

# MONTANA ADMINISTRATIVE REGISTER

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# MONTANA ADMINISTRATIVE REGISTER

## ISSUE NO. 20

The Montana Administrative Register (MAR or Register), a twice-monthly publication, has three sections. The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted. The Rule Adoption Section contains final rule notices which show any changes made since the proposal stage. All rule actions are effective the day after publication of the adoption notice unless otherwise specified in the final notice. The Interpretation Section contains the Attorney General's opinions and state declaratory rulings. Special notices and tables are found at the end of each Register.

Inquiries regarding the rulemaking process, including material found in the Montana Administrative Register and the Administrative Rules of Montana, may be made by calling the Secretary of State's Office, Administrative Rules Services, at (406) 444-9000.

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BEFORE THE DEPARTMENT OF ADMINISTRATION  
OF THE STATE OF MONTANA

In the matter of the repeal of ARM	)	NOTICE OF PROPOSED REPEAL
2.13.202, 2.13.204, and 2.13.207	)	
pertaining to the statewide emergency	)	NO PUBLIC HEARING
telephone system	)	CONTEMPLATED

TO: All Concerned Persons

1. On November 27, 2018, the Department of Administration proposes to repeal the above-stated rules.

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

3. The department proposes to repeal the following rules:

2.13.202 DEFINITIONS, found on ARM page 2-391.

AUTH: 10-4-102, 10-4-114, MCA  
IMP: 10-4-101, MCA

2.13.204 PARTICIPATION BY PUBLIC AND PRIVATE SAFETY AGENCIES, found on ARM page 2-391.

AUTH: 10-4-102, MCA  
IMP: 10-4-104, 10-4-113, MCA

2.13.207 WIRELESS ENHANCED 911 DISTRIBUTION FOR WIRELESS PROVIDERS, found on ARM page 2-392.

AUTH: 10-4-102, 10-4-114, MCA  
IMP: 10-4-301, 10-4-313, MCA

STATEMENT OF REASONABLE NECESSITY: The department finds it necessary to repeal these rules because 2017 HB 61 reformed the public safety communications program and funding mechanisms. As a result of the legislation, 10-4-102, 10-4-104, 10-4-113, 10-4-114, 10-4-301, and 10-4-313, MCA, were repealed and the definitions in 10-4-101, MCA, were amended. The department completed distribution of funds under the programs eliminated by 2017 HB 61 and

has begun distribution under the new statutes and rules that resulted from the legislation. Therefore, the rules being repealed are no longer necessary.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action to Rhonda Sullivan, Department of Administration, 1400 8th Ave., P.O. Box 200113, Helena, Montana 59620; telephone (406) 444-2420; fax (406) 444-2701; or e-mail [rsullivan@mt.gov](mailto:rsullivan@mt.gov), and must be received no later than 5:00 p.m., November 16, 2018.

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

6. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to the person listed in 4 above no later than 5:00 p.m., November 16, 2018.

7. If the department receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 5 of the 53 9-1-1 jurisdictions (local and tribal governments) or 1 of the 4 wireless providers defined under the statutes that predated 2017 HB 61.

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

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

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

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

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

Certified to the Secretary of State October 9, 2018.

BEFORE THE DEPARTMENT OF COMMERCE  
OF THE STATE OF MONTANA

In the matter of the amendment of ) NOTICE OF PUBLIC HEARING ON  
ARM 8.111.602 definitions and ) PROPOSED AMENDMENT  
8.111.603 housing credit allocation )  
procedure )

TO: All Concerned Persons

1. On November 8, 2018, at 9:00 a.m., the Department of Commerce will hold a public hearing in Room 228 of the Park Avenue Building at 301 South Park Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Department of Commerce will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Commerce no later than 5:00 p.m. on November 6, 2018, to advise us of the nature of the accommodation that you need. Please contact Bonnie Martello, Board of Housing, Department of Commerce, 301 South Park Avenue, P.O. Box 200501, Helena, Montana, 59620-0501; telephone (406) 841-2596; fax (406) 841-2771; TDD (406) 841-2702; or e-mail [bmartello@mt.gov](mailto:bmartello@mt.gov).

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

8.111.602 DEFINITIONS (1) and (2) remain the same.

(3) "QAP" means the board's "Housing Credit Program ~~2019~~ 2020 Qualified Allocation Plan," which sets forth the application process and selection criteria used by the board for evaluation and selection of projects to receive awards for allocation of housing credits for calendar year ~~2019~~ 2020. The board adopts and incorporates by reference the Housing Credit Program 2020 Qualified Allocation Plan, copies of which may be obtained by contacting the Board of Housing by mail at P.O. Box 200528, Helena, MT 59620-0528, by telephone at (406) 841-2845 or (406) 841-2838, or at the board's web site [www.housing.mt.gov](http://www.housing.mt.gov).

(4) remains the same.

AUTH: 90-6-106, MCA

IMP: 90-6-104, MCA

REASON: The proposed amendments to ARM 8.111.602 are necessary to adopt and incorporate by reference the board's Housing Credit Program 2020 Qualified Allocation Plan (QAP).

Federal low-income housing tax credits are allocated by the federal government to the states, according to their population, for allocation to particular buildings. Each



state's share of federal low-income housing tax credits is allocated to particular buildings under programs administered by the respective states' housing credit agencies. The Montana Board of Housing is Montana's housing credit agency for purposes of administering the tax credit program and allocating tax credits in the state of Montana. In Montana, the program is known as the Montana Housing Credit Program. Federal law requires that tax credits allocated to the state by the federal government must be allocated by the state pursuant to a "qualified allocation plan" or "QAP."

Prior to publication of this notice, the board conducted several public meetings to consider suggestions and comments regarding the provisions of the 2020 QAP. Thereafter, at its August 8, 2018 meeting, the board considered and approved public notice and distribution of the proposed 2020 QAP. After public notice of the proposed 2020 QAP and of the opportunity for public comment was published and distributed, a public hearing on the proposed 2019 QAP was held on August 23, 2018, and written comments were also received. At its September 11, 2018 meeting, after considering all written and oral comments on the proposed 2020 QAP, staff recommendations, additional public comment and various proposed revisions in response to comments, the board approved the 2020 QAP for submission to and approval by the Montana Governor, as required by the federal tax credit statute, 26 U.S.C. § 42. The Governor approved the 2020 QAP on September 20, 2018.

A copy of the 2020 QAP is available on the internet at <http://housing.mt.gov/MFQAP> or by requesting a copy from: Mary Bair, Board of Housing, Department of Commerce, 301 South Park Avenue, P.O. Box 200528, Helena, Montana, 59620-0528; telephone (406) 841-2845; fax (406) 841-2841; or e-mail [mbair@mt.gov](mailto:mbair@mt.gov).

8.111.603 HOUSING CREDIT ALLOCATION PROCEDURE (1) through (3) remain the same.

(4) Following submission of applications, board staff will review and evaluate each invited application for conformance with the threshold and other requirements of the QAP. Applications meeting all minimum threshold requirements and not excluded from further consideration under the QAP will be reviewed and evaluated according to all applicable QAP criteria and requirements, including but not limited to determining for the amount of housing credits needed for feasibility and long-term viability, and evaluation and scoring ~~will be further evaluated and scored~~ according to the development evaluation criteria of the QAP. The points awarded to each project pursuant to the development evaluation criteria and scoring provisions of the QAP are for the purposes specified in (9), and not for purposes of ranking projects for allocation of housing credits. Following application review, evaluation and scoring, board staff may provide recommendations to the board for allocation of housing credits to qualifying projects.

(5) through (9) remain the same.

AUTH: 90-6-106, MCA  
IMP: 90-6-104, MCA

20-10/19/18

REASON: The proposed amendment to ARM 8.111.603(5) is necessary to clarify that applications will be reviewed and evaluated in accordance with all applicable QAP criteria and requirements, not solely those listed specifically in the current rule. The QAP includes various requirements and evaluation processes, including but not limited to certain development cost limitations, financial underwriting and related underwriting assumptions, accessibility requirements, energy and green building initiatives, goals and requirements, and rehabilitation requirements. The proposed amendments clarify that applications will be reviewed and evaluated in accordance with all applicable QAP provisions.

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: Mary Bair, Board of Housing, Department of Commerce, 301 South Park Avenue, P.O. Box 200528, Helena, Montana, 59620-0528; telephone (406) 841-2845; fax (406) 841-2841; or e-mail mbair@mt.gov, and must be received no later than 5:00 p.m., November 16, 2018.

5. Mary Bair, Department of Commerce, has been designated to preside over and conduct this hearing.

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

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

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

/s/ G. MARTIN TUTTLE  
G. MARTIN TUTTLE  
Rule Reviewer

/s/ PAM HAXBY-COTE  
PAM HAXBY-COTE  
Director  
Department of Commerce

Certified to the Secretary of State October 9, 2018.

BEFORE THE GOVERNOR'S OFFICE  
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF PUBLIC HEARING ON
ARM 14.6.101 and 14.6.102 and the	)	PROPOSED AMENDMENT AND
adoption of New Rules I, II, III, and	)	ADOPTION
IV, pertaining to implementation of	)	
the Greater Sage-Grouse	)	
Stewardship Act	)	

TO: All Concerned Persons

1. The Sage Grouse Habitat Conservation Program will hold one public hearing at the following date and time to consider the proposed amendment and adoption of the above-stated rules:

November 9, 2018, 2:00 p.m., DNRC Headquarters, Montana Room, 1539 Eleventh Avenue, Helena, MT

2. The Governor's Office 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 Governor's Office no later than 5:00 p.m. November 1, 2018 to advise us of the nature of the accommodation that you need. Please contact Carolyn Sime, Sage Grouse Habitat Conservation Program Manager, Montana Sage Grouse Oversight Team, c/o Department of Natural Resources and Conservation, P.O. Box 201601, Helena, MT 59620-1601; telephone (406) 444-0554; fax (406) 444-6721; or email at csime2@mt.gov.

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

14.6.101 DEFINITIONS Unless the context clearly requires otherwise, to aid in the implementation of the Montana Greater Sage-Grouse Stewardship Act and as used in these rules:

(1) and (2) remain the same

(3) "HQT" means Habitat Quantification Tool, a geo-spatial based application designed to implement 76-22-103(9), MCA, as documented in the Montana Mitigation System Habitat Quantification Tool Technical Manual for Greater Sage-Grouse.

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

(5) "Major Version" is a means to track revisions to the Montana Mitigation System Habitat Quantification Tool Technical Manual for Greater Sage-Grouse or Montana Mitigation System Policy Guidance for Greater Sage-Grouse. Major Versions are identified as 1.x, 2.x, 3.x, etc.

(6) "Minor Version" is a means to track routine inputs to the HQT made by the program to the Montana Mitigation System Habitat Quantification Tool Technical

Manual for Greater Sage-Grouse or Montana Mitigation System Policy Guidance for Greater Sage-Grouse. Minor Versions are identified as x.1, x.2, x.3, etc. Examples of routine inputs include updates to Geographic Information System layers used in the HQT and editorial changes.

(7) "Mitigation Hierarchy or Sequence" means taking steps to:

(a) avoid impacts by not taking a certain action or parts of an action;

(b) minimize impacts by limiting the degree or magnitude of the action and its implementation;

(c) rectify impact by repairing, rehabilitating, or restoring the affected environment;

(d) reduce or eliminate the impact over time by preservation and maintenance operations during the life of the action; and

(e) compensate for impact by replacing or providing substitute resources or environments.

(8) "Mitigation System" means implementation of the mitigation hierarchy, as defined by (7) and as directed by (9) the Montana Habitat Quantification Tool Technical Manual for Greater Sage-Grouse and (10) the Montana Mitigation System Policy Guidance for Greater Sage-Grouse.

(9) "Montana Mitigation System Habitat Quantification Tool Technical Manual for Greater Sage-Grouse" describes the scientific methods used to evaluate vegetation and environmental conditions related to the quality and quantity of sage grouse habitat.

(10) "Montana Mitigation System Policy Guidance for Greater Sage-Grouse" describes the policies, procedures, and methods of the Mitigation System to quantify and calculate the value of credits and debits.

(4) and (5) remain the same but are renumbered (11) and (12).

AUTH: 76-22-104, MCA

IMP: 76-22-105, 76-22-109, 76-22-110, 76-22-112, 76-22-118, MCA

REASONABLE NECESSITY: Compliance with the requirements of SB 261 (Session Laws of Montana 2015, Chapter No. 445, Section 2, codified at 76-22-101, et seq. MCA) requires MSGOT to adopt additional rules regarding compensatory mitigation. Additional definitions are needed to clarify terms in these additional rules. In particular, the terms related to the mitigation system and the documents describing the technical function of the Habitat Quantification tool and policy for application of its outputs and how changes to those are managed through time are new introductions to administrative rules.

14.6.102 GRANTS (1) through (8) remain the same.

(9) MSGOT will give greater priority to applications for conservation activities eligible for funding under 76-22-110, MCA, which would be implemented in core areas. MSGOT may still consider funding conservation activities in general habitat and connectivity areas where high resource values for sage grouse exist and credits could be generated consistent with 76-22-109, MCA.

AUTH: 76-22-104, MCA

IMP: 76-22-105, 76-22-109, 76-22-110, 76-22-112, 76-22-118, MCA

REASONABLE NECCESITY: Compliance with the requirements of SB 261 (Session Laws of Montana 2015, Chapter No. 445, Section 2, codified at 76-22-101, et seq. MCA) required MSGOT to adopt rules to "administer . . . the eligibility and evaluation criteria for grants distributed pursuant to 76-22-110." This amendment provides flexibility for MSGOT by allowing MSGOT to consider funding projects outside of core areas if high resource values for sage grouse can be protected.

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

NEW RULE I HABITAT QUANTIFICATION TOOL DESIGNATION

(1) Designation of major versions of the Montana Mitigation System Habitat Quantification Tool Technical Manual for Greater Sage-Grouse shall prompt the initiation of rulemaking to incorporate the new major version by reference.

(2) MSGOT shall review all proposed changes to major versions of its designated Montana Mitigation System Habitat Quantification Tool Technical Manual for Greater Sage-Grouse after a publicly announced MSGOT meeting and after accepting written and oral public comment.

(3) Minor versions of the Montana Mitigation System Habitat Quantification Tool Technical Manual for Greater Sage-Grouse shall be recorded by the program.

(4) Once the current Montana Mitigation System HQT has been applied to calculate the credits of a proposed mitigation site, or the debits of a proposed development site; the program has completed its review; and the project developer obtains the necessary state or federal permits, any subsequent versions of the HQT will not apply to the project except as provided in (b).

(a) Once the HQT has been applied to calculate credits or debits, the number of calculated credits or debits will not be changed without written approval from all affected parties, including, but not limited to:

- (i) MSGOT;
- (ii) the project developer;
- (iii) the credit provider; and
- (iv) any affected third parties.

(b) Permit amendments will be subject to the current version of the HQT to calculate debits resulting from new activities associated with the amendment.

(c) Amendments to credit sites will be subject to the current version of the Montana Mitigation System Habitat Quantification Tool Technical Manual for Greater Sage-Grouse at the time of the proposed amendment.

(5) The current version of the MSGOT designated Montana Mitigation System Habitat Quantification Tool Technical Manual for Greater Sage-Grouse is the version made available to the public on the program's web site. Past versions of HQT will be blocked from further use except as allowed in (4)(a) and preserved in archive by the program.

(6) MSGOT or any other third party must apply the current version of the Montana Mitigation System Habitat Quantification Tool Technical Manual for Greater Sage-Grouse to calculate credits and debits as provided on the program's website for the following:

- (a) a conservation bank;
- (b) participation in a habitat credit exchange approved by the U.S. Fish and Wildlife Service (USFWS);
- (c) making a financial contribution to the Sage-Grouse Stewardship Account if sufficient credits are not available;
- (d) implementing stand-alone mitigation actions to offset impacts to sage grouse habitat;
- (e) calculating credits created by funding from the Sage-Grouse Stewardship Account; or
- (f) calculating credits through stand-alone efforts to create mitigation credit sites.

AUTH: 76-22-104, MCA

IMP: 76-22-105, 76-22-109, 76-22-110, 76-22-111, 76-22-112, 76-22-113, 76-22-114, 76-22-118, MCA

REASONABLE NECESSITY: This rule is reasonably necessary for MSGOT to comply with the requirements of SB 261 (Session Laws of Montana 2015, Chapter No. 445, Section 2, codified at 76-22-104, et seq. MCA) which requires MSGOT to: "adopt rules to administer...the designation of a habitat quantification tool." This rule partially implements the requirements of that bill and describes the ordered process for enumerating major and minor versions and distinguishing routine operational elements of the HQT from changes that trigger rulemaking.

NEW RULE II COMPENSATORY MITIGATION SYSTEM (1) The mitigation sequence is applicable to all activities within sage grouse core areas, general habitat and connectivity habitat subject to agency review, approval, or authorization including temporal impacts that are later rectified through reclamation and restoration activities, unless exempted by MSGOT.

(2) Designation of major versions of the Montana Mitigation System Policy Guidance for Greater Sage-Grouse shall prompt the initiation of rulemaking to incorporate the new major version by reference.

(3) MSGOT shall review major proposed changes to its designated Montana Mitigation System Policy Guidance for Greater Sage-Grouse after a publicly announced MSGOT meeting, and after accepting written and oral public comment.

(4) Minor versions of the Montana Mitigation System Policy Guidance for Greater Sage-Grouse shall be recorded by the program.

(5) The current version of the Montana Mitigation System Policy Guidance for Greater Sage-Grouse is the version made available to the public on the program's website. Past versions of the Montana Mitigation System Policy Guidance for Greater Sage-Grouse will be archived by the program.

(6) Once the current Montana Mitigation System Policy Guidance for Greater Sage-Grouse has been applied to calculate the credits of a proposed mitigation site, or the debits of a proposed development site; the program has completed its review; and the project developer obtains the necessary state or federal permits, any subsequent versions of the Montana Mitigation System Policy Guidance for Greater Sage-Grouse will not apply.

(7) Once the current Montana Mitigation System Policy Guidance for Greater Sage-Grouse has been applied to calculate credits or debits:

(a) the number of calculated credits or debits will not be changed without written approval from all affected parties, including, but not limited to:

- (i) MSGOT;
- (ii) the project developer;
- (iii) the credit provider; or
- (iv) any affected third parties; and

(b) Permit amendments will be subject to the current version of the Montana Mitigation System Policy Guidance for Greater Sage-Grouse to calculate debits resulting from new activities associated with the amendment.

(c) amendments to credit sites will be subject to the current version of the Montana Mitigation System Policy Guidance for Greater Sage-Grouse at the time of the proposed amendment.

(8) MSGOT or any other third party shall use the current Montana Mitigation System Policy Guidance for Greater Sage-Grouse provided on the program's web site for the following:

- (a) a conservation bank;
- (b) participation in a habitat credit exchange approved by USFWS;
- (c) making a financial contribution to the Sage-Grouse Stewardship Account if sufficient credits are not available;
- (d) implementing stand-alone mitigation actions to offset impacts to sage grouse habitat;
- (e) calculating credits created by funding from the Sage-Grouse Stewardship Account; or
- (f) calculating credits through stand-alone efforts to create mitigation credit sites.

(9) MSGOT will approve compensatory mitigation plans that involve sage grouse habitat restoration, habitat enhancement, or habitat preservation through participation in one or more of the following:

- (a) a conservation bank;
- (b) participation in a habitat credit exchange;
- (c) making a financial contribution to the Sage-Grouse Stewardship Account if sufficient credits are not available; or
- (d) funding stand-alone mitigation actions to offset impacts to sage grouse habitat.

(10) All compensatory mitigation plans involving habitat restoration, enhancement, or preservation, and approved by MSGOT, must:

- (a) meet the applicable standards provided in the Montana Mitigation System Policy Guidance for Greater Sage-Grouse;
- (b) be in consideration of applicable USFWS Greater Sage-Grouse policies; and
- (c) apply the current version of the HQT that implements the Montana Mitigation System Habitat Quantification Tool Technical Manual for Greater Sage-Grouse designated by MSGOT.

(11) Research or education shall not be used to fulfill mitigation sequence obligations.

AUTH: 76-22-104, MCA

IMP: 76-22-105, 76-22-109, 76-22-110, 76-22-111, 76-22-112, 76-22-113, 76-22-114, 76-22-118, MCA

REASONABLE NECESSITY: This rule is reasonably necessary for MSGOT to comply with the requirements of SB 261 (Session Laws of Montana 2015, Chapter No. 445, Section 2, codified at 76-22-101, et seq. MCA) which requires MSGOT to: "adopt rules to administer...methods of compensatory mitigation available..." This rule partially implements the requirements of that bill and describes the ordered process for enumerating major and minor versions and distinguishing routine operational elements from changes that trigger rulemaking.

NEW RULE III METHOD TO TRACK AND MAINTAIN THE NUMBER OF CREDITS AND DEBITS AVAILABLE AND USED (1) MSGOT or its designee shall assign a unique identifier for each credit created through funds disbursed from the Sage-Grouse Stewardship Account.

