

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 8

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 The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

In the matter of the amendment of ARM) NOTICE OF PUBLIC HEARING ON
2.5.201, 2.5.303, 2.5.401, 2.5.502, and) PROPOSED AMENDMENT
2.5.603 pertaining to definitions and)
changes within the State Procurement)
Bureau and Central Stores Program)

TO: All Concerned Persons

1. On May 19, 2016, at 2:00 p.m., the Department of Administration, State Financial Services Division will hold a public hearing in Room 165 of the Mitchell Building, at 125 North Roberts, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Department of Administration will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Department of Administration no later than 4:00 p.m. on May 10, 2016, to advise us of the nature of the accommodation that you need. Please contact Penny Moon, Department of Administration, P.O. Box 200135, Helena, Montana, 59620-0135; telephone (406) 444-3313; fax (406) 444-2529; Montana Relay Service 711; or e-mail pmoon@mt.gov.

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

2.5.201 DEFINITIONS In this chapter, words and terms ~~shall~~ have the same meaning as defined in Title 18, chapter 4, MCA, and, unless the context clearly requires otherwise or a different meaning is prescribed for a particular rule, the following definitions apply:

(1) through (6) remain the same.

(7) ~~"Central Stores Program" means the program within the State Procurement Bureau that develops standard specifications and procures certain supplies for state agencies.~~

(7) "Commodity code" means a number designated to include a specific type of supply or service. The commodity codes provide a means for vendors registered with State Procurement Bureau to easily define the supplies and/or services they offer and for agencies to target specific vendors when issuing solicitations.

(8) through (13) remain the same.

(14) ~~"Division" means the General Services Division~~ State Financial Services Division of the Department of Administration.

(15) through (24) remain the same.

(25) "Office supply" means a consumable product or supply used on a recurring basis in general business and office operations. An office supply under this definition includes, but is not limited to, fax and copy paper, writing tools,

erasers, toner, fasteners (paper clips, rubber bands, binding clips, etc.), calculators, staplers, adhesives (tape, glue, etc.), scissors, rulers, tape dispensers, pencil sharpeners, notepads and sticky notes, nonprinted envelopes, calendars and planners, rubber stamps, disposable batteries, clocks, portable shredders, desk accessories and organizational aids, data processing and storage media (CDs, USBs, etc.), minor computer peripherals (monitors, individual external hard drives, keyboards, etc.), document filing and organizers (binders, clipboards, dividers, file folders, file labels, storage boxes, etc.), bulletin boards, marker and chalk boards, office mats (chair, antifatique, etc.), cleaning equipment and supplies, first aid supplies, individual hand sanitizer, dish soap, disposable gloves, coarse paper products, trash can liners, and disposable food service products. An office supply does not include office furniture, computer equipment (except as noted above), items available through State Print and Mail, facility and industrial supplies and tools, lab equipment, photocopiers, software, or food and beverage items.

(25) remains the same, but is renumbered (26).

(26)(40) "State Print and Mail Services" means that the General Services Division bureau of the division responsible for supervising and attending to all public printing of the for state agencies, and handling and processing of state mail for the capitol complex.

(27) remains the same.

(28) "Receiving" means inspecting the supply or service and checking it against the contract to ensure it is acceptable, complete, and complies with the contract terms.

(28) through (38) remain the same, but are renumbered (29) through (39).

(39)(41) "State Procurement Bureau" means the division's bureau responsible for procuring or supervising the procurement of all supplies and services needed by the state, excluding those services procured by the State Print and Mail Services Bureau.

(40)(42) "Surplus Property Program" means the General Services Division program within the State Procurement Bureau that is responsible for managing the state and federal surplus property.

(41) through (48) remain the same, but are renumbered (43) through (50).

AUTH: 18-1-114, 18-4-221, MCA

IMP: 18-4-221, MCA

STATEMENT OF REASONABLE NECESSITY: SB 94 of the 2015 Legislature removed the definition of office supplies and the Central Stores program from 18-4-301 and 18-4-302, MCA, respectively. The State Procurement Bureau worked with office supply vendors from across the state to develop a new definition of office supplies to clarify for vendors and purchasers alike what is included as an office supply and to assist the state in developing and administering office supply contracts. Because the Central Stores Program no longer exists, all references must be removed from this and other rules included in this notice. In addition, the name of Print and Mail Services is changed to reflect its current name.

In 2015, the State Procurement Bureau implemented an electronic procurement (eProcurement) system to facilitate vendor registration and submission

of bids and proposals. It is necessary to add a definition for "commodity code" to match terminology used by the new eProcurement system.

In June 2015, the State Procurement Bureau transitioned from the General Services Division to the State Financial Services Division; therefore, references to General Services Division are being changed to State Financial Services Division throughout the rules in this notice.

Moving the definition of "receiving" from ARM 2.5.303 to this rule enhances readability by placing all definitions in the same rule. Additional amendments are included to simplify the rule language.

2.5.303 ENFORCING THE CONTRACT (1) Except for items purchased and warehoused by the ~~division's~~ department's Surplus Property Program, agencies are responsible for receiving supplies and services and documenting acceptance or rejection. ~~procured on their behalf by the division. "Receiving" means inspecting the supply or service and checking it against the contract to ensure that it is acceptable, complete, and in compliance with the terms of the contract.~~

(2) ~~Agencies should submit complaints about vendor performance to the division.~~ shall comply with the provisions of the Contract Management policy regarding documentation of "significant contract complaints, disputes, and terminations." The department adopts and incorporates by reference the Contract Management policy effective November 25, 2015. The policy may be found on the Montana Operations Manual web site at <https://montana.policytech.com/docview/?docid=692&public=true&fileonly=true>.

(3) ~~For contracts established by the division on behalf of an agency, the~~ The division ~~will~~ shall investigate complaints and attempt to resolve the problem to the agency's satisfaction. The division ~~will~~ shall notify the complaining agency of any action taken as a result of the complaint.

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

AUTH: 18-4-221, MCA

IMP: 18-4-221, MCA

STATEMENT OF REASONABLE NECESSITY: See the reasonable necessity statement for ARM 2.5.201. In addition, the department believes it appropriate to move the definition of "receiving" to the definition rule to keep all terms defined in this chapter in a single rule. It is necessary to incorporate by reference the requirements of the Contract Management policy to clarify roles and responsibilities regarding contract enforcement.

2.5.401 VENDORS LIST (1) ~~The General Services Division~~ State Financial Services Division maintains an online vendors list for all supply and service commodities. Names and addresses on the vendors list ~~shall be~~ are available for public inspection, ~~but, however,~~ this list ~~shall~~ may not be used for private promotional, commercial, or marketing purposes as ~~per 2-6-109 described in 2-6-1017,~~ MCA.

(2) To be placed on the vendors list, a vendor must register with the division online at ~~http://www.vendor.mt.gov/~~ http://vendorresources.mt.gov/. Each vendor is

responsible for keeping their information current, including selection of the ~~categories, quote groups, and items~~ commodity codes to which identify the supplies or services the vendor ~~wishes to provide~~.

AUTH: 18-4-221, MCA

IMP: 18-4-221, MCA

STATEMENT OF REASONABLE NECESSITY: See the reasonable necessity statement for ARM 2.5.201. Also, additional amendments are included to simplify the rule language and improve readability. HB 123 of the 2015 Legislature repealed 2-6-109, replacing it with 2-6-1017, MCA, thus necessitating the change to the correct statute. The new eProcurement web site replaced the division's previous web site, requiring update of the web address.

2.5.502 BID, PROPOSAL, AND CONTRACT PERFORMANCE SECURITY

(1) and (2) remain the same.

(3) Facsimile, ~~electronic~~, or photocopy copies of bid or contract security are not acceptable.

(4) through (10) remain the same.

AUTH: 18-4-221, 18-4-312, MCA

IMP: 18-1-201, 18-4-312, MCA

STATEMENT OF REASONABLE NECESSITY: This amendment is necessary to remove the prohibition of electronic submission of bid and contract security. This amendment will align the rule with practices prescribed by the Commissioner of Securities and Insurance, and facilitate use of the eProcurement system.

2.5.603 SMALL PURCHASES OR LIMITED SOLICITATIONS OF SUPPLIES AND SERVICES (1) through (3) remain the same.

(4) This rule does not apply to controlled items purchased through exclusive term contracts, requisition time schedules, ~~the Central Stores Program~~, or ~~the State Print and Mail Services Bureau~~ unless specifically delegated in a written delegation agreement to the agency.

(5) through (6)(d) remain the same.

AUTH: 18-4-221, MCA

IMP: 18-4-305, MCA

STATEMENT OF REASONABLE NECESSITY: See necessity statement for ARM 2.5.201.

4. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Penny Moon, Department of Administration, State Procurement Bureau, P.O. Box 200135, Helena, Montana 59620-0135; telephone (406) 444-

3313; Montana Relay Service 711; fax (406) 444-2529; or e-mail pmoon@mt.gov and must be received no later than 5:00 p.m., May 20, 2016.

5. Penny Moon, Department of Administration, has been designated to preside over and conduct this hearing.

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

7. An electronic copy of this proposal notice is available through the department's web site at <http://doa.mt.gov/administrativerules>. The department 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 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 department 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, apply and have been fulfilled. The primary bill sponsor, Senator Edward Buttrey, was contacted on February 23, 2016, by e-mail.

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

By: /s/ Sheila Hogan
Sheila Hogan, Director
Department of Administration

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

Certified to the Secretary of State April 11, 2016.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 2.21.4002, 2.21.4005, 2.21.4008,) PROPOSED AMENDMENT
2.21.4013, 2.21.4020, and 2.21.4028)
pertaining to equal employment)
opportunity, nondiscrimination, and)
harassment prevention)

TO: All Concerned Persons

1. On May 12, 2016, at 9:30 a.m., the Department of Administration will hold a public hearing in Room 136 of the Mitchell Building, at 125 N. Roberts Street, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Department of Administration will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m. on May 6, 2016, to advise us of the nature of the accommodation needed. Please contact John Pavao, Department of Administration, P.O. Box 200127, 125 N. Roberts Street, Helena, MT 59620-0127; telephone (406) 444-3984; Montana Relay Service 711; fax (406) 444-0703; or e-mail jpavao@mt.gov.

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

2.21.4002 POLICY AND OBJECTIVES (1) through (1)(c) remain the same.
(d) ~~and the Governor's Executive Order 41-2008, Equal Employment Opportunity, Nondiscrimination, and Harassment Prevention No. 04-2016, Executive Order Prohibiting Discrimination in State Employment and Contracts.~~
(2) through (3)(e) remain the same.

AUTH: 2-18-102, MCA
IMP: 2-18-102, MCA

STATEMENT OF REASONABLE NECESSITY: The Department of Administration proposes to update these rules to reflect Executive Order No. 04-2016, issued by Governor Steve Bullock on January 18, 2016.

These amended rules and the other rules making up this policy establish the minimum standards for complying with federal and state laws, regulations, and executive orders prohibiting illegal discrimination, including harassment. Agency managers have the flexibility to impose stricter standards as needed. Citing the federal and state laws and executive order provides readers with background information and references for finding additional information.

These rules do not apply to entities beyond the executive branch. Other state entities may adopt these rules or develop their own internal policies and procedures for preventing and addressing discrimination and harassment.

2.21.4005 EQUAL EMPLOYMENT OPPORTUNITY (EEO) AND NONDISCRIMINATION (1) remains the same.

(2) Agency managers, as defined by the agency in policy or rule to promote consistency with internal policies and procedures, may not tolerate discrimination or harassment based on an individual's race, color, national origin, age, physical or mental disability, marital status, religion, creed, sex, pregnancy, childbirth, or a medical condition related to pregnancy or childbirth, sexual orientation, gender identity or expression, political beliefs, genetic information, military service or veteran's status, culture, social origin or condition, or ancestry. Likewise, agency management may not tolerate discrimination or harassment because of a person's marriage to or association with individuals in one of the previously mentioned protected classes.

(3) through (5) remain the same.

AUTH: 2-18-102, MCA

IMP: 2-18-102, MCA

STATEMENT OF REASONABLE NECESSITY: This rule emphasizes the state's commitment to promoting diversity, inclusion, equal employment opportunity, and equal access to programs, services, and activities offered to the public.

The department, like other state and local governments and corporations around the world, recognizes the value of a diverse and inclusive workplace. Diversity and inclusion promote innovation and problem solving by exploring different experiences and perspectives. Embracing and capitalizing on individual differences can help state agencies discover more efficient ways of doing business and better meet the needs of our diverse citizens.

This rule aligns the state's policy with the Montana Constitution, which recognizes the inalienable rights and dignity of an individual, and federal and state laws, regulations, and executive orders prohibiting discrimination and harassment.

This policy expands protections to include pregnancy itself, the birth of a child, and medical conditions resulting from pregnancy or childbirth. The policy requires amendment to align with enforcement guidance released by the Equal Employment Opportunity Commission (EEOC). The EEOC is the federal agency charged with enforcing many of the employment statutes prohibiting employment discrimination. See the EEOC's [Enforcement Guidance: Pregnancy Discrimination and Related Issues](#) and associated [Questions and Answers](#) for additional information.

This policy also must be amended to expressly prohibit discrimination and harassment based on gender identity and gender expression. The U.S. Supreme Court and many lower courts have found that discrimination based on sex or gender stereotypes is a violation of the sex discrimination provisions of Title VII of the Civil Rights Act of 1964. Sex or gender stereotypes may include, but are not limited to, assumptions and/or expectations about how persons of a certain sex should dress

or behave. See [Examples of Court Decisions Supporting Coverage of LGBT-Related Discrimination Under Title VII](#). The EEOC demonstrated its commitment by including LGBT coverage in its [Strategic Enforcement Plan](#), releasing a fact sheet, [What You Should Know about EEOC and the Enforcement Protections for LGBT Workers](#), and [litigating LGBT cases](#).

In a March 1, 2016, press release, the EEOC announced it has filed its first two sex discrimination lawsuits against employers based on sexual orientation. See [EEOC Files First Suits Challenging Sexual Orientation Discrimination as Sex Discrimination](#) for more information.

The department also proposes to include military service as a protected class, thus aligning this rule with federal and state laws, regulations, and executive orders prohibiting discrimination against current service members, whether active duty, Guard, Reserves, or veterans.

2.21.4008 RESPONSIBILITIES (1) through (1)(c) remain the same.

(d) create and maintain an annual report summarizing state government's efforts toward achieving diversity and inclusion;

(e) provide EEO analyses, reports, and technical assistance to agencies;

~~(e)(f)~~ recommend strategies to promote diversity and overcome potential barriers to employment; and

~~(f)(g)~~ design and develop diversity and inclusion and equal opportunity training that includes minimum standards for new employee orientation and refresher training; and

(h) submit the biennial State and Local Government EEO-4 Report to the Equal Employment Opportunity Commission by the reporting deadline on odd-numbered years.

(2) Executive branch department heads shall:

(a) appoint an EEO officer responsible for:

(i) managing the agency's EEO program;

(ii) training employees on EO;

(iii) assisting employees and managers with resolving EO issues;

(iv) conducting internal investigations; and

(v) ~~developing written EEO action plans; and~~ updating the department's annual EEO action plan or affirmative action plan if required by a federal department;

(vi) developing strategies and measurable goals and objectives for evaluating the effectiveness of the agency's EEO action plan;

(vii) reporting the agency's progress toward minimizing underutilization of women and minorities to the department each year; and

(b) through (b)(iii) remain the same.

(3) Agency managers shall:

(a) and (b) remain the same.

(c) provide reasonable accommodations, upon request, for limitations resulting from pregnancy-related disabilities and the interaction of pregnancy with an underlying impairment;

(d) develop internal procedures to provide meaningful access (interpreters, translators, etc.) to programs, services, and activities for customers with limited English proficiency (LEP);

(e) include provisions in all contracts and subcontracts that prohibit discrimination or harassment based on race, color, national origin, age, physical or mental disability, marital status, religion, creed, sex, pregnancy, childbirth, or a medical condition related to pregnancy or childbirth, sexual orientation, gender identity or expression, political beliefs, genetic information, military service or veteran's status, culture, social origin or condition, or ancestry;

~~(e)~~(f) post the state's EO policy poster and complaint-resolution procedures, including contact information for the agency EEO officer and ADA coordinator, in areas frequented by employees and the public;

~~(d)~~(g) provide a copy of these rules to all employees;

(h) have employees sign a statement acknowledging their understanding and acceptance of the standards set forth in these rules and file a copy in their personnel file;

~~(e)~~(i) provide diversity and inclusion and EO and harassment prevention training to all new employees within 90 days of hire according to guidelines established by the department; ~~or within six months of August 26, 2011, for current employees who have not yet received training;~~

~~(f)~~(j) provide diversity and inclusion and EO and harassment prevention refresher training for all employees every three years or more frequently as needed according to guidelines established by the department; ~~and~~

~~(g)~~(k) document all training in the employee's personnel file; ~~and~~

(l) report the number of trainings provided, by new employee and refresher training and number of people trained, to the department each quarter.

AUTH: 2-18-102, MCA

IMP: 2-18-102, MCA

STATEMENT OF REASONABLE NECESSITY: This rule promotes consistent enforcement of the policy across executive branch agencies and aims to minimize duplication of effort. The department oversees the state's equal opportunity program and provides technical assistance, tools, and resources to help agencies effectively implement the state's equal opportunity rules. Since department heads are ultimately responsible for fair and equitable treatment of applicants, employees, and customers of their respective agencies, agency EO officers and ADA coordinators are critical to successful implementation of the agency's equal opportunity program.

The department proposes an annual requirement for submitting EEO action plans to closely monitor the state's progress toward increasing the representation of women and minorities in occupations where they are currently underrepresented, thereby promoting diversity and inclusion and minimizing the potential risk of litigation. Providing annual EEO action plans affords agencies the opportunity to evaluate their progress and revise strategies as needed.

The Governmental Code of Fair Practices, 49-3-201, MCA, requires state agencies to regularly review employment practices to ensure compliance and

requires appointing authorities to "exercise care to ensure utilization of minority group persons." Federal laws prohibit employers from using selection procedures that adversely impact employment, to include hiring, promotion, or other employment opportunities, based on race, sex, or ethnicity, unless those procedures were validated in accordance with the [Uniform Guidelines on Employee Selection Procedures](#).

Several federal agencies require state agencies to track and report employee demographics based on gender, ethnicity, and race or to develop Affirmative Action plans when receiving federal funding.

The department also proposes EEO plans include strategies, as well as measurable goals and objectives, to assess the state's efforts to attract and retain diverse talent. Incorporating strategies tied to the unique needs of each agency, and developing measureable goals and objectives, will assist agency managers as well as the department, in evaluating the effectiveness of equal opportunity and diversity and inclusion initiatives and identifying successful practices within state government. The department will assist agency HR staffs with plan development and offer tools and resources for developing comprehensive EEO action plans.

The rule addresses responsibilities of agency EO officers, ADA coordinators, and managers in implementing the agency's equal opportunity program. EO officers and ADA coordinators have insight into the unique needs and challenges of their respective agencies and serve as subject matter experts to employees and managers. These rules outline the minimum responsibilities to promote effective program implementation.

Managers have the important responsibility of preventing discrimination and harassment from occurring. Likewise, managers must take swift and decisive action to stop discrimination, harassment, and inappropriate behavior when it occurs. As previously stated, employers may be liable for harassment if management knew or should have known of the misconduct and failed to take immediate and appropriate corrective action.

Managers and employees must understand and abide by the standards set forth in this policy. Violations of this policy may result in discipline up to and including termination.

Providing a copy of these rules and subsequent training increases individual awareness and promotes accountability. Maintaining training records demonstrates a good-faith effort to prevent discrimination and harassment and promotes compliance with 49-3-201, MCA. The statute requires state agencies to provide orientation and training programs with emphasis on human relations and fair employment practices.

Managers must also recognize and respond to accommodation requests from employees, as well as responding to the needs of diverse customers.

The department proposes a requirement to provide reasonable accommodations, upon request, to employees for pregnancy-related disabilities and limitations resulting from pregnancy and an underlying impairment. The proposed change emphasizes the state's commitment to promoting an inclusive work environment for women and aligns with the U.S. Supreme Court decision in [Young v. United Parcel Serv., Inc.](#) and EEOC Enforcement Guidance: Pregnancy Discrimination and Related Issues.

The department proposes a requirement for agency managers to develop internal processes and procedures for providing access to programs, services, and activities for customers who speak limited English. Agency managers must respond to the unique language needs of their customers and provide meaningful access to the programs and services they offer. This may include providing documents and forms in a language other than English or contracting with an interpreter to engage in meaningful communication with a customer who speaks limited English. Including this requirement promotes a consistent approach, since state agencies that receive federal funding already have this requirement under [Title VI of the Civil Rights Act of 1964](#). The U.S. Supreme Court, in *Lau v. Nichols*, 414 U.S. 563 (1974), interpreted Title VI to prohibit conduct that would disproportionately affect LEP persons because such conduct constitutes discrimination based on national origin. Including this requirement not only supports agencies with Title VI obligations, but promotes compliance with 49-3-205, MCA, which prohibits discrimination in services, including discrimination based on national origin.

The department proposes language that prohibits discrimination by contractors and subcontractors who perform work on behalf of state government. The department proposes this language to comply with Executive Order No. 04-2016, which requires all agencies, managers, supervisors, and employees to include language in contracts and subcontracts that prohibits discrimination consistent with guidelines established in the executive order.

The department proposes minimum requirements for training. The department believes minimum requirements will send a consistent message across state government and reinforce the state's commitment to equal opportunity, diversity, and inclusion. Employees and managers must know their rights and responsibilities under various federal and state equal opportunity laws, regulations, executive orders, policies, and procedures. Employees must know they can request reasonable accommodations because of a disability and their religious beliefs, and how to make a request. Employees and managers must know what actions to take if a customer requests a modification to a workplace policy or procedure or an auxiliary aid or service because of a disability.

Likewise, employees and managers must understand what behaviors may be inappropriate in the workplace or lead to discrimination or harassment. Employees must know that they can oppose discrimination or harassment and free from retaliation. Managers must know how to respond to, report, and correct these behaviors and the tools and resources available to them.

The EEOC emphasizes the importance of training, particularly for supervisors, in their [Enforcement Guidance on Vicarious Employer Liability for Unlawful Harassment by Supervisors](#). Comprehensive, thought-out training is critical to promoting mutual understanding and respect, promoting diversity and inclusion, and preventing discrimination and harassment from occurring. It demonstrates a good-faith effort and sends a message that we value our employees and customers.

2.21.4013 HARASSMENT (1) through (2)(c) remain the same.

(3) Agency managers may not tolerate any behavior ~~that negatively focuses on a protected class. Although a behavior or pattern of behavior might not constitute~~

illegal discrimination, it might still violate this rule. or pattern of behavior that intentionally or unintentionally degrades or demeans an individual or group of individuals, whether based on a legally protected class or not.

(4) remains the same.

AUTH: 2-18-102, MCA

IMP: 2-18-102, MCA

STATEMENT OF REASONABLE NECESSITY: The department proposes this rule to promote a safe, healthy, and respectful environment for employees and citizens. The department believes it is important to include language that prohibits all forms of harassment to promote a culture of individual dignity and respect. While some forms of harassment may not be illegal, they may be disruptive and threatening in the work environment and increase the risk of litigation. Behaviors that demean or degrade individuals for any reason, whether intentional or unintentional, may impact morale, productivity, communication, and the health, safety, and wellbeing of an individual or team, and result in higher turnover, complaints, and litigation. Therefore, agency managers shall not tolerate inappropriate behavior or harassment in any form. Any behavior that constitutes harassment is a violation of this policy.

2.21.4020 INVESTIGATING A COMPLAINT (1) and (2) remain the same.

(a) the investigation process and anticipated timelines; and

(b) what retaliation is and that it is illegal, unacceptable behavior; and

~~(c) expectations and consequences of discussing the complaint with anyone other than the investigator, management, union representative, or legal counsel.~~

(3) through (4)(c) remain the same.

AUTH: 2-18-102, MCA

IMP: 2-18-102, MCA

STATEMENT OF REASONABLE NECESSITY: The department proposes replacing "unacceptable behavior" with "illegal." Federal and state laws, regulations, executive orders, and policies that prohibit discrimination based on race, color, sex (to include sexual orientation and gender identity), pregnancy, childbirth, and medical conditions related to pregnancy or childbirth, religion, national origin, age, disability, military service, creed, marital status, and political beliefs, also prohibit retaliation against individuals who oppose unlawful discrimination or participate in an employment discrimination proceeding. Therefore, retaliation is illegal.

Retaliation claims are the most frequently filed charges of discrimination with EEOC, making up 45 percent of all charges filed, and the EEOC is currently proposing new enforcement guidance to curb this growing trend. See [EEOC Seeks Public Input on Draft Proposed Enforcement Guidance on Retaliation and Related Issues](#) for more information.

The department proposes removing (2)(c) to promote consistency with a July 30, 2012, National Labor Relations Board (NLRB) decision, *Banner Health System d/b/a/ Banner Estrella Medical Center and James A. Navarro*, 358 NLRB No. 93. The NLRB held that an employer violated employees' right to engage in concerted

activities for their mutual aid and protection under the National Labor Relations Act (NLRA) by asking employees who make complaints not to discuss the matter with coworkers while the investigation is pending. The NLRA and the Montana Collective Bargaining for Public Employees Act (39-31-201, MCA) give employees the right to organize, form, join, or assist a labor union, to bargain collectively, or to engage in other concerted activities for mutual aid or protection. The NLRB concluded, before prohibiting an employee from discussing a pending investigation, an employer must conduct an individualized assessment and be able to demonstrate that a legitimate business reason outweighs the employee's rights under the Act. The employer must consider whether (1) there are witnesses in need of protection; (2) evidence is in danger of being destroyed; (3) testimony is in danger of being fabricated; or (4) there is a need to prevent a cover-up. Employers cannot make blanket rules and must consider these factors before suggesting that employees refrain from discussing the complaint or pending investigation.

- 2.21.4028 INITIATING AN EXTERNAL COMPLAINT (1) In addition to the internal complaint process, complaints may be filed with the following agencies:
- (a) Montana Human Rights Bureau, ~~4625 11th Avenue~~ 33 S. Last Chance Gulch, Suite 2, P.O. Box 1728, Helena, MT 59624-1728, (406) 444-~~2884~~ 4356, (800) 542-0807, TTY ~~(406) 444-0532~~ Montana Relay Service 711; or
 - (b) United States Equal Employment Opportunity Commission (EEOC) ~~San Francisco District Office, 350 The Embarcadero, Suite 500, San Francisco, CA 94105-1260, Seattle Field Office, 909 First Avenue, Suite 400, Seattle, WA 98104-1061~~, (800) 669-4000, TTY (800) 669-6820, ASL Video (844) 234-5122.
- (2) Jurisdiction may vary based on the nature of the complaint. For example, neither the Human Rights Bureau nor the EEOC considers complaints based on ~~sexual orientation~~, culture, social origin or condition, or ancestry.
- (3) and (4) remain the same.

AUTH: 2-18-102, MCA
IMP: 2-18-102, MCA

STATEMENT OF REASONABLE NECESSITY: The department proposes removing sexual orientation from the example under (2)(b). As previously stated, the EEOC, U.S. Supreme Court, and many lower courts have sent a clear message that employment discrimination and harassment based on sexual orientation may violate the sex discrimination provisions of Title VII of the Civil Rights Act of 1964. Therefore, the EEOC and Montana Human Rights Bureau are pursuing employment discrimination complaints alleging discrimination based on sexual orientation.

OVERALL STATEMENT OF REASONABLE NECESSITY FOR ALL RULES: Section 49-3-201, MCA, addresses employment of state and local government personnel. Section 49-3-205, MCA, addresses equal access to governmental services. These sections are necessary to emphasize state and local governments' responsibilities to make employment decisions and to provide equal access to governmental services without regard to an individual's race, color, national origin, age, physical or mental disability, marital status, religion, creed, sex, pregnancy,

childbirth, or a medical condition related to pregnancy or childbirth, sexual orientation, gender identity or expression, political beliefs, genetic information, military service or veteran's status, culture, social origin or condition, or ancestry.

As part of its required biennial review of rules, the Department of Administration proposes to update the policy to include prohibition of discrimination based on pregnancy, childbirth, or a medical condition related to pregnancy or childbirth, sexual orientation, gender identity or expression, and military service in compliance with new federal laws and regulations and the Governor's executive order; clarify and address agency and management responsibilities; and update relevant contact information. This guidance is lacking in the current rules.

4. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to John Pavao, Department of Administration, P.O. Box 200127, Helena, MT 59620; telephone (406) 444-3984; Montana Relay Service 711; fax (406) 444-0703; or e-mail jpavao@mt.gov, and must be received no later than 5:00 p.m., May 20, 2016.

5. John Pavao, Department of Administration, has been designated to preside over and conduct this hearing.

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

7. An electronic copy of this proposal notice is available through the department's web site at <http://doa.mt.gov/administrativerules>. The department 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 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 department 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. The department has determined that under 2-4-111, MCA, the proposed amendment of the above-stated rules will not significantly and directly affect small businesses.

By: /s/ Sheila Hogan
Sheila Hogan, Director
Department of Administration

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

Certified to the Secretary of State April 11, 2016.

BEFORE THE BOARD OF EXAMINERS
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF PROPOSED
ARM 2.53.201 pertaining to model	)	AMENDMENT
procedural rules)	
	)	NO PUBLIC HEARING
	)	CONTEMPLATED

TO: All Concerned Persons

1. On May 22, 2016, the Board of Examiners (board) 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, please contact the board 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 Mark Bruno, Department of Administration, 125 N. Roberts, Room 176, P.O. Box 200107, Helena, MT 59620-0107; telephone (406) 444-4612; Montana Relay Service 711; fax (406) 444-2812; or e-mail mbruno@mt.gov.

