

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 9

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 The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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 print 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) 444-2055.

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

In the matter of the amendment of)	NOTICE OF PROPOSED
ARM 2.43.3501 pertaining to the)	AMENDMENT
adoption by reference of the State of)	
Montana Public Employee Defined)	NO PUBLIC HEARING
Contribution Plan Document)	CONTEMPLATED

TO: All Concerned Persons

1. On June 27, 2016, the Public Employees' Retirement Board proposes to amend the above-stated rule.

2. The Public Employees' Retirement Board will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Public Employee Retirement Administration no later than 5:00 p.m. on May 27, 2016, to advise us of the nature of the accommodation that you need. Please contact Kris Vladic, Public Employee Retirement Administration, P.O. Box 200131, Helena, Montana, 59620-0131; telephone (406) 444-2578; fax (406) 444-5428; TDD/Montana Relay Service (406) 444-1421; or e-mail kvladic@mt.gov.

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

2.43.3501 ADOPTION OF DEFINED CONTRIBUTION PLAN DOCUMENT AND TRUST AGREEMENT (1) remains the same.

(a) State of Montana Public Employee Defined Contribution Plan Document (~~August 2015 edition~~) (December 2015 edition) that was approved by the board on ~~August 13, 2015~~, December 22, 2015 and subsequently amended April 14, 2016 retroactive to December 22, 2015 and describes the terms and conditions related to the operation and administration of the plan; and

(b) through (2) remain the same.

AUTH: 19-3-2104, MCA

IMP: 19-3-2102, MCA

REASON: The Public Employees' Retirement Board, as administrator of the Public Employees' Retirement System Defined Contribution Plan (DCRP), determined to revise the Defined Contribution Plan Document to incorporate recent Montana legislative changes and Internal Revenue Code revisions related to the payment of accounts to beneficiaries. The changes ensure that the DCRP remains a qualified retirement plan under IRS. The revised plan document was reviewed and approved by the board at its December 22, 2015 meeting. Subsequent recommended revisions were approved by the board at its April 14, 2016 meeting by the adoption

of Amendment One to the State of Montana Public Employee Defined Contribution Plan retroactive to December 22, 2015.

Because the Public Employees' Retirement Board determined to adopt the original plan document by reference, 2-4-307(4), MCA requires that changes to the document also be adopted by reference. Therefore it is necessary to amend the rule that adopts the plan document to indicate the version of the plan document being adopted by reference.

The plan documents are available on the board's web page at mpera.mt.gov.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to: Public Employee Retirement Administration, P.O. Box 200131, Helena, Montana, 59620-0131; telephone (406) 444-3154; fax (406) 444-5428; or e-mail mpera@mt.gov, and must be received no later than 5:00 p.m., June 3, 2016.

5. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to Kris Vladic at the above address no later than 5:00 p.m., June 3, 2016.

6. If the agency receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 228 persons based on 2,284 Public Employees' Retirement System Defined Contribution Retirement Plan participants.

7. The Public Employees' Retirement Board 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 Public Employees' Retirement Board.

8. An electronic copy of this proposal notice is available through the Secretary of State's web site at <http://sos.mt.gov/ARM/Register>. The Secretary of State strives to make the electronic copy of this notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed

text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the Secretary of State works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

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

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

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

/s/ Sheena Wilson
Sheena Wilson
President
Public Employees' Retirement Board

Certified to the Secretary of State April 25, 2016

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

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

TO: All Concerned Persons

1. On June 27, 2016, the Public Employees' Retirement Board proposes to amend the above-stated rules.

2. The Public Employees' Retirement Board will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Montana Public Employee Retirement Administration no later than 5:00 p.m. on May 27, 2016, to advise us of the nature of the accommodation that you need. Please contact Kris Vladic, Montana Public Employee Retirement Administration, P.O. Box 200131, Helena, Montana, 59620-0131; telephone (406) 444-2578; fax (406) 444-5428; TDD (406) 444-1421; or e-mail kvladic@mt.gov.

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

2.43.3502 ADOPTION OF INVESTMENT POLICY STATEMENT AND STABLE VALUE FUND INVESTMENT GUIDELINES (1) The board adopts and incorporates by reference the State of Montana 401(a) Defined Contribution Plan Investment Policy Statement approved by the board on ~~June 11, 2015~~ April 14, 2016. The Investment Policy Statement provides investment guidelines for the defined contribution plan, a long-term retirement-savings vehicle that permits participants to invest employer and participant contributions on a tax-deferred basis. The investment guidelines help the board to meet its fiduciary responsibilities to evaluate and positively influence the direction of the plan and its investments for the benefit of the plan participants and beneficiaries.

(2) and (3) remain the same.

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

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

Investment Policy Statement approved by the board on ~~June 11, 2015~~ April 14, 2016. The Investment Policy Statement provides investment guidelines for the 457(b) deferred compensation plan, a supplemental retirement-savings vehicle that permits participants to invest on either a pre-tax or a tax-deferred basis. The investment guidelines help the board to meet its fiduciary responsibilities to evaluate and positively influence the direction of the plan and its investments for the benefit of the plan participants and beneficiaries.

(2) and (3) remain the same.

AUTH: 19-50-102, MCA

IMP: 19-50-102, MCA

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

Pursuant to the recommendation of the board's investment consultant, Buck Consultants, and the board's advisory committee, the Employee Investment Advisory Council, the board amended the investment policy statements on April 14, 2016 to clarify that (1) mutual funds retained or added to each plan may have an expense ratio that exceeds the mean for the fund's peer group if revenue sharing fees are returned to the fund participants; and a non-institutional share class may be added or retained in the plans if the fee rebate results in a lower net fee to the fund participants.

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

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

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to: Montana Public Employee Retirement Administration, P.O. Box 200131, Helena, Montana, 59620-0131; telephone (406) 444-3154; fax (406) 444-5428; or e-mail mpera@mt.gov, and must be received no later than 5:00 p.m., June 3, 2016.

5. If persons who are directly affected by the proposed amendments wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any

written comments they have to Kris Vladic at the above address no later than 5:00 p.m., June 3, 2016.

6. If the Public Employees' Retirement Board receives requests for a public hearing on the proposed amendments from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed amendment; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 1,099 persons based on approximately 2,284 participants in the Defined Contribution Retirement Plan and 8,708 participants in the Deferred Compensation Plan as of June 30, 2015, for a total of 10,992 participants.

7. The Public Employees' Retirement Board 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 PER Board.

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

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

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

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

/s/ Sheena Wilson
Sheena Wilson
President
Public Employees' Retirement Board

Certified to the Secretary of State April 25, 2016

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the adoption of New) NOTICE OF PUBLIC HEARING ON
Rules I through III and amendment of) PROPOSED ADOPTION AND
ARM 4.16.201 and 4.16.509 pertaining) AMENDMENT
to growth through agriculture (GTA))

TO: All Concerned Persons

1. On June 3, 2016, at 10:00 a.m., the Department of Agriculture will hold a public hearing in Room 225 of the Scott Hart Building at 302 N. Roberts, Helena, Montana, to consider the proposed adoption and amendment of the above-stated rules.

2. The Department of Agriculture will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Agriculture no later than 5:00 p.m. on May 16, 2016, to advise us of the nature of the accommodation that you need. Please contact Benjamin Tiller, Department of Agriculture, P.O. Box 200201, Helena, Montana, 59620-0201; telephone (406) 444-0132; fax (406) 444-9442; or e-mail btiller@mt.gov.

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

NEW RULE I COUNCIL REVIEW PROCESS PRIOR TO LOAN OR GRANT

(1) Prior to making an initial loan or grant determination, the council shall:

(a) direct the department to ensure applications are completed as required by ARM 4.16.503;

(b) review all complete applications and the accompanying materials required by ARM 4.15.503;

(c) determine whether each proposed project meets the requirements of 90-9-308 and 90-9-311, MCA;

(d) consider information provided by the applicant to the council at a meeting designated for such purpose;

(e) determine whether grant applicants meet the requirements of 90-9-310, MCA; and

(f) rank the projects according to the information reviewed.

(2) After the council has reviewed and ranked the projects, it shall make funding decisions based on eligibility, funds availability, and project rankings.

(3) The council may provide preference to projects within targeted areas.

AUTH: 90-9-202, MCA

IMP: 90-9-202, MCA

REASON: The council is required by 90-9-203, MCA to adopt rules to be followed by the council in its review process prior to making a loan or grant. The proposed process ensures that the Department of Agriculture may continue to aid the council in administrative functions, while the funding determinations are made by the council. It provides potential loan and grant applicants with a clear explanation of the council's decision-making process.

NEW RULE II POST-DISBURSEMENT MONITORING OF LOANS AND GRANTS (1) Each recipient of a loan or grant must provide the council with the following reports:

- (a) semiannual reports due on July 31 and January 31 of each year in which a loan or grant is active; and
 - (b) a final report due within 30 days of completion of the project.
- (2) Each report shall describe, at a minimum:
- (a) project objectives achieved;
 - (b) expenditures of grant and/or loan funds;
 - (c) receipt of matching funds;
 - (d) economic impact of the project;
 - (e) projected future activities; and
 - (f) other information deemed necessary by the council or department to adequately monitor or administer the project.
- (3) The department shall monitor the reports for compliance with rules, statutes, and contracts, and report any issues of noncompliance to the council at the second and fourth quarterly meeting of each fiscal year.
- (4) If the council determines after review of the department report that a loan or grant requires additional monitoring, it shall direct the department to gather necessary information and report back to the council at the next regularly scheduled meeting.
- (5) The council may, at a loan or grant recipient's request, defer or forgive a loan and any accrued interest if the council determines that such action is in the best interest of the recipient, does not conflict with the purposes of the Act, and will not jeopardize the financial integrity of the growth through agriculture program.
- (6) The council will not consider a request to defer or forgive a loan and any accrued interest unless the request is received prior to six months after the recipient is first notified by the department that the recipient has missed an obligation under the loan or grant contract.

AUTH: 90-9-203, MCA
IMP: 90-9-202, 90-9-203, MCA

REASON: The proposed rule is required by 90-9-203, MCA. The rule sets forth minimum reporting requirements for all grant and loan recipients. These reports are designed to enable the department and the council to gather the information necessary to ensure council funds are used for the intended purposes. The reports will also aid the department in gathering statistics on the impact council grants and loans have on the recipient companies. The rule also addresses situations in which recipients are unable to meet their obligations under the grant or

loan contracts. The rule ensures that delinquent accounts are brought to the attention of the council, which then has the authority to forgive the recipient's obligation or to direct the department to continue collection.

NEW RULE III FAILURE TO MEET CONDITIONS OF LOAN OR GRANT

- (1) If a recipient of a loan or grant fails to meet a condition of the loan or grant, the department shall notify the recipient in writing.
- (2) The council shall consider the reported default at a regularly scheduled quarterly meeting and consider whether to:
 - (a) grant requests for forgiveness made pursuant to [NEW RULE II];
 - (b) forgive performance of a grant obligation;
 - (c) defer performance obligations;
 - (d) modify the loan or grant agreement;
 - (e) convert a grant to a loan;
 - (f) convert a loan or grant to the default interest rate; or
 - (g) take other action not inconsistent with statute or rule.

