

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 14

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 The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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)	NOTICE OF PROPOSED
ARM 2.4.403, 2.4.404, 2.4.406,	)	AMENDMENT
2.4.410, and 2.4.411 pertaining to the)	
Single Audit Act	)	NO PUBLIC HEARING
	)	CONTEMPLATED

TO: All Concerned Persons

1. On September 8, 2011, the Department of Administration proposes to amend the above-stated rules.

2. The Department of Administration will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Administration no later than 5:00 p.m. on August 18, 2011, to advise us of the nature of the accommodation that you need. Please contact Kay Gray, Local Government Services Bureau, 301 South Park Avenue – Room 340, P.O. Box 200547, Helena, Montana 59620-0547; telephone (406) 841-2903; Montana Relay Service 711; facsimile (406) 841-2910; or e-mail to kaygray@mt.gov.

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

2.4.403 PENALTIES FOR FAILING TO FILE ANNUAL FINANCIAL REPORTS WITHIN PRESCRIBED TIME WITHOUT APPROVED EXTENSION

(1) As provided by 2-7-517, MCA, if a local government entity, ~~other than a school district or associated cooperative,~~ is unable to file its annual financial reports with the department ~~within six months of the end of the local government entity's fiscal year~~ as required by 2-7-503, MCA, the department may grant an extension of time in which to file the financial reports or may waive the fines, fees, and other penalties if the local government entity demonstrates ~~to the department~~ that it has good cause for not submitting the reports within the prescribed time or that the failure to comply was the result of circumstances beyond the entity's control.

(a) and (b) remain the same.

(c) The department shall determine, based on the facts of each case, what constitutes circumstances beyond the entity's control. Examples of circumstances beyond an entity's control may include, but are not limited to, unexpected loss of key accounting staff, loss or inaccessibility of accounting records due to computer malfunction, or natural disaster.

(2) ~~If a local government entity has failed to file its annual financial report with the department within six months of the end of the local government entity's fiscal year, and if the department has not granted an extension of time in which to file the financial report, the department may issue an order to all state agencies requiring~~

~~each agency to withhold payment of any state financial assistance to the local government entity pending receipt of the local government entity's annual financial report.~~

~~(3) Upon receipt of the required annual financial report, the department will notify each state agency that any financial assistance withheld pursuant to the department's order is to be released to the local government entity.~~

(2) If a local government entity has not filed the reports within 180 days of the required dates and the department has not granted an extension for filing the reports, the department shall notify the entity of the fine due and shall provide public notice of the delinquent reports.

(a) Public notice means publishing in the local newspaper, if available, and posting on the department's web site.

(b) Based on the cost of providing public notice, the department shall charge a delinquent filing fee of \$50 for reports not filed within 180 days of the required due dates.

AUTH: 2-7-517, MCA

IMP: 2-7-503, 2-7-517, MCA

STATEMENT OF REASONABLE NECESSITY: The amendments to ARM 2.4.403 are proposed to comply with SB 420 passed by the 2011 Legislature. SB 420 addresses penalties for delinquent filing of required audits and reports by a local government entity to the department; requires the department to adopt rules establishing a fine; and allows the department to waive the penalties under certain circumstances. Specifically, the bill provides that the fine not exceed \$100, based on the cost of providing public notice informing the public that a local government entity failed to timely file required audits and reports. The bill also allows the department to extend the deadlines for filing audits and reports and to waive fines, fees, and other penalties if the entity shows good cause for the delinquency or demonstrates that the failure was the result of circumstances beyond the entity's control.

The amended rule first clarifies how "circumstances beyond the entity's control" will be determined by the department. Since there may be many reasons why a local government fails to file reports, determining what are circumstances beyond the entity's control must necessarily be done based on the facts of each case. However, the department believes that including several examples of such circumstances will provide some clarity for local governments. Not providing any examples would leave these entities in the dark regarding this exception. This situation would not serve the entity's or the department's interests or the public interest.

The amendment also clarifies that "public notice" includes publishing in the local newspaper and posting on the department's web site. The department believes that because most residents have access to the local newspaper, newspaper notice is an appropriate conduit for providing the notice. However, for those people who do not have this access or rely on their computers to obtain

information, posting on the web site is a cost-effective way of providing public notice that helps ensure more widespread public access to the information.

The fee amount of \$50 was calculated based on the estimated cost of publishing a notice in a local newspaper as outlined in ARM 2.67.303. This rule gives authority to the Board of County Printing to establish rates for legal advertising. The department cannot determine how many local governments will be required to pay the fee because it is unknown how many will not file the required reports within 180 days of the required due dates.

Finally, based on the required biennial rule review, portions of ARM 2.4.403(1) and all of (2) and (3) have been deleted because they unnecessarily repeat statute, which is prohibited by 2-4-305(2), MCA.

2.4.404 PENALTY FOR FAILING TO PAY FILING FEE WITHIN 60 DAYS OF DUE DATE (1) ~~As provided by 2-7-514, MCA, local government entities required to submit an annual financial report to the department must pay to the department, at the time the report is submitted, a filing fee as prescribed by ARM 2.4.402.~~

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

(2) (3) If the required filing fee is not submitted to the department within 60 days of ~~receipt~~ the due date of the annual report, the department may add to the filing fee a late payment penalty equal to 10% of the required filing fee for each month or portion of a month that the filing fee is delinquent in excess of 60 days.

(4) and (5) remain the same, but are renumbered (3) and (4).

AUTH: ~~2-7-504~~, 2-7-514, 2-7-517, MCA

IMP: ~~2-7-504~~, 2-7-514, 2-7-517, MCA

STATEMENT OF REASONABLE NECESSITY: The change in the wording of ARM 2.4.404(3) for failure to pay the filing fee penalty is to clarify that the penalty will be calculated, as the title of the rule states, from the due date of the annual financial report not the receipt of the report. There are times when a report is never submitted or submitted well past the due date. The penalty can be more consistently and fairly applied if it is calculated from the due date rather than the submission date.

Based on the required biennial rule review, ARM 2.4.404(1) is deleted because it unnecessarily repeats ARM 2.4.402. Section 2-7-504, MCA, has been deleted as an authority and implemented statute because it was incorrect, and 2-7-514, MCA, has been added as the correct citation.

2.4.406 ROSTER OF INDEPENDENT AUDITORS AUTHORIZED TO CONDUCT AUDITS OF LOCAL GOVERNMENT ENTITIES (1) through (5)(c) remain the same.

(d) have an external quality control review at least once every three years that meets the requirements specified in Government Auditing Standards, as

established by the Comptroller General of the United States, and receive an ~~unqualified review report~~ a peer review rating of "pass" or "pass with deficiencies" from the reviewing firm, team, or association;

(e) through (12) remain the same.

~~(13) Upon termination of a contract for a local government entity audit, if the local government entity fails to present a signed contract to the department for approval with the 90-day period in (12), the department will designate an independent auditor to perform the audit as provided by 2-7-506, MCA.~~

AUTH: 2-7-504, 2-7-506, MCA

IMP: 2-7-504, 2-7-506, MCA

STATEMENT OF REASONABLE NECESSITY: The terminology in ARM 2.4.406(5)(d) regarding external quality control reviews for auditors is changed to conform with wording changes in current accounting standards. The standards now use the terms "pass" or "pass with deficiencies" instead of "unqualified" when denoting a clean opinion. Utilizing terminology consistent with the standards, rather than the department crafting its own terminology, is less confusing for auditors who need to comply with the rules for inclusion on the auditor roster.

Based on the required biennial rule review, ARM 2.4.406(13) is deleted because it unnecessarily repeats statute, which is prohibited by 2-4-305(2), MCA.

2.4.410 REVIEW OF FINANCIAL STATEMENTS (1) through (11) remain the same.

AUTH: ~~2-7-503~~, 2-7-504, MCA

IMP: ~~2-7-503~~, 2-7-504, MCA

STATEMENT OF REASONABLE NECESSITY: Based on the required biennial rule review, ARM 2.4.410 has been changed to eliminate the authority citation 2-7-503, MCA, because there is no specific rulemaking authority in 2-7-503, MCA.

2.4.411 INCORPORATION BY REFERENCE OF VARIOUS STANDARDS, ACCOUNTING POLICIES, AND FEDERAL LAWS AND REGULATIONS

(1) through (4)(a)(xiv) remain the same.

(b) The Federal Single Audit Act of 1984 as amended by the Single Audit Act Amendments of 1996 is codified as Chapter 75 of Title 31 of the United States Code. The code is available at many public libraries and at law offices, and can be accessed at the following web site address: http://www.access.gpo.gov/uscode/title31/subtitlev_chapter75_.html <http://www.gpoaccess.gov/uscode/>.

(c) The circular is available from the federal Office of Management and Budget. A hard copy can be obtained by calling (202) 395-3080. It can also be accessed at the following web site address: <http://www.whitehouse.gov/omb/circulars/a133/a133.html> http://whitehouse.gov/omb/circulars_default/.

(5) through (5)(b) remain the same.

AUTH: ~~2-7-503~~, ~~2-7-504~~, ~~2-7-505~~, ~~2-7-506~~, MCA
IMP: 2-7-503, 2-7-504, 2-7-505, 2-7-506, MCA

STATEMENT OF REASONABLE NECESSITY: Based on the required biennial rule review, ARM 2.4.411 has been changed to provide updated web site addresses for accessing the United States Code and the federal Office of Management and Budget. The authority citation 2-7-503, MCA, has been eliminated because there is no specific rulemaking authority in 2-7-503, MCA.

4. Concerned persons may present their data, views, or arguments concerning the proposed action to Kay Gray, Bureau Chief, Local Government Services Bureau, P.O. Box 200547, Helena, Montana 59620-0547; faxed to the office at (406) 841-2910; e-mailed to kaygray@mt.gov; and must be received no later than 5:00 p.m., August 25, 2011.

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 at the above address no later than 5:00 p.m., August 25, 2011.

6. If the Local Government Services Bureau 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 130 local governments based on the number of Montana local governments.

7. An electronic copy of this Proposal Notice is available through the department's web site at <http://doa.mt.gov/administrativerules.mcp>. 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 Local Government Services Bureau maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this bureau. 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 bureau 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 Kay Gray, Local Government Services Bureau, 301 South Park Avenue – Room 340, P.O. Box 200547, Helena, Montana 59620-0547; faxed to the office at (406) 841-2910; e-mailed to kaygray@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, apply and have been fulfilled. The primary bill sponsor, Steven Gallus, was contacted by mail on June 28, 2011.

By: /s/ Janet R. Kelly
Janet R. Kelly, Director
Department of Administration

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

Certified to the Secretary of State July 18, 2011.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the adoption of New) NOTICE OF PUBLIC HEARING ON
Rules I through XI pertaining to) PROPOSED ADOPTION
English language proficiency (ELP))
standards and performance)
descriptors)

TO: All Concerned Persons

1. On August 24, 2011 at 10:00 a.m. the Board of Public Education will hold a public hearing in the Office of Public Instruction conference room at 1300 11th Avenue, Helena, Montana, to consider the proposed adoption of the above-stated rules.

2. The Board of Public Education 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 board no later than 5:00 p.m. on August 19, 2011, to advise us of the nature of the accommodation that you need. Please contact Steve Meloy, Executive Secretary, 46 North Last Chance Gulch, P.O. Box 200601, Helena, Montana, 59620-0601; telephone (406) 444-0302; fax (406) 444-0847; or e-mail SMeloy@mt.gov.

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

NEW RULE I ENGLISH LANGUAGE PROFICIENCY CONTENT

STANDARD 1 (1) To satisfy the requirements of English language proficiency content standard 1, English language learners must communicate for social and instructional purposes within the school setting.

AUTH: 20-2-114, MCA

IMP: 20-2-121, MCA

NEW RULE II ENGLISH LANGUAGE PROFICIENCY CONTENT

STANDARD 2 (1) To satisfy the requirements of English language proficiency content standard 2, English language learners must communicate information, ideas, and concepts necessary for academic success in the content area of language arts.

AUTH: 20-2-114, MCA

IMP: 20-2-121, MCA

NEW RULE III ENGLISH LANGUAGE PROFICIENCY CONTENT

STANDARD 3 (1) To satisfy the requirements of English language proficiency content standard 3, English language learners must communicate information,

ideas, and concepts necessary for academic success in the content area of mathematics.

AUTH: 20-2-114, MCA

IMP: 20-2-121, MCA

NEW RULE IV ENGLISH LANGUAGE PROFICIENCY CONTENT

STANDARD 4 (1) To satisfy the requirements of English language proficiency content standard 4, English language learners must communicate information, ideas, and concepts necessary for academic success in the content area of science.

AUTH: 20-2-114, MCA

IMP: 20-2-121, MCA

NEW RULE V ENGLISH LANGUAGE PROFICIENCY CONTENT

STANDARD 5 (1) To satisfy the requirements of English language proficiency content standard 5, English language learners must communicate information, ideas, and concepts necessary for academic success in the content area of social studies.

AUTH: 20-2-114, MCA

IMP: 20-2-121, MCA

NEW RULE VI ENGLISH LANGUAGE PROFICIENCY PERFORMANCE

DESCRIPTORS AT THE ENTERING LEVEL (1) At the entering level of English language proficiency, English language learners will process, understand, produce, or use:

- (a) pictorial or graphic representation of the language of the content areas;
- (b) words, phrases, or chunks of language when presented with one-step commands; directions; WH-, choice, or yes/no questions; or statements with sensory, graphic, or interactive support; and
- (c) oral language with phonological, syntactic, or semantic errors that often impede meaning when presented with basic oral commands, direct questions, or simple statements with sensory, graphic, or interactive support.

AUTH: 20-2-114, MCA

IMP: 20-2-121, MCA

NEW RULE VII ENGLISH LANGUAGE PROFICIENCY PERFORMANCE

DESCRIPTORS AT THE EMERGING LEVEL (1) At the emerging level of English language proficiency, English language learners will process, understand, produce, or use:

- (a) general language related to the content areas;
- (b) phrases or short sentences; and
- (c) oral or written language with phonological, syntactic, or semantic errors that often impede the meaning of the communication when presented with one to

multiple-step commands, directions, questions, or a series of statements with sensory, graphic, or interactive support.

AUTH: 20-2-114, MCA

IMP: 20-2-121, MCA

NEW RULE VIII ENGLISH LANGUAGE PROFICIENCY PERFORMANCE DESCRIPTORS AT THE DEVELOPING LEVEL (1) At the developing level of English language proficiency, English language learners will process, understand, produce, or use:

- (a) general and some specific language of the content areas;
- (b) expanded sentences in oral interaction or written paragraphs; and
- (c) oral or written language with phonological, syntactic, or semantic errors that may impede the communication, but retain much of its meaning, when presented with oral or written, narrative or expository descriptions with sensory, graphic, or interactive support.

AUTH: 20-2-114, MCA

IMP: 20-2-121, MCA

NEW RULE IX ENGLISH LANGUAGE PROFICIENCY PERFORMANCE DESCRIPTORS AT THE EXPANDING LEVEL (1) At the expanding level of English language proficiency, English language learners will process, understand, produce or use:

- (a) specific and some technical language of the content areas;
- (b) a variety of sentence lengths of varying linguistic complexity in oral discourse or multiple, related sentences or paragraphs; and
- (c) oral or written language with minimal phonological, syntactic, or semantic errors that do not impede the overall meaning of the communication when presented with oral or written connected discourse with sensory, graphic, or interactive support.

AUTH: 20-2-114, MCA

IMP: 20-2-121, MCA

NEW RULE X ENGLISH LANGUAGE PROFICIENCY PERFORMANCE DESCRIPTORS AT THE BRIDGING LEVEL (1) At the bridging level of English language proficiency, English language learners will process, understand, produce, or use:

- (a) specialized or technical language of the content areas;
- (b) a variety of sentence lengths of varying linguistic complexity in extended oral or written discourse, including stories, essays, or reports; and
- (c) oral or written language approaching comparability to that of proficient English peers when presented with grade level material.

AUTH: 20-2-114, MCA

IMP: 20-2-121, MCA

NEW RULE XI ENGLISH LANGUAGE PROFICIENCY PERFORMANCE DESCRIPTORS AT THE REACHING LEVEL

(1) At the reaching level of English language proficiency, English language learners will process, understand, produce, or use:

- (a) specialized or technical language reflective of the content areas at grade level;
- (b) a variety of sentence lengths of varying linguistic complexity in extended oral or written discourse as required by the specified grade level; and
- (c) oral or written communication in English comparable to proficient English peers.

