
CHEMICAL DEPENDENCY CLINIC (PT32)	\$398,831	23

CRITICAL ACCESS HOSPITAL (PT74)	\$39,244	50
HOME & COMM BASED SERVICES (PT28)	\$177,267	583
HOSPITAL - INPATIENT (PT01)	\$212,959	141
HOSPITAL - OUTPATIENT (PT02)	\$56,968	315
INDEP DIAG TESTING FACILITY (PT72)	\$30	19
LABORATORY (PT40)	\$34,791	161
LICENSED PROFESSIONAL COUNSELOR (PT58)	\$343,218	657
MENTAL HEALTH CENTER (PT59)	\$669,461	19
MID-LEVEL PRACTITIONER (PT44)	\$139,234	3,127
PHYSICIAN (PT27)	\$121,195	8,830
PSYCHIATRIST (PT65)	\$64,537	260
PSYCHOLOGIST (PT17)	\$22,153	192
SOCIAL WORKER (PT42)	\$184,558	454
1115 WAIVER	\$233,423	192
<b>Medicaid Mental Health Adult (AMDD) Subtotal</b>	<b>\$2,907,717</b>	

<b>Provider Type</b>	<b>Annual Estimated Fiscal Impact</b>	<b>Enrolled Provider Count</b>
CASE MANAGEMENT - MENTAL HEALTH (PT60)	\$205,824	19
COMPREHENSIVE SCHOOL AND COMMUNITY TREATMENT	\$1,558,098	464
CRITICAL ACCESS HOSPITAL (PT74)	\$16,100	50
HCBS 1915 IHOME (PT28)	\$645	583
HOSPITAL - INPATIENT (PT01)	\$210,283	141
HOSPITAL - OUTPATIENT (PT02)	\$70,131	315
INDEP DIAG TESTING FACILITY (PT72)	\$51	19
LABORATORY (PT40)	\$18,250	161
LICENSED PROFESSIONAL COUNSELOR (PT58)	\$286,466	657
MENTAL HEALTH CENTER (PT59)	\$200,161	26
MID-LEVEL PRACTITIONER (PT44)	\$57,575	3,127
PHYSICIAN (PT27)	\$67,754	8,830
PSYCHIATRIC RES. TREAT. FAC (PT 38)	\$641,854	15
PSYCHIATRIST (PT65)	\$63,354	260

PSYCHOLOGIST (PT17)	\$26,055	192
SOCIAL WORKER (PT42)	\$157,771	454
THERAPEUTIC FAMILY CARE (PT64)	\$261,393	14
THERAPEUTIC GROUP HOME (PT61)	\$646,627	16
<b>Medicaid Mental Health Youth (CMH/DD) Subtotal</b>	<b>\$4,488,394</b>	

<b>Provider Type</b>	<b>Annual Estimated Fiscal Impact</b>	<b>Enrolled Provider Count</b>
DD (Disability Services Division) Medicaid Waiver	\$3,753,707	70
<b>Disability Services Subtotal</b>	<b>\$3,753,707</b>	
<b>TOTAL RATE INCREASE ALL PROVIDER TYPES</b>	<b>\$41,538,678</b>	

<b>Provider Type</b>	<b>Annual Estimated Fiscal Impact</b>	<b>Enrolled Provider Count</b>
Dentists/Denturists High Cost Dental	\$4,674,357	603
<b>Dentists/Denturists High Cost Dental Subtotal</b>	<b>\$4,674,357</b>	

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 the [dphhslegal@mt.gov](mailto:dphhslegal@mt.gov), and must be received no later than 5:00 p.m., October 5, 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.

11. With the exception of the amendments to ARM 37.85.105(3)(e) and 37.86.1006, the department intends to apply these rule amendments retroactively to July 1, 2018. The department intends to apply the amendments to ARM 37.85.105(3)(e) and 37.86.1006 retroactively to October 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 August 28, 2018.

BEFORE THE SECRETARY OF STATE  
OF THE STATE OF MONTANA

In the matter of the amendment of ) NOTICE OF PUBLIC HEARING ON  
ARM 1.2.419 pertaining to the ) PROPOSED AMENDMENT  
scheduled dates for the 2019 )  
Montana Administrative Register )

TO: All Concerned Persons

1. On September 27, 2018, at 9:30 a.m., the Secretary of State will hold a public hearing in the Secretary of State's Office Conference Room, Room 260, State Capitol Building, Helena, Montana, to consider the proposed amendment of the above-stated rule.

2. The Secretary of State 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 Secretary of State no later than 5:00 p.m., September 20, 2018, to advise us of the nature of the accommodation that you need. Please contact Joe DeFilippis, Secretary of State's Office, P.O. Box 202801, Helena, MT 59620-2801; telephone (406) 444-5476; fax (406) 444-3976; TDD/Montana Relay Service (406) 444-9068; or e-mail [jdefilippis@mt.gov](mailto:jdefilippis@mt.gov).