AUTH: 90-9-203, MCA
IMP: 90-9-202, 90-9-203, MCA

REASON: The proposed rule is required by 90-9-203, MCA. The rule is necessary to inform loan or grant recipients of the council's remedies if the recipient fails to comply with the loan or grant terms. It sets forth the most likely forms of recourse, however does not limit the council's options if the chosen recourse is consistent with current rules and laws.

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

4.16.201 DEFINITIONS (1) through (1)(b) remain the same

(2) "Matching Funds" means both cash or in-kind match. In-kind match is calculated at the actual market price of the services rendered but no more than 25 dollars an hour. All in-kind match(es) must be project-specific as opposed to the normal operation of an ongoing business. The credit for in-kind match is limited to ten percent of the total match proposed.

AUTH: ~~90-9-202~~ 90-9-203, MCA
IMP: ~~90-9-902~~ 90-9-203, MCA

REASON: The council has determined that in-kind match should be limited to ensure that the distinction between in-kind match and payments for "normal operation of an ongoing business" is maintained. The limitation also helps to ensure the financial success of the applicants by helping ensure the recipient adds tangible assets and outside, nonpayroll resources to its operation.

4.16.509 APPLICATION LIMIT (1) remains the same.

(2) A company may not receive more than \$100,000 in grant funding in any 18-month period.

AUTH: 90-9-203, MCA
IMP: 90-9-203, MCA

REASON: The council is required to maintain a rule limiting the amount of loans or grants that any company may receive or apply for over a given period of time. The current rule addresses the number of applications within a given period of time, however it does not address a dollar amount. Section 90-9-309, MCA, provides the limits contemplated with respect to loans. That statute limits the total loan amount to \$100,000 in a nine-month period. However, similar restrictions do not appear in the grant section found at 90-9-310, MCA. That statute sets a maximum grant amount at \$50,000. However, there is no time restriction. The council has determined that applying a limit to the dollar amount of grants within a given time period is necessary to meet the requirements of 90-9-203, MCA. Given the riskier nature of grant funding when compared to loan funding, the council has determined that no more than \$100,000 in grant funding may be given to one company within any 18-month period. This will ensure that grant recipients do not become dependent on grant funding to cash flow their operations.

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: Benjamin Tiller, Department of Agriculture, P.O. Box 200201, Helena, Montana, 59601; telephone (406) 444-0132; fax (406) 444-9442; or e-mail btiller@mt.gov, and must be received no later than 5:00 p.m., June 3, 2016.

6. Benjamin Tiller, Department of Agriculture, 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. An electronic copy of this proposal notice is available through the Secretary of State's web site at <http://sos.mt.gov/ARM/Register>. The Secretary of State strives to make the electronic copy of the notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the Secretary of State works to keep its web site accessible at all times, concerned persons should be aware that the web

site may be unavailable during some periods, due to system maintenance or technical problems.

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

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

/s/ Benjamin C. Tiller
Benjamin C. Tiller
Rule Reviewer

/s/ Ron de Yong
Ron de Yong
Director
Montana Department of Agriculture

Certified to the Secretary of State April 25, 2016.

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 and 8.111.603) PROPOSED AMENDMENT
pertaining to the low income housing)
tax credit program)

TO: All Concerned Persons

1. On May 26, 2016, at 10:00 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 Department of Commerce no later than 5:00 p.m. on May 20, 2016, to advise us of the nature of the accommodation that you need. Please contact Bonnie Martello, Paralegal, 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.

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 "~~Montana~~ Montana Housing Credit Program 2016 2017 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 ~~2016~~ 2017, 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.

(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 update the Qualified Allocation Plan (QAP) definition to reference the 2017 Qualified Allocation Plan for the Montana Housing Credit Program.

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 2017 QAP. Thereafter, at its February 8, 2016 meeting, the board considered and approved public notice and distribution of the proposed 2017 QAP. After public notice of the proposed 2017 QAP and of the opportunity for public comment was published and distributed, a public hearing on the proposed 2017 QAP was held on February 17, 2016 and written comments were also received. At its March 14, 2016 meeting, after considering all written and oral comments on the proposed 2017 QAP, staff recommendations, additional public comment and various proposed revisions in response to comments, the board approved the 2017 QAP for submission to and approval by the Montana Governor, as required by the federal tax credit statute, 26 U.S.C. § 42. The 2017 QAP has been submitted to the Governor for approval. Adoption of the proposed rule is contingent upon the Governor's approval of the 2017 QAP.

A copy of the 2017 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.

8.111.603 HOUSING CREDIT ALLOCATION PROCEDURE

(1) and (2) remain the same.

(3) All projects wishing to apply for housing credits must submit a letter of intent in accordance with the requirements of the QAP.

(a) At a board the board's meeting in the month after the letter of intent submission deadline and before the application submission deadline, board staff will present letters of intent to the board and the board will provide an opportunity for applicants to make a presentation regarding their projects and letters of intent and for public comment on proposed projects and letters of intent, all according to the provisions of the QAP. The board may ask questions of applicants and discuss proposed projects for purposes of assisting the board in determining which projects it will invite to submit applications and assisting applicants in presenting better applications, but there will be no applicant presentations and the board will not make any award determination at this meeting. Board such questions, answers comments, and discussion are for purposes of assisting applicants in presenting better applications and shall not be binding upon the board in any later award determination or other board process.

(b) After considering the letters of intent, presentations, questions and answers and discussion, the board will select those projects that it will invite to

submit applications, in accordance with the provisions of the QAP. Each project so selected by the board will be deemed invited to submit an application. An application may be submitted only for a project invited by the board to submit an application and all other applications will be returned without consideration.

(4) Following submission of applications, board staff will 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 evaluated for the amount of housing credits needed for feasibility and long-term viability and will be further evaluated and scored according to the development evaluation criteria of the QAP. The points awarded to each project pursuant to the evaluation criteria of the QAP are for the purposes specified in (9), and not for purposes of ranking projects for allocation of housing credits. Following application evaluation and scoring, board staff may provide recommendations to the board for allocation of housing credits to qualifying projects.

(5) ~~After~~ At the board's meeting in the month of application submission, the board will provide an opportunity for applicants to make a presentation to the board regarding their projects and applications board staff will present applications to the board and the board will provide an opportunity for public comment on proposed projects and applications, all according to the provisions of the QAP. The board may ask questions of applicants and discuss proposed projects but there will be no applicant presentations.

(6) Copies of applications and other information submitted to the board in connection with applications are available to other applicants for housing credit projects and members of the public to the extent provided and according to the procedures specified in the QAP board's information request and release policy, available on the board's web site at www.housing.mt.gov.

(7) and (8) remain the same.

(9) The board will select those projects to receive an award of housing credits that it determines best meet the most pressing housing needs of low income people within the state of Montana, taking into consideration the selection criteria as defined in the QAP. The awarding of points to projects pursuant to the development evaluation criteria of the QAP is for purposes of determining that the projects meet at least the minimum criteria required for further consideration under the QAP and to assist the board in evaluating and comparing projects. Development evaluation criteria scoring is only one of several considerations taken into account by the board and does not control the selection of projects that will receive an award of housing credits. In addition to any other selection criteria specified in the QAP, the board may consider the following factors in selecting projects for an award of housing credits to qualifying projects:

- (a) the geographical distribution of housing credit projects;
- (b) the rural or urban location of the projects;
- (c) the overall income levels targeted by the projects;
- (d) the need for affordable housing in the community, including but not limited to current vacancy rates;
- (e) rehabilitation of existing low income housing stock;
- (f) sustainable energy savings initiatives;

(g) financial and operational ability of the applicant to fund, complete, and maintain the project through the extended use period;

(h) past performance of an applicant in initiating and completing housing tax credit projects;

(i) cost of construction, land, and utilities, including but not limited to costs/credits per square foot/unit;

(j) the project is being developed in or near a historic downtown neighborhood; and/or

(k) the frequency of awards in the respective areas where projects are located.

AUTH: 90-6-106, MCA

IMP: 90-6-104, MCA

REASON: The proposed amendments to ARM 8.111.603 are necessary to specify the purpose, procedure, and criteria for board consideration of the housing credit letter of intent, and the factors that may be considered in an award of housing credits.

In recent housing credit award rounds, the number of applications submitted and the housing credit dollars requested have greatly exceeded the number of projects that could be funded and the housing credits available for award. Very considerable resources must be expended by applicants to develop and prepare a complete housing credit application and by board staff to evaluate, underwrite, and score such applications, yet only a small number of applicant projects receive an award of credits.

Accordingly, the board has determined that it is in the best interests of the program and applicants to adopt a process that screens proposed projects through the letter of intent process and reduces the number of projects expending the resources to submit full applications. Letters of intent will be required to include a market or minimarket study and other information that the board would be required to consider in making an award of credits. Based upon such information, presentations from applicants, questions by and answers to the board and public comment, and consideration of any of the selection criteria in the QAP, the board will select projects for invitation to submit full applications. The board will then consider applications from only those projects invited to apply.

This process allows the board to review the type, location, characteristics, and other details concerning particular projects being proposed for developments, along with applicants' justifications of need for the various projects in light of the most current housing market conditions. It further will allow the board to begin to prioritize potential projects under the QAP criteria, in particular, the factors that would be mandated by federal law for an actual award of housing credits, and to narrow the field of applicants who will fully compete for housing credits through submission of a full application.

Finally, the proposed rule amendments are necessary to add an additional factor to the list of factors the board may consider in selecting projects for an award of housing credits. The fact that a proposed project is being developed in or near a historic downtown neighborhood is a significant consideration, as such locations generally are close to services needed by residents, facilitate integration of projects into existing and historical neighborhoods, encourage resident engagement in community functions, and encourage engagement of community members in such projects.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing 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., June 3, 2016.

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 section 4 above or may be made by completing a request form at any rules hearing held by the department.

7. An electronic copy of this proposal notice is available through the Secretary of State's web site at <http://sos.mt.gov/ARM/Register>. The Secretary of State strives to make the electronic copy of the notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the Secretary of State works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

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

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

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

/s/ DOUGLAS MITCHELL
DOUGLAS MITCHELL
Deputy Director
Department of Commerce

Certified to the Secretary of State April 25, 2016.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of ARM)	NOTICE OF PROPOSED
17.8.818, pertaining to the averaging)	AMENDMENT
period for the PM-2.5 significant)	
monitoring concentration)	(AIR QUALITY)
)	
)	NO PUBLIC HEARING
)	CONTEMPLATED

TO: All Concerned Persons

1. On August 5, 2016, the Board of Environmental Review proposes to amend the above-stated rule.

2. The board will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Denise Hartman, Administrative Rules Coordinator, no later than 5:00 p.m., May 20, 2016, to advise us of the nature of the accommodation that you need. Denise Hartman can be contacted at the Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2630; fax (406) 444-4386; or e-mail dhartman2@mt.gov.

3. The rule proposed to be amended provides as follows with stricken matter interlined:

17.8.818 REVIEW OF MAJOR STATIONARY SOURCES AND MAJOR MODIFICATIONS--SOURCE APPLICABILITY AND EXEMPTIONS (1) through (6) remain the same.