AUTH: 20-2-114, MCA

IMP: 20-2-121, MCA

4. REASON: The Board of Public Education has determined that it is reasonable and necessary to adopt rules to provide content standards and performance descriptors for English language proficiency. The English language proficiency standards that are being recommended for adoption are specific to English language proficiency with links to academic content standards and address the need for students to become fully proficient in both social and academic English. They meet the federal requirement under Title III, section 3113(b)(2) for specific English language proficiency standards. In addition, their links to academic language have been aligned to the national Common Core State Standards.

5. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Steve Meloy, Executive Secretary, 46 North Last Chance Gulch, P.O. Box 200601, Helena, Montana, 59620-0601; telephone (406) 444-0302; fax (406) 444-0847; or e-mail SMeloy@mt.gov. and must be received no later than 5:00 p.m., August 25, 2011.

6. Steve Meloy, Executive Secretary for the Board of Public Education has been designated to preside over and conduct this hearing.

7. The Board of Public Education 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 for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 5 above or may be made by completing a request form at any rules hearing held by the board.

8. An electronic copy of this proposal notice is available through the Secretary of State's web site at <http://sos.mt.gov/ARM/Register>. The Secretary of State strives to make the electronic copy of 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.

/s/ Steve Meloy
Steve Meloy
Rule Reviewer

/s/ Patty Myers
Patty Myers, Chair
Board of Public Education

Certified to the Secretary of State July 18, 2011.

BEFORE THE DEPARTMENT OF CORRECTIONS
OF THE STATE OF MONTANA

In the matter of the adoption of New) NOTICE OF PUBLIC HEARING ON
Rule I pertaining to expansion of adult) PROPOSED ADOPTION
community corrections contracted)
treatment facilities or programs)

TO: All Concerned Persons

1. On August 19, 2011, at 9:00 a.m., the Department of Corrections will hold a public hearing in Room 3-34 of 5 South Last Chance Gulch, at Helena, Montana, to consider the proposed adoption of the above-stated rule.

2. The Department of Corrections will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Department of Corrections no later than 10:00 a.m. on August 12, 2011, to advise us of the nature of the accommodation that you need. Please contact Cheryl Waits, Department of Corrections, 5 South Last Chance Gulch, Helena, Montana, 59620; telephone (406) 444-4906; fax (406) 444-6450; or e-mail cwaits@mt.gov.

3. The rule proposed to be adopted effective October 1, 2011, provides as follows:

NEW RULE I INCREASE IN CONTRACT CAPACITY (1) The Department of Corrections may biennially increase the department contract capacity by not more than 25 percent for a contracted treatment facility or program that was established through competitive bidding.

(2) The department may biennially increase the contract capacity of a contracted treatment facility or program by more than 25 percent but less than 50 percent for a treatment facility or program that was established through competitive bidding if:

(a) the department has determined, in writing, that the increase is in the best interest of the department;

(b) the increase does not change the nature of the contracted services provided in the facility or program; and

(c) the current contract has at least twenty-four months remaining, including renewals, before expiration.

(3) Before the department executes a contract amendment for an increase of more than 25 percent but less than 50 percent, the department must give notice to the public and to current treatment facility or program providers of its intent to expand the existing treatment facility or program.

(a) The department must publish the notice not less than 90 days in advance of the proposed expansion date.

(b) The notice must request potential contractors to notify the department, in writing, of their interest in providing the same services.

(c) The notice must request potential contractors to provide proof to the department that the potential contractor has the ability to provide the contracted services.

(d) Notice is considered accomplished under this subsection if the department publishes the notice on its web site and sends such notice to each existing department treatment facility or program provider.

(e) The department shall set a reasonable deadline for potential contractors to notify the department.

(f) If the department receives notification under this subsection from a valid potential contractor who is able to provide such services, the department may not proceed without opening up the expansion to competitive bidding.

(4) The department must engage in the competitive procurement process in order to increase by more than 50 percent the contract capacity of a treatment facility or program that was established through the competitive procurement process or to increase the contract capacity of a treatment facility or program that was not established through competitive procurement.

AUTH: 53-1-203, MCA

IMP: 53-1-203, MCA

STATEMENT OF REASONABLE NECESSITY: The 62nd Montana Legislature enacted Senate Bill 72 which mandates the department adopt rules necessary for the expansion of treatment facilities or programs previously established by contract through a competitive procurement process. The department proposes to adopt New Rule I to comply with Senate Bill 72.

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: Cheryl Waits, Department of Corrections, 5 South Last Chance Gulch, Helena, Montana, 59620; telephone (406) 444-4906; fax (406) 444-6450; or e-mail cwaits@mt.gov, and must be received no later than 5:00 p.m., August 25, 2011.

5. Diana L. Koch, Department of Corrections, 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 Myrna Omholt-Mason, 5 South Last Chance Gulch, Helena, Montana, 59620 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, apply and have been fulfilled. The primary bill sponsor was contacted by e-mail on June 10, 2011, and by phone on June 29, 2011.

/s/ Diana L. Koch
Diana L. Koch
Rule Reviewer

/s/ Mike Ferriter
Mike Ferriter
Director
Department of Corrections

Certified to the Secretary of State July 18, 2011.

BEFORE THE DEPARTMENT OF CORRECTIONS
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 20.7.506, 20.7.507, 20.7.510,) PROPOSED AMENDMENT,
20.7.511, adoption of New Rule I and) ADOPTION, AND REPEAL
repeal of 20.7.508 pertaining to siting,)
establishment, and expansion of)
prerelease centers)

TO: All Concerned Persons

1. On August 19, 2011, at 8:00 a.m., the Department of Corrections will hold a public hearing in Room 3-34 of 5 South Last Chance Gulch, at Helena, Montana, to consider the proposed amendment, adoption, and repeal of the above-stated rules.

2. The Department of Corrections will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Department of Corrections no later than 10:00 a.m. on August 12, 2011, to advise us of the nature of the accommodation that you need. Please contact Cheryl Waits, Department of Corrections, 5 South Last Chance Gulch, Helena, Montana, 59620; telephone (406) 444-4906; fax (406) 444-6450; or e-mail cwaits@mt.gov.

3. GENERAL STATEMENT OF REASONABLE NECESSITY: The department proposes to amend ARM 20.7.506, 20.7.507, 20.7.510, and to repeal ARM 20.7.508 in order to clarify the sequence of steps necessary to site a prerelease center. To clarify the sequence of necessary steps, the department proposes to delete the portions of the rules that deal with selection of a specific geographic area and combine them all into one new rule, namely New Rule I.

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

20.7.506 WORKING COMMITTEE (1) and (2) remain the same.
(a) educate the city, town, or county citizens; and
(b) determine if there is public support for a center; ~~and~~
~~(c) if there is support for a center, then to identify and select an appropriate geographical area within the city, town, or county for that center.~~
(3) through (5) remain the same.

AUTH: 53-1-203, MCA
IMP: 53-1-203, MCA

20.7.507 PUBLIC INVOLVEMENT PROCESS (1) In order to determine the level of public support for a center ~~and for a specific geographic area within the city,~~

~~town, or county for the center, the working committee shall develop a process which includes the public in a meaningful way.~~

~~(a) remains the same.~~

~~(b) If there is sufficient public support, then the committee shall determine the level of support for specific geographic areas which the committee is considering within the city or town.~~

~~(2) remains the same.~~

~~(3) Should the committee determine there is support for a center, the committee may move forward to determine the specific geographic area within the city, town, or county for the center.~~

~~(4) The specific geographic area within the city, town, or county which the committee chooses must be in compliance with all applicable laws, codes, ordinances and existing conditions, covenants, restrictions of record, zoning regulations, or be capable of coming into compliance with applicable zoning regulation through the use of a zoning change, variance, conditional use permit, PUD, or other process set forth in the governing zoning regulations.~~

~~(5) The specific geographic area within the city, town, or county must have access to:~~

~~(a) a law enforcement agency capable of emergency response within 15 minutes; and~~

~~(b) 24-hour emergency medical and fire protection services.~~

~~(i) Medical transportation services must be available from a licensed ambulance service.~~

~~(ii) Fire protection must be available by a professional fire protection service. Appropriate fire protection services and response time must be determined by the state fire marshal or the authority having jurisdiction.~~

AUTH: 53-1-203, MCA

IMP: 53-1-203, MCA

20.7.510 REQUEST FOR PROPOSALS (1) After the working committee has approved a specific geographic area of the city, town, or county for the center and the department has shown through surveys that the area has the support of local officials and the public, the department shall request proposals from vendors to construct or acquire a building and operate the center within the boundaries identified for the specific geographic area.

(2) and (3) remain the same.

AUTH: 53-1-203, MCA

IMP: 53-1-203, MCA

20.7.511 EXPANSION OF EXISTING CENTER (1) The Department of Corrections may biennially increase the department contract capacity for a prerelease center by not more than 25 percent without engaging in the competitive procurement process.

(2) The department may biennially increase the contract capacity by more than 25 percent but less than 50 percent without engaging in the competitive

procurement process if:

(a) the department has determined, in writing, that the increase is in the best interest of the department;

(b) the increase does not change the nature of the prerelease services; and

(c) the current contract has at least twenty-four months remaining, including renewals, before expiration.

(3) Before the department executes a contract amendment for an expansion of more than 25 percent but less than 50 percent, the department must give notice to the public and to current treatment facility or program providers of its intent to expand the existing treatment facility or program.

(a) The department must publish the notice not less than 90 days in advance of the proposed expansion date.

(b) The notice must request potential contractors to notify the department, in writing, of their interest in providing the same services.

(c) The notice must request potential contractors to provide proof to the department that the potential contractor has the ability to provide the contracted services.

(d) Notice is considered accomplished under this subsection if the department publishes the notice on its web site and send such notice to each existing department treatment facility or program provider.

(e) The department shall set a reasonable deadline for potential contractors to notify the department.

(f) If the department receives appropriate notification under this subsection, the department may not proceed without opening up the expansion to competitive bidding.

(4) The department may not increase by more than 50 percent the department contract capacity for a prerelease program.

(5) If an existing prerelease center wishes to expand For an expansion of the contract capacity of more than 25 percent, the department shall conduct a public hearing in the neighborhood in which the center is situated. The department shall conduct the hearing in conformity with Title 2, chapter 3, MCA.

(2) through (4) remain the same but renumbered (a) through (c).

(5)(d) TheA prerelease center expansion is subject to any existing conditions, covenants, restrictions of record, and zoning regulations.

AUTH: 53-1-203, MCA

IMP: 53-1-203, MCA

STATEMENT OF REASONABLE NECESSITY: The department is adopting rules to govern the expansion of department treatment facilities or programs, and believes that, to be consistent, it must apply the same concepts to expansion of prerelease centers. The amendments to this rule accomplish that goal and provide similar criteria to prerelease centers as will be in place for treatment facilities and programs.

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

NEW RULE I DETERMINING A SPECIFIC GEOGRAPHIC AREA (1) The committee must select a proposed area with specific identifiable boundaries that it deems suitable for a prerelease center. The proposed area the committee identifies must have access to:

- (a) a law enforcement agency capable of emergency response within 15 minutes;
- (b) 24-hour emergency medical and fire protection services;
- (c) medical transportation services from a licensed ambulance service; and
- (d) fire protection by a professional fire protection service capable of responding within reasonable time as determined by the state fire marshal or the authority having jurisdiction.

(2) The committee shall involve local organizations such as service groups and local government advisory boards to assist the committee to select a specific geographic area for the center.

(3) The specific geographic area within the city, town, or county which the committee chooses must be in compliance with all applicable laws, codes, ordinances and existing conditions, covenants, restrictions of record, zoning regulations, or be capable of coming into compliance with applicable zoning regulation through the use of a zoning change, variance, conditional use permit, PUD, or other process set forth in the governing zoning regulations.

(4) After the working committee has selected the proposed geographic area, the department shall contract with a professional consulting firm to conduct a comprehensive, statistically valid, and nonbiased survey to determine if the area has an appropriate level of support of local officials, the public who live within the geographic area, and the businesses that are located within the geographic area.

(a) To determine support of local officials, the consulting firm shall survey the following local officials:

- (i) members of city, town, or county governing bodies;
- (ii) city, town, or county attorney;
- (iii) chief public defender, if there is one;
- (iv) mayor or chief executive officer of city or town;
- (v) local district judges;
- (vi) local state legislators who represent any portion of the city, town, or county of the proposed geographic area;
- (vii) sheriff; and
- (viii) if there is one, the chief of police.

(b) To determine support of the public, the consulting firm shall survey a statistically valid random sampling of persons who live in the area and persons who own businesses within the geographic area.

(5) The working committee shall approve both surveys.

(6) An appropriate level of support is at least 51 percent of local officials and 60 percent of the public and business owners surveyed.

(7) If the geographic area the committee selects does not garner the appropriate amount of support in the survey, the committee may select another area and proceed with the process indicated in (1) through (5) of this rule.

(8) The department may not move forward and publish a request for proposals until the working committee has selected a specific geographic area and

the department can show through the survey in (3) and (4) of this rule that the area has the support of local officials and the public.

AUTH: 53-1-203, MCA

IMP: 53-1-203, MCA

5. The department proposes to repeal the following rule:

20.7.508 COMPREHENSIVE SURVEY, is found on page 20-114 of the Administrative Rules of Montana.

AUTH: 53-1-203, MCA

IMP: 53-1-203, MCA

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: Cheryl Waits, Department of Corrections, 5 South Last Chance Gulch, Helena, Montana, 59620; telephone (406) 444-4906; fax (406) 444-6450; or e-mail cwaits@mt.gov, and must be received no later than 5:00 p.m., August 25, 2011.

7. Diana L. Koch, Department of Corrections, 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 Myrna Omholt-Mason, 5 South Last Chance Gulch, Helena, Montana, 59620 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.

/s/ Diana L. Koch
Diana L. Koch
Rule Reviewer

/s/ Mike Ferriter
Mike Ferriter
Director
Department of Corrections

Certified to the Secretary of State July 18, 2011.

BEFORE THE DEPARTMENT OF CORRECTIONS
OF THE STATE OF MONTANA

In the matter of the amendment of	)	AMENDED NOTICE AND
ARM 20.9.302, 20.9.306, 20.9.308,	)	EXTENSION OF COMMENT
20.9.311, 20.9.315, and 20.9.320	)	PERIOD ON PROPOSED
pertaining to youth who have been	)	AMENDMENT
paroled from youth correctional)	
facilities)	

TO: All Concerned Persons

1. On May 26, 2011, the Department of Corrections published MAR Notice No. 20-9-47 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 808 of the 2011 Montana Administrative Register, Issue Number 10.

2. A public hearing was held June 28, 2011. No testimony or comments were received. The Department of Corrections is extending the comment period because it has revised the statement of reasonable necessity for the proposed amendment to ARM 20.9.311 pursuant to e-mailed comments received from the Legislative Services Division. Sections 2-4-305(8)(b) and(c), MCA, require that an agency must use an amended proposal notice to correct any deficiencies in a statement of reasonable necessity.

3. The Department of Corrections will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Department of Corrections no later than 5:00 p.m. on August 2, 2011, to advise us of the nature of the accommodation that you need. Please contact Diana L. Koch, Department of Corrections, 5 South Last Chance Gulch, Helena, Montana, 59620; telephone (406) 444-9593; fax (406) 444-4920; or e-mail dkoch@mt.gov.

4. The department proposes to amend ARM 20.9.311 as follows, new matter underlined, deleted matter interlined:

20.9.311 APPEAL (1) through (3) remain as proposed.

(4) The statement shall contain notice to the youth of the youth's right to appeal, within ~~40~~ ten days, the director's decision to the district court in the county where the parole revocation hearing was held and the youth's right to have a written transcript of the hearing if the youth appeals the decision to district court.

(5) Within a reasonable time of notice of the youth's appeal to district court, the department will furnish a transcript of the revocation hearing to the youth's attorney.

AUTH: 52-5-102, 52-5-129, MCA

IMP: 52-5-102, 52-5-126, 52-5-127, 52-5-128, 52-5-129, MCA

STATEMENT OF REASONABLE NECESSITY: The department proposes to amend ARM 20.9.311 to delete the necessity to provide a written transcript of the hearing and to lengthen the amount of time in which the department must provide a recording to the youth and department director. The department does not have the resources to provide written transcription of the hearing in every case, but will provide a transcript if the youth appeals to district court. Also, the department and cannot provide a recording within one business day of the hearing.

