

# MONTANA ADMINISTRATIVE REGISTER

## ISSUE NO. 5

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 The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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 BOARD OF PRIVATE ALTERNATIVE ADOLESCENT  
RESIDENTIAL OR OUTDOOR PROGRAMS  
DEPARTMENT OF LABOR AND INDUSTRY  
STATE OF MONTANA

In the matter of the amendment of )  
ARM 24.181.301 definitions, )  
24.181.402 fees, and the adoption of )  
NEW RULES I through XL pertaining )  
to private alternative adolescent )  
residential and outdoor programs )

NOTICE OF PUBLIC HEARING ON  
PROPOSED AMENDMENT AND  
ADOPTION

TO: All Concerned Persons

1. On April 3, 2009, at 9:00 a.m., a public hearing will be held in room B-07, 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 Board of Private Alternative Adolescent Residential or Outdoor Programs (board) no later than 5:00 p.m., March 27, 2009, to advise us of the nature of the accommodation that you need. Please contact Cyndi Breen, Board of Private Alternative Adolescent Residential or Outdoor Programs, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2392; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail dlibsdpap@mt.gov.

3. GENERAL STATEMENT OF REASONABLE NECESSITY: The 2005 Montana Legislature enacted House Bill 628 which established a board to examine the benefit of licensing private alternative adolescent residential or outdoor programs by gathering data via the registration process. The board was required to report its findings, recommendations, and proposed legislation, if any, to the economic affairs interim committee by September 15, 2006.

Following the institution of the registration process under 37-48-103, MCA, and submission of the board's report to the interim committee, the 2007 Montana Legislature enacted Chapter 178, Laws of 2007 (House Bill 769), an act requiring mandatory registration and licensure of alternative adolescent residential or outdoor programs and directing the board to adopt rules establishing minimum program criteria to ensure the health and safety of program participants. The bill was signed by the Governor and became effective on April 10, 2007.

The board determined it is reasonable and necessary to amend certain rules and adopt new rules to establish the licensing and regulation of private alternative adolescent residential or outdoor programs and further implement the 2007 legislation. Where additional specific bases for a proposed action exist, the board will identify those reasons immediately following that rule.

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

24.181.301 DEFINITIONS For the purpose of this chapter the following definitions apply:

(1) "Administrator" means the person designated on the program application or by written notice to the department as the person responsible for the daily operation of the program and for the daily resident care provided by the program.

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

(3) "Board" means the Board of Private Alternative Adolescent Residential or Outdoor Programs provided for in 2-15-1745, MCA.

(4) "Child abuse or neglect" is defined in 41-2-102, MCA.

(5) "Contraband" means any item possessed by a program participant or found on a program's premises that are prohibited by law or by the program.

(6) "Department" means the Department of Labor and Industry.

(7) "Direct care staff" means program personnel who directly participate in the care, supervision, and guidance of program participant in a program.

(2) and (3) remain the same but are renumbered (8) and (9).

(10) "Prospective owner or operator or worker affiliated with the program" means any owner, partner, member, employee, or contractor providing professional or occupational services to a program.

(11) "Registration" refers to the process whereby a person or entity seeking to establish a private alternative adolescent residential or outdoor program as provided in 37-48-101, et seq, MCA, completes the necessary application for registration, submits the required fee, and thereby seeks approval for the issuance of a provisional license.

(12) "Significant Change to Plan of Operation" means a major addition or deletion of advertised services or location or change of services offered by the program.

AUTH: 37-1-131, 37-48-103, MCA

IMP: 37-1-131, 37-48-103, MCA

24.181.402 LICENSING FEE SCHEDULE (1) through (4) remain the same.

(5) Additional standardized fees are specified in ARM 24.101.403.

AUTH: 37-1-131, 37-48-103, MCA

IMP: 37-1-134, 37-48-103, 37-48-106, MCA

REASON: The board is amending this rule to add a reference to additional standardized fees that apply to all licensees as set forth in department rule.

5. The proposed new rules provide as follows:

NEW RULE I PROGRAM ADMINISTRATION (1) Each program shall have the following:

- (a) A plan of operation described in an information packet or similar publication for public distribution containing items such as:
    - (i) a description of the program and facility;
    - (ii) a description of the mission, goals, and objectives of the program for program participants;
    - (iii) a description of the services provided;
    - (iv) a description of the population served by the program, including the maximum number of program participants to be served and gender of program participants;
    - (v) a policy regarding communication privileges and restrictions; and
    - (vi) expectations for program participants and family participation.
  - (b) A written contract between the program and the legally responsible persons shall be completed, signed by all legally responsible persons, and maintained in the program participants' records with copies provided to those involved in the contract. It shall include:
    - (i) services to be provided;
    - (ii) cost of services; and
    - (iii) refund policy.
- (2) Where there is duplication of review by another oversight agency, the department shall accept that documentation as proof of compliance.

AUTH: 37-48-103, 37-48-113, MCA

IMP: 37-48-103, 37-48-113, MCA

#### NEW RULE II RIGHTS AND RESPONSIBILITIES OF PROGRAM

PARTICIPANTS (1) Each program shall have policy and procedures regarding rights and responsibilities of program participants including the rights to:

- (a) receive care and services, including educational services within the program's capability, mission, and applicable laws and regulations;
- (b) be free from discrimination;
- (c) a safe environment with respect for human dignity;
- (d) the protection of the privacy of information and records regarding each program participant and the participant's family;
- (e) communication privileges within the limitations of the program policy, excepting that at all times program participants will be allowed unrestricted access to contact the Montana abuse reporting hotline to report allegations of abuse;
- (f) be aware of the limitations that are necessary for the program to maintain a contraband free environment, including a description of the types of searches that are allowed in the program, the circumstances under which each type of search will be allowed, including the required training that staff must complete to be authorized to conduct such searches;
- (g) be free from corporal punishment or the infliction of physical pain as a disciplinary measure; and
- (h) submit complaints and grieve alleged violations of these rules. This shall include a prohibition on retaliation against a program participant for submitting such a complaint.