(7) The department may exempt a proposed major stationary source or major modification from the requirements of ARM 17.8.822, with respect to monitoring for a particular pollutant, if:

- (a) through (a)(ii) remain the same.
- (iii) PM-2.5: 0 µg/m³, ~~24-hour average~~;
- (iv) through (c) remain the same.

AUTH: 75-2-111, 75-2-203, MCA
IMP: 75-2-202, 75-2-203, 75-2-204, MCA

REASON: The federal Clean Air Act (CAA) at § 165(e)(2), 42 U.S.C. § 7475(e)(2), requires a proposed major emitting facility to conduct monitoring for, among other emissions, particulate matter with a diameter of less than 2.5 microns (PM_{2.5}) for up to one year before submitting an application for an air quality preconstruction permit. The preconstruction permit is part of the New Source Review-Prevention of Significant Deterioration (NSR-PSD) program, which is

designed to protect the air quality of areas cleaner than the national standards.

On October 20, 2010, the U.S. Environmental Protection Agency (EPA) adopted regulations setting the significant monitoring concentration (SMC) for particulate matter with a diameter of less than 2.5 microns (PM_{2.5}). The SMC was set at 4 ug/m³ averaged over 24 hours. See 40 C.F.R. §§ 51.166(i)(5)(i)(c) and 52.21(i)(5)(i)(c), adopted in 75 Fed. Reg. 64864. An SMC is used to exempt sources from preconstruction monitoring when modeled impacts from the proposed facility, or the existing air quality level in the area of the proposed source, is less than the SMC.

The board adopted ARM 17.8.818(7), which adopted the same SMC for PM_{2.5} as the federal regulation, effective October 14, 2011. See 2011 MAR p. 2457. Based on a court decision vacating the PM_{2.5} SMC as not allowed by the Clean Air Act (*Sierra Club v. EPA*, 705 F.3d 458, 403 U.S. App. D.C. 318 (2013)), EPA amended its regulations to reduce the SMC to 0 mug/m³ and eliminate the 24-hour averaging period. 78 Fed. Reg. 73698, December 9, 2013.

Because EPA amended its regulations, the department requested the board to amend its rule. However, the department inadvertently failed to recommend that the board remove the averaging period for the PM_{2.5} SMC from the rule. The board amended the rule effective October 10, 2014, without removing the averaging period. See 2014 MAR p. 2457. The department submitted this amended rule to EPA as a revision to the Montana State Implementation Plan (SIP) on April 10, 2015.

EPA has requested Montana to amend ARM 17.8.818(7)(a)(iii) to remove the averaging period for the PM_{2.5} SMC and to submit a revision with that change to the SIP for EPA's review. If Montana does not remove the averaging period from the rule, its rule could be considered less stringent than EPA's regulation. If a Montana rule is less stringent than an EPA regulation, EPA could take steps to withdraw its approval of Montana's regulatory program, and that could result in EPA becoming the primary administrator of air quality regulations in Montana.

This proposed rulemaking would remove the averaging period for PM_{2.5}, making the board's rules consistent with and as stringent as the EPA regulation, and ensure Montana's ongoing NSR-PSD program's primacy and authority.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to Denise Hartman at Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2630; fax (406) 444-4386; or e-mail dhartman2@mt.gov, no later than June 3, 2016. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

5. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments they have to Denise Hartman at Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2630; fax (406) 444-4386; or e-mail dhartman2@mt.gov, no later than June 3, 2016.

6. If the board receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons who are 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 persons directly affected has been determined to be 25, based on the more than 250 persons who potentially could wish to appeal air quality permits and therefore could be affected by this rulemaking.

7. The board 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, email, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: air quality; hazardous waste/waste oil; asbestos control; water/wastewater treatment plant operator certification; solid waste; junk vehicles; infectious waste; public water supply; public sewage systems regulation; hard rock (metal) mine reclamation; major facility siting; opencut mine reclamation; strip mine reclamation; subdivisions; renewable energy grants/loans; wastewater treatment or safe drinking water revolving grants and loans; water quality; CECRA; underground/above ground storage tanks; MEPA; or general procedural rules other than MEPA. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to Denise Hartman, Administrative Rules Coordinator, Department of Environmental Quality, 1520 E. Sixth Ave., P.O. Box 200901, Helena, Montana 59620-0901, faxed to the office at (406) 444-4386, e-mailed to dhartman2@mt.gov, 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 board has determined that the amendment of the above-stated rule will not significantly and directly impact small businesses.

Reviewed by:

BOARD OF ENVIRONMENTAL REVIEW

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

BY: /s/ Joan Miles
JOAN MILES, CHAIRMAN

Certified to the Secretary of State, April 25, 2016.

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

In the matter of the amendment of) AMENDED NOTICE OF PUBLIC
ARM 37.85.104 and 37.85.105) HEARING ON PROPOSED
pertaining to the revision of fee) AMENDMENT
schedules for Medicaid provider rates)
effective July 1, 2016)

TO: All Concerned Persons

1. On April 22, 2016, the Department of Public Health and Human Services published MAR Notice No. 37-745 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 669 of the 2016 Montana Administrative Register, Issue Number 8.

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 May 20, 2016, to advise us of the nature of the accommodation that you need. Please contact Kenneth Mordan, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena MT 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

3. The department will not be adopting a new conversion rate for outpatient hospitals or a new APR-DRG fee schedule for inpatient hospitals effective July 1, 2016. The 64th Montana Legislature did not appropriate a provider rate increase for the hospital program for state fiscal year (SFY) 2017. A provider rate increase for the hospital program was inadvertently added to the changes to ARM 37.85.105, published in MAR Notice No. 37-745.

4. ARM 37.85.105 remains as proposed, but with the following changes to the original proposal, new matter underlined, deleted matter interlined:

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

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

(a) 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, 2016~~ July 1, 2015; and

(ii) the Montana Medicaid APR-DRG relative weight values, average national length of stay (ALOS), outlier thresholds, and APR grouper version ~~33~~ 32 are contained in the APR-DRG Table of Weights and Thresholds effective ~~July 1, 2016~~ July 1, 2015. The department adopts and incorporates by reference the APR-DRG Table of Weights and Thresholds effective ~~July 1, 2016~~ July 1, 2015.

(b) The outpatient hospital services fee schedules including:

(i) remains as proposed.

(ii) the conversion factor for outpatient services on or after ~~July 1, 2016~~ July 1, 2015 is ~~\$57.21~~ \$56.64;

(iii) through (6) remain as proposed.

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

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

5. The statement of reasonable necessity is being amended as follows:
deleted matter interlined:

At page 675 the following text is being removed:

~~(3)(a)(ii): Revise the effective date regarding the APR-DRG Table of Weights and Thresholds to July 1, 2016. Update the APR-DRG grouper version from version 32 to version 33.~~

~~(3)(b)(ii): Revise the effective date regarding the conversion factor for outpatient services to July 1, 2016. Update the conversion factor for outpatient services from \$56.64 to \$57.21.~~

At page 677 the following text is being removed:

Provider Type	SFY 2017 Budget Impact (All Funds)	SFY 2017 Budget Impact (GF and SSR Only)	SFY 2017 Budget Impact (Federal Funds)	Active Provider Count
Inpatient Hospital	\$1,940,497	\$671,764	\$1,268,733	374
Outpatient Hospital	\$1,057,063	\$362,618	\$694,445	374

6. ARM 37.85.104 remains as proposed.

7. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to: Kenneth Mordan, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena MT 59604-4210, no later than 5:00 p.m. on May 27, 2016. The department has extended the comment period seven days. Comments may also be faxed to (406) 444-9744 or e-mailed to dphhslegal@mt.gov.

/s/ Geralyn Driscoll
Geraldyn Driscoll, Attorney
Rule Reviewer

/s/ Richard H. Opper
Richard H. Opper, Director
Public Health and Human Services

Certified to the Secretary of State April 25, 2016.

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

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 37.40.801, 37.40.805,) PROPOSED AMENDMENT
37.40.806, 37.40.807, 37.40.808,)
37.40.815, 37.40.816, 37.40.825, and)
37.40.830 pertaining to hospice)
reimbursement and updates)

TO: All Concerned Persons

1. On May 26, 2016, at 10:00 a.m., the Department of Public Health and Human Services will hold a public hearing in the auditorium of the Department of Public Health and Human Services Building, 111 North Sanders, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Public Health and Human Services no later than 5:00 p.m. on May 18, 2016, to advise us of the nature of the accommodation that you need. Please contact Kenneth Mordan, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

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

37.40.801 HOSPICE, DEFINITIONS (1) remains the same.

(2) Except for the definition of "physician", the department hereby adopts and incorporates by reference 42 CFR 418.3, as amended through ~~October 1, 1988~~ August 22, 2014, which sets forth definitions of terms related to services covered as hospice care. Copies of 42 CFR 418.3, as amended through ~~October 1, 1988~~ August 22, 2014, are available from the Department of Public Health and Human Services, ~~Health Policy and Services~~ Resources Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

(3) remains the same.

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

37.40.805 HOSPICE, CONDITIONS OF PARTICIPATION (1) remains the same.

(2) ~~The department hereby adopts and incorporates by reference 42 CFR~~

~~418.50 through 418.100, as amended through October 1, 1988, which set forth Medicare's conditions of participation for hospice providers. Copies of 42 CFR 418.50 through 418.100, as amended through October 1, 1988, are available from the Department of Public Health and Human Services, Health Policy and Services Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951. The department adopts and incorporates by reference the following sections of 42 CFR as amended June 5, 2008:~~

- ~~(a) 418.52 through 418.74;~~
- ~~(b) 418.78;~~
- ~~(c) 418.102 through 418.106; and~~
- ~~(d) 418.110 through 418.116.~~

~~(3) The department adopts and incorporates by reference the following sections of 42 CFR as amended August 6, 2009:~~

- ~~(a) 418.76;~~
- ~~(b) 418.100; and~~
- ~~(c) 418.108.~~

~~(4) These CFRs set forth Medicare's conditions of participation for hospice providers. A copy of the sections of CFR listed in (2) and (3) may be obtained from the Department of Public Health and Human Services, Health Resources Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59320-2951.~~

~~(3) through (5) remain the same, but are renumbered (5) through (7).~~

AUTH: 53-6-113, MCA

IMP: 53-6-101, MCA

37.40.806 HOSPICE, COVERED SERVICES (1) remains the same.

~~(2) For covered hospice services, Medicaid will generally pay for the services covered by Medicare. The department hereby adopts and incorporates by reference 42 CFR 418.202 through 418.204, as amended through October 1, 1988, except for those provisions of 42 CFR 418.202 which apply to physicians' services. The incorporated material sets forth requirements for Medicare coverage of hospice services. Copies of 42 CFR 418.202 through 418.204, as amended through October 1, 1988, except for those provisions of 42 CFR 418.202 which apply to physicians' services, are available from the Department of Public Health and Human Services, Health Policy and Services Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.~~

~~(a) Physicians' services is a covered hospice service and must be performed by a doctor of medicine or osteopathy.~~

~~(b) Outpatient drugs and biologicals not related to the terminal conditions will be reimbursed separately under the provisions of ARM 37.86.1101, 37.86.1102, and 37.86.1105 and 46.12.704.~~

~~(3) The department adopts and incorporates by reference the following section of 42 CFR as amended August 4, 2011:~~

- ~~(a) 418.202 except for those provisions which apply to physicians services.~~

~~(4) The department adopts and incorporates by reference the following sections of 42 CFR as amended August 6, 2009:~~

- ~~(a) 418.200; and~~

(b) 418.204.