5. ARM 20.9.302, 20.9.306, 20.9.308, 20.9.315, and 20.9.320 remain as proposed.

6. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to: Diana L. Koch, Department of Corrections, 5 South Last Chance Gulch, Helena, Montana, 59620; telephone (406) 444-9593; fax (406) 444-4920; or e-mail dkoch@mt.gov, and must be received no later than 5:00 p.m., August 5, 2011.

/s/ Diana L. Koch
Diana L. Koch
Rule Reviewer

/s/ Mike Ferriter
Mike Ferriter
Director
Department of Corrections

Certified to the Secretary of State July 18, 2011.

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

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 24.141.405 fee schedule and) PROPOSED AMENDMENT AND
the adoption of NEW RULE I) ADOPTION
nonroutine applications)

TO: All Concerned Persons

1. On August 18, 2011, at 10:00 a.m., a public hearing will be held in room 439, 301 South Park Avenue, Helena, Montana, to consider the proposed amendment and adoption of the above-stated rules.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the State Electrical Board no later than 5:00 p.m., on August 12, 2011, to advise us of the nature of the accommodation that you need. Please contact Jason Steffins, State Electrical Board, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2329; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2309; e-mail dlibsdele@mt.gov.

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

24.141.405 FEE SCHEDULE (1) through (4) remain the same.

- (a) Contractor ~~200~~ 275
- (b) Master ~~400~~ 135
- (c) Journeyman ~~400~~ 135
- (d) Residential ~~400~~ 135
- (5) through (11) remain the same.

AUTH: 37-1-134, 37-68-201, MCA

IMP: 37-1-134, 37-1-141, 37-1-304, 37-1-305, 37-68-304, 37-68-310, 37-68-311, 37-68-312, 37-68-313, MCA

REASON: The board has determined it is reasonably necessary to increase renewal fees to comply with 37-1-134, MCA, and keep the board's fees commensurate with associated costs. In 2009, the board raised fees by just one-half of the amount of increase recommended by the department. In providing administrative services to the board, the department has now determined that unless the renewal fees are increased as proposed, the board will have a shortage of operating funds by November 2011. The board estimates that the proposed fee

increases will affect 2,109 licensees and result in approximately \$90,495 in additional annual revenue.

4. The proposed new rule provides as follows:

NEW RULE I NONROUTINE APPLICATIONS (1) Applications for initial licensure or renewal that disclose any of the following circumstances are nonroutine and must be reviewed and approved by the board before the license may be issued or renewed:

(a) the applicant's electrician's license was disciplined or the application for an electrician's license was denied in another state or jurisdiction;

(b) the applicant has been convicted of a felony for which the applicant is currently on probation or is otherwise under supervision;

(c) the applicant has been convicted of any of the following felonies committed within the past five years, regardless of whether the applicant is currently on probation:

(i) property crimes including, but not limited to, theft or burglary; or

(ii) crimes of violence including, but not limited to, assault or rape.

(2) For purposes of this rule, any judgment in a criminal case other than acquittal will be deemed a "conviction" for purposes of this rule, without regard to the nature of the plea or whether the applicant received a suspended or deferred sentence.

AUTH: 37-1-131, 37-68-201, MCA

IMP: 37-1-101, 37-68-201, 37-68-311, MCA

REASON: Section 37-1-101, MCA, specifies that the department is responsible for receipt and processing of routine license applications for all boards administratively attached to the department. Because the board meets only quarterly, having the board review all applications containing some type of irregularity has caused unnecessary delays in issuing licenses. The board concluded that with the guidance provided in this new rule, the board's current rules, and in Title 37, chapter 68, MCA, department staff will be able to competently process more electrician applications and issue the licenses and renewals without additional board review.

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 the State Electrical Board, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2309, or by e-mail to dlibsdele@mt.gov, and must be received no later than 5:00 p.m., August 26, 2011.

6. An electronic copy of this Notice of Public Hearing is available through the department and board's site on the World Wide Web at www.electrician.mt.gov. 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.

7. 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 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 State Electrical Board, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; faxed to the office at (406) 841-2309; e-mailed to dlibsdele@mt.gov; or 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. Anne O'Leary, attorney, has been designated to preside over and conduct this hearing.

STATE ELECTRICAL BOARD
JACK FISHER, PRESIDENT

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

/s/ KEITH KELLY
Keith Kelly, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State July 18, 2011

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

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 24.159.301 definitions,) PROPOSED AMENDMENT,
24.159.401 fees, 24.159.662 faculty) ADOPTION, AND REPEAL
for practical nursing programs,)
24.159.901, 24.159.903, 24.159.905,)
24.159.910, and 24.159.915)
medication aides, 24.159.1011)
prohibited intravenous therapies,)
24.159.1024 and 24.159.1224)
licensure by examination, the)
adoption of NEW RULES I through V)
medication aides, and the repeal of)
ARM 24.159.1025 and 24.159.1225)
nurse reexamination)

TO: All Concerned Persons

1. On August 18, 2011, at 1:00 p.m., a public hearing will be held in room 439, 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 Nursing (board) no later than 5:00 p.m., on August 12, 2011, to advise us of the nature of the accommodation that you need. Please contact Cari Harris, Board of Nursing, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2340; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail nurse@mt.gov.

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

24.159.301 DEFINITIONS (1) "Accrediting organization" means a professional organization, ~~which has been approved by the board,~~ that establishes standards and criteria for continuing education programs in nursing, advanced nursing, medicine, and other health care specialties.

(2) through (4) remain the same.

(5) "Charge nurse" means the nurse who is in charge of patient and/or resident care during a nursing shift. An LPN may serve as a charge nurse in the absence of an RN in a ~~long-term~~ long-term care facility, pursuant to 37-8-102, MCA.

(6) "CNOR" means the documented validation of the professional achievement of identified standards of practice by an individual registered nurse providing care for patients before, during, and after surgery.

~~(6)~~ (7) "Competency" means performing skillfully and proficiently the functions that are within the role of the licensee, and, demonstrating the interrelationship of essential knowledge, judgment, and skills.

(7) through (25) remain the same, but are renumbered (8) through (26).

~~(26)~~ (27) "Practical nurse" means the same thing as "licensed practical nurse," "PN," and "LPN," unless the context of the rule dictates otherwise. The practice of practical nursing is defined at 37-8-102, MCA.

(27) through (30) remain the same, but are renumbered (28) through (31).

~~(31)~~ (32) "Registered nurse" means the same thing as "RN" and "professional nurse," unless the context of the rule dictates otherwise. The practice of professional nursing is defined at 37-8-102, MCA.

(32) through (34) remain the same, but are renumbered (33) through (35).

~~(35)~~ (36) "Strategy of care" means the goal-oriented plan developed to assist individuals or groups to achieve optimum health potential. This includes initiating and maintaining comfort measures, promoting and supporting human functions and responses, establishing an environment conducive to ~~well-being~~ well-being, providing health counseling and teaching, and collaborating on certain aspects of the medical regimen, including but not limited to, the administration of medications and treatments.

(36) through (38) remain the same, but are renumbered (37) through (39).

AUTH: 37-1-131, 37-8-202, MCA

IMP: 37-1-131, 37-8-101, 37-8-102, 37-8-202, 37-8-422, MCA

REASON: The board adopted the definition of accrediting organization in November 2008, when the board implemented the continuing education (CE) requirement for advanced practice registered nurses. Since the board implemented CE for RNs and LPNs in late 2010, the board has received numerous requests to approve many professional organizations that establish standards and criteria for continuing education programs in nursing. Having reviewed a significant number of those requests, the board concluded that no such professional organization will fail to meet board approval. The board is amending (1) to delete the process of obtaining board approval as it is unnecessary, time-consuming, and tends to limit nurses' access to quality CE programs.

The 2011 Montana Legislature enacted Chapter 173, Laws of 2011 (House Bill 547), an act providing insurance coverage for Registered Nurse First Assistants (RNFAs), and requiring the board to adopt rules specifying criteria for recognition of registered nurses certified as registered nurse first assistants. The Governor signed the bill on April 14, 2011, and the bill became effective on July 1, 2011.

It is reasonably necessary to add the definition of CNOR to further implement HB 547. The CNOR is a credential that indicates a registered nurse has demonstrated the knowledge and skills denoting competency in the specialized field of perioperative nursing to provide care for patients before, during, and after surgery.

24.159.401 FEES (1) through (14) remain the same.

(15) The fee for medication aide I or II initial licensure is \$25.

(16) The fee for medication aide I or II licensure renewal is \$20 per year.

(17) through (20) remain the same.

AUTH: 37-1-134, 37-1-319, 37-8-202, MCA; Chap. 392, section 6, L. of 2011

IMP: 37-1-134, 37-1-141, 37-8-202, MCA; Chap. 392, section 6, L. of 2011

REASON: The 2011 Montana Legislature enacted Chapter 392, Laws of 2011 (House Bill 377), an act providing for licensure of medication aides employed at long-term care facilities, and giving rulemaking authority to the board to implement the legislation. A chapter number was assigned on May 12, 2011, and the bill will become effective on October 1, 2011. The board is amending this rule to further implement HB 377 and establish a licensure fee for both types of medication aide licenses.

24.159.662 FACULTY FOR PRACTICAL NURSING EDUCATION

PROGRAMS (1) All nursing faculty for practical nursing programs, including part-time, shall hold at least a ~~baccalaureate or master's degree in nursing~~ one of the following degrees from a nationally accredited program:

(a) a baccalaureate degree in nursing, supplemented by courses with coursework in curriculum development, principles and methods of teaching, and measurement and evaluation;

(b) a master's degree in nursing; or

(c) a doctorate degree in nursing or a related field.

(2) and (3) remain the same.

(4) A maximum of ten percent or two faculty members, whichever is greater, based on full-time equivalents, may qualify under an exception at any point in time at a given school.

AUTH: 37-8-202, 37-8-301, MCA

IMP: 37-8-202, 37-8-301, MCA

REASON: The board determined it is reasonably necessary to amend this rule to address confusion by clarifying the level of education required of faculty members teaching in practical nursing education (PN) programs. Individuals have expressed the mistaken belief that faculty of a PN program holding a master's degree must also have taken supplemental courses before being qualified to provide instruction. Such a requirement is inconsistent with ARM 24.159.659, which allows faculty members to teach in registered nursing education (RN) programs with a master's degree and no supplemental courses. The board concluded that this rule is not clear and is amending it accordingly.

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

(1) remains the same.

(2) "General supervision", with respect to a medication aide I, means at least quarterly ~~on-site~~ onsite review, by a supervising nurse, of a medication aide's aide I's medication administration skills, and the guidance of a supervising nurse to include a written plan addressing questions and situations that may arise when the supervising nurse is not available. Such a plan must include access to a health care professional.

(3) "Medication aide I" means an employee of an assisted living facility who, under the general supervision of a Montana licensed nurse, administers PRN and routine medication as defined in ARM 24.159.301, to residents of the assisted living facility, and who:

(a) and (b) remain the same.

(c) has successfully passed a ~~board approved~~ board-approved medication aide I training program and examination.

(4) "Medication aide II" means an employee of a long-term care facility licensed to provide skilled nursing care as defined in 50-5-101, MCA, uses standardized procedures in the administration of drugs as defined in 37-7-101, MCA, as assigned by and under the supervision of a Montana licensed nurse, administers medication to residents of the long-term care facility, and who:

(a) has a high school diploma or equivalent;

(b) is a Certified Nursing Assistant (CNA);

(c) has 4,000 hours of experience as a CNA in a long-term care facility;

(d) maintains a current Cardio-Pulmonary Resuscitation Certification (CPR);

and

(e) has successfully passed a board-specified medication aide II training program.

(5) "Supervision", with respect to medication aide II, means a provision of general supervision by a professional or practical nurse who is on the premises for the accomplishment of medication administration.

AUTH: 37-8-202, MCA; Chap. 392, section 6, L. of 2011

IMP: 37-8-202, MCA; Chap. 392, sections 3 and 6, L. of 2011

REASON: The 2011 Montana Legislature enacted Chapter 392, Laws of 2011 (House Bill 377), an act providing for licensure of medication aides employed at long-term care facilities (Medication Aide II), and giving rulemaking authority to the board to implement the legislation. A chapter number was assigned on May 12, 2011, and the bill will become effective on October 1, 2011.

The board determined it is reasonably necessary to amend the Medication Aide I rules (ARM 24.159.901, 24.159.903, 24.159.905, 24.159.910, and 24.159.915) to further implement HB 377 and distinguish between those and the Medication Aide II rules (proposed New Rules I through IV). These amendments will define Medication Aide II practice, address confusion and ambiguity within the Medication Aide I rules, and streamline licensure processes and requirements where possible between the two medication aide licensure types. Where additional specific bases for a proposed action exist, the board will identify those reasons immediately following that rule.

24.159.903 PURPOSE OF STANDARDS OF PRACTICE FOR THE LICENSED MEDICATION AIDE AIDES (1) The purpose of the ~~standard~~ standards is to:

- (a) establish minimal acceptable levels of safe and effective practice for the medication aide aides; and
- (b) remains the same.

AUTH: 37-1-131, 37-8-202, MCA; Chap. 392, section 6, L. of 2011
IMP: 37-8-101, MCA; Chap. 392, section 6, L. of 2011

24.159.905 GENERAL REQUIREMENTS FOR MEDICATION AIDE I TRAINING PROGRAMS AND INSTRUCTORS (1) The board shall approve medication aide I training programs. The program must include the following components:

- (a) through (d) remain the same.
- (e) care, storage, and regulation of controlled substances and medications;
- (f) through (k) remain the same.
- (l) ~~completion of the board-approved~~ a skills checklist.
- (2) remains the same.
- (3) The training program must assure an instructor to student ratio of ~~no less than~~ one instructor to no more than five students in the clinical practice setting and one instructor to no more than ten students in the clinical laboratory setting. The supervised clinical experience shall be obtained under the direction of a nurse with an unencumbered Montana license, and who need not be the board-approved instructor.
- (4) The board shall approve instructors for medication aide I training programs. The training program instructor must:
 - (a) through (c) remain the same.

AUTH: 37-1-131, 37-8-202, MCA
IMP: 37-8-101, 37-8-202, 37-8-422, MCA

REASON: The board is deleting from (1)(l) the requirement for a board approved skills checklist. It has always been the board's intent that the checklists are created by the training programs to be consistent with the curriculum.

24.159.910 GENERAL REQUIREMENTS FOR LICENSURE AS MEDICATION AIDE I (1) The applicant for licensure may apply to take the Montana medication aide I exam if the applicant:

- (a) has completed a ~~board-approved~~ board-approved medication aide I training program as outlined in these rules; or
- (b) remains the same.
- (2) In order to be licensed as a medication aide I in Montana, the applicant shall pass the ~~board-approved~~ board-approved medication aide I exam ~~at 85 percent proficiency.~~
 - (a) The applicant may ~~retake~~ take the examination ~~once if not successful the first time~~ up to three times. If not successful on the ~~second~~ third try, the applicant

must retake and pass the medication aide I training program before being eligible to take the examination again.

(b) The applicant must pass the exam within ~~six~~ 12 months of satisfactorily completing the medication aide I training program, or else the applicant must complete the training program again before being eligible to take the exam.

(3) The application will be kept on file for one year. If the applicant fails to complete the requirements for application within one year, a new application and fee will be required.

(4) remains the same.

(5) Renewal notices will be sent as specified in ARM 24.101.414, which must be completed and returned to the board before the date set by ARM 24.101.413, together with the renewal fee.

AUTH: 37-1-131, 37-8-202, MCA

IMP: 37-1-131, 37-1-141, 37-8-101, 37-8-202, MCA

REASON: The board determined it is reasonably necessary to delete the 85% required cut score for the Medication Aide I examination in (2). The statutes do not mandate a specific cut score, and such a score does not allow test vendors any flexibility to establish a better test that is sensitive to applicants' level of knowledge.

The board is raising the number of allowable testing attempts from two to three. An exam provider informed the board that candidates gain an advantage after three tries because the test is mastered, not the material required for competency.