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

2.53.201 MODEL PROCEDURAL RULES ~~The board of examiners has herein adopted and incorporated the attorney general's model procedural rules one through 28 by reference to such rules as stated in ARM 1.3.101 through ARM 1.3.234 insofar as the board's functions relating to the liquidation of unsettled claims against the state are concerned, except that the following rules will apply, any provision in the model rules to the contrary notwithstanding:~~

(1) The Board of Examiners adopts and incorporates by reference the following model rules relating to citizen participation, notice and hearing procedures, and declaratory rulings, which may be found at <http://sos.mt.gov>:

(a) the Attorney General's model procedural rules ARM 1.3.201, 1.3.202, 1.3.211 through 1.3.224, and 1.3.226 through 1.3.233, including, as applicable, the appendix of sample forms in effect April 11, 2016; and

(b) the Secretary of State's model rules ARM 1.3.101, 1.3.102, 1.3.301, 1.3.302, 1.3.304, 1.3.305, 1.3.307 through 1.3.309, and 1.3.311 through 1.3.313 in effect April 11, 2016. These rules define model requirements for rulemaking under the Montana Administrative Procedure Act.

~~(1) Pursuant to 17-8-221(1), MCA, any person having a claim against the state, the settlement of which is not otherwise provided for by law, must present the same to the board of examiners at least two months before the meeting of the legislature accompanied by a statement showing the facts constituting the claim, verified in the same manner as complaints in civil actions.~~

~~(2) Pursuant to 17-8-222(2), MCA, no payment may be made in favor of a witness who appeared in behalf of a claimant.~~

~~(3) Pursuant to 17-8-225(1), MCA, the board of examiners must not entertain for the second time a demand against the state once rejected by it or by the legislature, unless such facts are presented to the board as in suits between individuals would furnish sufficient grounds for granting a new trial. Further, as provided in 17-8-226, MCA, any person interested, who is aggrieved by the disapproval of a claim by the board, may appeal from the decision to the legislature of the state by filing with the board a notice thereof, and upon receipt of such notice the board must transmit the demand and all the papers accompanying the same, with a statement of the evidence taken before it, to the legislature.~~

AUTH: 2-4-201, MCA

IMP: 2-4-201, MCA

STATEMENT OF REASONABLE NECESSITY: The board finds it necessary to amend ARM 2.53.201 to update to current statutes and rules. The model rules contained in ARM Title 1 have been updated since adoption of ARM 2.53.201, compelling the board to amend the references to these rules that the board has adopted by reference.

In addition, 17-8-221, 17-8-222, 17-8-225, and 17-8-226, MCA, have been repealed, negating the validity of current (1), (2), and (3), and so the board proposes removing those sections.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to Mark Bruno, Department of Administration, 125 N. Roberts, Room 176, P.O. Box 200107, Helena, MT 59620-0107; telephone (406) 444-4612; Montana Relay Service 711; fax (406) 444-2812; or e-mail mbruno@mt.gov and must be received no later than 5:00 p.m., May 20, 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 the request along with any written comments to the person listed in 4 above no later than 5:00 p.m., May 20, 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 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 15 persons based on the 150 legislators in the Montana Legislature.

7. The Board of Examiners maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this board. Persons who wish to have their name added to the list shall make a written request that includes the

name, e-mail, and mailing address of the person to receive notices. 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 person in 4 above or may be made by completing a request form at any rules hearing held by the board.

8. An electronic copy of this proposal notice is available through the Department of Administration's web site at <http://doa.mt.gov/administrativerules>. The department 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 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 board 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 board has determined that the proposed rule amendments will not significantly and directly impact small businesses.

By: /s/ Sheila Hogan
Sheila Hogan, Executive Secretary
Board of Examiners

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

Certified to the Secretary of State April 11, 2016.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the amendment of ARM) NOTICE OF PROPOSED
2.59.1735 pertaining to determining the) AMENDMENT
amount of surety bond for a new)
mortgage broker or mortgage lender) NO PUBLIC HEARING
) CONTEMPLATED

TO: All Concerned Persons

1. On May 30, 2016, the Department of Administration proposes to amend the above-stated rule.

2. The Department of Administration will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Administration no later than 5:00 p.m. on May 16, 2016, to advise us of the nature of the accommodation that you need. Please contact Wayne Johnston, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, Montana 59620-0546; telephone (406) 841-2918; TDD (406) 841-2974; facsimile (406) 841-2930; or e-mail to banking@mt.gov.

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

2.59.1735 DETERMINING THE AMOUNT OF SURETY BOND FOR A NEW MORTGAGE BROKER OR MORTGAGE LENDER (1) An entity applying for a license as a mortgage broker or mortgage lender for the first time in Montana shall submit with its application the total combined annual loan production volume for the year preceding the year of application as required by 32-9-123(2)(b), MCA.
(2) An entity having no prior business history, or a business history of less than one year at the time of application, shall purchase a surety bond in the amount of ~~\$50,000~~ \$25,000.

AUTH: 32-9-130, MCA
IMP: 32-9-123, MCA

STATEMENT OF REASONABLE NECESSITY: The department proposes to amend this rule to reduce the initial amount of bond required for the licensure of new mortgage broker and mortgage lender entities, from \$50,000 to \$25,000. The department proposes this amendment given that since this rule was adopted, no new licensees have originated enough Montana mortgage loans in one year to require the \$50,000 bond pursuant to the levels set in 32-9-123, MCA. This proposed amendment aligns the rule with actual experience of new mortgage brokers and lenders in Montana.

The department is aware that often licensees maintain a \$50,000 bond after the first year of licensure even though the loan volume produced by that licensee does not warrant the higher bond amount, thus costing the licensee unnecessary expense. The department seeks to avoid requiring mortgage companies to pay more for a surety bond than is necessary.

4. Concerned persons may present their data, views, or arguments concerning the proposed action to Kelly O'Sullivan, Legal Counsel, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, Montana 59620-0546; faxed to the office at (406) 841-2930; or e-mailed to banking@mt.gov; and must be received no later than 5:00 p.m., May 23, 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 the person listed in 4 above no later than 5:00 p.m., May 23, 2016.

6. If the Division of Banking and Financial Institutions 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 25 persons based on the 250 existing licensed mortgage brokers and mortgage lenders.

7. An electronic copy of this proposal notice is available through the department's web site at <http://doa.mt.gov/administrativerules>. The department 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 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 department 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 Division of Banking and Financial Institutions maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this division. Persons who wish to have their name added to the mailing list shall make a written request that includes the name, mailing address, and e-mail address of the person to receive notices and specifies that the person wishes to receive notices regarding division rulemaking actions. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written requests may be mailed or delivered to Wayne Johnston, Division of Banking and Financial Institutions, 301 S. Park, Ste. 316, P.O. Box 200546, Helena, Montana 59620-0546; faxed to the

office at (406) 841-2930; e-mailed to banking@mt.gov; or may be made by completing a request form at any rules hearing held by the department.

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

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

By: /s/ Sheila Hogan
Sheila Hogan, Director
Department of Administration

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

Certified to the Secretary of State April 11, 2016.

BEFORE THE DEPARTMENT OF COMMERCE
OF THE STATE OF MONTANA

In the matter of the adoption of New	)	NOTICE OF PUBLIC HEARING ON
Rule I pertaining to the administration	)	PROPOSED ADOPTION
of the 2016 and 2017 Program Year)	
Federal Community Development)	
Block Grant (CDBG) Program –)	
Public Facilities Projects)	

TO: All Concerned Persons

1. On May 12, 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, in Helena, Montana, to consider the proposed adoption of the above-stated rule.

2. The Department of Commerce will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Commerce no later than 5:00 p.m., May 10, 2016, to advise us of the nature of the accommodation that you need. Please contact Bonnie Martello, Department of Commerce, 301 South Park Avenue, P.O. Box 200501, Helena, Montana 59620-0523; telephone (406) 841-2770; TDD 841-2702; fax (406) 841-2771; or e-mail bmartello@mt.gov.

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

NEW RULE I INCORPORATION BY REFERENCE OF RULES FOR THE ADMINISTRATION OF THE COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) – PUBLIC FACILITIES PROJECTS (1) The Department of Commerce adopts and incorporates by reference the 2016-2017 Application and Administrative Guidelines for Public Facilities Projects Grants as rules for the administration of the 2016-2017 Community Development Block Grant (CDBG) Program.

(2) The rules incorporated by reference in (1) relate to the scope and procedures for the award, administration, monitoring, and close-out of matching planning grants to cities, towns, counties, consolidated governments, county or multicounty water, wastewater or solid waste districts, and tribal governments.

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

AUTH: 90-1-103, MCA
IMP: 90-1-103, MCA

REASON: It is reasonably necessary to adopt this rule because the federal regulations governing the state's administration of the Community Development

Block Grant Program (CDBG) and 90-1-103, MCA, require the department to adopt rules to implement the program.

4. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Department of Commerce, Grants Bureau, 301 South Park Avenue, P.O. Box 200523, Helena, Montana 59620-0523; telephone (406) 841-2770; TDD 841-2702; fax (406) 841-2771; or e-mail DOCDBG@mt.gov, and must be received no later than 5:00 p.m., May 20, 2016.

5. Andrew Chanania, CDBG Public Facility and Housing Program Manager, Department of Commerce, has been designated to preside over and conduct this hearing.

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

7. 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 adoption of the above-referenced rule will not significantly and directly impact small businesses.

/s/ KELLY A. LYNCH
KELLY A. LYNCH
Rule Reviewer

/s/ MEG O'LEARY
MEG O'LEARY
Director
Department of Commerce

Certified to the Secretary of State April 11, 2016.

BEFORE THE DEPARTMENT OF COMMERCE
OF THE STATE OF MONTANA

In the matter of the adoption of New	)	NOTICE OF PUBLIC HEARING ON
Rule I pertaining to the administration	)	PROPOSED ADOPTION
of the 2016 and 2017 Program Year)	
Community Development Block Grant)	
(CDBG) Program – Competitive)	
Housing and Neighborhood Renewal)	
Projects)	

TO: All Concerned Persons

1. On May 12, 2016, at 11:00 a.m., the Department of Commerce will hold a public hearing in Room 228 of the Park Avenue Building at 301 South Park Avenue, in Helena, Montana, to consider the proposed adoption of the above-stated rule.

2. The Department of Commerce will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Commerce no later than 5:00 p.m., May 10, 2016, to advise us of the nature of the accommodation that you need. Please contact Bonnie Martello, Department of Commerce, 301 South Park Avenue, P.O. Box 200501, Helena, Montana 59620-0523; telephone (406) 841-2770; TDD 841-2702; fax (406) 841-2771; or e-mail bmartello@mt.gov.

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

NEW RULE I INCORPORATION BY REFERENCE OF RULES FOR THE
ADMINISTRATION OF THE COMMUNITY DEVELOPMENT BLOCK GRANT
(CDBG) – COMPETITIVE HOUSING AND NEIGHBORHOOD RENEWAL
PROJECTS

(1) The Department of Commerce adopts and incorporates by reference the 2016-2017 Application and Administrative Guidelines for Housing and Neighborhood Renewal Projects as rules for the administration of the 2016-2017 Community Development Block Grant (CDBG) Program.

(2) The rules incorporated by reference in (1) relate to the scope and procedures for the award, administration, monitoring, and close-out of matching planning grants to cities, towns, counties, consolidated governments, county or multicounty water, wastewater or solid waste districts, and tribal governments.

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

AUTH: 90-1-103, MCA
IMP: 90-1-103, MCA

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

4. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Department of Commerce, Grants Bureau, 301 South Park Avenue, P.O. Box 200523, Helena, Montana 59620-0523; telephone (406) 841-2770; TDD 841-2702; fax (406) 841-2771; or e-mail DOCDBG@mt.gov, and must be received no later than 5:00 p.m., May 20, 2016.

5. Andrew Chanania, CDBG Public Facility and Housing Program Manager, Department of Commerce, has been designated to preside over and conduct this hearing.

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

7. 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 adoption of the above-referenced rule will not significantly and directly impact small businesses.

/s/ KELLY A. LYNCH

KELLY A. LYNCH

Rule Reviewer

/s/ MEG O'LEARY

MEG O'LEARY

Director

Department of Commerce

Certified to the Secretary of State April 11, 2016.

BEFORE THE DEPARTMENT OF TRANSPORTATION
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF PROPOSED
ARM 18.8.512 pertaining to Motor	)	AMENDMENT
Carrier Services)
	)	NO PUBLIC HEARING
	)	CONTEMPLATED

TO: All Concerned Persons

1. On May 22, 2016, the Department of Transportation proposes to amend the above-stated rule.

2. The Department of Transportation will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Transportation no later than 5:00 p.m. on May 13, 2016, to advise us of the nature of the accommodation that you need. Please contact Dan Kiely, Department of Transportation, Motor Carrier Services, P.O. Box 201001, Helena, Montana, 59620-1001; telephone (406) 444-7629; fax (406) 444-9263; TDD/Montana Relay Service (406) 444-7696 or (800) 335-7592; or e-mail dkiely@mt.gov.

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

18.8.512 HEIGHT (1) A permittee is prohibited from traveling under a bridge, underpass, or other overhead obstruction that does not exceed the height of the load or vehicle. ~~Each permit is automatically restricted to clearance of any bridge or underpass or other overhead obstruction on the route traveled.~~

(2) The permittee will be responsible for checking the route or routes to be traveled to determine clearance of bridges, underpasses, and/or other ~~structures~~ obstructions.

(3) remains the same.

~~(4) All divisible loads with a height of 14 feet 6 inches or less may be issued either a term or single trip special permit. Divisible loads may not exceed 14 feet 6 inches in height.~~

~~(5) (4) All nondivisible loads~~ Loads with a height of 15 feet 6 inches or less may be issued either a term or single trip permit. ~~Any permit must be verified for clearance as per (1) through (3).~~

~~(6) (5) Nondivisible loads~~ Loads with a height in excess of 15 feet 6 inches ~~will~~ may be issued single trip special permits. ~~Nondivisible loads in excess of 17 feet must follow the permit requirements of ARM 18.8.1101.~~

~~(7) Baled or loose hay loads with a height of 15 feet 6 inches or less may be issued a term or single trip special permit. Hay loads must not exceed 15 feet 6 inches except as per (8).~~

(8) remains the same but is renumbered (6).

~~(9) The department will enforce administrative penalties for violation of the height permitting requirements as per ARM 18.8.902.~~

AUTH: 61-10-155, MCA

IMP: 61-10-101, 61-10-103, 61-10-109, 61-10-121, ~~61-10-122, 61-10-123,~~
61-10-124, MCA

REASON: The department has determined that the revision is reasonably necessary to address an inconsistency in the department's permitting process between divisible and nondivisible loads. The proposed language will clarify requirements for permittees.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to: Dan Kiely, Department of Transportation, Motor Carrier Services, P.O. Box 201001, Helena, Montana, 59620-1001; telephone (406) 444-7629; fax (406) 444-9263; or e-mail dkiely@mt.gov, and must be received no later than 5:00 p.m., May 20, 2016.

5. If persons who are directly affected by the proposed actions wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to Dan Kiely at the above address no later than 5:00 p.m., May 20, 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 1288 persons based on the 12,877 of permitted vehicles in the 2015 calendar year.

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

8. An electronic copy of this proposal notice is available 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 department has determined that the amendment of the above-referenced rule will not significantly and directly impact small businesses.

/s/ Valerie D. Wilson
Valerie D. Wilson
Rule Reviewer

/s/ Michael T. Tooley
Michael T. Tooley
Director
Department of Transportation

Certified to the Secretary of State April 11, 2016

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

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 24.29.1433, 24.29.1534, and) PROPOSED AMENDMENT
24.29.1538, related to workers')
compensation medical service fee)
schedules)

TO: All Concerned Persons

1. On May 13, 2016, at 10:00 a.m., the Department of Labor and Industry (department) will hold a public hearing in the Second Floor Conference Room of the Beck Building, 1805 Prospect Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m., on May 9, 2016, to advise us of the nature of the accommodation that you need. Please contact the Department of Labor and Industry, Attn: Maralyn Lytle, Employment Relations Division, P.O. Box 8011, Helena, MT 59604-8011; telephone (406) 444-6604; fax (406) 444-4140; Montana TTD (406) 444-5549; or e-mail mlytle@mt.gov.

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

24.29.1433 FACILITY SERVICE RULES AND RATES FOR SERVICES PROVIDED ON OR AFTER JULY 1, 2013 (1) The department adopts the fee schedules provided by this rule to determine the reimbursement for medical services provided by a facility when a person is discharged on or after July 1, 2013. An insurer is obligated to pay the fee provided by the fee schedules for a service, even if the billed charge is less, unless the facility and insurer have a managed care organization (MCO) or preferred provider organization (PPO) arrangement that provides for a different payment amount. The fee schedules are available online at the Employment Relations Division web site and are updated as soon as is reasonably feasible relative to the effective dates of the medical codes as described below. The fee schedules are comprised of the elements listed in 39-71-704, MCA, and the following:

(a) and (b) remain the same.

(c) The base rates and conversion formulas established by the department:

(i) The "Montana Workers' Compensation Facility Fee Schedule Instruction-Set for 2013," for services provided from July 1, 2013 through June 30, 2014;

(ii) The "Montana Workers' Compensation Facility Fee Schedule Instruction Set Effective July 1, 2014," for services provided from July 1, 2014, through June 30, 2015; ~~and~~

(iii) The "Montana Workers' Compensation Facility Fee Schedule Instruction Set Effective July 1, 2015-," for services provided from July 1, 2015, through June 30, 2016; and

(iv) The "Montana Workers' Compensation Facility Fee Schedule Instruction Set Effective July 1, 2016."

(2) through (10) remain the same.

(11) The following applies to inpatient services provided at an acute care hospital:

(a) The department may establish the base rate annually.

(i) Effective July 1, 2013, through June 30, 2014, the base rate is \$7,944.

(ii) Effective July 1, 2014, through June 30, 2015, the base rate is \$7,984.

(iii) Effective July 1, 2015, through June 30, 2016, the base rate is \$8,076.

(iv) Effective July 1, 2016, the base rate is \$8,120.

(b) Payments for inpatient acute care hospital services must be calculated using the base rate multiplied by the Montana MS-DRG weight. For example, if the MS-DRG weight is 0.5, the amount payable is ~~\$4,038~~ \$4,060, which is the base rate of ~~\$8,076~~ \$8,120 multiplied by 0.5.

(c) through (g) remain the same.

(12) The following applies to outpatient services provided at an acute care hospital or an ASC:

(a) The annual department-set base rate for outpatient service at acute care hospitals is:

(i) \$107, from July 1, 2013, through June 30, 2014;

(ii) \$109, from July 1, 2014, through June 30, 2015; ~~and~~

(iii) \$111, ~~on or after from~~ from July 1, 2015, through June 30, 2016; and

(iv) \$111, on or after July 1, 2016.

(b) The annual department-set base rate for ASCs, which is 75 percent of the hospital outpatient base rate, is:

(i) \$80, from July 1, 2013, through June, 30, 2014;

(ii) \$82, from July 1, 2014, through June 30, 2015; ~~and~~

(iii) \$83, ~~on or after from~~ from July 1, 2015, through June 30, 2016; and

(iv) \$83, on or after July 1, 2016.

(c) through (g) remain the same.

AUTH: 39-71-203, MCA

IMP: 39-71-704, MCA

REASON: Because the department is required by 39-71-704(2), MCA, to annually establish a schedule of fees for medical services provided to injured workers, subject to various statutory requirements, there is reasonable necessity to amend ARM 24.29.1433. In addition, there is reasonable necessity to update the instruction set as part of the annual update.

24.29.1534 PROFESSIONAL FEE SCHEDULE FOR SERVICES PROVIDED ON OR AFTER JULY 1, 2013 (1) The department adopts the professional fee schedule provided by this rule to determine the reimbursement amounts for medical services provided by a professional provider at a nonfacility or facility furnished on or after July 1, 2013. An insurer must pay the fee schedule or the billed charge, whichever is less, for a service provided within the state of Montana. The fee schedules are available online at the Employment Relations Division web site and are updated as soon as is reasonably feasible relative to the effective dates of the medical codes as described below. The fee schedules are comprised of the elements listed in 39-71-704, MCA, and the following:

(a) the instruction set for the fee schedule as adopted in this subsection. All the definitions, guidelines, RVUs, procedure codes, modifiers, and other explanations provided in the instructions set affecting the determination of individual fees apply. A copy of the instruction set may also be obtained at no charge from the Montana Department of Labor and Industry, P.O. Box 8011, Helena, Montana 59604-8011;

(i) The "Montana Workers' Compensation Professional Fee Schedule Instruction Set for 2013" applies to services provided from July 1, 2013 through June 30, 2014;

(ii) The "Montana Workers' Compensation Professional Fee Schedule Instruction Set Effective July 1, 2014" applies to services provided from July 1, 2014 through June 30, 2015; and

(iii) The "Montana Workers' Compensation Professional Fee Schedule Instruction Set Effective July 1, 2015" applies to services provided on or after from July 1, 2015 through June 30, 2016; and

(iv) The "Montana Workers' Compensation Professional Fee Schedule Instruction Set Effective July 1, 2016" applies to services provided on or after July 1, 2016.

(b) through (10) remain the same.

AUTH: 39-71-203, MCA

IMP: 39-71-704, MCA

REASON: Because the department is required by 39-71-704(2), MCA, to annually establish a schedule of fees for medical services provided to injured workers, subject to various statutory requirements, there is reasonable necessity to amend ARM 24.29.1534. In addition, there is reasonable necessity to update the instruction set as part of the annual update in order to adopt a revised Professional Fee Schedule each year for the purpose of incorporating all annual changes to CPT codes, RBRVS, CCI edits, including medically unnecessary edits (MUE), conversion factors, modifiers, and Montana unique codes.

24.29.1538 CONVERSION FACTORS FOR SERVICES PROVIDED ON OR AFTER JANUARY 1, 2008 (1) This rule applies to services, supplies, and equipment provided on or after January 1, 2008.

(2) The conversion factors established by the department for goods and services, other than anesthesia services are:

- (a) \$63.45 from January 1, 2008₁ through December 31, 2008;
- (b) \$65.28 from January 1, 2009₁ through June 30, 2013;
- (c) \$60.52 from July 1, 2013₁ through June 30, 2014;
- (d) \$59.72 from July 1, 2014₁ through June 30, 2015; ~~and~~
- (e) \$61.49 ~~on or after~~ from July 1, 2015, through June 30, 2016; and
- (f) \$62.91 on or after July 1, 2016.

(3) The conversion factors established by the department for anesthesia services are:

- (a) \$57.20 from January 1, 2008₁ through December 31, 2008;
 - (b) \$61.98 from January 1, 2009₁ through December 31, 2009;
 - (c) \$60.97 from January 1, 2010₁ through June 30, 2013;
 - (d) \$61.40 from July 1, 2013₁ through June 30, 2014;
 - (e) \$62.98 from July 1, 2014₁ through June 30, 2015; ~~and~~
 - (f) ~~\$65.63 on or after~~ from July 1, 2015, through June 30, 2016; and
 - (g) \$63.86 on or after July 1, 2016.
- (4) and (5) remain the same.

AUTH: 39-71-203, MCA

IMP: 39-71-704, MCA

REASON: Because the department is required by 39-71-704(2), MCA, to annually establish a schedule of fees for medical services provided to injured workers, subject to various statutory requirements, there is reasonable necessity to amend ARM 24.29.1538.

4. Copies of the proposed 2016 publications, identified as "Proposed Montana Workers' Compensation Facility Fee Schedule Instruction Set Effective July 1, 2016," and "Proposed Montana Workers' Compensation Professional Fee Schedule Instruction Set Effective July 1, 2016," are available and can be accessed at: <http://erd.dli.mt.gov/work-comp-claims/medical-regulations>.

5. A printed version of the proposed 2016 publications is also available by contacting Maralyn Lytle at the address, e-mail, or telephone numbers listed in paragraph 2 of this notice.

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: Maralyn Lytle, Employment Relations Division, P.O. Box 8011, Helena, MT 59604-8011; telephone (406) 444-6604; fax (406) 444-4140; Montana TTD (406) 444-5549; or e-mail mlytle@mt.gov, and must be received no later than 5:00 p.m., on May 20, 2016.

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, which includes the name and e-mail or mailing address of the person to receive notices, and specifies the particular subject matter or matters regarding which the person wishes to receive

notices. Such written request may be mailed or delivered to the Department of Labor and Industry, attention: Mark Cadwallader, 1315 Lockey Avenue, P.O. Box 1728, Helena, Montana 59624-1728, faxed to the department at (406) 444-1394, e-mailed to mcadwallader@mt.gov, or may be made by completing a request form at any rules hearing held by the agency.

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

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

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

/s/ MARK CADWALLADER

Mark Cadwallader
Alternate Rule Reviewer

/s/ PAM BUCY

Pam Bucy, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State April 11, 2016.

BEFORE THE BOARD OF BEHAVIORAL HEALTH
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF PUBLIC HEARING ON
ARM 24.154.301 definitions,	)	PROPOSED AMENDMENT,
24.154.401 fee schedule, 24.154.403	)	ADOPTION, AND REPEAL
military training or experience,)	
24.154.405 education requirement,)	
24.154.407 application procedures,)	
24.154.408 licensure by)	
endorsement, 24.154.409 supervised)	
work experience, 24.154.420)	
nonresident licensed addiction)	
counselor services, 24.154.422)	
inactive status and conversion from)	
inactive to active status, 24.154.2105)	
continuing education requirements,)	
24.154.2107 continuing education)	
procedures and documentation, and)	
24.154.2301 unprofessional conduct,)	
the adoption of NEW RULES I)	
supervisor qualifications, II qualified)	
treatment setting, III addiction)	
counselor licensure candidate)	
application procedures, IV addiction)	
counselor licensure candidate)	
requirements, V addiction counselor)	
licensure candidate annual)	
registration requirements, and VI)	
gambling disorder education)	
requirement for current licensed)	
addiction counselor licensees, and)	
the repeal of 24.154.201 procedural)	
rules, 24.154.202 public participation)	
rules, 24.154.2101 renewals, and)	
24.154.2401 complaint procedure)	

TO: All Concerned Persons

1. On May 13, 2016, at 4:00 p.m., a public hearing will be held in the Large Conference Room, 4th floor, 301 South Park Avenue, Helena, Montana, to consider the proposed amendment, adoption, and repeal of the above-stated rules.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an

accommodation, contact the Board of Behavioral Health (board) no later than 5:00 p.m., on May 6, 2016, to advise us of the nature of the accommodation that you need. Please contact Cyndi Reichenbach, Board of Behavioral Health, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2392; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; dlibsdswpc@mt.gov (board's e-mail).

3. GENERAL REASONABLE NECESSITY STATEMENT: The 2015 Legislature enacted Chapter 288, Laws of 2015 (House Bill 358), an act generally revising laws relating to licensed addiction counselors (LAC) and transferring the duties related to regulating LACs from the Department of Labor and Industry (department) to the Board of Behavioral Health (board). This bill also revised the registration and regulation of persons seeking licensure as addiction counselors (addiction counselor licensure candidates), and established the requirement that LAC applicants submit to background checks. The bill was signed by the Governor on April 24, 2015, and became effective on October 1, 2015.

The board is adopting NEW RULES III through V and amending certain existing rules to coincide with the new legislative changes and further implement the bill regarding addiction counselor licensure candidates.

Additional changes include replacing out-of-date terminology for current language and processes, repealing unnecessary or redundant rules, and amending rules and catchphrases for accuracy, consistency, simplicity, better organization, and ease of use for the reader. The board is also renumbering within the reorganized rules to comply with ARM formatting requirements. Authority and implementation citations are being amended to accurately reflect all statutes implemented through the rule, provide the complete sources of the board's rulemaking authority, and delete references to repealed statutes. Where additional specific bases for a proposed action exist, the board will identify those reasons immediately following that rule.

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

24.154.301 DEFINITIONS (1) "Board" means the Board of Behavioral Health established in 2-15-1744, MCA.

(1) through (4) remain the same but are renumbered (2) through (5).

~~(5)~~ (6) "Dual relationship" means a relationship where a licensed addiction counselor licensee is concurrently or sequentially participating in two or more role categories with a client. These types of relationships may include, but are not limited to, social, professional, familial, financial, business, treatment-professional, communal, institutional, forensic, educational, supervisory, sexual, digital, online, or internet.

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

(8) "Gambling dependence impulse control disorder" means persistent and recurrent problematic gambling behavior leading to clinically significant impairment or distress.

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

(11) "Supervisor," when used to refer to a person who supervises the work of an applicant for licensure or licensure candidate, means a person who meets the criteria set forth in [NEW RULE I].

(12) "Training and supervision plan" means a plan, in a form approved by the board, that describes the type, structure, and amount of supervised work experience that a licensure candidate must have in order to satisfy the experience requirements for the type of license the licensure candidate is seeking.

AUTH: 37-35-103, MCA

IMP: 37-35-102, 37-35-103, MCA

REASON: The 2013 Legislature enacted Chapter 275, Laws of 2013 (House Bill 61), an act that added gambling dependence for purposes of addiction counselor licensure laws and amended 37-35-102, MCA. The bill was signed by the Governor on April 24, 2013, and became effective on October 1, 2013. It is reasonably necessary to add (8) and define the term as used in the statute.

The board is adding (11) to define "supervisor" to facilitate the supervisor qualifications that are being established in NEW RULE I.

24.154.401 FEE SCHEDULE (1) through (1)(c) remain the same.

(d) Application for Addiction Counselor Licensure Candidate 250

(e) Addiction Counselor Licensure Candidate Annual Registration 100

(2) remains the same.

(3) The fee for the National Certified Addiction Counselor (~~Level~~ Levels I and II) written ~~examination is~~ examinations are established by and payable directly to the vendor contracted with ~~by the department~~ board to administer the written examination.

AUTH: 37-35-103, 37-35-202, MCA

IMP: 37-1-141, 37-35-103, 37-35-202, MCA

REASON: It is reasonably necessary to amend this rule to specify application and annual registration fees for LAC licensure candidates and further implement House Bill 358. The board is setting these fees to comply with 37-1-134, MCA, and ensure that board fees provide the amount of money usually needed for the operation of the board in providing similar regulatory services. The board notes that only the fee for candidate annual registration is new, as applicants beginning supervised experience are already charged the \$250 application fee in (1)(a). The board estimates that approximately 31 annually renewing LAC licensure candidates will be affected by the proposed new fee, which will increase annual revenue by \$3,100.