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

1.2.419 FILING AND PUBLICATION SCHEDULE FOR THE MONTANA ADMINISTRATIVE REGISTER (1) The scheduled filing dates, time deadline, and publication dates for material to be published in the Montana Administrative Register are listed below:

2018 Register Publication Schedule		
Issue	Filing (due by noon)	Publication
1	<del>January 2</del>	January 12
2	<del>January 16</del>	January 26
3	<del>January 30</del>	February 9
4	<del>February 13</del>	February 23
5	<del>March 6</del>	March 16
6	<del>March 20</del>	March 30
7	<del>April 3</del>	April 13
8	<del>April 17</del>	April 27
9	<del>May 1</del>	May 11
10	<del>May 15</del>	May 25
11	<del>May 29</del>	June 8
12	<del>June 12</del>	June 22

13	June 26	July 6
14	July 10	July 20
15	July 31	August 10
16	August 14	August 24
17	August 28	September 7
18	September 11	September 21
19	September 25	October 5
20	October 9	October 19
21	October 23	November 2
22	November 7	November 16
23	November 27	December 7
24	December 11	December 21

2019 Register Publication Schedule

<u>Issue</u>	<u>Filing (due by noon)</u>	<u>Publication</u>
<u>1</u>	<u>January 2</u>	<u>January 11</u>
<u>2</u>	<u>January 15</u>	<u>January 25</u>
<u>3</u>	<u>January 29</u>	<u>February 8</u>
<u>4</u>	<u>February 12</u>	<u>February 22</u>
<u>5</u>	<u>March 5</u>	<u>March 15</u>
<u>6</u>	<u>March 19</u>	<u>March 29</u>
<u>7</u>	<u>April 2</u>	<u>April 12</u>
<u>8</u>	<u>April 16</u>	<u>April 26</u>
<u>9</u>	<u>April 30</u>	<u>May 10</u>
<u>10</u>	<u>May 14</u>	<u>May 24</u>
<u>11</u>	<u>May 28</u>	<u>June 7</u>
<u>12</u>	<u>June 11</u>	<u>June 21</u>
<u>13</u>	<u>June 25</u>	<u>July 5</u>
<u>14</u>	<u>July 16</u>	<u>July 26</u>
<u>15</u>	<u>July 30</u>	<u>August 9</u>
<u>16</u>	<u>August 13</u>	<u>August 23</u>
<u>17</u>	<u>August 27</u>	<u>September 6</u>
<u>18</u>	<u>September 10</u>	<u>September 20</u>
<u>19</u>	<u>September 24</u>	<u>October 4</u>
<u>20</u>	<u>October 8</u>	<u>October 18</u>
<u>21</u>	<u>October 29</u>	<u>November 8</u>
<u>22</u>	<u>November 12</u>	<u>November 22</u>
<u>23</u>	<u>November 26</u>	<u>December 6</u>
<u>24</u>	<u>December 17</u>	<u>December 27</u>

(2) remains the same.

AUTH: 2-15-401, MCA  
IMP: 2-4-312, MCA



REASONABLE NECESSITY: ARM 1.2.419 is proposed to be amended to set dates pertinent to the twice-monthly publication of the Montana Administrative Register during 2019. The schedule is being proposed at this time in order that it may be adopted in a timely manner to allow state agencies the opportunity to plan their rulemaking schedule to meet program needs for the upcoming year.

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: Joe DeFilippis, Secretary of State's Office, P.O. Box 202801, Helena, Montana 59620-2801, or by e-mailing [jdefilippis@mt.gov](mailto:jdefilippis@mt.gov), and must be received no later than 5:00 p.m., October 5, 2018.

5. Aislinn Shaul-Jensen, Department of Justice, Helena, Montana 59620-2801, has been designated to preside over and conduct the hearing.

6. The Secretary of State 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 which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding administrative rules, corporations, elections, notaries, records, uniform commercial code, or combination thereof. Such written request may be mailed or delivered to the Secretary of State's Office, Administrative Rules Services, 1301 E. 6th Avenue, P.O. Box 202801, Helena, MT 59620-2801, faxed to the office at (406) 444-3976, or may be made by completing a request form at any rules hearing held by the Secretary of State's Office.

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 Secretary of State has determined that the amendment of the above-referenced rule will not significantly and directly impact small businesses.

/s/ AISLINN SHAUL-JENSEN  
Aislinn Shaul-Jensen  
Rule Reviewer

/s/ COREY STAPLETON  
Corey Stapleton  
Secretary of State

Dated this 28th day of August, 2018.