(2) Each program shall have a written student handbook or a statement of program participant rights and responsibilities, a copy of which must be provided to the program participant and the participant's parent(s) and/or guardian(s) at the time the participant is enrolled in the program. If requested, the program participant's parent(s) and/or guardian(s) will be given an opportunity to read the handbook prior to completing enrollment.

AUTH: 37-48-113, MCA  
IMP: 37-48-113, MCA

NEW RULE III REQUIRED PERSONNEL SCREENING (1) Each program shall submit a background check for the program manager and each worker affiliated with the program that has or will have direct access to program participants.

(2) Consistent with 37-48-108, MCA, the background investigation will include a set of fingerprints for a fingerprint check by the Department of Justice and the Federal Bureau of Investigation.

AUTH: 37-48-108, 37-48-113, MCA  
IMP: 37-48-108, 37-48-113, MCA

NEW RULE IV PROGRAM PARTICIPANT PROTECTION (1) A program may not employ any staff member, aide, volunteer, or other person having direct contact with the program participants in the residential or outdoor program that poses a potential threat to the health, safety, or well being of any program participant.

(2) For purposes of this rule, a person "posing a potential threat" is any person who:

(a) within the past ten years, has been convicted of a crime involving youth under the age of 18 years, physical or sexual violence against any person, or any felony drug related offense; or

(b) is charged with a crime involving youth under the age of 18 years, physical or sexual violence against any person, any felony drug related offense, or is awaiting trial.

(3) Each program shall have written policy and procedures to ensure program compliance with (1). The policy and procedures must include the requirement to notify the board in any case where any current program staff member, aide, volunteer, or other person having direct contact with program participants is identified as "posing a potential threat" under this rule.

(4) Failure of any program to comply with this rule constitutes unprofessional conduct and could form a basis for action being taken against the program's license.

AUTH: 37-48-113, MCA  
IMP: 37-48-108, 37-48-113, MCA

NEW RULE V PHYSICAL ENVIRONMENT (1) Each program shall comply with all applicable federal and state regulations, laws, and codes. Specific attention is directed to programs regarding compliance with Montana building and fire codes.

Programs shall maintain the necessary documentation of annual compliance with these codes and/or inspection requirements.

(2) In the event that any building or fire code violations are found during a building code or fire code inspection of a program's premises and structures intended for use by the enrolled program participants, the program shall:

(a) Within five calendar days of the date the inspection is completed and the program is provided with a report indicating a violation, the program shall deliver a copy of the report to the board office.

(b) Within five calendar days of the date the program has remedied the noted violation and has been reinspected and received a satisfactory inspection report, the program shall deliver a copy of the report to the board office.

(c) Failure of any program to comply with this rule constitutes unprofessional conduct and could form a basis for action being taken against the program's license.

AUTH: 37-48-113, MCA

IMP: 37-48-113, MCA

NEW RULE VI PERSONNEL ADMINISTRATION (1) Each program shall have written policy and procedures to include the following:

(a) employee grievance procedures;

(b) lines of authority;

(c) orientation and ongoing training;

(d) performance appraisals;

(e) rules of conduct;

(f) prohibited conduct that constitutes sexual and personal harassment; and

(g) duties and responsibilities of employees.

(2) Each program shall have:

(a) a personnel file for each employee; and

(b) written policy and procedures describing required minimum initial and ongoing staff training and the requirement that staff members complete at least the minimum training required.

(3) Direct care staff initial training shall consist of the following minimum requirements:

(a) the program's policy, procedures, organization, and services;

(b) mandatory child abuse reporting laws;

(c) confidentiality;

(d) medical protocols and emergency procedures;

(e) suicide prevention; and

(f) de-escalation of crisis situations and passive physical restraint techniques to ensure the protection and safety of the program participants and staff.

(4) A program which uses volunteers, substitutes, or student interns shall have written policy and procedures covering direct supervision by program staff.

(5) The program shall document the trainings and maintain training records.

AUTH: 37-48-113, MCA

IMP: 37-48-113, MCA

NEW RULE VII RECORD KEEPING (1) Each program shall have written policy and procedures regarding program participant records. Staff and program participant files and records shall be maintained in accordance with state and federal law.

AUTH: 37-48-113, MCA

IMP: 37-48-113, MCA

NEW RULE VIII ADMISSIONS (1) Each program shall have written admissions policy and procedures including but not limited to:

- (a) suicide screening;
- (b) pertinent physical and mental health history;
- (c) current allergies;
- (d) current medical conditions and medications;
- (e) relevant history of medications that have been prescribed, but discontinued;
- (f) relevant psycho-social history; and
- (g) policies regarding the attesting or verifying of legal authority to place or remove a program participant from a program.

AUTH: 37-48-113, MCA

IMP: 37-48-113, MCA

NEW RULE IX TREATMENT PLANNING AND DELIVERY OF SERVICES

- (1) Each program shall have written policy and procedures that:
- (a) address services provided;
  - (b) clearly define the minimum levels of supervision of program participants during each day's activities; and
  - (c) protect the privacy of program participants in accordance with laws pertaining to confidentiality.

AUTH: 37-48-113, MCA

IMP: 37-48-113, MCA

NEW RULE X INCIDENTS, CRISIS INTERVENTION, AND EMERGENCY PLANS AND SAFETY (1) Each program shall have a written plan of action and training for:

- (a) response to and training for disasters, casualties, and evacuation;
- (b) Montana laws regarding reporting of child abuse and neglect as required in 41-3-201, MCA. Incidents of abuse or neglect must be reported to the appropriate state agency as required by state law;
- (c) handling emergency situations such as suicide threat or attempt, abuse, assault, and program participants running away from the program, which must include notification of the parent or legally responsible person;
- (d) addressing an incident that involves death which must include board notification as well as notification of the parent or legally responsible person;

(e) personnel to follow in medical emergencies and when arranging for medical care which requires, at a minimum:

(i) the availability of an adequately supplied first aid kit in the facility and a direct care staff certified in first aid and CPR present;

(ii) a telephone or two-way radio available for emergencies;

(iii) response to and training on suicide prevention as well as prevention of injuries and illness; and

(iv) maintenance and repair for essential equipment.