24.154.403 MILITARY TRAINING OR EXPERIENCE (1) Pursuant to 37-1-145, MCA, the ~~department~~ board shall accept relevant military training, service, or education toward the requirements for licensure as a licensed addition counselor.

(2) through (3)(b) remain the same.

(c) any other documentation as required by the ~~department~~ board.

(4) The ~~department~~ board shall consider all documentation received to determine whether an applicant's military training, service, or education is equivalent to relevant licensure requirements.

AUTH: 37-1-145, MCA

IMP: 37-1-145, MCA

24.154.405 EDUCATION REQUIREMENT ~~(1) The following education requirements apply only to students enrolled in an education program per 37-35-202, MCA, prior to September 20, 2013.~~

~~(2) Applicants for counselor certification must meet one of the following three education requirements, and must provide information regarding the chemical dependency treatment setting in which the 1000 hours supervised chemical dependency counseling experience will be completed, as well as the name of the certified counselor approved to supervise chemical dependency counseling experience. Applicants must provide certified transcripts or certificates of completion as proof of successful completion of one of the following education programs:~~

~~(a) a baccalaureate degree in alcohol and drug studies, psychology, social work, counseling or a related field from an accredited college or university; or~~

~~(b) an associate of arts or applied science degree in alcohol and drug studies, chemical dependency or substance abuse from an accredited college or university; or~~

~~(c) graduation from a formal chemical dependency counselor training program which is at least one year in duration and has been approved by the department or recognized under the laws of another state. The formal training program must include 400 hours of classroom preparation and 1600 hours of documented clinical training. Applicants must submit a certificate of graduation with application, as well as a description of the curriculum and training provided.~~

(1) At the time of application, an applicant for licensure as an addiction counselor or registration as an addiction counselor licensure candidate must have graduated from an accredited college or university with:

(a) a baccalaureate or advanced degree in alcohol and drug studies, psychology, sociology, social work, or counseling, or a comparable degree per 37-35-202(9), MCA; or

(b) an associate of arts degree in alcohol and drug studies, addiction, or substance abuse.

(2) At the time of application, an applicant must have graduated from an accredited college or university with:

(a) a baccalaureate or advanced degree in alcohol and drug studies, psychology, sociology, social work, or counseling, or a comparable degree per 37-35-202(9), MCA; or

(b) an associate of arts degree in alcohol and drug studies, addiction, or substance abuse.

(3) All education requirements To qualify for LAC licensure, a candidate's education must include 270 330 contact hours of specific chemical dependency addiction or counseling courses. These are contact hours that may be obtained through academic course work, approved workshop training, or approved

home study courses. The ~~270~~ 330 hours must include minimum hours in each of the following areas:

(a) chemical dependency assessment and patient placement (must include chemical dependency assessment, biopsychosocial testing, diagnosis, referrals, and patient placement);	30 <u>60</u> hours
(b) counseling;	45 <u>90</u> hours
(c) pharmacology (must include drug classification, effects, detoxification and withdrawal);	12 <u>30</u> hours
(d) ethics (ethics for addiction counselors);	6 <u>15</u> hours
(e) remains the same.	
(f) treatment planning and documentation;	45 <u>30</u> hours
(g) multicultural competency - knowledge of and sensitive to the cultural factors and needs of diverse populations and demonstrate competency in applying culturally relevant skills;	42 <u>15</u> hours
(h) co-occurring disorders;	30 <u>30</u> hours
(i) gambling/gaming disorder assessment and counseling.	30 <u>30</u> hours

AUTH: 37-35-103, MCA

IMP: 37-35-103, 37-35-202, MCA

REASON: It is reasonably necessary to update (3) and reflect current national LAC educational standards and reflect the statutory changes from House Bill 61 (2013), which added gambling dependence for purposes of addiction counselor licensure laws. Although the hours were updated previously in ARM 24.154.407, the board is amending and reorganizing these rules to locate the educational standards in a single location and general application procedures in the other.

24.154.407 LICENSED ADDICTION COUNSELOR APPLICATION

PROCEDURES (1) An individual seeking licensure in Montana as a licensed addiction counselor (LAC) ~~will first be granted a temporary practice permit upon submission of~~ must submit the following:

- (a) remains the same.
- (b) official transcripts, ~~certificates of completion, or other forms of~~ documentation to verify graduation and completion of the requirements of 37-35-202, MCA, and ARM 24.154.405, sent directly from the accredited college or university as ~~proof of successful completion of an education program per 37-35-202, MCA;~~
- (i) ~~Qualifying education in (b) must include at least 300 contact hours of specific courses, including minimum hours in each of the following areas:~~
 - (A) ~~substance related/use disorders assessment and patient placement, biopsychosocial testing, diagnosis, referrals, and the American Society of Addiction Medicine Patient Placement (ASAM) criteria or any nationally recognized equivalent~~ 60 hours
 - (B) ~~licensed addiction counseling~~ 90 hours
 - (C) ~~pharmacology (must include drug classification, effects, detoxification, and withdrawal)~~ 30 hours
 - (D) ~~ethics (ethics for licensed addiction counselors)~~ 15 hours

(E) alcohol and drug studies	30 hours
(F) treatment planning and documentation	30 hours
(G) multicultural competency	15 hours
(H) co-occurring disorders	30 hours

(c) specific information regarding the licensed addiction counseling qualified treatment setting satisfying [NEW RULE II] where the supervised work experience will be completed, including:

- (i) ~~name of the LAC responsible for the supervised work experience;~~
- (ii) ~~verification that any and all licenses held by the LAC supervisor in other jurisdictions are unrestricted with no pending discipline; and~~
- (iii) ~~proof that the LAC supervisor has at least three years of licensed addiction counseling experience post licensure in an approved LAC treatment setting; and~~

(d) specific information regarding the applicant's supervisor and demonstrating the supervisor has met the qualifications listed in [NEW RULE I], including:

- (i) name and qualifications of the supervisor responsible for the supervised work experience;
- (ii) verification that any and all licenses held by the supervisor in other jurisdictions are unrestricted with no pending discipline; and
- (iii) proof that the supervisor has at least three years of licensed addiction counseling experience post licensure in an approved addiction counseling treatment setting;

(e) documentation, on a form approved by the board, that the applicant has satisfied the supervised experience requirements in ARM 24.154.409;

(f) the fingerprint and background check required by the board; and

(d) remains the same but is renumbered (g).

(2) ~~The new education requirements in (1)(b)(i)(A) through (H) apply to first-time students newly enrolled in an education program after September 20, 2013. The former education requirements at ARM 24.154.405 apply only to students enrolled in an education program prior to September 20, 2013.~~

(3) ~~A person is eligible for only one temporary practice permit for each application and no extensions to permits are allowed.~~

(4) ~~Pursuant to ARM 24.154.409, LAC temporary practice permit holders must submit proof of completed supervised work experience hours, signed by the permit holder's LAC supervisor, before becoming eligible to take the written examination. Supervised work experience forms are included in the LAC application.~~

(5) ~~Individuals with a LAC temporary practice permit must provide proof of completed supervised work experience hours as detailed in (1)(c) before they are eligible to take the written examination.~~

(2) Except as provided in (5), all supervised experience hours must be completed pursuant to ARM 24.154.409 before an individual is eligible to take the written examination.

(6) (3) The addiction counselor written examination shall cover four content areas, including, but not limited to:

(a) through (d) remain the same.

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

(5) If the applicant achieved a passing score on the NCC Level 1 or Level 2 examination, the Northwest Certification II examination, or the Southwest Certification II examination as part of the applicant's education program, the passing examination score will be accepted for licensure.

(6) Examination results are valid within four years of the date the applicant took the examination that resulted in the passing score.

(7) Applicants shall be allowed a maximum of three attempts to successfully pass the examination.

(8) After the third attempt, if the applicant has not achieved a passing score, the applicant must request in writing to the board to retake the examination. The board may require the applicant to complete a preapproved remediation plan prior to additional exam administrations.

AUTH: 37-35-103, MCA

IMP: 37-35-103, 37-35-202, MCA

REASON: See REASON for ARM 24.154.405.

With the passage of House Bill 358, all board licensees and licensure candidates are subject to the board's fingerprint and background check requirements. The board determined it is reasonably necessary to add (1)(f) to clarify this requirement for LAC applicants.

24.154.408 LICENSURE BY ENDORSEMENT OF OUT-OF-STATE LAC

APPLICANTS ~~(1) Licensed addiction counselors (LAC) licensed in other states or through the military may apply for a Montana license. To apply, applicants must:~~

~~(a) complete the licensure application;~~

~~(b) submit documentation of education and required hours of supervised work experience pursuant to ARM 24.154.409;~~

~~(i) In the absence of access to a supervisor, applicants may verify the supervised work experience hours by affidavit, and need not supply a supervisor's signature upon reasonable explanation of why the supervisor's signature is unavailable.~~

~~(c) submit verification directly from all states where the applicant holds or has held a license that such license(s) are unrestricted with no pending discipline;~~

~~(d) submit proof of successful passage of the National Association of Alcoholism and Drug Abuse Counselors Certification Commission (NCC) Level 1 or Level 2 examination or equivalent;~~

~~(e) shall submit proof the applicant has been in continuous practice as a LAC in another jurisdiction for the two years immediately preceding the date of application in Montana; and~~

~~(f) pay the application fee.~~

(1) A license to practice as a licensed addiction counselor in Montana may be issued to the holder of an out-of-state licensed addiction counselor or equivalent license at the discretion of the board, provided the applicant completes and files with the board an application for licensure and pays the required application fee. The applicant shall:

(a) hold a valid and unrestricted license to practice as a licensed addiction counselor or equivalent in another state or jurisdiction that was issued under standards substantially equivalent to or greater than current standards in this state. Official written verification of such licensure status must be received by the board directly from the other state(s) or jurisdiction(s);

(b) hold a degree, which meets the requirements of 37-35-202, MCA, and shall supply a copy of the certified transcript sent directly from an accredited college, university, or institution, and complete the degree summary sheet provided by the board;

(i) Candidates who did not obtain the addiction-specific education hours within their degree must complete an addiction-specific education summary sheet.

(c) supply proof of successful completion of the National Association of Alcoholism and Drug Abuse Counselors Certification Commission Level 1 or Level 2 examination, the Northwest Certification II examination, or the Southwest Certification II examination or another board-approved licensing examination. The applicant's scores on the examination must be forwarded directly to the board;

(d) submit proof of completion of the hours of addiction counseling experience required in ARM 24.154.409. The applicant may verify the experience hours by affidavit and need not supply a supervisor's signature upon reasonable explanation of why the supervisor's signature is unavailable to the applicant;

(e) submit proof of continuous practice as a licensed addiction counselor or equivalent in another jurisdiction for the two years immediately preceding the date of application in Montana; and

(f) answer questions about the applicant's character and fitness to practice on a form prescribed by the board, and provide all information required by the board in response to these questions.

(2) All applicants must submit the fingerprint and background checks required by the board.

(3) An out-of-state applicant for licensure in Montana may be granted a temporary permit to practice addiction counseling, provided:

(a) the applicant has submitted a completed application as described in this subchapter; and

(b) the initial screening by board staff shows the current license is in good standing and not on probation or subject to ongoing disciplinary action.

(i) The temporary permit will remain valid until a license is granted or until notice of proposal to deny license is served, whichever occurs first.

(ii) In the event that neither contingency has occurred within one year of issuance of the temporary permit, the temporary permit shall expire and may not be renewed.

AUTH: 37-35-103, MCA

IMP: 37-35-103, MCA

24.154.409 SUPERVISED WORK EXPERIENCE (1) A minimum of ~~Six~~ seven months and {1000 hours} of supervised work experience hours in a licensed addiction counseling qualified treatment setting pursuant to [NEW RULE II] is required for licensure.

(2) ~~Applicants for LAC temporary practice permits must maintain~~ An LAC applicant's or licensure candidate's supervised experience must be documented on weekly timesheets.

(a) The weekly timesheets must document work experience in the following 11 skill areas:

(i) through (xi) remain the same.

(b) The weekly timesheets must be signed by the supervisor and submitted to the department ~~at the completion of the required minimum hours~~ with an application for licensure.

(c) The supervisor must observe the work of ~~applicants for LAC temporary practice permits~~ the LAC applicant or licensure candidate in each of the 11 skill areas. ~~Observation of the work of applicants by supervisors~~ may occur via Skype or other similar technological means.

(d) A summary sheet for each supervisor named must also be attached to the weekly timesheets to verify the ~~applicants meet~~ LAC applicant or licensure candidate has met the required minimum hours in the 11 skill areas. This summary sheet shall summarize the weekly timesheets ~~maintained by the applicants.~~

(e) ~~Applicants~~ LAC applicants and licensure candidates must complete the required minimum hours in the 11 skill areas as follows. The remaining hours must be under onsite clinical supervision in each of the 11 skill areas.

Skill Areas	Hours
screening	30
assessment/patient placement	100
treatment planning	50
referrals	20
case management	50
individual counseling	60
group counseling	100
client education	35
documentation	35
professional and ethical responsibilities	10
multicultural competency	10
TOTAL	500

(3) ~~Temporary practice permit holders~~ An LAC applicant or licensure candidate may select any of the 11 skill areas in order to accumulate the remaining supervised work experience hours. ~~Temporary practice permit holders may select any of the 11 skill areas in order to accumulate the remaining supervised work experience hours.~~

~~(4) Temporary practice permit holders are not eligible to take the examination if the supervised work experience hours are not accumulated by the end of the timeframes delineated in (1). If holders do not accumulate their supervised work experience hours within those timeframes, their applications will be closed and applicants must reapply, pay the application fee, and begin accumulating the required hours again.~~

~~(4) The supervisor's relationship with the LAC applicant or licensure candidate shall not constitute a conflict of interest, including, but not limited to being in a cohabitation or financially dependent relationship with the LAC applicant or licensure candidate, or being the applicant's or licensure candidate's parent, child, spouse, or sibling.~~

~~(5) Supervised work experience hours may be gained through paid work experience, academic internship hours, or unpaid volunteer work if the temporary practice permit holder LAC applicant or licensure candidate is supervised by a Montana LAC qualified supervisor in a qualified treatment setting.~~

~~(6) Supervised work experience must be completed in not more than two different treatment settings. Internship hours earned through an academic program are not included in the limit of two treatment settings.~~

~~(7) Qualified treatment settings include those where temporary practice permit holders may obtain supervised work experience based on nationally recognized patient placement criteria. Criteria for these treatment settings may include settings that provide the basis for a continuum of care for patients with addictions and settings that include any level of care as defined by American Society of Addiction Medicine (ASAM) in *The ASAM Criteria: Treatment Criteria for Addictive, Substance-Related, and Co-Occurring Conditions* (October 24, 2013).~~

~~(a) Qualified treatment settings for supervised work experience are:~~

~~(i) settings with a primary focus in licensed addiction counseling;~~

~~(ii) Joint Commission on Accreditation of Healthcare Organizations (JCAHO) or Commission on Accreditation of Rehabilitation Facilities (CARF) approved settings;~~

~~(iii) Indian Health Service (IHS) approved settings;~~

~~(iv) organized licensed addiction counseling settings within branches of the armed forces of veterans' administration hospitals; and~~

~~(v) organized group practice setting (two or more licensed addiction counselors in a defined, conjoint practice). The work setting must have the capacity to provide multidisciplinary supervision.~~

~~(b) Qualified treatment settings must have a direct referral relationship for the provision of:~~

~~(i) detoxification services;~~

~~(ii) medical services;~~

~~(iii) laboratory services;~~

~~(iv) psychiatric consultations; and~~

~~(v) psychological consultations.~~

~~(c) Qualified treatment settings must demonstrate the individualized treatment plans including:~~

~~(i) problem formulations;~~

~~(ii) goals;~~

~~(iii) measurable treatment objectives;~~
~~(iv) progress notes; and~~
~~(v) regular reviews of plans at specified times by a designated treatment team.~~

AUTH: 37-35-103, MCA

IMP: 37-35-103, 37-35-202, MCA

REASON: It is reasonably necessary to update this rule to reflect current national LAC standards in supervised experience and reflect the statutory changes from House Bill 61 (2013), which added gambling dependence for purposes of addiction counselor licensure laws.

The board is relocating the provisions of (7) regarding qualified treatment settings to NEW RULE II.

24.154.420 NONRESIDENT LICENSED ADDICTION COUNSELOR SERVICES (1) remains the same.

(2) If the provision of such services allowable by 37-35-201, MCA, exceeds ten days within any calendar year, the nonresident LAC shall report the nature and extent of the activity or service to the ~~department~~ board on a ~~department-provided~~ board-approved form.

AUTH: 37-35-103, MCA

IMP: 37-35-201, MCA

24.154.422 INACTIVE STATUS AND CONVERSION FROM INACTIVE TO ACTIVE STATUS (1) A licensee may place a license on inactive status by either indicating on the renewal form that inactive status is desired or by informing the ~~department~~ board in writing that an inactive status is desired. The license must have been active and in good standing prior to the first time it is placed on inactive status. It is the sole responsibility of the inactive licensee to keep the ~~department~~ board informed as to any changes of address during the period of time the license remains on inactive status. Inactive licensees must pay the inactive license fee annually to maintain license status.

(2) through (4)(a) remain the same.

(b) submitting satisfactory evidence that the licensee has attended ten hours of continuing education per year while on inactive status, which comply with the continuing education rules of the ~~department~~ board. The continuing education hours must have been acquired within the 24 months immediately preceding application to convert to active status.

AUTH: 37-1-319, 37-35-103, MCA

IMP: 37-1-319, 37-35-103, MCA

24.154.2105 CONTINUING EDUCATION REQUIREMENTS (1) through (3) remain the same.

(4) If licensees are unable to acquire sufficient continuing education credits to meet the requirements due to medical hardship, licensees may request an exception from the ~~department board~~. All requests for exceptions will be evaluated on a case-by-case basis by the ~~department board~~.

AUTH: 37-1-319, 37-35-103, MCA

IMP: 37-1-131, 37-1-306, 37-1-319, 37-35-103, MCA

24.154.2107 CONTINUING EDUCATION PROCEDURES AND DOCUMENTATION ~~(1) Renewing licensees shall submit a completed renewal form to the department either electronically or by mail and pay the applicable renewal fee.~~

~~(a) At renewal, licensees must affirm they have complied with all continuing education (CE) requirements.~~

~~(b) (1) New licensees renewing for the first time are exempt from CE continuing education (CE) reporting, but shall affirm compliance with all CE requirements beginning with their second renewal.~~

~~(2) through (10) remain the same.~~

AUTH: 37-1-319, 37-35-103, MCA

IMP: 37-1-104, 37-1-131, 37-1-306, 37-1-319, 37-35-103, MCA

REASON: Because the department administers a standardized renewal process for all professional and occupational licensure boards, the board is amending this rule to remove unnecessary language.

24.154.2301 UNPROFESSIONAL CONDUCT (1) In addition to unprofessional conduct as identified in ~~37-1-410~~ 37-1-316, MCA, a violation of one or more of the following constitutes unprofessional conduct:

(a) through (m) remain the same.

(n) misrepresenting the types or status of licensure by performing or holding oneself out as able to perform professional services beyond the ~~counselor's licensee's~~ field of competence, or outside the scope of the license, or delegating professional responsibilities to a person not appropriately qualified to provide such services;

(o) through (ab) remain the same.

(ac) entering into a treatment relationship that the ~~licensed addiction counselor licensee~~ knows or reasonably ought to know has the potential to be exploitative in nature, compromises the ~~licensed addiction counselor's licensee's~~ objectivity or professional judgment, or creates or increases the risk of harm to the client due to:

(ac)(i) through (ad) remain the same.

(ae) failing to resolve a treatment relationship that the ~~licensed addiction counselor licensee~~ knows or reasonably ought to know has the potential to be exploitative in nature, compromises the ~~licensed addiction counselor's licensee's~~ objectivity or professional judgment, or creates or increases the risk of harm to the client;

(af) through (aj) remain the same.

(ak) failing to refer clients whose impairment statuses are beyond the scope of the ~~licensed addiction counselor's~~ licensee's expertise;

(al) and (am) remain the same.

(an) habitual intemperance or excessive use of an addictive drug, alcohol, or any other substance to the extent the use impairs the user physically or mentally; or

(ao) conviction or violation of a federal or state law regulating the possession, distribution, or use of a controlled substance, as defined by the federal Food and Drug Administration or successors, whether or not an appeal is pending;

(ap) performing or holding oneself out as able to perform professional services beyond the field or fields of competence as established by education, work experience, and/or training; or

(aq) permitting a person under the licensee's supervision or control to perform or hold oneself out as competent to perform professional services beyond the level of education, work experience, and/or training of that person.

AUTH: 37-1-319, 37-35-103, 37-35-301, MCA

IMP: 37-1-316, 37-1-319, ~~37-1-410~~, 37-35-103, ~~37-35-301~~, MCA

REASON: The board is adding (1)(ap) and (aq) to this rule at the request of the board screening panel following House Bill 80's (2009) establishment of temporary practice permits for licensed addiction counselor applicants completing prelicensure supervised work experience. In order to adequately regulate and appropriately discipline both the temporary permit holders and their supervisors, the board determined it is reasonably necessary to add the specified behavior to those actions the board intends as unprofessional conduct.

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

NEW RULE I SUPERVISOR QUALIFICATIONS (1) A person supervising the experience of an addiction counselor licensure candidate shall meet the minimum qualifications set forth in this rule.

(2) The supervisor must:

(a) be a licensed addiction counselor or trained in a related field;

(b) hold an active and current license in good standing, which was issued by the licensing board or other officially recognized licensing body of the state where supervision occurs; and

(c) have three years of postlicensure experience in a qualified treatment setting.

AUTH: 37-35-103, MCA

IMP: 37-35-103, 37-35-202, MCA

REASON: It is reasonably necessary to adopt NEW RULE I and move the supervisor qualifications from ARM 24.154.407(1)(c) to this rule for clarity and ease of use.

NEW RULE II QUALIFIED TREATMENT SETTING (1) Qualified treatment settings include those addiction treatment programs where licensed addiction counselor (LAC) applicants or licensure candidates may obtain supervised work experience based on nationally recognized patient placement criteria. Criteria for these treatment settings may include settings that provide the basis for a continuum of care for patients with addictions and settings that include any level of care as defined by American Society of Addiction Medicine (ASAM) in The ASAM Criteria: Treatment Criteria for Addictive, Substance-Related, and Co-Occurring Conditions (October 24, 2013).

(2) Qualified treatment settings for supervised work experience are:

- (a) settings with a primary focus in licensed addiction counseling;
- (b) Joint Commission on Accreditation of Healthcare Organizations (JCAHO), Commission on Accreditation of Rehabilitation Facilities (CARF), or Council on Accreditation (COA) approved settings;
- (c) Indian Health Service (IHS)-approved settings;
- (d) organized licensed addiction counseling settings within branches of the armed forces of veterans' administration hospitals;
- (e) licensed mental health centers; and
- (f) organized group practice setting (two or more licensed addiction counselors in a defined, conjoint practice). The work setting must have the capacity to provide multidisciplinary supervision.

(3) Qualified treatment settings must have a direct referral relationship for the provision of:

- (a) detoxification services;
- (b) medical services;
- (c) laboratory services;
- (d) psychiatric consultations; and
- (e) psychological consultations.

(4) Qualified treatment settings must demonstrate the individualized treatment plans including:

- (a) problem formulations;
- (b) goals;
- (c) measurable treatment objectives;
- (d) progress notes; and
- (e) regular reviews of plans at specified times by a designated treatment team.

AUTH: 37-35-103, MCA

IMP: 37-35-103, 37-35-202, MCA

REASON: The board is relocating the provisions on qualified treatment settings from ARM 24.154.409, the rule on supervised work experience, to this new rule for increased clarity and ease of use for the reader.

NEW RULE III ADDICTION COUNSELOR LICENSURE CANDIDATE APPLICATION PROCEDURES (1) A person seeking licensure as an addiction counselor licensure candidate must apply on the board's official forms which may be

obtained through the department. All requirements with documentation must be met at the time of application. Incomplete applications will not be considered by the board.

(2) A completed addiction counselor licensure candidate application must include:

- (a) the application fee;
- (b) official transcripts provided directly from the institution documenting the applicant's completion of the education required by ARM 24.154.405; and
- (c) the licensure candidate's proposed training and supervision plan.

(3) A training and supervision plan is subject to board approval, must be in a form approved by the board, and must include:

- (a) identification of the candidate and qualified supervisors;
- (b) the supervisors' license types, license numbers, and amount of postlicensure experience in a qualified treatment setting;
- (c) verification that any and all licenses held by the supervisors in all jurisdictions are unrestricted with no pending discipline;
- (d) identification of the applicant's qualified treatment setting and evidence that the qualified treatment setting satisfies the requirements of [NEW RULE II];
- (e) a proposed record of supervision in a form approved by the board that will address and document the licensure candidate's experience for the purpose of meeting the requirements of ARM 24.154.409; and
- (f) a signed supervision agreement between the candidate and supervisors addressing the duties of the candidate and supervisors, the obligations of the candidate and supervisor under ARM 24.154.409, confidentiality, frequency and method of supervision, and duration and termination of the supervision agreement.

(4) All applicants must submit the fingerprint and background check required by the board.

AUTH: 37-35-103, MCA

IMP: 37-35-103, 37-35-202, MCA

NEW RULE IV ADDICTION COUNSELOR LICENSURE CANDIDATE REQUIREMENTS

(1) An addiction counselor licensure candidate must provide an update to the board within ten business days:

- (a) if there is a substantial change in the candidate's training and supervision plan; and
- (b) prior to commencing supervised work experience under a new supervisor.

(2) An updated training and supervision plan or change in supervisor does not require additional board approval, unless there is reason to believe the update does not conform to the board's training and supervision requirements.

(3) The licensure candidate and supervisors are responsible for ensuring that the licensure candidate and supervisors comply with the requirements of ARM 24.154.409 and the statutes, rules, and standards pertaining to the practice of addiction counseling at all times.

(4) The licensure candidate must maintain the record of supervision, which must be maintained according to the requirements of ARM 24.154.409 and may be requested by the board at any time.

AUTH: 37-35-103, MCA
IMP: 37-35-103, 37-35-202, MCA

NEW RULE V ADDICTION COUNSELOR LICENSURE CANDIDATE ANNUAL REGISTRATION REQUIREMENTS (1) An individual shall register annually as an addiction counselor licensure candidate on or before June 30. An individual may register as an addiction counselor licensure candidate for up to three years from the date the candidate's original candidate license was issued.
(2) Candidates licensed after April 1 in any calendar year will not be required to register again until June 30 of the following calendar year.
(3) After the third registration, an addiction counselor licensure candidate must request permission for an additional registration, which the board may grant on a case-by-case basis.

AUTH: 37-35-103, MCA
IMP: 37-35-103, 37-35-202, MCA

NEW RULE VI GAMBLING DISORDER EDUCATION REQUIREMENT FOR CURRENT LICENSED ADDICTION COUNSELOR LICENSEES (1) For individuals holding a valid Montana LAC license on or before [the effective date of this rule], the gambling disorder assessment and counseling education requirement in ARM 24.154.405(3)(i) shall be satisfied as follows:
(a) Licensees shall obtain 15 hours of education regarding gambling disorder assessment and counseling. These education credits:
(i) shall count towards the licensee's current continuing education renewal requirement;
(ii) may be obtained by any means delineated in ARM 24.154.2107; and
(iii) must be completed no more than three years prior to, or one year following [the effective date of this rule].
(b) Licensees shall submit proof of compliance with this requirement to the board office no later than [one year from the effective date of this rule].

AUTH: 37-35-103, MCA
IMP: 37-35-102, 37-35-103, MCA

REASON: The 2013 Legislature enacted Chapter 275, Laws of 2013 (House Bill 61), an act that added gambling dependence counseling for purposes of addiction counselor licensure. The bill was signed by the Governor on April 24, 2013, and became effective on October 1, 2013. The board is adopting NEW RULE VI to further implement the bill and coincide with the establishment of gambling disorder assessment and counseling education requirements for LAC applicants in ARM 24.154.405. The board determined it is reasonably necessary to set a similar, one-time education requirement for LACs licensed at the time of this rule's effective date.

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

24.154.201 PROCEDURAL RULES at ARM page 24-14615.

AUTH: 37-35-103, MCA
IMP: 2-4-201, MCA

REASON: The board is repealing this rule and ARM 24.154.202, because the provisions are adequately addressed in the board rules in ARM Title 24, chapter 219, which clearly identify their application to all of the board's activities.

24.154.202 PUBLIC PARTICIPATION RULES at ARM page 24-14615.

AUTH: 37-35-103, MCA
IMP: 2-3-103, MCA

24.154.2101 RENEWALS at ARM page 24-14751.

AUTH: 37-1-141, 37-35-103, MCA
IMP: 37-1-141, MCA

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

24.154.2401 COMPLAINT PROCEDURE at ARM page 24-14771.

AUTH: 37-35-103, MCA
IMP: 37-1-402, 37-1-403, 37-1-404, 37-35-301, MCA

REASON: The board is repealing this unnecessary rule because the complaint procedure is adequately addressed in statute and should not be unnecessarily repeated in rule per the Montana Administrative Procedure Act.

7. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Board of Behavioral Health, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to dlibsdswhpc@mt.gov, and must be received no later than 5:00 p.m., May 20, 2016.

8. An electronic copy of this notice of public hearing is available at www.swpc.mt.gov (department and board's web site). The department 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 department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems, and that technical

difficulties in accessing or posting to the e-mail address do not excuse late submission of comments.

9. The board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this board. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding all board administrative rulemaking proceedings or other administrative proceedings. The request must indicate whether e-mail or standard mail is preferred. Such written request may be sent or delivered to the Board of Behavioral Health, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; faxed to the office at (406) 841-2305; e-mailed to dlibsdswwpc@mt.gov; or made by completing a request form at any rules hearing held by the agency.

10. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. Representative Ryan Lynch, the primary bill sponsor, was contacted on April 28, 2015, by regular USPS mail.

11. With regard to the requirements of 2-4-111, MCA, the board has determined that the amendment of ARM 24.154.301, 24.154.401, 24.154.403, 24.154.405, 24.154.407, 24.154.408, 24.154.409, 24.154.420, 24.154.422, 24.154.2105, 24.154.2107, and 24.154.2301 will not significantly and directly impact small businesses.