BEFORE THE DEPARTMENT OF ADMINISTRATION  
OF THE STATE OF MONTANA

In the matter of the adoption of New ) NOTICE OF ADOPTION  
Rules I through VI pertaining to 9-1-1 )  
Grants )

TO: All Concerned Persons

1. On July 20, 2018, the Department of Administration published MAR Notice No. 2-13-577 pertaining to the public hearing on the proposed adoption of New Rules I through VI at page 1322 of the 2018 Montana Administrative Register, Issue Number 14.

2. The department has adopted New Rule II (ARM 2.13.404) and New Rule VI (ARM 2.13.411) exactly as proposed.

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

NEW RULE I (2.13.401) GRANT PROGRAM DEFINITIONS (1) through (4) remain as proposed; however, the implementation citation is amended as follows:

AUTH: 10-4-108, MCA  
IMP: 10-4-101, 10-4-304, 10-4-306, MCA

NEW RULE III (2.13.405) APPLICATION FOR GRANTS (1) An applicant for grant funds shall submit an application on a form approved by the department in consultation with the 9-1-1 Advisory Council ~~and adopted by reference in this rule.~~ The application form is available on the department's website. In fiscal year 2020 and thereafter, grants will be awarded on a prospective basis ~~to encourage expansion of 9-1-1 systems and services.~~

(2) through (4) remain as proposed.

NEW RULE IV (2.13.407) APPLICANT PRIORITY AND CRITERIA FOR AWARDING GRANTS (1) through (2)(a) remain as proposed.

(b) the extent to which the application supports planning, implementation, operation, or maintenance of 9-1-1 systems, 9-1-1 services, or both as provided by 10-4-306(2), MCA, (50 points maximum); and

(c) through (5) remain as proposed.

NEW RULE V (2.13.410) GRANT REPORTING, MONITORING, AND RECORDKEEPING (1) ~~The department may request periodic progress reports from grant award recipients, but not more frequently than quarterly. Grant award recipients shall provide the department quarterly progress reports. If a grant award~~

recipient provides the department progress reports more often than quarterly, the recipient need not provide the quarterly report.

(2) through (5) remain as proposed.

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

Comment #1: The department received a comment suggesting that 10-4-101, MCA, be listed as a statute implemented by New Rule I.

Response #1: The department agrees and has added the citation.

Comment #2: The department received a comment suggesting the phrase "and adopted by reference in the rule" be removed from NEW RULE III(1) because the application itself does not contain any additional substantive requirements, and the rule is simply advising interested persons that the application is available on the department's website.

Response #2: The department agrees with the comment and has removed the words "and adopted by reference in the rule" from NEW RULE III(1).

Comment #3: The department received a comment from the Montana Telecommunications Association requesting deletion of language in NEW RULE III(1) referring to "expansion of 9-1-1 systems" as inappropriate to the intent of 10-4-306, MCA, because the statute is not limited to encouraging expansion of 9-1-1 systems but allows grants for implementation, operation, and maintenance of 9-1-1 systems, equipment, devices, and data, as well as other statutorily authorized uses.

Response #3: The department agrees with the comment and is adopting the rule without the last part of the last sentence. Insertion of the sentence in NEW RULE III was a clerical error made during preparation of the rule notice. The department regrets the error and the resulting confusion and thanks the association for pointing out the error.

Comment #4: The department received a comment noting that a reference to 10-4-306(2), MCA, was needed in NEW RULE IV(2)(b), because the rule subsection incorporates all the allowable uses included in the statute.

Response #4: The department agrees and has added language referring to the allowable uses of grant funds found in 10-4-306(2), MCA.

Comment #5: A member of the State Administration and Veterans' Affairs Interim Committee asked the department to consider requiring grant recipients to provide periodic progress reports on a quarterly basis in NEW RULE V(1).

Response #5: The department agrees with the comment and has modified NEW RULE V(1) to require quarterly reports.

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

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

Certified to the Secretary of State August 28, 2018.

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

In the matter of the amendment of )  
ARM 24.159.501 definitions, the )  
adoption of New Rule I enhanced )  
nurse licensure compact rules, and )  
the repeal of ARM 24.159.504 )  
issuance of a license by a compact )  
state, 24.159.507 limitations on )  
multistate licensure privilege - )  
discipline, and 24.159.510 information )  
system )

TO: All Concerned Persons

1. On March 30, 2018, the Board of Nursing (board) published MAR Notice No. 24-159-85 regarding the proposed amendment, adoption, and repeal of the above-stated rules, at page 624 of the 2018 Montana Administrative Register, Issue No. 6. On May 11, 2018, the board published a notice of public hearing on the amendment, adoption, and repeal of the above-stated rules at page 947 of the 2018 Montana Administrative Register, Issue No. 9.

2. On June 5, 2018, a public hearing was held on the proposed amendment, adoption, and repeal of the above-stated rules in Helena. Several comments were received by the June 8, 2018, deadline.