(2) MSGOT or its designee shall assign a unique identifier for each credit created through conservation activities funded or implemented independently from the Sage-Grouse Stewardship Account.

(3) MSGOT or its designee shall assign a unique identifier for each debit created by a project developer.

(4) MSGOT or its designee shall establish a database and tracking system that contains, but is not limited to:

(a) the number of credits generated by conservation activities funded, at least in part, by funds disbursed from the Sage-Grouse Stewardship Account;

(b) the number of credits generated by conservation activities not funded through the Sage-Grouse Stewardship Account and approved by MSGOT for use as compensatory mitigation by project developers;

(c) the number of debits attributed to a development project;

(d) the location of all credits generated and debits generated; and

(e) credit transactions between parties.

(5) The information within the tracking system will be available to the public on the program's web site.

AUTH: 76-22-104, MCA

IMP: 76-22-104, 76-22-105, 76-22-109, 76-22-110, 76-22-111, 76-22-112, 76-22-118, MCA

REASONABLE NECESSITY: This rule is reasonably necessary for MSGOT to comply with the requirements of SB 261 (Session Laws of Montana 2015, Chapter No. 445, Section 2, codified at 76-22-101, et seq. MCA) which requires MSGOT to:

(1) "adopt rules to administer...a method to track and maintain the number of credits attributable to projects funded . . . that are available to a project developer to

purchase for compensatory mitigation to offset debits under 67-22-111;" (2) "adopt rules to administer . . . review and monitoring or projects funded pursuant to [Part 1];

(3) "review compensatory mitigation plans proposed under 76-22-111. If the plan includes a financial contribution to the sage grouse stewardship account established



in 76-22-109, MCA, the oversight team will, using the HQT, determine how to secure enough credits with the financial contribution to offset the debits of a project." This rule partially implements the requirements of that bill.

NEW RULE IV METHOD TO ADMINISTER THE REVIEW AND MONITORING OF MSGOT FUNDED PROJECTS (1) MSGOT, through the program, will establish a database and tracking system to review and monitor projects funded by MSGOT using the Sage-Grouse Stewardship Account.

(2) The database and tracking system shall contain information including, but not limited to:

- (a) the name of the Sage-Grouse Stewardship Account grant recipient(s);
- (b) the amount awarded;
- (c) the date the state funds were transferred to the grant recipient(s) if a one-time lump sum grant, or
- (d) the dates state funds were transferred to the grant recipient(s) if the award was a reimbursable grant;
- (e) a description of characteristics of the project including, but not limited to:
  - (i) type of project;
  - (ii) number of acres; and
  - (iii) land ownership;
- (f) the duration of the project;
- (g) any expected conservation benefits of the project;
- (h) the geospatial location where the project was implemented;
- (i) the number of credits generated, and their characteristics;
- (j) the unique identifier assigned to each of those credits;
- (k) transactions of credits created;
- (l) progress and final reports submitted by the grant recipient(s);
- (m) annual monitoring reports;
- (n) sage grouse leks on and in the vicinity of the project area, and trend data on the number of breeding males on those leks; and
- (o) the grant agreement number assigned by the Program and any amendments to the original grant.

AUTH: 76-22-104, MCA

IMP: 76-22-104, 76-22-105, 76-22-109, MCA

REASONABLE NECESSITY: This rule is reasonably necessary for MSGOT to comply with the requirements of SB 261 (Session Laws of Montana 2015, Chapter No. 445, Section 2, codified at 76-22-101, et seq. MCA) which requires MSGOT to: (1) "adopt rules to administer...the review and monitoring of projects funded." This rule partially implements the requirements of that bill.

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: Carolyn Sime, Sage Grouse Habitat Conservation Program Manager, Montana Sage Grouse Oversight Team, c/o Department of Natural Resources and Conservation, P.O. Box 201601, Helena, MT 59620-1601; telephone (406) 444-

0554; fax (406) 444-6721; or through the public comment web application located on the MSGOT web page at <https://sagegrouse.mt.gov/msgot.html>. All comments must be received no later than 11:59 p.m., November 19, 2018.

6. Carolyn Sime, Sage Grouse Habitat Conservation Program Manager, Montana Sage Grouse Oversight Team, has been designated to preside over and conduct this hearing.

7. The Governor's Office 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 must 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. Such written request may be mailed or delivered to the Natural Resource Policy Advisor, P.O. Box 200801, 1301 East Sixth Avenue, Helena, MT 59620; fax (406) 444-4151; or may be made by completing a request form at any rules hearing held by the Governor's Office.

8. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted by e-mail and postal mail on October 4, 2018.

9. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment and adoption of the above-referenced rules may directly impact small businesses. Documentation of the MSGOT's above-stated determination is available upon request to, Sage Grouse Habitat Conservation Program Manager, Montana Sage Grouse Oversight Team, c/o Department of Natural Resources and Conservation, P.O. Box 201601, Helena, MT 59620-1601, or to [csime2@mt.gov](mailto:csime2@mt.gov).

/s/ Raphael Graybill  
RAPHAEL GRAYBILL  
Rule Reviewer

/s/ Patrick Holmes  
PATRICK HOLMES  
Natural Resource Policy Advisor  
Governor's Office

Certified to the Secretary of State October 9, 2018.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY  
STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF PUBLIC HEARING ON
ARM 24.11.2205 and 24.11.2711,	)	PROPOSED AMENDMENT AND
and the adoption of New Rule I,	)	ADOPTION
pertaining to unemployment	)	
insurance contributions	)	

TO: All Concerned Persons

1. On November 9, 2018, at 1:30 p.m., a public hearing will be held in the Lewis Room, in the basement of the Walt Sullivan Building, 1315 Lockey Avenue, Helena, Montana, to consider the proposed amendment and adoption of the above-stated rules.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m., on November 5, 2018, to advise us of the nature of the accommodation that you need. Please contact Boris Karasch, Unemployment Insurance Division, 1315 Lockey Avenue, P.O. Box 1728, Helena, Montana 59624; telephone (406) 444-2646; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 444-2699; or via e-mail to BKarasch2@mt.gov.

3. GENERAL STATEMENT OF REASONABLE NECESSITY: As required by 2-4-314, MCA, the Unemployment Insurance Division (division) of the department periodically reviews its administrative rules. The following rules are proposed for amendment to update and clarify various terms and procedures related to unemployment insurance benefit claims. The division handles approximately 130,000 unemployment insurance claims a year. The division monitors how the rules are applied and interpreted by agency staff, claimants, employers, and the various adjudicatory bodies that rule on disputed claims. The division concludes that the proposed amendments are reasonably necessary to improve the efficient and timely processing of claims, and to improve the understanding of employers, workers, and adjudicators, regarding the provisions of the rules. This general statement of reasonable necessity applies to all of the following rules. Additional statements of reasonable necessity are provided following specific rules where appropriate.

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

24.11.2205 EXPERIENCE-RATING RECORD TRANSFER (1) through (4)(b) remain the same.

(c) the successor employer files an employer registration form ~~as provided in ARM 24.11.2005.~~

(5) In the case of partial transfer of the trade or business of an employing entity (referred to as the predecessor employer) to another entity (referred to as the successor), the portion of the experience-rating record transferred from the predecessor employer to the successor must be determined in the same ratio as:

(a) the portion of the payroll transferred to the successor in the current and the previous four calendar quarters immediately preceding the date of transfer; to

(b) the total payroll of the predecessor employer would have had during that same period, had the transfer not occurred.

(6) The penalty assessed in 39-51-1219, MCA, is based on the taxable payroll of the successor following the transfer of the experience-rating record.

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

AUTH: 39-8-201, 39-51-301, 39-51-302, MCA

IMP: 39-8-201, 39-51-1219, MCA

REASON: There is reasonable necessity to remove internal references, which will expedite administrative rulemaking in the future and decrease the number of erroneous internal references. Furthermore, there is a reasonable necessity to clarify the experience-rating ratio must be the same in the current and four preceding quarters. There is reasonable necessity to put the department's current practice into rule. Further, there is a reasonable necessity to clarify how the penalty assessed in 39-51-1219, MCA, is based.

24.11.2711 DUE DATE OF TAXES AND QUARTERLY REPORTS BY EMPLOYERS (1) Every employer must report employee wage information and pay taxes on those wages to the department each quarter on an approved quarterly report form. The department may request any information from the employer necessary for the collection of the tax.

~~(2) All employers must complete and return this form even if the~~ An employer ~~did who does~~ not pay any wages during ~~the a~~ calendar quarter is not relieved of the duty to submit a quarterly wage report.

(3) remains the same.

(4) The quarterly wage reports and tax payments must be ~~postmarked~~ sent to the department by the following due dates:

<u>Quarter</u>	<u>Months Covered</u>	<u>Due Date</u>
First:	January, February, March	April 30
Second:	April, May, June	July 31
Third:	July, August, September	October 31
Fourth:	October, November, December	January 31

(5) If a due date falls on a weekend or holiday, the next business day becomes the due date ~~the quarterly reports and tax payment must be postmarked.~~

(6) If a tax payment or quarterly report is ~~postmarked~~ sent after the due date, the department may assess a penalty and interest.

(7) An employer or its agent must report wage information in a format prescribed by the department.

(a) An employer who reported wages for 20 or more employees in any quarter in the preceding calendar year and a third-party agent who reports on behalf of an employer must use an electronic format provided or approved by the department to file quarterly wage reports. Once an employer crosses the 20 or more employee threshold, all subsequent wage reporting must be electronic.

(b) An employer reporting 19 or fewer employees may file quarterly wage reports using a UI-5 form provided or approved by the department or by an electronic format provided or approved by the department.

(c) The department may deem wage reports filed in other than the prescribed format as untimely and subject the employer to a late filing penalty, pursuant to 39-51-1301, MCA.

(8) A tax payment may be made by:

(a) cash, check, or money order, accompanied by a department-approved payment voucher;

(b) automated clearing house (ACH) debit;

(c) ACH credit; or

(d) credit card.

AUTH: 39-51-301, 39-51-302, MCA

IMP: 39-51-603, MCA

REASON: There is reasonable necessity to amend this rule to clarify the due dates and procedures for filing quarterly wage reports. Further, there is a reasonable necessity to require employers of 20 or more employees to file electronically because electronic filing is more efficient for both the department and the employer. The proposed amendments are reasonably necessary in order to make the procedures explained by the rule consistent with and supportive of employers' increasing use of electronic reporting and payment processes.

5. The rule proposed for adoption is as follows:

NEW RULE I STATUS OF CERTAIN FAMILY EMPLOYEES (1) As provided in 39-51-204, MCA, service performed by any of the following is excluded from the definition of employment:

(a) a sole proprietor's spouse;

(b) a sole proprietor's dependent; or

(c) a dependent who is claimed as an exemption under 26 U.S.C. 152 by a person who is in partnership with their spouse.

(2) Service performed by a dependent of one partner in a partnership who cannot be claimed as a dependent by all partners in a partnership under 26 U.S.C. 152 is included in the definition of employment.

AUTH: 39-51-301, 39-51-302, MCA

IMP: 39-51-203, 39-51-204, MCA

REASON: There is reasonable necessity to create a new rule which clarifies when a spouse or dependent is exempt under federal law in order to make the application of the exemption provisions clearer for employers and others who prepare the quarterly wage reports. Furthermore, there is a reasonable necessity for these proposed changes because they will bring the department's rules more clearly in conformity with federal law.

6. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Boris Karasch, Unemployment Insurance Division, 1315 Lockey Avenue, P.O. Box 1728, Helena, Montana 59624; facsimile (406) 444-2699; or BKarasch2@mt.gov., and must be received no later than 5:00 p.m., November 16, 2018.

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

8. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and e-mail or mailing address of the person to receive notices, and specifies the particular subject matter or matters regarding which the person wishes to receive notices. Such written request may be mailed or delivered to the Department of Labor and Industry, attention: Mark Cadwallader, 1315 E. Lockey Avenue, P.O. Box 1728, Helena, Montana 59624-1728, faxed to the department at (406) 444-1394, e-mailed to [mcadwallader@mt.gov](mailto:mcadwallader@mt.gov), or may be made by completing a request form at any rules hearing held by the agency.

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

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

11. The Office of Administrative Hearings has been designated to preside over and conduct this hearing.

/s/ Mark Cadwallader  
Mark Cadwallader  
Alternate Rule Reviewer

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

Certified to the Secretary of State October 9, 2018.

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

In the matter of the adoption of New	)	NOTICE OF PUBLIC HEARING ON
Rules I through VII, the amendment	)	PROPOSED ADOPTION,
of ARM 24.29.1401A, the amendment	)	AMENDMENT, AMENDMENT AND
and transfer of ARM 24.29.1591,	)	TRANSFER, AND TRANSFER
24.29.1595, and 24.29.1596, and the	)	
transfer of ARM 24.29.1593 and	)	
24.29.1599, pertaining to utilization	)	
and treatment guidelines, including a	)	
drug formulary, for workers'	)	
compensation	)	

TO: All Concerned Persons

1. On November 9, 2018, at 10:00 a.m., the Department of Labor and Industry (department) will hold a public hearing in the basement auditorium at the DPHHS building, 111 North Sanders Street, Helena, Montana, to consider the proposed adoption, amendment, amendment and transfer, and transfer of the above-stated rules.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m., on November 5, 2018, to advise us of the nature of the accommodation that you need. Please contact Cindy Zimmerman, Employment Relations Division, P.O. Box 8011, Helena, Montana 59604-8011; telephone (406) 444-1752; Montana TTD (406) 444-5549; facsimile (406) 444-4140; or e-mail [Cindy.Zimmerman@mt.gov](mailto:Cindy.Zimmerman@mt.gov).

3. GENERAL STATEMENT OF REASONABLE NECESSITY: There is reasonable necessity to adopt, amend, amend and transfer, and transfer rules related to a workers' compensation prescription drug formulary that is to be part of the workers' compensation medical utilization and treatment guidelines in order to implement the provisions of Chapter 433, Laws of 2017 (Senate Bill 312). This statement of reasonable necessity applies to all the rule changes proposed within this Notice of Public Hearing.

The department has determined there is reasonable necessity to consolidate all of the medical utilization and treatment rules into a new subchapter 16 in ARM Title 24, chapter 29, in order to make the rules easier for users to locate in the ARM and in order to make it clear that the drug formulary rules being proposed are adopted as part of the overall workers' compensation medical utilization and treatment guidelines (U & T Guidelines) authorized by 39-71-704, MCA, and previously adopted by the department. A new subchapter is reasonably necessary to organize all the related U & T Guidelines in a logical and sequential manner.



Accordingly, there is reasonable necessity to transfer existing U & T Guideline rules to a new subchapter.

Following the enactment of Chap. 433, L. of 2017, the department undertook a survey of workers' compensation drug formularies and administrative rules adopted in various other states. The department consulted with a group of stakeholders (including insurers, medical providers, claims examiners, and representatives of injured workers) to evaluate whether the Montana workers' compensation system as a whole would be benefited by the adoption of a drug formulary, and if so, whether Montana should adopt a commercially available drug formulary, a formulary developed by another state, or develop its own formulary. After extensive discussion, the department developed a general consensus among its stakeholder group that it should adopt the commercial ODG formulary. The Labor-Management Advisory Council (LMAC) gave its approval to the department's choice as well.

In selecting the commercial ODG formulary, the department specifically considered whether the ODG formulary was evidence-based. The department received materials from a competitor of ODG that questioned whether the ODG formulary is evidence-based. In response to that material, the department analyzed how ODG rates the various types of medical studies it considers, and how ODG rates the quality of the studies it considers. After analysis, the department concluded that the ODG formulary appropriately uses high quality medical evidence as the basis for its formulary.

The department thereafter used a similar stakeholder group to review and evaluate the administrative rules used by other states to implement that state's drug formulary. Following general discussions of alternative administrative rule structures with the stakeholders, the department began drafting specific language to implement a drug formulary. As the department drafted specific language, the department consulted with its stakeholder groups and LMAC, refining the language in response to the input of those process participants.

There is reasonable necessity to adopt the proposed formulary rules, along with coordinating amendments and transfers in order to improve worker outcomes in the treatment of workplace injuries by using evidence-based guidelines for prescription drugs. No type or class of prescription drug is banned or prohibited by the formulary. Injury-appropriate prescription drugs that are listed as a "Y" on the formulary are presumptively medically appropriate for injured workers and are not subject to any prior authorization requirements. Prescription drugs that are not listed as a "Y" code on the formulary are subject to the prior approval of the insurer. The formulary rules require that a prescribing medical provider furnish appropriate information and clinical support to the insurer whenever the provider seeks prior authorization. Unless an insurer has suitable medical reasons not to authorize an "N" or unlisted medication, the insurer will presumably grant authorization. Insurers that unreasonably withhold prior authorization are subject to penalties and other sanctions as provided by the Workers' Compensation Act.

There is reasonable necessity to adopt by reference the commercial ODG drug formulary, based on the decision-making process described above. The ODG drug formulary is a commercially available drug formulary, designed specifically for workers' compensation matters, and is updated electronically on a monthly basis in order to be medically current. The drug formulary will be updated annually via the formal rulemaking process. The use of monthly updates and annual rulemaking is expressly provided for by 39-71-704(3)(b), MCA (2017), and is expressly authorized by 2-4-307(8), MCA (2017).

There is reasonable necessity to adopt rules that provide for an expedited dispute resolution process when the denial of a prescription medication is likely to lead to the injured worker suffering a medical emergency as a result of the denial. While other states sometimes allow the state regulatory agency to issue orders to continue a medication during dispute resolution, Montana law does not currently provide the department with that authority. Accordingly, the expedited medical review procedure provided in the rules is reasonably necessary to implement the statutory requirements for a speedy, effective dispute resolution process for formulary disputes.

There is reasonable necessity to adopt a phased adoption of the formulary rules for the following reason. The department anticipates that effective April 1, 2019, the formulary rules will apply to the treatment of workplace injuries occurring on and after that date. The department expects that the formulary rules will be adopted by December 31, 2018, thus giving medical providers and claims staff three months in which to become familiar with the formulary rules.

Workers' compensation claims relating to injuries occurring prior to April 1, 2019, are referred to in the rules (and the insurance industry) as "legacy claims." The formulary rules will not apply to legacy claims prior to April 1, 2020, and then only in cases where the insurer has given at least 90 days' notice to the injured worker and the prescribing medical providers that the insurer intends to begin to apply the formulary rules to the claim. The injured worker's medical provider(s) will be required to consider the effect of the proposed application of the formulary rules on the treatment of the injured worker. The medical provider may, if appropriate in light of the U & T Guidelines, decide whether it is appropriate to continue with the existing course of treatment or to transition the injured worker to a medical regimen that is consistent with the formulary and U & T Guidelines. Where appropriate, a transition plan may include providing the injured worker with supportive services in conjunction with a change of medications or dosages. The transition plan is designed to ensure that an injured worker with a long-term chronic injury is not suddenly "cut-off" from medications, and that a prescription medication dependency related to the injury is addressed in a medically appropriate manner.

From the beginning of its survey process to the present, the department has been meeting with stakeholders and other interested person for approximately 24 months in the development of its proposed new rules. The department concludes

that it has selected an approach to the adoption of a prescription drug formulary in a way that is reasonable and necessary to implement 39-71-704, MCA, as amended by Chap. 433, L. of 2017.

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

NEW RULE I DEFINITIONS As used in [this subchapter], the following definitions apply:

(1) "Claim" means an injury or occupational disease where:

(a) liability has been accepted by the insurer; or

(b) payment has been made by the insurer pursuant to:

(i) 39-71-608, MCA;

(ii) 39-71-615, MCA; or

(iii) any other reservation of rights.

(2) "Department" means the Department of Labor and Industry, Employment Relations Division.

(3) "Evidence-based" means use of the best evidence available in making decisions about the care of the individual patient, gained from the scientific method of medical decision-making and includes use of techniques from science, engineering, and statistics, such as randomized controlled trials (RCTs), meta-analysis of medical literature, integration of individual clinical expertise with the best available external clinical evidence from systematic research, and a risk-benefit analysis of treatment (including lack of treatment).

(4) "Formulary" means the list of drugs for which prior authorization is generally not needed, as adopted and automatically updated pursuant to [NEW RULE III].

(5) "Formulary rules" means:

(a) [NEW RULE I];

(b) [NEW RULE II];

(c) [NEW RULE III];

(d) [NEW RULE IV];

(e) [NEW RULE V];

(f) [NEW RULE VI]; and

(g) [NEW RULE VII].

(6) "Insurer" means compensation plan No. 1, plan No. 2, and plan No. 3.

(7) "Legacy claim" means a workers' compensation or occupational disease claim with an occurrence date before April 1, 2019.

(8) "Medical director" means a person who is an employee of, or contractor to, the department, and who is responsible for the independent medical review of requests for treatment(s) or procedure(s), when those requests are denied, and whose responsibility will also include other areas to be determined by the department. A person serving as a medical director must be a physician licensed by the state of Montana under Title 37, chapter 3, MCA.