(2) The written plan of action and training must require that each direct care staff member must acknowledge in writing that the staff member received the training.

AUTH: 37-48-113, MCA

IMP: 37-48-113, MCA

NEW RULE XI TRANSFER AND DISCHARGE (1) Each program shall have written discharge and transfer policy and procedures.

AUTH: 37-48-113, MCA

IMP: 37-48-113, MCA

NEW RULE XII BEHAVIORAL MANAGEMENT (1) Each program shall have written behavioral management policy and procedures that employs the least restrictive method to assure the safety of all the parties concerned (i.e. program participants and staff) and also includes:

(a) a definition of appropriate and inappropriate behaviors of program participants;

(b) acceptable and unacceptable staff responses to inappropriate behaviors; and

(c) acceptable consequences to inappropriate behaviors.

(2) All staff will receive a copy of this policy and staff shall receive training relative to behavior management at least annually.

(3) The program behavioral management policy shall prohibit the following:

(a) excessive physical labor with no purpose other than for punishment;

(b) denying necessary food, clothing, bedding, rest, toilet use, or bathing facilities as punishment;

(c) verbal abuse, ridicule, humiliation, profanity, threats, or other forms of degradation directed at a program participant or a participant's family;

(d) forcing a program participant to take an uncomfortable position for an extended period of time, which is anticipated to cause pain, for no purpose other than for punishment;

(e) denial of visits or communication with the program participant's parent(s) or guardian(s) except as specified in the program's written policy, design and planned activities, the program participant's service plan, or court order;

(f) locked confinement;

(g) administration of medication for disciplinary purposes, for the convenience of staff, or as a substitute for appropriate treatment services;

(h) administration of discipline of a program participant by another participant without staff supervision;

(i) the intentional or malicious infliction of physical or mental suffering including pain;

(j) the use of pain to force compliance; and

(k) placement of a program participant alone in a locked room for nontherapeutic purposes.

(4) Programs shall only allow passive physical restraint when required in an emergency situation in which there is an imminent threat to life or physical safety of the program participant, staff, or others. Passive physical restraint shall not be associated with punishment in any way. Only staff trained in industry accepted de-escalation techniques and passive physical restraint, such as CPI and Mandt, may restrain program participants.

(5) Programs that use time out or short-term intervention for behavior modification or for therapeutic purposes will have written policy and procedures that have been provided to the program participants and legally responsible parties.

(6) Each program shall have written policy and procedures for handling emergency situations such as suicide threat or attempt, abuse, assault, and program participants running away from the program.

AUTH: 37-48-113, MCA

IMP: 37-48-113, MCA

NEW RULE XIII CHEMICAL DEPENDENCY TREATMENT (1) Any program that includes in its marketing, advertising, information packet, or other similar document reference to providing primary, inpatient chemical dependency treatment must ensure that such treatment program is provided by a public or private treatment chemical treatment facility licensed by the Montana Department of Health and Human Services under Title 53, chapter 24, of the Montana Code Annotated (MCA).

AUTH: 37-48-113, MCA

IMP: 37-48-113, MCA

NEW RULE XIV MEDICAL SERVICES (1) Each program shall have written policy and procedures for provision of routine and emergent medical services, including mental health services.

AUTH: 37-48-113, MCA

IMP: 37-48-113, MCA

NEW RULE XV MEDICATIONS (1) Each program shall have written policy and procedures regarding medication dispensing and control according to state and federal regulations which includes:

(a) notification within 24 hours of the parents or legally responsible person of any changes in medication that is prescribed or distributed by program staff; and

(b) maintaining a log of missed or refused dosages of prescribed medications distributed by program staff. Such log must be made available upon request to state and federal inspectors and to a parent or legally responsible person.

AUTH: 37-48-113, MCA  
IMP: 37-48-113, MCA

NEW RULE XVI INFECTIOUS DISEASES (1) Each program shall have written policy and procedures designed to prevent or control infectious and communicable diseases in accordance with accepted standards.

AUTH: 37-48-113, MCA  
IMP: 37-48-113, MCA

NEW RULE XVII FINANCIAL REQUIREMENTS (1) Before accepting any payment, processing any application, or entering any contract to provide services, the program shall provide written disclosure of all fees and expenses a program participant may incur, and identify which fees may be refundable.

AUTH: 37-48-113, MCA  
IMP: 37-48-113, MCA

NEW RULE XVIII PHYSICAL ENVIRONMENT (1) Each program shall comply with all applicable federal and state regulations, laws, and codes.

AUTH: 37-48-113, MCA  
IMP: 37-48-113, MCA

NEW RULE XIX FOOD SERVICES (1) Each program shall provide food adequate to the nutritional needs of participants and sanitary conditions and take reasonable steps to provide safe drinking water.

AUTH: 37-48-113, MCA  
IMP: 37-48-113, MCA

NEW RULE XX CLOTHING (1) Each program shall have written policy and procedures concerning the appropriate apparel that program participants should wear.

AUTH: 37-48-113, MCA  
IMP: 37-48-113, MCA

NEW RULE XXI TRANSPORTATION (1) Each program shall have written policy and procedures for transporting program participants.

(2) In each program or staff vehicle used to transport program participants, there shall be emergency information including: the name, address, and telephone number of the program and an emergency telephone number.

AUTH: 37-48-113, MCA  
IMP: 37-48-113, MCA

NEW RULE XXII ADMINISTRATION-OUTDOOR PROGRAMS (1) In addition to the core requirements for all programs at ARM [NEW RULES I through XXI], each outdoor program must also comply with the requirements set forth at ARM [NEW RULES XXII through XXXVI].