With regard to the requirements of 2-4-111, MCA, the board has determined that the adoption of NEW RULES I through VI will not significantly and directly impact small businesses.

With regard to the requirements of 2-4-111, MCA, the board has determined that the repeal of ARM 24.154.201, 24.154.202, 24.154.2101, and 24.154.2401 will not significantly and directly impact small businesses.

Documentation of the board's above-stated determinations is available upon request to the Board of Behavioral Health, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2392; facsimile (406) 841-2305; or dlibsdswwpc@mt.gov (board's e-mail).

12. Cyndi Reichenbach, Executive Officer, has been designated to preside over and conduct this hearing.

BOARD OF BEHAVIORAL HEALTH
DR. PETER DEGEL, LCPC

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

/s/ PAM BUCY
Pam Bucy, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State April 11, 2016

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

In the matter of the repeal of ARM	)	NOTICE OF PROPOSED REPEAL
37.57.101, 37.57.102, 37.57.105,)	
37.57.106, 37.57.109, 37.57.110,)	
37.57.111, 37.57.112, 37.57.117, and)	
37.57.118 pertaining to the children's)	
special health services financial	)	NO PUBLIC HEARING
assistance program	)	CONTEMPLATED

TO: All Concerned Persons

1. On May 23, 2016, the Department of Public Health and Human Services proposes to repeal 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 13, 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 proposes to repeal the following rules:

37.57.101 PURPOSE OF RULES found on page 37-12561 of the Administrative Rules of Montana.

AUTH: 50-1-202, MCA
IMP: 50-1-202, MCA

37.57.102 DEFINITIONS found on page 37-12562 of the Administrative Rules of Montana.

AUTH: 50-1-202, MCA
IMP: 50-1-202, MCA

37.57.105 GENERAL REQUIREMENTS FOR CSHS FINANCIAL ASSISTANCE found on page 37-12567 of the Administrative Rules of Montana.

AUTH: 50-1-202, MCA
IMP: 50-1-202, MCA

37.57.106 ELIGIBILITY FOR CSHS FINANCIAL ASSISTANCE found on page 37-12568 of the Administrative Rules of Montana.

AUTH: 50-1-202, MCA
IMP: 50-1-202, MCA

37.57.109 APPLICATION PROCEDURE FOR CSHS FINANCIAL ASSISTANCE found on page 37-12575 of the Administrative Rules of Montana.

AUTH: 50-1-202, MCA
IMP: 50-1-202, MCA

37.57.110 CONDITIONS AND SERVICES FOR CSHS FINANCIAL ASSISTANCE found on page 37-12576 of the Administrative Rules of Montana.

AUTH: 50-1-202, MCA
IMP: 50-1-202, MCA

37.57.111 PAYMENT LIMITS AND REQUIREMENTS found on page 37-12579 of the Administrative Rules of Montana.

AUTH: 50-1-202, MCA
IMP: 50-1-202, MCA

37.57.112 INFORMAL RECONSIDERATION PROCEDURE found on page 37-12581 of the Administrative Rules of Montana.

AUTH: 50-1-202, MCA
IMP: 50-1-202, MCA

37.57.117 CSHS PROVIDERS RECEIVING CSHS FUNDS: REQUIREMENTS found on page 37-12591 of the Administrative Rules of Montana.

AUTH: 50-1-202, MCA
IMP: 50-1-202, MCA

37.57.118 PROGRAM RECORDS found on page 37-12593 of the Administrative Rules of Montana.

AUTH: 50-1-202, MCA
IMP: 50-1-202, MCA

4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) is proposing to repeal ARM 37.57.101, 37.57.102, 37.57.105, 37.57.106, 37.57.109, 37.57.110, 37.57.111, 37.57.112, 37.57.117, and 37.57.118. This proposed repeal will

eliminate the Children's Special Health Services (CSHS) financial assistance program.

The program currently serves approximately 20 families; there has been a steady decline in enrollment in the last several years. In state fiscal year (SFY) 2015 a total of \$11,351 (a maximum of \$2k per person) was approved pay for copays, services, medical equipment, and prescription drugs not covered by the child's private health insurance.

The CSHS financial assistance program follows the same poverty guidelines as the Healthy Montana Kids (HMK) program. The decline in financial assistance program enrollment is likely attributable to the increase of federal poverty guidelines for Healthy Montana Kids and the subsequent enrollment of children in that program. The families currently served by the CSHS financial assistance program have private insurance and have not applied for HMK; although, since the guidelines for CSHS financial assistance are equal, it would stand to reason that they would qualify for HMK.

The families have been notified and encouraged to apply for HMK. If the families qualify for HMK, the services, etc. that CSHS is currently covering through the financial assistance program should be covered by HMK, thereby eliminating the financial impact on the families. If families do not qualify, or they choose not to apply, the maximum impact to families will be \$2,000 per state fiscal year. None of the families currently enrolled have expressed displeasure with this rule change. Many have applied for and been granted HMK coverage for their children.

The funds saved by CSHS will be redirected to programs that can be utilized by all children and youth with special healthcare needs in Montana and are not restricted by federal poverty guidelines.

ARM 37.57.118 refers to specialty clinic records. CSHS is no longer directly coordinating clinics' services so this rule will be repealed. CSHS will retain current records according to appropriate retention schedule.

Fiscal Impact

If families currently enrolled in the CSHS financial assistance program qualify for Healthy Montana Kids (HMK), the financial impact on families will be very little or none. This is because the services, equipment, etc., that CSHS currently pays for, should be covered by HMK. If families do not qualify, or they choose not to apply, the maximum impact to families will be \$2,000 per eligible child per state fiscal year. For those currently enrolled this will impact approximately 20 families with a maximum cumulative cost of approximately \$40,000.

5. The department intends to apply the repeal of these rules retroactively to March 31, 2016. A retroactive application of the proposed rule does not result in a negative impact to any affected party.

6. 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 20, 2016. Comments may also be faxed to (406) 444-9744 or e-mailed to dphhslegal@mt.gov.

7. 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 Kenneth Mordan at the above address no later than 5:00 p.m., May 20, 2016.

8. If the agency receives requests for a public hearing on the proposed action from either 10% 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 two persons based on 20 families in this program.

9. 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.

10. 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.

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

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

13. 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/ Nicholas Domitrovich
Nicholas Domitrovich
Rule Reviewer

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

Certified to the Secretary of State April 11, 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 37.85.104 and 37.85.105) PROPOSED AMENDMENT
pertaining to the revision of fee)
schedules for Medicaid provider rates)
effective July 1, 2016)

TO: All Concerned Persons

1. On May 12, 2016, at 10:30 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 5, 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:

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

(a) Mental health services plan provider reimbursement, as provided in ARM 37.89.125, is effective ~~July 1, 2015~~ July 1, 2016.

(b) 72-hour presumptive eligibility for adult-crisis stabilization services reimbursement for services, as provided in ARM 37.89.523, is effective ~~July 1, 2015~~ July 1, 2016.

(c) Youth respite care services, as provided in ARM 37.87.2203, is effective ~~October 1, 2015~~ July 1, 2016.

(d) Substance use disorder services provider reimbursement, as provided in ARM 37.27.908, is effective July 1, 2016.

(2) remains the same.

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

8-4/22/16

MAR Notice No. 37-745

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

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

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

(a) Resource-based relative value scale (RBRVS) means the version of the Medicare resource-based relative value scale contained in the Medicare Physician Fee Schedule adopted by the Centers for Medicare and Medicaid Services (CMS) of the U.S. Department of Health and Human Services and published at ~~79 Federal Register 217, page 67547 (November 13, 2014)~~ 80 Federal Register 220, page 70886 (November 16, 2015) effective ~~January 1, 2015~~ January 1, 2016 which is adopted and incorporated by reference. Procedure codes created after ~~January 1, 2015~~ January 1, 2016 will be reimbursed using the relative value units from the Medicare Physician Fee Schedule in place at the time the procedure code is created.

(b) Fee schedules are effective ~~July 1, 2015~~ July 1, 2016. The conversion factor for physician services is ~~\$36.93~~ \$37.89. The conversion factor for allied services is ~~\$24.93~~ \$25.38. The conversion factor for mental health services is ~~\$24.55~~ \$24.90. The conversion factor for anesthesia services is ~~\$29.23~~ \$29.76.

(c) Policy adjusters are effective ~~July 1, 2015~~ July 1, 2016. The maternity policy adjuster is 112%. The family planning policy adjuster is 105%. The psychological testing for youth policy adjuster is 145%. The psychological testing policy adjuster applies only to psychologists.

(d) The payment-to-charge ratio is effective ~~July 1, 2015~~ July 1, 2016 and is 47% of the provider's usual and customary charges.

(e) The specific percentages for modifiers adopted by the department are effective ~~July 1, 2015~~ July 1, 2016.

(f) Psychiatrists receive a 112% provider rate of reimbursement adjustment to the reimbursement of physicians effective ~~July 1, 2015~~ July 1, 2016.

(g) Midlevel practitioners receive a 90% provider rate of reimbursement adjustment to the reimbursement of physicians for those services described in ARM 37.86.205(5)(b) effective ~~July 1, 2015~~ July 1, 2016.

(h) Optometric services receive a 112% provider rate of reimbursement adjustment to the reimbursement for allied services as provided in ARM 37.85.105(2) effective ~~July 1, 2015~~ July 1, 2016.

(i) Reimbursement for physician-administered drugs described at ARM 37.86.105 is determined at 42 CFR 414.904 (2016).

(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, 2015~~ July 1, 2016; and

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

(b) The outpatient hospital services fee schedules including:

(i) the Outpatient Prospective Payment System (OPPS) fee schedule as published by the Centers for Medicare and Medicaid Services (CMS) in ~~79~~ 80 Federal Register ~~247~~ 219, page ~~66769~~ 70298, ~~November 10, 2014~~ November 13, 2015, effective ~~July 1, 2015~~ July 1, 2016, and reviewed annually by CMS as required in 42 CFR 419.5 (2016) as updated by the department;

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

(iii) the Medicaid statewide average outpatient cost-to-charge ratio is ~~46.3%~~ 45.2%; and

(iv) remains the same.

(c) The hearing aid services fee schedule, as provided in ARM 37.86.805, is effective ~~January 1, 2016~~ July 1, 2016.

(d) The Relative Values for Dentists, as provided in ARM 37.86.1004, reference published in ~~2015~~ 2016 resulting in a dental conversion factor of ~~\$33.18~~ \$33.78 and fee schedule is effective ~~January 1, 2016~~ July 1, 2016.

(e) The dental services covered procedures, the Dental and Denturist Program Provider Manual, as provided in ARM 37.86.1006, is effective ~~January 1, 2016~~ July 1, 2016.

(f) The outpatient drugs reimbursement, dispensing fees range as provided in ARM 37.86.1105(2)(b) is effective ~~July 1, 2015~~ July 1, 2016:

(i) a minimum of \$2.00 and a maximum of ~~\$4.94~~ \$8.47 for brand-name and nonpreferred generic drugs;

(ii) a minimum of \$2.00 and a maximum of ~~\$6.78~~ \$11.62 for preferred brand-name and generic drugs and generic drugs not identified on the preferred list.

(g) remains the same.

(h) The outpatient drugs reimbursement, vaccine administration fee as provided in ARM 37.86.1105(5), will be \$21.32 for the first vaccine and ~~\$13.37~~ \$13.00 for each additional administered vaccine, effective ~~July 1, 2015~~ July 1, 2016.

(i) and (j) remain the same.

(k) The home infusion therapy services fee schedule, as provided in ARM 37.86.1506, is effective ~~July 1, 2015~~ July 1, 2016.

(l) Montana Medicaid adopts and incorporates by reference the Region D Supplier Manual, ~~January 2016~~ effective July 1, 2016, which outlines the Medicare coverage criteria for Medicare covered durable medical equipment, local coverage determinations (LCDs), and national coverage determinations (NCDs) as provided in ARM 37.86.1802, effective ~~January 1, 2016~~ July 1, 2016. The prosthetic devices, durable medical equipment, and medical supplies fee schedule, as provided in ARM 37.86.1807, is effective July 1, 2015.

(m) ~~The early and periodic screening, diagnostic and treatment (EPSDT) services fee~~ Fee schedules for private duty nursing, nutrition, and orientation and

mobility specialists as provided in ARM 37.86.2207(2), ~~is~~ are effective ~~July 1, 2015~~ July 1, 2016.

(n) The transportation and per diem fee schedule, as provided in ARM 37.86.2405, is effective ~~July 1, 2015~~ July 1, 2016.

(o) The specialized nonemergency medical transportation fee schedule, as provided in ARM 37.86.2505, is effective ~~July 1, 2015~~ July 1, 2016.

(p) The ambulance services fee schedule, as provided in ARM 37.86.2605, is effective ~~July 1, 2015~~ July 1, 2016.

(q) The audiology fee schedule, as provided in ARM 37.86.705, is effective ~~July 1, 2015~~ July 1, 2016.

(r) The therapy fee schedules for occupational therapists, physical therapists, and speech therapists, as provided in ARM 37.85.610, are effective ~~July 1, 2015~~ July 1, 2016.

(s) The optometric fee schedule provided in ARM 37.86.2005, is effective ~~January 1, 2016~~ July 1, 2016.

(t) The chiropractic fee schedule, as provided in ARM 37.85.212(2), is effective July 1, 2016.

(u) The lab and imaging fee schedule, as provided in ARM 37.85.212(2) and 37.86.3007, is effective July 1, 2016.

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

(a) Home and community-based services for elderly and physically disabled persons fee schedule, as provided in ARM 37.40.1421, is effective ~~July 1, 2015~~ July 1, 2016.

(b) Home health services fee schedule, as provided in ARM 37.40.705, is effective ~~July 1, 2015~~ July 1, 2016.

(c) Personal assistance services fee schedule, as provided in ARM 37.40.1135, is effective ~~July 1, 2015~~ July 1, 2016.

(d) Self-directed personal assistance services fee schedule, as provided in ARM 37.40.1135, is effective ~~July 1, 2015~~ July 1, 2016.

(e) Community first choice services fee schedule, as provided in ARM 37.40.1026, is effective ~~July 1, 2015~~ July 1, 2016.

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

(a) Case management services for adults with severe disabling mental illness reimbursement, as provided in ARM 37.86.3515, is effective ~~July 1, 2015~~ July 1, 2016.

(b) Mental health center services for adults reimbursement, as provided in ARM 37.88.907, is effective ~~July 1, 2015~~ July 1, 2016.

(c) Home and community-based services for adults with severe disabling mental illness, reimbursement, as provided in ARM 37.90.408, is effective ~~October 1, 2015~~ July 1, 2016.

(d) Targeted case management services for substance use disorders, reimbursement, as provided in ARM 37.86.4010, is effective ~~July 1, 2015~~ July 1, 2016.

(6) The department adopts and incorporates by reference, the fee schedule for the following programs within the Developmental Services Division, on the date stated-:

(a) Mental health services for youth, as provided in ARM 37.87.901 in the Medicaid Youth Mental Health Services Fee Schedule, is effective ~~October 1, 2015~~ July 1, 2016.

(b) Mental health services for youth, as provided in ARM 37.87.1313 in the 1915(i) HCBS State Plan Program for Youth with Serious Emotional Disturbance Fee Schedule, is effective ~~July 1, 2015~~ July 1, 2016.

~~(c) Mental health services for youth, as provided in ARM 37.87.1303 in the 1915(c) HCBS Bridge Waiver for Youth with Serious Emotional Disturbance Fee Schedule, is effective July 1, 2015.~~

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

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

4. STATEMENT OF REASONABLE NECESSITY

SUMMARY OF PROPOSED AMENDMENTS TO ARM 37.85.104 AND 37.85.105

Provider rate increases contained in these two proposed rule amendments are a reflection of legislative appropriations contained in House Bill 2, 64th Legislature. Rate increases are calculated by dividing the 2015 Montana Legislature's appropriation for Medicaid member's health care during the upcoming state fiscal year (SFY) by the estimated total units of health care, to be provided during the upcoming SFY to derive a rate or fee. As part of the executive budget process in the summer of 2014, the department calculated a rate increase by multiplying expenditure projections for the providers affected in these proposed rules by 2%. These projections were done at a point in time prior to the submission of the November 2014 executive budget. The legislative branch adopted the executive projections in the form of a dollar amount. These 2014 projections were not adjusted during the 2015 legislative process to reflect changes in estimated inflation or utilization. Because they were not adjusted and they were done at a point in time, they no longer equal exactly 2%.

The rate methodology for the physician conversion factor and the pharmacy rate are also based on the legislative appropriation but differ in the ways described below.

Resource-Based Relative Value Scale (RBRVS) Methodology Summary

Many Montana Medicaid providers' rates are established through the resource-based relative value scale (RBRVS) model. RBRVS is used nationwide by most health plans, including Medicare and Medicaid. The relative value unit component of RBRVS is revised annually by the Centers for Medicare and Medicaid Services (CMS) and the American Medical Association. The department amends ARM 37.85.105 annually to adopt current relative value units (RVUs). An RVU is a numerical value assigned to each medical procedure. RVUs are based on physician

work, practice expense, and malpractice insurance expenses and express the relative effort and expense expended to provide one procedure compared with another. RVUs are added for new procedures and the RVUs of particular procedures may increase or decrease from year to year.

"Conversion factor" (CF) means a dollar amount by which RVUs are multiplied to establish the RBRVS fee for a service. The department annually calculates conversion factors for physician services, allied services, mental health services, and anesthesia services. These conversion factors are calculated by dividing the Montana Legislature's appropriation for Medicaid member's health care during the upcoming SFY by the estimated total units of health care, expressed as total RVUs, to be provided during the upcoming SFY. The resulting quotient is the conversion factor. The RVU for a procedure multiplied by the conversion factor is the fee paid for the procedure. In SFY 2017, the conversion factors for allied, mental health, and anesthesia services were calculated in this manner.

The conversion factor for licensed physicians is set by 53-6-125, MCA, and is based on the previous year increase in the consumer price index for medical services. In SFY 2017, the physician services conversion factor will increase from \$36.93 to \$37.89.

Proposed Pharmacy Rate Changes

In conjunction with an increase in the professional dispensing fee for pharmacy providers, Montana Medicaid will be implementing an Average Acquisition Cost (AAC) methodology for drug ingredient reimbursement. The methodology is outlined in MAR Notice No. 37-746 but the fiscal impact of both changes will be outlined in this rule notice, as they directly correlate. MAR Notice No. 37-746 has been published in conjunction with this rulemaking.

These summaries for ARM 37.85.104 and 37.85.105 are categorized according to the following divisions: Health Resources Division (HRD), Addictive and Mental Disorders Division (AMDD), Senior and Long Term Care Division (SLTC), and Developmental Services Division (DSD).

HRD's Proposed Amendments

HRD has no amendments to ARM 37.85.104. The following describes the proposed amendments that the HRD will make to ARM 37.85.105.

(2)(a): Update the reference effective date for the Federal Register regarding the Resource-Based Relative Value Scale (RBRVS) to July 1, 2016. Update the effective date in place regarding procedure codes being reimbursed using the relative value units from the Medicare Physician Fee Schedule in place to July 1, 2016.

- (2)(b): Revise the effective date regarding RBRVS fee schedules to July 1, 2016. Update the conversion factor for physician services from \$36.93 to \$37.89, allied services from \$24.93 to \$25.38, mental health services from \$24.55 to \$24.90, and anesthesia services from \$29.23 to \$29.76.
- (2)(c): Revise the effective date regarding policy adjustors to July 1, 2016.
- (2)(e): Revise the effective date regarding the specific percentages for modifiers adopted by the department to July 1, 2016.
- (2)(f): Revise the effective date regarding psychiatrist rate of reimbursement to July 1, 2016.
- (2)(g): Revise the effective date regarding midlevel practitioner rate of reimbursement to July 1, 2016.
- (2)(h): Revise the effective date regarding reimbursement of optometric services to July 1, 2016.
- (3)(a)(i): Revise the effective date regarding the APR-DRG (inpatient hospital) fee schedule to July 1, 2016.
- (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)(i): Update the Federal Register from 79 Federal Register 217, page 66769, November 10, 2014 to 80 Federal Register 219, page 70298, November 13, 2015. Update the Federal Register reference to July 1, 2016.
- (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.
- (3)(b)(iii): Update the Medicaid statewide average outpatient cost-to-charge ratio from 46.3% to 45.2%.
- (3)(c): Revise the effective date regarding the hearing aid services fee schedule to July 1, 2016.
- (3)(d): Revise the Relative Value for Dentists publication date to 2016. Update the dental conversion factor from \$33.18 to \$33.78, and revise the fee schedule effective date to July 1, 2016.
- (3)(e): Revise the effective date regarding the Dental and Denturist Program Provider Manual to July 1, 2016.

(3)(f): Revise the effective date regarding outpatient drug dispensing fees to July 1, 2016.

(3)(f)(i): Update the maximum dispensing fee for brand-name and nonpreferred generic drugs from \$4.94 to \$8.47.

(3)(f)(ii): Update the maximum dispensing fee for preferred brand-name, generic drugs, and generic drugs not identified on the preferred list from \$6.78 to \$11.62.

(3)(h): Revise the effective date regarding outpatient drug reimbursement of vaccine administration to July 1, 2016. Update the fee for additional administered vaccines from \$13.37 to \$13.00.

(3)(k): Revise the effective date regarding home infusion therapy fee schedule to July 1, 2016.

(3)(l): Revise the effective date of the reference to the Region D Supplier Manual to July 1, 2016. Revise the effective date of local coverage determinations (LCDs), and national coverage determinations (NCDs) referenced in ARM 37.86.1802 to July 1, 2016.

(3)(m): Remove the reference to early and periodic screening, diagnostic and treatment (EPSDT) and update the effective date regarding the private duty nursing, nutrition, and orientation and mobility fee schedules to July 1, 2016.

(3)(n): Revise the effective date regarding the transportation and per diem fee schedule to July 1, 2016.

(3)(o): Revise the effective date regarding the nonemergency medical transportation fee schedule to July 1, 2016.

(3)(p): Revise the effective date regarding the ambulance services fee schedule to July 1, 2016.

(3)(q): Revise the effective date regarding the audiology services fee schedule to July 1, 2016.

(3)(r): Revise the effective date regarding the fee schedule for occupational therapists, physical therapists, and speech therapists to July 1, 2016.

(3)(s): Revise the effective date regarding the optometric fee schedule to July 1, 2016.

(3)(t): A new subsection is being added - the chiropractic fee schedule, as provided in ARM 37.85.212(2), is effective July 1, 2016.

(3)(u): A new subsection is being added - The lab and imaging fee schedule, as provided in ARM 37.85.212(2) and 37.86.3007, is effective July 1, 2016.

Fiscal Impact

The proposed amendments to ARM 37.85.105 regarding fees for services administered by the Health Resources Division will increase the Medicaid budget for SFY 2017 by the amount appropriated by the 2015, 64th Legislature for provider rate increases.

The following table estimates the number of providers affected by the increase, as well as the fiscal impact to state funds for SFY 2017:

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
Ambulance	\$196,041	\$67,652	\$128,389	202
Audiology	\$2,560	\$869	\$1,691	33
Dental	\$1,670,221	\$428,624	\$1,241,597	576
Denturist	\$71,342	\$25,156	\$46,186	20
Dialysis Clinic	\$111,431	\$39,313	\$72,118	24
Hearing Aid	\$7,655	\$2,643	\$5,012	49
Home Infusion Therapy	\$33,983	\$11,787	\$22,196	15
Inpatient Hospital	\$1,940,497	\$671,764	\$1,268,733	374
Nonemergency Medical Transportation	\$1,799	\$635	\$1,164	7
Nutrition	\$330	\$117	\$213	40
Occupational Therapists	\$62,328	\$21,035	\$41,293	130
Optician	\$3,010	\$985	\$2,025	36
Optometric	\$112,857	\$35,575	\$77,282	174
Orientation and Mobility	\$757	\$265	\$492	2
Physical Therapists	\$90,216	\$30,172	\$60,044	578
Outpatient Hospital	\$1,057,063	\$362,618	\$694,445	374
Private Duty Nursing	\$189,988	\$66,501	\$123,487	7
Speech Therapists	\$62,007	\$21,400	\$40,607	158
Targeted Case Management–High Risk Pregnant Women and Children and Youth with Special Health Needs	\$14,928	\$5,266	\$9,662	17

Transportation	\$125,254	\$44,190	\$81,064	N/A
Transportation–Commercial	\$14,064	\$4,956	\$9,108	8
Chiropractor	\$16,088	\$4,900	\$11,188	116
Midlevel Practitioners	\$336,651	\$115,942	\$220,709	2,916
Physician, including Family Planning Clinics, Independent Diagnostic Testing Facilities, Laboratory and X-Ray Services, Podiatrist, Psychiatrist and Dentists providing medical services, and Public Health Clinics	\$1,786,746	\$615,355	\$1,171,391	11,027

The changes to the pharmacy provider dispensing fee and the proposed pharmacy reimbursement rule (MAR Notice No. 37-746) have an administrative cost of \$139,583.31 in SFY 2016 and \$141,666.64 in SFY 2017. In addition, the proposed changes will result in a projected cost savings of \$4.3 million.

The proposed rule amendments are estimated to affect 176,700 Medicaid members. In addition, it will impact the provider populations outlined in the tables above.

Summary of Addictive and Mental Disorders Division (AMDD) Proposed Amendments

In the 2015 Legislative Session, a provider rate increase for SFY 2017 was appropriated for mental health and substance use disorder services. The proposed changes to the rules are to implement the provider rate increase for SFY 2017 and to ensure all services indicated in fee schedules provided by the Addictive and Mental Disorders and Medicaid are included in the appropriate rules.

Details of each rule change and necessity are provided below:

ARM 37.85.104

This rule implements fee schedules for services not paid for by Medicaid. The AMDD proposes amending ARM 37.85.104(a) and (b) to change the rates effective date of the fee schedules to July 1, 2016.

The department proposes amending ARM 37.85.104 to add a subsection (d) which adopts the current fee schedule for substance use disorder services providers.

ARM 37.85.105

This rule implements fee schedules for services paid for by Medicaid. AMDD proposes amending ARM 37.85.105(5)(a), (b), (c), and (d) to change the rates and effective date of fees schedules to July 1, 2016.

Fiscal Impact

The proposed amendments to ARM 37.85.104 and 37.85.105 regarding fees for services administered by the Addictive and Mental Disorders Division will increase the Medicaid and non-Medicaid budget for SFY 2017 by the amount appropriated by the 2015, 64th Legislature for provider rate increases.

Medicaid Services 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
Mental Health Centers	\$376,288	\$133,163	\$243,125	10
Targeted Case Management – Substance Use Disorder	\$1,195	\$418	\$777	27
Case Management – Adults with Severe Disabling Mental Illness	\$189,441	\$67,041	\$122,400	10
Home and Community Based – Severe Disabling Mental Illness Waiver	\$81,800	\$28,944	\$52,856	6
Adult Mental Health Medicaid	\$545,555	\$193,065	\$352,490	16
Total	\$1,194,279	\$422,631	\$771,648	69

Approximately 1,000 Mental Health Services Plan (MHSP) waiver, 300 Home and Community Based Services (HCBS) waiver, 1,860 adult mental health program, and 5,065 substance use disorder program members will receive services in state fiscal year 2017 in one or more of these programs.

Non-Medicaid

Non-Medicaid Services 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
72-Hour Program	\$31,813	\$31,813	\$0	7
Substance Use Disorder Block Grant	\$126,117		\$126,117	27
MHSP Program	\$121,781	\$121,781	\$0	10
Substance Use Disorder Residential Treatment Program	\$41,973	\$41,973	\$0	7
Total	\$321,684	\$195,567	\$126,117	51

Approximately 1,260 72-hour crisis intervention program, 4,865 substance use disorder block grant program, 600 MHSP program, and 220 substance use disorder residential treatment program members will receive services in SFY 2017 in one or more of these programs.

Summary of Senior and Long-Term Care Division's Amendments

SLTC's amendments to ARM 37.85.105 implement the legislatively appropriated provider rate increases for the following programs, effective on July 1, 2016:

Home and Community-Based Services (HCBS) Waiver Program

37.85.105(4)(a) - The fee increase is an \$802,835 appropriation for the HCBS Waiver Program.

Home Health Program

37.85.105(4)(b) - The fee increase is an \$11,040 appropriation for Home Health Program services.

Personal Assistance Services (PAS) Program

37.85.105(4)(d) - The fee increase is a \$16,991 appropriation for the PAS Program.

Community First Choice (CFC) Program

37.85.105(4)(e) - The fee increase is a \$1,216,742 appropriation for the CFC Program.

Fiscal Impact

The fee changes will impact all Medicaid home health, CFC/PAS, and HCBS waiver recipients and providers who utilize this service.

Approximately 350 home health, 3,200 CFC, 900 PAS, and 2,450 HCBS waiver members will receive services in state fiscal year 2017 in one or more of these programs.

Summary of Developmental Services Division's (DSD) Proposed Amendments

The department is proposing to amend ARM 37.85.104 and 37.85.105 to incorporate by reference the new fee schedules to implement the intent of HB2, 64th Montana Legislature appropriation.

ARM 37.85.104

This rule implements fee schedules for services not paid for by Medicaid. DSD proposes to increase the non-Medicaid rates for Medicaid Youth Mental Health respite services and change the effective date of the fee schedule to July 1, 2016.

ARM 37.85.105

DSD proposes to increase the rates Youth Mental Health services and 1915(i) HCBS State Plan Program for Youth with Serious Emotional Disturbance services and change the effective date to July 1, 2016.

Fee schedule references rates set by Montana Medicaid's resource based relative value scale (RBRVS) reimbursement method for psychologists, social workers, and professional counselors. The RBRVS is located in ARM 37.85.212 and is revised annually.

ARM 37.85.105(6)(c) - DSD proposes to repeal rates established in the 1915(c) HCBS "Bridge Waiver" fee schedule. The department terminated HCBS PRTF waiver authority on September 30, 2012. The Centers for Medicare and Medicaid Services (CMS) allowed Montana to continue to provide 1915(c) HCBS bridge-waiver services after the termination date to youth already enrolled in the waiver. The last enrolled youth discharged on December 2, 2015, and the program terminated.