(9) "Montana Guidelines" are the Montana utilization and treatment guidelines adopted by the department in [ARM 24.29.1611].

(10) "ODG drug formulary" means the ODG Workers' Compensation Drug Formulary, established as Appendix A to the ODG Treatment in Workers' Comp publication, published by MCG Health, LLC.

(11) "PBM" mean the pharmacy benefits manager used by an insurer to help the insurer implement the formulary's use in the insurer's claims handling processes.

(12) "Primary medical services" has the same meaning as provided by 39-71-116, MCA.

(13) "Prior authorization" means the interested party receives prior authorization (either verbally or in writing) from the insurer:

(a) to perform treatment for those cases identified by [ARM 24.29.1621]; or

(b) to obtain medications for those cases identified in the formulary rules as requiring prior authorization.

(14) "Rebuttable presumption" means that the Montana Guidelines, as adopted in [ARM 24.29.1611], are presumed to be compensable medical treatment for an injured worker. The presumption can be rebutted by a preponderance of credible medical evidenced-based material and medical reasons to justify that the medical treatment(s) or procedure(s) that require prior authorization are reasonable and necessary care for the injured worker.

(15) "Refill" means the dispensing of additional medications after the initial number of doses authorized by a written prescription have been dispensed, where the prescription expressly indicates that a certain number of refills are allowed without the need for another written prescription.

(16) "Supportive services" means those treatments, therapies, and related services that are designed to safely, effectively, and compassionately assist an injured worker transition from an existing medication regimen.

(17) "Treating physician" has the same meaning as provided by ARM 24.29.1401A.

(18) "Treatment" has the same meaning as provided by ARM 24.29.1401A.

(19) "Treatment plan" means a written outline of how the provider intends to treat a specific condition or complaint. A treatment plan includes a transition plan provided for in [NEW RULE V]. A treatment plan must be made in accordance with the Montana Guidelines adopted in [ARM 24.29.1611] and made in accordance with any insurer authorized treatments or procedures.

AUTH: 39-71-203, 39-71-704, MCA

IMP: 39-71-704, MCA

NEW RULE II APPLICABILITY OF FORMULARY RULES TO OUT-PATIENT SERVICES (1) The provisions of these formulary rules apply to all claims arising on or after April 1, 2019, but only with respect to outpatient services.

(2) For claims arising before April 1, 2019, which are referred to as "legacy claims," the rules in [this subchapter] will apply to prescriptions written on or after April 1, 2020, or 90 days after the insurer gives notice as provided in [NEW RULE V], whichever is later.

(3) The provisions of [this subchapter], including the formulary adopted and automatically updated as provided in [NEW RULE III] apply as they are in effect on the date the prescription is written.

(4) Nothing in [this subchapter] excuses an insurer from providing medications that constitute primary medical services required to be furnished by 39-71-704, MCA.

(5) Nothing in [this subchapter] requires an insurer to use the services of a PBM.

AUTH: 39-71-203, 39-71-704, MCA

IMP: 39-71-704, MCA

NEW RULE III INCORPORATION BY REFERENCE AND UPDATES TO THE FORMULARY (1) The department will annually undertake formal rulemaking to select a formulary. The formulary may be any one of the following:

- (a) a formulary published by a commercial vendor;
- (b) a formulary published by another state for use in workers' compensation and occupational disease claims; or
- (c) a formulary specially developed by the department.

(2) The department adopts and incorporates by reference the October 2018 edition of the ODG Drug Formulary as its formulary.

(3) Pursuant to 2-4-307, MCA, the automatic monthly updates of the annually adopted edition of the formulary are incorporated by reference without additional rulemaking, and are applicable as of the date the update is posted on the department's web site.

(4) The formulary is available from:

(a) the department's web site, at <http://erd.dli.mt.gov/work-comp-claims/medical-regulations>, at no charge;

(b) the department at Employment Relations Division, Medical Regulations, P.O. Box 8011, Helena, MT 59624-8011, at the costs of reproduction and postage for a printed .pdf version; and

(c) the vendor, via electronic access, at a subscription rate charged by the vendor, which may include supplemental information or materials that are not incorporated by reference. The vendor may be contacted via the internet at [www.mcg.com/odg](http://www.mcg.com/odg), and at ODG by MCG Health, 3006 Bee Caves Road, Suite A250, Austin, TX 78746.

(5) Archived versions of the formulary will be maintained by the department for five years from the date of the adoption of the formulary.

AUTH: 39-71-203, 39-71-704, MCA

IMP: 39-71-704, MCA

NEW RULE IV INTEGRATION OF FORMULARY WITH MONTANA UTILIZATION AND TREATMENT GUIDELINES – WHEN PRIOR AUTHORIZATION IS REQUIRED (1) The formulary is considered to be a part of the Montana Guidelines established by the department.

(2) A medical provider is expected to write a prescription for medication in accordance with the Montana Guidelines, as adopted by [ARM 24.29.1611], and in accordance with the formulary adopted by [NEW RULE III].

(3) Because the formulary is part of the Montana Guidelines, medical providers are required to prescribe in accordance with the provisions of the formulary unless the provider can sufficiently articulate sound medical reasoning to vary from the formulary.

(4) Insurers shall pay for medications that are prescribed in a manner consistent with the formulary, subject to the medical provider furnishing documentation as required by [ARM 24.29.1621]. Payments for medications are subject to the provisions of 39-71-727, MCA.

(5) Pursuant to the formulary, prior authorization for an injury appropriate medication is not required as follows:

- (a) the medication is listed as "Y" on the formulary; or
- (b) the medication is listed as "N" on the formulary, and the prescription is:
  - (i) written within seven days of the occurrence of the workplace injury; and
  - (ii) limited to a maximum of a seven-day supply of the medication.

(6) Pursuant to the formulary, prior authorization for a medication is required as follows:

- (a) except as provided by (5)(b), the medication is listed as "N" on the formulary;
- (b) the medication is not listed on the formulary;
- (c) the medication is experimental or investigational; or
- (d) the medication is a compound, even if all the components of the compound are listed as "Y" medications on the formulary.

(7) The prior authorization process described in [ARM 24.29.1621] applies to formulary matters, except that:

- (a) the insurer shall respond within three business days of a request for prior authorization being made to the insurer or the insurer's designee, by either approving or denying the request; and
- (b) if the insurer fails to respond within three business days to a request for prior authorization, the prescription is deemed to be approved. An approval for a prescription medication made due to the lack of a timely response by the insurer does not apply to any refill that may be ordered.

(8) An insurer may delegate prior authorization decisions pertaining to the formulary to a PBM or other agent with which it contracts. An insurer has the legal responsibility for the decisions made by the PBM on behalf of the insurer.

(9) The delegation by an insurer of prior authorization decisions pertaining to the formulary to a PBM or other agent does not, in and of itself, violate the requirement of 39-71-107, MCA, that all claims be examined by a claims examiner in Montana.

AUTH: 39-71-203, 39-71-704, MCA

IMP: 39-71-107, 39-71-704, MCA

NEW RULE V SPECIAL PROVISIONS FOR TRANSITION OF LEGACY CLAIMS – WHEN APPLICABLE

(1) The insurer shall notify in writing the injured worker and the treating physician (who, for the purposes of this rule, also includes any other prescribing medical provider) that a claim constitutes a legacy claim in which the insurer will enforce the applicability of these formulary rules.

(2) The notification required by (1) must include at least the following information:

- (a) the name of the injured worker;
- (b) the name of the treating physician or other prescribing medical provider;
- (c) the name of each medication that is affected by the notice;
- (d) the name and contact information of the claims examiner responsible for the injured worker's claim; and
- (e) the date upon which the insurer will enforce the applicability of these formulary rules.

(3) This rule applies to a legacy claim on the latter of:

- (a) April 1, 2020; or
- (b) 90 days after the insurer provides notice as provided by (1).

(4) By not later than the applicability date of this rule pursuant to (3), the treating physician shall determine whether a transition plan is needed for an injured worker who is receiving:

- (a) one or more drugs for which prior authorization is otherwise required; or
- (b) drugs at a dosage level greater than recommended by the Montana Guidelines.

(5) The treating physician must state in writing whether the injured worker:

- (a) should transition to "Y" status drugs or to medication dosages which are consistent with the recommendations of the Montana Guidelines; or
- (b) should not undergo a transition from the existing medications because a transition is not medically appropriate.

(6) The treating physician must provide the basis for the medical provider's decision as required by [ARM 24.29.1621]. The explanation, and development of a transition plan as appropriate, constitutes a "by report" service (CPT code 99080).

(7) If the treating physician fails to provide the determination required in (5), by the date this rule becomes applicable to the claim pursuant to (3), these formulary rules will apply to prescriptions written for the injured worker.

(8) If the treating physician determines a transition from one or more drugs for which prior authorization required to a "Y" status drug is appropriate, or that a reduction in dosage is appropriate, the treating physician shall include in the worker's treatment plan a specific plan, including a projected time table or schedule, for transitioning the injured worker to care that is consistent with the Montana Guidelines.

(9) The treatment plan may, when determined by the treating physician to be medically necessary, include the provision of supportive services to the injured worker during the transition.

(10) Supportive services may be delivered in an out-patient or an in-patient setting, as appropriate, based upon the treating provider's transition plan. Supportive services that are reasonable and medically necessary constitute part of the primary medical services to which an injured worker with a legacy claim is entitled.

(11) Nothing in this rule prohibits the treating physician from proposing a treatment plan for transition prior to an insurer's authorization as provided in (1).

AUTH: 39-71-203, 39-71-704, MCA

IMP: 39-71-704, MCA

NEW RULE VI EXPEDITED CASE REVIEW FOR PRESCRIPTION

MEDICATIONS BY DLI MEDICAL DIRECTOR (1) Expedited case review is available only when insurer declines to authorize further dispensing of an already prescribed medication.

(2) Expedited case review is only applicable in cases of medical emergency. A medical emergency occurs when all three of the following circumstances are present:

- (a) the medical condition has a sudden onset;
  - (b) the medical condition manifests itself by acute symptoms of sufficient severity, including severe pain; and
  - (c) in the absence of immediate medical attention, the medical condition could reasonably be expected to result in:
    - (i) placing the injured worker's health or bodily functions in serious jeopardy;
- or

- (ii) a serious dysfunction of any body organ or part of the injured worker.

(3) An expedited case review may be requested concurrently with a demand for mediation on the dispute concerning the medication.

(4) An expedited case review may only be requested within 14 days of the insurer's denial of, or refusal to authorize further dispensing of an already prescribed medication.

(5) A request for an expedited case review must be supported by such written information as the treating physician considers pertinent to the treating physician's opinion that a medical emergency is likely to occur as a result of the denial of the medication.

(6) The expedited medical review will be conducted within three business days of receipt by the department of a written request for an expedited medical review. The findings of the expedited medical review must be in writing and be based on the information provided by the treating physician, along with the reasoning given by the insurer or its agent for the denial.

(7) If the findings of the medical director determine that a medical emergency is likely to occur as the result of not providing the further dispensing of medication as prescribed by the treating physician, those findings may be offered in evidence in mediation or the Workers' Compensation Court.

(8) If the findings of the medical director are that no medical emergency is likely to occur as a result of the insurer's denial, then the medical director shall further consider the matter of the denial under the independent medical review procedures provided for by [ARM 24.29.1641].

AUTH: 39-71-203, 39-71-704, MCA

IMP: 39-71-704, MCA

NEW RULE VII DISPUTE RESOLUTION FOR FORMULARY

(1) Disputes between the treating physician and the insurer regarding the formulary are subject to



the same process available for other disputes regarding the Montana Guidelines, except as provided in [NEW RULE VI].

(2) A dispute between the injured worker and the insurer regarding the use or application of the formulary constitutes a dispute concerning benefits, and may be resolved as provided by 39-71-2905, MCA.

AUTH: 39-71-203, 39-71-704, MCA

IMP: 39-71-704, 39-71-2905, MCA

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

24.29.1401A DEFINITIONS As used in subchapters 14 and 15, the following definitions apply:

(1) through (13) remain the same.

~~(14) "Evidence-based" means use of the best evidence available in making decisions about the care of the individual patient, gained from the scientific method of medical decision-making and includes use of techniques from science, engineering, and statistics, such as randomized controlled trials (RCTs), meta-analysis of medical literature, integration of individual clinical expertise with the best available external clinical evidence from systematic research, and a risk-benefit analysis of treatment (including lack of treatment).~~

(15) through (23) remain the same, but are renumbered (14) through (22).

~~(24) "Medical director" means a person who is an employee of, or contractor to, the department, and who is responsible for the independent medical review of requests for treatment(s) or procedure(s), when those requests are denied, and whose responsibility will also include other areas to be determined by the department. A person serving as a medical director must be a physician licensed by the state of Montana under Title 37, chapter 3, MCA.~~

(25) through (32) remain the same, but are renumbered (23) through (30).

~~(33)~~ (31) "Prior authorization" means:

~~(a) with respect to services provided on or before June 30, 2011, that for those matters identified by ARM 24.29.1517 the provider receives (either verbally or in writing) authorization from the insurer to perform a specific procedure or series of related procedures, prior to performing that procedure; and~~

~~(b) with respect to services provided on or after July 1, 2011, the interested party receives prior authorization (either verbally or in writing) from the insurer to perform treatment for those cases identified by ARM 24.29.1593.~~

(34) remains the same, but is renumbered (32).

~~(35) "Rebuttable presumption" means that the Montana Guidelines, as adopted in ARM 24.29.1591, are presumed to be compensable medical treatment for an injured worker. The presumption can be rebutted by a preponderance of credible medical evidenced-based material and medical reasons to justify that the medical treatment(s) or procedure(s) that require prior authorization are reasonable and necessary care for the injured worker.~~

(36) through (41) remain the same, but are renumbered (33) through (38).

~~(42)~~ (39) "Treatment plan" means a written outline of how the provider intends to treat a specific condition or complaint.

~~(a) With respect to services provided on or before June 30, 2011, the~~ The treatment plan must include a diagnosis of the condition, the specific type(s) of treatment, procedure, or modalities that will be employed, a timetable for the implementation and duration of the treatment, and the goal(s) or expected outcome of the treatment. Treatment, as used in this definition, may consist of diagnostic procedures that are reasonably necessary to refine or confirm a diagnosis. The treating physician may indicate that treatment is to be performed by a provider in a different field or specialty, and defer to the professional judgment of that provider in the selection of the most appropriate method of treatment; however, the treating physician must identify the scope of the referral in the treatment plan and provide guidance to the provider concerning the nature of the injury or occupational disease.

~~(b) With respect to services provided on or after July 1, 2011, a treatment plan must be made in accordance with the Montana Guidelines adopted in ARM 24.29.1591 and made in accordance with any insurer authorized treatments or procedures.~~

AUTH: 39-71-203, MCA

IMP: 39-71-116, 39-71-704, MCA

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

24.29.1591 (24.29.1611) UTILIZATION AND TREATMENT GUIDELINES

(1) through (3)(a) remain the same.

(b) The department recognizes that medical treatment may include deviations from the Montana Guidelines as individual cases dictate. The provider or interested party shall follow the procedure for prior authorization under ~~ARM 24.29.1593~~ [ARM 24.29.1621] for cases in which treatments or procedures are requested that are:

(i) through (c) remain the same.

(i) prior authorization is obtained from the insurer pursuant to 39-71-704, MCA, and in accordance with ~~ARM 24.29.1593~~ [ARM 24.29.1621]; or

(ii) through (d) remain the same.

(4) All insurers shall routinely and regularly review claims to ensure that care is consistent with the Montana Guidelines adopted by reference in (1) and (6).

(5) remains the same.

(6) Effective April 1, 2019, the formulary adopted in [NEW RULE III] is considered to be a part of the Montana Guidelines.

AUTH: 39-71-203, 39-71-704, MCA

IMP: 39-71-704, MCA

24.29.1595 (24.29.1641) INDEPENDENT MEDICAL REVIEW PROCESS

(1) remains the same.

(2) The interested party or insurer must submit its request for review to the department and must notify the other party of its request for review. Upon notice of a request for review, the insurer must submit a copy of the request for prior authorization, the denial, and any other relevant medical information to the department. The interested party and the insurer may also submit additional information to the department, if the information falls within the categories outlined in ~~ARM 24.29.1593~~ [ARM 24.29.1621]. Any new information submitted to the department must also be submitted to the other party.

(3) through (8) remain the same.

(9) An expedited case review for medications is provided by [NEW RULE VII].

AUTH: 39-71-203, 39-71-704, MCA

IMP: 39-71-224, 39-71-704, 39-71-2401, MCA

24.29.1596 (24.29.1604) APPLICABILITY OF UTILIZATION AND TREATMENT RULES (1) The following rules are subject to the applicability provisions of this rule:

(a) ~~ARM 24.29.1594~~ [ARM 24.29.1609];

(b) ~~ARM 24.29.1593~~ [ARM 24.29.1611];

(c) ~~ARM 24.29.1595~~ [ARM 24.29.1621]; and

(d) ~~ARM 24.29.1599~~ [ARM 24.29.1641].

(2) remains the same.

(3) The presumption of compensability in the Montana utilization and treatment guidelines adopted by ~~ARM 24.29.1594~~ [ARM 24.29.1611] does not apply to injuries occurring on or before June 30, 2007. However, treatment for these injuries made in accordance with the guidelines constitutes reasonable primary or secondary medical treatment, pursuant to 39-71-704, MCA, for any condition or diagnosis identified in the guidelines. Therefore, prior authorization is not required for treatment within the guidelines for these injuries unless prior authorization would otherwise be required under these rules.

(4) As used in ~~ARM Title 24, chapter 29, subchapters 14 and 15~~ this subchapter, the term "injuries" includes occupational diseases which were diagnosed as an occupational disease, or should have been diagnosed as an occupational disease, during the time period specified.

AUTH: 39-71-203, 39-71-704, MCA

IMP: 39-71-704, MCA

7. The rules proposed to be transferred are as follows:

24.29.1593 (24.29.1621) PRIOR AUTHORIZATION

AUTH: 39-71-203, 39-71-704, MCA

IMP: 39-71-704, MCA

24.29.1599 (24.29.1609) APPLICABILITY OF UTILIZATION AND  
TREATMENT GUIDELINES FOR MANAGED CARE ORGANIZATIONS OR  
PREFERRED PROVIDER ORGANIZATIONS

AUTH: 39-71-293, 39-71-704, MCA

IMP: 39-71-704, MCA

8. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Cindy Zimmerman, Employment Relations Division, P.O. Box 8011, Helena, Montana 59604-8011, by facsimile to (406) 444-4140, or by e-mail to [Cindy.Zimmermant@mt.gov](mailto:Cindy.Zimmermant@mt.gov), and must be received no later than 5:00 p.m., November 16, 2018.

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

10. 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, which includes the name and e-mail or mailing address of the person to receive notices, and specifies the particular subject matter or matters regarding which the person wishes to receive notices. Such written request may be mailed or delivered to the Department of Labor and Industry, attention: Mark Cadwallader, 1315 E. Locky Avenue, P.O. Box 1728, Helena, Montana 59624-1728, faxed to the department at (406) 444-1394, or e-mailed to [mcadwallader@mt.gov](mailto:mcadwallader@mt.gov), or may be made by completing a request form at any rules hearing held by the agency.

11. The bill sponsor contact requirements of 2-4-302, MCA, apply and were fulfilled on November 9, 2017, via letter.

12. Pursuant to 2-4-111, MCA, the department has determined that the rule changes proposed in this notice do not have a significant and direct impact upon small businesses.

13. The department's Office of Administrative Hearings has been designated to preside over and conduct this hearing.

/s/ Mark Cadwallader  
Mark Cadwallader  
Alternate Rule Reviewer

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

Certified to the Secretary of State October 9, 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 37.27.902, 37.85.104, ) PROPOSED AMENDMENT  
37.85.105, and 37.88.101 pertaining )  
to updating the effective dates of )  
Medicaid fee schedules )

TO: All Concerned Persons

1. On November 8, 2018, at 2:00 p.m., the Department of Public Health and Human Services will hold a public hearing in the auditorium of the Department of Public Health and Human Services Building, 111 North Sanders, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Public Health and Human Services no later than 5:00 p.m. on October 28, 2018, to advise us of the nature of the accommodation that you need. Please contact Gwen Knight, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail [dphhslegal@mt.gov](mailto:dphhslegal@mt.gov).

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

37.27.902 MEDICAID SUBSTANCE USE DISORDER SERVICES:  
AUTHORIZATION REQUIREMENTS (1) remains the same.

(2) In addition to the requirements contained in rule, the department has developed and published the Addictive and Mental Disorders Division Medicaid Services Provider Manual for Substance Use Disorder and Adult Mental Health (Manual), dated ~~May 1, 2018~~ January 1, 2019, which it adopts and incorporates by reference. The purpose of the Manual is to implement requirements for utilization management and services. A copy of the Manual may be obtained from the department by a request in writing to the Department of Public Health and Human Services, Addictive and Mental Disorders Division, 100 N. Park, Ste. 300, P.O. Box 202905, Helena, MT 59620-2905 or at <http://dphhs.mt.gov/amdd.aspx>.