Last, the board is increasing the examination time period from 6 to 12 months as the board concluded 6 months was unnecessarily restrictive, but that a 12-month limit is needed to ensure the aide's training is recent enough.

24.159.915 STANDARDS RELATED TO THE RESPONSIBILITIES OF A MEDICATION AIDE'S AIDE I RESPONSIBILITIES AS A MEMBER OF HEALTH TEAM

(1) The medication aide I shall:

(a) through (e) remain the same.

(i) ~~insulin may be subcutaneously injected from a prefilled, labeled, unit dose syringe~~ labeled and preset or predrawn insulin delivery device; and

(f) remains the same.

(i) the patient has a change in medication, and the medication is not available as described in (1)(c); or

(ii) remains the same.

AUTH: 37-1-131, 37-8-202, MCA

IMP: 37-8-202, 37-8-422, MCA

REASON: The board is correcting an outdated term used in (1)(e)(i).

24.159.1011 PROHIBITED INTRAVENOUS (IV) THERAPIES (1) and (1)(a) remain the same.

~~(b) mix unit dose IV medication solutions;~~

(c) through (g) remain the same, but are renumbered (b) through (f).

(2) remains the same.

AUTH: 37-1-131, 37-8-202, MCA

IMP: 37-1-131, 37-8-202, MCA

REASON: In January 2011, both supervising RNs and LPNs suggested the board amend this rule to allow LPNs to mix unit dose IV solutions as it is difficult in small facilities to bring RNs in to mix IVs. It is also important to note that LPNs already mix injections using the same process. The board concluded that this amendment will facilitate the safe and sensible use of an LPN's skills while eliminating a rigid and unreasonable restraint that is inconsistent with the practice of practical nursing in 37-8-102, MCA.

24.159.1024 LICENSURE BY EXAMINATION REQUIREMENTS (1) and (2) remain the same.

(3) All candidates desiring to take or retake the licensing examination for practical nursing shall:

(a) make application for licensure to the board on a form provided by the board, accompanied by the fee required by the board; and

(b) ~~shall~~ make application for ~~the examination or reexamination~~ to the national council licensing examinations on a form distributed by the board as provided by the National Council of State Boards of Nursing, accompanied by the fee required by the National Council of State Boards of Nursing.

(4) through (7) remain the same.

(8) Candidates shall be notified, in writing only, regarding the examination results.

(9) through (11) remain the same.

(12) Individual results of the examination shall not be released to anyone, unless the release is authorized by the candidate in writing.

(13) remains the same.

AUTH: 37-8-202, MCA

IMP: 37-1-131, 37-8-406, 37-8-416, MCA

REASON: The board is amending this rule and ARM 24.159.1224 to align with the proposed repeal of ARM 24.159.1025 and 24.159.1225, and address exam retakes for professional and practical nursing applicants. The rules proposed for repeal limit the number of times applicants take the exam, require applicants submit a plan of study after failing twice, and require that applicants reeducate after failing five times.

There is no national data to support a correlation between any number of exam attempts with the ability of the professional or practical nurse to practice. Also, an educational institution cannot grant the same degree twice, so requiring an applicant to reeducate is not a reasonable requirement. Board staff are available for the candidate to consult should a plan of study be sought by a candidate, but submitting a plan of study does not guarantee success in the next retest. The National Council of State Boards of Nursing (NCSBN), which administers the exams,

has an acceptable process for applicants to follow regarding exams, and the board determined it is unnecessary to set additional limits in rule.

Moreover, the current restriction has no practical purpose since applicants may simply retake the examination in bordering states and then endorse their license into Montana, without consideration of the number of attempts that were necessary to pass the exam.

24.159.1224 LICENSURE BY EXAMINATION REQUIREMENTS (1) and (2) remain the same.

(3) All candidates desiring to take or retake the licensing examination for registered nursing shall:

(a) make application for licensure or reexamination to the board on a form provided by the board, accompanied by the fee required by the board; and

(b) ~~shall~~ make application for ~~the examination~~ or reexamination to the national council licensing examinations on a form distributed by the board as provided by the National Council of State Boards of Nursing, accompanied by the fee required by the National Council of State Boards of Nursing.

(4) through (7) remain the same.

(8) Candidates shall be notified, in writing only, regarding the examination results.

(9) through (11) remain the same.

(12) Individual results of the examination shall not be released to anyone, unless the release is authorized by the candidate in writing.

(13) remains the same.

AUTH: 37-8-202, MCA

IMP: 37-1-131, 37-8-406, 37-8-416, MCA

4. The proposed new rules provide as follows:

NEW RULE I MEDICATION AIDE II TRAINING PROGRAM CURRICULUM

(1) The board adopts and incorporates by reference the curriculum content outline as published in the December 2010 report of House Joint Resolution 17, regarding the utilization of medication aides in long-term care nursing homes. Copies of the curriculum content outline are available from the Board of Nursing, 301 S. Park Avenue, P.O. Box 200513, Helena Montana, 59620, or can be viewed on the Board of Nursing's web site at www.nurse.mt.gov.

(2) The medication aide II must also receive training in the subcutaneous injection of insulin from labeled and preset or predrawn insulin delivery device(s).

AUTH: Chap. 392, section 6, L. of 2011

IMP: Chap. 392, sections 3 and 6, L. of 2011

REASON: The 2011 Montana Legislature enacted Chapter 392, Laws of 2011 (House Bill 377), an act providing for licensure of medication aides employed at long-term care facilities, and giving rulemaking authority to the board to implement

the legislation. A chapter number was assigned on May 12, 2011, and the bill will become effective on October 1, 2011.

The board is proposing New Rules I through IV to implement the legislation and establish licensure qualifications and requirements, application and renewal fees, approved education program curriculum, continuing education requirements, and mandatory cardiopulmonary resuscitation certification.

NEW RULE II GENERAL REQUIREMENTS FOR LICENSURE AS MEDICATION AIDE II (1) The applicant for licensure as medication aide II must:

- (a) submit a completed application and application fee;
- (b) provide proof of high school diploma or equivalent;
- (c) hold a valid certificate from the Department of Public Health and Human Services as a certified nursing assistant (CNA);
- (d) have been employed as a CNA in a long-term care facility for a minimum of 4,000 hours;
- (e) hold a valid CPR certificate;
- (f) provide proof of successful passage of the board-approved medication aide II exam at 80 percent proficiency; and
- (g) provide a certificate of completion from a medication aide II training program as outlined in these rules; or
- (h) hold an unencumbered certification or license in another state or U.S. jurisdiction that is determined by the board to be reasonably equivalent to the board-specified program.

(2) The application will be kept on file for one year. If the applicant fails to complete the requirements for application within one year, a new application and fee will be required.

(3) Licenses shall be issued for one-year periods and shall expire on the date set by ARM 24.101.413.

(4) Renewal notices will be sent as specified in ARM 24.101.414, which must be completed and returned to the board before the date set by ARM 24.101.413, together with the renewal fee.

AUTH: Chap. 392, section 6, L. of 2011

IMP: Chap. 392, sections 3 and 6, L. of 2011

NEW RULE III STANDARDS RELATED TO THE RESPONSIBILITIES OF A MEDICATION AIDE II (1) The medication aide II shall:

- (a) practice only in a long-term care facility licensed to provide skilled nursing care as defined by 50-5-101, MCA;
- (b) practice under the supervision of a professional or practical nurse who holds an unencumbered Montana nursing license and is on the premises;
- (c) administer medications only by allowable routes as defined in ARM 24.159.901, except insulin may be subcutaneously injected from a labeled and preset or predrawn insulin delivery device;
- (d) notify the supervising nurse if the medication aide II has observed a change in the normal condition of the patient; and
- (e) follow the conduct rules as found in ARM 24.159.2301.

- (2) A medication aide II cannot:
 - (a) administer PRN medication as defined in ARM 24.159.301;
 - (b) convert or calculate dosages;
 - (c) take verbal orders related to changes in medications or dosages; or
 - (d) provide information or education to a patient beyond basic knowledge of medications and medication administration.

AUTH: Chap. 392, section 6, L. of 2011

IMP: Chap. 392, sections 4 and 6, L. of 2011

NEW RULE IV CONTINUING EDUCATION REQUIREMENTS FOR MEDICATION AIDE II (1) A Montana licensed medication aide II must complete 12 contact hours of continuing education each annual license renewal period. The continuing education must be in pharmacology and medication administration.

(2) The board may prorate the requirement for continuing education contact hours upon the written request of a medication aide II who practices in Montana for a period of less than one year.

AUTH: Chap. 392, section 6, L. of 2011

IMP: Chap. 392, sections 3 and 6, L. of 2011

NEW RULE V REGISTERED NURSE FIRST ASSIST (1) A registered nurse first assistant (RNFA) is a perioperative registered nurse who:

- (a) is certified as a CNOR with proof of completion from the Competency and Credentialing Institute (CCI) approved RNFA education program;
- (b) works in collaboration with the surgeon and other health care team members to achieve optimal patient outcomes;
- (c) has acquired the necessary knowledge, judgment, and skills specific to the expanded role of RNFA clinical practice;
- (d) intraoperatively practices at the direction of the surgeon; and
- (e) does not concurrently function as a scrub person.

AUTH: 37-8-202, MCA

IMP: 33-22-114, 33-31-102, 37-8-202, MCA

REASON: The 2011 Montana Legislature enacted Chapter 173, Laws of 2011 (House Bill 547), an act providing insurance coverage for Registered Nurse First Assistants (RNFAs), and requiring the board to adopt rules specifying criteria for recognition of registered nurses certified as registered nurse first assistants. The Governor signed the bill on April 14, 2011, and the bill became effective on July 1, 2011. It is reasonably necessary to adopt New Rule V to further implement HB 547 to identify the role of a RNFA and require certification through a nationally recognized professional nursing organization.

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

24.159.1025 PRACTICAL NURSE REEXAMINATION found at ARM page 24-16571.

AUTH: 37-1-131, 37-8-202, 37-8-406, MCA
IMP: 37-8-202, 37-8-416, MCA

REASON: See reasonable necessity for ARM 24.159.1024.

24.159.1225 REGISTERED NURSE REEXAMINATION found at ARM page 24-16614.

AUTH: 37-1-131, 37-8-202, 37-8-406, MCA
IMP: 37-8-202, 37-8-406, MCA

REASON: See reasonable necessity for ARM 24.159.1024.

6. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Board of Nursing, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to nurse@mt.gov, and must be received no later than 5:00 p.m., August 26, 2011.

7. An electronic copy of this Notice of Public Hearing is available through the department and board's site on the World Wide Web at www.nurse.mt.gov. 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.

8. 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 the person wishes to receive notices regarding all board administrative rulemaking proceedings or other administrative proceedings. The request must indicate whether e-mail or standard mail is preferred. Such written request may be sent or delivered to the Board of Nursing, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; faxed to the office at (406) 841-2305; e-mailed to nurse@mt.gov; or made by completing a request form at any rules hearing held by the agency.

9. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted on June 7, 2011, by electronic mail.

10. Tyler Moss, attorney, has been designated to preside over and conduct this hearing.

BOARD OF NURSING
KATHY HAYDEN, LPN

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

/s/ KEITH KELLY
Keith Kelly, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State July 18, 2011

BEFORE THE BOARD OF REAL ESTATE APPRAISERS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of) NOTICE OF PROPOSED
ARM 24.207.505 and 24.207.506) AMENDMENT
qualifying education requirements for)
licensed real estate appraisers and) NO PUBLIC HEARING
residential certification) CONTEMPLATED

TO: All Concerned Persons

1. On September 12, 2011, the Board of Real Estate Appraisers (board) proposes to amend 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 the rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the board no later than 5:00 p.m., on August 19, 2011, to advise us of the nature of the accommodation that you need. Please contact Board of Real Estate Appraisers, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406)841-2354; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2323; e-mail dlibsrea@mt.gov.

24.207.505 QUALIFYING EDUCATION REQUIREMENTS FOR LICENSED REAL ESTATE APPRAISERS (1) through (3) remain the same.

(4) To upgrade from a trainee to a licensed real estate appraiser, an applicant may use education obtained for licensure as a trainee, as long as the education meets the required core curriculum as outlined in ~~ARM 24.207.506~~ this rule.

(5) remains the same.

AUTH: 37-1-131, 37-54-105, MCA

IMP: 37-1-131, 37-54-105, 37-54-202, MCA

REASON: The board is amending this rule to correct an inaccurate reference to the appraiser core curriculum as it is located within this rule.

24.207.506 QUALIFYING EDUCATION REQUIREMENTS FOR RESIDENTIAL CERTIFICATION (1) Applicants for certification as certified residential real estate appraisers shall provide evidence of completion of ~~420~~ 200 hours of board-approved instruction in the required core curriculum.

~~(2) In addition to the topics listed in ARM 24.207.505, applicants for certification as a certified residential real estate appraiser shall demonstrate that their education involved coverage of the required core curriculum requirements.~~

(3) through (3)(k) remain the same, but are renumbered (2) through (2)(k).

~~(4)~~ (3) To upgrade from a trainee or a licensed real estate appraiser to a certified residential real estate appraiser, an applicant may use education obtained for licensure as a licensed real estate appraiser, as long as the education meets the required core curriculum in this section.

(5) through (5)(e) remain the same, but are renumbered (4) through (4)(e).

AUTH: 37-1-131, 37-54-105, 37-54-303, MCA

IMP: 37-1-131, 37-54-105, 37-54-303, MCA

REASON: The board is amending this rule to correct the total hours required for certified residential appraisal licensure to align with the revised Appraisal Qualification Board (AQB) requirements. The AQB is the federal body that establishes the qualifications for appraisers. Montana must amend its requirements to remain federally compliant. The board initially amended the total hour requirement in (3) to 200 hours when the AQB requirements changed effective January 1, 2008. The board inadvertently missed correcting this additional reference to the former 120 hours and is doing so now. The board is deleting (2) as redundant and unnecessary since all appraisers must fulfill the requirements of ARM 24.207.505.

4. Concerned persons may submit their data, views, or arguments concerning the proposed amendment in writing to the Board of Real Estate Appraisers, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2323, or by e-mail to dlibsrea@mt.gov, to be received no later than 5:00 p.m., August 25, 2011.

5. If persons who are directly affected by the proposed amendment wish to express their data, views, and arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments they have to Board of Real Estate Appraisers, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2323, or by e-mail to dlibsrea@mt.gov. The comments must be received no later than August 25, 2011.

6. If the board receives requests for a public hearing on the proposed amendment from either 10 percent or 25, whichever is less, of the persons who are directly affected by the proposed rules; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 7 persons based on 67.

7. An electronic copy of this notice is available through the department and board's site on the World Wide Web at www.realestateappraiser.mt.gov. 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.

8. 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 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 Real Estate Appraisers, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, faxed to the office at (406) 841-2323, e-mailed to dlibsdua@mt.gov, or made by completing a request form at any rules hearing held by the agency.

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

BOARD OF REAL ESTATE APPRAISERS
JENNIFER MCGINNIS, CHAIRPERSON

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

/s/ KEITH KELLY
Keith Kelly, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State July 18, 2011

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the adoption of New	)	NOTICE OF ADOPTION
Rule I pertaining to department approval	)	AND AMENDMENT
of loan agreement form, and the)	
amendment of ARM 2.59.1505)	
pertaining to examination of deferred)	
deposit lenders)	

TO: All Concerned Persons

1. On May 12, 2011, the Department of Administration, Division of Banking and Financial Institutions, published MAR Notice No. 2-59-454 regarding the proposed adoption and amendment of the above-stated rules at page 692 of the 2011 Montana Administrative Register, issue number 9.

2. No comments were received.

3. The department has adopted New Rule I (ARM 2.59.1514) exactly as proposed.

4. The department has amended ARM 2.59.1505 exactly as proposed.

By: /s/ Sheryl Olson
Sheryl Olson, Deputy Director
Department of Administration

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

Certified to the Secretary of State July 18, 2011.

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 4.13.1001A pertaining to the)
State Grain Lab Pricing)

TO: All Concerned Persons

1. On May 12, 2011 the Department of Agriculture published MAR Notice No. 4-14-186 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 696 of the 2011 Montana Administrative Register, Issue Number 9.

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

3. No comments or testimony were received.

/s/ Cort Jensen _____
Cort Jensen
Rule Reviewer

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

Certified to the Secretary of State July 18, 2011.