Fiscal Impact

The proposed amendments to rates for services provided through the Children's Mental Health Bureau will increase SFY 2017 provider rates for Medicaid services by \$2,013,476; Comprehensive School and Community Treatment \$576,151; and non-Medicaid Respite \$5,800. These are total fund amounts. This funding will impact over 16,000 youth served by the children's mental health Medicaid program.

5. The department intends to adopt these rule amendments effective July 1, 2016.

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., May 20, 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/ 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 11, 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 37.86.105, 37.86.1101,	)	PROPOSED AMENDMENT
37.86.1102, 37.86.1105, and)
37.86.1106 pertaining to changes to)
Montana Medicaid pharmacy)
reimbursement)

TO: All Concerned Persons

1. On May 12, 2016, at 1:30 p.m., the Department of Public Health and Human Services will hold a public hearing in the auditorium of the Department of Public Health and Human Services Building, 111 North Sanders, Helena, Montana, to consider the proposed amendment of the above-stated 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 5, 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:

37.86.105 PHYSICIAN SERVICES, REIMBURSEMENT/GENERAL REQUIREMENTS AND MODIFIERS (1) through (3) remain the same.

(4) Reimbursement to physicians for physician-administered drugs which are billed under HCPCS "J" and "Q" codes is made according to the department's fee schedule or the provider's usual and customary charge, whichever is lower. The department's fee schedule is updated at least annually based upon:

(a) and (b) remain the same.

(c) ~~the estimated acquisition cost (EAC)~~ Average Acquisition Cost (AAC) methodology as defined in ARM 37.86.1101 ~~if there is an EAC~~; or

(d) remains the same.

(5) The maximum allowable cost limitation ~~shall~~ does not apply in those cases where the physician certifies in their own handwriting that in their medical judgment a specific brand name drug is medically necessary for a particular patient. Acceptable certification statements are "brand necessary" or "brand required". A check-off box on a form or a rubber stamp is not acceptable.

(6) through (11) remain the same.

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

37.86.1101 OUTPATIENT DRUGS, DEFINITIONS (1) remains the same.

(2) ~~"Average manufacturer price (AMP)" means, with respect to a covered outpatient drug of a manufacturer for a rebate period, the average price paid to the manufacturer for the drug in the United States by wholesalers for drugs distributed to the retail pharmacy class of trade. The AMP is determined without regard to customary prompt pay discounts extended to wholesalers.~~

(3) ~~"Best price" means with respect to a single source drug or innovator multiple source drug of a manufacturer (including the lowest price available to any entity for any such drug of a manufacturer that is sold under an approved new drug application) the lowest price available from the manufacturer during the rebate period to any wholesaler, retailer, provider, health maintenance organization, nonprofit entity, or governmental entity within the United States.~~

(4) ~~"Estimated acquisition cost (EAC)" means the calculation of the provider's estimated cost of a drug for which no federal maximum allowable cost (FMAC) or state maximum allowable cost (SMAC) price has been determined. The EAC is the department's best estimate of what price providers are generally paying in the state for a drug in the package size providers buy most frequently. If actual wholesale cost is not available, the EAC is the lesser of:~~

~~(a) eighty five percent of average wholesale price (AWP); or~~

~~(b) wholesale acquisition cost (WAC) plus 2%.~~

(5) ~~"Federal maximum allowable cost" (FMAC) means the per unit amount the department reimburses a provider for a prescription drug included in the federal upper limit program. FMAC is the federal upper limit the department will pay for multi-source drugs as published by the Centers for Medicare and Medicaid Services (CMS) at https://www.cms.gov/Reimbursement/05_FederalUpperLimits.asp.~~

(6) ~~"Legend drugs" means drugs that federal law prohibits dispensing without a prescription.~~

(7) ~~"Maintenance medications" means oral tablet or capsule drugs:~~

~~(a) that have a low probability for dosage or therapy changes due to side effects;~~

~~(b) are subject to serum drug concentration monitoring or therapeutic response of a course of prolonged therapy;~~

~~(c) whose most common use is to treat a chronic disease state. Therapy with the drug is not considered curative or promoting of recover; and~~

~~(d) the drug is administered continuously rather than intermittently.~~

(8) ~~"Multi source" means a drug product sold under its generic name whose active ingredients are identical in chemical composition to one or more others sold under trademark that can be purchased from different manufacturers or distributors.~~

(9) ~~"State maximum allowable cost (SMAC)" means the per unit amount the department reimburses a provider for a prescription drug included in the state maximum allowable cost program. SMAC is the upper limit the department will pay for multi-source drugs.~~

~~(10) "Outpatient drugs" means drugs which are obtained outside of a hospital.~~

~~(11) "Active Pharmaceutical Ingredient" (API) means a nonrebatable bulk drug substance, which is defined in 21 CFR 207.3(a)(4)(2011) as any substance that is represented for use in a drug and that, when used in manufacturing, processing, or packaging of a drug, becomes an active ingredient of the drug product.~~

(2) "Active pharmaceutical ingredient (API)" means a nonrebatable bulk drug substance, defined in 21 CFR 207.3(a)(4) (2011) as any substance that is represented for use in a drug and that, when used in manufacturing, processing, or packaging of a drug, becomes an active ingredient of the drug product.

(3) "Allowed ingredient cost" means the "Average Acquisition Cost (AAC)" or "submitted ingredient cost," whichever is lower. If AAC is not available, drug reimbursement is determined at the lesser of "Wholesale Acquisition Cost (WAC)" or the "submitted ingredient cost."

(4) "Average acquisition cost (AAC)" means the calculated average drug ingredient cost per drug determined by direct pharmacy survey, wholesale survey, and other relevant cost information.

(5) "Average manufacturer price" means the price as defined at 42 CFR Part 447.504(a).

(6) "Best price" means with respect to a single source drug or innovator multiple source drug of a manufacturer the lowest price available from the manufacturer during the rebate period to any wholesaler, retailer, provider, health maintenance organization, nonprofit entity, or governmental entity within the United States. Best price includes the lowest price available to any entity for any such drug of a manufacturer that is sold under an approved new drug application.

(7) "Legend drugs" means drugs that federal law prohibits dispensing without a prescription.

(8) "Maintenance medications" means oral tablet or capsule drugs that:

(a) have a low probability for dosage or therapy changes due to side effects;

(b) are subject to serum drug concentration monitoring or therapeutic response of a course of prolonged therapy;

(c) the most common use is to treat a chronic disease state;

(d) therapeutically are not considered curative or promoting of recovery; and

(e) are administered continuously rather than intermittently.

(9) "Multi-source" means a drug product sold under its generic name for which the active ingredients are identical in chemical composition to one or more other drugs sold under trademark that can be purchased from different manufacturers or distributors.

(10) "Outpatient drugs" means drugs that are obtained outside of a hospital.

(11) "Preferred drug list (PDL)" means selected drugs that have a significant clinical benefit over other agents in the same therapeutic class and also represent good value to the department based on total cost.

(12) "Submitted ingredient cost" means a pharmacy's actual ingredient cost. For drugs purchased under the 340B Drug Pricing Program, "submitted ingredient cost" means the actual 340B purchase price. For drugs purchased under the Federal Supply Schedule (FSS), "submitted ingredient cost" means the actual FSS purchase price.

(13) "Usual and customary charge" means the price the provider charges a typical customer in the provider's typical course of business.

(14) "Wholesale acquisition cost (WAC)" is the cost as defined in 42 USC 1395w-3a(c)(6)(B).

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

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

37.86.1102 OUTPATIENT DRUGS, REQUIREMENTS (1) remains the same.

(2) For purposes of Medicaid reimbursement, outpatient ~~D~~drugs may not be filled or refilled without the authorization of the physician or other licensed practitioner who is authorized by law to prescribe drugs and is recognized by the Medicaid program.

(3) The department will only participate in the payment of legend and over-the-counter drugs listed on the department drug formulary, as determined by the Medicaid Drug Formulary Committee established by the department. The formulary committee is the Drug Use Review Board, established and operating in accordance with 42 USC 1396r-8 ~~(2011)~~ (2016), which governs Medicaid drug programs. The drug formulary includes a preferred drug list, (PDL) ~~of selected drugs that have a significant clinical benefit over other agents in the same therapeutic class and also represent good value to the department based on total cost.~~ Prescribers must prescribe from the preferred drug list if medically appropriate.

(a) remains the same.

(4) The inappropriate use of drugs, as determined by professional review, may result in the imposition of a limitation upon the quantities of medications which are payable by the medical assistance program. Retroactive limitation ~~will not be~~ is not applied, unless the involved pharmacy has knowledge or can reasonably be expected to have had knowledge of the inappropriate use of drugs by the recipient member.

(5) Each prescription ~~shall~~ must be dispensed in the quantity ordered except that:

(a) Prescriptions for which a specific quantity has not been ordered ~~shall~~ must be dispensed in sufficient quantities to cover the period of time for which the condition is being treated except for injectable antibiotics, which may be dispensed in sufficient quantities to cover a three-day period.

(b) Notwithstanding the above, maintenance medications may be dispensed in quantities sufficient for a 90-day supply or 100 units, whichever is greater. Other medications may not be dispensed in quantities greater than a 34-day supply. The department ~~will post~~ maintains a list of current drug classes which ~~will be~~ are considered maintenance medications and ~~will be~~ are posted on the department's web site at <http://medicaidprovider.mt.gov>.

(6) The department ~~will~~ does not participate in the payment of a prescription drug:

(a) remains the same.

(b) that is not subject to a rebate agreement between the manufacturer and the secretary of HHS as required by 42 USC 1396r-8 ~~(2011)~~ (2016); and

(c) that does not meet prior authorization criteria as determined by the Medicaid Drug Formulary Committee, established and operating in accordance with 42 USC 1396r-8 ~~(2011)~~ (2016), without the existence of a prior authorization request approved by the department or its designated representative. A list of drugs subject to prior authorization, known as the prior authorization drug list, will be provided to interested Medicaid providers.

(7) remains the same.

(8) The drug formulary, PDL, and the prior authorization drug list ~~will~~ be is updated by the department on a monthly basis, on the last day of each month. A copy of the most current listings may be obtained from the department web site at www.dphhs.mt.gov, or by writing to the Department of Public Health and Human Services, Health Resources Division, Allied Health Services Bureau, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

(9) The department has a drug rebate program administered in accordance with 42 USC 1396r-8 ~~(2011)~~ (2016) and CMS drug program state releases, CMS drug manufacturer releases, and the National Drug Rebate Agreement in effect in 2008, ~~which the~~ The department adopts and incorporates by reference the National Drug Rebate Agreement (2008). A copy of all documents incorporated by reference in this rule may be obtained from the department web site at www.dphhs.mt.gov, or by writing to the Department of Public Health and Human Services, Health Resources Division, Allied Health Services Bureau, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

(a) Pharmaceutical manufacturers, hereafter referred to as the manufacturer, ~~will~~ must make rebate payments to the department for each calendar quarter within 30 days after receiving from the department the Medicaid utilization information defined in their federal rebate agreement. The manufacturer is responsible for timely payment of the rebate within 30 days of receiving, at a minimum, information on the number of units paid, by NDC number.

(b) 42 USC 1396r-8 ~~(2011)~~ (2016) ~~states~~ establishes the requirements that must be met by the department, drug manufacturers, and providers in order for providers to receive reimbursement for outpatient drugs that have been dispensed. This statute describes rebate agreements, covered drugs, prior authorization, reimbursement limits, and drug use review programs.

(10) A provider ~~shall~~ must maintain a signature log to act as proof of delivery of prescription drugs that the dispensed medication has been received by the member or an individual acting on behalf of the member. Each recipient ~~The member~~, or an individual acting on behalf of the ~~recipient~~ member, must sign the log each time that they receive a prescription drug ~~is delivered from a pharmacy provider~~. For prescription drugs delivered to a nursing facility, the individual charged with ensuring the security of pharmaceutical supplies may sign the log after verifying delivery of all prescription drugs.

(11) The department ~~will use~~ uses the following procedures to develop the preferred drug list (PDL):

(a) The department ~~will perform~~ performs a pharmacoeconomic analysis of the Medicaid Pharmacy Program and ~~identify~~ identifies therapeutic classes of drugs for possible PDL inclusion.

(b) The department and the Drug Use Review (DUR) Board/Formulary Committee members ~~will~~ consider recommendations and determine which therapeutic drug classes will be reviewed at a meeting of the committee. Notice of the meeting and the therapeutic drug class to be considered ~~will be~~ is posted on the department's web site in advance of the meeting date.

(c) The department ~~will~~ performs drug class reviews using peer-reviewed literature, established evidence-based practice methods, and local clinicians to interpret and apply practical experience to the structured evidence reviews. The department ~~will~~ also conducts supplemental rebate negotiations.

(d) The committee ~~will~~ combines its members' evaluations and the evaluations from the department to consider equivalent products within the drug class. Information used by the department and its contractors ~~will be~~ is available to the public prior to the meeting. During the meeting, the committee ~~will~~ also hears comments from interested parties.

(e) The committee ~~will~~ recommends to the department which preferred agents should be selected for the specific therapeutic class.

(f) The department ~~will~~ makes a final decision and posts its decision on the department's web site.

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

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

37.86.1105 OUTPATIENT DRUGS, REIMBURSEMENT

(1) Outpatient D~~drugs will be~~ are paid for on the basis of the Montana "estimated acquisition cost", "the federal maximum allowable cost", or the "state maximum allowable cost", plus a dispensing fee established by the department, or the provider's "usual and customary charge", whichever is lower; except that the "federal maximum allowable cost", or the "state maximum allowable cost" limitation shall not apply in those cases where a physician or other licensed practitioner who is authorized by law to prescribe drugs and is recognized by the Medicaid program certifies in their own handwriting that in their medical judgment a specific brand name drug is medically necessary for a particular patient. An example of an acceptable certification would be the notation "brand necessary" or "brand required". A check off box on a form or a rubber stamp is not acceptable. reimbursed at the lower of:

(a) the provider's "usual and customary charge"; or

(b) the "allowed ingredient cost" plus a dispensing fee.

(2) The dispensing fee for filling prescriptions ~~will be~~ is determined for each pharmacy provider annually.

(a) The dispensing fee is based on the pharmacy's average cost of filling prescriptions. The average cost of filling a prescription ~~will be~~ is based on the direct and indirect costs that can be allocated to the cost of the prescription department and that of filling a prescription, as determined from the Montana Dispensing Fee Questionnaire. A provider's failure to submit, upon request, the dispensing fee questionnaire properly completed ~~will~~ results in the assignment of the minimum dispensing fee offered. A copy of the Montana Dispensing Fee Questionnaire is available upon request from the department.

(b) The dispensing fees assigned ~~will be~~ are as provided in ARM 37.85.105(3).

(c) If the individual provider's usual and customary average dispensing fee for filling prescription is less than the foregoing method of determining the dispensing fee, then the lesser dispensing fee ~~will be~~ is applied in the computation of the payment to the pharmacy provider.

(3) In-state pharmacy providers that are new to the Montana Medicaid program ~~will be~~ are assigned the maximum dispensing fee in (2)(b) until a dispensing fee questionnaire, as provided in (2), can be completed for six months of operation. At that time, a new dispensing fee ~~will be~~ is assigned which ~~will be~~ is the lower of the dispensing fee calculated in accordance with (2) for the pharmacy or the maximum allowed dispensing fee provided in (2)(b). Failure to comply with the six months dispensing fee questionnaire requirement ~~will results~~ in assignment of a dispensing fee of \$2.00.

(4) The department ~~will reimburse~~ reimburses pharmacies for compounding drugs only if the ~~client's~~ member's drug therapy needs cannot be met by commercially available dosage strengths, forms of the therapy, or both.

(a) Prescription claims for compound drugs ~~will be~~ are billed and reimbursed using the National Drug Code (NDC) number and quantity for each compensable ingredient in the compound.

(b) remains the same.

(c) Reimbursement for each drug component ~~will be~~ is determined in accordance with ARM 37.86.1101.

(d) remains the same.

(e) The department ~~will reimburse~~ reimburses pharmacies a compound-drug dispensing fee as provided in ARM 37.85.105(3) in lieu of the dispensing fee stated in (2). Prior authorization ~~will be~~ is required for reimbursement above the lowest compound dispensing fee.

(f) remains the same.

(g) The department ~~will publish~~ publishes guidelines for billing the different level of effort fees.

(h) remains the same.

(5) The department ~~will reimburse~~ reimburses pharmacies a vaccine administration fee as provided in ARM 37.85.105(3) in lieu of the dispensing fee stated in (2) for any covered vaccine as allowed by the Montana Pharmacy Practice Act, 37-7-101, MCA.

(6) Reimbursement for outpatient drugs provided to Medicaid persons in state institutions ~~will be~~ is as follows:

(a) and (b) remain the same.

(7) Full-benefit dual eligible persons qualify for pharmaceutical drug coverage under Medicare Part D prescription drug plans (PDPs) ~~on January 1, 2006~~ under 42 USC 1302, 1395w-101 through 1395w-152 (2011), the Medicare Prescription Drug Improvement and Modernization Act of 2003 (MMA). For purposes of the MMA and this rule, the term full-benefit dual eligible has the same meaning as stated in 42 CFR 423.772.

(8) The MMA allows PDPs to exclude from coverage the drug classes listed in 42 USC 1396r-8(d)(2) (2011). Montana Medicaid may also exclude these drugs and has chosen to do so except for the prescription and nonprescription drugs

identified on the department's drug formulary. ~~On January 1, 2006,~~ Montana Medicaid's reimbursement for outpatient drugs provided to full-benefit dual eligible persons, for whom third party payment is not available, ~~will be~~ is limited to the excluded drugs identified on the department's drug formulary.

(9) The department ~~will reimburse~~ pharmacies a unit dose prescription fee as provided in ARM 37.85.105(3). The unit dose prescription fee ~~will offset~~ the additional cost of packaging supplies and materials which are directly related to filling unit dose prescriptions by the individual pharmacy. This fee is in addition to the regular dispensing fee allowed. The unit dose prescription fee ~~will not be~~ is not paid for a unit dose prescription packaged by drug manufacturers. Unit dose prescriptions may not exceed the 34-day supply limit. Only one unit dose prescription fee is allowed each month for each prescribed medication.

(10) Providers must bill Montana Medicaid the following:

(a) their actual acquisition cost including providers who purchase drugs through the Federal Supply Schedule or providers who are participating in the 340B Drug Pricing Program; and

(b) their "usual and customary charge" as defined in ARM 37.86.1101.

(11) In accordance with the NCPDP 340B Information Exchange Reference Guide Version 1.0 (July 2011), a claim for Section 340B drugs must be identified through the use of a valid value 20 in the NCPDP Submission Clarification Code (420-DK) field. If a claim is identified as a 340B claim and the submitted ingredient cost is greater than the AAC, or WAC if no AAC is present, the claim will deny.

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

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

~~37.86.1106 CALCULATION OF THE STATE MAXIMUM ALLOWABLE CHARGE, THE ESTIMATED ACQUISITION CHARGE, AND PROVIDER'S USUAL AND CUSTOMARY CHARGE AVERAGE ACQUISITION COST~~ (1) ~~The state maximum allowable cost (SMAC) Average Acquisition Cost (AAC)~~ is the state average acquisition cost per drug determined by direct pharmacy survey, wholesale survey, and other relevant cost information.

(a) The department ~~will review~~ SMAC AAC rates on an ongoing basis and ~~adjusts~~ the rates as necessary to reflect prevailing market conditions and ensure reasonable access by providers to drugs at or below the applicable ~~SMAC AAC~~ rate.

(b) Pharmacies and providers that are enrolled in Montana Medicaid are required, as a condition of participation, to submit, upon request, to the department, or its designee, acquisition cost information, product availability information, and other information deemed relevant by the department for the efficient operation of the pharmacy benefit. Information ~~will be~~ is provided in the format requested by the department or its designee. Providers ~~will~~ are not ~~be~~ reimbursed for this information and ~~will~~ must submit information to the department or its designee within 30 days following a request for such information unless the department or its designee grants an extension upon written request of the pharmacy or provider.

~~(2) The estimated acquisition cost (EAC) for a drug is:~~

~~(a) the direct price charged by manufacturers to retailers;~~

~~(b) a department set SMAC for specified drugs or drug categories when the department determines that acquisition cost is lower than (2)(a) or (c) based on national pricing data, or~~
~~(c) the lesser of:~~
~~(i) eighty five percent of the average wholesale price (AWP) if there is no direct price available to providers in the state; or~~
~~(ii) the wholesale acquisition cost (WAC) plus 2%.~~
~~(3) The usual and customary charge is the price the provider charges a typical customer in the provider's typical course of business.~~

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

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

4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) is proposing amendments to ARM 37.85.105, found in MAR Notice No. 37-745, in conjunction with this rulemaking in order to increase the professional dispensing fees for Montana Medicaid pharmacy providers and to ARM 37.86.105, 37.86.1101, 37.86.1102, 37.86.1105, and 37.86.1106 in order to modify the calculation of drug reimbursement.

Montana Medicaid is proposing changes to outpatient drug ingredient reimbursement. This change will eliminate the estimated acquisition cost reimbursement methodology and sets drug ingredient reimbursement as close to actual acquisition as possible. Similar to the existing State Maximum Allowable Cost, the new methodology is referred to as Average Acquisition Cost (AAC). AAC is established based on drug invoice data, oftentimes coming directly from the wholesaler collected via acquisition cost surveys from Montana pharmacy providers. In conjunction with using AAC to set drug ingredient reimbursement, the professional dispensing fees for in-state Montana Medicaid pharmacy providers will be increased. This increase is shown in MAR Notice No. 37-745, but the fiscal impact will be included in this rule package as it directly correlates to the methodology change and is a CMS-required component of this change.

Montana Medicaid is adopting the AAC methodology in accordance with federal guidelines. On February 1, 2016, the Centers for Medicare and Medicaid Services (CMS) issued the final rule with comment period (CMS-2345-FC) regarding Medicaid covered outpatient drugs in the Federal Register. This rule revises requirements pertaining to Medicaid reimbursement for covered outpatient drugs to implement provision of the Patient Protection and Affordable Care Act of 2010, as amended by the Health Care and Education Reconciliation Act of 2010 (collectively known as the Affordable Care Act). This change is a migration from "estimated acquisition cost" to "actual acquisition cost." In the rule CMS stated "we propose in section 447.518(c) to require all States to provide data to adequately support proposed changes in reimbursement using AAC. This supporting data could include, but is not limited to, a national survey, to create a database of actual acquisition costs that States may

use as a basis for determining State-specific rates. Additionally, a State survey of retail pharmacy providers or other reliable data which reflects the pharmacy provider's price to acquire a drug could be used as a basis to support proposed changes in reimbursement. We believe that surveying pharmacy providers for acquisition costs or using other reliable data, based on actual sales transactions, as a base from which to develop an appropriate ingredient cost reimbursement is reasonable."

42 USC 256b(a)(5)(A)(i) prohibits duplicate discounts in association with the 340B drug pricing program. Therefore, state Medicaid programs are required to find methodologies to ensure that drug manufacturers are not invoiced for rebate for drugs dispensed under the 340B program.

Montana Medicaid is also proposing to require 340B pharmacy providers to disclose which prescriptions were dispensed as 340B. The disclosure, as indicated on a pharmacy claim, will assist the department in the appropriate invoicing of drug rebates. These providers will be required to submit claims that do not exceed their actual 340B purchase price. The department will configure the pharmacy claims processing system to deny 340B pharmacy claims if they are submitted with an ingredient cost that is greater than the AAC, or Wholesale Acquisition Cost (WAC) if no AAC is present.

This proposed rulemaking will also require all providers to submit their actual acquisition cost and usual and customary charge to Montana Medicaid, whether the drug was attained from the Federal Supply Schedule, is a 340B drug, or a drug not subject to any special reductions.

The department is proposing the following amendments in this rulemaking:

37.86.105, 37.86.1101, and 37.86.1106

The department is proposing to change the references to Estimated Acquisition Cost to Allowed Ingredient Cost within ARM 37.86.105, 37.86.1101, and 37.86.1106.

37.86.1101

The definitions for Federal Maximum Allowable Cost, State Maximum Allowable Cost will be removed from ARM 37.86.1101. The department is adding definitions of Allowed Ingredient Cost, Average Acquisition Cost, Submitted Ingredient Cost, Wholesale Acquisition Cost, and Usual and Customary Charge to ARM 37.86.1101. In addition, the department is revising the definition of Average Manufacturer Price.

37.86.1102

The reference to the provider signature log in ARM 37.86.1102 is modified to improve clarity.

37.86.1105

ARM 37.86.1105 incorporates the definitions from ARM 37.86.1101. This rule states that drugs are reimbursed at the lower of the provider's usual and customary charge or the allowed ingredient cost plus a professional dispensing fee. This rule is also revised to include requirements for pharmacy providers to identify through an indicator when a drug is dispensed as a 340B drug. In addition, these providers are required to bill Montana Medicaid the actual acquisition cost of the 340B product. Montana Medicaid will deny 340B claims that are submitted with an ingredient cost that is greater than the AAC, or WAC, if no AAC is present.

37.86.1106

The title of ARM 37.86.1106 will be modified to align with the reimbursement changes. This rule is being updated to explain the calculation of the Montana Average Acquisition Cost.

Fiscal Impact

This proposed rule amendment has an administrative cost of \$139,583.31 in state fiscal year (SFY)2016 and \$141,666.64 in SFY2017. In addition, the proposed changes will result in a projected cost savings of \$4.3 million.

The proposed rulemaking is estimated to affect: 100,211 Medicaid members, 27,352 HELP members, 25,100 HMK members, 935 MHSP members, 420 pharmacies, 314 Inpatient Hospitals, 3 outpatient hospitals, 7,304 physicians, and 2,109 mid-level practitioners.

5. The department intends to adopt these rule amendments effective July 1, 2016.

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., May 20, 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 significantly and directly impact small businesses.

The group of small businesses that will be affected are pharmacies enrolled with Montana Medicaid that have fewer than 50 employees.

It is estimated that the affected small businesses would see a reduction on average of \$2.56 per Montana Medicaid pharmacy claim.

Montana Medicaid weighed the alternative methodologies to satisfy 42 CFR Part 447. It was determined that using a Montana-based AAC would result in the least impact to 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 because they are the result of rate changes necessitated by federal law.

/s/ Geralyn Driscoll for
Cary B. Lund
Rule Reviewer

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

Certified to the Secretary of State April 11, 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 37.40.301, 37.40.304,	)	PROPOSED AMENDMENT
37.40.307, 37.40.315, 37.40.326,)
37.40.330, 37.40.336, 37.40.345,)
37.40.352, and 37.40.361 pertaining)
to nursing facility reimbursement and)
updating outdated terms)

TO: All Concerned Persons

1. On May 12, 2016, at 2:30 p.m., the Department of Public Health and Human Services will hold a public hearing in the auditorium of the Department of Public Health and Human Services Building, 111 North Sanders, Helena, Montana, to consider the proposed amendment of the above-stated 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 5, 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:

37.40.301 SCOPE, APPLICABILITY, AND PURPOSE (1) This subchapter specifies requirements applicable to provision of and reimbursement for Medicaid nursing facility services, including intermediate care facility services for ~~the mentally retarded~~ individuals with intellectual disabilities. These rules are in addition to requirements generally applicable to Medicaid providers as otherwise provided in state and federal statute, rules, regulations, and policies.

(2) and (3) remain the same.

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

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

37.40.304 NURSING FACILITY SERVICES (1) Nursing facility services are provided in accordance with 42 CFR, part 483, subpart B, or intermediate care facility services for ~~the mentally retarded~~ individuals with intellectual disabilities provided in accordance with 42 CFR, part 483, subpart I. The

department adopts and incorporates by reference 42 CFR, part 483, subparts B and I, that define the participation requirements for nursing facility and intermediate care facility for ~~the mentally retarded (ICF/MR)~~ individuals with intellectual disabilities (ICF/IID) providers, copies of which may be obtained from the Department of Public Health and Human Services, Senior and Long Term Care Division, 111 N. Sanders, P.O. Box 4210, Helena, MT 59604-4210.

(2) through (4) remain the same.

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

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

37.40.307 NURSING FACILITY REIMBURSEMENT (1) For nursing facility services, other than ~~ICF/MR~~ ICF/IID services, provided by nursing facilities located within the state of Montana, the Montana Medicaid program will pay a provider, for each Medicaid patient day, a per diem rate determined in accordance with this rule, minus the amount of the Medicaid recipient's patient contribution.

(2) Effective July 1, 2001, and in subsequent rate years, nursing facilities will be reimbursed using a price-based reimbursement methodology. The rate for each facility will be determined using the operating component defined in (2)(a) and the direct resident care component defined in (2)(b):

(a) through (c) remain the same.

(d) The total payment rate available for the period ~~July 1, 2015~~ July 1, 2016 through ~~June 30, 2016~~ June 30, 2017 will be the rate as computed in (2), plus any additional amount computed in ARM 37.40.311 and 37.40.361.

(3) Providers who, as of July 1 of the rate year, have not filed with the department a cost report covering a period of at least six months participation in the Medicaid program in a newly constructed facility will have a rate set at the statewide median price as computed on ~~July 1, 2015~~ July 1, 2016. Following a change in provider as defined in ARM 37.40.325, the per diem rate for the new provider will be set at the previous provider's rate, as if no change in provider had occurred.

(4) For ~~ICF/MR~~ ICF/IID services provided by nursing facilities located within the state of Montana, the Montana Medicaid program will pay a provider as provided in ARM 37.40.336.

(5) In addition to the per diem rate provided under (2) or the reimbursement allowed to an ~~ICF/MR~~ ICF/IID provider under (4), the Montana Medicaid program will pay providers located within the state of Montana for separately billable items, in accordance with ARM 37.40.330.

(6) For nursing facility services, including ~~ICF/MR~~ ICF/IID services, provided by nursing facilities located outside the state of Montana, the Montana Medicaid program will pay a provider only as provided in ARM 37.40.337.

(7) through (12) remain the same.

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

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

37.40.315 STAFFING AND REPORTING REQUIREMENTS

(1) Providers must provide staffing at levels which are adequate to meet federal law, regulations, and requirements.