AUTH: 53-6-113, 53-24-204, 53-24-208, 53-24-209, MCA  
IMP: 53-6-101, 53-24-204, 53-24-208, 53-24-209, 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."~~ January 1, 2019.

(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."~~ January 1, 2019.

(c) remains the same.

(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."~~ January 1, 2019.

(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) remains the same.

(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) Resource-based relative value scale (RBRVS) means the version of the Medicare resource-based relative value scale contained in the Medicare Physician Fee Schedule adopted by the Centers for Medicare and Medicaid Services (CMS) of the U.S. Department of Health and Human Services and published at 82 Federal Register 219, page 52976 (November 15, 2017) effective January 1, 2018 which is adopted and incorporated by reference. Procedure codes created after January 1, ~~2018~~ 2019 will be reimbursed using the relative value units from the Medicare Physician Fee Schedule in place at the time the procedure code is created.

(b) Fee schedules are effective ~~July 1, 2018, as revised and labeled "version 2."~~ January 1, 2019. The conversion factor for physician services is \$37.81. The conversion factor for allied services is \$23.67. The conversion factor for mental health services is \$23.92. The conversion factor for anesthesia services is \$29.76.

(c) 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 106% of the Average Sale Price (ASP), effective ~~July 1, 2018~~ January 1, 2019.

(j) Reimbursement for vaccines described at ARM 37.86.105 is effective ~~July 1, 2018, as revised and labeled "version 2."~~ January 1, 2019.

(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 ~~July 1, 2018~~ January 1, 2019; and
- (ii) remains the same.
- (b) The outpatient hospital services fee schedules including:
  - (i) remains the same.
  - (ii) the conversion factor for outpatient services on or after ~~July 1, 2018~~ January 1, 2019 is ~~\$50.98~~ \$56.64;
  - (iii) and (iv) remain the same.
- (c) The hearing aid services fee schedule, as provided in ARM 37.86.805, is effective ~~July 1, 2018~~ January 1, 2019.
- (d) through (j) remain the same.
- (k) Montana Medicaid adopts and incorporates by reference the Region D Supplier Manual, effective ~~July 1, 2018~~ January 1, 2019, 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 ~~July 1, 2018~~ January 1, 2019. The prosthetic devices, durable medical equipment, and medical supplies fee schedule, as provided in ARM 37.86.1807, is effective ~~July 1, 2018~~ January 1, 2019.
- (l) through (q) remain the same.
- (r) The optometric fee schedule provided in ARM 37.86.2005, is effective ~~July 1, 2018, as revised and labeled "version 2."~~ January 1, 2019.
- (s) remains the same.
- (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."~~ January 1, 2019.
- (u) through (w) remain the same.
- (x) The mobile imaging fee schedule, as provided in ARM 37.85.212, is effective ~~July 1, 2018, as revised and labeled "version 2."~~ January 1, 2019.
- (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."~~ January 1, 2019.
- (z) and (4) remain the same.
- (5) The department adopts and incorporates by reference, the fee schedule for the following programs within the Addictive and Mental Disorders Division on the date stated:
  - (a) 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."~~ January 1, 2019.
  - (b) Home and community-based services for adults with severe disabling mental illness, reimbursement, as provided in ARM 37.90.408, is effective ~~July 1, 2018~~ January 1, 2019.
  - (c) Substance use disorder services reimbursement, as provided in ARM 37.27.905, is effective ~~July 1, 2018, as revised and labeled "version 2."~~ January 1, 2019.
  - (6) remains the same.

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



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

37.88.101 MEDICAID MENTAL HEALTH SERVICES FOR ADULTS, AUTHORIZATION REQUIREMENTS (1) remains the same.

(2) In addition to the requirements contained in rule, the department has developed and published the Addictive and Mental Disorders Division Medicaid Services Provider Manual for Substance Use Disorder and Adult Mental Health (Manual), dated ~~May 1, 2018~~ January 1, 2019, which it adopts and incorporates by reference. The purpose of the Manual is to implement requirements for utilization management and services. A copy of the Manual may be obtained from the department by a request in writing to the Department of Public Health and Human Services, Addictive and Mental Disorders Division, 100 N. Park, Ste. 300, P.O. Box 202905, Helena, MT 59620-2905 or at <http://dphhs.mt.gov/amdd.aspx>.

(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, 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.

Addictive & Mental Disorders Division (AMDD)

ARM 37.27.902 and 37.88.101

The department proposes to amend these rules to incorporate a new edition of the Addictive and Mental Disorders Division Medicaid Services Provider Manual for Substance Use Disorder and Adult Mental Health (Manual), effective January 1, 2019, which includes the following manual changes to clarify policy language, and to revise the concurrent services sections in the services as described below.

SECTION 1 - UTILIZATION MANAGEMENT:

Revise the language under "Authorization" in the "Determinations" section to reflect that an authorization indicates that the utilization review resulted in approval of provider requested services or service units as deemed medically necessary up to the maximum number of allowed days as stated for each service requiring authorization.

## SECTION 2 - MEDICAID ADULT MENTAL HEALTH SERVICES:

Revise the concurrent services lists as follows (removed services means the service is allowed concurrently, added services means the service is not allowed concurrently):

- 1) Add Community-Based Psychiatric Rehabilitation and Supports (CBPRS) to Crisis Stabilization Program.
- 2) Remove Dialectical Behavioral Therapy (DBT) and Illness Management and Recovery (IMR) from Adult Group Home (AGH).
- 3) Remove Crisis Stabilization Program from DBT.
- 4) Remove Intensive Community-Based Rehabilitation (ICBR) and Crisis Stabilization Program from Mental Health Out Patient (OP) Therapy.
- 5) Added language to clarify that CBPRS may not be provided during PHP program hours.
- 6) Remove ICBR, Crisis Stabilization Program, and DBT from IMR.
- 7) Remove Crisis Stabilization Program from Targeted Case Management (TCM).

## SECTION 3 - MEDICAID SUBSTANCE USE DISORDER (SUD) SERVICES, SUD Medically Monitored Intensive Inpatient (ASAM 3.7) Adult / SUD Medically Monitored High Intensity Inpatient (ASAM 3.7) Adolescent:

Revise the definition language in Section 3 to remove the language pertaining to the maximum number of beds in the facility. This is necessary because the Patients and Communities Act, if signed into law, may modify the provision of reimbursement for Institutions for Mental Disease (IMD), which may affect the number of beds a facility may have and still receive reimbursement.

### ARM 37.85.104(1) and 37.85.105(5)

The department is proposing to amend ARM 37.85.104(1) and 37.85.105(5) to update the AMDD Medicaid and non-Medicaid fee schedules effective dates to January 1, 2019, as follows:

### SUBSTANCE USE DISORDER FEE SCHEDULES:

ARM 37.85.104(1)(d) - Add "HF" modifier to CPT 90832, 90834, 90837, 90853 to reflect required billing information for the Substance Abuse Management System (SAMS) under the Block Grant for contracted State-Approved Substance Use Disorder Treatment Providers. This update is in conjunction with a May 9, 2018 Provider Notice which clarifies the use of the HF modifier.

ARM 37.85.105(5)(c) - Remove CPT codes subject to the resource-based relative value scale (RBRVS) reimbursement methodology for specific providers as described in this rule and add the language: State approved Chemical Dependency providers may bill applicable CPT codes within the scope of their practice, subject to licensure provisions and state approval. State approved Chemical Dependency

Providers bill using standard CPT procedure codes and are reimbursed according to the Department's RBRVS system. Please refer to <https://medicaidprovider.mt.gov/>." This amendment is necessary to make the AMDD behavioral health fee schedules consistent.

**SEVERE DISABLING MENTAL ILLNESS (SDMI) WAIVER FEE SCHEDULE:**

ARM 37.85.105(5)(b) - Amend the AMDD SDMI Waiver fee schedule to remove the following services pursuant to the approved 10/1/18 waiver amendment:

- (1) S5116 Overnight Support; and
- (2) S5135 Companion Services.

Medicaid Mental Health Individuals 18 years of age and older Fee Schedule:

ARM 37.85.105(5)(a) - Update the "Limit" column to reflect unit limits in place for certain services as described in the manual. The limits require a provider to receive prior authorization for the provision of services over the defined limits. These revisions do not affect current reimbursement or applicable billing practices.

72 Hour Presumptive Eligibility Program for Crisis Stabilization, Individuals 18 years of age and Older Fee Schedule:

ARM 37.85.104(1)(b) - Update the "Limit" column to reflect unit limits in place for certain services as described in the manual. The limits require a provider to receive prior authorization for the provision of services over the defined limits. These revisions do not affect current reimbursement or applicable billing practices.

Mental Health Services Plan Individuals 18 years of age and Older Fee Schedule:

ARM 37.85.104(1)(a) - Update the "Limit" column to reflect unit limits in place for certain services as described in the manual. The limits require a provider to receive prior authorization for the provision of services over the defined limits. These revisions do not affect current reimbursement or applicable billing practices.

Health Resources Division (HRD)

The Department of Public Health and Human Services (department) is proposing to amend ARM 37.85.105, to update the effective dates of Medicaid fee schedules to January 1, 2019.

The rule amendments are necessary so that the Montana Medicaid Program can adopt updates to procedure codes that the federal Medicare program will enact in January 2019. The federal Medicare program's updates include new code additions, code deletions, and changes to existing code descriptions. Medicare enacts routine updates every January, and Montana Medicaid, which uses Medicare procedure codes for billing, must adopt the changes for the state program.

ARM 37.85.105(2)

The department is proposing to adopt new Medicare codes that are effective on January 1, 2019. This will allow the department to update Medicare fees, additions, deletions, or changes to procedure codes when Medicare releases and updates their fee schedule.

ARM 37.85.105(2)(b)

The department is proposing to amend the effective date for RBRVS fee schedules from July 1, 2018, as revised and labeled "version 2," to January 1, 2019. This will allow the department to update Medicare fees, additions, deletions, or changes to procedure codes when Medicare releases and updates their fee schedule.

ARM 37.85.105(2)(i)

The department is proposing to amend the effective date for Average Sale Price from January 1, 2018 to January 1, 2019. This will allow the department to update Medicare fees, additions, deletions, or changes to procedure codes when Medicare releases and updates their fee schedule.

ARM 37.85.105(2)(j)

The department is proposing to add the fee schedule for vaccines and provide an effective date of January 1, 2019. This will allow the department to update Centers for Disease Control and Prevention (CDC) fees when they update their fee schedule.

ARM 37.85.105(3)(a)(i)

The department is proposing to increase the inpatient hospital base rate for general hospitals by 5%, a change from \$5,154 to \$5,425 effective date of January 1, 2019. This does not apply to the base rate for Center for Excellence (CoE) hospitals, as the CoE rates were not reduced. This change restores a reduction implemented in state fiscal year (SFY) 2018 via MAR Notice No. 37-828.

ARM 37.85.105(3)(b)(ii)

The department is proposing to increase the outpatient conversion factor by 10%, a change from \$50.98 to \$56.64 with an effective date of January 1, 2019. This change restores a reduction implemented in state fiscal year via MAR Notice No. 37-828.

ARM 37.85.105(3)(c)

The department is proposing to amend the effective date for the hearing aid services fee schedule from July 1, 2018 to January 1, 2019. This will allow the department to

update Medicare fees, additions, deletions, or changes to procedure codes when Medicare releases and updates their fee schedule.

ARM 37.85.105(3)(k)

The department is proposing to amend the effective date of the Region D Supplier Manual from July 1, 2018 to January 1, 2019. The department is amending the effective date of local coverage determinations (LCDs), national coverage determinations (NCDs) as provided in ARM 37.86.1802 from July 1, 2018 to January 1, 2019. The department is also proposing to amend the effective dates for the durable medical equipment fee schedule from July 1, 2018 to January 1, 2019 by adopting the Calendar Year 2019 Medicare Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS) fee schedule. This will allow the department to update Medicare fees, additions, deletions, or changes to procedure codes when Medicare releases and updates their fee schedule.

ARM 37.85.105(3)(r)

The department is proposing to amend the effective date for the optometric fee schedule from July 1, 2018, as revised and labeled "version 2," to January 1, 2019. This will allow the department to update Medicare fees, additions, deletions, or changes to procedure codes when Medicare releases and updates their fee schedule.

ARM 37.85.105(3)(t)

The department is proposing to amend the effective date for the lab and imaging fee schedule from July 1, 2018, as revised and labeled "version 2" to January 1, 2019. This will allow the department to update Medicare fees, additions, deletions, or changes to procedure codes when Medicare releases and updates their fee schedule.

ARM 37.85.105(3)(x)

The department is proposing to amend the effective date for the mobile imaging fee schedule from July 1 2018, as revised and labeled "version 2" to January 1, 2019. This will allow the department to update Medicare fees, additions, deletions, or changes to procedure codes when Medicare releases and updates their fee schedule.

ARM 37.85.105(3)(y)

The department is proposing to amend the effective date for the licensed direct entry midwives fee schedule from July 1, 2018, as revised and labeled "version 2" to January 1, 2019. This will allow the department to update Medicare fees, additions, deletions, or changes to procedure codes when Medicare releases and updates their fee schedule.

### AMDD Fiscal Impact

There is no fiscal impact pertaining to the amendments in ARM 37.27.902, 37.85.104(1)(a), (b), and (d), and 37.85.105(5)(a), (b), and (c). There is no fiscal impact pertaining to the amendments in the AMDD, Medicaid Services Provider Manual.

### HRD Fiscal Impact

The following table displays the provider groups affected, the number of providers by type, and the fiscal impact to State general funds for State Fiscal Year (SFY) 2019 and SFY 2020 for the proposed amendments.

Provider Type	SFY 2019 Impact (State General Funds)	SFY 2019 Impact (Federal Funds)	Total Impact	Providers Affected
Inpatient Hospital	\$1,070,747	\$4,332,776	\$5,403,523	376
Outpatient Hospital	\$1,330,013	\$6,011,859	\$7,341,872	376
Durable Medical Equipment	\$107,353	\$203,546	\$310,899	430
Hearing Aid	\$1,105	\$2,095	\$3,200	36
Optometric/Optician	\$36,101	\$68,448	\$104,549	247

Provider Type	SFY 2020 Impact (State General Funds)	SFY 2020 Impact (Federal Funds)	Total Impact	Providers Affected
Inpatient Hospital	\$2,419,010	\$9,036,458	\$11,455,468	376
Outpatient Hospital	\$3,036,007	\$12,528,761	\$15,564,768	376
Durable Medical Equipment	\$223,254	\$413,342	\$636,596	430
Hearing Aid	\$2,298	\$4,255	\$6,553	36
Optometric/Optician	\$75,076	\$138,999	\$214,075	247

5. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Gwen Knight, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail [dphhslegal@mt.gov](mailto:dphhslegal@mt.gov), and must be received no later than 5:00 p.m., November 16, 2018.

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

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

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

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

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

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

/s/ Brenda K. Elias

Brenda K. Elias  
Rule Reviewer

/s/ Sheila Hogan

Sheila Hogan, Director  
Public Health and Human Services

Certified to the Secretary of State October 9, 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 pertaining to            ) PROPOSED AMENDMENT  
updated Medicaid rates manual         )

TO: All Concerned Persons

1. On November 8, 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 rule.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Public Health and Human Services no later than 5:00 p.m. on November 1, 2018, to advise us of the nature of the accommodation that you need. Please contact Gwen Knight, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

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

37.34.3005 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-~~ version 3." 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

4. STATEMENT OF REASONABLE NECESSITY



The Department of Public Health and Human Services (department) proposes to amend ARM 37.34.3005, which adopts and incorporates by reference the developmental disabilities program manual containing rates of reimbursement for the delivery of services and items available through each Home and Community-Based Services Waiver Program. House Bill 638, which became law as a result of the 65th Montana Legislative Session, appropriated funding for a rate increase of at least 75 cents per hour for workers who provide direct care to people with developmental disabilities. The proposed amendment would give a \$1 per hour wage increase to the following direct care workers:

July 1, 2018 Direct-Care Wage Rate Increases

Residential Community Home (small/no geographic factor)  
Residential Community Home (medium/no geographic factor)  
Residential Community Home (large/no geographic factor)  
Residential Community Home (small/medium geographic factor)  
Residential Community Home (medium/medium geographic factor)  
Residential Community Home (large/medium geographic factor)  
Residential Community Home (small/high geographic factor)  
Residential Community Home (medium/high geographic factor)  
Residential Community Home (large/high geographic factor)  
Residential Community Home (Medically Intensive/no geographic factor)  
Residential Community Home (Medically Intensive/Medium geographic factor)  
Residential Community Home (Medically Intensive/high geographic factor)  
Residential Community Home (Children's Group Home/no geographic factor)  
Residential Community Home (Children's Group Home/medium geographic factor)  
Residential Community Home (Children's Group Home/high geographic factor)  
Supported Living Hourly/no geographic factor  
Supported Living Hourly/medium geographic factor  
Supported Living Hourly/high geographic factor  
Supported Living Hourly/Rural Remote  
Supported Living Flex  
Supported Living Base  
Supported Living (SMALL Agency/no geographic factor)  
Supported Living (SMALL Agency/medium geographic factor)  
Supported Living (SMALL Agency/high geographic factor)  
Residential Training Supports (no geographic factor)  
Residential Training Supports (medium geographic factor)  
Residential Training Supports (high geographic factor)  
Residential Training Supports (SMALL Agency/no geographic factor)  
Residential Training Supports (SMALL Agency/medium geographic factor)  
Residential Training Supports (SMALL Agency/High geographic factor)  
Adult Foster Support (Low Supervision)  
Adult Foster Support (Moderate Supervision)  
Adult Foster Support (Enhanced Supervision)  
Adult Foster Support (Intensive Supervision)  
Assisted Living  
Personal Care

Companion

Respite

Small Group Employment Support – no geographic factor

Small Group Employment Support – medium geographic factor

Small Group Employment Support – high geographic factor

Day Supports & Activities – no geographic factor

Day Supports & Activities – medium geographic factor

Day Supports & Activities – high geographic factor

SMALL Day Supports & Activities – no geographic factor

SMALL Day Supports & Activities – medium geographic factor

SMALL Day Supports & Activities – high geographic factor

Retirement Services – no geographic factor

Retirement Services – medium geographic factor

Retirement Services – high geographic factor

SMALL Retirement Services – no geographic factor

SMALL Retirement Services – medium geographic factor

SMALL Retirement Services – high geographic factor

Personal Supports

The proposed rate increase would be effective retroactively to July 1, 2018. The department is proposing this rule at this time because it has funding to do so based upon the governor's budget restoration announced in October of 2018.

#### ARM 37.34.3005

The department is proposing the amendment of an updated fee schedule effective July 1, 2018, as revised and labeled "version 3." The rates contained in the proposed fee schedule were modified to implement direct care wage increases as intended by the passing of HB 638 during the 65th Montana Legislative Session.

The department further proposes to incorporate into rule this new "version 3" of the manual effective July 1, 2018, which includes changes in the rates of reimbursement.

#### Fiscal Impact

The department estimates that the proposed amendment would cost approximately \$5,715,284 federal dollars and \$3,009,008 state general fund dollars annually.

5. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Gwen Knight, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail [dphhslegal@mt.gov](mailto:dphhslegal@mt.gov), and must be received no later than 5:00 p.m., November 16, 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, apply and have been fulfilled. The primary bill sponsor was notified by letter, telephone, and email on October 5, 2018.

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

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

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

/s/ Jennifer C. Kaleczyc  
Jennifer C. Kaleczyc  
Rule Reviewer

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

Certified to the Secretary of State October 9, 2018.

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF PUBLIC HEARING ON
ARM 42.18.121, 42.18.127,	)	PROPOSED AMENDMENT AND
42.18.128, and 42.20.455, and the	)	REPEAL
repeal of ARM 42.18.122, 42.18.124,	)	
42.18.129, 42.18.134, 42.18.135,	)	
42.18.136, and 42.18.137 pertaining	)	
to the reappraisal cycles for	)	
residential, commercial, forest, and	)	
agricultural properties, and	)	
development of a reappraisal plan	)	
and valuation manuals	)	

TO: All Concerned Persons

1. On November 9, 2018, at 10:00 a.m., the Department of Revenue will hold a public hearing in the Third Floor Reception Area Conference Room of the Sam W. Mitchell Building, located at 125 North Roberts, Helena, Montana, to consider the proposed amendment and repeal of the above-stated rules. The conference room is most readily accessed by entering through the east doors of the building.

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, please contact the Department of Revenue no later than 5 p.m. on October 26, 2018, to advise us of the nature of the accommodation you need. Please contact Todd Olson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or email [todd.olson@mt.gov](mailto:todd.olson@mt.gov).