(2) A list of all currently enrolled program participants must be maintained and be readily available.

AUTH: 37-48-103, 37-48-113, MCA  
IMP: 37-48-103, 37-48-113, MCA

REASON: The board determined it is reasonable and necessary to adopt new rules XXII through XXXVI to delineate the rules specifically applicable to outdoor programs. These outdoor programs have special purposes and inherent risk factors and the board is proposing these rules to set forth the relevant definitions and requirements to ensure adequate protection of the outdoor program participants.

NEW RULE XXIII DEFINITIONS-OUTDOOR PROGRAMS (1) The following definitions apply only to outdoor programs.

(a) "Direct care staff" means program personnel who directly participate in the care, supervision, and guidance of program participants in an outdoor program, including senior field staff and field staff.

(b) "Expedition" means an excursion undertaken for specific therapeutic or educational purposes that takes program participants away from the field office.

(c) "Expedition camp" means a nonpermanent campsite. Program participants and staff may move from one expedition camp to another when on expedition.

(d) "Field office" means the office where coordination of expedition operations takes place.

(e) "High adventure activity" means an outdoor activity provided to program participants for the purposes of behavior management, outdoor education, or treatment, and which requires special safety precautions in accordance with industry risk management standards.

(f) "Low impact camping" means wilderness and land use ethics designed to minimize the impact of visitors to back country areas.

(g) "Outdoor program" means a program in which the majority of time, including overnight, is spent outdoors.

(h) "Solo experience" means separation of a program participant from the group as part of the outdoor therapeutic process exceeding the length of eight hours.

(i) "Wilderness first responder" means a certified first responder.

AUTH: 37-48-113, MCA  
IMP: 37-48-113, MCA

NEW RULE XXIV STAFF REQUIREMENTS (1) The staff of each outdoor program must include an individual responsible for oversight of field operations who will be referred to as the field director.

(2) The field director shall be primarily responsible for:

- (a) the quality of field activities;
- (b) coordinating field operations;
- (c) supervising direct care staff;
- (d) ensuring compliance with applicable licensing rules in the field; and
- (e) ensuring that staff members are familiar with all applicable field program

policy and procedures.

(3) The field director may serve as direct care staff.

(4) The field director shall meet, at a minimum, the following qualifications:

- (a) a bachelors degree or one year outdoor program field experience; and
- (b) hold a wilderness first aid or wilderness first responder certification.

(5) If qualified, the administrator may serve as field director.

(6) Field staff teams responsible for direct care must have at least one team member certified as a wilderness first responder or in wilderness first aid. Other team members must be currently certified in first aid and CPR.

AUTH: 37-48-113, MCA

IMP: 37-48-113, MCA

NEW RULE XXV STAFF TRAINING (1) Each outdoor program shall have written policy, procedures, and training curriculum regarding minimum requirements for initial and ongoing training.

(2) Initial staff training shall consist of the following minimum requirements:

- (a) the program's policy, procedures, organization, and services;
- (b) mandatory child abuse reporting laws;
- (c) low impact camping;
- (d) confidentiality; and
- (e) medical protocols and emergency procedures to include but not be

limited to:

- (i) suicide prevention;
- (ii) documentation;
- (iii) de-escalation of crisis situations and passive physical restraint techniques to ensure the protection and safety of program participants and staff;
- (iv) avoiding potential hazards of the expedition areas; and
- (v) emergency evacuation procedures.

AUTH: 37-48-113, MCA

IMP: 37-48-113, MCA

NEW RULE XXVI PROGRAM PARTICIPANT ADMISSION REQUIREMENTS (1) Each outdoor program shall have written admissions policies and procedures to include the following:

- (a) age range of program participants;

(b) current health history of program participants including notation of limitations and prescription medications; and

(c) a requirement that program participants have a physical examination by a licensed medical provider that has been completed within six months preceding enrollment into the program. Medical release forms for each program participant must be kept by field staff team providing direct care to participants.

AUTH: 37-48-113, MCA

IMP: 37-48-113, MCA

NEW RULE XXVII RATIO OF PROGRAM PARTICIPANTS TO STAFF

(1) Outdoor programs shall have written policies establishing ratios between direct care staff and program participants which meet program participant needs for health and safety. The maximum program participant to direct care staff ratio shall not exceed 20 participants to one direct care staff member.

AUTH: 37-48-113, MCA

IMP: 37-48-113, MCA

NEW RULE XXVIII PHYSICAL ENVIRONMENT (1) Each outdoor program must adhere to use of land requirements of forest service, park service, state lands, BLM, or the landowner.

(2) Health and safety policies and procedures must be adequate to meet the requirements of program participants living in an outdoor setting for an extended period of time.

(3) Sleeping areas must be set up in accordance with program policy to provide for safety and adequate supervision of participants in an outdoor setting.

AUTH: 37-48-113, MCA

IMP: 37-48-113, MCA

NEW RULE XXIX TOOLS AND POTENTIALLY HAZARDOUS MATERIALS

(1) Each outdoor program shall have written policy and procedures on management of tools and other sharp edged implements and any potentially hazardous material.

AUTH: 37-48-113, MCA

IMP: 37-48-113, MCA

NEW RULE XXX HYGIENE (1) Each outdoor program shall provide methods available in an outdoor setting for program participants to wash hands and face, brush teeth, and bathe.

(2) Toileting methods must provide for privacy and be compatible with low impact camping.

AUTH: 37-48-113, MCA

IMP: 37-48-113, MCA

NEW RULE XXXI WATER, FOOD, AND NUTRITION (1) Outdoor programs must take reasonable steps to provide safe drinking water.