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

PROPONENTS

COMMENT 1: Several commenters generally supported the proposed rule changes in MAR Notice No. 24-159-85.

RESPONSE 1: The board appreciates all comments received during the rulemaking process and is proceeding with the changes exactly as proposed.

COMMENT 2: Many commenters supported the amendment of ARM 24.159.501, stating that the new definitions are the verbatim definitions adopted by the Interstate Commission of Nurse Licensure Compact Administrators (Commission) related to the Enhanced Nurse Licensure Compact, codified at 37-8-501, MCA (eNLC).

RESPONSE 2: The board intends to adopt the definitions exactly as proposed by the Commission.

COMMENT 3: Many commenters supported the repeal of ARM 24.159.504, 24.159.507, and 24.159.510, as the rules apply to the original NLC, which is no longer in effect.

RESPONSE 3: The board agrees that the old rules pertain to the original Nurse Licensure Compact (NLC). The board further notes the statutory authority for those rules was repealed when the eNLC became effective on January 19, 2018.

COMMENT 4: Numerous commenters supported the proposed adoption of New Rule I, opining that since Montana is a party state to the compact, the board is bound by the rules adopted by the Commission.

RESPONSE 4: The board agrees that, pursuant to Article VII(7)(a), and Article VIII of the eNLC, the Commission has been invested with rulemaking authority regarding rules to facilitate and coordinate implementation of the eNLC, and that Montana, as a party state, is bound by those rules.

### OPPONENTS

COMMENT 5: Several commenters asserted the board is using the adoption of the eNLC to eliminate rules in favor of allowing the Commission to adopt rules for Montana, and that this was not the legislative intent of entering the eNLC.

RESPONSE 5: The board must enact rules consistent with legislative intent. The board has determined, under the plain language of the eNLC, that the Commission has authority to enact rules to facilitate and coordinate implementation of the eNLC if those rules are promulgated pursuant to the procedures defined in Article VIII of the eNLC. The board notes that it retains rulemaking authority in all other aspects of licensure and enforcement. The board further notes, as evidenced by the rulemaking process followed regarding this rule proposal, the board is still observing appropriate rulemaking procedures. The board still accepts public comment on proposed rule changes and will not enact those changes without public input.

COMMENT 6: Many commenters specifically opposed adoption of New Rule I, asserting that the eNLC does not require the board to be bound by rules not otherwise adopted in Montana.

RESPONSE 6: Article VII(7)(a) and Article VIII of the eNLC discuss the rulemaking provisions of the eNLC. These provisions invest the Commission with authority to enact rules to facilitate and coordinate implementation of the eNLC, and that Montana, as a party state, is bound by those rules.

COMMENT 7: Several commenters stated that New Rule I does not provide sufficient notice to the public to notify individuals of rules and rulemaking, and may not comply with Montana's public notice laws.

RESPONSE 7: The board understands the public's right to participate in the board's and the Commission's rulemaking. Under Article VIII of the eNLC, the Commission must issue a notice of proposed rulemaking and request for public comment at least 60 days before holding a public meeting at which the rule changes will be considered. The board will continue to encourage public participation in this rulemaking process. Additionally, the board will publish the Commission's notice of proposed rulemaking in the Montana Administrative Register to adequately notify the public of the proposed changes.

COMMENT 8: Numerous commenters opposed the amendment of ARM 24.159.501 stating the elimination of the definitions for "public" and "primary state of residence" may cause confusion as to when Montana would be considered a primary state of residence and when individuals would need to become licensed in Montana.

RESPONSE 8: The board has concluded that statutory definitions within the eNLC sufficiently cover these terms, and, in some cases, may be much clearer.

COMMENT 9: Many commenters specifically opposed the repeal of ARM 24.159.504(1)(f), which states that a nurse changing primary state of residence may continue to practice under the former state's multistate licensure privilege for 90 days. The commenters expressed concerns that the rules as proposed will not adequately address how the board will track multistate practice privileges, and whether nurses residing in Montana are complying with the requirement that they apply for a Montana nursing license. One commenter stated this may allow nurses to practice in Montana without maintaining competency because, as licensees of another state, they may not be required to take continuing education courses.

RESPONSE 9: Since the eNLC was enacted, the board has not had issues with nurses failing to apply for licensure upon changing primary state of residence. The board agrees that it does not have a method to track whether each nurse complies with this requirement. However, although the board attempts to educate nurses as much as possible regarding current licensure laws, the board expects nurses to follow those laws. If the board receives complaints that nurses are not complying with eNLC requirements, the board has authority to take disciplinary action against a nurse's privilege to practice in Montana and has the authority to issue cease and desist orders against any nurse found to be in violation of the eNLC.

Moreover, although the board requires its nurses to obtain continuing education and has determined that CE is important to the public, the board understands that there is no evidence of a correlation between continuing education and continued competency.