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

42.18.121 PURPOSE; ADOPTION OF MONTANA REAPPRAISAL PLAN AND MANUALS; VALUATION CYCLES (1) ~~For each reappraisal period the department shall develop and adopt the Montana Reappraisal Plan, the Montana Agricultural Land Classification Manual, and the Montana Forest Land Classification Manual to be used during the reappraisal cycle. The plan and manuals will be used for valuing residential land and improvements, commercial land and improvements, industrial land and improvements, new construction, use changes, agricultural land, and forest land.~~ This chapter pertains to the department's statutorily required reappraisal plan and related property classification and valuation manuals for each valuation cycle. The Montana Reappraisal Plan (Plan) provides an overview of the department's duty to complete uniform valuations of all taxable real property. The manuals referenced in (3) describe department processes used in the classification

and valuation of residential land and improvements, commercial land and improvements, industrial land and improvements, agricultural land, and forest land.

~~(2) The plan and manuals provide detail on the valuation processes the department uses.~~

~~(3) (2) The plan and manuals incorporate the department's duties as provided in 15-1-701 through 15-7-103, MCA, and the department shall consider them when performing these duties.~~ The department will use its CAMA system to assist in its valuation processes and will consider the sales comparison approach, cost approach, and income approach in its determination of a property's market value. The department shall use the approach or approaches based on the type of property and the quantity and quality of data available.

(3) The department adopts and incorporates by reference the Plan, the Montana Residential, Commercial, and Industrial Property Classification and Valuation Manual, and the Montana Agricultural Land Classification and Valuation Manual, all dated January 1, 2019. The department also adopts and incorporates by reference the Montana Forest Land Classification and Valuation Manual dated October 10, 2014 (revised October 4, 2018). Each manual explains how the department classifies and values subject property types. A copy of the Plan and the manuals may be obtained from the Department of Revenue, Property Assessment Division, P.O. Box 8018, Helena, MT 59604-8018, and on the department's web site at <https://mtrevenue.gov/publications/property-reappraisal-plan-manuals>.

~~(4) The plan and manuals shall guide department appraisers in the application of approved appraisal practices, including but not limited to the three approaches to property valuation: market, cost, and income. Class four residential, commercial, and industrial property is appraised at its market value as of January 1, 2018, for the 2019-2020 valuation cycle.~~

~~(5) The publication date and use for each is set forth in ARM 42.18.122. Class three agricultural land is appraised at its productivity value as of January 1, 2018, for the 2019-2020 valuation cycle. Agricultural land values reflect productivity values in accordance with 15-7-201 and 15-44-103, MCA.~~

~~(6) Class ten forest land is appraised at its productivity value as of January 1, 2014, for the 2015-2020 valuation cycle. Forest land values reflect productivity values in accordance with 15-7-201 and 15-44-103, MCA.~~

~~(7) For the purposes of these rules, the terms "reappraisal cycle" and "valuation cycle" are considered synonymous and interchangeable.~~

AUTH: 15-1-201, 15-7-111, 15-7-201, MCA

IMP: 15-7-101, 15-7-103, 15-7-111, 15-7-112, 15-7-201, 15-44-103, MCA

REASONABLE NECESSITY: The department proposes amending ARM 42.18.121 to remove unnecessary language and incorporate relevant language from other rules being repealed in this same rulemaking notice. The intent is to place similar content together in a single rule for efficiency and ease of locating. The department proposes to amend the rule to provide a statement of purpose for the chapter regarding the authority and execution of the department's property classification and valuation duties and the resources it will use in carrying out these duties.

The department proposes replacing certain internal references to "reappraisal cycle" with "valuation cycle," to better describe what the cycle refers to; to correspond with alternating use of the terms in statute; and proposes a new (7) to clarify that the department considers these two terms interchangeable. The department proposes striking incorrect or unnecessary statute references and language from former (3), adding a relevant reference to CAMA, and renumbering the section to (2). The department further proposes to strike the first two sentences of (1) and alternatively adopt and incorporate by reference into rule the Plan and manuals described in proposed (3), which is a more specific statement and better meets the Plan requirements of 15-7-111 and 15-7-201, MCA, and the manual adoption requirements of 2-4-307, MCA, and ARM 1.2.210. Section (4) is proposed to be restructured to incorporate language that better describes the department's process for determining market value for commercial, industrial, and residential properties and to include the valuation date for the 2019-2020 valuation cycle. The valuation date has historically been provided in ARM 42.18.124, which is being proposed for repeal.

The department proposes striking the first sentence in (5), because it merely references a rule proposed for repeal. The language proposed for new (5) provides statutory references for the valuation of agricultural land, and the valuation date for the 2019-2020 agricultural land valuation cycle. This information has historically been provided in ARM 42.18.137, which is proposed for repeal. Likewise, the language proposed for (6) provides statutory references for the valuation of forest land, and the valuation date for the 2015-2020 forest land valuation cycle. This information has historically been provided in ARM 42.18.135, which is proposed for repeal.

The department further proposes adding 15-7-111 and 15-7-201, MCA, as rulemaking authority, as they pertain to the required adoptions of the reappraisal plan and the agricultural land valuation manual by rule, respectively. The department is also updating the implementing citations to correspond with the relocation of language into this rule from repealed rules to ensure that the relevant statutes are cited both as a reference for users and as support for the rule content.

42.18.127 PROPERTY TAX FEE APPRAISAL REQUIREMENTS WHEN TAXPAYER DENIES THE DEPARTMENT ACCESS TO PROPERTY TO CONDUCT AN APPRAISAL AND/OR AUDIT (1) ~~The~~ For the department to consider a fee appraisal as an estimate of market value, as provided in 15-7-139, MCA, the appraisal must:

(a) be completed by an appraiser who is licensed or certified by the Montana Board of Real Estate Appraisers- under Title 37, chapter 54, MCA;

~~(2) The appraisal must~~

(b) be conducted in accordance with current uniform standards of professional appraisal practice (USPAP) as set forth for licensed or certified real estate appraisers under 37-54-403, MCA;

(c) be conducted within one year of the valuation date provided in 15-7-103, MCA, and ARM 42.18.121. This one-year requirement may necessitate that a fee appraiser conduct a retroactive appraisal, in accordance with USPAP. In this situation, the effective date of the appraisal may be prior to the date of the appraisal

report. If an appraisal has already been conducted, and it was conducted prior to the valuation date, then:

(i) a recertification or update of value may be required as an addendum to the original appraisal; and

(ii) the recertification or update of value must be completed by the same appraiser who conducted the original appraisal; and

(3) The appraisal must

(d) establish a separate market value for each improvement and the land.;

~~(a)~~ (i) If the appraisal was conducted for a ~~single-family~~ single-family dwelling, the sales comparison approach and cost approach must be included. The cost approach must document the land value, the value of each ~~single-family~~ single-family residence dwelling, and all outbuildings. If the appraiser chooses the sales comparison approach as the best indicator of value, then the appraiser must specifically state the contributory value of the land to the reconciled value.

~~(b)~~ (ii) If the appraisal was conducted for a commercial property, the income approach, sales comparison approach, and the cost approach must all be included. The cost approach must document the land value, the value of each commercial structure, and all ancillary buildings and site improvements. If the appraiser chooses either the income approach or the sales comparison approach as the best indicator of value, then the appraiser must specifically state the contributory value of the land to the reconciled value.

~~(4) The appraisal must be conducted within one year of the reappraisal base year provided for in 15-7-103, MCA, and ARM 42.18.124, which means the appraisal must be adjusted to the market value as it would have been in the base year provided for in 15-7-103, MCA, and ARM 42.18.124. This may require the appraiser to make a retrospective appraisal, in accordance with the uniform standards of professional appraisal practice, which means the effective date of the appraisal may be prior to the date of the appraisal report. If the appraisal has already been conducted, and it was conducted after the base year provided for in 15-7-103, MCA, and ARM 42.18.124, then a recertification or update of value will be required as an addendum to the original appraisal. The recertification or update must be completed by the same appraiser who conducted the original appraisal.~~

AUTH: 15-1-201, 15-7-139, MCA

IMP: 15-7-139, 37-54-403, MCA

REASONABLE NECESSITY: The department proposes amending ARM 42.18.127 to remove unnecessary language and reformat the rule into subsections under (1) to eliminate redundancy. The department is also inserting missing language and reference details to make the rule more informative and easier to understand.

The department proposes adding 15-7-139, MCA, into the lead-in statement in (1) as a reference to details for when a fee appraisal would apply. The word "licensed" is also being inserted in newly numbered (1)(a) and (b) for clarification as to the type of appraisers that would qualify to provide a fee appraisal.

The department proposes adding a reference to the section of the Montana Code Annotated covering real estate appraisers, and language to provide for

situations when a fee appraiser could need to update their original appraisal, in (1)(c). This language was added to ARM 42.20.455 when amended recently, and adding it to this rule will bring consistency to the two rules on this subject. Furthermore, the department is inserting a missing hyphen into the phrase "single-family" in (1)(d)(i) and changing an incidence of the word "residence" to "dwelling" to be consistent with a preceding instance of that verbiage in the subsection.

The department is striking (4) because it contains outdated language. For example, the department now uses the phrase "valuation date" instead of "base year." The relevant detail from this section is updated and relocated in (1)(c).

The department further proposes adding 37-54-403, MCA, as an implementing citation, as it pertains to the uniform standards of professional appraisal practice (USPAP) for real estate appraisers.

42.18.128 DEFINITIONS The following definitions apply to terms used in this subchapter:

(1) through (5) remain the same.

~~(6) "Trail" means a relatively smooth and clear pathway made by animals, humans, and/or vehicles, usually narrower and rougher than a road and made by frequent use rather than by mechanical grading and paving; in some instances, open only to foot travel.~~

AUTH: 15-1-201, 15-7-111, MCA

IMP: 15-7-111, ~~15-7-112, 15-7-139, 15-9-101~~, MCA

REASONABLE NECESSITY: The department proposes amending ARM 42.18.128 to strike a definition that is no longer necessary due to the proposed repeal of ARM 42.18.129. The department also proposes removing implementing citations that no longer apply.

42.20.455 CONSIDERATION OF INDEPENDENT APPRAISALS AS AN INDICATION OF MARKET VALUE (1) When considering any objection to the appraisal of property, the department may consider independent fee appraisals of the property as evidence of the market value of the property. For an independent fee appraisal to be considered, the taxpayer or the taxpayer's agent must submit the following documents to the local department office in the county where the property is located:

(a) remains the same.

(b) a copy of the independent fee appraisal that meets the following requirements and was conducted:

(i) and (ii) remain the same.

(iii) within six months of the valuation date provided for in 15-7-102, MCA, and ~~ARM 42.18.124~~ ARM 42.18.121. This six-month requirement may necessitate that a fee appraiser conduct a retroactive appraisal, in accordance with USPAP. In this situation, the effective date of the appraisal may be prior to the date of the Appraisal Report. If an appraisal has already been conducted, and it was conducted prior to the valuation date, then:

(A) through (3) remain the same.



AUTH: 15-1-201, MCA

IMP: 15-7-102, 15-7-111, ~~15-8-111~~, 37-54-403, MCA

REASONABLE NECESSITY: The department proposes amending ARM 42.20.455 to update a rule number reference in (1)(b)(iii). ARM 42.18.124 is proposed to be repealed and the relevant information from it has been relocated in ARM 42.18.121. The department also proposes updating the implementing statutory citations to remove an obsolete statutory reference and add a new reference due to USPAP references in the rule language.

4. The department proposes to repeal the following rules:

42.18.122 2017-2018 MONTANA REAPPRAISAL PLAN, APPRAISAL GUIDE, AND 2017-2018 MONTANA AGRICULTURAL LAND CLASSIFICATION MANUAL

AUTH: 15-1-201, 15-7-111, MCA

IMP: 15-7-111, MCA

REASONABLE NECESSITY: The department proposes repealing ARM 42.18.122 and more generally covering the content in ARM 42.18.121, as proposed in this same rulemaking notice. The intent is to provide the reappraisal plan and valuation manual information in a single rule for efficiency and ease of locating, which renders this rule unnecessary.

As proposed to be set forth in ARM 42.18.121, the agricultural land valuation manual will be located together with the reappraisal plan on the department's web site. The "appraisal guide," which contains the details the department's staff needs to appraise different property types, will continue to be used internally by department staff. It will no longer be published online, because the content is technical, covers internal data processing instructions, and is of no real value to lay persons.

42.18.124 VALUATION PERIODS

AUTH: 15-1-201, 15-7-111, MCA

IMP: 15-6-134, 15-7-103, 15-7-111, MCA

REASONABLE NECESSITY: The department proposes repealing ARM 42.18.124, and more generally covering the content in ARM 42.18.121, as proposed in this same rulemaking notice. The intent is to provide the valuation dates and valuation cycles for class three, four, and ten properties within the reappraisal plan in a single location for efficiency and ease of locating, which renders this rule unnecessary.

42.18.129 PERMISSION BY THE OWNER OR OWNER'S AGENT TO ENTER IMPROVEMENTS AND PERSONAL PROPERTY

AUTH: 15-7-111, MCA  
IMP: 15-7-139, MCA

REASONABLE NECESSITY: The department proposes repealing ARM 42.18.129 because it is unnecessary. The rule content is useful as an internal procedure for department field staff to reference, but serves no purpose as a rule.

42.18.134 2017-2018 RESIDENTIAL AND COMMERCIAL REAPPRAISAL

AUTH: 15-1-201, 15-7-111, MCA  
IMP: 15-7-111, 15-7-112, 15-7-201, 15-9-101, MCA

REASONABLE NECESSITY: The department proposes repealing ARM 42.18.134 and more generally covering the content in ARM 42.18.121, as proposed in this same rulemaking notice. The intent is to provide the reappraisal plan and valuation manual information in a single rule for efficiency and ease of locating, which renders this rule unnecessary.

42.18.135 2015 FOREST LAND REAPPRAISAL

AUTH: 15-1-201, 15-7-111, MCA  
IMP: 15-7-111, 15-7-112, 15-7-201, 15-9-101, 15-44-103, MCA

REASONABLE NECESSITY: The department proposes repealing ARM 42.18.135 and more generally covering the content in ARM 42.18.121, as proposed in this same rulemaking notice. The intent is to provide the reappraisal plan and valuation manual information in a single rule for efficiency and ease of locating, which renders this rule unnecessary.

42.18.136 2017-2018 INDUSTRIAL PROPERTY REAPPRAISAL

AUTH: 15-1-201, 15-7-111, MCA  
IMP: 15-7-111, MCA

REASONABLE NECESSITY: The department proposes repealing ARM 42.18.136 and more generally covering the content in ARM 42.18.121, as proposed in this same rulemaking notice. The intent is to provide the reappraisal plan and valuation manual information in a single rule for efficiency and ease of locating, which renders this rule unnecessary.

42.18.137 2017-2018 AGRICULTURAL LAND REAPPRAISAL

AUTH: 15-1-201, 15-7-111, MCA  
IMP: 15-7-111, 15-7-112, 15-7-201, 15-9-101, MCA

REASONABLE NECESSITY: The department proposes repealing ARM 42.18.137 and more generally covering the content in ARM 42.18.121, as proposed

in this same rulemaking notice. The intent is to provide the reappraisal plan and valuation manual information in a single rule for efficiency and ease of locating, which renders this rule unnecessary.

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 Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or e-mail [todd.olson@mt.gov](mailto:todd.olson@mt.gov), and must be received no later than 5:00 p.m., November 16, 2018.

6. Todd Olson, Department of Revenue, Director's Office, has been designated to preside over and conduct the hearing.

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

8. 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 and repeal of the above-referenced rules will not significantly and directly impact small businesses.

/s/ Todd Olson

Todd Olson  
Rule Reviewer

/s/ Gene Walborn

Gene Walborn, Director  
Department of Revenue

Certified to the Secretary of State October 9, 2018.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW  
OF THE STATE OF MONTANA

In the matter of the amendment of            )           NOTICE OF AMENDMENT  
ARM 17.8.505 pertaining to air quality        )  
operation fees                                        )           (AIR QUALITY)

TO: All Concerned Persons

1. On June 22, 2018, the Board of Environmental Review published MAR Notice No. 17-397 regarding the public hearing on the proposed amendment of the above-stated rule at page 1132 of the 2018 Montana Administrative Register, Issue Number 12.

2. The board has amended ARM 17.8.505 as proposed, but with the following changes, stricken matter interlined, new matter underlined:

17.8.505 AIR QUALITY OPERATION FEES (1) through (6) remain as proposed.

(7) The air quality operation fee for facilities other than portable facilities or registered oil and gas well facilities is:

(a) remains as proposed.

(b) a tonnage fee of an amount not to exceed ~~\$45.37~~ \$44.35 per ton of the actual, or the estimated actual, emissions by the facility during the previous calendar year of PM-10, sulfur dioxide, lead, oxides of nitrogen, and volatile organic compounds.

(8) remains as proposed.

(9) The air quality operation fee for registered oil and gas well facilities is ~~\$900~~ \$850.

(10) through (13) remain as proposed.

3. The following comments were received and appear with the board's responses:

COMMENT NO. 1: The department provided comments at the public hearing recommending that the board adopt the following operation fees:

(a) in ARM 17.8.505(7), for facilities other than portable facilities or registered oil and gas well facilities, a per-ton fee of \$44.35. In the notice of public hearing that initiated this rulemaking, the board proposed to increase the per-ton fee to an amount not to exceed \$45.37. After that notice was issued, the department was able to determine more precisely its program costs and the amount of revenue it would receive from the federal government and the state general fund. After discussing the amount of the fee with stakeholders, the department determined that the smaller increase to \$44.35 per ton was sufficient to fund the department's program.

(b) in ARM 17.8.505(9), for registered oil and gas well facilities, an annual operation fee of \$850. In the notice of public hearing that initiated this rulemaking,

the board proposed to increase the fee to \$900. After the notice was issued, the department was able to determine more precisely its program costs and the amount of revenue it would receive from the federal government and the state general fund. After discussing the amount of the fee with stakeholders, the department determined that an increase to \$850 was sufficient to fund the department's program.

COMMENTS NO. 2 and 3: The board received comments that while an increase in operating fees was unwanted, regulated entities understood sufficient fees were necessary to enable the department to continue implementing the air quality program. The regulated entities appreciated the department's engagement of a stakeholder process and wished to be included in future fee discussions.

RESPONSE: The board appreciates the comments.

4. No other comments or testimony were received.

Reviewed by:

BOARD OF ENVIRONMENTAL REVIEW

/s/ Edward Hayes  
EDWARD HAYES  
Rule Reviewer

By: /s/ Christine Deveny  
CHRISTINE DEVENY  
Chairman

Certified to the Secretary of State, October 9, 2018.

BEFORE THE BOARD OF MEDICAL EXAMINERS  
DEPARTMENT OF LABOR AND INDUSTRY  
STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF AMENDMENT,
ARM 24.156.601 fee schedule,	)	ADOPTION, AND REPEAL
24.156.606 examination, 24.156.615	)	
renewals, 24.156.801 purpose and	)	
authority, 24.156.802 definitions,	)	
24.156.1002 fees, 24.156.1003 ankle	)	
surgery certification, 24.156.1409	)	
accreditation, approval, and	)	
standards, 24.156.1618 physician	)	
assistant fees, and 24.156.1621	)	
obligation to report to board; the	)	
adoption of New Rule I medical	)	
assistant–delegation and supervision,	)	
and New Rule II practice requirements	)	
for physicians using telemedicine; and	)	
the repeal of ARM 24.156.640 medical	)	
assistant and 24.156.810 effect of	)	
telemedicine license	)	

TO: All Concerned Persons

1. On May 11, 2018, the Board of Medical Examiners (board) published MAR Notice No. 24-156-84 regarding the public hearing on the proposed amendment, adoption, and repeal of the above-stated rules, at page 936 of the 2018 Montana Administrative Register, Issue No. 9.

2. On June 6, 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:

COMMENT 1: Many commenters generally supported the proposed amendments to ARM 24.156.801 and 24.156.802.

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

COMMENT 2: Several commenters generally supported New Rule I regarding delegation and supervision of medical assistants, but were concerned as to their qualifications. The commenters suggested adding certification as one express

means by which a supervising practitioner can document the medical assistant's competence to perform a delegated task under (2).

RESPONSE 2: The board cannot make the proposed significant amendments in this final notice, but will consider future amendments to this new rule.

COMMENT 3: Several commenters expressed concern with the term "direct supervision" used in New Rule I and defined in ARM 24.156.501. The commenters stated that the terms "sufficiently close proximity" and "quickly available" in the definition are vague and should be more specific.

RESPONSE 3: Noting the comment refers to ARM 24.156.501, which is not included in this rulemaking MAR Notice No. 24-156-84, the board is unable to address that rule in this final notice. The board will consider whether to address the definitions referenced in the comment in a future rules proposal.

COMMENT 4: Many commenters were concerned regarding delegation of tasks involving administration of IV medications, blood products, or conscious sedation to medical assistants in New Rule I. Some commenters suggested that only licensed professionals should be performing these skills and urged the board to consider safe medical practices and patient safety. Other commenters suggested that those tasks should be delegable only to medical assistants who have graduated from a postsecondary, programmatically accredited medical assisting program; and hold a current medical assisting credential from a nationally accredited organization.