(a) Each provider must submit to the department within ten days following the end of each calendar month a complete and accurate ~~form~~ DPHHS-SLTC-015, "Monthly Nursing Home Staffing Report" prepared in accordance with all applicable department rules and instructions. ~~Copies of form DPHHS-SLTC-015 may be obtained from the Department of Public Health and Human Services, Senior and Long Term Care Division, 111 N. Sanders, P.O. Box 4210, Helena, MT 59604-4210.~~

(b) If a complete and accurate ~~copies of form~~ DPHHS-SLTC-015 are ~~is~~ not received by the department within ten days following the end of each calendar month, the department may withhold all payments for nursing facility services until the provider complies with the reporting requirements in (1)(a).

AUTH: 53-6-113, MCA

IMP: 53-2-201, 53-6-101, 53-6-108, 53-6-111, 53-6-113, MCA

37.40.326 INTERIM PER DIEM RATES FOR NEWLY CONSTRUCTED FACILITIES AND NEW PROVIDERS (1) This rule specifies the methodology the department will use to determine the interim per diem rate for in-state providers, other than ~~ICF/MR~~ ICF/IID providers, which as of July 1 of the rate year have not filed with the department a cost report covering a period of at least six months participation in the Medicaid program in a newly constructed facility or following a change in provider as defined in ARM 37.40.325.

(a) and (b) remain the same.

AUTH: 53-6-113, MCA

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

37.40.330 SEPARATELY BILLABLE ITEMS (1) through (8) remain the same.

(9) The provisions of (3) through (7) apply to all nursing facilities, including intermediate care facilities for ~~the mentally retarded individuals with intellectual disabilities~~, whether or not located in the state of Montana.

(10) remains the same.

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

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

37.40.336 REIMBURSEMENT FOR INTERMEDIATE CARE FACILITIES FOR THE MENTALLY RETARDED INDIVIDUALS WITH INTELLECTUAL DISABILITIES (1) For intermediate care facility services for ~~the mentally retarded individuals with intellectual disabilities~~ provided in facilities located in the state of Montana, the Montana Medicaid program will pay a provider a per diem rate equal to the actual allowable cost incurred by the provider during the fiscal year, determined retrospectively in accordance with ARM 37.40.345 and 37.40.346, divided by the total patient days of service during the rate year, minus the amount of

the Medicaid recipient's patient contribution, subject to the limits specified in (2)(a) and (b).

(2) remains the same.

(3) All ~~ICF/MR~~ ICF/IID providers must use a July 1 through June 30 fiscal year for accounting and cost reporting purposes.

(4) and (5) remain the same.

(6) Following the sale of an intermediate care facility for ~~the mentally retarded individuals with intellectual disabilities~~ after April 5, 1989, the new provider's property costs will be the lesser of historical costs or the rate used for all other intermediate care facilities, subject to the limitations in 42 USC 1396a(a)(13)(C).

AUTH: 53-6-113, MCA

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

37.40.345 ALLOWABLE COSTS (1) and (2) remain the same.

(3) For purposes of reporting costs as required in ARM 37.40.346, allowable costs will be determined in accordance with the PRM-15, subject to the exceptions and limitations provided in these rules, including but not limited to the following:

(a) Return on net invested equity is an allowable cost only for providers of intermediate care facility services for ~~the mentally retarded~~ individuals with intellectual disabilities which provide services on a for-profit basis.

(b) through (4) remain the same.

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

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

37.40.352 UTILIZATION REVIEW AND QUALITY OF CARE (1) Upon admission and as frequently thereafter as the department may deem necessary, the department or its agents, in accordance with 42 CFR 456 subpart F (1997), may evaluate the necessity of nursing facility care for each Medicaid resident in an intermediate care facility for ~~the mentally retarded~~ individuals with intellectual disabilities. 42 CFR 456 subpart F contains federal regulations which specify utilization review criteria for intermediate care facilities. The department ~~hereby~~ adopts and incorporates ~~herein~~ by reference 42 CFR 456 (1997). A copy of these regulations may be obtained from the Department of Public Health and Human Services, Senior and Long Term Care Division, 111 N. Sanders, P.O. Box 4210, Helena, MT 59604-4210.

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

IMP: 53-2-201, 53-6-101, 53-6-111, 53-6-113, 53-6-142, MCA

37.40.361 DIRECT CARE AND ANCILLARY SERVICES WORKERS' WAGE REPORTING/ADDITIONAL PAYMENTS INCLUDING LUMP SUM PAYMENTS FOR DIRECT CARE AND ANCILLARY SERVICES WORKERS' WAGE AND BENEFIT INCREASES (1) Effective for the period ~~July 1, 2015~~ July 1, 2016 and for the six months thereafter, nursing facilities must report to the department actual hourly wage and benefit rates paid for all direct care and ancillary services workers

or the lump sum payment amounts for all direct care and ancillary services workers that will receive the benefit of the increased funds. The reported data will be used by the department for the purpose of comparing types and rates of payment for comparable services and tracking distribution of direct care wage funds to designated workers.

(2) The department will pay Medicaid certified nursing care facilities located in Montana that submit an approved request to the department a lump sum payment in addition to the amount paid as provided in ARM 37.40.307 and 37.40.311 to their computed Medicaid payment rate to be used only for wage and benefit increases or lump sum payments for direct care or ancillary services workers in nursing facilities.

(a) The department will determine the lump sum payments, twice a year commencing ~~July 1, 2015~~ July 1, 2016, and again in six months from that date as a pro rata share of appropriated funds allocated for increases in direct care and ancillary services workers' wages and benefits or lump sum payments to direct care and ancillary services workers.

(b) through (3) remain the same.

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

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

4. STATEMENT OF REASONABLE NECESSITY

The 64th Legislature in House Bill 2 (HB2) has provided funding to implement an approximate 2% increase in Medicaid provider rates using state and federal funds for state fiscal year (SFY) 2017. The increase is necessary to maintain Medicaid provider rates at a level consistent with efficiency, economy, quality of care, and to ensure the continued participation of providers.

These rules continue the methodology for implementing legislative funding for nursing facility reimbursement, including updated estimated patient days, patient contribution amounts, and case mix indices (acuity) into the rate calculation for SFY 2017. Funding will continue to be available to provide for a direct care worker wage increase for nursing facility providers for workers who provide direct care and ancillary services in SFY 2017.

The Legislature continued approval for the use of local county matching funds as a source of additional revenue for nursing facility providers. The intergovernmental fund transfer (IGT) program maintains access to, and the quality of, nursing facility services, and will be available for SFY 2017.

The department will provide rate sheets to all providers in advance of the rule hearing for verification purposes and in order to facilitate comments. These sheets will distribute the funding available in order to meet the department goals for a price-based system of reimbursement and will incorporate legislative appropriated funding levels.

37.40.307

The department is proposing to amend the fiscal year to the current fiscal year.

37.40.315

The department is proposing to amend the wording in the rule relative to the staffing report requirements.

37.40.361

The department is proposing to amend the fiscal year to the current fiscal year.

37.40.301, 37.40.304, 37.40.307, 37.40.326, 37.40.330, 37.40.336, 37.40.345, and 37.40.352

The department is proposing to amend the wording from "individual with Mental Retardation (ICF/MR) to "individuals with Intellectual Disabilities (ICF/IID)." These proposed amendments reflect the current language reference from the Centers for Medicare and Medicaid (CMD) for this category of service.

Fiscal Impact

The total state and federal funding available for state fiscal year (SFY) 2017 for rate calculation purposes utilizing the funding in HB2 is currently projected at \$145,987,024 which is comprised of \$15,704,708 in state special revenue, \$35,445,757 in state general funds, and \$94,836,559 in federal funds when the provider rate increases are included.

The ongoing funding of lump sum payments to providers for direct care workers and ancillary staff consists of \$2,445,820 of state general funds and \$4,540,242 in federal funds for a total appropriation of \$6,986,062 for the nursing facility direct care worker wage program. This total funding for direct care wages includes an additional \$0.25 per hour increase of \$1,502,478 in new funding for SFY 2017.

The estimated total funding available for SFY 2017 for nursing facility reimbursement is estimated at approximately \$178,738,473 of combined state funds and federal funds, including \$32,751,449 in patient contributions. These numbers do not include at risk provider funds or direct care wage funding.

Anticipated days for SFY 2016 are 1,015,234 using estimates of caseload adopted by the Legislature.

The estimated total funding impact of the onetime payments to "at risk" nonstate governmental providers and other nursing facilities not determined to be "at risk," has been appropriated at \$20,150,700 in total funds of which \$7,054,760 comes from state special revenue funds and approximately \$13,095,940 comes from federal funding sources.

Seventy-seven nursing facility providers participated in the Medicaid nursing facility payment program and approximately 4,669 recipients received services in nursing facilities under Medicaid.

The analysis of Medicaid nursing facility rates that is annually conducted by Myers and Stauffer, LC shows that in SFY 2015 Montana Medicaid on average is reimbursing approximately 94% of the cost of providing nursing facility services. The department considered the impact of the rate changes on efficiency, economy, quality of care, and access to Medicaid services and concluded that the rates are still sufficient to meet the requirements of 42 USC 1396a (a) (30(A)).

5. The department intends to amend these rules effective July 1, 2016.

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., May 20, 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 Bashor
Valerie Bashor, Attorney
Rule Reviewer

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

Certified to the Secretary of State April 11, 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 37.85.406, 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 May 12, 2016, at 9:30 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 5, 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:

37.85.406 BILLING, REIMBURSEMENT, CLAIMS PROCESSING, AND PAYMENT (1) through (17) remain the same.

(18) Except as otherwise provided in the rules of the department which pertain to the method of determining payment rates for claims of recipients members who have Medicare and Medicaid coverage (cross-over claims), the Medicaid allowed amount for Medicare covered services is:

(a) for facility based providers who generally bill on the ~~UB-92~~ UB-04 billing form, for covered medical services the full Medicare coinsurance and deductible as defined by the Medicare carrier;

(i) through (21) remain the same.

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

IMP: 53-2-201, 53-6-101, 53-6-111, 53-6-113, 53-6-131, 53-6-149, MCA

37.86.2803 ALL HOSPITAL REIMBURSEMENT, COST REPORTING

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

(a) remains the same.

(b) For cost report periods occurring on or after May 1, 2010, such definition of allowable costs is further defined in accordance with the Medicare Provider Reimbursement Manual, CMS Publication 15, Form 2552-10, ~~Transmittal 2~~, subject to the exceptions and limitations provided in the department's administrative rules.

(c) For cost report periods occurring prior to May 1, 2010, such definition of allowable costs is further defined in accordance with the Medicare Provider Reimbursement Manual, CMS Publication 15, Form 2552-96, ~~Transmittal 25~~, last updated April 2011, subject to the exceptions and limitations provided in the department's administrative rules.

(d) through (3) remain the same.

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

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

37.86.2907 INPATIENT HOSPITAL PROSPECTIVE REIMBURSEMENT, APR-DRG PAYMENT RATE DETERMINATION (1) The department's APR-DRG prospective payment rate for inpatient hospital services is based on the classification of inpatient hospital discharges to APR-DRGs. The provider reimbursement rates for inpatient hospital services, except as otherwise provided in ARM 37.85.206, is stated in the department's APR-DRG fee schedule adopted and effective at ARM 37.85.105. The procedure for determining the APR-DRG prospective payment rate is as follows:

(a) and (b) remain the same.

(c) The department computes a Montana average base price per case. This base price includes in-state and out-of-state distinct part rehabilitation units and long term care (LTC) facilities. The effective date and base rate amount is adopted and effective as provided at ARM 37.85.105. Disproportionate share payments are not included in this price.

(d) The department computes a base price for long-term care (LTC) facilities. The effective date and base-rate amount are adopted and effective as provided at ARM 37.85.105. Disproportionate share payments are not included in this price.

(d) through (f) remain the same, but are renumbered (e) through (g).

(h) Inpatient reimbursement will be calculated at the lessor of the assigned APR-DRG rate or the claim billed charges.

(2) The department adopts and incorporates by reference the APR-DRG Table of Weights and Thresholds ~~adopted and effective~~ at ARM 37.85.105. The Montana Medicaid APR-DRG relative weight values, average national length of stay (ALOS), outlier thresholds, and APR grouper version ~~29~~ 33 are contained in the APR-DRG Table of Weights and Thresholds which are adopted and effective as provided at ARM 37.85.105 and published by the department. Copies may be obtained from the Department of Public Health and Human Services, Health Resources Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

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

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

37.86.2916 INPATIENT HOSPITAL PROSPECTIVE REIMBURSEMENT, COST OUTLIERS (1) and (2) remain the same.

(3) The department determines the outlier reimbursement for cost outliers for all hospitals and distinct part units, entitled to receive cost outlier reimbursement, as follows:

(a) computing an estimated cost for the inpatient hospital stay by multiplying the allowed charges for the stay by the statewide facility-specific average PPS cost-to-charge ratio as set forth in ARM 37.86.2905; all out-of-state facilities, except Center of Excellence facilities, will use their statewide average cost-to-charge ratio;

(b) remains the same.

(c) multiplying the cost outlier amount by ~~60%~~ 50% to establish the marginal cost outlier payment for the hospital stay.

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

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

37.86.4401 RURAL HEALTH CLINICS AND FEDERALLY QUALIFIED HEALTH CENTERS, DEFINITIONS (1) and (2) remain the same.

(3) "Crossover claim" means a claim for services provided to ~~Medicare/Medicaid dual eligibles or qualified Medicare beneficiaries~~ dually eligible members (a beneficiary of both Medicare and Medicaid or qualified Medicare beneficiaries).

(4) "Federally qualified health center (FQHC)" means an entity which is a federally qualified health center as defined in 42 USC 1396d(l)(2)(B) (2016). ~~(2003 Supp.). For purposes of defining "federally qualified health center" the department adopts and incorporates by reference 42 USC 1396d(l)(2)(B) (2003 Supp.), which is a federal statute defining "federally qualified health center" for purposes of the Medicaid program. A copy of the cited statute is available upon request from the Department of Public Health and Human Services, Health Resources Division, Hospital and Physicians Services Bureau, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.~~

(5) "FQHC core services" means the FQHC ambulatory services defined in 42 USC 1396d(l)(2)(A) and described in 42 USC 1395x(aa)(1). ~~For purposes of defining and describing FQHC core services, the department adopts and incorporates by reference 42 USC 1396d(l)(2)(A) and 42-1395x(aa)(1) (2003 Supp.). The cited statutes are federal Medicaid and Medicare statutes defining certain FQHC services for purposes of the Medicaid and Medicare programs. Copies of the cited statutes are available upon request from the Department of Public Health and Human Services, Health Resources Division, Hospital and Physicians Services Bureau, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.~~

(6) and (7) remain the same.

(8) "Health professional" means a physician, nurse practitioner (NP), physician assistant (PA), certified nurse-midwife (CNM), clinical psychologist (CP),

clinical social worker (CSW), licensed professional counselor (LCPC), or licensed addiction counselor (LAC).

(8) through (16) remain the same, but are renumbered (9) through (17).

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

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

4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) is proposing amendments to ARM 37.85.406, 37.86.2803, 37.86.2907, 37.86.2916, and 37.86.4401 regarding claims processing and reimbursement, hospital cost reporting, inpatient hospital reimbursement, rural health clinic, and federally qualified health centers. These rules are being updated to correct dates and claim forms, update reimbursement policies for inpatient APR-DRG hospitals, and update and add new definitions applicable to rural health clinics and federally qualified health centers.

37.85.406(18)(a)

In 2005, the National Uniform Billing Committee approved the updated Uniform Bill (UB-04) paper claim as the replacement to the Uniform Bill-92 (UB-92). The department no longer accepts the UB-92 claim and is proposing to update the rule to reflect this change.

Fiscal Impact

The changes to this rule will have no fiscal impact.

37.86.2803

The department is proposing to remove the dates related to the Centers for Medicare and Medicaid (CMS) publications, Form 2252-10 and Form 2552-96. These publications and forms have been updated since the last filing of this rule. The department is adopting the current versions that CMS maintains and updates related to cost reporting for hospitals.

Fiscal Impact

The changes to this rule will have no fiscal impact.

37.86.2907

The department is proposing to amend the APR-DRG base rate for long-term care (LTC) hospitals in ARM 37.85.105 effective July 1, 2016. ARM 37.86.2907 is being updated to clarify that LTC base rates are separate from other inpatient hospitals.

The department is adding a new methodology for inpatient APR-DRG hospitals. This payment methodology calculates the claim reimbursement at the lesser of the assigned APR-DRG rate or the claim billed charges. The department uses this payment methodology throughout the Medicaid program and is updating the inpatient APR-DRG methodology to maintain program consistency.

The department is also updating the APR grouper version used to 33.

Fiscal Impact

The changes to this rule will have no fiscal impact. The fiscal impact for the changes to the LTC hospital-base rate is in the updates to ARM 37.85.105 found in MAR Notice No. 37-745.

37.86.2916

The APR-DRG payment methodology multiplies the allowed charges for the inpatient stay by the cost-to-charge ratio. The current methodology in administrative rules states that the department will use the statewide average Prospective Payment System (PPS) cost-to-charge ratio set forth in ARM 37.86.2905. In July of 2015, the department changed the methodology to use the facility-specific average PPS cost-to-charge ratio for in-state facilities and Centers of Excellence facilities. Out-of-state facilities, that are not Centers of Excellence, use their statewide average cost-to-charge ratio. ARM 37.86.2916 is being updated to reflect this change.

The department is reducing the marginal percentage from 60% to 50% for the cost outlier payment for hospital stays. This change is necessary because 60% results in outlier payments going to out-of-state hospitals at a disproportionate amount. The reduction to 50% will not lower the percentage of the DRG payment going to the outlier pool.

Fiscal Impact

The changes to this rule will have no fiscal impact. Savings from these changes will be incorporated back into the base rate that hospitals receive.

37.86.4401

The language within the definitions for rural health clinics (RHC) and federally qualified health centers (FQHC) was updated to reflect the federal statute 42 CFR 1396d and to remove duplicate information.

A new definition, health professional, was added. This definition was added to clarify the allowed core service providers allowed to bill within an FQHC or RHC. Any clinic that wants to bill services for one of the allowed health professionals must have that profession within their scope of service. Licensed addiction counselors (LAC) are being added to the allowed core service providers. If a clinic plans to

include an LAC in their clinic services, they must complete a scope of service change.

Fiscal Impact

The only proposed change to the above rule that has a fiscal impact is the addition of licensed addiction counselors to the allowed core service providers. The addition of LACs could increase the number of visits at these clinics. The estimated total fiscal impact for state fiscal year 2017 would be \$157,481.

5. The department intends to adopt these rule amendments effective July 1, 2016.

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., May 20, 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. The changes proposed are primarily rate and language changes that do not lend themselves to performance-based measurement.

/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 11, 2016.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of) AMENDED NOTICE OF PROPOSED
ARM 42.29.101, 42.29.102, and) AMENDMENT AND EXTENSION OF
42.29.103 pertaining to universal) COMMENT PERIOD
system benefits programs)

TO: All Concerned Persons

1. On January 8, 2016, the Department of Revenue published MAR Notice No. 42-2-947 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 13 of the 2016 Montana Administrative Register, Issue Number 1.

2. A public hearing was held on February 1, 2016. Deb Martin Young, representing Northwestern Energy, and Gary Wiens, representing the Montana Electric Cooperative Association, appeared and testified at the hearing. No written comments were received.

3. The department has determined a need to further amend the rules to correct a deficiency in a citation of authority for the proposed amendments. The cited rulemaking authority for the above-stated rules is specific to activity completed in 1999 and may not sufficiently support future amendments, such as the updates necessary to implement Senate Bill 312, L. 2015. Therefore, and as provided for in 2-4-305(8)(a), MCA, the department proposes adding its general rulemaking authorization statute, 15-1-201, MCA, to the rules. The addition of another rulemaking statute is not in response to public comments; however, the department is extending the comment period provided for in the original notice to allow for public consideration of the amendment. The department also proposes further amending ARM 42.29.103 in response to public comments.

4. The proposed changes from the original proposal are as follows, new matter underlined, deleted matter interlined:

42.29.101 DEFINITIONS The following definitions apply to this chapter:
(1) through (13) remain as proposed.

AUTH: 15-1-201, 69-8-413, MCA
IMP: 69-8-402, MCA

42.29.102 PURPOSE (1) and (2) remain as proposed.

AUTH: 15-1-201, 69-8-413, MCA
IMP: 69-8-103, 69-8-501, MCA

42.29.103 ANNUAL REPORTING AND PENALTIES (1) Annual USB programs summary reports required pursuant to 69-8-402, MCA, must be filed with the department on or before March 1 of each year for the previous calendar year USB programs' credits and expenditures. For the purpose of 69-8-414, MCA, a USB programs summary report filed on or before March 1 for the previous calendar year is considered to be filed on March 1.

(2) The department shall provide written notice to each ~~public~~ utility or large customer claiming the USB credit that fails to submit a USB programs annual summary report by March 1 of each year for the previous calendar year USB programs' credits and expenditures. Penalties, authorized by 69-8-414, MCA, shall be imposed if the department does not receive a ~~public~~ utility's or large customer's USB programs annual summary report within 20 business days of the date on the department's written notice.

(3) If the department does not receive a USB programs annual summary report from the ~~public~~ utility or large customer claiming the USB credit within 20 business days of the department's written notice, as set forth in (2), the department shall impose a \$1,000 administrative penalty against the ~~public~~ utility or large customer. For each additional 30 days that the ~~public~~ utility or large customer does not file with the department a USB programs annual summary report with the department for previous calendar year credits and expenditures, an additional \$1,000 administrative penalty, up to a maximum of \$5,000, will be assessed.

(4) Documents submitted by the ~~public~~ utility or large customer shall be subject to the department's protective orders regarding confidential or proprietary materials. A ~~public~~ utility or large customer claiming confidential or proprietary materials shall move the department for a protective order 30 days in advance of filing the USB programs annual summary report to allow an order to be issued prior to the report being filed. The motion for protective order must specify the material sought to be protected and the reason such materials should be considered confidential or proprietary.

(a) and (b) remain as proposed.

(5) The department shall publish a public notice listing:

(a) the names of the ~~public~~ utilities or large customers who have filed application for the credits as shown on the annual summary reports;

(b) remains as proposed.

(c) the specific date by which interested persons must file any challenge to a ~~public~~ utility's or large customer's claim for credit; and

(d) remains as proposed.

(6) Publication of the public notice will occur within 20 days of the department receiving the ~~public~~ utility's or large company's USB programs annual summary report. The department shall publish the public notice on its web site and in the major newspapers of general circulation for the state of Montana.

(7) A USB programs summary report received on or before March 1 for the previous calendar year is considered timely and recorded as received on March 1.

(8) A USB programs summary report received March 2 through April 1 for the previous calendar year is considered delinquent and recorded as received on April 1.

(7)(9) Claimed credits shall be presumed to be acceptable unless proven otherwise, and the burden of proving ineligibility of a credit lies with the challenging party. If the department receives a challenge to a claimed credit, it shall promptly notify the public utility or large customer claiming the credit of the challenge, in writing, and provide a copy of the interested person's challenge and any supporting documents to the claimant.

AUTH: 15-1-201, 69-8-413, MCA
IMP: 69-8-402, 69-8-414, MCA

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

COMMENT 1: Gary Wiens, representing the Montana Electric Cooperative's Association, requested that in all instances where the words "public utility" are used in the proposed rules that the word "public" be stricken because, under state statute, electric cooperatives are not public utilities. He stated that the requested amendment is to ensure that the electric cooperatives are covered under the rules.

RESPONSE 1: The department appreciates Mr. Wiens bringing attention to this important distinction, and agrees that under statute electric cooperatives are not public utilities. To ensure the rules are applicable to the electric cooperatives, the department has further amended ARM 42.29.103 to strike the word "public" from all instances of "public utility."

COMMENT 2: Deb Young, representing Northwestern Energy, suggested that there is room for some clarification around the language of the filing of the annual report by March 1 in ARM 42.29.103. She recommended that the department add language to make it clear that the annual report is tied to the previous calendar year so that a customer is not in a position where they are filing a report for 2016 USB expenditures on March 1 when they have not yet accrued all of their USB obligations for that period of time.

Ms. Young further suggested that the department consider clarifying the language in the rule around the date at which the filing notice obligation begins and the public notification of it. She explained that this is so that the customer, interested parties, and the department will all have an understanding of when to look for the filing of reports, when potential challenges against the reports would be possible, and when the department's notification of the reports would be made available to the public.

RESPONSE 2: The department appreciates Ms. Young's comments and agrees that the language should be amended to clarify that the annual report is tied to the previous calendar year. The department has further amended ARM 42.29.103 to specify that the USB report required to be filed by March 1 of each year is for the previous calendar year USB programs' credits and expenditures.

The department also concurs with Ms. Young regarding her suggestion to clarify the date of the filing notice obligation, and has added new (7) to the rule to specify that a USB programs summary report received on or before March 1 for the previous

calendar year is considered timely and recorded as received on March 1, and new (8) to specify that a USB programs summary report received March 2 through April 1 for the previous calendar year is considered delinquent and recorded as received on April 1. This will reduce the number of public notices required and narrow the timeframe for the public notices to be published. As Ms. Young suggested, this will give interested parties a better understanding of when to look for the filing of reports, when potential challenges against the reports would be possible, and when the department's notification of the reports would be made available to the public.

6. The Department of Revenue 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, advise the department of the nature of the accommodation needed no later than 5 p.m. on May 6, 2016. Contact Laurie Logan, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or e-mail lalogan@mt.gov.

7. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to: Laurie Logan, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or e-mail lalogan@mt.gov and must be received no later than May 16, 2016. All public comments provided in response to the original notice remain valid for this rulemaking and do not need to be resubmitted to the department.

/s/ Laurie Logan

Laurie Logan
Rule Reviewer

/s/ Mike Kadas

Mike Kadas
Director of Revenue

Certified to the Secretary of State April 11, 2016

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 1.2.104 pertaining to) PROPOSED AMENDMENT
administrative rules services fees)

TO: All Concerned Persons

1. On May 16, 2016, at 9:30 a.m., the Secretary of State will hold a public hearing in the Secretary of State's Office Conference Room, Room 260, State Capitol Building, Helena, Montana, to consider the proposed amendment of the above-stated rule.

2. The Secretary of State will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Secretary of State no later than 5:00 p.m. on April 28, 2016, to advise us of the nature of the accommodation that you need. Please contact Jorge Quintana, Secretary of State's Office, P.O. Box 202801, Helena, MT 59620-2801; telephone (406) 431-7718; fax (406) 444-4249; TDD/Montana Relay Service (406) 444-9068; or e-mail jquintana@mt.gov.

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

1.2.104 ADMINISTRATIVE RULES SERVICES FEES (1) The Secretary of State is required by law ~~(2-4-312 and 2-4-313, MCA)~~, to distribute copies of the ~~Administrative Rules of Montana and Montana Administrative Register and revisions thereto~~, free of charge, to certain federal, state, and county agencies entities and individuals. ~~These agencies may opt to provide access to an electronic version of the current ARM and Register in lieu of receiving the print copy.~~

(2) through (9) remain the same.

AUTH: 2-15-401, 2-15-405, MCA

IMP: ~~2-4-305~~, 2-4-311, 2-4-312, 2-4-313, 2-15-405, MCA

REASON: The amendment to (1) is necessary because 2-4-312, MCA, requires the Secretary of State to send the Montana Administrative Register to certain entities and individuals free of charge, but 2-4-313, MCA, does not require the Secretary of State to distribute copies of the Administrative Rules of Montana and any supplements or revisions to those same entities and individuals without charge. The authority and implementation statutes were reviewed and updated.

4. Pursuant to 2-4-302, MCA, the Secretary of State is unable to include an estimate of the cumulative dollar amount for all persons of the proposed fees to be charged in (1). The number of persons affected is approximately 47 based on the

entities and individuals that currently receive the Administrative Rules of Montana supplements and revisions free of charge. Under the current fee schedule, if the entities and individuals have to pay for a year's worth of quarterly ARM supplements and revisions, the cost would be \$300 per year for each subscriber. If an entity or individual wants an initial ARM set plus quarterly supplements and revisions, the cost would be \$800 the first year and \$300 per year thereafter. Until the number of entities and individuals that want to continue their ARM subscription can be determined, the cumulative dollar amount cannot accurately be calculated.

5. Concerned persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Jorge Quintana, Secretary of State's Office, P.O. Box 202801, Helena, Montana 59620-2801, or by e-mailing jquintana@mt.gov, and must be received no later than 5:00 p.m., May 20, 2016.

6. Jorge Quintana, Secretary of State's Office, P.O. Box 202801, Helena, Montana 59620-2801, has been designated to preside over and conduct the hearing.

7. The Secretary of State maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding administrative rules, corporations, elections, notaries, records, uniform commercial code, or combination thereof. Such written request may be mailed or delivered to the Secretary of State's Office, Administrative Rules Services, 1236 Sixth Avenue, P.O. Box 202801, Helena, MT 59620-2801, faxed to the office at (406) 444-4263, or may be made by completing a request form at any rules hearing held by the Secretary of State's Office.

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

/s/ JORGE QUINTANA
Jorge Quintana
Rule Reviewer

/s/ LINDA MCCULLOCH
Linda McCulloch
Secretary of State

Dated this 11th day of April, 2016.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the transfer of ARM) NOTICE OF TRANSFER AND
2.5.701 and 2.5.801 and the transfer) AMENDMENT
and amendment of ARM 2.5.702)
pertaining to the State Surplus Property)
Program)

TO: All Concerned Persons

1. On March 4, 2016, the Department of Administration published MAR Notice No. 2-11-540 pertaining to the proposed transfer and amendment of the above-stated rules at page 355 of the 2016 Montana Administrative Register, Issue Number 5.

2. No comments were received.

3. The department has transferred ARM 2.5.701 (2.11.201) and 2.5.801 (2.11.203) and transferred and amended ARM 2.5.702 (2.11.202) exactly as proposed.