COMMENT 10: Several commenters questioned how disciplinary action will be taken and communicated under the eNLC, and expressed concern that the rules adopted by the Commission do not adequately address this issue.

RESPONSE 10: The board's disciplinary authority has not changed, and the board will continue to follow similar processes as it did under the original nurse licensure

compact. The board also notes that whether an individual is practicing under a multistate practice privilege or a Montana license, the board has authority to take disciplinary action against the individual's permission to practice in Montana.

COMMENT 11: Many commenters questioned what checks and balances, if any, will ensure the board's executive officer will vote in the Commission in a manner that represents the interests of Montana and its licensed nurses.

RESPONSE 11: The board agrees that part of its mission is to protect the health, safety, and welfare of Montana and understands that the Commission will work collaboratively in the interest of public health, welfare, and safety. Pursuant to the eNLC, the board's executive officer (EO) will vote on behalf of the board at Commission meetings, but the board will continue to monitor the EO's participation in the Commission to ensure that the EO is acting in a manner that represents Montana's interests.

COMMENT 12: Numerous commenters questioned whether the Commission is a public agency, subject to state transparency requirements, including the Montana Public Records Act.

RESPONSE 12: The board notes that the Commission is a public agency. A determination as to whether the Commission is subject to the provisions of the Montana Public Records Act is beyond the scope of these rules.

COMMENT 13: Many commenters requested the board vote not to adopt, repeal, and amend the rules as proposed and instead requested the board form a subcommittee to review the issues raised by opponents of the rule proposal.

RESPONSE 13: The board discussed the proposed rule changes at several open board meetings before issuing a rule proposal notice. The board followed all statutory rulemaking procedures of the Montana Administrative Procedure Act when determining whether to make these rule changes. The board is proceeding with the rule changes exactly as proposed.

## OTHERS

COMMENT 14: Several commenters responded to claims that the board is using the adoption of the eNLC to eliminate rules in favor of allowing the Commission to adopt rules for the state of Montana. These commenters stated that the Commission only has the authority to adopt rules related to the eNLC and cannot enact rules that impact the Montana Nurse Practice Act. As such, the board's rules and the eNLC rules can exist simultaneously.

RESPONSE 14: The board agrees.

COMMENT 15: Several commenters responded to claims that New Rule I does not provide sufficient notice to the public to notify individuals of rules and rulemaking,



and may not comply with Montana's public notice laws. The commenters provided the notice procedures required by Article VIII of the eNLC.

RESPONSE 15: The board agrees. The board further notes that it will publish all proposed eNLC rule changes in the Montana Administrative Register, as authorized by eNLC Article VII(3)(b).

COMMENT 16: Several commenters responded to questions regarding whether the Commission is a public agency, subject to state transparency requirements, stating that the Commission is a public, governmental agency and that the Commission subjects itself to open meeting laws and follows guidelines based on the Federal Administrative Procedure Act.

RESPONSE 16: The board agrees.

COMMENT 17: Several commenters responded to claims that Montana has ceded many of its rights and responsibilities regarding nurse licensure to a private organization. These commenters believed that Montana has not ceded any rights or responsibilities to a private organization, and that the Commission can only make rules related to the compact.

RESPONSE 17: The board agrees.

COMMENT 18: Several commenters responded to concerns that the proposed rules do not adequately address how the board will track multistate practice privileges, and whether nurses residing in Montana are complying with the requirement to apply for a Montana nursing license. The commenters noted that the eNLC Final Rules, Section 402 adequately addresses this issue and that it is not necessary to implement a rule requiring all Montana-based health care providers and other employers to provide the board with the names and license information of all nurses subject to the compact that are providing nursing care in Montana.

RESPONSE 18: Please see RESPONSE 9.

COMMENT 19: Some commenters expressed support for the eNLC.

RESPONSE 19: The Montana Legislature enacted the eNLC, which became effective on January 19, 2018, six months after the 26th state enacted the eNLC. The board must comply with statutory provisions. As such, the eNLC is beyond the scope of this rule proposal.

COMMENT 20: Several commenters opposed the eNLC and raised concerns as to specific provisions of the eNLC.

RESPONSE 20: The Montana Legislature enacted the eNLC, which became effective on January 19, 2018, six months after the 26th state enacted the eNLC.

The board must comply with statutory provisions. As such, the eNLC is beyond the scope of this rule proposal.

4. The board has amended ARM 24.159.501 exactly as proposed.
5. The board has adopted New Rule I (24.159.502) exactly as proposed.
6. The board has repealed ARM 24.159.504, 24.159.507, and 24.159.510 exactly as proposed.

BOARD OF NURSING  
SHARON SWEENEY FEE, RN  
PRESIDENT

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

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

Certified to the Secretary of State August 28, 2018.