RESPONSE 4: The board is unable to make the proposed significant amendments in this final notice, but will consider future amendments to this new rule.

COMMENT 5: Many commenters fully supported the adoption of New Rule II on telemedicine practice requirements and thanked the board for developing rules that support safe and effective delivery of telemedicine services in Montana.

RESPONSE 5: The board appreciates all comments received during the rulemaking process.

COMMENT 6: Many commenters supported New Rule II, but some were concerned about a physician's inability to prescribe a Schedule II drug without first having a physician-patient relationship established through in-person meetings with medical interviews and a physician examination. The commenters suggested the board further amend this new rule to allow Montana physicians to prescribe Schedule II drugs without an in-person exam under certain conditions including emergency psychiatric situations and treatment/management of opioid or alcohol dependence.

RESPONSE 6: The board is unable to make the proposed significant amendments in this final notice, but will consider future amendments to this new rule.

4. The board has amended ARM 24.156.601, 24.156.606, 24.156.615, 24.156.801, 24.156.802, 24.156.1002, 24.156.1003, 24.156.1409, 24.156.1618, and 24.156.1621 exactly as proposed.

5. The board has adopted New Rules I (24.156.401) and II (24.156.813) exactly as proposed.

6. The board has repealed ARM 24.156.640 and 24.156.810 exactly as proposed.

BOARD OF MEDICAL EXAMINERS  
TANJA BREKKE, L.AC., 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 October 9, 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 AMENDMENT  
ARM 24.101.413 renewal dates                    )

TO: All Concerned Persons

1. On September 7, 2018, the Board of Nursing (board) published MAR Notice No. 24-159-86 regarding the public hearing on the proposed amendment of the above-stated rule, at page 1778 of the 2018 Montana Administrative Register, Issue No. 17.

2. On September 28, 2018, a public hearing was held on the proposed amendment of the above-stated rule in Helena. Several comments were received by the October 5, 2018, deadline.

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

COMMENT 1: Several commenters supported the proposed rule change as proposed.

RESPONSE 1: The board appreciates all comments received during the rulemaking process. The board is amending the rule exactly as proposed.

COMMENT 2: Numerous commenters supported the rule amendment but stressed the need for the board to communicate the new renewal plan with all licensed nurses. Some commenters made suggestions for ensuring all licensees are aware of their renewal dates.

RESPONSE 2: The board is aware of its duty to communicate with licensed nurses and will work with the department and stakeholders to ensure an adequate communication plan is in place to ensure all nurses are aware of the new renewal schedule.

COMMENT 3: Some commenters requested the board address the effect this rule change will have on continuing education requirements.

RESPONSE 3: The board recognizes that licensed nurses may have planned continuing education courses over the past two years with the expectation that contact hours obtained in 2017 and 2018 would be accepted at their next license renewal. With that in mind, the board will accept contact hours obtained during 2017 and 2018 as meeting biennial continuing education requirements under ARM 24.159.2102 for nurses renewing in 2019. All nurses renewing their licenses after

2019 will continue to be held to the biennial continuing education requirements of ARM 24.159.2102.

COMMENT 4: Some commenters opposed the rule amendment because the changes likely cannot be implemented efficiently for the upcoming renewal cycle. The commenters believed this will cause confusion related to the process change that will lead to greater frustration for licensees and health care facilities.

RESPONSE 4: The board understands the commenters' concerns and notes that licensed nurses are ultimately responsible for renewing licenses on time. The board will work with the department to minimize any confusion or frustration that may result from this change in the renewal schedule and ensure that all nurses are adequately informed about the changes in this process.

COMMENT 5: A few commenters who opposed the rule amendment asserted that splitting licensees into two renewal groups shifts the regulatory burden and workload from the board to health care facilities, and increases the potential for lapses in nursing licensure.

RESPONSE 5: The board recognizes that resources, such as the Nursys database, provide tools to help employers of nurses easily retrieve data and track license expiration dates. For more information regarding the Nursys system, please contact the board's executive officer.

4. The board has amended ARM 24.101.413 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 October 9, 2018.

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

In the matter of the amendment of	)	NOTICE OF AMENDMENT AND
ARM 24.162.301 definitions,	)	REPEAL
24.162.501 application and	)	
documentation for licensure,	)	
24.162.506 temporary license,	)	
24.162.510 licensure by credential,	)	
and the repeal of 24.162.402 public	)	
information	)	

TO: All Concerned Persons

1. On July 20, 2018, the Board of Nursing Home Administrators (board) published MAR Notice No. 24-162-41 regarding the proposed amendment and repeal of the above-stated rules, at page 1355 of the 2018 Montana Administrative Register, Issue No. 14.

2. No comments were received by the August 17, 2018, deadline.

3. The board has amended ARM 24.162.301, 24.162.501, 24.162.506, and 24.162.510 exactly as proposed.

4. The board has repealed ARM 24.162.402 exactly as proposed.

BOARD OF NURSING HOME  
ADMINISTRATORS  
KATHRYN BEATY, PRESIDING OFFICER

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

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

Certified to the Secretary of State October 9, 2018.

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

In the matter of the amendment of	)	NOTICE OF AMENDMENT AND
ARM 24.216.402 fee schedule,	)	REPEAL
24.216.503 examination, 24.216.506	)	
sanitarian-in-training, 24.216.2102	)	
continuing education, 24.216.2104	)	
inactive status and conversion from	)	
inactive to active status, and	)	
24.216.2301 unprofessional conduct,	)	
and the repeal of 24.216.401 board	)	
meetings, 24.216.403 seal of the	)	
board, 24.216.501 applications, and	)	
24.216.2101 renewal	)	

TO: All Concerned Persons

1. On May 11, 2018, the Board of Sanitarians (board) published MAR Notice No. 24-216-23 regarding the public hearing on the proposed amendment and repeal of the above-stated rules, at page 949 of the 2018 Montana Administrative Register, Issue No. 9.

2. On June 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 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:

ARM 24.216.506 Sanitarian-in-Training

COMMENT 1: One commenter suggested adding a section defining supervision to include both supervision and training, to allow the term "supervision" to be used instead of supervision and training throughout the rule.

RESPONSE 1: The requested amendment cannot be made in this final notice since the amendment would substantially change the meaning of supervision and require public notice. The requested change can be discussed in future board rulemaking.

COMMENT 2: One commenter suggested the board set a minimum time for supervision/training to allow the board to hold sanitarians accountable for failure to properly supervise sanitarians-in-training. The commenter suggested amending the rule to require a reasonable schedule for minimum supervision or training.

RESPONSE 2: The board is amending the rule exactly as proposed, but may consider the commenter's suggestions in future rulemaking.

ARM 24.216.2102 Continuing Education

COMMENT 3: One commenter suggests modifying the language of (6)(b) to parallel (6)(a).

RESPONSE 3: Since the board has not proposed changes to (6)(b) in this notice, the suggestion is outside the scope of the current project, but the board may consider it in future rulemaking. ARM 24.216.2102(5) already allows for credit for continuing education (CE) courses approved by the board.

COMMENT 4: One commenter suggested deleting ARM 24.216.2102(8) as unnecessary since CE approval requests can be made under ARM 24.216.2101(5).

RESPONSE 4: The only proposed change to (8) was a renumbering to (7), so the suggestion exceeds the scope of the current rulemaking project. The board may consider the suggestion in future rulemaking.

COMMENT 5: Several commenters suggested the board retain "and other organizations" from (7) and include it in (6)(a) to allow sanitarians to obtain CE from organizations other than those specifically listed.

RESPONSE 5: ARM 24.216.2102(5) already allows for credit on any CE courses as approved by the board. The board also believes that the suggested language would not allow the board to review any CE, is inconsistent with (5), and is beyond the scope of the proposed changes in this notice.

COMMENT 6: Several commenters suggested striking "related to the practice of a registered sanitarian" from (6)(a) to allow sanitarians a broader spectrum of CE.

RESPONSE 6: ARM 24.216.2102(1) also requires CE be related to the practice of a registered sanitarian, and the board has not proposed changing that section. Further, (5) allows the board to review submitted courses to determine whether they are related to the practice of a registered sanitarian. After discussion, the board determined that (5) is broad enough to allow sanitarians to select from a larger spectrum of CE, so long as the sanitarian demonstrates to the board that the CE is related to the practice of a registered sanitarian as that term is defined in statute, while still allowing the board to make the final determination.

ARM 24.216.2301 Unprofessional Conduct

COMMENT 7: One commenter suggested adding "of a sanitarian-in-training" to (1)(f) to provide a more complete thought.

RESPONSE 7: The board agrees and is amending the rule accordingly.

COMMENT 8: Several commenters suggested the board expand unprofessional conduct to include carrying weapons while working, using racist language, and discriminating against those sanitarians are supposed to serve.

RESPONSE 8: The board notes that further additions to unprofessional conduct would require public notice and opportunity to comment and may not be done in a final notice. Further, the board has no authority to regulate or restrict the ability of sanitarians to carry weapons. The ability to regulate weaponry belongs to the Montana Legislature, which has not delegated authority to the board to establish rules limiting whether a registered sanitarian may carry a weapon. Similarly, the board may not regulate racist language, which is protected by the First Amendment, or claims of discrimination, which must be handled in compliance with the Montana Human Rights Act, as established at 49-2-512, MCA.

COMMENT 9: Several commenters requested the board consider reducing fees in a future project because current licensing fees are a hardship to registered sanitarians and may inhibit growth and maintenance of the sanitarian workforce.

RESPONSE 9: The board will continue to monitor the fees on a regular basis and review the budget to ensure that fees are commensurate with costs.

4. The board has amended ARM 24.216.402, 24.216.503, 24.216.506, 24.216.2102, and 24.216.2104 exactly as proposed.

5. The board has repealed ARM 24.216.401, 24.216.403, 24.216.501, and 24.216.2101 exactly as proposed.

6. The board has amended ARM 24.216.2301 with the following changes, stricken matter interlined, new matter underlined:

24.216.2301 UNPROFESSIONAL CONDUCT (1) through (1)(e) remain as proposed.

(f) falsification or misrepresentation of the record of supervision of a sanitarian-in-training by the supervising sanitarian.

BOARD OF SANITARIANS  
SUSAN FOSTER, R.S.  
PRESIDING OFFICER

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

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

Certified to the Secretary of State October 9, 2018.

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

In the matter of the amendment of ) NOTICE OF AMENDMENT  
ARM 37.34.3005, 37.40.830, )  
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 7, 2018, the Department of Public Health and Human Services published MAR Notice No. 37-863 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 1785 of the 2018 Montana Administrative Register, Issue Number 17.

2. The department has amended the following rules as proposed: ARM 37.34.3005, 37.85.104, 37.86.705, 37.86.805, 37.86.1101, 37.86.1105, 37.86.1406, 37.86.1807, 37.86.2005, 37.86.2605, 37.86.2803, 37.86.2905, 37.86.2912, 37.86.3007, 37.86.3109, and 37.86.3205.

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

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

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

AUTH: 53-6-113, MCA

IMP: 53-6-101, MCA

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

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

(f) through (6) remain as proposed.

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

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

37.85.106 MEDICAID BEHAVIORAL HEALTH TARGETED CASE MANAGEMENT FEE SCHEDULE (1) remains as proposed.

(2) The Department of Public Health and Human Services (department) adopts and incorporates by reference the Medicaid Behavioral Health Targeted Case Management Fee Schedule effective 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 as proposed.

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

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

37.86.1006 DENTAL SERVICES, COVERED PROCEDURES (1) through (4) remain as proposed.

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

(a) through (d) remain as proposed.

(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) through (18) remain as proposed.

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

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

37.86.2806 COST-BASED HOSPITAL, GENERAL REIMBURSEMENT

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

(a) remains as proposed.

(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 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 ~~400%~~ 101% of allowable costs as determined in accordance with ARM 37.86.2803(1).

(2) through (8) remain as proposed.

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

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



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: At the hearing on September 7, 2018, the department noted an error in the proposed amendment to ARM 37.85.106(2), which refers to the Behavioral Health Targeted Case Management fee schedule. This fee schedule was previously dated January 1, 2018, and does not have a previously incorporated July 1, 2018, fee schedule. Therefore, there is no need to label it as "version 2."

RESPONSE #1: The rule text will be updated to remove the reference to "version 2" so as to accurately describe the fee schedule. This is a change in the label of the fee schedule and does not change any of the fees set forth in the schedule as proposed.

COMMENT #2: At the hearing on September 7, 2018, the department noted an error in the proposed amendment to ARM 37.86.2806(1)(b). The proposed amendment mistakenly states that cost settlements for report periods ending on or after July 1, 2018 will be limited to 100%. The correct percentage is 101%.

RESPONSE #2: The department will update the rule text to reflect the appropriate cost settlement percentage.

COMMENT #3: At the hearing on September 7, 2018, the department noted that a table in the Fiscal Impact statement, on page 1808 of MAR Notice No. 37-863, erroneously lists a fiscal impact to private duty nursing providers. There is no fiscal impact because there was no proposed rate change to private duty nursing in this rule notice.

RESPONSE #3: Private duty nursing rates were increased within MAR Notice No. 37-854, and the fiscal impact was articulated in that rule notice.

COMMENT #4: At the hearing on September 7, 2018, the department noted that ARM 37.40.830 was erroneously included in this rule notice. The department does not propose any changes to hospice reimbursement and ARM 37.40.830 should not have been included in this rule notice.

RESPONSE #4: The department withdraws ARM 37.40.830 from this rule notice and the hospice fee schedule will remain effective January 1, 2018.

COMMENT #5: The department noted an error in ARM 37.85.105(3)(e), which refers to the effective date of the Dental and Denturist Program Provider Manual. The effective date should be October 1, 2018, as set forth in the Statement of Reasonable Necessity.

RESPONSE #5: The department has made the correction to the language in ARM 37.85.105(3)(e) to make the manual changes effective on October 1, 2018.

COMMENT #6: Several commenters expressed support for the proposal to restore Medicaid reimbursement rates to levels prior to 1/1/2018, when Montana state government experienced revenue shortfalls necessitating a 2.99% reduction in Medicaid provider rate reimbursement. Some commenters took issue with using the word "increase" to characterize the action the department proposed. They said the department should use the word "restore" in place of the word "increase."

RESPONSE #6: The department acknowledges and appreciates the support. The department acknowledges the commenters' perspectives with respect to language usage. However, the department feels that the word "increase" is an accurate description of the proposed change in rule.

COMMENT #7: Some commenters noted that this rule proposal does not restore targeted case management (TCM) services for children and adults to pre-1/1/2018 reimbursement rates.

RESPONSE #7: The department acknowledges and agrees with this statement. The department is currently proposing to raise rates by 3.08%. The governor directed the department to create a plan for efficient and fiscally sound case management across Montana. Additional improvements to care/case management services across the Medicaid program are being analyzed by the department. Future changes to targeted case management and/or other care management programs will be noticed via the public rulemaking process as appropriate.

COMMENT #8: A commenter requested the reinstatement of 24 outpatient therapy sessions per year for youth who do not have a diagnosis of severe emotional disturbance (SED).

RESPONSE #8: The department acknowledges the request, but the department, at this time, is not proposing to reinstate this service for youth who do not have an SED diagnosis.

COMMENT #9: A commenter requested the reinstatement of room and board reimbursement for children's therapeutic group homes and indicated that eliminating funding for room and board has pushed children to a higher level of care.

RESPONSE #9: The department acknowledges this request, but the department at this time is not proposing to reinstate room and board payments for therapeutic group homes.

COMMENT #10: Some commenters expressed concerns that even with the proposed increase to restore rates to pre-1/1/2018 reimbursement levels the system is still short of dollars. Some commenters expressed concern regarding future

funding to enable nonprofits to continue to provide services for individuals with developmental disabilities.

RESPONSE #10: The department has restored the rate for the 0208 waiver and the 0667 waiver, which effectively restores rates to the level prior to the 2.99% decrease. Future funding for services for individuals with developmental disabilities will be determined by the 2019 Montana Legislature.

COMMENT #11: A commenter expressed concern that prior authorization requirements increase administrative burdens for medical providers by increasing administrative tasks and reducing time and resources for direct care.

RESPONSE #11: The department acknowledges these concerns. Utilization review, in the form of prior authorizations, is a best practice that helps maintain adherence to the budget by ensuring Medicaid members are receiving medically necessary services at the appropriate level of care, thus allowing Medicaid dollars to go as far as possible in treating a population of members. The department intends to continue to monitor trends in member utilization, denials and deferments, numbers of providers, and length of stays. The department intends to use this information to manage requirements in the future.

COMMENT #12: A commenter stated that the legislature intended for monies relating to the private prison contract were supposed to fund specific programs such as fire suppression and budget restoration. The commenter indicated that the legislature intended for the budget restoration to assist the most vulnerable populations in Montana and treat people in the least restrictive environments.

RESPONSE #12: The department acknowledges the commenter's statement. However, the use of money relating to the private prison contract is outside the scope of this administrative rule proposal and is outside the purview of the Department of Public Health and Human Services.

COMMENT #13: One commenter discussed the challenges in providing home support services (HSS) at the current reimbursement rate structure.

RESPONSE #13: The department acknowledges the commenter's statement while recognizing that the subject is outside the scope of this rule change. The department will incorporate the feedback into the broader program improvement recommendation list.

COMMENT #14: A commenter asked if the department intended to reinstate the prior authorization requirement for dental crowns.

RESPONSE #14: No, the department inadvertently included the prior authorization language in the restoration of the adult dental benefit. The rule text has been updated to eliminate the reference to "prior authorization" in ARM 37.86.1006(5)(e).

COMMENT #15: Several commenters appreciated the restoration of dental rates and services. Others went on to state that they considered this step a work in progress and discussed the impact of previous cuts.

RESPONSE #15: The department appreciates the support and will continue to work with providers and the Montana Dental Association on ways to improve the program.

COMMENT #16: A commenter stated the 2.99% restoration was a start, but outpatient hospitals were reduced an additional 10% during other reduction rules and were subjected to the elimination of provider-based clinics.

RESPONSE #16: The department acknowledges the commenter's statement while recognizing that the subject is outside the scope of this rule change. The department will incorporate the feedback into the broader program improvement recommendation list.

COMMENT #17: A commenter requested the underlying financial and other materials supporting the proposed rule changes, including providing individual hospital impact analysis.

RESPONSE #17: The department included forecasted impact by provider type in the fiscal impact section of the Notice of Public Hearing on Proposed Amendment for this rule notice. The department does not produce forecasted impact analyses for individual providers. The department modeled claims data utilizing versions 35 of the DRG grouper. As part of the department's standard annual process, the modeling re-centered the national APR-DRG weights to a case mix of 1.0. Without any changes to the hospital base rates, the anticipated impact was budget neutral. The base rates were increased due to the budget restoration.

COMMENT #18: A few commenters addressed providers lowering wages, increasing the difficulty in finding employees to provide services for those at risk for institutionalization.

RESPONSE #18: The decision to lower wages is that of the provider, not the department. The department does recognize the difficulty in recruiting and retaining trained direct care workers.

COMMENT #19: One commenter stated they were unable to bill at the old higher rate with little direction from the department who should be working with the fiscal intermediary to fix this issue.

RESPONSE #19: The department thanks the commenter for the information. The department will provide additional information to providers on how to ensure they receive the increase reimbursement.

COMMENT #20: One commenter inquired about the timely response in implementing fee schedules.

RESPONSE #20: The department thanks the commenter for the question. The department will continue to communicate with providers and implement system changes to ensure timely implementation of fee schedule increases.

COMMENT #21: A commenter asked for a future review of all cuts in services and hours for some individuals.

RESPONSE #21: The department acknowledges the commenter's statement while recognizing that the subject is outside the scope of this rule change. The department will incorporate the feedback into the broader program improvement recommendation list.

COMMENT #22: One commenter acknowledged the difficulty of the reductions on all parties and thanked the department for having collaboration on how to move forward.

RESPONSE #22: The department appreciates the comment.

COMMENT #23: One commenter reminded the department that restoration funds should not be used to raise direct care wages, as that funding is available in HB 638.

RESPONSE #23: The department acknowledges the commenter's statement while recognizing that the subject is outside the scope of this rule change. The department will incorporate the feedback into the broader program improvement recommendation list.

COMMENT #24: One commenter stated trust needed to be restored with the department. Assisted Living is aging in place. House Bill (HB) 17 would have helped the industry with a rate increase but the department did not implement it.

RESPONSE #24: The department acknowledges the commenter's statement while recognizing that the subject is outside the scope of this rule change. The department will incorporate the feedback into the broader program improvement recommendation list.

COMMENT #25: Comments were received that assisted living providers should be included in the direct care wage increase of HB 638.

RESPONSE #25: The department acknowledges the commenter's statements while recognizing that the subject is outside the scope of this rule change. The department will incorporate the feedback into the broader program improvement recommendation list.