AUTH: 37-48-113, MCA  
IMP: 37-48-113, MCA

NEW RULE XXXII MEDICAL AND MEDICATION MANAGEMENT, STORAGE, AND ADMINISTRATION (1) At least one member of an outdoor program field staff team must be trained in the management and administration of medications in an outdoor setting.

(2) Each group of staff and program participants must have a medical kit that will meet the need for wilderness first aid. First aid medical kits shall include sufficient supplies for the activity, location, and environment and shall be available during all field activities.

AUTH: 37-48-113, MCA  
IMP: 37-48-113, MCA

NEW RULE XXXIII EMERGENCY AND EVACUATION PLANS (1) Outdoor programs shall have:

- (a) a written emergency plan which provides specific procedures for disasters, evacuations, medical emergencies, missing youth, and other serious incidents identified by the program; and
- (b) an established form of communication for emergency situations.

AUTH: 37-48-113, MCA  
IMP: 37-48-113, MCA

NEW RULE XXXIV SOLO EXPERIENCE (1) If an outdoor program uses a solo experience as part of the therapeutic or educational process during expeditions, the program shall have written policy and procedures for the utilization of the solo experience. Policy and procedures must address:

- (a) purpose of solo experience;
- (b) assessment of participant readiness for the experience; and
- (c) risk management procedures.

AUTH: 37-48-113, MCA  
IMP: 37-48-113, MCA

NEW RULE XXXV EDUCATION (1) Outdoor programs which operate during the academic year and in which program participants are enrolled more than six weeks must provide an educational component.

AUTH: 37-48-113, MCA  
IMP: 37-48-113, MCA

NEW RULE XXXVI OUTDOOR PROGRAMS-HIGH ADVENTURE REQUIREMENTS (1) High adventure activities are those that may require specific certification and/or equipment or training and may include the following:

- (a) target sports;
- (b) aquatics;
- (c) adventure challenge courses;
- (d) climbing and rappelling;
- (e) spelunking;
- (f) swimming;
- (g) white water activities;
- (h) use of horses or other animals for riding or packing;
- (i) skiing; and
- (j) trampoline.

(2) For the high adventure activities identified in (1), each program shall adopt written policy and procedures that address minimum training, experience, and qualifications for leaders and staff and must adhere to accepted industry risk management procedures.

AUTH: 37-48-113, MCA  
IMP: 37-48-113, MCA

NEW RULE XXXVII ADMINISTRATION-RESIDENTIAL PROGRAMS (1) In addition to the core requirements for all programs at ARM [NEW RULES I through XXI], residential programs must also comply with the requirements set forth at ARM [NEW RULES XXXVII through XL].

(2) A list of all currently enrolled program participants must be maintained and be readily available.

AUTH: 37-48-103, 37-48-113, MCA  
IMP: 37-48-103, 37-48-113, MCA

REASON: The board determined it is reasonable and necessary to adopt new rules XXXVII through XL to delineate the rules specifically applicable to residential programs. These residential programs have specialized purposes and the board is proposing these rules to set forth the relevant definitions and requirements to ensure adequate protection of the residential program participants.

NEW RULE XXXVIII DEFINITIONS-RESIDENTIAL PROGRAMS (1) The following definitions apply only to residential programs.

(a) "Residential program" means a 24-hour group living environment for four or more program participants unrelated to the owner or provider.

AUTH: 37-48-113, MCA  
IMP: 37-48-113, MCA

NEW RULE XXXIX STAFFING (1) Residential programs shall have a manager who is responsible for the day-to-day supervision of program participants

and operation of the program. The responsibilities of the manager shall be clearly defined. Whenever the manager is absent there shall be a substitute available.

(2) Residential programs that employ, contract, or consult with professional licensed or certified staff shall:

(a) describe in policy and procedure the circumstances under which the professional staff are to be engaged; and

(b) maintain on file copies of the professional staff licenses or certifications.

(3) Residential programs that do not employ, contract, or consult with licensed medical staff shall have written policy and procedures in place to secure medical care when needed.

(4) Each residential program shall have written policy and procedures to secure mental health care as needed.

(5) Each residential program shall have written policy and procedures establishing direct care staff to program participant ratios that meet program participant needs for health and safety in the various activities and settings available in the program.

AUTH: 37-48-113, MCA

IMP: 37-48-113, MCA

NEW RULE XL FOOD SERVICE (1) Each residential program kitchen shall have clean, safe, and operational equipment for the preparation, storage, serving, and cleanup of all meals.

(2) Each residential program shall have written safety and health policy and procedures for preparation of food by staff and program participants.

AUTH: 37-48-113, MCA

IMP: 37-48-113, MCA

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 Private Alternative Adolescent Residential or Outdoor Programs, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to [dlibsdpap@mt.gov](mailto:dlibsdpap@mt.gov), and must be received no later than 5:00 p.m., April 10, 2009.

7. An electronic copy of this Notice of Public Hearing is available through the department and board site on the World Wide Web at [www.paarp.mt.gov](http://www.paarp.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 Private Alternative Adolescent Residential or Outdoor Programs, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, faxed to the office at (406) 841-2305, e-mailed to [dlibsdpap@mt.gov](mailto:dlibsdpap@mt.gov), or made by completing a request form at any rules hearing held by the agency.

9. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was notified on November 21, 2008, by regular mail.

10. Mike McCabe, attorney, has been designated to preside over and conduct this hearing.

BOARD OF PRIVATE ALTERNATIVE  
ADOLESCENT RESIDENTIAL OR  
OUTDOOR PROGRAMS  
JOHN SANTA, 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 March 2, 2009

BEFORE THE DEPARTMENT OF PUBLIC SERVICE REGULATION  
OF THE STATE OF MONTANA

In the matter of the amendment of ) NOTICE OF PUBLIC HEARING ON  
ARM 38.3.601 and 38.3.602, ) PROPOSED AMENDMENT AND  
pertaining to motor carrier certificates ) REPEAL  
and repeal of ARM 38.2.318 )  
pertaining to electronic copy of filings )

TO: All Concerned Persons

1. On April 29, 2009, at 10:00 a.m., the Department of Public Service Regulation will hold a public hearing in the Bollinger Room of the Public Service Commission (PSC) offices, 1701 Prospect Avenue at Helena, Montana, to consider the proposed amendment and repeal of the above-stated rules.