BEFORE THE STATE AUDITOR AND COMMISSIONER OF INSURANCE
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF AMENDMENT AND
ARM 6.6.4601 and 6.6.4602, and the	)	ADOPTION
adoption of NEW RULE I pertaining to)	
Montana Life and Health Insurance)	
Guaranty Association Act and Notice)	
Concerning Coverage Limitations and)	
Exclusions)	

TO: All Concerned Persons

1. On May 12, 2011, the State Auditor and Commissioner of Insurance published MAR Notice No. 6-192 regarding the public hearing on the proposed amendment and adoption of the above-stated rules at page 700 of the 2011 Montana Administrative Register, issue number 9.

2. On June 2, 2011, the State Auditor and Commissioner of Insurance held a public hearing to consider the proposed amendment and adoption of the above-stated rules. One comment was received by the June 10, 2011, comment deadline.

3. The commissioner has thoroughly considered the comment received. A summary of the comment received and the commissioner's response are as follows:

COMMENT 1: One comment was received from the American Council of Life Insurers (ACLI) expressing general support for the amendment and adoption of the administrative rules as proposed, but expressing concern regarding the applicability date of the rule changes. The ACLI stated that insurers need a minimum of 60 days to implement the changes to the notice form and suggested further amending ARM 6.6.4602 to state that the notice adopted in New Rule I (ARM 6.6.4603) would be delivered to policyowners for policies issued or renewed on or after October 1, 2011.

RESPONSE 1: The Montana Life and Health Insurance Guaranty Association Act provides at Mont. Code Ann. § 33-10-210(2), that after the Commissioner approves the notice to policyowners, member insurers have 60 days to begin issuing the notice. Accordingly, it is not necessary to further amend ARM 6.6.4602 to allow 60 days for member insurers to begin issuing the new notice because the statute already provides this.

A date certain to begin using the new notice can be determined by counting 60 days from the effective date of these rule changes. The Insurance Department anticipates that the Notice of Amendment and Adoption for these rule changes will be published in the Montana Administrative Register on July 28, 2011, and therefore on July 29, 2011, the changes would be effective pursuant to Mont. Code Ann. § 2-4-306, and would be adopted by the Commissioner. Given 60 days under Mont.

Code Ann. § 33-10-210(2) to begin using the new notice, member insurers should begin issuing the new notice no later than September 27, 2011, to be in compliance.

4. The commissioner has amended ARM 6.6.4601 and 6.6.4602 exactly as proposed.

5. The commissioner has adopted New Rule I (ARM 6.6.4603) exactly as proposed.

/s/ Christina L. Goe
Christina L. Goe
Rule Reviewer

/s/ Jesse Laslovich
Jesse Laslovich
Chief Legal Counsel

Certified to the Secretary of State July 18, 2011.

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

In the matter of the repeal of a)	
temporary emergency rule closing the	)	NOTICE OF REPEAL OF A
Belt Creek within Sluice Boxes State	)	TEMPORARY EMERGENCY RULE
Park from Logging Creek Bridge to)	
Riceville Bridge in Cascade County)	

TO: All Concerned Persons

1. On May 23, 2011 the Fish, Wildlife and Parks Commission (commission) adopted a temporary emergency rule closing Belt Creek within Sluice Boxes State Park from Logging Creek Bridge to Riceville Bridge in Cascade County, published at page 1033 of the 2011 Montana Administrative Register, Issue No. 11. Belt Creek was closed due to high water flows that created large rapids, boils, and eddies creating dangerous boating conditions. This situation constituted an imminent peril to the public health, safety, and welfare of anyone recreating on the creek.

2. As conditions have substantially changed and public safety is no longer an issue, the temporary emergency rule closing Belt Creek within Sluice Boxes State Park from Logging Creek Bridge to Riceville Bridge in Cascade County, MAR Notice No. 12-369, is no longer necessary. As this situation no longer constitutes an imminent peril to public health, safety, and welfare, the department is repealing the rule. The repeal of the rule will be sent as a press release to newspapers throughout the state. Also, signs informing the public of the closure will be removed at access points. The repeal notice will be sent to interested parties, and published in Issue No. 14 of the 2011 Montana Administrative Register.

3. The repeal of the temporary emergency rule is effective July 8, 2011.

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

/s/ Joe Maurier
Joe Maurier, Secretary
Fish, Wildlife and Parks Commission

/s/ William A. Schenk
William A. Schenk
Rule Reviewer

Certified to the Secretary of State July 8, 2011.

BEFORE THE PETROLEUM TANK RELEASE COMPENSATION BOARD
OF THE STATE OF MONTANA

In the matter of the amendment of ARM)	NOTICE OF AMENDMENT
17.58.326, 17.58.336, and 17.58.340)	
pertaining to operation and management)	(PETROLEUM TANK RELEASE
of petroleum storage tanks, review and)	COMPENSATION BOARD)
determination of claims for)	
reimbursement, and third-party damages)	

TO: All Concerned Persons

1. On May 12, 2011, the Petroleum Tank Release Compensation Board published MAR Notice No. 17-321 regarding a notice of public hearing on the proposed amendment of the above-stated rules at page 720, 2011 Montana Administrative Register, issue number 9.

2. The board has amended the rules exactly as proposed.

3. No comments or testimony were received.

Reviewed by:	PETROLEUM TANK RELEASE COMPENSATION BOARD
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/s/ James M. Madden
 JAMES M. MADDEN
 Rule Reviewer

By: /s/ Roger Noble
 ROGER NOBLE
 Presiding Officer

Certified to the Secretary of State July 18, 2011.

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

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 24.11.2221, pertaining to)
unemployment insurance rates for)
governmental entities)

TO: All Concerned Persons

1. On June 9, 2011, the Department of Labor and Industry (department) published MAR Notice No. 24-11-258 regarding the public hearing on the above-stated rule at page 1002 of the 2011 Montana Administrative Register, Issue Number 11.

2. On June 30, 2011, a public hearing was held. No members of the public attended the hearing and no oral or written comments were submitted. No written comments were received during the comment period.

3. The department has amended the rule as proposed.

4. As stated in the proposal notice, the amended rate schedule will be applied to wages paid in the first calendar quarter of the state fiscal year, which began on July 1, 2011, and thereafter.

/s/ MARK CADWALLADER
Mark Cadwallader
Alternate Rule Reviewer

/s/ KEITH KELLY
Keith Kelly
Commissioner
Department of Labor and Industry

Certified to the Secretary of State July 18, 2011

BEFORE THE BOARD OF PERSONNEL APPEALS
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 24.26.643 pertaining to petitions)
for decertification before the Board of)
Personnel Appeals)

TO: All Concerned Persons

1. On June 9, 2011, the Board of Personnel Appeals (board) published MAR Notice No. 24-26-257 regarding the public hearing on the amendment of the above-stated rule on page 1006 of the 2011 Montana Administrative Register, Issue Number 11.

2. On June 30, 2011, a public hearing was held at which a member of the public made oral comments. Additional written comments were received during the comment period.

3. The Board of Personnel Appeals (board) has thoroughly considered the comments and testimony received from the public. The following is a summary of the public comments received and the board's response to those comments:

Comment 1: There were two commenters that opposed the proposed amendment to the rule on the grounds that it represented a substantial change. One commenter contends that the amendment greatly expands a hearing officer's interpretation of the rule that determined that a petition for decertification could only be filed on the terminal date of a collective bargaining agreement and not after the terminal date of a collective bargaining agreement. The commenter contends that this puts unions, particularly public employee unions, at a distinct disadvantage because the union would feel forced to unnecessarily compromise to ensure that negotiations are completed and a new agreement in place before a terminal date rather than facing a decertification petition.

Response 1: The board acknowledges that the rule change represents a substantial change to the manner in which the board's hearing officer interpreted the existing rule on decertification. However, the rule change does not represent a substantial change in the manner in which the board has been conducting business. Prior to the ruling, the board routinely accepted petitions for decertification after the terminal date of a collective bargaining agreement. Consequently, the amendment merely clarifies the board's standard practice.

Comment 2: One commenter wrote in support of the proposed amendment on the grounds that it conforms to existing legal precedent in collective bargaining laws. The commenter notes that the board has been interpreting the rule in a manner that has allowed decertification petitions to be filed on or after the terminal date of a contract. Further, this commenter noted that there is no precedent for interpreting

the rule in the manner that would disallow petitions after the terminal date and to do so would create a significant practical burden on a petitioner.

Response 2: The board acknowledges the comment.

Comment 3: One commenter opposed the board's changing the language in the rule from "shall" to "may." The commenter feels the amendment will unnecessarily expand the field of persons or parties that would be able to file a petition for decertification.

Response 3: The board believes that the amendment will not alter the standing of interested parties that may file a petition for decertification rather it corrects a verbal auxiliary from a mandatory to a discretionary. The filing of a petition for decertification is not a mandatory act.

4. The board has amended the following rule as proposed: ARM 24.26.643.

/s/ MARK CADWALLADER
Mark Cadwallader
Alternate Rule Reviewer

/s/ JACK HOLSTROM
Chair
Board of Personnel Appeals
Department of Labor and Industry

/s/ KEITH KELLY
Keith Kelly
Commissioner
Department of Labor and Industry

Certified to the Secretary of State July 18, 2011

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

In the matter of the adoption of New) NOTICE OF ADOPTION
Rules I through XIII pertaining to the)
Montana Medicaid Provider Incentive)
Program for electronic healthcare)
records)

TO: All Concerned Persons

1. On May 26, 2011, the Department of Public Health and Human Services published MAR Notice No. 37-536 pertaining to the public hearing on the proposed adoption of the above-stated rules at page 824 of the 2011 Montana Administrative Register, Issue Number 10.

2. The department has adopted the above-stated rules as proposed: New Rule I (37.85.1101), II (37.85.1103), III (37.85.1105), IV (37.85.1107), V (37.85.1109), VI (37.85.1111), VII (37.85.1113), VIII (37.85.1115), IX (37.85.1117), X (37.85.1119), XI (37.85.1121), XII (37.85.1123), XIII (37.85.1125).

3. No comments or testimony were received.

/s/ John Koch
Rule Reviewer

/s/ Mary E. Dalton for
Anna Whiting Sorrell, Director
Public Health and Human Services

Certified to the Secretary of State July 18, 2011.

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

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 37.40.307, 37.40.325,)
37.40.330, and 37.40.361 pertaining)
to nursing facility reimbursement)

TO: All Concerned Persons

1. On May 26, 2011, the Department of Public Health and Human Services published MAR Notice No. 37-537 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 835 of the 2011 Montana Administrative Register, Issue Number 10.

2. The department has amended the above-stated rules as proposed.

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

COMMENT #1: Several commenters stated that these rules implement a 2% provider rate cut. The cost of caring for residents is increasing but instead of an inflationary increase to account for these costs, the rates are being cut. The department's consultant determined that for FY 2010, the cost of caring for a Medicaid beneficiary was \$179.96 per day. The department is now setting rates two years later, at an average of \$161.96 per day. If one considers minimal inflation of 2.5% per year, the cost of a day of care will be \$189.07 during the period for which these rates are being set. On average, the state will be paying only 85% of actual costs of care.

In the statement of reasonable necessity, the department indicated that the final rates set will be dependent on the funding levels authorized by the 62nd Legislature, as well as other factors. The commenter asks the department to clarify what other factors were considered in determining that rates should be cut 2%. What factors, other than the legislative appropriation, would support the reasonableness of cutting rates by 2% when costs of health insurance, food, transportation, and other costs are increasing? Please provide any data developed by the department to determine that a 2% cut was necessary and appropriate.

The decrease in reimbursement rates will make it nearly impossible to make improvements to the facility to provide a home-like environment for residents or purchase necessary equipment to provide safe quality care. A small rural facility is not fortunate enough to have other payer sources to cost-shift the burden of lower reimbursement. Over the long run the rural facility will likely not survive these cuts

and why should they continue to burden private pays residents and families to shoulder the revenue obligation of the state and federal government?

Many facilities have not provided base increases to salaries for the past four years due to the uncertainty of Medicaid reimbursement. As a result, they have experienced increased turnover accompanied by low morale. The continued push towards culture change, resident centered care, and electronic records are examples of the high cost of providing health care to the elderly.

The commenters strongly consider not taking long-term Medicaid referrals for admission to their facility as it would increase the deficit budgeted for Medicaid. Most facilities will not survive these cuts. Residents will be forced to go to facilities outside of their community causing their mental health to suffer, and add a hardship to the family still residing in the home, due to the distance needed to visit. The community and potential residents would be devastated if facilities are unable to accept a Medicaid referral due to lowered reimbursement rate.

The department also indicates that it considered the impact of rate changes on efficacy, economy, quality of care, and access to Medicaid services, and concluded that the rates are still sufficient to meet the requirements of 42 USC 1396(a)(3)(A). The commenters requested the department to provide evidence that these factors were considered, how they were considered, and the results of that consideration. It seems incomprehensible that the department would believe that cutting rates when cost of care is increasing will not result in a decline in quality of care.

The statement of reasonable necessity also discusses the persons and entities affected. However, there is no mention of the nursing facility residents who pay for their own care, nor the taxpayers in counties that pass levies to make up the difference that Medicaid doesn't pay. Did the department consider shifting the costs from Medicaid to nursing facility residents who pay privately for their care? Or to county taxpayers whose property taxes are increased to support their county nursing facility because Medicaid doesn't pay the cost of care?

RESPONSE #1: Federal laws or regulations do not mandate that established Medicaid rates must cover all of the actual costs incurred by nursing facility providers. This is not a standard by which the legal adequacy of rates has been measured in the past, nor is it the standard that will be utilized in the future.

The department has developed rates which are reasonable, adequate, and in compliance with all requirements. The price is reflective of many factors that impact the ways that nursing facilities do business and is set at a level that is fair when considering all of those factors together.

The statewide price is determined through a public process. Factors that are considered in the establishment of this price include the cost of providing nursing facility services, Medicaid recipient's access to nursing facility services, the quality of nursing facility care as well as budgetary or funding levels. The price-based rate

reflects a rate commensurate with the services that are required to be provided by nursing facility providers when meeting federal and state requirements. Predictability of the reimbursement calculation is one of the required features of the price-based reimbursement approach, as is the recognition of the changes in acuity of the residents in a facility over time.

Montana contracts with Myers and Stauffer, LC, to prepare an annual analysis for each nursing facility's cost of providing nursing facility services to Medicaid recipients, and each facility's reimbursement rate. The analysis provides the department with an evaluation tool as to the adequacy of the statewide pricing for Montana nursing facilities and has done so since 2002. The annual rate to cost analysis that is performed for the rate-setting process indicates for state fiscal year 2010 that Montana's Medicaid day-weighted average total rate that includes all supplemental payments (Intergovernmental Fund Transfer (IGT) and direct care wages) was \$170.49 compared to the Medicaid inflated cost of \$177.96, or that on average Medicaid is covering approximately 96% of cost through the various forms of reimbursement to nursing facility providers. This rate comparison supports the determination as to the adequacy of the Medicaid reimbursement rates for nursing facilities.

Montana nursing facilities received additional funding from the (IGT) program in fiscal year (FY) 2011, made possible by taking advantage of the ability to match existing county funds with enhanced federal funds up to the higher Medicaid Upper Payment Limit (UPL), thus providing an enhanced IGT payment to Montana nursing facilities in 2011. County nursing facilities received total combined funding from Medicaid reimbursement, to the UPL or at a minimum a net gain of \$12.35 per day, while noncounty facilities received IGT funding of almost \$5.54 per day in addition to their reimbursement rates and direct care wage funds to support their Medicaid residents in FY 2011.

Providers will continue to participate and benefit from the IGT program that provides supplemental payments in addition to the Medicaid payment rate set through the reimbursement methodology during FY 2012. The IGT program provides funding separately to both county and noncounty facilities.

In FY 2012, Montana nursing facilities will continue to receive increases from direct care wage (DCW) funding through an appropriation that is separate and in addition to the provider rate funding provided through the price-based methodology. The DCW program provides funding separately from the reimbursement rate calculation, to help facilities provide wage increases to its direct care workforce and will provide over \$3.8 million dollars in ongoing funding during this fiscal year that can only be used to provide for lump-sum bonus' or to sustain or increase wage payments to direct care and ancillary workers in nursing facilities. This is approximately \$3.63 per Medicaid day that will be passed on to facilities to provide for wage or bonus increases for direct care and ancillary workers. This funding should serve to mitigate some of the concerns related to providing wages and bonuses to facility workers during the next fiscal year.