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

In the matter of the amendment of ) NOTICE OF AMENDMENT AND  
ARM 24.174.501 examination for ) REPEAL  
licensure as a registered pharmacist, )  
24.174.526 requirements to become a )  
clinical pharmacist practitioner, )  
24.174.1704 requirements for )  
submitting prescription registry )  
information to the board, and the )  
repeal of 24.174.2401 screening )  
panel, 24.174.2402 complaint )  
procedure, and 24.174.2403 legal )  
suspension or revocation )

TO: All Concerned Persons

1. On March 16, 2018, the Board of Pharmacy (board) published MAR Notice No. 24-174-70 regarding the public hearing on the proposed amendment and repeal of the above-stated rules, at page 535 of the 2018 Montana Administrative Register, Issue No. 5.

2. On April 6, 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 April 13, 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: Several commenters expressed support for the amendments as proposed to the clinical pharmacist practitioner requirements in ARM 24.174.526.

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

COMMENT 2: Numerous commenters expressed support for amendments to the Montana Prescription Drug Registry (MPDR, Registry) reporting requirements, ARM 24.174.1704, and ongoing efforts to improve the program.

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

COMMENT 3: Two commenters supported amendments to MPDR reporting requirements in ARM 24.174.1704 but expressed concerns for meeting the next-day reporting timeline in critical access hospital facilities during weekends and other

short staffing situations. A commenter requested the board allow at least four days to comply with the reporting requirements or permit an exemption for such facilities.

RESPONSE 3: The board acknowledges the need for more timely reporting of data to the MPDR, but does not believe this rule change will be overly burdensome to the operation of critical access hospitals who manually report MPDR data. Because commenters appeared to believe that critical access hospital staff would need to come in on weekends or holidays to comply with the "next day" rule change, the board is clarifying that MPDR data will need to be reported by the close of the next business day. Therefore, if the pharmacy is not open the day after a prescription is dispensed, the MPDR data must be reported during the next day of operation.

Further, the board surveyed pharmacies throughout the state before proposing this rule change. As provided in the reasonable necessity statement, pharmacies reporting prescription information automatically to the MPDR can already meet a daily reporting requirement. While some pharmacies, including some critical access hospitals, currently report MPDR data manually, the board concluded there is generally a low volume of outpatient prescriptions and staff currently spends approximately 30 to 60 minutes each week on the manual reporting. As well, the board is including additional and more efficient training resources on its MPDR web site regarding manual reporting.

Given the importance of the integrity of the MPDR data in promoting public safety and the minimal impact of the proposed rule change, the board is amending ARM 24.174.1704 exactly as proposed.

COMMENT 4: Several commenters expressed support for all the proposed rule changes in MAR Notice No. 24-174-70.

RESPONSE 4: The board appreciates all comments received in the rulemaking process.

4. The board has amended ARM 24.174.501, 24.174.526, and 24.174.1704 exactly as proposed.

5. The board has repealed ARM 24.174.2401, 24.174.2402, and 24.174.2403 exactly as proposed.

BOARD OF PHARMACY  
STARLA BLANK, RPh  
PRESIDENT

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

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

Certified to the Secretary of State August 28, 2018.

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

In the matter of the adoption of NEW ) NOTICE OF ADOPTION  
RULES I through VIII pertaining to the )  
operation of the underground facilities )  
protection program )

TO: All Concerned Persons

1. On June 22, 2018, the Department of Labor and Industry (department) published MAR Notice No. 24-301-337 regarding the public hearing on the proposed adoption of the above-stated rules, at page 1135 of the 2018 Montana Administrative Register, Issue No. 12.

2. On July 13, 2018, a public hearing was held on the proposed adoption of the above-stated rules in Helena. No comments were received by the July 20, 2018, deadline.

3. The department has adopted New Rules I (24.301.1001), II (24.301.1002), III (24.301.1003), IV (24.301.1006), V (24.301.1007), VI (24.301.1009), VII (24.301.1011), and VIII (24.301.1012) exactly as proposed.

/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 August 28, 2018.

BEFORE THE BOARD OF MILK CONTROL  
OF THE STATE OF MONTANA

In the matter of the amendment of ) NOTICE OF AMENDMENT  
ARM 32.24.480 producer pricing )  
rules )

TO: All Concerned Persons

1. On July 6, 2018, the Board of Milk Control published MAR Notice No. 32-18-290 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 1219 of the 2018 Montana Administrative Register, Issue Number 13.

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

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

COMMENT 1: Dave Lewis, who is a Montana producer, submitted a comment that noted that the proposed rule amendment will help Montana producers have more comparable butterfat prices to the rest of the nation and will still provide a discount to processors that is about 16% of the current difference between national butterfat prices and the Montana Class III butterfat price. He noted that Montana dairy farmers receive amongst the lowest prices for milk in the United States, even though a large percentage is bottled as Class I milk. He hopes that the change in the Class III butterfat price formula will entice more processing of cream products in Montana.