COMMENT #26: A commenter stated that the rule is not clear about funding; therefore it cannot be determined if the department is doing enough or what kind of funding is available as compared to what is distributed in this rule.

RESPONSE #26: The department acknowledges the commenter's statement. The department has explained the reasons for these rule changes and the funding utilized in the Statement of Reasonable Necessity in the Notice of Public Hearing on Proposed Amendment for this rule proposal.

COMMENT #27: A few comments were received about the adequacy of the assisted living rate and problems remain on how rates are determined.

RESPONSE #27: This rule notice does not address the adequacy of the rate for a specific service; the scope is to increase provider rates equally among provider types.

COMMENT #28: One commenter stated restricted access to Assisted Living is silly as it is a cost effective alternative.

RESPONSE #28: The department acknowledges the commenter's statement while recognizing that the subject is outside the scope of this rule change. The department will incorporate the feedback into the broader program improvement recommendation list.

COMMENT #29: A few commenters stated that adding Utilization Management for Substance Use Disorder (SUD) treatment burdens providers with administrative tasks rather than providing services to individuals. Additionally, one commenter stated that Utilization Management delays access to services for high need clients.

RESPONSE #29: The department acknowledges the commenter's statement while recognizing that the subject is outside the scope of this rule change. The department will incorporate the feedback into the broader program improvement recommendation list.

COMMENT #30: A few commenters thanked the department for agreeing to work with providers regarding targeted case management and stated that they would like to meet with the department to discuss options.

RESPONSE #30: The department appreciates the comment. The governor directed the department to create a plan for efficient and fiscally sound case management across Montana. Additional improvements to care/case management services across the Medicaid program are being analyzed by the department. The department looks forward to discussing existing and potential care/case management models with providers.

COMMENT #31: A few commenters stated that the department made a mistake in reimbursing group therapy and assessments for SUD at the same rate as group therapy and assessments for mental health. The commenter states that the lowering of the group therapy rate essentially closed intensive outpatient therapy for SUD.

RESPONSE #31: The department acknowledges the commenter's statement while recognizing that the subject is outside the scope of this rule change. The department will incorporate the feedback into the broader program improvement recommendation list.

COMMENT #32: A commenter thanked the department for restoring high-cost dental procedures but stated that it doesn't undo the harm that was caused by cutting these procedures in the first place to providers of dental services.

RESPONSE #32: The department acknowledges the commenter's statement.

COMMENT #33: One commenter stated that the harsh reality is that restoring the reimbursement for Developmental Disability Programs still leaves programs short, as they were short prior to the rate reductions. The commenter requests the governor and the department look closely at the quality services for developmentally delayed youth and adults in this state for the next legislative session.

RESPONSE #33: The department acknowledges the commenter's statement while recognizing the subject is outside the scope of this rule change. The department will incorporate this feedback into the broader program improvement recommendation list.

COMMENT #34: A few commenters requested additional information about when and how the rate restoration will be implemented.

RESPONSE #34: The department will communicate with Medicaid providers about exact details on this process on or after October 20, 2018, when these rule amendments are finalized.

COMMENT #35: One commenter stated it was the legislative intent for the CorCivic money to go into a state special revenue account, with \$15 million going to fire suppression and the balance to fund restoration of cuts. In addition, it was lined out in the bill what was meant by restoration, including the most vulnerable populations and the least restrictive environment. The commenter wishes the legislative intent was clearly articulated in this rule making. Another commenter expanded on this to state that it is not particularly clear which money and which funding sources are being spent

RESPONSE #35: The department acknowledges these comments while recognizing that this subject is outside the scope of this rule change.

5. With the exception of the changes in ARM 37.85.105(3)(e) and 37.86.1006 (restoring certain high-cost dental procedures), the department intends to apply these rule amendments retroactively to July 1, 2018. The department intends to apply the changes in 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 October 9, 2018.



BEFORE THE SECRETARY OF STATE  
OF THE STATE OF MONTANA

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

TO: All Concerned Persons

1. On September 7, 2018, the Secretary of State published MAR Notice No. 44-2-230 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 1813 of the 2018 Montana Administrative Register, Issue Number 17.
2. The Secretary of State has amended the above-stated rule as proposed.
3. No comments or testimony were received.

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

/s/ COREY STAPLETON  
Corey Stapleton  
Secretary of State

Dated this 9th day of October, 2018.

VOLUME NO. 57

OPINION NO. 3

CITIES AND TOWNS - The authority for the removal of a trustee appointed to the board of a free public library is a matter to be adopted and implemented by the board of trustees under its statutory duty to adopt bylaws and rules for the transaction of business and the governance of the library;

LIBRARIES – The authority for the removal of a trustee appointed to the board of a free public library is a matter to be adopted and implemented by the board of trustees under its statutory duty to adopt bylaws and rules for the transaction of business and the governance of the library;

STATUTORY CONSTRUCTION – A court should interpret a statute based on its plain language, neither inserting nor omitting language;

MONTANA CODE ANNOTATED – Title 22; Title 22, chapter 1, part 3; Title 22, chapter 1, part 7; Title 7, chapter 4; Title 7, chapter 4, part 41; sections 1-2-101, 1-2-102, 7-4-4103(4), 7-4-4303, 7-4-4303(2), 22-1-303(1), 22-1-308(1), 22-1-308(4), 22-1-308(5), 22-1-309(1), 22-1-402, 22-1-702(1), 22-1-706, 22-1-706(8), 35-1-217(2), 35-1-236(2).

HELD:           The authority for the removal of a trustee appointed to the board of a free public library is a matter to be adopted and implemented by the board of trustees under its statutory duty to adopt bylaws and rules for the transaction of business and the governance of the library.

September 27, 2018

Ms. Lori A. Harshbarger  
Town Attorney  
Town of Twin Bridges  
c/o 336 Waterloo Road  
Whitehall, MT 59759

Dear Ms. Harshbarger:

You have requested an Attorney General Opinion, which I have restated below:

After the creation of a free public library and the appointment of library trustees, under Title 22, chapter 1, part 3 of the Montana Code Annotated, what is the source of authority and the procedure to remove a trustee from office?

Twin Bridges' town council passed a resolution to create a free public library under Mont. Code Ann. § 22-1-303(1). The Town is presently in the process of drafting an interlocal agreement pertaining to the Twin Bridges Town Library. The library is not part of a public library district (Title 22, chapter 1, part 7, Mont. Code Ann.) and is not part of a library federation (Mont. Code Ann. § 22-1-402). The draft interlocal agreement allows the Mayor of Twin Bridges to remove an appointed library trustee "for cause" with the consent of the Town Council.

You inform me that an attorney with the State Library Board has suggested that the Town's proposed provision conflicts with "the statutes protecting Library trustees" within Title 22. Presumably that attorney was referring to Mont. Code Ann. § 22-1-706. You propose instead that the mayor may remove a free library trustee under the general powers granted mayors in Title 7, chapter 4 (Local Government Officers and Employees) and specifically under Mont. Code Ann. § 7-4-4303.

Your question involves statutory interpretation. A primary rule of statutory interpretation requires courts to apply plain and unambiguous statutes according to their express terms. Mont. Code Ann. § 1-2-101. A court cannot amend, omit or insert terms of a statute. *Id.* The intention of the legislature is to be pursued if possible. Mont. Code Ann. § 1-2-102.

"When the statute is plain, unambiguous, direct and certain, the statute speaks for itself and there is no need to resort to extrinsic means of interpretation." *In re Marriage of Christian*, 295 Mont. 352, 356, 983 P.2d 966, 968 (1999); *State ex rel. Cobbs v. Montana Dep't of Social and Rehabilitation Servs.*, 274 Mont. 157, 162, 906 P.2d 204, 207 (1995) ("The Court is to effectuate the intent of the Legislature, and if the Legislature's intent can be determined from the plain meaning of the words used in a statute, the courts may not go further and apply any other means of interpretation.").

Title 22, chapter 1, part 3 of the Montana Code Annotated—titled "Free Public Libraries"—provides for the creation of a public library in the manner chosen by Twin Bridges—by resolution of the governing body. Mont. Code Ann. § 22-1-303(1). Under that statute, the resolution must contain language "to the effect that a free public library is established under the provision of Montana laws relating to public libraries." *Id.*

Upon the establishment of a free public library, the mayor, with the advice and consent of the city council or city commissioners, shall appoint a board of five trustees for the library. Mont. Code Ann. § 22-1-308(1). Trustees serve in staggered terms, with each trustee limited to two five-year terms. *Id.*, § 22-1-308(4). Vacancies and replacements are made by appointment in the same manner as the original board. *Id.*, § 22-1-308(5). However, Title 22, chapter 1, part 3 does not provide a specific procedure by which a free public library trustee may be removed from that appointed office.

As noted above, Montana courts will not insert what has been omitted from a statute. Mont. Code Ann. § 1-2-101; *Sturchio v. Wausau Underwriters Ins. Co.*, 2007 MT 311, ¶ 15, 340 Mont. 141, 172 P.3d 1260. A reasonable reading of the statute, in its entirety, is one method of arriving at legislative intent. *Id.* Because Title 22, chapter 1, part 3 does not include a specific provision for the removal of trustees, I must look to the general authority provided within this part, unless another section of the Code specifically applies to free public libraries.

The removal of appointed trustees of a public library is not provided for by Title 7, chapter 4 as you contend. While Mont. Code Ann. § 7-4-4303(2) provides that the mayor may suspend or remove "nonelective officers" with the approval of the council, the "officers" referred to are the nonelected officers listed in part 41 that the mayor may appoint. See Mont. Code Ann. § 7-4-4103(4) (nonelected officers of towns include one clerk, one marshal, and "other officers necessary to carry out the provisions of *this title*." (emphasis added)). The board members of a public library established under Title 22 are not "necessary to carry out the provisions of" Title 7. When considering Title 7 in its entirety, the mayor's power to remove "nonelective officers" under § 7-4-4303(2) does not include the power to remove public library board trustees. To read this statute as broadly as you suggest would be to improperly insert something that the Legislature omitted, in violation of Mont. Code Ann. § 1-2-101. See also *University of Texas Southwestern Med. Ctr. v. Nassar*, 570 U.S. 338, 353 (2013) (when the language of a statute is clear "it would be improper to conclude that what [the Legislature] omitted from the statute is nevertheless within its scope.")).

Likewise, the provisions of Title 22, chapter 1, part 7 are not applicable. This section provides for the creation of a "public library district," including the *election* of a board of trustees for the library district. Mont. Code Ann. § 22-1-706. These elected library district trustees may only be removed "by a court of competent jurisdiction pursuant to state law governing the removal of elected officials." Mont. Code Ann. § 22-1-706(8). A public library created under part 3, and a library district created under Part 7, however, are different entities. A "public library" under Part 3 means "a library created under (a) [Part 3]; or (b) Title 7." Mont. Code Ann. § 22-1-301(3) (Part 7 is not listed as an alternative). Here you represent that the town created the free public library under Part 3. And Public library trustees are also appointed by the mayor, not elected. While a "public library" under Part 3 may be "conver[ted] . . . to a public library district," Mont. Code Ann. § 22-1-702(1), until "conversion" occurs, Part 3, not Part 7, controls.

I must look to Title 22, chapter 1, part 3, then, to locate authority regarding removal of a trustee. The power to determine the criteria for trustee removal lies with the library board of trustees. The board is specifically provided the authority to "adopt bylaws and rules for its own transaction of business and for the government of the library, not inconsistent with law." Mont. Code Ann. § 22-1-309(1). The "government of the library" generally includes removal of a trustee. Because the remainder of part 3 fails to specify the manner for removal of an appointed trustee, it necessarily may be implied that the procedure for removal of trustees is a matter to be determined by the board when pursuing its self-governance rulemaking obligation.

This result complies with Montana law regarding corporate governance. Generally, the removal of a board member, director, officer or agent of a corporation is governed by the corporation's bylaws, charter, certificate of incorporation or by statute. 19 C.J.S. Corporations §§ 536, 537 (2018). Montana provides corporations (both business and nonprofit) the broad authority to adopt bylaws intended to

regulate and manage the affairs of the corporation "consistent with law or the articles of incorporation." Mont. Code Ann. § 35-1-236(2) and § 35-1-217(2), respectively. Similarly, where "the legislature has failed to prescribe policy, local boards have inferred general powers to act." *School District v. Hughes*, 170 Mont. 267, 274, 552 P.2d 328, 332 (1976) (citing *Campana v. Calderhead*, 17 Mont. 548, 44 P. 83 (1896)). In the absence of specific authority to the contrary, a public library board may adopt procedures for the removal of trustees as part of its bylaws.

THEREFORE, IT IS MY OPINION:

The authority for the removal of a trustee appointed to the board of a free public library is a matter to be adopted and implemented by the board of trustees under its statutory duty to adopt bylaws and rules for the transaction of business and the governance of the library.

Sincerely,

/s/ Timothy C. Fox  
TIMOTHY C. FOX  
Attorney General

tcf/jss/jym

## **NOTICE OF FUNCTION OF ADMINISTRATIVE RULE REVIEW COMMITTEE**

### **Interim Committees and the Environmental Quality Council**

Administrative rule review is a function of interim committees and the Environmental Quality Council (EQC). These interim committees and the EQC have administrative rule review, program evaluation, and monitoring functions for the following executive branch agencies and the entities attached to agencies for administrative purposes.

#### **Economic Affairs Interim Committee:**

- Department of Agriculture;
- Department of Commerce;
- Department of Labor and Industry;
- Department of Livestock;
- Office of the State Auditor and Insurance Commissioner; and
- Office of Economic Development.

#### **Education and Local Government Interim Committee:**

- State Board of Education;
- Board of Public Education;
- Board of Regents of Higher Education; and
- Office of Public Instruction.

#### **Children, Families, Health, and Human Services Interim Committee:**

- Department of Public Health and Human Services.

#### **Law and Justice Interim Committee:**

- Department of Corrections; and
- Department of Justice.

#### **Energy and Telecommunications Interim Committee:**

- Department of Public Service Regulation.

**Revenue and Transportation Interim Committee:**

- Department of Revenue; and
- Department of Transportation.

**State Administration and Veterans' Affairs Interim Committee:**

- Department of Administration;
- Department of Military Affairs; and
- Office of the Secretary of State.

**Environmental Quality Council:**

- Department of Environmental Quality;
- Department of Fish, Wildlife and Parks; and
- Department of Natural Resources and Conservation.

**Water Policy Interim Committee (where the primary concern is the quality or quantity of water):**

- Department of Environmental Quality;
- Department of Fish, Wildlife and Parks; and
- Department of Natural Resources and Conservation.

These interim committees and the EQC have the authority to make recommendations to an agency regarding the adoption, amendment, or repeal of a rule or to request that the agency prepare a statement of the estimated economic impact of a proposal. They also may poll the members of the Legislature to determine if a proposed rule is consistent with the intent of the Legislature or, during a legislative session, introduce a bill repealing a rule, or directing an agency to adopt or amend a rule, or a Joint Resolution recommending that an agency adopt, amend, or repeal a rule.

The interim committees and the EQC welcome comments and invite members of the public to appear before them or to send written statements in order to bring to their attention any difficulties with the existing or proposed rules. The mailing address is P.O. Box 201706, Helena, MT 59620-1706.

## HOW TO USE THE ADMINISTRATIVE RULES OF MONTANA AND THE MONTANA ADMINISTRATIVE REGISTER

### Definitions:

**Administrative Rules of Montana (ARM)** is a looseleaf compilation by department of all rules of state departments and attached boards presently in effect, except rules adopted up to three months previously.

**Montana Administrative Register (MAR or Register)** is an online publication, issued twice-monthly, containing notices of rules proposed by agencies, notices of rules adopted by agencies, and interpretations of statutes and rules by the Attorney General (Attorney General's Opinions) and agencies (Declaratory Rulings) issued since publication of the preceding Register.

### Use of the Administrative Rules of Montana (ARM):

Known  
Subject

1. Consult ARM Topical Index.  
Update the rule by checking recent rulemaking and the table of contents in the last Montana Administrative Register issued.

Statute

2. Go to cross reference table at end of each number and title which lists MCA section numbers and department corresponding ARM rule numbers.



## RECENT RULEMAKING BY AGENCY

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies that have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through June 30, 2018. This table includes notices in which those rules adopted during the period March 30, 2018, through September 7, 2018, occurred and any proposed rule action that was pending during the past 6-month period. (A notice of adoption must be published within six months of the published notice of the proposed rule.) This table does not include the contents of this issue of the Montana Administrative Register (MAR or Register).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through June 30, 2018, this table, and the table of contents of this issue of the Register.

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

To aid the user, this table includes rulemaking actions of such entities as boards and commissions listed separately under their appropriate title number.

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| 2-59-571 | Annual Reporting for Consumer Loan Licensees - Escrow Business Reference Updates - Mortgage Definitions - Mortgage Renewal Fees - Escrow Funds Held by Mortgage Companies, p. 357, 822 |

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(Commissioner of Securities and Insurance)

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## EXECUTIVE BRANCH APPOINTEES AND VACANCIES

Section 2-15-108, MCA, passed by the 1991 Legislature, directed that all appointing authorities of all appointive boards, commissions, committees, and councils of state government take positive action to attain gender balance and proportional representation of minority residents to the greatest extent possible.

One directive of 2-15-108, MCA, is that the Secretary of State publish monthly in the ***Montana Administrative Register*** a list of executive branch appointees and upcoming vacancies on those boards and councils.

In this issue, appointments effective in September 2018 appear. Potential vacancies from November 1, 2018 through January 31, 2019, are also listed.

### IMPORTANT

Membership on boards and commissions changes constantly. The following lists are current as of October 1, 2018.

For the most up-to-date information of the status of membership, or for more detailed information on the qualifications and requirements to serve on a board, contact the appointing authority.

**EXECUTIVE BRANCH APPOINTEES FOR SEPTEMBER 2018**

<u>Appointee</u>	<u>Appointed By</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>21st Judicial District</b>			
Ms. Jennifer Boatwright Lint	Governor	Haynes	9/24/2018
Victor			1/4/2021
Qualifications (if required): None Stated			
<b>Alternative Health Care Board</b>			
Ms. Sheehan Edine-Rosen	Governor	Brown	9/24/2018
Victor			9/1/2022
Qualifications (if required): Midwife			
Ms. Jazmin R. Price	Governor	Danison	9/24/2018
Bozeman			9/1/2021
Qualifications (if required): Midwife			
Mrs. Ashly M. Tubbs	Governor	Lovitt-Abramson	9/24/2018
East Helena			9/1/2022
Qualifications (if required): Public member who is not a member of a profession regulated by the board			
<b>Board of Investments</b>			
Mr. James Michael Edwards	Governor	Bessette	9/7/2018
Helena			1/1/2021
Qualifications (if required): Representative of small business			

**EXECUTIVE BRANCH APPOINTEES FOR SEPTEMBER 2018**

<u>Appointee</u>	<u>Appointed By</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>Board of Veterinary Medicine</b>			
Dr. Tia Nelson	Governor	Hughes	9/7/2018
Helena			8/1/2023
Qualifications (if required): Licensed veterinarian			
<b>Building Codes Council</b>			
Ms. Deb Larson	Governor	Brothers	9/7/2018
Bozeman			10/1/2020
Qualifications (if required): Member of the general public			
<b>Burial Preservation Board</b>			
Mr. Morris Belgard	Governor	Reappointed	9/1/2018
Harlem			9/1/2020
Qualifications (if required): Representative of the Fort Belknap Indian Community			
Mr. Carl Davis	Governor	Reappointed	9/1/2018
Missoula			9/1/2020
Qualifications (if required): Representative of the Montana Archaeological Association			
Mr. Tom Escarcega	Governor	Four Star	9/1/2018
Poplar			9/1/2019
Qualifications (if required): Representative of the Fort Peck Assiniboine and Sioux Tribes			

**EXECUTIVE BRANCH APPOINTEES FOR SEPTEMBER 2018**

<u>Appointee</u>	<u>Appointed By</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>Burial Preservation Board Cont.</b>			
Ms. Skye Gilham	Governor	Reappointed	9/1/2018
Cut Bank			9/1/2019
Qualifications (if required): Physical anthropologist			
Mr. Gregory Kirkwood	Governor	Bullis	9/1/2018
Malta			9/1/2020
Qualifications (if required): Representative of the Montana Coroner's Association			
Mr. Richard Parenteau	Governor	Reappointed	9/1/2018
Great Falls			9/1/2020
Qualifications (if required): Representative of the Little Shell Tribe			
Dr. Stan Wilmoth	Governor	Platt	9/1/2018
Helena			9/1/2019
Qualifications (if required): Representative of the Montana state historical preservation office			
<b>Governor's Budget Director</b>			
Director Tom Livers	Governor	None Stated	9/6/2018
Helena			1/1/2021
Qualifications (if required): None Stated			