2. The PSC 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 PSC no later than 4:00 p.m. on April 21, 2009, to advise us of the nature of the accommodation you need. Please contact Verna Stewart, PSC Secretary, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601; telephone (406) 444-6170; TTD (406) 444-6199; fax (406) 444-7618; or e-mail vstewart@mt.gov.

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

38.3.601 OPERATION UPON GRANTING OF CERTIFICATE (1) Every person or corporation who is granted a certificate of public convenience and necessity to operate as a motor carrier by the commission must:

(a) within 30 days after the date of the issuance of the order to grant the certificate comply with all rules and regulations of the commission and the laws of the state of Montana necessary to begin actual operations as a motor carrier, ~~and,~~

~~(b) within 30 days after the necessary operating compliance has been met begin actual operations as a motor carrier in the manner set forth in the application and by the commission.~~

(2) If a motor carrier fails to meet the necessary operating compliance ~~or to begin actual operations~~ within the required time periods, the failure ~~will~~ may result in the revocation of the certificate of public convenience and necessity granted by the commission to the person or corporation.

AUTH: 69-12-201, 69-12-204, MCA

IMP: 69-12-101, et seq., 69-12-327, 69-12-401, 69-12-402, MCA

38.3.602 OPERATION AFTER SALE OR TRANSFER OF CERTIFICATE

(1) Every person or corporation who, with the approval of the commission, procures any right, privilege, or certificate of public convenience and necessity as a motor carrier either by sale, assignment, lease, transfer, or inheritance must:

(a) within 30 days after the mailing of the notice of such approval by the commission, comply with all rules and regulations of the commission and the laws of the state of Montana necessary to begin actual operations as a motor carrier, and

~~(b) within 30 days after the necessary operating compliance has been met, a motor carrier must begin actual operations as a motor carrier.~~

(2) If a motor carrier fails to meet the necessary operating compliance ~~or to begin actual operations~~ within the required time periods, the failure ~~will~~ may result in the revocation of the right, privilege, or certificate held by the motor carrier.

AUTH: 69-12-201, 69-12-204, MCA

IMP: 69-12-101, et seq., 69-12-327, 69-12-401, 69-12-402, MCA

REASON: Amendment of ARM 38.3.601 and 38.3.602 is reasonably necessary to amend the rules to conform to PSC practice. The PSC finds that enforcing these rules on all motor carriers would not be reasonable given that only Class D motor carriers are subject to a requirement that regular use is required in order to retain a certificate. § 69-12-314(2), MCA. Regular use requirements for Class D carriers are set forth at ARM 38.3.1201 through 38.3.1207. Requiring non-Class D carriers to show proof of operation within 30 days of acquiring a certificate, when no further showing is required, does not appear to have a rational basis.

The proposed rule changes are consistent with PSC discretion involving motor carrier certificate decisions as set out in ARM 38.3.1201 through 38.3.1207. According to ARM 38.3.1207, if the PSC determines that a carrier is not in compliance with 69-12-314, MCA, the PSC may issue an order to show cause why the certificate should not be revoked. The changes to ARM 38.3.601 and 38.3.602 clarify that the PSC has the discretion to revoke a certificate, which is consistent with the permissive language of "may" used in ARM 38.3.1207. The PSC solicited industry comment on ARM 38.3.601(b) and 38.3.602(b) and is not persuaded by the comments received that these sections should be retained.

4. The PSC proposes to repeal the following rule:

38.2.318 ELECTRONIC COPY OF FILINGS (AUTH: 69-1-110, 69-2-101, 69-3-103, MCA; IMP: 69-1-110, 69-2-101, 69-3-103, MCA) found at page 38-43 of the Administrative Rules of Montana.

REASON: Repeal of ARM 38.2.318 is reasonably necessary to remove a rule that is outdated and no longer necessary. The enforcement of this rule has been suspended while new electronic filing rules are being considered and implemented.

5. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments (original and ten copies) may also be submitted to Legal Division, Public Service Commission, 1701 Prospect Avenue, P.O. Box 202601, Helena, MT 59620-2601, and must be received no later than April 29, 2009, 5:00 p.m., or may be submitted to the PSC through the PSC's web-based comment form at <http://psc.mt.gov> (go to "Contact Us," "Comment on Proceedings Online," then complete and submit the form) no later

than April 29, 2009. (PLEASE NOTE: When filing comments pursuant to this notice please reference "Docket No. L-09.2.1-RUL.")

6. The PSC, a commissioner, or a duly appointed presiding officer may preside over and conduct the hearing.

7. The Montana Consumer Counsel, 616 Helena Avenue, P.O. Box 201703, Helena, Montana 59620-1703, telephone (406) 444-2771, is available and may be contacted to represent consumer interests in this matter.

8. The PSC maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the PSC. Persons who wish to have their name added to the list shall make a written request which includes that name, e-mail address, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: electric utilities, providers, and suppliers; natural gas utilities, providers, and suppliers; telecommunications utilities and carriers; water and sewer utilities; common carrier pipelines; motor carriers; rail carriers; and/or administrative procedures. Such written request may be mailed or delivered to Public Service Commission, Legal Division, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601, faxed to Verna Stewart at (406) 444-7618, e-mailed to [vstewart@mt.gov](mailto:vstewart@mt.gov), or may be made by completing a request form at any rules hearing held by the PSC.