(5) The department adopts and incorporates by reference the following section of 42 CFR as amended November 5, 2004:

(a) 418.205.

(6) The incorporated material sets forth requirements for Medicare coverage of hospice services. A copy of the sections of CFR listed in (3), (4), and (5) may be obtained from the Department of Public Health and Human Services, Health Resources Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59320-2951.

AUTH: 53-6-113, MCA

IMP: 53-6-101, MCA

37.40.807 HOSPICE REQUIREMENTS, PLAN OF CARE CONDITION OF PARTICIPATION: INTERDISCIPLINARY GROUP, CARE PLANNING, AND COORDINATION OF SERVICES

~~(1) The plan of care must be maintained by the hospice and available for department review. To be eligible for coverage, services must be consistent with the plan of care. In order to establish a plan of care:~~

~~(a) one member of the basic interdisciplinary assessment group must assess the individual's needs;~~

~~(b) prior to writing the initial plan that member must discuss his assessment with at least one other group member;~~

~~(i) one of those two members must be either a physician or nurse.~~

~~(c) the initial plan must be completed on the same day as the assessment if that day is to be a covered day; and~~

~~(d) the entire group must approve the initial plan within two calendar days following the assessment. The department adopts and incorporates by reference 42 CFR 418.56 as amended June 5, 2008, which sets forth Medicare conditions for participation in regards to interdisciplinary groups, care planning, and coordination of services. Copies of 42 CFR 418.56 are available from the Department of Public Health and Human Services, Health Resources Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.~~

AUTH: 53-6-113, MCA

IMP: 53-6-101, MCA

37.40.808 HOSPICE, CERTIFICATION OF TERMINAL ILLNESS

~~(1) remains the same.~~

~~(2) The department hereby adopts and incorporates by reference 42 CFR 418.22, as amended through October 1, 1988 August 4, 2011, which sets forth Medicare conditions for certification of terminal illness to qualify an individual to be eligible to elect hospice care. Copies of 42 CFR 418.22, as amended through October 1, 1988, are available from the Department of Public Health and Human Services, Health Policy and Services Resources Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.~~

AUTH: 53-6-113, MCA

IMP: 53-6-101, MCA

37.40.815 HOSPICE, ELECTION AND WAIVER OF OTHER BENEFITS

(1) remains the same.

(2) ~~The department hereby adopts and incorporates by reference 42 CFR 418.24(a) through 418.24(d), as amended through October 1, 1988, which set forth requirements for individual election of hospice care and 42 CFR 418.26, as amended through October 1, 1988, which sets forth elements of the election statement. Copies of 42 CFR 418.24(a) through 418.24(d) and 418.26, as amended through October 1, 1988, are available from the Department of Public Health and Human Services, Health Policy and Services Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951. The department adopts and incorporates by reference the following sections of 42 CFR as amended November 22, 2005:~~

(a) 418.21 which sets forth the duration of hospice care coverage and election periods; and

(b) 418.25 which sets forth the requirements for admission to hospice.

(3) The department adopts and incorporates by reference the following section of 42 CFR as amended June 5, 2008:

(a) 418.20 which sets forth eligibility requirements.

(4) The department adopts and incorporates by reference the following sections of 42 CFR as amended August 22, 2014:

(a) 418.24(a) through 418.24(f) which sets forth the requirements for individual election of hospice care; and

(b) 418.26 which sets forth the requirements for discharge from hospice care.

(5) A copy of the sections of CFR listed in (2) through (4) may be obtained from the Department of Public Health and Human Services, Health Resources Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59320-2951.

(3) remains the same, but is renumbered (6).

(7) The hospice chosen by the eligible individual, or their representative, must file a Notice of Election (NOE) with the department within five calendar days after the effective date of the election statement. NOEs must be sent to the Senior & Long Term Care Division, 111 N. Sanders, P.O. Box 4210, Helena, MT 59604-4210. The department may waive the consequences of failure to submit a timely-filed NOE. A hospice must fully document and furnish any requested documentation to the department for a determination of exception.

(8) When the hospice election is ended due to discharge, the hospice must file a Notice of Termination of Election with the department within five calendar days after the effective date of the discharge, unless it has already filed a final claim for that beneficiary. Notice of Terminations must be sent to the Senior & Long Term Care Division, 111 N. Sanders, P.O. Box 4210, Helena, MT 59604-4210.

AUTH: 53-6-113, MCA

IMP: 53-6-101, MCA

37.40.816 HOSPICE, REVOCATION OF ELECTION (1) remains the same.

(2) The department hereby adopts and incorporates by reference 42 CFR 418.28, as amended ~~through October 1, 1988~~ August 22, 2014, which sets forth the Medicare requirements for revoking the election of hospice care. Copies of 42 CFR

418.28, ~~as amended through October 1, 1988~~, are available from the Department of Public Health and Human Services, Health ~~Policy and Services~~ Resources Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

(3) When the hospice election is ended due to revocation, the hospice must file a Notice of Revocation of Election with the department within five calendar days after the effective date of the revocation, unless it has already filed a final claim for that beneficiary. A Notice of Revocation must be sent to the Senior & Long Term Care Division, 111 N. Sanders, P.O. Box 4210, Helena, MT 59604-4210.

AUTH: 53-6-113, MCA

IMP: 53-6-101, MCA

37.40.825 HOSPICE, CHANGE OF HOSPICE (1) remains the same.

(2) The department ~~hereby~~ adopts and incorporates by reference 42 CFR 418.30, ~~as amended through October 1, 1988~~ June 5, 2008, which sets forth the Medicare requirements that must be met when another hospice is chosen in an election period. Copies of 42 CFR 418.30, ~~as amended through October 1, 1988~~, are available from the Department of Public Health and Human Services, Health ~~Policy and Services~~ Resources Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

AUTH: 53-6-113, MCA

IMP: 53-6-101, MCA

37.40.830 HOSPICE, REIMBURSEMENT (1) Medicaid payment for covered hospice care will be made in accordance with the specific categories of covered hospice care (~~routine home care day, continuous home care day, inpatient respite care day, and general inpatient care day~~) and the payment amounts and procedures established by Medicare. The specific categories of covered hospice care include:

- (a) routine home care day;
- (b) continuous home care day;
- (c) inpatient respite care day;
- (d) general inpatient care day; and
- (e) service intensity add-on.

(2) Hospice Routine Home Care (RHC) level of care days will be paid one of two RHC rates. RHC per-diem payment rates for the RHC level of care will be paid depending on the timing of the day within the patient's episode of care. Days 1 through 60 will be paid at the RHC "High" rate while days "61 plus" will be paid at the RHC "Low" rate.

~~(2)~~ (3) The department adopts and incorporates by reference 42 CFR 418.302, ~~effective as amended~~ August 6, 2015 and 42 CFR 418.306, ~~effective as amended~~ August 6, 2015, which sets forth the Medicare payment procedures. Copies of 42 CFR 418.302 and 42 CFR 418.306 are available at the federal web site: <http://cms.hhs.gov/Medicare/Medicare-Fee-for-Service-Payment/Hospice/index.html>.

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

~~(4)~~ (5) The following services performed by hospice physicians are included in the rates described in (1) and ~~through~~ ~~(2)~~ (3) of this rule:

- (a) general supervisory services of the medical director; and
- (b) participation in the establishment of plans of care, supervision of care and services, periodic review and updating of plans of care, and establishment of governing policies by the physician member of the interdisciplinary group.

~~(5)~~ (6) For services not described in ~~(4)~~ (5), Medicaid will pay the hospice for those physician services furnished by hospice employees or under arrangements with the hospice in accordance with ARM 37.86.101, 37.86.104, and 37.86.105. Reimbursement for these physician services is included in the amount subject to the hospice limit described ~~below~~ in (7). Services furnished voluntarily by physicians are not reimbursable.

(6) and (7) remain the same, but are renumbered (7) and (8).

~~(8)~~ (9) The department adopts and incorporates by reference 42 CFR 418.309, effective ~~as amended~~ August 6, 2015, which sets forth Medicare's methodology for calculating the hospice cap amount. Copies of 42 CFR 418.309 are available at the federal web site: <http://cms.hhs.gov/Medicare/Medicare-Fee-for-Service-Payment/Hospice/index.html>.

(9) and (10) remain the same, but are renumbered (10) and (11).

~~(11)~~ (12) The hospice fee schedules are effective ~~October 1, 2015~~ January 1, 2016. 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 Lockety, P.O. Box 202951, Helena, MT 59602-2951.

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

4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) proposes to amend ARM 37.40.801, 37.40.805, 37.40.806, 37.40.807, 37.40.808, 37.40.815, 37.40.816, 37.40.825, and 37.40.830. These amendments are necessary to incorporate changes made to the Code of Federal Regulations (CFR), specifically 42 CFR 418.1 through 418.405, dealing with standards for participation in, and reimbursement rates for Hospice care.

In order to pay Medicaid hospice providers according to the Medicare fee schedule and rate methodology the rules must be updated to provide adoption and incorporation of current federal regulations. This includes updating all references to CFR related to determination of payment rates. Failure to update these rules will result in hospice reimbursement rates no longer staying current with federal changes and providers not having clarity on which federal regulations are applicable for Medicaid hospice services and reimbursement.

ARM 37.40.801, 37.40.807, 37.40.808, 37.40.825

The department proposes to amend these rules to incorporate the most recent federal regulations governing hospice participation and reimbursement. Failure to update these rules will result in the hospice program being out of compliance with federal regulations.

ARM 37.40.805

The department proposes to amend this rule to include the adoption and incorporation by reference of: 42 CFR 418.52 through 418.74; 418.76; 418.78; 418.100; 418.102 through 418.106; 418.108; and 418.110 through 418.116.

The proposed amendment is necessary to incorporate the most recent federal regulations governing Hospice participation and reimbursement. Failure to update the rules will result in the Hospice program being out of compliance with federal regulations.

ARM 37.40.806

The department proposes to amend this rule to include the adoption and incorporation by reference of 42 CFR 418.200; 418.202 (except for those provisions which apply to provision services); 418.204; and 418.205.

The proposed amendment is necessary to incorporate the most recent federal regulations governing Hospice participation and reimbursement. Failure to update the rules will result in the Hospice program being out of compliance with federal regulations.

ARM 37.40.815

The department proposes to amend this rule to include the adoption and incorporation by reference of 42 CFR 418.20 and 418.21; 418.24 (a) though (f); 418.25; and 418.26.

This proposed amendment will include language about the requirement for the hospice provider to submit the Election of Hospice Benefit Form to the department and provides an updated mailing address for submission.

The proposed amendment is necessary to incorporate the most recent federal regulations governing Hospice participation and reimbursement. Failure to update the rules will result in the Hospice program being out of compliance with federal regulations.