# **EXECUTIVE BRANCH APPOINTEES FOR SEPTEMBER 2018**

<u>Appointee</u>	<u>Appointed By</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>Mental Disabilities Board of Visitors</b>			
Mrs. Melissa Ancell	Governor	Reappointed	9/7/2018
Poplar			6/30/2019
Qualifications (if required): Consumer or family of consumer of developmental disability services			
Mr. Jeffrey Folsom	Governor	Reappointed	9/7/2018
Helena			6/30/2020
Qualifications (if required): Experience with treatment and welfare of adults with developmental disabilities			
Ms. Amy Camille Tipton	Governor	Reappointed	9/7/2018
Edgar			6/30/2020
Qualifications (if required): Treatment and welfare of adults with serious disabling mental illness			
<b>Montana ABLE (Achieving a Better Life Experience) Program Oversight Committee</b>			
Ms. Katalin Kallay Patterson	Governor	Reappointed	9/1/2018
Bozeman			9/1/2022
Qualifications (if required): Knowledge, skill, and experience in accounting			
<b>Montana State Workforce Innovation Board</b>			
Ms. Rebecca Morgan	Governor	Hall	9/7/2018
Missoula			7/27/2019
Qualifications (if required): Business Representative			



**EXECUTIVE BRANCH APPOINTEES FOR SEPTEMBER 2018**

<u>Appointee</u>	<u>Appointed By</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>Statewide Independent Living Council</b>			
Dr. Julie Melissa Lane Tudor	Governor	Martel	9/7/2018
Three Forks			12/1/2018
Qualifications (if required):	Person with disability		

**EXECUTIVE BRANCH VACANCIES – NOVEMBER 1, 2018 THROUGH JANUARY 31, 2019**

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
<b>13th Judicial District Judge</b>		
Mr. Donald L. Harris, Billings Qualifications (if required): None Stated	Governor	1/1/2019
Ms. Jessica Teresa Fehr, Billings Qualifications (if required): None Stated	Governor	1/1/2019
<b>Board of Aeronautics</b>		
Mr. Fred Lark, Lewistown Qualifications (if required): Representative of the General Public	Governor	1/1/2019
Mr. A Christopher Edwards, Billings Qualifications (if required): Active Fixed Base Operator	Governor	1/1/2019
<b>Board of Athletic Trainers</b>		
Dr. John David Michelotti, Helena Qualifications (if required): Physician licensed under Title 31, Chapter 3	Governor	1/1/2019
<b>Board of Behavioral Health</b>		
Ms. Mona Summer, Billings Qualifications (if required): Licensed Addiction Counselor	Governor	1/1/2019
Mr. Durand T. Bear Medicine, Browning Qualifications (if required): Licensed Addiction Counselor	Governor	1/1/2019

**EXECUTIVE BRANCH VACANCIES – NOVEMBER 1, 2018 THROUGH JANUARY 31, 2019**

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

**EXECUTIVE BRANCH VACANCIES – NOVEMBER 1, 2018 THROUGH JANUARY 31, 2019**

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

**EXECUTIVE BRANCH VACANCIES – NOVEMBER 1, 2018 THROUGH JANUARY 31, 2019**

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

**EXECUTIVE BRANCH VACANCIES – NOVEMBER 1, 2018 THROUGH JANUARY 31, 2019**

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

**EXECUTIVE BRANCH VACANCIES – NOVEMBER 1, 2018 THROUGH JANUARY 31, 2019**

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

**EXECUTIVE BRANCH VACANCIES – NOVEMBER 1, 2018 THROUGH JANUARY 31, 2019**

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



**EXECUTIVE BRANCH VACANCIES – NOVEMBER 1, 2018 THROUGH JANUARY 31, 2019**

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

**EXECUTIVE BRANCH VACANCIES – NOVEMBER 1, 2018 THROUGH JANUARY 31, 2019**

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
<b>Board of Respiratory Care Practitioners Cont.</b>		
Mr. Justin Lyle O'Brien, Libby	Governor	1/1/2019
Qualifications (if required): Member of the public who is not a member of a health care profession		
<b>Board of Social Work Examiners and Professional Counselors</b>		
Mr. Peter Degel, Helena	Governor	1/1/2019
Qualifications (if required): Professional Counselor		
Mr. B.A. "Doc" Tweedy, Helena	Governor	1/1/2019
Qualifications (if required): Public Representative		
Ms. Carol Staben Burroughs, Bozeman	Governor	1/1/2019
Qualifications (if required): Professional Counselor		
<b>Coal Board</b>		
Representative Ralph L. Lenhart, Glendive	Governor	1/1/2019
Qualifications (if required): Optometrist		
Ms. Marianne Roose, Eureka	Governor	1/1/2019
Qualifications (if required): District 1		

**EXECUTIVE BRANCH VACANCIES – NOVEMBER 1, 2018 THROUGH JANUARY 31, 2019**

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
<b>Coal Board Cont.</b>		
Mr. Tim Schaff, Fishtail Qualifications (if required): District 2, expertise in education	Governor	1/1/2019
Mrs. Veronica Small-Eastman, Lodge Grass Qualifications (if required): District 2 and expertise in education	Governor	1/1/2019
<b>Commission for Human Rights</b>		
Ms. Sheri Sprigg, Helena Qualifications (if required):	Governor	1/1/2019
Ms. Eldena Bear Don't Walk, Saint Ignatius Qualifications (if required): Public Representative	Governor	1/1/2019
<b>District Court Judge District 17 Department 1</b>		
Judge Yvonne Laird, Chinook Qualifications (if required): None Stated	Governor	1/1/2019
<b>District Court Judge District 5 Department 1</b>		
Judge Luke Michael Berger, Helena Qualifications (if required): None Stated	Governor	1/1/2019

**EXECUTIVE BRANCH VACANCIES – NOVEMBER 1, 2018 THROUGH JANUARY 31, 2019**

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
<b>District Court Judge, District 1, Department 1</b> Representative Mike Menahan, Helena Qualifications (if required): None Stated	Elected	1/1/2019
<b>District Court Judge, District 1, Department 2</b> Judge Jeffrey Sherlock, Helena Qualifications (if required): None Stated	Elected	1/1/2019
<b>District Court Judge, District 10, Department 1</b> Judge Jon Oldenburg, Lewistown Qualifications (if required): None Stated	Elected	1/1/2019
<b>District Court Judge, District 11, Department 1</b> Judge Ted O. Lympus, Kalispell Qualifications (if required): None Stated	Elected	1/1/2019
<b>District Court Judge, District 11, Department 2</b> Judge Robert B Allison, Kalispell Qualifications (if required): None Stated	Elected	1/1/2019
<b>District Court Judge, District 11, Department 3</b> Judge Heidi J. Ulbricht, Kalispell Qualifications (if required): None Stated	Elected	1/1/2019

**EXECUTIVE BRANCH VACANCIES – NOVEMBER 1, 2018 THROUGH JANUARY 31, 2019**

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
<b>District Court Judge, District 12, Department 1</b> Judge Dan Boucher, Havre Qualifications (if required): None Stated	Elected	1/1/2019
<b>District Court Judge, District 13, Department 1</b> Judge Ingrid Gayle Gustafson, Billings Qualifications (if required): None Stated	Elected	1/1/2019
<b>District Court Judge, District 13, Department 2</b> Judge Russell C. Fagg, Billings Qualifications (if required): None Stated	Elected	1/1/2019
<b>District Court Judge, District 13, Department 3</b> Judge Susan P Watters, Billings Qualifications (if required): None Stated	Elected	1/1/2019
<b>District Court Judge, District 14, Department 1</b> Judge Randal I Spaulding, Roundup Qualifications (if required): None Stated	Elected	1/1/2019
<b>District Court Judge, District 15, Department 1</b> Honorable David J. Cybulski, Plentywood Qualifications (if required): None Stated	Elected	1/1/2019

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<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
<b>District Court Judge, District 16, Department 1</b> Judge Gary L Day, Miles City Qualifications (if required): None Stated	Elected	1/1/2019
<b>District Court Judge, District 16, Department 2</b> Mr. Robert Huss, Bozeman Qualifications (if required): None Stated	Elected	1/1/2019
<b>District Court Judge, District 17, Department 1</b> Judge John C. McKeon, Malta Qualifications (if required): None Stated	Elected	1/1/2019
<b>District Court Judge, District 18, Department 1</b> Judge Holly Brown, Bozeman Qualifications (if required): None Stated	Elected	1/1/2019
<b>District Court Judge, District 18, Department 2</b> Judge Rienne Hartman McElyea, Bozeman Qualifications (if required): None Stated	Governor	1/1/2019
<b>District Court Judge, District 18, Department 3</b> Judge John C. Brown, Bozeman Qualifications (if required): None Stated	Elected	1/1/2019

**EXECUTIVE BRANCH VACANCIES – NOVEMBER 1, 2018 THROUGH JANUARY 31, 2019**

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
<b>District Court Judge, District 2, Department 1</b> Judge Kurt Krueger, Butte Qualifications (if required): None Stated	Elected	1/1/2019
<b>District Court Judge, District 2, Department 2</b> Representative Brad Newman, Butte Qualifications (if required): None Stated	Elected	1/1/2019
<b>District Court Judge, District 20, Department 2</b> Judge Deborah Kim Christopher, Polson Qualifications (if required): None Stated	Elected	1/1/2019
<b>District Court Judge, District 22, Department 1</b> Judge Blair Jones, Columbus Qualifications (if required): None Stated	Elected	1/1/2019
<b>District Court Judge, District 3, Department 1</b> Judge Ray J Dayton, Anaconda Qualifications (if required): None Stated	Elected	1/1/2019
<b>District Court Judge, District 4, Department 1</b> Judge Ed McLean, Missoula Qualifications (if required): None Stated	Elected	1/1/2019

**EXECUTIVE BRANCH VACANCIES – NOVEMBER 1, 2018 THROUGH JANUARY 31, 2019**

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
<b>District Court Judge, District 4, Department 2</b> Honorable Robert L. Deschamps III, Missoula Qualifications (if required): None Stated	Elected	1/1/2019
<b>District Court Judge, District 4, Department 3</b> Judge John W Larson, Missoula Qualifications (if required): None Stated	Elected	1/1/2019
<b>District Court Judge, District 5, Department 1</b> Honorable Loren Tucker, Virginia City Qualifications (if required): None Stated	Elected	1/1/2019
<b>District Court Judge, District 6, Department 1</b> Judge Brenda Gilbert, Livingston Qualifications (if required): None Stated	Elected	1/1/2019
<b>District Court Judge, District 8, Department 1</b> Judge Greg Pinski, Great Falls Qualifications (if required): None Stated	Elected	1/1/2019
<b>District Court Judge, District 8, Department 2</b> Judge Julie Macek, Great Falls Qualifications (if required): None Stated	Elected	1/1/2019



**EXECUTIVE BRANCH VACANCIES – NOVEMBER 1, 2018 THROUGH JANUARY 31, 2019**

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
<b>District Court Judge, District 8, Department 3</b> Judge Kenneth R. Neill, Belt Qualifications (if required): None Stated	Elected	1/1/2019
<b>District Court Judge, District 9, Department 1</b> Judge Robert G. Olson, Cut Bank Qualifications (if required): None Stated	Elected	1/1/2019
<b>Economic Development Advisory Council</b> Ms. Shalon Hastings, Helena Qualifications (if required): Montana Business Assistance Connection Region Representative	Governor	1/1/2019
<b>Fish and Wildlife Commission</b> Mr. Logan Brower, Scobey Qualifications (if required): District 4	Governor	1/1/2019
Mr. Richard Kerstein, Billings Qualifications (if required): District 4 representative	Governor	1/1/2019
Mr. Dan Vermillion, Livingston Qualifications (if required): District 2 representative	Governor	1/1/2019
<b>Hard-Rock Mining Impact Board</b> Ms. Marianne Roose, Eureka Qualifications (if required): District 1 impact area	Governor	1/1/2019

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<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
<b>Hard-Rock Mining Impact Board Cont.</b>		
Commissioner Dolores Plumage, Chinook Qualifications (if required): District 2 impact area	Governor	1/1/2019
Ms. Donna von Nieda, Nye Qualifications (if required): District 1 impact area	Governor	1/1/2019
Ms. Jane Weber, Great Falls Qualifications (if required): Person when appointed to the board is an elected County Commissioner	Governor	1/1/2019
<b>Information Technology Board</b>		
Commissioner Chris Mehl, Bozeman Qualifications (if required): Member representing local government	Governor	1/1/2019
Commissioner Galen Hollenbaugh, Helena Qualifications (if required): Director of a State Agency	Governor	1/1/2019
<b>Judicial Nomination Commission</b>		
Representative Hal Harper, Helena Qualifications (if required): Public Representative	Governor	1/1/2019
<b>Labor-Management Advisory Council</b>		
Lt. Governor Mike Cooney, Helena Qualifications (if required): None Stated	Governor	12/31/2018

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<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
<b>Labor-Management Advisory Council Cont.</b>		
Mr. Don Judge, Helena Qualifications (if required): Representing employees	Governor	12/31/2018
Mr. Bill Dahlgren, Missoula Qualifications (if required): Montana Chamber of Commerce	Governor	12/31/2018
Mr. Larry Jones, Missoula Qualifications (if required): Representative of employers	Governor	12/31/2018
Mr. Doug Buman, Seattle, WA Qualifications (if required): Representing Employees	Governor	12/31/2018
Ms. Annette Hoffman, Billings Qualifications (if required): Representing employers	Governor	12/31/2018
Mr. Chris Cavazos, Helena Qualifications (if required): Representing employees	Governor	12/31/2018
Mr. Eric Strauss, Helena Qualifications (if required): Ex-officio Member	Governor	12/31/2018
Mr. Lance Zanto, Helena Qualifications (if required): Representing employers	Governor	12/31/2018
Mr. Marvin Jones, Great Falls Qualifications (if required): Employer representing self-insurers	Governor	12/31/2018

**EXECUTIVE BRANCH VACANCIES – NOVEMBER 1, 2018 THROUGH JANUARY 31, 2019**

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
<b>Labor-Management Advisory Council Cont.</b>		
Mr. Jim Larson, Billings Qualifications (if required): Representing employees	Governor	12/31/2018
Mr. Al Smith, Helena Qualifications (if required): Employees chosen by the Montana Trial Lawyers Association	Governor	12/31/2018
Mr. Alan Ekblad, Helena Qualifications (if required): Employers	Galen Hollenbaugh	12/31/2018
Ms. Vicki Evans, Great Falls Qualifications (if required): Self-Insurers	Governor	12/31/2018
Mr. Adam Haight, Helena Qualifications (if required): Employees	Governor	12/31/2018
<b>Montana Alfalfa Seed Committee</b>		
Mr. Dallas Steiger, Hysham Qualifications (if required): Actively engaged in the growing of alfalfa seed	Governor	12/1/2018
Dr. Laura Burkle, Bozeman Qualifications (if required): Actively engaged in the growing of alfalfa seed	Governor	12/1/2018
<b>Montana Children's Trust Fund Board</b>		
Ms. Tracy Moseman, Helena Qualifications (if required): State government agency involved in education	Governor	1/1/2019

**EXECUTIVE BRANCH VACANCIES – NOVEMBER 1, 2018 THROUGH JANUARY 31, 2019**

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
<b>Montana Children's Trust Fund Board Cont.</b> Mr. James Scott Wheeler, Kalispell Qualifications (if required): Public Member	Governor	1/1/2019
<b>Montana Council on Developmental Disabilities</b> Ms. Connie Wethern, Glasgow Qualifications (if required): Secondary consumer	Governor	1/1/2019
Ms. Janet Carlson, Malta Qualifications (if required): Primary Consumer	Governor	1/1/2019
Ms. Tarra Thomas, Billings Qualifications (if required): Secondary Consumer	Governor	1/1/2019
Ms. Heather Juvan, Livingston Qualifications (if required): Primary Consumer	Governor	1/1/2019
<b>Montana Facility Finance Authority</b> Mr. Joe Quilici, Butte Qualifications (if required): Public Representative	Governor	1/1/2019
Mr. Matthew B. Thiel, Missoula Qualifications (if required): Attorney	Governor	1/1/2019
Ms. Kimberly Rickard, Helena Qualifications (if required): Public Representative	Governor	1/1/2019

**EXECUTIVE BRANCH VACANCIES – NOVEMBER 1, 2018 THROUGH JANUARY 31, 2019**

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

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

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



**EXECUTIVE BRANCH VACANCIES – NOVEMBER 1, 2018 THROUGH JANUARY 31, 2019**

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
<b>Public Safety Officer Standards and Training Council Cont.</b>		
Mr. William Dial, Whitefish Qualifications (if required): Board of Crime Control Representative	Governor	1/1/2019
Mr. Lewis G. Matthews, Wolf Point Qualifications (if required): Tribal Law Enforcement	Governor	1/1/2019
Mr. Jesse Slaughter, Great Falls Qualifications (if required): Local Law Enforcement	Governor	1/1/2019
Ms. Tia Rikel Robbin, Kalispell Qualifications (if required): Citizen At-Large	Governor	1/1/2019
Ms. Gina Dahl, Havre Qualifications (if required): County Attorney	Governor	1/1/2019
Mr. Ryan L. Oster, Hamilton Qualifications (if required): Chief of Police	Governor	1/1/2019
<b>Rail Service Competition Council</b>		
Mr. Dylan Boyle, Whitefish Qualifications (if required): Person with substantial knowledge/experience related to rail passenger service by Amtrak	Governor	1/1/2019
Mr. Craig A. Gilchrist, Glasgow Qualifications (if required): Substantial knowledge and experience related to Class II railroads	Governor	1/1/2019

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<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
<b>State Employee Group Benefits Advisory Council</b>		
Mr. Doug Mitchell, Helena Qualifications (if required): State Employee Representative	Director (Commerce)	12/31/2018
Ms. Mary Dalton, Helena Qualifications (if required): State Employee Representative	Director (DPHHS)	12/31/2018
Ms. Diane Fladmo, Helena Qualifications (if required): State Employees and Labor Organizations	Director (MEA-MFT)	12/31/2018
Mr. John McEwen, Helena Qualifications (if required): Retired State Employees' Representative	Director	12/31/2018
Mr. Rex Renk, Helena Qualifications (if required): Judiciary Branch	Director (Judiciary)	12/31/2018
Senator Jim Keane, Butte Qualifications (if required): Legislature Representative	Director (Legislature)	12/31/2018
Ms. Amy Sassano, Helena Qualifications (if required): State Employee Representative	Director (Gov's Office)	12/31/2018
Mr. Quinton Edward Nyman, Helena Qualifications (if required): State Employees and Labor Organizations	Director (MPEA)	12/31/2018
Ms. Marilyn Bartlett, Helena Qualifications (if required): Ex-officio Member Representing the Department of Administration	Director (Administration)	12/31/2018

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<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
<b>State Employee Group Benefits Advisory Council Cont.</b>		
Ms. Julie Flynn, Helena Qualifications (if required): State Employee Representative	Director (Commerce)	12/31/2018
Ms. Susan Fox, Helena Qualifications (if required): Legislative Branch	Director (Leg. Branch)	12/31/2018
Ms. Tami Gunlock, Helena Qualifications (if required): State Employees and Labor Organizations	Director (Administration)	12/31/2018
Ms. Peggy MacEwen, Helena Qualifications (if required): State Employee Representative	Director (DEQ)	12/31/2018
Ms. Connie Winner, Helena Qualifications (if required): State Employee Representative	Director	12/31/2018
<b>State Lottery Commission</b>		
Mr. Leo Prigge, Butte Qualifications (if required): Certified Public Accountant	Governor	1/1/2019
<b>State Parks and Recreation Board</b>		
Senator Thomas E. "Tom" Towe, Billings Qualifications (if required): District 5	Governor	1/1/2019
Director Mary Sexton, Helena Qualifications (if required): District 3	Governor	1/1/2019

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<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
<b>State Parks and Recreation Board Cont.</b> Mr. Rockwood Scott Brown, Billings Qualifications (if required): District 5 member	Governor	1/1/2019
<b>State Tax Appeal Board</b> Mr. Dave McAlpin, Missoula Qualifications (if required): Public Representative	Governor	1/1/2019
<b>Statewide Independent Living Council</b> Ms. Barbara Louise Davis, Missoula Qualifications (if required): Public Representative	Governor	12/1/2018
Mr. Mitchell Ray McCabe, Missoula Qualifications (if required): Person with a disability employed by state agency or Center for Independent Living	Governor	12/1/2018
Dr. Julie Melissa Lane Tudor, Three Forks Qualifications (if required): Person with disability	Governor	12/1/2018
<b>Transportation Commission</b> Representative Carol Lambert, Broadus Qualifications (if required): District 4 Representative	Governor	1/1/2019

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<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
<b>Transportation Commission Cont.</b> Mr. Daniel Belcourt, Missoula Qualifications (if required): District 1 Representative	Governor	1/1/2019
<b>Unemployment Insurance Appeals Board</b> Mr. Bruce Campbell, Helena Qualifications (if required): Public Representative	Governor	1/1/2019

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**COREY STAPLETON**  
SECRETARY OF STATE

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