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. However, the PSC advises that it will decide any conflict between the official version and the electronic version in favor of the official printed version. 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 notice requirements of 2-4-302, MCA, apply to the proposed amendment of ARM 38.3.601 and 38.3.602, and have been fulfilled. Senator Barry Stang was previously notified by letter when the department began work on the substantive comment and wording of the amendments and was notified again by letter dated February 17, 2009. A copy of the published notice will be sent within three days after publication. The bill sponsor notice requirements of 2-4-302, MCA, do not apply with respect to the proposed repeal of ARM 38.2.318.

/s/ Greg Jergeson  
Greg Jergeson, Chairman  
Public Service Commission

/s/ Robin A. McHugh  
Reviewed by Robin A. McHugh

Certified to the Secretary of State, February 25, 2009.

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 VI pertaining to the )  
medical marijuana program )

TO: All Concerned Persons

1. On September 25, 2008, the Department of Public Health and Human Services published MAR Notice No. 37-452 pertaining to the public hearing on the proposed adoption of the above-stated rules at page 2027 of the 2008 Montana Administrative Register, Issue Number 18.

2. The department has adopted New Rule III (37.107.104), Rule IV (37.107.107), and Rule VI (37.107.109) as proposed.

3. The department will not be adopting New Rule V at this time.

4. The department has adopted the following rules 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 (37.107.101) DEFINITIONS In addition to the terms defined in 50-46-102, MCA, the following definitions apply to this chapter:

(1) through (3) remain as proposed.

~~(4) "Attending physician" means a Doctor of Osteopathy or medical doctor who has established a bona fide physician/patient relationship with the applicant, is licensed under Title 37, chapter 3, MCA, and who, with respect to an applicant diagnosed with a debilitating medical condition:~~

~~(a) is primarily responsible for the medical care and treatment of the applicant;~~

~~(b) has reviewed the applicant's medical records at the request of the applicant;~~

~~(c) has conducted a thorough physical examination of the applicant;~~

~~(d) has provided or planned follow-up care; and~~

~~(e) has documented these activities in the applicant's medical record.~~

(5) through (7) remain as proposed but are renumbered (4) through (6).

AUTH: 50-46-210, MCA

IMP: 50-46-103, 50-46-210, MCA

NEW RULE II (37.107.103) REGISTRATION AND APPLICATION PROCESS (1) through (5) remain as proposed.

(6) If the applicant wants to use a caregiver, a caregiver must be designated on the application. The caregiver must sign a statement agreeing to provide medical

marijuana as needed and available only to those qualifying patients who have designated on their application that individual as their caregiver.

(7) through (11) remain as proposed.

AUTH: 50-46-210, MCA

IMP: 50-46-103, 50-46-210, 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: Several comments were received supporting the proposed rule changes.

RESPONSE #1: The department thanks the commentors for their support.

COMMENT #2: I am concerned about product quality and use of pesticides and other substances used on the plants, which patients would then inhale along with the product. There should be requirements set forth to guard against this from occurring.

RESPONSE #2: The department runs the Medical Marijuana Program registry and has no authority to prescribe growing practices related to medical marijuana. Therefore, the comment is beyond the scope of the department's rule.

COMMENT #3: I would like the department to consider implementing a rating scale for caregivers. Patients should have something available to help them choose among available caregivers as to the caregivers' abilities to provide them with good service and a quality product.

RESPONSE #3: The department runs the Medical Marijuana Program registry and has no authority to recommend caregivers. Implementing a rating scale for caregivers would be comparable to having a licensing board recommend a licensee. It is the consumer's responsibility to educate themselves in order to receive good service and a quality product.

COMMENT #4: Caregivers are performing a safety sensitive function in producing this product. As such, caregivers should not be allowed to use the product themselves. A patient of the Medical Marijuana Program should not be a caregiver for another. This should be made clear in the rulemaking process.

RESPONSE #4: The department disagrees. A caregiver may also be a qualifying patient if they meet the definition of a "qualifying patient" and if they meet criteria enumerated in 50-46-103(2)(a) through (e), MCA.

COMMENT #5: The rules should include a process to allow a person to lodge a complaint or concern that a caregiver with a valid certificate may not be following the statutory provisions under the Medical Marijuana Act (Act).

RESPONSE #5: The department runs the Medical Marijuana Program registry and has no authority to run a clearinghouse for complaints and lacks the authority to enforce law violations.

COMMENT #6: I have concerns that there is a belief and an attitude among the community, particularly those who use marijuana, that the use of marijuana does not cause impairment when driving. The commentor elucidated the research on the issue and referred to several studies found on the subject.

RESPONSE #6: Section 50-46-205, MCA, prohibits any person to operate, navigate, or be in the actual physical control of any motor vehicle, aircraft, or motorboat while under the influence of marijuana. It is unnecessary to reiterate this prohibition in rule.

COMMENT #7: There is concern about the length of time it takes the department to make caregiver changes.

RESPONSE #7: The department is aware of the processing time for caregiver changes, but is currently meeting the statutory requirements for verifying applicant information and issuing registry identification cards. However, the increase in applicants and caregiver change requests is making this progressively more difficult. Therefore, the department is seeking legislative approval to hire an additional half-time employee to meet the statutory deadlines and provide quality customer service to those individuals with debilitating medical conditions who benefit from the program.

COMMENT #8: It appears these proposed rules restrict the physician-patient relationship in ways that were not contemplated in the Act itself. By reading, the definition of physician is changing to "attending physician" and requires that the doctor take a greater role that is contained in the Act by adding Rule I(4)(a) through (e) (37.107.101). Specifically, that doctor now must have performed a "thorough physical examination" and "documented these activities in the applicant's medical record". In another section, the rules add the requirement that all that be performed within the last three months, all that has to happen each time a patient renews his or her application yearly. The commentor gets the sense the department is further trying to specify that the physician be a primary care physician, although it is not clear, that seems to be the implication of the requirement that there also be "planned follow-up care".

RESPONSE #8: The department agrees and has deleted the definition of "attending physician" in proposed Rule I(4)(a) through (e) (37.107.101).