The current statewide nursing facility occupancy level is at 70% with several facilities operating at occupancy levels of under 50%. With these levels of occupancy there are open and available beds for those individuals that seek to access nursing facility placements. While some facilities are operating at a much fuller occupancy level there is capacity in many of Montana's nursing facilities to place individuals that require this level of service. We believe that there will be facilities that will admit residents and provide Medicaid-funded nursing facility services.

COMMENT #2: Several commenters believe funding is available to avoid cuts because the total amount of funding appropriated by the Legislature for nursing homes is sufficient to fund higher rates, given a trend of declining utilization. Current utilization and trends indicate that utilization will be significantly below the 1,056,477 bed days being used in the department's calculations. In addition, the Legislature specifically reduced funding for 100 individuals – or 36,500 bed days. If decreasing utilization were properly included in the rate calculation, funding could be restored to current levels.

RESPONSE #2: The department has utilized the funding that was appropriated in House Bill (HB) 2 by Montana's 62nd Legislature in its calculation of the bed days to be utilized in the calculation of the Medicaid rates. Adjustments were made to account for increased caseload projected in the February 2011 caseload estimates which subsequently increased the funding for nursing facilities by approximately \$882,000 in total funds for fiscal year 2012. The corresponding bed days were added to the rate sheet based on this additional funding provided by the Legislature to cover this increased caseload estimate. The day estimates were adjusted downward to account for the 100 waiver slots that are designated for nursing facility transition placements or approximately 36,500 bed days were reduced in the calculation of bed days used in the rate spreadsheet. The department has reviewed paid claims data from April, May, and June of 2011 to estimate the number of days of care that will be provided in fiscal year 2011 in order to determine if there is any flexibility to reduce the Medicaid days used in the 2012 rate calculation based on current utilization patterns. Our projections do not indicate that the days utilized in the rate spreadsheet are overstated or should be adjusted at this time. We continue to monitor utilization and expenditures during the next fiscal year and will be able to assess if any future change is warranted, either upward or downward, as the fiscal year progresses.

Additionally, we have looked at current trends in patient contribution from paid claims data to determine what level of patient contribution will be available for the 2012 rate calculation. Current patient contribution levels are not growing at rates that they historically grew. Patient contribution typically increases on January 1 of each calendar year when the Social Security Administration (SSA) provides a cost of living adjustment (COLA). The COLA usually increases anywhere from 2% to 5% depending on the economy. A more significant increase of approximately 7% was provided in calendar year 2009 resulting in no increase on January 2011 in the COLA. It is not yet certain if there will be a COLA increase or what level of increase

retirement plans will have that may impact the patient contribution provided by nursing facility residents under Medicaid for rate year 2012. The department has estimated a modest increase of 2% in the patient contribution which is being passed on to nursing facility providers rather than being used to offset the amount that Medicaid will reimburse, thus providing an additional amount to nursing facilities in the total computed rate when the patient contribution is added to the state and federal share when calculating the total Medicaid rate paid to facilities.

The department will continue to monitor this rate and whether or not it increases at the estimated levels, and will assess if any future adjustment is warranted to the rate either upward or downward as the fiscal year progresses.

COMMENT #3: Several commenters support the lump-sum distributions appropriated by the Legislature and the methodology outlined for distribution of these funds. However, they believe the language throughout ARM 37.40.361 should be changed to acknowledge that the funding may be used to either increase wages, benefits, or lump-sum payments to workers, or to sustain wage increases previously given with the current biennium one-time-only (OTO) funding for this purpose. When the Legislature discussed this funding, it was discussed in terms of maintaining the current compensation/lump-sum distributions to these workers. Of course, the funding is less than the current funding allocated for this purpose, so it is insufficient to fully sustain current payments but should be used to sustain current payments to the extent possible. The continuation of the direct care wage payment is appreciated.

RESPONSE #3: The department will continue to provide the funding available in the Direct Care Wage (DCW) appropriation in 2012 in the same manner that these funds were distributed in FY 2011. The Legislature appropriated this funding under HB2 to be used to specifically raise provider rates for Medicaid services to allow for wage increases or lump-sum payments to workers who provide direct care and ancillary services. This funding must be used to raise direct care worker wages and related benefits or to provide lump-sum payments in the form of bonuses or stipends to workers who provide direct care and ancillary services. Medicaid providers in the Senior and Long Term Care Division's programs are providers that have consistently received targeted funding appropriated by the Legislature directed at increasing direct care workers wages. The department also recognizes the importance of these funds to provide for wage increases and lump-sum bonuses to direct care workers in communities across Montana. The department does not believe that it is necessary to change the language in ARM 37.40.361 to provide the specific direction that was proposed by the commenter. The department's cover letter, in addition to the instructions on the form that will be filled out by providers in order to receive the direct care worker wage funding, will outline that these funds can also be used, to the extent that the provider can provide the supporting documentation, to sustain wage compensation that was provided with previous direct care wage distributions. The department will also specify that these funds continue to be one-time-only (OTO) and providers should keep this in mind in determining the best way to distribute these funds.

COMMENT #4: One commenter stated that patient acuity levels have steadily risen in the past ten years. Because residents are requiring higher and higher levels of care, the commenter stated more funding is needed to meet growing needs.

RESPONSE #4: Currently, nursing facilities are reimbursed under a case-mix price-based system of reimbursement.

Each nursing facility receives the same operating per diem rate, which is 80% of the statewide price. The remaining 20% of the statewide price represents the direct resident care component of the rate and is acuity adjusted. Each facility's direct resident care component rate is specific to that facility and is based on the acuity of Medicaid residents served in that facility. As acuity changes in each facility based on the level of complexity of the residents being served relative to the statewide acuity, facility rates adjust upward or downward to account for this change in acuity. This was a component that was considered necessary when the price-based system of reimbursement was first adopted to account for and reflect the level of complexity of residents being served and adjust accordingly to account for this change in acuity in each facility. In order to minimize the volatility of the rates from year to year, which was a negative feature of the previous reimbursement system, only 20% of the overall price is adjusted for these changes in acuity.

With no increases in the overall funding in the system of reimbursement, facility rates will adjust upward or downward based on the acuity of their residents, especially if the acuity level is significantly higher or lower than the acuity of the prior year for that facility. This is one feature that providers believed was important in a rate system, the recognition of changes in the level of acuity of residents in each facility. The department will not make the changes to the reimbursement system to provide additional reimbursement for the recognition of acuity in the rate calculation, as this is recognized in the current rate calculation methodology.

COMMENT #5: Several commenters strongly opposed receiving a decrease in the Medicaid reimbursement rate. A small rural nursing facility already operates at a loss mainly due to DPHHS, Office of Public Assistance (OPA) taking up to six months to determine eligibility for Medicaid residents with nothing in return sometimes longer. They constantly have to wonder if they can actually pay their bills. They are fortunate that all they charge is interest (usually 15-18%). Most of the time it seems like all we are doing is exchanging money. Like any business that operates in today's world it takes money to make money.

RESPONSE #5: While Medicaid eligibility is not the subject of this rule notice, the department believes that most, if not all, of the issues related to eligibility can be resolved by working with the local office of public assistance. If there are specific cases that are taking longer than providers believe they should, they could also forward this information to the Human and Community Services Division in Helena for a review. As providers are aware, long-term care/nursing facility eligibility is a complicated process and requires a substantially greater amount of information and

review on the part of the eligibility workers to verify appropriate eligibility. Information that may make the process easier to understand and work through is posted on the Senior and Long Term Care Division web site under the Medicaid link at the following address.

<http://www.dphhs.mt.gov/sltc/programs/Medicaid/IndexMedicaid.shtml>

/s/ John Koch
Rule Reviewer

/s/ Mary E. Dalton for
Anna Whiting Sorrell, Director
Public Health and Human Services

Certified to the Secretary of State July 18, 2011.

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

In the matter of the amendment of	)	NOTICE OF AMENDMENT AND
ARM 37.87.1303, 37.87.1305,	)	REPEAL
37.87.1307, 37.87.1321, and)	
37.87.1333, and the repeal of ARM)	
37.87.1323, 37.87.1338, 37.87.1339,)	
37.87.1340, 37.87.1341, 37.87.1342,)	
37.87.1343, 37.87.1344, 37.87.1345,)	
and 37.87.1346 pertaining to home)	
and community-based services for)	
youth with serious emotional)	
disturbance (waiver))	

TO: All Concerned Persons

1. On May 26, 2011, the Department of Public Health and Human Services published MAR Notice No. 37-538 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 841 of the 2011 Montana Administrative Register, Issue Number 10.

2. The department has amended the above-stated rules as proposed.

3. The department has repealed the above-stated rules as proposed.

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

COMMENT #1: A commenter at the hearing testified that peer-to-peer services are an essential component of wraparound services and argued that the reimbursement rate is too low to recruit, train, and retain peers. The commenter stated reimbursement rates are insufficient to cover the overhead costs of small providers and asks the department to review the rates, taking into consideration the flexibility of smaller agencies.

RESPONSE #1: The department is not, through this proposed ARM amendment, decreasing the rates paid for peer-to-peer services. The department is appreciative of the commenter's testimony and will keep these comments in mind if an opportunity arises where rates may be adjusted.

/s/ John Koch
Rule Reviewer

/s/ Mary E. Dalton for
Anna Whiting Sorrell, Director
Public Health and Human Services

Certified to the Secretary of State July 18, 2011.

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

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 37.86.805, 37.86.1004,)
37.86.1105, 37.86.1506, 37.86.2207,)
37.86.2405, and 37.86.2605)
pertaining to Medicaid acute services)
reimbursement and early and periodic)
screening, diagnostic and treatment)
(EPSDT))

TO: All Concerned Persons

1. On May 26, 2011, the Department of Public Health and Human Services published MAR Notice No. 37-539 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 851 of the 2011 Montana Administrative Register, Issue Number 10.

2. The department has amended the above-stated rules as proposed.

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

COMMENT #1: A comment was made on the proposed changes to the reimbursement of hearing aid services (ARM 37.86.805), Early and periodic Screening, Diagnosis, and Treatment (EPSDT) services (ARM 37.86.2207), and school-based providers (ARM 37.86.2207). The commenter opposes the 2% cuts, stating these cuts will have a devastating effect on both adults and children with hearing loss. The EPSDT cuts will deny services to help adults and children recover essentials skills to communicate and the cuts to school-based services will affect children who need to build their literacy and learning skills. The commenter would like the department to reconsider the proposed reimbursement cuts.

RESPONSE #1: Thank you for your comments on the proposed rules but the department disagrees. The proposed amendments reducing the reimbursement rates to Medicaid providers by up to 2% will begin on August 1, 2011. These provider rate changes are based on a provider rate increase that went into effect in fiscal year (FY) 2010, and was held constant in FY 2011. The 2010 provider rate increase was paid for with one-time-only (OTO) funding appropriated by the 61st Legislative session meeting in 2009. This OTO funding was not included in the budget base for FY 2012 and the funds were not appropriated by the 62nd Legislative session. The department does not believe that the reduction is material enough to prevent the delivery of services.

COMMENT #2: A comment was made on the proposed reduction in pharmacy dispensing fee in ARM 37.86.1105. The commenters are opposing the proposed reduction of the drug reimbursement fee from \$5.04 to \$4.94 called for in 37.86.1105. The commenter stated pharmacies have taken a large reduction in Medicaid reimbursement with the implementation of the State Maximum Allowable Cost (SMAC) program and implementing a reduction in dispensing fees would lead many pharmacies to make a decision to no longer accept Medicaid clients. The dispensing fee is already low and the average dispensing fee, according to a survey conducted in 2007, is between \$8.50 and \$13.08. The commenter further stated the rate reduction does not take into consideration the cost associated with dispensing medication for clients, such as labor, energy, training, and drug inventory maintenance.

The commenter would also like to know if the rate reduction is only for new pharmacies or all pharmacies. The commenter is opposing the dispensing fee rate reduction and would like Montana Medicaid to reconsider the decision based on recent dispensing fee surveys, dispensing fee costs, and the SMAC program implemented last year.

RESPONSE #2: Thank you for your comments on the proposed rules. The department has considered your comments and will not be able to maintain the dispensing fee of \$5.04 for reasons outlined in the response to comment #1. The maximum dispensing fee shall be \$4.94 effective August 1, 2011. This applies to all pharmacy providers

/s/ John Koch
Rule Reviewer

/s/ Mary E. Dalton for
Anna Whiting Sorrell, Director
Public Health and Human Services

Certified to the Secretary of State July 18, 2011.

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

In the matter of the adoption of New) NOTICE OF ADOPTION AND
Rule I and the amendment of ARM) AMENDMENT
37.40.705, 37.40.1105, and)
37.40.1302 pertaining to home health)
care and personal assistance service)

TO: All Concerned Persons

1. On May 26, 2011, the Department of Public Health and Human Services published MAR Notice No. 37-540 pertaining to the public hearing on the proposed adoption and amendment of the above-stated rules at page 858 of the 2011 Montana Administrative Register, Issue Number 10.

2. The department has adopted New Rule I (37.40.1303) as proposed.

3. The department has amended the above-stated rules as proposed.

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

COMMENT #1: The department needs to clarify what is meant by "immediate family member" as proposed in New Rule I (37.40.1303), where it states that "[r]eimbursement is not available for self-directed personal assistance provided by immediate family members".

RESPONSE #1: The language relative to "immediate family member" is the same language that currently exists in ARM 37.40.1105, Personal Care Services Reimbursement. The interpretation of immediate family member has not changed from current practice. The current interpretation continues to apply in New Rule I (37.40.1303).

COMMENT #2: The department should not decrease Medicaid reimbursement rates by 2%. Some operations are already underfunded and they are asked to cut back even more. The 2% increase for state fiscal years 2010 and 2011 was made in part to improve pay and recruitment of qualified individuals providing personal care. The proposed reduction will lead to a decrease in staff and possibly a cut in their pay. Staff salaries are not high to begin with. Medicaid requires that individuals be served in the least restrictive setting possible, and underfunding personal care will not meet this objective. Rather, it will lead to more individuals in nursing home facilities which are more restrictive.

RESPONSE #2: The 2% provider rate increase was funded as a one-time-only (OTO) increase, by the 2009 Legislature. This OTO funding was not included in the budget base for state fiscal year (SFY) 2012, and the funds were not appropriated by the 62nd Legislative Session. The department has no ability to mitigate the impact of this 2% reduction. There is an appropriation for the continuation of the direct care worker wages that was appropriated by the 2011 Legislature for SFY 2012. While it was not the subject of this rule change, it will in fact be available to provide for continuation of some portion of the direct care worker wages that were funded during the last biennium. Separate reporting forms and information on the direct care worker wages will be sent to agencies for distribution of this ongoing wage funding. The department does not agree that the reduction of the rate by \$.09 for personal assistance services will lead to more individuals being admitted to the nursing facility.

COMMENT #3: The department's proposed 2% reduction will have a greater impact on self-directed personal care. The existing rate for self-directed care is already lower than that for agency-based care. The proposed rate decrease will be more than 2% for self-directed care, whereas the impact is not as great for agency-based care. The department should treat self-directed and agency-based care differently when proposing rate decreases.

RESPONSE #3: The department implemented the 2% provider rate reduction as a uniform amount across the program as a whole, equally distributing the reduction across both self-direct and agency-based programs. This was believed to be the fairest and simplest manner in which to implement the decrease. The resulting decrease in rate is the same \$.09 for each program.

/s/ Michelle Maltese
Rule Reviewer

/s/ Mary E. Dalton for
Anna Whiting Sorrell, Director
Public Health and Human Services

Certified to the Secretary of State July 18, 2011.

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

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 37.79.102 pertaining to Healthy)
Montana Kids definition of federal)
poverty level)

TO: All Concerned Persons

1. On May 26, 2011, the Department of Public Health and Human Services published MAR Notice No. 37-542 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 871 of the 2011 Montana Administrative Register, Issue Number 10.

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

3. No comments or testimony were received.

/s/ John Koch
Rule Reviewer

/s/ Mary E. Dalton for
Anna Whiting Sorrell, Director
Public Health and Human Services

Certified to the Secretary of State July 18, 2011.