ARM 37.40.816

The department proposes to amend this rule to include the adoption and incorporation by reference of 42 CFR 418.28. This proposed amendment will include the requirement for the hospice provider to submit the Termination of

Hospice Benefit Form to the department and provides an updated mailing address for submission.

The proposed amendment is necessary to incorporate the most recent federal regulations governing Hospice participation and reimbursement. Failure to update the rules will result in the Hospice program being out of compliance with federal regulations.

ARM 37.40.830

The department proposes to amend this rule to include the adoption and incorporation of a new routine home care rate structure (RHC) and the addition of a service intensity add-on rate (SIA), effective January 1, 2016.

The department also proposes to adopt and incorporate federal rule references in order to update the rule to the most current federally amended dates.

The proposed amendment is necessary to incorporate the most recent federal regulations governing Hospice participation and reimbursement. Failure to update the rules will result in the Hospice program being out of compliance with federal regulations.

Fiscal Impact

This proposed rulemaking incorporates the Medicare fee changes effective January 1, 2016, for the Medicaid Hospice program. Funds impacted will be from federal Medicaid fund source (03585) and general fund source (01100).

All providers will receive an increase in the RHC rate of 13.35% for services provided between 1 and 60 days. Hospice providers will experience a 10.26% decrease in the RHC rate for services provided 61 days and over.

Hospice rates are affected by a wage index which is adjusted for geographic differences and applied by county.

Four Hospices will receive a RHC and SIA rate reduction of two percentage points for failure to comply with the quality data submission requirements during this fiscal year.

Any reduction in rate is not applied retroactively but will be effective upon adoption of the MAR notice.

5. The department proposes to apply increases in the hospice reimbursement rates retroactively to January 1, 2016. The implementation date of the rate increase is consistent with the federal approval of the hospice reimbursement rate fee increase and the effective dates of the promulgated federal

regulations. Decreases in hospice rates would not be applied retroactively, but would be effective upon adoption of the proposed rule amendment.

6. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Kenneth Mordan, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail dphhslegal@mt.gov, and must be received no later than 5:00 p.m., June 3, 2016.

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

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

9. An electronic copy of this proposal notice is available through the Secretary of State's web site at <http://sos.mt.gov/ARM/Register>. The Secretary of State strives to make the electronic copy of the notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the Secretary of State works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

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

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

12. 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/ Valerie A. Bashor
Valerie A. Bashor
Rule Reviewer

/s/ Richard H. Opper
Richard H. Opper, Director
Public Health and Human Services

Certified to the Secretary of State April 25, 2016.

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 37.87.903 pertaining to) PROPOSED AMENDMENT
Children's Mental Health Bureau)
Medicaid Services Policy Manual)
Revisions)

TO: All Concerned Persons

1. On May 26, 2016, at 9:00 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 May 18, 2016, to advise us of the nature of the accommodation that you need. Please contact Kenneth Mordan, 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:

37.87.903 MEDICAID MENTAL HEALTH SERVICES FOR YOUTH, AUTHORIZATION REQUIREMENTS (1) remains the same.

(2) Medicaid mental health services for youth requiring approval prior to treatment, prior authorization, or continued stay authorization ~~will be~~ is reimbursed only if ~~the following requirements are met:~~

~~(a)~~ the youth has been determined to have a serious emotional disturbance defined in the Manual adopted and incorporated by reference in (8), which has been verified by the department or ~~designee~~ its utilization review contractor; ~~or~~

~~(b)~~ ~~the department or designee has determined on a case-by-case basis, that treatment is medically necessary for early intervention and prevention of a more serious emotional disturbance.~~

(3) through (6) remain the same.

~~(7)~~ ~~The prior authorization or continued authorization requirement shall not be waived except as provided in this rule.~~

~~(8)~~ (7) In addition to the requirements contained in rule, the department has developed and published a provider manual entitled Children's Mental Health Bureau, Medicaid Services Provider Manual (Manual), dated ~~October 1, 2015~~ July

15, 2016, for the purpose of implementing requirements for utilization management. The department adopts and incorporates by reference the Children's Mental Health Bureau, Medicaid Services Provider Manual, dated ~~October 1, 2015~~ July 15, 2016. 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, Developmental Services Division, Children's Mental Health Bureau, 111 N. Sanders, P.O. Box 4210, Helena, MT 59604-4210 or at <http://dphhs.mt.gov/dsd/CMB/Manuals.aspx>.

(9) and (10) remain the same, but are renumbered (8) and (9).

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

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

4. STATEMENT OF REASONABLE NECESSITY

The department proposes to amend ARM 37.87.903 and to modify the Children's Mental Health Bureau Medicaid Services Provider Manual (Manual), adopted and incorporated by reference in ARM 37.87.903. The proposed rule and Manual changes are a result of provider feedback and the department's periodic review of its rules, policies, and services.

Specifically, the department proposes the following amendments:

37.87.903

The department proposes to remove ARM 37.87.903(2)(b) and (7), and renumber current (8), (9), and (10) as (7), (8), and (9), respectively.

The removal of ARM 37.87.903(2)(b) is necessary for clarification because current rule language could be interpreted to mean that a youth does not need a Serious Emotional Disturbance (SED) diagnosis for a provider to be reimbursed for the mental health services provided to the youth. Such an interpretation would not be consistent with current department policy.

The removal of ARM 37.87.903(7) is necessary because the rule language is redundant to other rule and Manual provisions. The department articulates its utilization review requirements in the Manual adopted and incorporated by reference in current (8) of this rule.

The department proposes amendment in the rule of the reference date of the Manual described in (8) – proposed to be renumbered to (7) – to reflect Manual revisions with a desired effective date of July 15, 2016. It is necessary to amend the version date of the referenced material to inform providers and other interested parties that the new manual version has the force and effect of law upon adoption of the rule.

Children's Mental Health Bureau Medicaid Services Provider Manual (Manual)

Global changes affecting all Chapters

All instances of the word "designee," whether used in the context of "the Department or its designee" or the "department's designee," are proposed to be replaced with "utilization review contractor" because the term "designee" has become too vague and it is necessary for the department to clarify the roles of different entities for providers.

Chapter 1

The department proposes adding definitions to the Definitions section to identify "Authorized Representative," "Claimant," "Medical Assistance Provider," "Utilization Review Contractor," and "Youth" because it is necessary to define commonly used terms associated with the administrative review process. Other definitions applicable to the Montana Child and Adolescent Needs and Strengths (CANS) system are proposed for removal for the purposes described in the succeeding paragraph.

Chapter 2

Montana Child and Adolescent Needs and Strengths (CANS) Functional Assessment Subchapter

All references to the Montana CANS Functional Assessment are proposed for removal as the department has discontinued the requirement of the CANS assessment and the Montana CANS system (MCS). The changes are necessary because the MCS was not functioning as anticipated, consequently the department cannot require utilization of the MCS by providers. Providers may choose to use the paper CANS functional assessment.

Discharge from Services Subchapter

The department proposes the following amendments concerning prior authorization requirements to the Discharge from Services Subchapter:

(a) remove Acute Inpatient Hospitalization and Partial Hospitalization, which is necessary because MAR Notice No. 37-719 (adopted September 14, 2015 – effective October 1, 2015) removed the prior authorization requirement for these services, therefore the form is no longer required;

(b) add Home Support Services discharge notification form requirement, which is necessary because these services require prior authorization and there is a continued stay review requirement.

NEW Subchapter - Youth Leaving a Correctional Facility

A new subchapter of Chapter 2, titled "Youth Leaving a Correctional Facility," is proposed to outline the process and requirements for providers for youth who are leaving a correctional facility and entering services provided by Montana Medicaid. This content is currently located under the Psychiatric Residential Treatment Facility (PRTF) Service section of the Services subchapter of Chapter 3, but the department has identified a need for it to be applicable for all Montana Medicaid funded services when a youth is leaving a correctional facility and proposes to relocate the text.

Chapter 3

Serious Emotional Disturbance (SED) Subchapter

The department proposes to generally revise this subchapter to identify and clarify SED diagnosis requirements for youth under six and youth 18 to 20 who are in an accredited secondary school. The department proposes new (2), to clarify diagnosis requirements for youth under the age of six, and new (3) to better articulate the requirement that a youth must have an annual reassessment by a mental health professional to determine if the youth still meets the SED requirements.

Services Subchapter

Acute Inpatient Hospitalization Section

The department proposes to remove the discharge notification form requirement for in-state acute hospital. In MAR Notice No. 37-719, the department removed the prior authorization (PA) requirement for this service, which renders this form unnecessary.

Further, the department proposes to adopt into the Manual a PA requirement for out-of-state Acute Inpatient Hospitals. This amendment is necessary because in ARM 37.86.2801 out-of-state acute inpatient hospital providers are required to obtain a PA to receive the full reimbursement rate for services provided, without which hospitals are reimbursed at 50% of the submitted claim.

Psychiatric Residential Treatment Facility (PRTF) Subchapter

The department proposes to amend the following items in this subchapter:

- (a) change medical necessity and continued stay criteria, which are necessary to clarify the level of care and purpose of PRTF services. Current language reflects the minimum requirements, as stated in the Code of Federal Regulations, and is outdated and lacks substance;
- (b) add exclusion criteria, which is necessary to further clarify the level of care and purpose of PRTF services;

(c) add a requirement that providers must keep documentation of in-state denials in the file of a youth before the youth may be admitted into an out-of-state PRTF. Previously all in-state PRTFs were required to submit a letter of denial but the department removed the requirement for a hard copy letter in MAR Notice No. 37-719. Verbal denials are still compulsory and this amendment requires documentation that the denials were received;

(d) add the language "short (less than 30 days) continued stays for lack of step down placement" to continued stay criteria in order to improve the discharge process. The amendment is necessary to make the Manual consistent with department practice and clarify the limit of 30 days for providers who are responsible for discharge planning;

(e) provide that the discharge plan review form be optional rather than required because the form is not one that is used for utilization review and is intended to provide guidance to providers if they choose to incorporate this tool; and

(f) relocate the text regarding youth in correctional facilities to the new subchapter in Chapter 2 titled "Youth Leaving a Correctional Facility" as described above.

Therapeutic Group Home Subchapter

The department proposes to change prior authorization and continued stay request language to remove the requirement that a prior authorization request must be submitted two days prior to admission and a continued stay request must be submitted five days prior to the last covered day of service. These changes are necessary to align the Manual with the current department policy which is to issue prior authorization and continued stay approvals effective the date the department receives the requests or at the end of the current service span. The department does not issue retrospective approvals. Further, if the provider submits the request after the current approval span has expired, the department will approve or deny the request based upon the date the request was received rather than issuing a technical denial for the entire span.

Home Support Services Subchapter

The department proposes to amend continued stay criteria by removing the requirement that continued stay requests must be submitted five days prior to the 365th billable day of service. This amendment is necessary to align Manual language with department policy for approving continued stay requests which is to issue continued stay approvals effective the date the department receives the request or at the end of the current service span. The department does not issue retrospective approvals. Further, if the provider submits the request after the current approval span has expired, the department will approve or deny the request based upon the date the request was received rather than issuing a technical denial for the entire span.