By: /s/ Sheila Hogan
Sheila Hogan, Director
Department of Administration

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

Certified to the Secretary of State April 11, 2016.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the adoption of New	)	NOTICE OF ADOPTION,
Rule I, the amendment of ARM	)	AMENDMENT, AND TRANSFER AND
2.59.416, and the transfer and	)	AMENDMENT
amendment of ARM 2.59.421 pertaining)	
to credit union investments)	

TO: All Concerned Persons

1. On March 4, 2016, the Department of Administration published MAR Notice No. 2-59-542 pertaining to the proposed adoption, amendment, and transfer and amendment of the above-stated rules at page 359 of the 2016 Montana Administrative Register, Issue Number 5.

2. No comments were received.

3. The department has adopted NEW RULE I (ARM 2.59.422) exactly as proposed.

4. The department has amended ARM 2.59.416 exactly as proposed.

5. The department has transferred and amended ARM 2.59.421 (ARM 2.59.430) exactly as proposed.

By: /s/ Sheila Hogan
Sheila Hogan, Director
Department of Administration

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

Certified to the Secretary of State April 11, 2016.

BEFORE THE COMMISSIONER OF SECURITIES AND INSURANCE
MONTANA STATE AUDITOR

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 6.10.703 pertaining to)
Securities Restitution Fund)

TO: All Concerned Persons

1. On February 19, 2016, the Commissioner of Securities and Insurance, Montana State Auditor (CSI), published MAR Notice No. 6-221 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 256 of the 2016 Montana Administrative Register, Issue Number 4.

2. A hearing was held on March 10, 2016, with no testimony given, and no comments were received up to the closing date.

3. The CSI has amended ARM 6.10.703 exactly as proposed.

/s/ Nick Mazanec
Nick Mazanec
Rule Reviewer

/s/ Jesse Laslovich
Jesse Laslovich
Chief Counsel

Certified to the Secretary of State April 11, 2016.

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the amendment of ARM)	NOTICE OF AMENDMENT
17.36.101, 17.36.103, 17.36.106,)	
17.36.112, 17.36.323, 17.36.326,)	(SUBDIVISIONS/ON-SITE
17.36.327, 17.36.334, 17.36.802, and)	SUBSURFACE WASTEWATER
17.36.804 pertaining to definitions,)	TREATMENT)
application--contents, review)	
procedures--applicable rules, re-review)	
of previously approved facilities:)	
procedures, setbacks, sewage systems:)	
agreements and easements, existing)	
systems, water supply systems:)	
operation and maintenance, ownership,)	
easements, and agreements, fee)	
schedules, and disposition of fees)	

TO: All Concerned Persons

1. On December 24, 2015, the Department of Environmental Quality published MAR Notice No. 17-380, pertaining to the public hearing on the proposed amendment of the above-stated rules at page 2192 of the 2015 Montana Administrative Register, Issue No. 24.

2. The department has amended ARM 17.36.101, 17.36.103, 17.36.106, 17.36.112, 17.36.323, 17.36.334, and 17.36.804 exactly as proposed and has amended ARM 17.36.326, 17.36.327, and 17.36.802 as proposed, but with the following changes, stricken matter interlined, new matter underlined:

17.36.326 SEWAGE SYSTEMS: OPERATION AND MAINTENANCE, OWNERSHIP, EASEMENTS, AND AGREEMENTS (1) through (4)(b) remain as proposed.

(5) Users of multiple-user and shared sewage systems must have an agreement that identifies the rights and responsibilities of each user. ~~The user agreement must be signed by all users when the lots are sold.~~ When a lot is sold, the new owner shall sign the user agreement. User agreements must be in a form acceptable to the department.

17.36.327 SEWAGE SYSTEMS: EXISTING SYSTEMS (1) The provisions of (2) through (5) apply only to existing non-public sewage systems in proposed subdivisions. Public ~~water~~ sewage supply systems must meet the requirements of Title 75, chapter 6, MCA, and rules promulgated thereunder.

(2) through (5) remain as proposed.

17.36.802 FEE SCHEDULES (1) through (1)(c)(ii) remain as proposed.

(iii) new ~~gravity-dosed, siphon-dosed, or pressure-dosed~~ dosed system,

elevated sand mound, ET systems, intermittent sand filter, ETA systems, recirculating sand filter, recirculating trickling filter, aerobic treatment unit, nutrient removal, and whole house subsurface drip irrigation systems:

(A) through (d)(viii) remain as proposed.

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

COMMENT NO. 1: A commenter supported the amendment to ARM 17.36.103(1)(s) requiring proof of a water right or exempt well status before a subdivision application can be approved.

RESPONSE: This comment requires no response.

COMMENT NO. 2: In ARM 17.36.326(5) and 17.36.327, the department should strike the word "sewage" and replace it with "wastewater." Wastewater is a more current term.

RESPONSE: The department uses the term "sewage" in ARM 17.36.326(5) to maintain consistency throughout chapter 36. Additionally, the term "sewage" is specifically used in 76-4-104, MCA, and the department is required to adopt rules for sewage treatment and disposal. Furthermore, ARM 17.36.101(52) states that "sewage" is synonymous with "wastewater" for purposes of chapter 36, so those terms may be used interchangeably. The suggested change has not been made.

COMMENT NO. 3: ARM 17.36.326(5) requires all owners to sign or re-sign the user agreement every time a lot is sold. We think the intent is for new owners to sign upon buying a lot.

RESPONSE: The intent of ARM 17.36.326(5) is to ensure that there is a signature of every user on a user agreement. The department has deleted the proposed sentence and substituted a sentence that clearly accomplishes that intent.

COMMENT NO. 4: In ARM 17.36.326(5), the department should add the word "responsibilities" after "rights"; it would be helpful.

RESPONSE: The department agrees that it may be helpful to add the word "responsibilities" after "rights" in ARM 17.36.326(5). The suggested change has been made.

COMMENT NO. 5: The department should require user agreements to be recorded with the final plat or certificate of survey. User agreements should run with the land and be binding on the owner, the owner's heirs, successors and assigns.

RESPONSE: User agreements for shared systems are contracts between the participants, and those participants should be allowed to modify their contracts as necessary. Requiring the initial user agreement to run with the land would disallow modifications. The suggested change has not been made.

COMMENT NO. 6: The second line in ARM 17.36.327(1) refers to public "water" systems. This statement is either in the wrong place or is meant to be about public "wastewater" systems.

RESPONSE: The department agrees that the reference to public "water" supply systems is confusing. In response to this comment, the department has replaced the word "water" with "sewage" so that this section will be clearer and also be consistent with ARM 17.38.101(1)(e).

COMMENT NO. 7: The fee in ARM 17.36.802(1)(c)(iii) should be clarified by inserting the word "system" after gravity-dosed, siphon-dosed, and pressure-dosed. Alternatively, the department could replace all three terms with "dosed system" because the definition of "dosed system" in Department Circular DEQ-4 covers all three types of systems.

RESPONSE: The department agrees that the definition of "dosed system" in Department Circular DEQ-4 includes gravity-dosed, siphon-dosed, and pressure-dosed systems. Accordingly, the department has removed the references to gravity-dosed, siphon-dosed, and pressure-dosed systems in ARM 17.36.802(1)(c)(iii) and replaced those terms with "dosed system."

COMMENT NO. 8: The department should raise the local reimbursement of the lot fee to \$50.00. The current compensation of \$25.00 does not come close to covering the county's costs of going to the site to investigate specific conditions. This site visit is essential for evaluating whether a subdivision proposal is realistic and complete. The reimbursed amount has not changed since 2002, even though DEQ has increased the lot fee a number of times since then.

RESPONSE: The department did not propose changes to reimbursement fees with this rulemaking. Such a change requires public input. Accordingly, the requested change is beyond the scope of this rulemaking. The department will consider raising the local reimbursement fee in a future rulemaking. The suggested change has not been made.

Reviewed by:

DEPARTMENT OF ENVIRONMENTAL
QUALITY

/s/ John F. North

JOHN F. NORTH
Rule Reviewer

BY: /s/ Tom Livers

TOM LIVERS, Director

Certified to the Secretary of State, April 11, 2016.

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the amendment of ARM) NOTICE OF AMENDMENT
17.50.523 pertaining to transportation)
) (SOLID WASTE MANAGEMENT)

TO: All Concerned Persons

1. On January 8, 2016, the Department of Environmental Quality published MAR Notice No. 17-381 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 4, 2016 Montana Administrative Register, Issue No. 1.

2. The department has amended the rule exactly as proposed.

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

COMMENT NO. 1: The language of this rule is straightforward. It requires that loads being transported to waste facilities be "covered and secured" to prevent "discharge, dumping, spilling, or leaking from the transport vehicle." It should lead to fewer spills of oilfield exploration and production waste.

RESPONSE: The department agrees that the amendment to ARM 17.50.523 should lead to fewer spills of oilfield exploration and production waste.

COMMENT NO. 2: The amendment to ARM 17.50.523 is overly broad. It places a blanket requirement to cover all loads that contain Naturally Occurring Radioactive Materials (NORM) and Technologically Enhanced Naturally Occurring Radioactive Materials (TENORM) while in transit. This rule would affect all loads, regardless of how the load is packaged. For example, a load of waste that is packaged in poly bags on a flatbed truck would have an additional requirement to cover the entire load.

RESPONSE: The rule is intended to apply to all loads of oilfield exploration and production waste. In the event that a load of oilfield exploration and production waste was transported in poly bags on a flatbed truck, ARM 17.50.523 would require additional coverage over the bags. However, it is the department's understanding that oilfield exploration and production waste is not typically transported in this manner. If this method of transporting oilfield exploration and production waste becomes more prevalent, and it can be shown that this method is effective in preventing discharging, dumping, spilling, or leaking, the department may consider an exception for this method in future rulemaking.

COMMENT NO. 3: This rule moves the compliance responsibility of this type of waste directly to transporters, in most cases trucks. Trucking is already heavily regulated by the Federal Motor Carrier Safety Administration and the Montana Department of Transportation. 49 CFR Section 393.110 already specifies that loads

must be properly secured. Motor Carrier Services officers at the Montana Department of Transportation have the authority to enforce this regulation now.

RESPONSE: The Federal Motor Carrier Safety Administration and the Montana Department of Transportation regulate certain aspects of trucking and can enforce 49 CFR Section 393.110. The department does not have the authority to enforce 49 CFR Section 393.110. Additionally, depending on how a load is packaged, 49 CFR Section 393.110 may not apply to the types of loads targeted by ARM 17.50.523. However, 75-10-204(3), MCA, requires the department to adopt rules governing transportation of solid wastes so that the department can ensure that solid waste is transported in a manner that is protective of public health and safety.

COMMENT NO. 4: To enforce this rule, there would have to be officers or inspectors that witness noncompliance. Alternatively, compliance would need to be required by the waste facility.

RESPONSE: The department disagrees. ARM 17.50.523(2) will be enforced in the same manner as ARM 17.50.523(1) and the rest of the department's administrative rules. The department will investigate complaints when they are made. The department also anticipates that it will work with solid waste management facilities to ensure compliance.

COMMENT NO. 5: If the department is going to rely on law enforcement citations for enforcement, the likely enforcement agency is the Montana Department of Transportation. Montana Department of Transportation officers do not have the authority to enforce rules adopted pursuant to 75-10-204, MCA.

RESPONSE: The department does not intend to rely on Montana Department of Transportation officers to enforce ARM 17.50.523(2).

COMMENT NO. 6: The department could ensure that loads are properly packaged without adopting this rule if it coordinated with the Montana Department of Transportation and law enforcement.

RESPONSE: The department does work with the Montana Department of Transportation and law enforcement in its enforcement actions. However, the department has a statutory mandate to adopt rules regulating the transport of solid waste.

COMMENT NO. 7: This rule would include all construction companies, as how would roadside enforcement know what was being hauled without stopping the vehicle. The rule would become a hardship on all carriers.

RESPONSE: ARM 17.50.523(2) will be enforced in the same manner as ARM 17.50.523(1) and the rest of the department's administrative rules. The department does not intend to stop vehicles. The department will investigate complaints when they are made and work with solid waste management facilities to ensure compliance.

COMMENT NO. 8: There have been issues where loads may have been spilled, but this rule does nothing to solve the problem.

RESPONSE: ARM 17.50.523(2) adds the additional requirement for coverage when waste haulers are transporting oilfield exploration and production waste. The department believes that the rule will lead to fewer spills of oilfield exploration and production waste.

Reviewed by:

DEPARTMENT OF ENVIRONMENTAL
QUALITY

/s/ John F. North

JOHN F. NORTH

Rule Reviewer

BY: /s/ Tom Livers

TOM LIVERS, Director

Certified to the Secretary of State, April 11, 2016.

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

In the matter of the adoption of NEW) NOTICE OF ADOPTION
RULES I through III, related to)
workforce development activities for)
Montana HELP Act participants)

TO: All Concerned Persons

1. On January 22, 2016, the Department of Labor and Industry published MAR Notice No. 24-13-313 regarding a public hearing on the proposed adoption of the above-stated rules on page 105 of the 2016 Montana Administrative Register, Issue No. 2.

2. The department has thoroughly considered the comments and testimony of the public. The following is a summary of the public comments and the department's responses to those comments:

Comment 1: The Legislative Services Division noticed that in the statement of reasonable necessity, there was an apparent typographical error in the citation to the Montana HELP Act.

Response 1: The commenter is correct; there was a typographical error. The correct citation to the session law for the Montana HELP Act is Chapter 368, Laws of 2015. The Montana HELP Act was introduced as Senate Bill 405. The statutory citations for the AUTH and IMP cites for NEW RULES I through III are correct.

Comment 2: A commenter stated that NEW RULE II(1)(b) should be amended to remove the requirement that referrals be made to Workforce Innovation and Opportunity Act (WIOA) partners, and should allow a referral to any suitable program that might assist a HELP Act participant.

Response 2: The department's intention with the rule was to explain that HELP Act participants could be referred to WIOA partners and qualified providers, not to limit referrals solely to WIOA partners. The department has amended the rule to clarify that referrals may be made to any program or provider that appears suitable for the participant to consider.

Comment 3: A commenter generally stated that the department's proposed rules were not what members of the Legislature were led to believe would be put into place as part of the Montana HELP Act.

Response 3: The department believes, based on conversations with the prime sponsor of the Montana HELP Act, Senator Buttrey, that the proposed rules are consistent with the intent of the bill sponsor.

Comment 4: A commenter stated that NEW RULE II(3) provides too long an interval between accessing reportable activities. The commenter suggested that the interval be shorted to one week, bi-weekly, or even monthly.

Response 4: As noted in the statement of reasonable necessity, using a 90-day access cycle is consistent with existing workforce service systems, including monitoring software and systems already being used by Job Service offices for purposes of federal reporting under the Wagner-Peyser Act. The department estimates that it would cost approximately \$3,500 to modify its existing software to track and report on activities both on a 90-day cycle as well as on a more frequent basis.

Comment 5: The same commenter asked what outcomes the department expects from quarterly reporting.

Response 5: The department does not expect a particular outcome based on reporting. To the extent that the question was intended to ask why a 90-day tracking cycle was chosen for monitoring workforce development activities of participants, the department is using the business processes and systems that already exist for the Job Service programs. The 90-day reporting cycle provides a minimum standard based on current systems tracking; participants can and will be encouraged to access services at more frequent intervals than the minimum depending on their unique service needs and employment plan. Please also see Response 4.

Comment 6: The same commenter stated that the rules should prioritize activities or services that an individual participant should (or must) undertake or receive.

Response 6: The prioritization of particular services and activities is made on an individualized basis following the participant's initial evaluation. The department believes that because the Montana HELP Act requires an individual evaluation as the initial step in receiving workforce services, the Act contemplates that a "one size fits all" list of priorities is not an effective or efficient use of services, or particularly helpful to the participant. The department's Job Service staff will counsel and encourage participants in selecting the most effective services and activities for each individual participant.

The department's rules provide only for a baseline of the required level of activities, not an optimal level of active participation. The department will consider whether it is an efficient use of resources to create written rules that define what it considers to be an optimal level of activities or services to access, based upon a matrix of the participant's particular education, training, experience, and interests, as well as the likely barriers to employment. The department expects that while such rules are theoretically possible to write, such rules would likely be quite complex and bureaucratic in nature.

The department notes that the Montana HELP Act does not grant the department the ability to require that participants undertake any particular activity or use particular services in a specified order. The department concludes that rules that purport to require a participant to engage in activities or receive services in a particular order would exceed the department's statutory authority.

Comment 7: The same commenter stated that the department should look at the state unemployment insurance program's weekly job search requirements as a reasonable model for workforce activities under the Montana HELP Act.

Response 7: The department respectfully disagrees with the commenter's suggestion. The department notes that Montana HELP Act participants are not necessarily totally unemployed. Montana HELP Act participants may be employed 40 or more hours per week, hold multiple jobs, or be a full-time student, yet still have a family income of less than 138% of the federal poverty rate for Montana. The department concludes that it is not reasonable to expect a person who is employed or who is a student to conduct job searches with the same frequency as a person who is experiencing total unemployment.

Comment 8: The same commenter stated that based on initial reports of participant activities, the Montana HELP Act will not be successful.

Response 8: The department agrees that approximately 45 days into the full implementation of the Montana HELP Act, the expected benefits of the new legislation have not been fully realized. The department expects that as time goes on, participants will be able to use the services, education, and training made available under the legislation to achieve the goals of the Montana HELP Act by increasing the economic self-sufficiency of participants.

Comment 9: The same commenter stated that the rules are not a serious attempt to address workforce development issues and assist Montana HELP Act participants to transition out of "poverty and welfare," and that the rules only provide the department and the Governor "an excuse to hold another press conference and issue talking points."

Response 9: The department acknowledges that the commenter, as a member of the 2015 Legislature, generally opposed the passage of the Montana HELP Act. The department recognizes the sincerity of the views expressed by the commenter, but respectfully disagrees with the conclusions drawn by the commenter.

Comment 10: A commenter questioned what the department meant when it stated that services could be provided "remotely," and suggested that the rules explain how services or assistance could be provided remotely.

Response 10: In NEW RULE I(6), the department contrasts services and assistance delivered in person at a local Job Service office with services that are delivered "remotely." In this context, the department believes that a significant percentage of participants will obtain at least some of the available services "on-line," via the Internet. Each Job Service local office makes computers with Internet access available to the public, for performing job search and other workforce activities. While there are 23 local Job Service offices located across Montana, the department recognizes that even a local office might be located 100 miles or more from a participant's residence. In those instances, services or assistance could potentially be delivered via some other commonly available and generally used technology or method, including the U.S. Mail, telephone, or fax.

Comment 11: A commenter expressed concerns that an individual's freedom to choose services that might be of help in finding appropriate job openings was being compromised by the proposed rules.

Response 11: Engaging in workforce development activities is not required of any Montana HELP Act participant. Montana HELP Act participants can choose whether to make use of workforce development services and activities while enrolled in the Montana HELP Plan. Engaging in workforce development activities is one option that can help qualify a participant for a waiver of paying an insurance premium under the Montana HELP Plan. The department notes that a wide variety of workforce development services and activities are available to the general public, not just Montana HELP Act participants.

Comment 12: A commenter questioned whether a participant that is "medically fragile" would be exempt from the rules.

Response 12: As noted above, no Montana HELP Act participant is required to engage in workforce development services and activities. However, if an individual chooses to use the participant's engagement in workforce development services and activities as one of the ways to qualify for a premium waiver, the department does not contemplate that a participant's health status is a basis for excusing the statutory standard of being an active participant. While the Department of Public Health and Human Services might consider whether special circumstances (such as being "medically fragile") would be a reason not to disqualify a participant from a waiver, the Department of Labor and Industry does not believe that it has the statutory authority to provide for such a waiver.

Comment 13: A commenter asked whether it, as a social services provider, could perform an initial assessment of a participant, instead of the assessment being performed by the department.

Response 13: No. The department does not presently contemplate that third-party entities will be authorized to make the initial assessment of a participant's occupational skills and abilities, or to analyze the participant's probable barriers to employment. The department believes that it already has well-trained and qualified employees located in each Job Service office to perform the assessments. However, the department will look at the data on use and access patterns by Montana HELP Act participants to determine whether additional or supplemental service locations are needed. The department recognizes that potentially it might be cost-effective to contract with qualified third parties to provide assessment services in areas that are not adequately served by a Job Service office.

Comment 14: The same commenter stated that it believes it is a qualified trainer under the WIOA, and asked if it could provide workforce training and assistance to a participant.

Response 14: Yes. As noted in Response 2, the department will continue to make referrals to other service providers as appropriate for the needs of participants.

Comment 15: The same commenter asked whether participants could use computers located in the offices of the commenter to access services and engage in reportable activities.

Response 15: Yes. Such activities will automatically be logged by the department's computer system when the participant signs onto the Montana Works computer system (jobs@mt.gov) using the participant's log-in credentials. The participant does not have to separately track and report participation to the department. However, if a participant does not regularly or frequently engage in workforce development activities, the department believes it would be prudent for the participant (or someone assisting the participant) to informally monitor the use of services to avoid inadvertently losing "active participant" status.

3. The department has adopted the following rules as proposed: NEW RULE I (24.13.101) and NEW RULE III (24.13.109).

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

NEW RULE II (24.13.105) WORKFORCE DEVELOPMENT ACTIVITIES FOR HELP ACT PARTICIPANTS (1) and (1)(a) remain as proposed.

(b) Participants may also be eligible for referral to WIOA partners, and qualified training providers, and any other suitable program or service provider.

(2) through (6) remain as proposed.

AUTH: 39-12-107, 53-5-1318, MCA

IMP: 39-12-101, 39-12-103, MCA

/s/ MARK CADWALLADER
Mark Cadwallader
Alternate Rule Reviewer

/s/ PAM BUCY
Pam Bucy, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State April 11, 2016.

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

In the matter of the amendment of	)	NOTICE OF AMENDMENT,
ARM 24.126.411 patient records	)	ADOPTION, AND REPEAL
retention, 24.126.2103 continuing)	
education requirements, 24.126.2105)	
approved continuing education, and)	
24.126.2301 unprofessional conduct,)	
adoption of NEW RULE I sexual)	
relations with a patient and sexual)	
misconduct, and repeal of 24.126.405)	
board meetings, 24.126.406 record of)	
minutes and hearings, and)	
24.126.2101 renewals)	

TO: All Concerned Persons

1. On February 19, 2016, the Board of Chiropractors (board) published MAR Notice No. 24-126-35 regarding the public hearing on the proposed amendment, adoption, and repeal of the above-stated rules, at page 270 of the 2016 Montana Administrative Register, Issue No. 4.

2. On March 11, 2016, a public hearing was held on the proposed amendment, adoption, and repeal of the above-stated rules in Helena. Two comments were received by the March 18, 2016, deadline.

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

COMMENT 1: One commenter opposed the proposed amendment to ARM 24.126.411 to increase licensee record retention from five to seven years. The commenter stated that the Board of Medical Examiners does not have such a time period in their statutes or rules. Further, the commenter did not follow the board's reasoning for the change and questioned the last time Medicaid record retention changed.

RESPONSE 1: The board is making the change from five to seven years to address licensee questions and so licensees will not have to deal with unintentional conflicts between federal and board retention requirements. The board notes that each board promulgates rules under separate and individual rulemaking authority, and there is no requirement to have identical standards.

COMMENT 2: One commenter stated the board should retain (1)(b) of ARM 24.126.2301 and not adopt NEW RULE I. The commenter expressed concern that not all chiropractors terminate patient relationships in writing, and neither do they

keep such records permanently. The commenter noted that neither the Board of Medical Examiners nor the Board of Physical Therapy Examiners has these requirements, and suggested this board should not, either.

RESPONSE 2: The board proposed these changes to address ambiguities in the rules that caused difficulty in prosecuting sexual misconduct disciplinary cases. The board concluded that permanent maintenance of this one type of document will not be unduly burdensome on licensees. Boards are under no obligation to have similar retention requirements.

4. The board has amended ARM 24.126.411, 24.126.2103, 24.126.2105, and 24.126.2301 exactly as proposed.

5. The board has adopted NEW RULE I (24.126.2304) exactly as proposed.

6. The board has repealed ARM 24.126.405, 24.126.406, and 24.126.2101 exactly as proposed.

BOARD OF CHIROPRACTORS
LEE HUDSON, DC, PRESIDENT

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

/s/ PAM BUCY
Pam Bucy, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State April 11, 2016

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 42.25.1801 pertaining to crude)
oil pricing - stripper well bonus and)
stripper well exemption definitions)

TO: All Concerned Persons

1. On February 19, 2016, the Department of Revenue published MAR Notice No. 42-2-948 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 301 of the 2016 Montana Administrative Register, Issue Number 4.

2. The department amends the above-stated rule as proposed.

3. No comments or testimony were received.

/s/ Laurie Logan
Laurie Logan
Rule Reviewer

/s/ Eugene Walborn acting for
Mike Kadas
Director of Revenue

Certified to the Secretary of State April 11, 2016

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 42.22.1311 pertaining to)
industrial machinery and equipment)
trend factors)

TO: All Concerned Persons

1. On March 4, 2016, the Department of Revenue published MAR Notice No. 42-2-951 pertaining to the proposed amendment of the above-stated rule at page 456 of the 2016 Montana Administrative Register, Issue Number 5.
2. The department amends the above-stated rule as proposed.
3. No comments or testimony were received.

/s/ Laurie Logan
Laurie Logan
Rule Reviewer

/s/ Eugene Walborn acting for
Mike Kadas
Director of Revenue

Certified to the Secretary of State April 11, 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 September 30, 2015. This table includes those rules adopted during the period October 1, 2015, through December 31, 2015, 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 September 30, 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.

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BOARD APPOINTEES AND VACANCIES

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

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

In this issue, appointments effective in March 2016 appear. Vacancies scheduled to appear from May 1, 2016 through July 31, 2016, are listed, as are current vacancies due to resignations or other reasons. Individuals interested in serving on a board should refer to the bill that created the board for details about the number of members to be appointed and necessary qualifications.

Each month, the previous month's appointees are printed, and current and upcoming vacancies for the next three months are published.

IMPORTANT

Membership on boards and commissions changes constantly. The following lists are current as of April 1, 2016.