RESPONSE: The board thanks the commenter for the comment. The comments received are consistent with and support the justifications presented in the rulemaking proposal's statement of reasonable necessity.

COMMENT 2: The Montana Milk Producers Association (MMPA) submitted a comment that urged the board to withdraw the proposed rulemaking and develop a broader rule proposal, rather than only changing the Class II and Class III price formulas. MMPA expressed concern that the proposed amendments may put processing plants in Montana out of business and thereby not benefit Montana producers. MMPA stated its belief that the board is inadvertently creating market advantages for certain companies, which MMPA believes is inappropriate. MMPA noted that some recommendations in the Montana Milk Market Regulation Study Final Report (study) published in June 2018 have not been addressed in the rulemaking process. MMPA stated that the proposed amendments potentially create upheaval and challenges for Montana producers and processors.

RESPONSE: The board thanks the commenter for the comment. The board received no evidence that the proposed amendments will cause Montana plants to

close and did not receive any comments from distributors operating plants in Montana. Likewise, the board received no proposed alternatives to the rulemaking proposal. The board believes that the proposed amendments are supported by evidence presented to it. Several recommendations in the study were for the board not to act, such as seasonal pricing for Class I milk. The study also included recommendations about Montana's quota system and statewide pooling arrangement that would not impact Montana processors' cost for milk produced in Montana. The study did not recommend a single-phase rulemaking process that addressed all proposals concurrently. Accordingly, the board is immediately addressing the recommendations that are most readily actionable. The board notes that following completion of the study it distributed a survey to producers and processors to allow those groups to rate the importance of addressing the study's recommendations. Upon further consideration of the results of this study, the discussion about the study, and the condition of the Montana dairy industry, the board may engage in additional rulemaking. The board notes that the price formulas apply equally to all Montana processors based upon how each processor utilizes milk produced by Montana producers. The board's rulemaking is based on the evidence it receives. The board has considered amending Class III price formulas since before it commissioned the study. In December 2016, the board received an informal petition from producers drawing attention to their concern about Montana's Class III pricing structure. At the August 31, 2017 board meeting, the board tabled discussion to adjust the Class III price formulas until it received the draft study report. On April 30, 2018, after receiving the draft study report, the board instructed the Milk Control Bureau to draft a rule proposal to amend Class III and Class II price formulas. The board does not agree that the proposed amendments need to be withdrawn or be changed.

4. Written findings and conclusions pursuant to 81-23-302(7), MCA:

Findings:

- 1) The board proposed to revise the Class II and Class III price formulas based upon facts within its own knowledge. These facts include the data collected by the Milk Control Bureau; the data contained in the Montana Milk Market Regulation Study Final Report, authored by Dairy Technomics LLC; the data contained in the small business impact statement for this proposal; and data considered by the Board of Milk Control at its June 25, 2018 meeting. These facts provided the board information for it to consider regarding the balance between production and consumption of milk, the costs of production and distribution, and prices in adjacent and neighboring areas and state. When the board published the notice of proposed rulemaking, it notified the consuming public and the milk industry of the specific facts within its own knowledge so that all interested parties had opportunity to be heard and to question or rebut the facts as a matter of record.
- 2) No comments were received regarding the proposed amendments that questioned or rebutted the facts upon which the board relied.
- 3) No comments were received that proposed alternatives to the proposed amendments.

4) Most milk in the United States is covered by minimum price regulations, with the majority of jurisdictions basing prices on prices announced by the United States Department of Agriculture Agricultural Marketing Service (USDA-AMS).

5) Montana uses the same definitions of classes of utilization of milk as USDA-AMS, except that Montana combines the Class III and Class IV definitions into a single class, Class III.

6) USDA-AMS publishes two price announcements used in federally regulated markets to establish the value of producer milk. The USDA Announcement of Advanced Prices and Pricing Factors announces advance prices that are used to value Class I skim milk and butterfat and Class II skim milk. The USDA Announcement of Class and Component Prices announces prices after the month of production and utilization that are used to value Class II butterfat, Class III skim milk and butterfat, and Class IV skim milk and butterfat. The price formulas underlying both price announcements are the same, but the reference price data collection periods are different.

7) The current Montana Class II and Class III price formulas are different than federal price formulas for Class II, Class III, and Class IV milk in terms of price formula structure and reference price data collection periods.

8) Montana currently announces producer milk prices in advance of production and utilization for all classes of milk. The proposed Montana Class II and Class III price formulas would result in advanced price announcements. Advanced prices provide a benefit to processors in terms of financial planning, product pricing, and operational planning, since advanced prices establish the unit raw product cost prior to the purchase and utilization of milk. Advanced prices improve the ability of producers to estimate the blend price they will receive for their milk.