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

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 37.86.3607 pertaining to the)
rates of reimbursement for the)
provision by provider entities of)
Medicaid funded targeted case)
management services to persons with)
developmental disabilities)

TO: All Concerned Persons

1. On May 26, 2011, the Department of Public Health and Human Services published MAR Notice No. 37-544 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 881 of the 2011 Montana Administrative Register, Issue Number 10.

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

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

COMMENT #1: A change was required to be made in Section V of the Developmental Disabilities Program (DDP) Manual of Service Reimbursement Rates and Procedures. This manual has been incorporated by reference in ARM 37.86.3607. The change is being made in the manual, not in the rule. An analysis of Section V was conducted by DDP fiscal staff and they discovered that a provider's full time equivalent (FTE) calculation was incorrectly listed. The FTE amount was discussed with the provider in question and that provider verified that the amount was incorrect.

RESPONSE #1: The department has changed Section V of the manual to state the correct FTE number.

COMMENT #2: An analysis of Section VI of the Developmental Disabilities Program (DDP) Manual of Service Reimbursement Rates and Procedures was conducted by DDP fiscal staff as they were reviewing the manual. The original section states:

VI. Calculation of the Caseload Increase Adjustment to the Billing Cap:

1. At 4438.72 units/yr/FTE and 35 clients on the caseload for each FTE the number of units per client per year is $4438.72 / 35 = 126.82$ (round to 127).

2. 127 units per client times \$15.45 (rate) = \$1,962.15 per client per year.

3. For each client on the caseload above 35 the billing cap is increased by \$1,962.15 per client per FTE.

RESPONSE #2: The department concluded that the Section VI was unnecessarily complex in nature and attempts to apply the formula could create confusion about the correct amount and be potentially misleading to providers and the public. The DDP decided to change the section for the sake of clarity. The department has corrected the language to read:

VI. Calculation of the Caseload Increase Adjustment to the Billing Cap:

1. If a provider delivers units of services in excess of the dollar amounts in Section V, the additional units are to be compensated at \$15.45 per unit.

There is no fiscal impact due to this change.

/s/ Cary B. Lund
Rule Reviewer

/s/ Mary E. Dalton for
Anna Whiting Sorrell, Director
Public Health and Human Services

Certified to the Secretary of State July 18, 2011.

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

In the matter of the adoption of New) NOTICE OF ADOPTION AND
Rule I and amendment of ARM) AMENDMENT
37.86.2801, 37.86.2901, and)
37.86.2907 pertaining to Medicaid)
inpatient hospital services)

TO: All Concerned Persons

1. On May 26, 2011, the Department of Public Health and Human Services published MAR Notice No. 37-545 pertaining to the public hearing on the proposed adoption and amendment of the above-stated rules at page 884 of the 2011 Montana Administrative Register, Issue Number 10.

2. The department has amended ARM 37.86.2801 as proposed.

3. The department has adopted the following rule as proposed with the following changes from the original proposal. Matter to be added is underlined. Matter to be deleted is interlined.

NEW RULE I (37.86.2950) GRADUATE MEDICAL EDUCATION PAYMENT PROGRAM (1) through (4)(e) remain as proposed.

(f) add the percentage of the Facility Specific Medicaid Utilization Rate (FSMUR) plus the Facility Share of Medicaid Utilization (FSMU) plus the Hospital Percentage of Graduate Medical Education (HPGME) divided by three to acquire the Average Medicaid Utilization (AMU) specific to each eligible hospital; and

$$\frac{\text{FSMUR} + \text{FSMU} + \text{HPGME}}{3} = \text{AMU}$$

(g) through (5) remain as proposed.

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

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

37.86.2901 INPATIENT HOSPITAL SERVICES, DEFINITIONS (1) through (20) remain as proposed.

(21) "Graduate medical education" (GME) means a postgraduate primary care residency program approved by the Accreditation Council for Graduate Medical Education (ACGME) offered by an eligible in-state hospital for the purpose of

providing formal hospital-based training and education under the supervision of a licensed medical physician.

(22) through (43) remain as proposed.

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

IMP: 53-2-201, 53-6-101, 53-6-111, 53-6-113, 53-6-141, 53-6-149, MCA

37.86.2907 INPATIENT HOSPITAL PROSPECTIVE REIMBURSEMENT, APR-DRG PAYMENT RATE DETERMINATION (1) through (1)(a)(iv) remain as proposed.

(v) the client's ~~sex~~ gender;

(vi) through (2) remain as proposed.

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

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

COMMENT #1: A comment was received suggesting additional language be added to the formula in New Rule I [37.86.2950]. This will allow the explanation of the formula to accurately reflect the formula itself.

RESPONSE #1: The department has considered the suggested language and will insert the language into the rule.

COMMENT #2: One comment was received suggesting that additional language be added to the definition of "graduate medical education" as proposed in ARM 37.86.2901(21). The additional language would require eligible hospitals to be approved by the Accreditation Council for Graduate Medical Education (ACGME).

RESPONSE #2: The department has considered the suggested language and will insert the language into the rule.

COMMENT #3: One comment was received suggesting that the word "sex" be changed to the word "gender" as it appears in ARM 37.86.2907(1)(a)(v).

RESPONSE #3: The department has considered the suggested change in usage and will insert this change into the rule.

COMMENT #4: One comment was received from a provider who believes that there should be, in all cases where an out-of-state transport is being considered, a "vetting" of what can be done in-state for the child. Also described are the efforts of this in-state provider to improve pediatric medical care, to include specialized pediatric services, to keep clients from seeking pediatric services out of state. The comment indicates support of the proposed rule, ARM 37.86.2801.

RESPONSE #4: The department agrees that there are advantages to providing services in state. The department has studied the availability of Medicaid services in the past and will continue to stay informed of these services available in Montana.

The department will take this into consideration when approving client travel out of state. The department also understands that a client has the freedom to choose services from any qualified Medicaid provider. The department will continue to evaluate the availability of Medicaid services and associated travel costs to ensure appropriate delivery of these services in a cost effective manner. The department thanks the commenter.

/s/ John Koch
Rule Reviewer

/s/ Mary E. Dalton for
Anna Whiting Sorrell, Director
Public Health and Human Services

Certified to the Secretary of State July 18, 2011

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

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 37.86.3515, 37.88.907,)
37.89.125, 37.89.523, and 37.90.408)
pertaining to mental health services)
for adults)

TO: All Concerned Persons

1. On May 26, 2011, the Department of Public Health and Human Services published MAR Notice No. 37-546 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 891 of the 2011 Montana Administrative Register, Issue Number 10.
2. The department has amended the above-stated rules as proposed.
3. No comments or testimony were received.

/s/ Michelle Maltese
Rule Reviewer

/s/ Mary E. Dalton for
Anna Whiting Sorrell, Director
Public Health and Human Services

Certified to the Secretary of State July 18, 2011.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT AND
ARM 42.18.106 and 42.18.107 and) REPEAL
repeal of ARM 42.20.801, 42.20.802,)
42.20.803, and 42.20.804, relating to)
property taxes)

TO: All Concerned Persons

1. On June 9, 2011, the department published MAR Notice No. 42-2-861 regarding the proposed amendment and repeal of the above-stated rules at page 1020 of the 2011 Montana Administrative Register, issue no. 11.

2. No comments were received. Therefore, the department amends and repeals the rules as proposed.

3. The department amends ARM 42.18.106 and 42.18.107 and repeals ARM 42.20.801, 42.20.802, 42.20.803, and 42.20.804 as proposed.

4. An electronic copy of this notice is available on the department's web site at www.revenue.mt.gov. Locate "Legal Resources" in the left hand column, select the "Rules" link and view the options under the "Notice of Proposed Rulemaking" heading. 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.

/s/ Cleo Anderson
CLEO ANDERSON
Rule Reviewer

/s/ Dan R. Bucks
DAN R. BUCKS
Director of Revenue

Certified to Secretary of State July 18, 2011

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.

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 March 31, 2011. This table includes those rules adopted during the period April 1, 2011, through June 30, 2011, and any proposed rule action that was pending during the past 6-month period. (A notice of adoption must be published within six months of the published notice of the proposed rule.) This table does not include the contents of this issue of the Montana Administrative Register (MAR or Register).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through March 31, 2011, this table, and the table of contents of this issue of the MAR.

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 2011 Montana Administrative Register.

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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 June 2011 appear. Vacancies scheduled to appear from August 1, 2011, through October 31, 2011, 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 July 1, 2011.

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 June, 2011

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Board of Architects and Landscape Architects (Labor and Industry)			
Mr. Dale Nelson	Governor	Shepard	6/22/2011
Ronan			3/27/2012
Qualifications (if required): registered architect with three years continuous practice			
Board of Banking (Administration)			
Mr. Josh Webber	Governor	King	6/22/2011
Denton			7/1/2014
Qualifications (if required): state bank officer			
Board of Massage Therapists (Labor and Industry)			
Ms. Lyndsay Schott	Governor	Eayrs	6/23/2011
Whitefish			5/6/2015
Qualifications (if required): massage therapist			
Board of Real Estate Appraisers (Labor and Industry)			
Mr. Thomas Stevens	Governor	Moore	6/20/2011
Missoula			5/1/2014
Qualifications (if required): real estate appraiser			
Burial Preservation Board (Administration)			
Mr. William Big Day	Governor	reappointed	6/20/2011
Crow Agency			8/22/2012
Qualifications (if required): representative of the Crow Tribe			
Mr. Terry Bullis	Governor	reappointed	6/20/2011
Hardin			8/22/2012
Qualifications (if required): representative of the coroner's association			

BOARD AND COUNCIL APPOINTEES FROM June, 2011

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Burial Preservation Board (Administration) cont.			
Mr. Conrad Fisher Busby	Governor	Tall Bull	6/20/2011 8/22/2012
Qualifications (if required): representative of the Northern Cheyenne Tribe			
Ms. Skye Gilham Browning	Governor	Skelton	6/20/2011 8/22/2011
Qualifications (if required): physical anthropologist			
Dr. Ruthann Knudson Great Falls	Governor	reappointed	6/20/2011 8/22/2012
Qualifications (if required): representative of the archaeological association			
Mr. Videl Stump Sr. Box Elder	Governor	reappointed	6/20/2011 8/22/2012
Qualifications (if required): representative of the Chippewa Cree Tribe			
Flathead Basin Commission (Natural Resources and Conservation)			
Ms. Jasmine Courville-Brown Ronan	Governor	Whitney	6/30/2011 6/30/2015
Qualifications (if required): public representative			
Ms. Kate Hunt Kalispell	Governor	Heger	6/30/2011 6/30/2015
Qualifications (if required): public representative			

BOARD AND COUNCIL APPOINTEES FROM June, 2011

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Flathead Basin Commission (Natural Resources and Conservation) cont.			
Mr. Charles (Jack) Potter Columbia Falls	Governor	Loranger	6/30/2011 6/30/2015
Qualifications (if required): public representative			
Information Technology Board (Administration)			
Ms. Anna Whiting-Sorrell Helena	Governor	Parisot	6/3/2011 0/0/0
Qualifications (if required): state agency representative			
Montana Cherry Commodity Advisory Committee (Agriculture)			
Ms. Tanya Campbell No city listed	Director	reappointed	6/20/2011 5/3/2014
Qualifications (if required): none specified			
Cody Herring Big Fork	Director	reappointed	6/20/2011 5/3/2014
Qualifications (if required): none specified			
Ms. Lise Rousseau Polson	Director	reappointed	6/20/2011 5/3/2014
Qualifications (if required): none specified			
Postsecondary Scholarship Advisory Council (Governor)			
Ms. Margaret Bird Browning	Governor	reappointed	6/20/2011 6/20/2014
Qualifications (if required): experience in financial aid at a postsecondary institution			

BOARD AND COUNCIL APPOINTEES FROM June, 2011

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Research and Commercialization Technology Board (Commerce)			
Mr. Jim Davison Anaconda Qualifications (if required): public representative	Governor	reappointed	6/22/2011 7/1/2013
Mr. Tom Tanner Arlee Qualifications (if required): Native American representative	Governor	Robinson	6/22/2011 7/1/2012
Reserved Water Rights Compact Commission (Natural Resources and Conservation)			
Rep. Dorothy Bradley Bozeman Qualifications (if required): public representative	Governor	reappointed	6/1/2011 6/1/2015
Mr. Mark DeBruycker Bynum Qualifications (if required): public representative	Governor	reappointed	6/1/2011 6/1/2015
Mr. Gene Etchart Glasgow Qualifications (if required): public representative	Governor	reappointed	6/1/2011 6/1/2015
Mr. Richard Kirn Poplar Qualifications (if required): public representative	Governor	reappointed	6/1/2011 6/1/2015

VACANCIES ON BOARDS AND COUNCILS -- August 1, 2011 THROUGH October 31, 2011

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Alternative Health Care Board (Labor and Industry) Dr. Kathleen Stevens, Billings Qualifications (if required): medical doctor	Governor	9/1/2011
Dr. Nancy Aagenes, Helena Qualifications (if required): naturopathic physician	Governor	9/1/2011
Board of Athletic Trainers (Labor and Industry) Mr. Brian Coble, Helena Qualifications (if required): athletic trainer in a postsecondary school	Governor	10/1/2011
Mr. Christopher Heard, Butte Qualifications (if required): athletic trainer in a health care facility	Governor	10/1/2011
Dr. Derrick Johnson, Butte Qualifications (if required): physician	Governor	10/1/2011
Board of Barbers and Cosmetologists (Labor and Industry) Ms. Karan Charles, Miles City Qualifications (if required): barber	Governor	10/1/2011
Ms. Juanita Mace, Billings Qualifications (if required): cosmetologist	Governor	10/1/2011
Board of Medical Examiners (Labor and Industry) Rep. Mary Anne Guggenheim, Helena Qualifications (if required): doctor of medicine	Governor	9/1/2011

VACANCIES ON BOARDS AND COUNCILS -- August 1, 2011 THROUGH October 31, 2011

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Board of Medical Examiners (Labor and Industry) cont. Dr. James D. Upchurch, Crow Agency Qualifications (if required): doctor of medicine	Governor	9/1/2011
Board of Outfitters (Labor and Industry) Rep. Carol Gibson, Billings Qualifications (if required): sportsperson	Governor	10/1/2011
Mr. John R. Redman, Sidney Qualifications (if required): public representative	Governor	10/1/2011
Mr. Thomas Sather, Bozeman Qualifications (if required): sportsperson	Governor	10/1/2011
Mr. Tim Linehan, Troy Qualifications (if required): big game outfitter	Governor	10/1/2011
Board of Private Security (Labor and Industry) Mr. Raymond Murray, Missoula Qualifications (if required): representative of the Public Safety Officer Standards and Training Council	Governor	8/1/2011
Ms. Holly Dershem-Bruce, Glendive Qualifications (if required): public representative	Governor	8/1/2011
Board of Psychologists (Labor and Industry) Dr. Marla Lemons, Butte Qualifications (if required): public health psychologist	Governor	9/1/2011

VACANCIES ON BOARDS AND COUNCILS -- August 1, 2011 THROUGH October 31, 2011

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<p>Board of Veterans' Affairs (Military Affairs) Rep. Robert "Bob" Pavlovich, Butte Qualifications (if required): individual with experience with veterans' issues</p>	Governor	8/1/2011
<p>Mr. James E. Heffernan, Helena Qualifications (if required): individual with experience with veterans' issues</p>	Governor	8/1/2011
<p>Mr Lloyd Jackson, Pablo Qualifications (if required): representative of tribal councils</p>	Governor	8/1/2011
<p>Mr. Harvey Rattey, Glendive Qualifications (if required): veteran and tribal member</p>	Governor	8/1/2011
<p>Mr. C.E. Crookshanks, Missoula Qualifications (if required): individual with experience with veterans' issues</p>	Governor	8/1/2011
<p>Board of Water Well Contractors (Natural Resources and Conservation) Mr. Kirk Waren, Butte Qualifications (if required): none specified</p>	Director	10/5/2011
<p>Mr. Herrick Jeffrey, Helena Qualifications (if required): none specified</p>	Deputy Director	9/4/2011
<p>Building Codes Council (Labor and Industry) Commissioner Dave Gallik, Helena Qualifications (if required): public member</p>	Governor	10/1/2011