Chapter 4

Technical Denial Subchapter

The department proposes relocating language describing the process for administrative review and submitting new prior authorization requests after a technical denial of an initial request into the section "Reconsideration review process for PRTF services" because these processes are only applicable to PRTF services and this amendment clarifies the technical-denial procedures for providers as they pertain to PRTF services.

Fiscal Impact

The department determined that there is no fiscal impact from the proposed amendments to ARM 37.87.903 and the Children's Mental Health Bureau Medicaid Services Provider Manual.

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: Kenneth Mordan, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail dphhslegal@mt.gov, and must be received no later than 5:00 p.m., June 3, 2016.

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. An electronic copy of this proposal notice is available through the Secretary of State's web site at <http://sos.mt.gov/ARM/Register>. The Secretary of State strives to make the electronic copy of the notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the Secretary of State works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

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

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

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

The department has determined that the proposed program changes presented in this notice are appropriate for performance-based measurement and therefore are subject to the performance-based measures requirement of 53-6-196, MCA.

Principal reason for the rule	Measurement (what is being measured overall)	Data Collection Method/Metrics	Period of Measurement
Ensure most effective level of care to avoid unnecessary and potentially harmful higher levels of PRTF care for Medicaid youth that can be served in a lower level care.	PRTF admission and readmission	Track PRTF enrollment via MMIS Claims data system	Annually

/s/ Cary B. Lund
Cary B. Lund, Attorney
Rule Reviewer

/s/ Richard H. Opper
Richard H. Opper, Director
Public Health and Human Services

Certified to the Secretary of State April 25, 2016.

BEFORE THE COMMISSIONER OF SECURITIES AND INSURANCE
MONTANA STATE AUDITOR

In the matter of the adoption of New Rule I, and the amendment of ARM 6.6.3702, 6.6.3703, 6.6.3705, and 6.6.3717 pertaining to Reporting by Holding Company Systems) NOTICE OF ADOPTION AND AMENDMENT))))

TO: All Concerned Persons

1. On February 19, 2016, the Commissioner of Securities and Insurance, Montana State Auditor (CSI) published MAR Notice No. 6-219 pertaining to the proposed adoption and amendment of the above-stated rules at page 246 of the 2016 Montana Administrative Register, Issue Number 4.

2. The CSI has adopted New Rule I (6.6.3718) exactly as proposed.

3. The CSI has amended ARM 6.6.3702, 6.6.3703, 6.6.3705, and 6.6.3717 exactly as proposed.

4. No comments or testimony were received.

/s/ Nick Mazanec
Rule Reviewer

/s/ Jesse Laslovich
Chief Legal Counsel

Certified to the Secretary of State April 25, 2016.

BEFORE THE STATE PARKS AND RECREATION BOARD
OF THE STATE OF MONTANA

In the matter of the adoption of New) NOTICE OF ADOPTION
Rules I through XXIV pertaining to)
state parks public use)

TO: All Concerned Persons

1. On March 18, 2016, the State Parks and Recreation Board (board) published MAR Notice No. 12-462 pertaining to the public hearing on the proposed adoption of the above-stated rules at page 482 of the 2016 Montana Administrative Register, Issue Number 6.

2. The board has adopted the following rules as proposed: New Rule I (12.8.801), II (12.8.802), III (12.8.803), IV (12.8.804), V (12.8.805), VI (12.8.806), VII (12.8.807), VIII (12.8.808), IX (12.8.809), X (12.8.810), XI (12.8.811), XII (12.8.812), XIII (12.8.813), XIV (12.8.814), XV (12.8.815), XVI (12.8.816), XVIII (12.8.818), XIX (12.8.819), XX (12.8.820), XXI (12.8.821), XXII (12.8.822), XXIII (12.8.823), XXIV (12.8.824).

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

NEW RULE XVII (12.8.817) GEOCACHING (1) Placement of any geocache in a state park requires a permit approved by the park manager.

(a) The permit will be valid for ~~no more than two consecutive~~ three years and may be reissued for ~~an additional two consecutive years, after which the geocache must be removed upon expiration.~~

(b) through (2) remain as proposed.

(3) Geocaches may not contain the following items:

(a) through (g) remain as proposed;

(h) money in excess of five U.S. dollars; and

(i) through (4) remain as proposed.

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

Comment 1: The board received comments related to New Rule XVII, Geocaching, expressing concerns that limiting the total time a geocache can be in place to four years diminishes the geocaching experience because older caches are seen as highly desirable.

Response 1: The board has amended proposed New Rule XVII to remove the four-year limitation on geocaches.

Comment 2: The board received comments related to New Rule XVII, Geocaching, opposing language that prohibited money in geocaches because coinage and trackable one dollar bills are desirable geocache items.

Response 2: The board has amended New Rule XVII to prohibit money in excess of five U.S. dollars so as to allow coinage and one-dollar bills while maintaining the intent of the original language to minimize the use of geocaches for exchange of items of significant value.

Comment 3: The board received a comment related to New Rule XVII, Geocaching, opposing charging fees for establishing a geocache in a state park.

Response 3: While the rule does require permitting of geocaches, it does not establish or require a fee for obtaining a geocache permit.

Comment 4: The board received a comment related to New Rule XI, Hunting and Trapping, suggesting that regional supervisors determine in which state parks hunting is allowed, rather than regional park managers or the parks and recreation board.

Response 4: The board has determined the decision-making authority on hunting in state parks should lie with it, rather than with regional supervisors or regional park managers. Regional park managers will provide recommendations and input to the board as it makes these determinations. Doing so will ensure public input is received through the board's formal public comment process.

Comment 5: The board received a comment related to New Rule XI, Hunting and Trapping, suggesting that the rule should be changed to say that hunting, fishing, and trapping in state parks is permitted except where restricted.

Response 5: Due to increasing visitation, the relatively small size of many parks, and corresponding concerns over public safety, the board has determined that hunting and trapping should be prohibited except where specifically authorized. Fishing will continue to be allowed as it is currently.

Comment 6: The board received a comment related to New Rule XI, Hunting and Trapping, indicating any new restrictions on hunting, trapping, or fishing should only be implemented after public input.

Response 6: The board's formal decision-making and public-comment process allows this type of input.

Comment 7: The board received a comment related to New Rule XI, Hunting and Trapping, indicating that trap setbacks should be the same as the Department of Natural Resources and Conservation to ensure consistency.

Response 7: This comment is outside the scope of this rulemaking process. Any trap setback requirements will be determined by the Fish and Wildlife Commission during its annual season-setting process.

Comment 8: The board received comments in general support and appreciation of the proposed rules.

Response 8: The board appreciates your participation in this rulemaking process.

Comment 9: The board received a comment related to New Rule II, Property Disturbance, expressing concern with the prohibition on removing dead or live fish from a state park. The comment stated that fishing should be an appropriate use of a state park.

Response 9: The rule prohibits removal of dead or live fish "except where otherwise authorized." It is the intent of the board to continue to allow fishing as authorized and licensed through current fishing regulations.

Comment 10: The board received a comment opposing New Rule XVI, Unmanned Aircraft Systems and Model Aircraft, and the prohibition of unmanned aircraft.

Response 10: The rule allows individual park managers to designate areas where use of unmanned aircraft or model aircraft may be used. This allows managers to determine where such use may take place without interfering with others' use of state parks.

Comment 11: The board received a comment recommending adding language to increase the penalty for littering.

Response 11: The board has determined the current penalties for littering are appropriate.

Comment 12: The board received a comment related to implementation of New Rule VIII, Control of Animals, concerning whether the board could sell impounded livestock and keep the proceeds for state parks.

Response 12: The board has determined that the proposed rule language is the most practical way of dealing with the situation.

Comment 13: The board received a comment related to New Rule IX, Horses and Pack Animals, expressing support for the rule, but questioning how it would be enforced and whether visitors would need a permit.

Response 13: The rule does not require a permit to use horses or pack animals in a state park. The board feels that much of the rule would be implemented through visitor education.

Comment 14: The board received a comment suggesting inclusion of a rule requiring carry in/carry out or "Leave No Trace" principles for disposal of human waste during backcountry use.

Response 14: The board supports "Leave No Trace" principles, but prefers to educate visitors and seek voluntary compliance with method of disposal at this time.

Comment 15: The board received a comment in support of the prohibition of domestic animals running at large in state parks and requesting the rule apply year around in all state parks.

Response 15: The board has chosen to maintain a level of flexibility to allow this use depending upon park and use conditions.

Comment 16: The board received a comment opposing the number of rules.

Response 16: The board has developed the these rules in response to current visitor use and demonstrated needs.

Comment 17: The board received comments in support of management of Travelers' Rest State Park.

Response 17: These comments are outside the scope of this rulemaking process.

Comment 18: The board received a comment related to interpretation of mercury at Travelers' Rest State Park.

Response 18: This comment is outside the scope of this rulemaking process.

/s/ Zach Zipfel
Zach Zipfel
Rule Reviewer

/s/ Tom Towe
Tom Towe
Chairman
State Parks and Recreation Board

Certified to the Secretary of State April 25, 2016

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

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 37.85.204, 37.85.206,)
37.86.601, 37.86.606, 37.86.2002,)
37.86.2102, 37.86.2902, 37.86.3103,)
and 37.86.3105, pertaining to)
Medicaid program treatment limits,)
cost-share requirements, and)
Medicaid coverage)

TO: All Concerned Persons

1. On March 4, 2016, the Department of Public Health and Human Services published MAR Notice No. 37-737 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 409 of the 2016 Montana Administrative Register, Issue Number 5.

2. The department has amended the following rules as proposed: ARM 37.86.601, 37.86.606, 37.86.2002, 37.86.2902, 37.86.3103, and 37.86.3105.

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:

37.85.204 MEMBER REQUIREMENTS, COST SHARING (1) and (2) remain as proposed.

(3) A member with income at or below 100% of the federal poverty level (FPL) is responsible for the following copayments:

- (a) remains as proposed.
- (b) pharmacy-preferred brand drugs - \$4 per prescription;
- (c) pharmacy-nonpreferred brand drugs, including specialty drugs - \$8 per prescription;
- (d) outpatient hospital services - \$4 per visit;
- (e) podiatry services - \$4 per visit;
- (f) physical therapy services - \$4 per visit;
- (g) speech therapy services - \$4 per visit;
- (h) audiology services - \$4 per visit;
- (i) hearing aid services - \$4 per visit;
- (j) occupational therapy services - \$4 per visit;
- (k) home health services - \$4 per visit;
- (l) ambulatory surgical center services - \$4 per visit;
- (m) public health center services - \$4 per visit;
- (n) dental treatment services - \$4 per visit;
- (o) denturist services - \$4 per visit;

- (p) durable medical equipment - \$4 per visit;
- (q) optometric and optician services - \$4 per visit;
- (r) professional services - \$4 per visit;
- (s) federally qualified health center services - \$4 per visit;
- (t) rural health clinic services - \$4 per visit;
- (u) dialysis clinic services - \$4 per visit;
- (v) independent diagnostic testing facility services - \$4 per visit;
- (w) home infusion therapy services - \$4 per therapy;
- (x) home dialysis attendant services - \$4 per visit;
- (y) personal assistance services - \$4 per visit;
- (z) mental health clinic services - \$4 per visit;
- (aa) chemical dependency services - \$4 per visit; and
- (ab) targeted case management services - \$4 per visit.