9) Compared to the price formulas for Class II and Class III currently in use, the proposed price formulas would have collectively increased revenue to Montana producers in calendar years 2015 - 2017 by approximately 3.5% - 4.4%, dependent upon which proposed Montana Class III Butterfat Price Differential would have been in effect. The proposed Class III butterfat price formula would have accounted for nearly all of the increase.

10) The current structure of the Class III butterfat price formula causes the Montana Class III butterfat price to be substantially lower than Class III butterfat prices in most other regulated markets in the United States and for which the difference between the Montana Class III butterfat price and federal Class III butterfat price increases as national butter prices increase. In the 2015 – 2017 time period, the current Montana Class III price formula resulted in Class III butterfat prices that were 12.89% - 41.59% lower (or \$0.3233/lb to \$1.2627/lb lower) than the USDA Advanced Butterfat Pricing Factor.

11) The approximate impact the proposed amendments would have had in 2015 - 2017 to distributors' costs compared to current rules for the skim and butterfat portions of Class II and Class III utilization values are as follows:

a) dependent upon which proposed Montana Class III Butterfat Price Differential would have been in effect, the proposed amendments to the Class III price formulas would have increased distributors' costs for the butterfat portion of milk utilized in Class III by approximately 18.1% - 23.5%;



- b) the proposed amendments to the Class III price formulas would have decreased distributors' costs for the skim milk portion of milk utilized in Class III by approximately 1%;
- c) the proposed amendments to the Class II price formulas would have increased distributors' costs for the butterfat portion of milk utilized in Class II by approximately 4%;
- d) the proposed amendments to the Class II price formulas would have increased distributors' costs for the skim milk portion of milk utilized in Class II by approximately 1%; and
- e) the total utilization value of pool milk would have increased by 3.5% - 4.4%, dependent upon which proposed Montana Class III Butterfat Price Differential would have been in effect.

12) The Milk Production, Disposition, and Income 2017 Summary authored by the United States Department of Agriculture National Agricultural Statistics Service in April 2018 shows that Montana producers had among the lowest all milk average returns (per cwt) in 2017 and 2016 in the United States. The Montana Milk Market Regulation Study Final Report (June 2018) noted that with the exception of Idaho in 2017, the net price for milk per cwt paid to producers in Montana is the lowest in the region and at or near the bottom in the country.

13) The following recommendations regarding Montana's class price formulas were made by Dairy Technomics, LLC in its June 2018 Montana Milk Market Regulation Study Final Report, which considered prices in adjacent and neighboring areas and states and costs of production and distribution:

- a) Montana should maintain the Montana Differential of \$2.55 for Class I milk for the immediate future;
- b) Class II should be based on the Federal Order, with Class II butterfat based on advanced pricing; and
- c) Class III pricing should be the lower of Federal Order Class III and Class IV but calculated from advanced pricing; it may be necessary to incorporate some discounts to processors, at least for a period of time, to allow the impact of a change in Class III pricing to be absorbed.

14) The proposed Class III Montana Butterfat Price Differential functions as a discount to the USDA Advanced Butterfat Pricing Factor in the proposed Class III butterfat price formula. The proposed amendments provide for a \$0.10 per pound of butterfat Class III Montana Butterfat Price Differential for Class III butterfat utilized after June 30, 2019, which is approximately a 4% discount from the USDA Advanced Butterfat Pricing Factor.

#### Conclusions:

- 1) Based upon the evidence produced in public comment and the hearing held August 3, 2018, the board concludes that it may rely upon the facts within its own knowledge when it proposed the amendments.
- 2) The board concludes that the requirements of 81-23-302, MCA, for revising milk pricing formulas have been met.
- 3) The board concludes that the proposed amendments will result in minimum prices that are fair and equitable to producers and consumers.

4) The board concludes that the proposed amendments will result in Class II and Class III prices comparable to regulated jurisdictions elsewhere in the United States.

5) The board concludes that the proposed Class III butterfat price formula will result in a formula that causes Montana Class III butterfat prices to parallel federal Class III butterfat prices and will provide a modest but meaningful discount for distributors to address the impact of the change in Class III pricing and market volatility that may occur from using an advanced price formula based on prices announced in the USDA Announcement of Advanced Prices and Pricing Factors instead of prices announced in the USDA Announcement of Class and Component Prices.

5. This rule amendment is effective September 19, 2018.

/s/ Cinda Young-Eichenfels  
Cinda Young-Eichenfels  
Rule Reviewer

/s/ W. Scott Mitchell  
W. Scott Mitchell  
Chair  
Board of Milk Control

Certified to the Secretary of State August 28, 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 March 31, 2018. This table includes notices in which those rules adopted during the period January 1, 2018, through July 6, 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 March 31, 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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MONTANA ADMINISTRATIVE  
REGISTER

2018 ISSUE NO. 17  
SEPTEMBER 7, 2018  
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