VACANCIES ON BOARDS AND COUNCILS -- August 1, 2011 THROUGH October 31, 2011

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Building Codes Council (Labor and Industry) cont. Mr. David Broquist, Great Falls Qualifications (if required): professional engineer	Governor	10/1/2011
Mr. Scott Lemert, Livingston Qualifications (if required): representative of the Board of Plumbers	Governor	10/1/2011
Mr. Mick Wonnacott, Butte Qualifications (if required): building contractor industry representative	Governor	10/1/2011
Mr. Mike Seaman, Kalispell Qualifications (if required): manufactured housing industry representative	Governor	10/1/2011
Mr. Rodney N. Driver, Bigfork Qualifications (if required): elevator mechanic	Governor	10/1/2011
Mr. Allen Lorenz, Helena Qualifications (if required): state fire marshal	Governor	10/1/2011
Ms. Anna Whiting-Sorrell, Helena Qualifications (if required): DPHHS Director	Governor	10/1/2011
Mr. Steven Meismer, Missoula Qualifications (if required): building inspector	Governor	10/1/2011
Ms. Deborah Kane, Bozeman Qualifications (if required): licensed architect	Governor	10/1/2011

VACANCIES ON BOARDS AND COUNCILS -- August 1, 2011 THROUGH October 31, 2011

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Building Codes Council (Labor and Industry) cont. Mr. Ron Bartsch, Montana City Qualifications (if required): home building industry representative	Governor	10/1/2011
Mr. Bill Qualls, East Helena Qualifications (if required): representative of the Board of Electricians	Governor	10/1/2011
Burial Preservation Board (Administration) Mr. Robert P. Four Star, Poplar Qualifications (if required): representative of the Fort Peck Tribes	Governor	8/22/2011
Mr. Steve Platt, Helena Qualifications (if required): representative of the State Historic Preservation Office	Governor	8/22/2011
Mr. John Murray, Browning Qualifications (if required): representative of the Blackfoot Tribe	Governor	8/22/2011
Ms. Marilyn Silva, Miles City Qualifications (if required): public representative	Governor	8/22/2011
Capital Finance Advisory Council (Administration) Mr. Fred Flanders, Helena Qualifications (if required): Montana Higher Education Student Assistance Corporation representative	Governor	10/29/2011
Rep. David Ewer, Helena Qualifications (if required): Budget Director	Governor	10/29/2011

VACANCIES ON BOARDS AND COUNCILS -- August 1, 2011 THROUGH October 31, 2011

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Capital Finance Advisory Council (Administration) cont. Secretary Linda McCulloch, Helena Qualifications (if required): Secretary of State	Governor	10/29/2011
Director Janet Kelly, Helena Qualifications (if required): Director of the Department of Administration	Governor	10/29/2011
Sen. Trudi Schmidt, Great Falls Qualifications (if required): Legislator	Governor	10/29/2011
Director Mary Sexton, Helena Qualifications (if required): Department of Natural Resources Director	Governor	10/29/2011
Director Anthony Preite, Helena Qualifications (if required): Department of Commerce director	Governor	10/29/2011
Director Richard Opper, Helena Qualifications (if required): Department of Environmental Quality Director	Governor	10/29/2011
Director Jim Lynch, Helena Qualifications (if required): Department of Transportation Director	Governor	10/29/2011
Mr. J.P. Crowley, Helena Qualifications (if required): Board of Investments representative	Governor	10/29/2011
Ms. Teresa Cohea, Helena Qualifications (if required): Board of Investments representative	Governor	10/29/2011

VACANCIES ON BOARDS AND COUNCILS -- August 1, 2011 THROUGH October 31, 2011

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<p>Capital Finance Advisory Council (Administration) cont. Mr. Stephen M. Barrett, Bozeman Qualifications (if required): Budget Director</p>	Governor	10/29/2011
<p>Mr. Bill Kearns, Townsend Qualifications (if required): Facility Finance Authority representative</p>	Governor	10/29/2011
<p>Atty. General Steve Bullock, Helena Qualifications (if required): Attorney General</p>	Governor	10/29/2011
<p>Rep. Roy Hollandsworth, Brady Qualifications (if required): Legislator</p>	Governor	10/29/2011
<p>Historical Preservation Review Board (Historical Society) Mr. Robert Valach, Lewistown Qualifications (if required): public representative</p>	Governor	10/1/2011
<p>Ms. Miki Wilde, East Helena Qualifications (if required): public representative</p>	Governor	10/1/2011
<p>Ms. Donna Coate, Forsyth Qualifications (if required): public representative</p>	Governor	10/1/2011
<p>Historical Records Advisory Council (Historical Society) Mr. Kim Allen Scott, Bozeman Qualifications (if required): public representative</p>	Governor	10/9/2011

VACANCIES ON BOARDS AND COUNCILS -- August 1, 2011 THROUGH October 31, 2011

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Historical Records Advisory Council (Historical Society) cont. Ms. Judy Ellinghausen, Great Falls Qualifications (if required): public representative	Governor	10/9/2011
Ms. Peggy Gow, Deer Lodge Qualifications (if required): public representative	Governor	10/9/2011
Ms. Samantha K. Pierson, Libby Qualifications (if required): public representative	Governor	10/9/2011
Ms. Donna McCrea, Missoula Qualifications (if required): public representative	Governor	10/9/2011
Ms. Jodie Foley, Helena Qualifications (if required): state archivist	Governor	10/9/2011
Ms. Faith Bad Bear-Bartlett, Crow Agency Qualifications (if required): public representative	Governor	10/9/2011
Mr. Jon Ille, Hardin Qualifications (if required): public representative	Governor	10/9/2011
Mental Health Ombudsman (Governor) Rep. Eve Franklin, Helena Qualifications (if required): none specified	Governor	8/2/2011

VACANCIES ON BOARDS AND COUNCILS -- August 1, 2011 THROUGH October 31, 2011

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<p>Mental Health Ombudsman (Governor) cont. Ms. Jennifer L. Hensley, Butte Qualifications (if required): none specified</p>	Governor	8/2/2011
<p>Montana Noxious Weed Seed Free Forage Advisory Council (Agriculture) Mr. Don Walker, Glendive Qualifications (if required): forage producer representative</p>	Director	9/17/2011
<p>Ms. Michelle Miller, Billings Qualifications (if required): feed pellets/cube products representative</p>	Director	9/17/2011
<p>Ms. Jennifer Cramer, Hysham Qualifications (if required): eastern county weed district representative</p>	Director	9/17/2011
<p>Mr. Tom Benson, Pablo Qualifications (if required): western county weed district representative</p>	Director	9/17/2011
<p>Montana Organic Commodity Advisory Committee (Agriculture) Mr. Tennyson Doney, Harlem Qualifications (if required): none specified</p>	Director	8/18/2011
<p>Sen. Gene Thayer, Great Falls Qualifications (if required): none specified</p>	Director	8/18/2011
<p>Ms. Sharon Lindquist, Bloomfield Qualifications (if required): none specified</p>	Director	8/18/2011

VACANCIES ON BOARDS AND COUNCILS -- August 1, 2011 THROUGH October 31, 2011

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<p>Montana Wheat and Barley Committee (Agriculture) Mr. Leonard Schock, Vida Qualifications (if required): wheat and barley grower and resident of District 7</p>	governor	8/20/2011
<p>Mr. Frank Schoonover, Dutton Qualifications (if required): wheat or barley grower and resident of District 4</p>	Governor	8/20/2011
<p>Montana's Poet Laureate (Labor and Industry) Mr. Henry Real Bird, Garryowen Qualifications (if required): Montana poet</p>	Governor	9/23/2011
<p>Prescription Drug Abuse Advisory Council (Justice) Judge Thomas M McKittrick, Great Falls Qualifications (if required): none specified</p>	Attorney General	10/2/2011
<p>Sen. Fred R. Van Valkenburg, Missoula Qualifications (if required): none specified</p>	Attorney General	10/2/2011
<p>Mr. James R. Cashell, Bozeman Qualifications (if required): none specified</p>	Attorney General	10/2/2011
<p>Sen. Trudi Schmidt, Great Falls Qualifications (if required): none specified</p>	Attorney General	10/2/2011
<p>Mr. Ryan C. Rusche, Wolf Point Qualifications (if required): none specified</p>	Attorney General	10/2/2011

VACANCIES ON BOARDS AND COUNCILS -- August 1, 2011 THROUGH October 31, 2011

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Prescription Drug Abuse Advisory Council (Justice) cont. Rep. Tom Berry, Roundup Qualifications (if required): none specified	Attorney General	10/2/2011
Ms. Starla Blank, Helena Qualifications (if required): none specified	Attorney General	10/2/2011
Mr. Joseph Doyle, Hardin Qualifications (if required): none specified	Attorney General	10/2/2011
Dr. Bill Gallea, Helena Qualifications (if required): none specified	Attorney General	10/2/2011
Mr. Wyatt Glade, Miles City Qualifications (if required): none specified	Attorney General	10/2/2011
Mr. Mark A. Long, Helena Qualifications (if required): none specified	Attorney General	10/2/2011
Mr. Michael Metzger, Billings Qualifications (if required): none specified	Attorney General	10/2/2011
Dr. Andrew Michel, Helena Qualifications (if required): none specified	Attorney General	10/2/2011
Ms. Trudy Mizner, Missoula Qualifications (if required): none specified	Attorney General	10/2/2011

VACANCIES ON BOARDS AND COUNCILS -- August 1, 2011 THROUGH October 31, 2011

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Prescription Drug Abuse Advisory Council (Justice) cont. Mr. Mark Muir, Missoula Qualifications (if required): none specified	Attorney General	10/2/2011
Mr. Russ Papke, Kalispell Qualifications (if required): none specified	Attorney General	10/2/2011
Mr. Karl Rosston, Helena Qualifications (if required): none specified	Attorney General	10/2/2011
Mr. Rich St. John, Billings Qualifications (if required): none specified	Attorney General	10/2/2011
State Emergency Response Commission (Military Affairs) Mr. Charles Mazurek, Clancy Qualifications (if required): representative of the insurance industry	Governor	10/1/2011
Mr. Tom Ellerhoff, Helena Qualifications (if required): representative of the Department of Environmental Quality	Governor	10/1/2011
Mr. Bruce Suenram, Helena Qualifications (if required): representative of the Department of Natural Resources and Conservation	Governor	10/1/2011
Mr. William T. Rhoads, Butte Qualifications (if required): representative of a utility company	Governor	10/1/2011
Sheriff Clifford Brophy, Columbus Qualifications (if required): representative of a law enforcement association	Governor	10/1/2011

VACANCIES ON BOARDS AND COUNCILS -- August 1, 2011 THROUGH October 31, 2011

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
State Emergency Response Commission (Military Affairs) cont.		
Mr. David W. Mason, Helena Qualifications (if required): representative of the fire services training school	Governor	10/1/2011
Ms. Stephanie Nelson, Bozeman Qualifications (if required): representative of a public health organization	Governor	10/1/2011
Mr. Royce A. Shipley, Great Falls Qualifications (if required): representative of the US Air Force	Governor	10/1/2011
Mr. Dan McGowan, Helena Qualifications (if required): representative of the Disaster and Emergency Services	Governor	10/1/2011
Mr. Thomas Kuntz, Red Lodge Qualifications (if required): representative of a fire service association	Governor	10/1/2011
Mr. Jim Johnson, Missoula Qualifications (if required): representative of a railroad company	Governor	10/1/2011
Ms. Jolene Jacobson, Polson Qualifications (if required): representative of a tribal emergency response commission	Governor	10/1/2011
Ms. Sally Buckles, Boulder Qualifications (if required): representative of an emergency medical services association	Governor	10/1/2011
Commissioner Ed Tinsley, Fort Harrison Qualifications (if required): representative of the Disaster and Emergency Services	Governor	10/1/2011

VACANCIES ON BOARDS AND COUNCILS -- August 1, 2011 THROUGH October 31, 2011

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
State Emergency Response Commission (Military Affairs) cont. Mr. Michael Vogel, Bozeman Qualifications (if required): representative of the university system	Governor	10/1/2011
Mr. Joe Marcotte, Billings Qualifications (if required): representative of Montana hospitals	Governor	10/1/2011
Mr. Jim DeTienne, Helena Qualifications (if required): representative of the Emergency Medical Services and Trauma Services Section/DPHHS	Governor	10/1/2011
Major Don Emerson, Fort Harison Qualifications (if required): representative of the Montana National Guard	Governor	10/1/2011
Ms. Sheena Wilson, Helena Qualifications (if required): representative of the governor's office	Governor	10/1/2011
Mr. Kerry O'Connell, Big Timber Qualifications (if required): representative of an emergency management association	Governor	10/1/2011
Ms. Cheryl Richman, Helena Qualifications (if required): representative of the Department of Transportation	Governor	10/1/2011
Mr. Ron Jendro, Helena Qualifications (if required): representative of the Department of Fish, Wildlife and Parks	Governor	10/1/2011
Captain Tom Butler, Belgrade Qualifications (if required): representative of the Department of Justice	Governor	10/1/2011

VACANCIES ON BOARDS AND COUNCILS -- August 1, 2011 THROUGH October 31, 2011

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
State Emergency Response Commission (Military Affairs) cont.		
Mr. Joe Lamson, Helena Qualifications (if required): representative of the Department of Natural Resources and Conservation	Governor	10/1/2011
Ms. Mary Simmons, Helena Qualifications (if required): representative of the Department of Public Health and Human Services	Governor	10/1/2011
Mr. Ron Zellar, Helena Qualifications (if required): representative of the Department of Agriculture	Governor	10/1/2011
Mr. Jim Lewis, Missoula Qualifications (if required): representative of a trucking association	Governor	10/1/2011
Mr. Michael Mercer, Great Falls Qualifications (if required): representative of the National Weather Service	Governor	10/1/2011
Commissioner Joe Brenneman, Kalispell Qualifications (if required): representative of the association of counties	Governor	10/1/2011
Ms. Cindy McIlveen, Butte Qualifications (if required): representative of the league of cities and towns	Governor	10/1/2011
Mr. Bob Levitan, Helena Qualifications (if required): representative of the Department of Natural Resources and Conservation	Governor	10/1/2011
Ms. Susan Taylor, Billings Qualifications (if required): representative of petroleum industry	Governor	10/1/2011

VACANCIES ON BOARDS AND COUNCILS -- August 1, 2011 THROUGH October 31, 2011

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<p>State Emergency Response Commission (Military Affairs) cont. Mr. Pete Lawrenson, Missoula Qualifications (if required): representative of a railroad company</p>	Governor	10/1/2011
<p>Mr. Dale Nelson, Ronan Qualifications (if required): representative of a tribal emergency response commission</p>	Governor	10/1/2011
<p>Vocational Rehabilitation Council (Public Health and Human Services) Ms. Shaunda Albert, Pablo Qualifications (if required): business representative</p>	Governor	10/1/2011
<p>Ms. Maureen Kenneally, Butte Qualifications (if required): representative of the State Workforce Investment Board</p>	Governor	10/1/2011
<p>Ms. Jacqueline Colombe, Basin Qualifications (if required): representative of the disabilities community</p>	Governor	10/1/2011
<p>Mr. Dan Burke, Missoula Qualifications (if required): representative of the disabilities community</p>	Governor	10/1/2011
<p>Ms. Michelle Williamson, Pablo Qualifications (if required): representative of the disabilities council</p>	Governor	10/1/2011
<p>Ms. Sharla LaFountain, Lewistown Qualifications (if required): representative of the disabilities community</p>	Governor	10/1/2011
<p>Ms. Faith Dawson, Missoula Qualifications (if required): representative of the disabilities community</p>	Governor	10/1/2011

VACANCIES ON BOARDS AND COUNCILS -- August 1, 2011 THROUGH October 31, 2011

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Vocational Rehabilitation Council (Public Health and Human Services) cont. Ms. Dalayna Faught, Missoula Qualifications (if required): vocational rehabilitation counselor	Governor	10/1/2011
Ms. Lois McElravy, Missoula Qualifications (if required): representative of the disabilities council	Governor	10/1/2011
Mr. Richard Quillin, Whitefish Qualifications (if required): representative of the business community	Governor	10/1/2011
Water and Waste Water Operators' Advisory Council (Environmental Quality) Dr. Carol Reifschneider, Havre Qualifications (if required): university faculty member	Governor	10/16/2011
Workers' Compensation Court Judge (not listed) Mr. James Shea, Missoula Qualifications (if required): none specified	Governor	9/6/2011