(4) A member with income above 100 percent of the FPL, except as noted in (a) and (b) is responsible for cost share of 10% of the provider reimbursed amount. A member is responsible for cost share for outpatient pharmacy services as follows:

- (a) preferred brand drugs - \$4 per prescription;
 - (b) nonpreferred brand drugs, including specialty drugs - \$8 per prescription.
- (5) through (8) remain as proposed.

(9) Providers may directly charge members only for the following services if the member signs an Advanced Beneficiary Notice for the specific service prior to the service being provided:

- (a) through (d) remain as proposed.
- (e) services that are not medically necessary; ~~or~~
- (f) investigational services; or
- (g) dental treatment expenses that exceed the annual dental treatment cap.

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

IMP: 53-6-101, 53-6-113, 53-6-141, MCA

37.85.206 SERVICES PROVIDED (1) and (2) remain as proposed.

(3) State plan Medicaid benefits are available for members who are Medicaid-covered through the ~~00484~~ Waiver for Additional Services and Populations (WASP) Medicaid 1115 Waiver as approved by the Centers for Medicare and Medicaid Services (CMS).

(a) A person may receive coverage through the ~~00484~~ WASP Medicaid 1115 Waiver if the person is 18 or older, has severe disabling mental illnesses (SDMI), would qualify for or be enrolled in the state-financed mental health services plan (MHSP) or the ~~00484~~ WASP Medicaid 1115 Waiver but is otherwise ineligible for Medicaid benefits, and either:

(i) and (ii) remain as proposed.

(b) A person determined categorically eligible for Medicaid as aged, blind, or disabled (ABD) in accordance with ARM 37.82.901 through 37.82.903 is not subject to the annual \$1,125 dental treatment limit. The monies expended for treatment costs exceeding the limit are covered through the ~~00484~~ WASP Medicaid 1115 Waiver.

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

IMP: 53-2-201, 53-6-101, 53-6-103, 53-6-111, 53-6-113, 53-6-131, 53-6-141, MCA

37.86.2102 EYEGASSES, SERVICES, REQUIREMENTS AND RESTRICTIONS (1) through (4) remain as proposed.

(5) In the circumstances described in (4)(a) through (i), the member may be allowed two pairs of single vision eyeglasses every 365-day period.

(6) and (7) remain as proposed.

AUTH: 53-6-113, MCA

IMP: 53-6-101, 53-6-141, 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: One comment was received questioning why the department was updating ARM 37.85.204.

RESPONSE #1: The changes to ARM 37.85.204 are to align the cost share payments for both the Medicaid population and the Montana Health and Economic Livelihood Partnership (HELP), Medicaid expansion, population. The HELP legislation required charging the maximum cost sharing allowed under federal law. This rule change aligns cost share for the expansion Medicaid population and the nonexpansion population. By aligning the cost share for these two coverage populations, these proposed rule changes also make the cost share less confusing for consumers and providers. The department's current rules, inclusive of ARM 37.85.204, also do not match federal legal authority on either exempt services or exempt populations. The rule changes align cost share with the current federal guidelines.

COMMENT #2: One comment was received regarding the different proposed copayment requirements for members below 100% of the Federal Poverty Level (FPL) and members above 100% of the FPL. The commenter is concerned about the administrative burden to manage these varying requirements.

RESPONSE #2: The changes are to align the copayments for services as among the new expansion population and the nonexpansion population. The HELP legislation specified that the department would charge the maximum amount permissible under federal law. Federal law provides that people over 100% of the federal poverty level (FPL) can be charged 10% of the Medicaid reimbursed amount for the service. While federal law limits the copays for services to people under 100% of FPL to certain specified copays. Those copays are in the changes for the rule.

COMMENT #3: One comment was received concerning the reduction of the inpatient hospital cost-share amount. The commenter was concerned that this change could have a negative impact to hospitals.

RESPONSE #3: Based on the federal cost-share regulations the department must decrease the amount that can be charged for inpatient stays for individuals with a FPL of below 100%. This proposed reduction aligns our cost share with federal requirements and actually increases the Medicaid payment to hospitals for those members under 100% of the FPL.

COMMENT #4: Several comments were received regarding ARM 37.85.204(7) which precludes providers from collecting cost shares from members at the time of service. The commenters are concerned that seeking to collect cost shares after the date of service would be difficult to achieve and that this could be a direct impact to small businesses.

RESPONSE #4: Due to the differing amounts of cost share for people above or below 100% of the FPL, different eligibility groups, services that are exempt from cost share, and the quarterly cost-sharing cap, the department determined that the best way to ensure that the correct amount of cost share was charged and paid would be to wait until the claim was adjudicated. In private insurance, it is standard practice for providers to bill patients for cost share after the claims have been adjudicated and this change closely aligns with the standard insurance practice.

COMMENT #5: One comment was received regarding the 5% cost-sharing cap being done on a quarterly basis. The commenter was concerned about the administrative burden and the cost to the department.

RESPONSE #5: The Centers for Medicare and Medicaid Services (CMS) require that the 5% cost-sharing cap be done on a quarterly basis. This requirement protects the members from large charges in relationship to their low income by capping the amount owed in one quarter.

COMMENT #6: One comment was received regarding the populations exempted in ARM 37.85.204(5)(c), (d), and (e) from cost-sharing requirements. The commenter questions the addition of these groups.

RESPONSE #6: The addition of the new groups of people exempt from cost share is necessary to comply with federal law. American Indians/Alaska Natives are exempt from cost share under federal law if they meet the criteria that are proposed in ARM 37.85.204(5)(c)(i-v). Individuals covered through breast and cervical cancer eligibility and individuals receiving hospice care are also exempt from cost share under federal law.

COMMENT #7: One comment was received regarding the proposed change at ARM 37.85.204(6)(e) expanding the exemption from nonemergency transportation

to the all-inclusive transportation services. The commenter questioned why no cost share would be charged for emergency transportation.

RESPONSE #7: Due to varying considerations, transportation, including ambulance, coverage is under current policy exempt from cost share. Transportation is provided by a variety of providers from friends and family to air ambulance. Nonemergency transportation services are paid as an administrative cost of operating the Medicaid program and do not go through the claims payment system. Nonemergency transportation services are prior authorized and mileage is only paid to the nearest available provider. Emergency transportation is also reviewed for medical necessity. However, depending on the urgency of the situation, it is often reviewed after the service. Emergency transportation is only reimbursed if it is medically necessary and to the nearest available provider. The changes to the rule reflect current policy that all transportation services are currently exempt from cost share.

COMMENT #8: One comment was received questioning how a provider would know what to charge for cost share.

RESPONSE #8: Providers will know what to charge members for cost share by reviewing their remittance advice after the claim has gone through the adjudication process. Cost share cannot be charged to the member until the claim has been paid and the provider receives their remittance advice with the amount paid and the amount owing by the member. This practice is necessary for purposes of administrative processing and parallels that of the insurance industry.

COMMENT #9: One comment was received regarding how providers will know what the federal poverty level (FPL) of a member is, in order to charge cost share.

RESPONSE #9: Providers will know what to charge members for cost share by reviewing their remittance advice after the claim has gone through the adjudication process. Cost share cannot be charged to the member until the claim has been paid and the provider receives their remittance advice with the amount paid and the amount owing by the member. This practice is necessary for purposes of administrative processing and parallels that of the insurance industry.

COMMENT #10: One comment was received regarding how a provider will know what to charge for members who are over 100% of the FPL at the time of service.

RESPONSE #10: Providers will know what to charge members for cost share by reviewing their remittance advice after the claim has gone through the adjudication process. Cost share cannot be charged to the member until the claim has been paid and the provider receives their remittance advice that outlines the amount due by the member. This practice is necessary for purposes of administrative processing and parallels that of the insurance industry.

COMMENT #11: One comment was received regarding how providers will be able to charge cost share for goods such as prescriptions and eyeglasses. The commenter asked if providers could hold the goods until the member paid their cost share.

RESPONSE #11: Prescription services are processed and adjudicated in a real time so pharmacy providers will know the cost share amount at the time the prescription is dispensed. All eyeglasses made available through Medicaid coverage are provided through a state bulk-purchasing contract. Consequently, cost share cannot be calculated for the individual provision of the item. The legal authorities governing the provision of services funded with Medicaid monies, do not allow for providers to withhold goods or services from a member until their cost-share amounts are paid.

COMMENT #12: One comment was received regarding cost share being exempt for emergency services. The commenter asked if there was a definition of emergency services and who would determine if a service was an emergency, or if there were designated codes for emergencies.

RESPONSE #12: Emergency services are defined in ARM 37.86.2601 as services provided after the sudden onset of a medical condition manifesting itself by acute symptoms of such severity, including severe pain, that the absence of immediate medical attention could reasonably be expected to result in placing the patient's health in serious jeopardy, serious impairment to bodily functions, or serious dysfunction of any bodily organ or part.

COMMENT #13: One comment was received noting that federal law forbids providers from refusing services to a member who cannot pay their cost share.

RESPONSE #13: 42 CFR Section 447.52(e) does prohibit providers from refusing services to a member who cannot pay their cost share if the member has a family income below 100% of the FPL and the member is not part of an exempted group per 42 CFR 447.56(a). ARM 37.85.402(5)(a) states that no provider may deny services to any member due to their inability to pay a copayment. A member's inability to pay does not lessen the member's obligation to pay a copayment. A provider may use their policy on collecting delinquent payments from a non-Medicaid member, to collect delinquent payments from Medicaid members.

COMMENT #14: One comment was received regarding the proposed 10% cost share for inpatient stays for members over 100% FPL. The commenter was concerned that the provider could have a fiscal impact if the member was to not pay their cost share. The commenter suggested making the inpatient cost share the same for both members above and below 100% FPL.

RESPONSE #14: The changes align the new expansion population and the nonexpansion population. The HELP legislation specified that the department would charge cost share at the maximum amount allowed under federal law. Federal law

specifies that individuals over 100% of the FPL can be charged 10% of the Medicaid reimbursed amount for the service. This includes inpatient hospital services. The maximum 5% cost-share cap, applied quarterly, protects members from large charges in relationship to their low incomes.

COMMENT #15: One comment was received questioning if the cost-share amounts listed in the proposed rule were meant to be per visit or per line, as the proposed rule change does not state which methodology will be used.

RESPONSE #15: The department has modified the proposed rule for adoption to denote whether the methodology used to determine cost share is by visit or by service.

COMMENT #16: One comment was received regarding cost share for provider-based services. The commenter questioned if cost share will be charged on both the provider claim and the facility claim.

RESPONSE #16: Cost sharing for provider-based services will continue to be subject to the methodology currently in place with the applicable cost share charged to each claim.

COMMENT #17: One comment was received regarding the use of charity care within nonprofit hospitals for members who cannot pay their cost share. The commenter noted that most hospitals within the state are nonprofit hospitals and that most if not all Medicaid members qualify for charitable care. Members with increased copayments may be inclined to use the charity care systems at these hospitals.

RESPONSE #17: Eligibility for nonprofit hospital charity care and the services that are given under these programs is determined by the individual hospitals not the department.