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

BOARD AND COUNCIL APPOINTEES FROM MARCH 2016

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Board of Architects (Labor and Industry)			
Ms. Janet Cornish Billings	Governor	reappointed	3/27/2016 4/1/2019
Qualifications (if required): Representative of public not engaged in the practice of architecture			
Ms. Shelly Engler Bozeman	Governor	reappointed	3/27/2016 4/1/2019
Qualifications (if required): Licensed landscape architect			
Ms. Marie O'Neill Bozeman	Governor	reappointed	3/27/2016 4/1/2019
Qualifications (if required): Licensed architect who is on the staff of the Montana State University-Bozeman School			
Mr. Nathan Steiner Billings	Governor	reappointed	3/27/2016 4/1/2019
Qualifications (if required): Licensed landscape architect			
Board of Nursing Home Administrators (Labor and Industry)			
Mr. Jim Corson Billings	Governor	reappointed	3/18/2016 6/1/2021
Qualifications (if required): Public at-large 55 years of age or older			
Board of Private Security (Labor and Industry)			
Mr. Martin Mangan Helena	Governor	reappointed	3/25/2016 8/1/2018
Qualifications (if required): Licensed private investigator			

BOARD AND COUNCIL APPOINTEES FROM MARCH 2016

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Board of Private Security (Labor and Industry) cont.			
Mr. Wynn Meehan	Governor	Dutton	3/25/2016
Townsend			8/1/2018
Qualifications (if required): County Sheriff's Office			
Mr. Charles Pesola	Governor	reappointed	3/25/2016
Kalispell			8/1/2018
Qualifications (if required): Contract security company or propriety security organization			
Board of Professional Engineers and Land Surveyors (Labor and Industry)			
Mr. M. Ruhul Amin	Governor	reappointed	3/25/2016
Bozeman			7/1/2019
Qualifications (if required): Instructor Professional Engineer (Mechanical)			
Mr. Raymond Gross	Governor	Eby	3/25/2016
Dillon			7/1/2019
Qualifications (if required): Professional and Practicing Land Surveyor			
Board of Psychologists (Labor and Industry)			
Ms. Rebecca Ann Bird	Governor	Hyatt-Murphy	3/18/2016
Billings			9/1/2020
Qualifications (if required): general public			
Community First Choice Development and Implementation Council (Public Health and Human Services)			
Ms. Dawna Brinkel	Director	not listed	3/18/2016
Bozeman			5/1/2017
Qualifications (if required): none specified			

BOARD AND COUNCIL APPOINTEES FROM MARCH 2016

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Community First Choice Development and Implementation Council (Public Health and Human Services) cont.			
Ms. Kris Carlson Kalispell	Director	not listed	3/18/2016 5/1/2017
Qualifications (if required):	none specified		
Ms. Claudia Clifford Helena	Director	not listed	3/18/2016 5/1/2017
Qualifications (if required):	none specified		
Ms. Glenna Dreese Florence	Director	not listed	3/18/2016 5/1/2017
Qualifications (if required):	none specified		
Ms. Ashli Gross Missoula	Director	not listed	3/18/2016 5/1/2017
Qualifications (if required):	none specified		
Mr. Travis Hoffman Missoula	Director	not listed	3/18/2016 5/1/2017
Qualifications (if required):	none specified		
Ms. Tiffany Metzler Billings	Director	not listed	3/18/2016 5/1/2017
Qualifications (if required):	none specified		

BOARD AND COUNCIL APPOINTEES FROM MARCH 2016

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Community First Choice Development and Implementation Council (Public Health and Human Services) cont.			
Mr. Randy Morigeau Polson	Director	not listed	3/18/2016 5/1/2017
Qualifications (if required):	none specified		
Ms. Sue Neff Butte	Director	not listed	3/18/2016 5/1/2017
Qualifications (if required):	none specified		
Ms. Kelly Reynolds Missoula	Director	not listed	3/18/2016 5/1/2017
Qualifications (if required):	none specified		
Mr. Quentin Schroeter Helena	Director	not listed	3/18/2016 5/1/2017
Qualifications (if required):	none specified		
Ms. Kimberly Schwartz Great Falls	Director	not listed	3/18/2016 5/1/2017
Qualifications (if required):	none specified		
Mr. John Stevenson Great Falls	Director	not listed	3/18/2016 5/1/2017
Qualifications (if required):	none specified		
Ms. Diana Tavary Helena	Director	not listed	3/18/2016 5/1/2017
Qualifications (if required):	none specified		

BOARD AND COUNCIL APPOINTEES FROM MARCH 2016

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Community First Choice Development and Implementation Council (Public Health and Human Services) cont.			
Ms. Sheila Thompson	Director	not listed	3/18/2016
Missoula			5/1/2017
Qualifications (if required):	none specified		
Ms. Meg Traci	Director	not listed	3/18/2016
Missoula			5/1/2017
Qualifications (if required):	none specified		
Ms. Jerilee Wilkerson	Director	not listed	3/18/2016
Helena			5/1/2017
Qualifications (if required):	none specified		
Future Fisheries Review Panel (Fish, Wildlife and Parks)			
Mr. Michael Paul Johns	Governor	Fisher	3/25/2016
Bozeman			7/1/2017
Qualifications (if required):	Licensed Montana angler		
Ms. Meriwether Schroeer	Governor	Christman	3/25/2016
Helena			7/1/2017
Qualifications (if required):	Montana High School Student		
Mr. William Frank Wichers	Governor	Munther	3/25/2016
Hamilton			7/1/2017
Qualifications (if required):	Member with expertise in fisheries		

BOARD AND COUNCIL APPOINTEES FROM MARCH 2016

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Future Fisheries Review Panel (Fish, Wildlife and Parks) cont.			
Mr. Joseph Willauer Butte	Governor	reappointed	3/25/2016 7/1/2017
Qualifications (if required): Licensed Montana angler			
Information Technology Board (Administration)			
Commissioner Chris Mehl Bozeman	Governor	Anderson	3/25/2016 1/1/2017
Qualifications (if required): Local government			
Labor-Management Advisory Council (Labor and Industry)			
Mr. Doug Buman Seattle	Director	not listed	3/25/2016 7/1/2017
Qualifications (if required): none specified			
Mr. Chris Cavazos Helena	Director	not listed	3/25/2016 7/1/2017
Qualifications (if required): none specified			
Lieutenant Governor Mike Cooney Helena	Director	not listed	3/25/2016 7/1/2017
Qualifications (if required): none specified			
Mr. Bill Dahlgren Missoula	Director	not listed	3/25/2016 7/1/2017
Qualifications (if required): none specified			

BOARD AND COUNCIL APPOINTEES FROM MARCH 2016

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Labor-Management Advisory Council (Labor and Industry) cont.			
Ms. Annette Hoffman Billings	Director	not listed	3/25/2016 7/1/2017
Qualifications (if required): none specified			
Mr. Marvin Jordan Great Falls	Director	not listed	3/25/2016 7/1/2017
Qualifications (if required): none specified			
Mr. Don Judge Helena	Director	not listed	3/25/2016 7/1/2017
Qualifications (if required): none specified			
Mr. Jim Larson Billings	Director	not listed	3/25/2016 7/1/2017
Qualifications (if required): none specified			
Mr. William Russell McElyea Bozeman	Director	not listed	3/25/2016 7/1/2017
Qualifications (if required): none specified			
Mr. Zachary Rogala Darby	Director	not listed	3/25/2016 7/1/2017
Qualifications (if required): none specified			
Mr. Al Smith Helena	Director	not listed	3/25/2016 7/1/2017
Qualifications (if required): none specified			

BOARD AND COUNCIL APPOINTEES FROM MARCH 2016

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Labor-Management Advisory Council (Labor and Industry) cont.			
Mr. Eric Strauss Helena	Director	not listed	3/25/2016 7/1/2017
Qualifications (if required): none specified			
Mr. Roger Wagner Nashua	Director	not listed	3/25/2016 7/1/2017
Qualifications (if required): none specified			
Mr. Bob Worthington Helena	Director	not listed	3/25/2016 7/1/2017
Qualifications (if required): none specified			
Ms. Lance Zanto Helena	Director	not listed	3/25/2016 7/1/2017
Qualifications (if required): none specified			
Montana Arts Council (Education)			
Mr. Sean Chandler Harlem	Governor	Stein	3/18/2016 2/1/2020
Qualifications (if required): Public Representative			
State Emergency Response Commission (Military Affairs)			
Mr. Gregory Thomas Doyon Great Falls	Governor	Carney	3/25/2016 10/1/2019
Qualifications (if required): Representative of the Montana League of Cities and Towns			

BOARD AND COUNCIL APPOINTEES FROM MARCH 2016

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Teachers' Retirement Board (Administration)			
Mr. Daniel Chamberlin	Governor	Cordingley	3/18/2016
Helena			7/1/2020
Qualifications (if required): representative of the public			
Temporary Assistance for Needy Families (Public Health and Human Services)			
Ms. Lorianne Burhop	Director	not listed	3/4/2016
Missoula			3/1/2018
Qualifications (if required): Representative of a statewide food program			
Ms. Lucinda Burns	Director	not listed	3/4/2016
Lame Deer			3/1/2018
Qualifications (if required): none specified			
Ms. Barbara Burton	Director	not listed	3/4/2016
Helena			3/1/2018
Qualifications (if required): Representative of a youth related advocacy organization			
Rep. Mary M. Caferro	Director	not listed	3/4/2016
Helena			3/1/2018
Qualifications (if required): Public representative and former TANF parent			
Ms. Pamela Carlson	Director	not listed	3/4/2016
Helena			3/1/2018
Qualifications (if required): Representative of TANF WoRC Consortium			

BOARD AND COUNCIL APPOINTEES FROM MARCH 2016

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Temporary Assistance for Needy Families (Public Health and Human Services) cont.			
Ms. Erin Irvine	Director	not listed	3/4/2016
Ronan			3/1/2018
Qualifications (if required): Public representative/single mother and current college student			
Ms. Veronica Moldenhauer	Director	not listed	3/4/2016
Great Falls			3/1/2018
Qualifications (if required): Representative of an early childhood education organization			
Ms. Heather O'Loughlin	Director	not listed	3/4/2016
Missoula			3/1/2018
Qualifications (if required): Representative of a statewide research organization			
Ms. Jaymie Sheldahl	Director	not listed	3/4/2016
Helena			3/1/2018
Qualifications (if required): Representing Head Start			
Mr. Patrick Sweeney	Director	not listed	3/4/2016
Billings			3/1/2018
Qualifications (if required): Representative of past TANF recipient			
Ms. Arlene Templer	Director	not listed	3/4/2016
Pablo			3/1/2018
Qualifications (if required): Representative of CSKT Tribal employment program			
Ms. Karen Vanni	Director	not listed	3/4/2016
Great Falls			3/1/2018
Qualifications (if required): Representative of a nonprofit organization working with low income clients			

BOARD AND COUNCIL APPOINTEES FROM MARCH 2016

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Temporary Assistance for Needy Families (Public Health and Human Services) cont.			
Ms. Pam Watson	Director	not listed	3/4/2016
Helena			3/1/2018
Qualifications (if required): Representing Montana Department of Labor and Industry			
Ms. Kelsen Young	Director	not listed	3/4/2016
Helena			3/1/2018
Qualifications (if required): Representative of a statewide advocacy program			
Youth Justice Council (Justice)			
Mr. Hubert Abrams	Governor	reappointed	3/25/2016
Wibaux			3/1/2018
Qualifications (if required): Competence in addressing problems related to school violence and vandalism			
Sheriff Craig Anderson	Governor	reappointed	3/25/2016
Glendive			3/1/2018
Qualifications (if required): Competence in addressing problems related to school violence and vandalism			
Ms. Michelle Aune	Governor	reappointed	3/25/2016
Bozeman			3/1/2018
Qualifications (if required): Competence in addressing problems related to school violence and vandalism			
Mr. Dave Bailon	Governor	reappointed	3/25/2016
Kalispell			3/1/2018
Qualifications (if required): Volunteer who works with Delinquents or Potential Delinquents			

BOARD AND COUNCIL APPOINTEES FROM MARCH 2016

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Youth Justice Council (Justice) cont.			
Mr. Tim Brurud Havre	Governor	reappointed	3/25/2016 3/1/2018
Qualifications (if required):	Private Non-Profit		
Ms. Tara French Billings	Governor	Singley	3/25/2016 3/1/2018
Qualifications (if required):	Law Enforcement and Juvenile Justice Agencies		
Ms. Marilyn Helen King Bozeman	Governor	Miller	3/25/2016 3/1/2018
Qualifications (if required):	Competence in addressing problems related to school violence and vandalism		
Judge Mary Jane Knisely Billings	Governor	reappointed	3/25/2016 3/1/2018
Qualifications (if required):	Law Enforcement and Juvenile Justice Agencies		
Ms. Kristina Lucero Helena	Governor	reappointed	3/25/2016 3/1/2018
Qualifications (if required):	Competence in addressing problems related to school violence and vandalism		
Commissioner Laura Obert Townsend	Governor	reappointed	3/25/2016 3/1/2018
Qualifications (if required):	Local Government and Board of Crime Control Member		
Mr. Peter Ohman Bozeman	Governor	reappointed	3/25/2016 3/1/2018
Qualifications (if required):	Public Agency concerned with Delinquency Prevention or Treatment		

BOARD AND COUNCIL APPOINTEES FROM MARCH 2016

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Youth Justice Council (Justice) cont.			
Mr. Braeden Quinn Missoula	Governor	reappointed	3/25/2016 3/1/2018
Qualifications (if required): Under the age of 24			
Mr. Randy Shipman Dillon	Governor	reappointed	3/25/2016 3/1/2018
Qualifications (if required): Public Agency concerned with Delinquency Prevention or Treatment			
Ms. Geri Small Lame Deer	Governor	reappointed	3/25/2016 3/1/2018
Qualifications (if required): Competence in addressing problems related to school violence and vandalism			

VACANCIES ON BOARDS AND COUNCILS -- MAY 1, 2016 THROUGH JULY 31, 2016

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Aging Advisory Council (Public Health and Human Services) Ms. Joan Taylor, Helena Qualifications (if required): Public Representative	Governor	7/1/2016
Commissioner Marianne Roose, Eureka Qualifications (if required): Public Representative	Governor	7/1/2016
Ms. Connie Bremner, Browning Qualifications (if required): Public Representative	Governor	7/1/2016
Mr. Alex Ward, Helena Qualifications (if required): Public Representative	Governor	7/1/2016
Associate Water Judge Mr. Sean Becker, Bozeman Qualifications (if required): none specified	Chief Justice	6/30/2016
Board of Hearing Aid Dispensers (Labor and Industry) Ms. Helen Hallenbeck, Missoula Qualifications (if required): Dispenser with National Certification and Masters	Governor	7/1/2016
Board of Massage Therapists (Labor and Industry) Mr. Stacy Baird, East Helena Qualifications (if required): massage therapist	Governor	5/6/2016
Board of Nursing (Labor and Industry) Ms. Heather O'Hara (Onstad), Helena Qualifications (if required): registered nurse and an educator	Governor	7/1/2016

VACANCIES ON BOARDS AND COUNCILS -- MAY 1, 2016 THROUGH JULY 31, 2016

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Board of Nursing (Labor and Industry) cont. Ms. Tammy Talley, Missoula Qualifications (if required): licensed practical nurse	Governor	7/1/2016
Ms. Shari Brownback, Helena Qualifications (if required): Licensed Practical Nurse	Governor	7/1/2016
Board of Nursing Home Administrators (Labor and Industry) Mr. Jim Corson, Billings Qualifications (if required): 55 years of age or older	Governor	5/28/2016
Mr. Ken Chase, Billings Qualifications (if required): public representative 55 years of age or older	Governor	5/28/2016
Board of Pharmacy (Labor and Industry) Ms. Shirley Baumgartner, Glasgow Qualifications (if required): licensed pharmacist	Governor	7/1/2016
Board of Physical Therapy Examiners (Labor and Industry) Ms. Susan Michels, Great Falls Qualifications (if required): Physical Therapist	Governor	7/1/2016
Board of Plumbers (Labor and Industry) Mr. Jeffrey Gruizenga, Billings Qualifications (if required): professional engineer (mechanical)	Governor	5/4/2016

VACANCIES ON BOARDS AND COUNCILS -- MAY 1, 2016 THROUGH JULY 31, 2016

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Board of Radiologic Technologists (Labor and Industry) Mr. Mike Nielsen, Billings Qualifications (if required): Radiology Technician and Radiology Practitioner Assistant	Governor	7/1/2016
Board of Realty Regulation (Labor and Industry) Mr. Pat Goodover, Great Falls Qualifications (if required): real estate salesperson and a Republican	Governor	5/9/2016
Board of Regents (Education) Mr. Asa Hohman, Missoula Qualifications (if required): Student Regent	Governor	6/30/2016
Board of Research and Commercialization Technology (Commerce) Mr. Leonard Smith, Billings Qualifications (if required): enrolled member of Montana Tribe	Governor	7/1/2016
Ms. Prairie Big Horn, Lolo Qualifications (if required): enrolled member of a Montana tribal government	Governor	7/1/2016
Board of Sanitarians (Labor and Industry) Mr. James Zabrocki, Miles City Qualifications (if required): Sanitarian	Governor	7/1/2016
Board of Veterinary Medicine (Labor and Industry) Dr. Kathy McGann, Missoula Qualifications (if required): veterinarian	Governor	7/31/2016

VACANCIES ON BOARDS AND COUNCILS -- MAY 1, 2016 THROUGH JULY 31, 2016

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Board of Veterinary Medicine (Labor and Industry) cont. Ms. Rebecca Mattix, Bozeman Qualifications (if required): veterinarian	Governor	7/31/2016
Butte Natural Resource Damage Restoration Council (Justice) Rep. Edith McClafferty, Butte Qualifications (if required): Public Representative	Governor	7/1/2016
Ms. Helen O'Connor, Butte Qualifications (if required): Public Representative	Governor	7/1/2016
Mr. Dave Williams, Butte Qualifications (if required): Public Representative	Governor	7/1/2016
Children's Trust Fund Board (Public Health and Human Services) Ms. Ann Gilkey, Helena Qualifications (if required): State agency representative involved in education and social work relating to children	Governor	7/1/2016
Commission on Practice of the Supreme Court (Supreme Court) Ms. Jean Faure, Great Falls Qualifications (if required): none specified	elected	6/19/2016
Committee on Telecommunications Access Services for Person with Disabilities (Public Health and Human Services) Mr. Ron Bibler, Great Falls Qualifications (if required): Disabilities Community (Deaf or Hard of Hearing)	Governor	7/1/2016

VACANCIES ON BOARDS AND COUNCILS -- MAY 1, 2016 THROUGH JULY 31, 2016

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Committee on Telecommunications Access Services for Person with Disabilities (Public Health and Human Services) cont.		
Ms. Linda Kirkland, Helena Qualifications (if required): Department of Administration	Governor	7/1/2016
Ms. Chris Caniglia, Helena Qualifications (if required): Business Person non-disabled	Governor	7/1/2016
Mr. Jim Marks, Helena Qualifications (if required): Department of Administration	Governor	7/1/2016
Ms. Cheryl Dickens, Bozeman Qualifications (if required): Disabilities Community (Deaf or Hard of Hearing)	Governor	7/1/2016
Community Service Commission (Labor and Industry)		
Mr. Adam Vauthier, Anaconda Qualifications (if required): Non-Profit Organization	Governor	7/1/2016
Mr. William Russell McElyea, Bozeman Qualifications (if required): Organized Labor	Governor	7/1/2016
Ms. Heather Margolis, Helena Qualifications (if required): National Service Program	Labor and Industry	7/1/2016
Ms. Wendy Nicolai, Helena Qualifications (if required): Agency Representative	Governor	7/1/2016

VACANCIES ON BOARDS AND COUNCILS -- MAY 1, 2016 THROUGH JULY 31, 2016

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
District Court Council (Justice) Judge Robert L. Dusty Deschamps III, Missoula Qualifications (if required): District Court Judge Position 1	Justice	6/30/2016
Economic Development Advisory Council (Commerce) Mr. Jim Smitham, Butte Qualifications (if required): Public Representative	Governor	7/23/2016
Mr. Paul Tuss, Havre Qualifications (if required): Public Representative	Governor	7/23/2016
Mr. Mike Henning, Fairfield Qualifications (if required): Public Representative	Governor	7/23/2016
Mr. Tim Warner, Helena Qualifications (if required): Public Representative	Governor	7/23/2016
Electrical Board (Labor and Industry) Ms. Dawn Achten, Billings Qualifications (if required): Public Representative	Governor	7/1/2016
Family Education Savings Oversight Committee (Higher Education) Ms. Laura McGee, Billings Qualifications (if required): public representative	Governor	7/1/2016
Future Fisheries Review Panel (Fish, Wildlife and Parks) Mr. Alan Johnstone, Wilsall Qualifications (if required): expertise in commercial agriculture	Governor	7/1/2016

VACANCIES ON BOARDS AND COUNCILS -- MAY 1, 2016 THROUGH JULY 31, 2016

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Future Fisheries Review Panel (Fish, Wildlife and Parks) cont. Mr. Jim Stone, Ovando Qualifications (if required): expertise in irrigated agriculture	Governor	7/1/2016
Ms. Karin Boyd, Bozeman Qualifications (if required): Private Sector Fisheries Restoration Professional	Governor	7/1/2016
Ms. Nancy Winslow, Missoula Qualifications (if required): expertise in mining reclamation techniques	Governor	7/1/2016
Governor's Commission on Community Service (Governor) Mr. Doug Mitchell, Helena Qualifications (if required): State agency representative	Governor	7/1/2016
Ms. Erica McKay, Bozeman Qualifications (if required): Youth Representative	Governor	7/1/2016
Governor's Postsecondary Scholarship Advisory Council (Governor) Ms. Connie Wittak, Flaxville Qualifications (if required): Experience in Education	Governor	7/1/2016
Insure Montana Board (State Auditor) Mr. John Jaksha, Butte Qualifications (if required): Commissioner of Securities and Insurance Representative	Auditor	6/30/2016
Interagency Coordinating Council for State Prevention Programs (Public Health and Human Services) Ms. Marilyn Zimmerman, Poplar Qualifications (if required): Experiences related to the private or nonprofit provision of prevention programs	Governor	7/1/2016

VACANCIES ON BOARDS AND COUNCILS -- MAY 1, 2016 THROUGH JULY 31, 2016

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Interagency Coordinating Council for State Prevention Programs (Public Health and Human Services) cont.		
Ms. Diane Cashell, Bozeman	Governor	7/1/2016
Qualifications (if required): experiences related to the private or nonprofit provision of prevention programs		
Interim Montana Clean Power Plan Advisory Council (Environmental Quality)		
Mr. Thomas Schneider, Helena	Governor	7/6/2016
Qualifications (if required): General member		
Rep. Duane Ankney, Colstrip	Governor	7/6/2016
Qualifications (if required): State Legislature		
Rep. Gary Forrester, Billings	Governor	7/6/2016
Qualifications (if required): Coal-fired power plant owners and investor-owned utilities		
Director David A. Galt, Helena	Governor	7/6/2016
Qualifications (if required): Electric cooperatives and large industrial electric consumers		
Ms. Kathy Hadley, Deer Lodge	Governor	7/6/2016
Qualifications (if required): Hunters/anglers		
Mr. Paul Gatzemeier, Billings	Governor	7/6/2016
Qualifications (if required): General member		
Sen. Jim Keane, Butte	Governor	7/6/2016
Qualifications (if required): Hunters/anglers		
Rep. Krayton Kerns, Laurel	Governor	7/6/2016
Qualifications (if required): State Legislature		

VACANCIES ON BOARDS AND COUNCILS -- MAY 1, 2016 THROUGH JULY 31, 2016

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Interim Montana Clean Power Plan Advisory Council (Environmental Quality) cont.		
Mr. Alan Ekblad, Great Falls Qualifications (if required): Organized labor	Governor	7/6/2016
Commissioner Kirk Bushman, Billings Qualifications (if required): Public Service Commission and Montana Consumer Counsel	Governor	7/6/2016
Mr. Carl Borgquist, Bozeman Qualifications (if required): Renewable energy	Governor	7/6/2016
Mr. Christopher Christianes, Great Falls Qualifications (if required): General member	Governor	7/6/2016
Mr. Gordon Criswell, Hysham Qualifications (if required): Coal-fired power plant owners and investor-owned utilities	Governor	7/6/2016
Mr. Douglas Hardy, Great Falls Qualifications (if required): Hunters/anglers	Governor	7/6/2016
Ms. Britt Erica Ide, Bozeman Qualifications (if required): General member	Governor	7/6/2016
Ms. Lorna Luebbe, Bellevue Qualifications (if required): Coal-fired power plant owners and investor-owned utilities	Governor	7/6/2016
Mr. Charles Magraw, Helena Qualifications (if required): Conservation and environment	Governor	7/6/2016

VACANCIES ON BOARDS AND COUNCILS -- MAY 1, 2016 THROUGH JULY 31, 2016

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Interim Montana Clean Power Plan Advisory Council (Environmental Quality) cont.		
Mr. Darrin Neal Old Coyote, Crow Agency Qualifications (if required): Tribal	Governor	7/6/2016
Mr. James Phillip Orchard, Decker Qualifications (if required): Coal mining	Governor	7/6/2016
Mr. William Pascoe, Absarokee Qualifications (if required): General member	Governor	7/6/2016
Ms. Sania Ruthanne Radcliffe, Portland Qualifications (if required): Coal-fired power plant owners and investor-owned utilities	Governor	7/6/2016
Mr. Frank Diego Rivas, Helena Qualifications (if required): Energy efficiency	Governor	7/6/2016
Mr. John Roeber, Helena Qualifications (if required): Organized Labor	Governor	7/6/2016
Mr. Rex Mervin Rogers, Colstrip Qualifications (if required): Organized Labor	Governor	7/6/2016
Mr. Darrell Soyars, Spokane Qualifications (if required): Coal-fired power plant owners and investor-owned utilities	Governor	7/6/2016
Mr. Patrick Sweeney, Billings Qualifications (if required): Conservation and environment	Governor	7/6/2016

VACANCIES ON BOARDS AND COUNCILS -- MAY 1, 2016 THROUGH JULY 31, 2016

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Interim Montana Clean Power Plan Advisory Council (Environmental Quality) cont.		
Mr. William Wayne Thompson, Butte	Governor	7/6/2016
Qualifications (if required): Coal-fired power plant owners and investor-owned utilities		
Mental Disabilities Board of Visitors (Governor's Office)		
Ms. Amy Tipton, Wolf Point	Governor	7/1/2016
Qualifications (if required): Experience relative to the treatment and welfare of adults with serious mental illnesses		
Mint Committee (Agriculture)		
Mr. Clyde Fisher, Columbia Falls	Governor	7/1/2016
Qualifications (if required): mint grower/research council representative		
Mr. Kirk Passmore, Kalispell	Governor	7/1/2016
Qualifications (if required): mint grower		
Montana Agriculture Development Council (Agriculture)		
Commissioner Greg Jergeson, Chinook	Governor	7/1/2016
Qualifications (if required): representative who is or was actively engaged in agriculture		
Mr. Verges Ageson, Gilford	Governor	7/1/2016
Qualifications (if required): Agriculture Representative		
Ms. Amy Kellogg, Kalispell	Governor	7/1/2016
Qualifications (if required): Agriculture Representative		
Montana Heritage Preservation and Development Commission (Commerce)		
Ms. Marilyn Ross, Twin Bridges	Governor	5/23/2016
Qualifications (if required): Historic Preservation		

VACANCIES ON BOARDS AND COUNCILS -- MAY 1, 2016 THROUGH JULY 31, 2016

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Montana Heritage Preservation and Development Commission (Commerce) cont. Mr. Philip Maechling, Florence Qualifications (if required): Community Planning	Governor	5/23/2016
Mr. Jason Davis, Helena Qualifications (if required): Business	Governor	5/23/2016
Ms. Shera Konen, Ennis Qualifications (if required): At-Large Representative	Governor	5/23/2016
Montana Historical Society Board of Trustees (Historical Society) Secretary Bob Brown, Whitefish Qualifications (if required): public member	Governor	7/1/2016
Mr. Thomas Nygard, Bozeman Qualifications (if required): public member	Governor	7/1/2016
Ms. Crystal Wong Shors, Helena Qualifications (if required): public member	Governor	7/1/2016
Montana Suicide Review Team (Public Health and Human Services) Mr. Karl Rosston, Helena Qualifications (if required): Montana's Suicide Prevention Officer	Governor	6/30/2016
Sheriff Brian Gootkin, Bozeman Qualifications (if required): Law Enforcement Representative	Governor	6/30/2016

VACANCIES ON BOARDS AND COUNCILS -- MAY 1, 2016 THROUGH JULY 31, 2016

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Montana Suicide Review Team (Public Health and Human Services) cont. Ms. Stephanie Iron Shooter, Billings Qualifications (if required): Advocacy Organization	Governor	6/30/2016
Ms. Carol Josephson, Elliston Qualifications (if required): Licensed Clinical Social Worker	Governor	6/30/2016
Dr. Leonard Lantz, Helena Qualifications (if required): Psychiatrist	Governor	6/30/2016
Mr. Bowman Smelko, Helena Qualifications (if required): Psychologist	Governor	6/30/2016
Ms. Vicki Waddington, Sidney Qualifications (if required): Clergy	Governor	6/30/2016
Noxious Weed Management Advisory Council (Agriculture) Mr. Jack Eddie, Dillon Qualifications (if required): Montana Weed Control Association	Governor	7/1/2016
Mr. Jim Olivarez, Missoula Qualifications (if required): consumer group	Governor	7/1/2016
Ms. Jennifer Anderson Vermillion, Livingston Qualifications (if required): Recreationist or Wildlife Group	Governor	7/1/2016
Mr. Dick Zoanni, Sidney Qualifications (if required): Eastern Montana Weed District Representative	Governor	7/1/2016

VACANCIES ON BOARDS AND COUNCILS -- MAY 1, 2016 THROUGH JULY 31, 2016

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Petroleum Tank Release Compensation Board (Environmental Quality)		
Mr. Jerry M. Breen, Choteau	Governor	7/1/2016
Qualifications (if required): Representative of the Independent Petroleum Markets		
Mr. Tom Downey, Butte	Governor	7/1/2016
Qualifications (if required): Representative of the Insurance Industry		
Mr. Roger Noble, Kalispell	Governor	7/1/2016
Qualifications (if required): Representative of the Petroleum Services Industry		
Mr. Keith Schnider, Great Falls	Governor	7/1/2016
Qualifications (if required): representative of the insurance industry		
Potato Commodity Advisory Council (Agriculture)		
Mr. Brad Haidle, Fallon	Director	5/20/2016
Qualifications (if required): Potato Producer		
Mr. Pat Fleming, Pablo	Director	5/20/2016
Qualifications (if required): Potato Producer		
Public Defenders Commission (Administration)		
Ms. Bonnie Olson, Marion	Governor	7/1/2016
Qualifications (if required): Public Representative nominated by the Speaker of the House		
Mr. Michael Metzger, Billings	Governor	7/1/2016
Qualifications (if required): Representative of the Petroleum Services Industry		

VACANCIES ON BOARDS AND COUNCILS -- MAY 1, 2016 THROUGH JULY 31, 2016

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Small Business Compliance Assistance Advisory Council (Environmental Quality)		
Ms. Michelle Bryan Mudd, Missoula	Governor	5/1/2016
Qualifications (if required): Public Representative		
Ms. Diana Vanek, Bozeman	Governor	5/1/2016
Qualifications (if required): Public Representative		
State Banking Board (Administration)		
Mr. Bart Langemeier, Red Lodge	Governor	7/1/2016
Qualifications (if required): National Bank Officer		
Ms. Amy Rapp, Great Falls	Governor	7/1/2016
Qualifications (if required): Public Representative		
State Library Commission (Education)		
Ms. Fredricka Hunter, Missoula	Governor	5/22/2016
Qualifications (if required): Public Representative		
Mr. Bruce Newell, Helena	Governor	5/22/2016
Qualifications (if required): Public Representative		
State Tribal Economic Development Commission (Commerce)		
Rep. Bill Whitehead, Wolf Point	Governor	6/30/2016
Qualifications (if required): Assiniboine and Sioux Tribes Alternate		
Mr. Rodney Miller, Wolf Point	Governor	6/30/2016
Qualifications (if required): Fort Peck Tribe Representative		

VACANCIES ON BOARDS AND COUNCILS -- MAY 1, 2016 THROUGH JULY 31, 2016

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
State Tribal Economic Development Commission (Commerce) cont. Mr. Roger "Sassy" Running Crane, Browning Qualifications (if required): Blackfeet Tribe's member	Governor	6/30/2016
Ms. Cheryl Reevis, Browning Qualifications (if required): Blackfeet Tribe's alternate member	Governor	6/30/2016
Dr. Kenneth Ryan, Poplar Qualifications (if required): Fort Peck Tribe alternate	Governor	6/30/2016
Mr. Garrett Big Leggins, Poplar Qualifications (if required): Assiniboine and Sioux Tribes Representative	Governor	6/30/2016
Mr. Harry Barnes, Browning Qualifications (if required): Blackfeet Nation Representative	Governor	6/30/2016
Mr. William Old Chief, Browning Qualifications (if required): Blackfeet Nation Alternate Representative	Governor	6/30/2016
Teachers' Retirement Board (Administration) Mr. Darrell Layman, Glendive Qualifications (if required): retired teacher	Governor	7/1/2016
Mr. Jeff Greenfield, Shepherd Qualifications (if required): teacher	Governor	7/1/2016

VACANCIES ON BOARDS AND COUNCILS -- MAY 1, 2016 THROUGH JULY 31, 2016

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Teachers' Retirement Board (Administration) cont. Mrs. Janice Muller, Hamilton Qualifications (if required): Active Teacher	Governor	7/1/2016
Tourism Advisory Council (Commerce) Ms. Rhonda Fitzgerald, Whitefish Qualifications (if required): Glacier Country Region	Governor	7/1/2016
Mr. Stan Ozark, Glasgow Qualifications (if required): Missouri River Region	Governor	7/1/2016
Mr. Bill McGladdery, Butte Qualifications (if required): Goldwest Country Region	Governor	7/1/2016
Mr. Dan Austin, Billings Qualifications (if required): Southeast Montana Country Region	Governor	7/1/2016
Mr. Mark Anderlik, Missoula Qualifications (if required): Glacier Country Region	Governor	7/1/2016