COMMENT #18: One comment was received requesting the department to clarify that noncovered services include those services for members who have met their dental treatment cap that would have been covered, if the member had not met their dental treatment cap. The commenter is concerned that the cost of performing dental treatments can readily exceed the annual maximum limit, and unless the remaining balance is considered noncovered, the practice cannot collect the balance billed for that service.

RESPONSE #18: Medicaid considers all dental procedure codes on the fee schedule as covered services. If the procedure code is not on the fee schedule, it is considered a noncovered service. Medicaid members now have an annual cap of \$1,125 for covered treatment services. Treatment services include procedures such as fillings, crowns, root canals, periodontal procedures, and extractions. Once a member has met their cap, any treatment code on the fee schedule is considered a noncovered service and will require a private payment arrangement between the

member and the dental office. Private pay agreements are addressed at ARM 37.85.406(11)(a). If a member wishes to have a procedure performed that is a noncovered service not on the fee schedule, this would also be considered a private pay arrangement. Procedures not counted toward the cap are diagnostic, preventive, anesthesia, and denture services. Medicaid will pay claims for these covered services even after the cap is met. The department has updated the final rule adoption section ARM 37.85.204(9) to include dental treatment expenses that exceed the dental treatment cap.

COMMENT #19: One comment was received requesting that the department create an Advanced Beneficiary Notice template for providers.

RESPONSE #19: The department will not be creating an Advanced Beneficiary Notice template.

COMMENT #20: One comment was received regarding the proposed removal of cost share exemption for personal assistance services and home dialysis attendant services. The commenter expressed concern that while the changes may simplify cost sharing these changes could affect patient access to these services.

RESPONSE #20: The proposed changes are to align the new expansion population and the nonexpansion population. The HELP legislation specified the department would charge the maximum cost share allowed under federal law. Personal assistance services and home dialysis attendant services are not exempt from cost share under federal law. Therefore, these services are being charged cost share.

COMMENT #21: One comment was received regarding nonemergency use of emergency room services. The commenter questioned why the new HELP Plan has cost share guidelines related to nonemergency use of the emergency room but ARM 37.85.204 does not. The commenter also noted that low-level emergency room visits are already reimbursed at a lower rate in lieu of increased cost share.

RESPONSE #21: At this current time, the cost share requirements related to nonemergency use of the emergency room only pertain to those participants in the HELP Plan.

COMMENT #22: One comment was received in support of the proposed exemption of preventive dental services from cost share.

RESPONSE #22: The department thanks the commenter for their support.

COMMENT #23: One comment was received in support of the proposed amendment of ARM 37.85.206 that exempts persons who are categorically eligible for Medicaid as aged, blind, or disabled from the annual \$1,125 dental treatment limit.

RESPONSE #23: The department thanks the commenter for their support.

COMMENT #24: One comment was received regarding the removal of therapy limits in ARM 37.86.603. The commenter questioned why the department is removing the limits.

RESPONSE #24: The department is aligning the benefits for the Medicaid expansion population and the nonexpansion population. The benchmark plan that the expansion plan was required to follow did not have limits on therapy services. In order to align the existing program, the department is removing this limit for the nonexpansion members.

COMMENT #25: One comment was received regarding the change of eyeglass and vision exams from once every 730 days to once every 365 days in ARM 37.86.2002. The commenter questioned why the department is changing the limits.

RESPONSE #25: The department is aligning the benefits for the Medicaid expansion population and the nonexpansion population. The benchmark plan that the expansion plan was required to follow allowed for these services once every 365 days. In order to align the existing program, the department is modifying the coverage of eyeglass and vision exams to once every 365 days.

COMMENT #26: One comment was received regarding the proposed language in ARM 37.86.2102(5). The commenter is concerned that the language as written about in the circumstances described in (4) is confusing and suggested that the language be changed to include the circumstances described in (4)(a) through (i).

RESPONSE #26: The department agrees with the commenter and has modified the language in the final rule adoption.

COMMENT #27: One comment was received regarding the proposed removal of the inpatient detoxification limit of seven days in ARM 37.86.2902. The commenter questioned why the department is changing the limit and why it is shown to have no cost implication.

RESPONSE #27: The department is modifying this rule to conform it with federal law that requires that Medicaid may not place unnecessary burdens on the obtainment of behavioral health services. The department required inpatient hospitals that performed detoxification services receive prior authorization only if the member is inpatient for greater than seven days. This change removes the prior authorization of services over seven days. The department's payment methodology for inpatient stays has a strong incentive for hospitals to self-monitor length of stay due to the prospective all-inclusive payment for the stay rather than paying based on a daily rate. The department examined its process of prior authorization for the past several years and found that this prior authorization was not needed or cost effective, as both the admissions and length of stays were appropriate.

COMMENT #28: One comment was received regarding the proposed removal of limits for cardiac rehabilitation in ARM 37.86.3103. The commenter questioned why the department was removing the limit and why the cost implication is so low.

RESPONSE #28: The department is aligning the benefits for the Medicaid expansion population and the nonexpansion population. The benchmark plan that the expansion plan is required to follow does not have limits on cardiac rehabilitation. In order to align the existing program, the department is removing this limit for the nonexpansion members. Cardiac rehabilitation is only used for people after a serious previous qualifying cardiac event; due to this, relatively few people use this service. The removal of the limits on the number of visits is not expected to significantly increase utilization.

COMMENT #29: One comment was received regarding the proposed removal of limits for pulmonary rehabilitation in ARM 37.86.3105. The commenter questioned why the department was removing the limit and why the cost implication is so low.

RESPONSE #29: The department is aligning the benefits for the Medicaid expansion population and the nonexpansion population. The benchmark plan that the expansion plan was required to follow did not have limits on pulmonary rehabilitation. In order to align the existing program, the department is removing this limit for the nonexpansion members. Pulmonary rehabilitation is only used for individuals with serious chronic obstructive pulmonary disease; due to this, relatively few people use this service. The removal of the limits on the number of visits is not expected to significantly increase utilization.

COMMENT #30: The department made the following change to the name of the 00181 Medicaid 1115 Waiver on further review of the rules based on comments that were received.

RESPONSE #30: The name of the 00181 Medicaid 1115 waiver was changed to the Waiver for Additional Services and Populations (WASP) Medicaid 1115 waiver.

5. The department intends to apply these rule amendments retroactively to January 1, 2016. A retroactive application of the proposed rule amendments does not result in a negative impact to any affected party.

/s/ Cary B. Lund
Cary B. Lund, Attorney
Rule Reviewer

/s/ Richard H. Opper
Richard H. Opper, Director
Public Health and Human Services

Certified to the Secretary of State April 25, 2016

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 37.106.704 pertaining to ten)
additional inpatient beds granted by a)
waiver under the Patients and)
Providers Act of 2008 for critical)
access hospitals)

TO: All Concerned Persons

1. On March 4, 2016, the Department of Public Health and Human Services published MAR Notice No. 37-739 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 430 of the 2016 Montana Administrative Register, Issue Number 5.
2. The department has amended the above-stated rule as proposed.
3. No comments or testimony were received.

/s/ Susan Callaghan
Susan Callaghan, Attorney
Rule Reviewer

/s/ Richard H. Opper
Richard H. Opper, Director
Public Health and Human Services

Certified to the Secretary of State April 25, 2016.

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

In the matter of the amendment of)	NOTICE OF DECISION ON
ARM 37.85.406, 37.86.2803,)	PROPOSED AMENDMENT
37.86.2907, 37.86.2916, and)	
37.86.4401 pertaining to hospitals,)	
inpatient hospitals, rural health)	
clinics, and federally qualified health)	
centers)	

TO: All Concerned Persons

1. On April 22, 2016, the Department of Public Health and Human Services (department) published MAR Notice No. 37-750 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 705 of the 2016 Montana Administrative Register, Issue Number 8.

2. The department has decided to cancel the public hearing on the proposed amendment of the above-stated rules that was scheduled for May 12, 2016, at 9:30 a.m., at the Department of Public Health and Human Services in the auditorium of the Department of Public Health and Human Services Building, 111 North Sanders, Helena, Montana.

3. The department is not adopting rule changes in MAR Notice No. 37-750, due to the amendments made to ARM 37.85.105 in MAR Notice No. 37-745, Amended Notice of Public Hearing on Proposed Amendments, pertaining to the hospital program rates and fee schedules. New fee schedules will not be effective July 1, 2016, meaning the new hospital long-term care facility base rate and the update to the marginal cost percentage will also not be effective July 1, 2016. The department needs additional time to implement hospital program rates and fee schedules to be effective at a later date.

/s/ Geralyn Driscoll
 Geralyn Driscoll, Attorney
 Rule Reviewer

/s/ Richard H. Opper
 Richard H. Opper, Director
 Public Health and Human Services

Certified to the Secretary of State April 25, 2016.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 42.2.303 and 42.2.325)
pertaining to meetings with)
department leadership, information)
access, and the department's)
acceptance of power of attorney)
requests)

TO: All Concerned Persons

1. On March 4, 2016, the Department of Revenue published MAR Notice No. 42-2-949 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 439 of the 2016 Montana Administrative Register, Issue Number 5.
2. The department amends the above-stated rules as proposed.
3. No comments or testimony were received.

/s/ Laurie Logan
Laurie Logan
Rule Reviewer

/s/ Mike Kadas
Mike Kadas
Director of Revenue

Certified to the Secretary of State April 25, 2016

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 a soft back, bound publication, issued twice-monthly, containing notices of rules proposed by agencies, notices of rules adopted by agencies, and interpretations of statutes and rules by the Attorney General (Attorney General's Opinions) and agencies (Declaratory Rulings) issued since publication of the preceding register.

Use of the Administrative Rules of Montana (ARM):

- | | |
|---------------|---|
| Known Subject | 1. Consult ARM Topical Index.
Update the rule by checking the accumulative table and the table of contents in the last Montana Administrative Register issued. |
| Statute | 2. Go to cross reference table at end of each number and title which lists MCA section numbers and department corresponding ARM rule numbers. |

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies that have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through December 31, 2015. This table includes those rules adopted during the period January 1, 2016, through March 31, 2016, and any proposed rule action that was pending during the past 6-month period. (A notice of adoption must be published within six months of the published notice of the proposed rule.) This table does not include the contents of this issue of the Montana Administrative Register (MAR or Register).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through December 31, 2015, this table, and the table of contents of this issue of the Register.

This table indicates the department name, title number, rule numbers in ascending order, catchphrase or the subject matter of the rule, and the page number at which the action is published in the 2015/2016 Montana Administrative Register.

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

ADMINISTRATION, Department of, Title 2

I-VII	Credit Union Supervisory Committee - Credit Union Investment Rules - Board of Director Training, p. 1556, 2247
2.5.201	and other rules - Definitions - Changes Within the State Procurement Bureau and Central Stores Program, p. 612
2.5.701	and other rules - State Surplus Property Program, p. 355, 719
2.21.4002	and other rules - Equal Employment Opportunity - Nondiscrimination - Harassment Prevention, p. 617
2.55.502	Individual Loss Sensitive Dividend Distribution Plan, p. 548
2.59.104	Semiannual Assessment for Banks, p. 479
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