COMMENT #9: I propose the addition of Rule I(4)(f) (37.107.101) requiring the attending physicians to complete training on the pharmacology et cetera of marijuana as follows:

"(4)(f) has successfully completed a training program approved by the department in the pharmacology, pharmacokinetics, and pharmacotherapeutics of marijuana. This program will include the adverse effects of using marijuana and the danger to public safety if a person under the influence of marijuana operates a vehicle on a public highway and/or performs any safety sensitive function in a private or public workplace."

RESPONSE #9: The department declines to add the suggested language to proposed Rule I(4)(f) (37.107.101). The requested language is beyond the scope of the rule amendments and would require a statutory inclusion into the Medical Marijuana Act. Additionally, marijuana is classified as a Schedule I drug by the FDA. It is not part of a pharmacopeia that can be prescribed by any practitioner. Finally, it would be discriminatory. The department does not require that sort of training of physicians concerning any other medications or treatments which they prescribe or recommend.

COMMENT #10: I proposed the addition of Rule I(8) (37.107.101) to the Definitions rule as follows:

"(8) "Safety sensitive function" means performing a task which could result in serious injury or death if the performer experienced a momentary lack of concentration. Examples would include, but are not limited to, handling hazardous materials, administering medications, working with electrical, hydraulic, nuclear, or combustible power."

RESPONSE #10: The department declines the addition to proposed Rule I(8) (37.107.101) for the definition term "safety sensitive function". The term is not found or used anywhere in the rule. Consequently, there is no context to the definition as it relates to the published rule.

COMMENT #11: We propose the addition to Rule II(2)(e) (37.107.103) requiring the attending physician to attest that the applicant has been informed about side effects of medical marijuana. Registrants should not be allowed to:

- operate a vehicle; use medical marijuana in the presence of a minor;
- use in a public place;
- and physician should inform each registrant it's addictive/may cause significant social and occupational dysfunction.

RESPONSE #11: The department disagrees. These suggestions exceed the scope of proposed Rule II (37.107.103) and would require statutory change to the Act and are of questionable constitutionality.

COMMENT #12: I propose an additional subsection to Rule II(2) (37.107.103) that would require attending physician to complete form 20-1900 "Driver Medical Evaluation" form and to mail it to the Department of Justice Motor Vehicle Division.

RESPONSE #12: The proposed request for an additional subsection to Rule II(2) (37.107.103) exceeds the scope of proposed Rule II (37.107.103) amendments and would require a statutory change to the Act.

COMMENT #13: We propose the additional subsection to Rule II (37.107.103) that would require a caregiver to provide the following:

(a) Copy of a negative drug test performed on specimen of hair from the body of the caregiver by a laboratory approved by the department.

(b) Specimens must be collected by a certified collector approved by the department. Specimens will be tested for THC, amphetamines, opiates, cocaine, PCP, and/or metabolites of these drugs.

(c) Evidence that the caregiver is included in a random testing program administered by either the department or a third-party administrator approved by the department. This program will test at least 50% of the enrolled caregivers during each quarter. If a caregiver is notified of selection the caregiver must report to an approved collector within 48 hours.

(d) Costs for drug testing required by this program will be paid by the caregiver.

(e) Test results will be reported to the department. If a drug test is positive for any illegal drug the caregiver's registry identification card will be revoked and the caregiver will never be eligible to have the card reinstated.

(f) A signed and dated form stating that the caregiver is familiar with the information listed in this rule.

RESPONSE #13: This proposed additional subsection to Rule II (37.107.103) is outside of the scope of the proposed rule amendments and would require a statutory change to the Act.

COMMENT #14: While we support the department's proposal to Rule II(6) (37.107.103), they are concerned that the rule's wording implies that registered caregivers are required at all times to keep patients supplied with their legal medicine. Unfortunately, under the law's severe restrictions on the number of plants that can be grown for a patient, this is not always possible. The commentors would thus be more comfortable if, in this rule's second sentence, words such as "as needed and available" were to be inserted between "marijuana" and "only".

RESPONSE #14: The department agrees and has amended Rule II(6) (37.107.103) accordingly.

COMMENT #15: There may be many individuals who have expert gardening skills and could grow a quality product who would be excluded as caregivers due to a nonrelated felony. We understand and share concerns about individuals who may have been found guilty of criminal offenses against a person, and it should be

grounds for preventing such a person from being a caregiver. We also have concerns about people who have not been found guilty of a felony who may still pose a threat to patients due to violent acts against a person but who were not convicted of a felony. Any offense against a person should be grounds to prevent a person from being a caregiver. There needs to be a method in place to guard against such a person becoming a caregiver.

RESPONSE #15: The Act restricts the department from issuing a registry identification card to a proposed caregiver who has previously been convicted of a felony drug offense. Nonrelated felony convictions do not prohibit an individual from being a caregiver. The Act does not address convictions or nonconvictions related to criminal acts against a person. Therefore, the department is not authorized to address these concerns in rule. This would require a statutory change to the Act.

COMMENT #16: I have had trouble growing regular plants in my area of Montana. If there is an individual with a felony charge against them, which is not one that does not pose a danger to the patient, and they possess the skills needed to grow and provide a quality product to patients, they should be allowed to be a caregiver.

RESPONSE #16: This comment is beyond the scope of proposed Rule II (37.107.103). Please see response to comment #15.

COMMENT #17: I propose an addition to proposed Rule III (37.107.104), Invalidation or Revocation of Registry Identification Card, in which a law enforcement officer who performs a lawful traffic stop may require a registered patient to submit to a serum drug test if they are operating a motor vehicle on a public road.

RESPONSE #17: This comment exceeds the scope of proposed Rule III (37.107.104) and would require a statutory change to the Act.

COMMENT #18: I propose an addition to proposed Rule III (37.107.104) that states when law enforcement performs a lawful stop they may require caregiver to submit to hair drug testing. Any positive result would revoke the caregiver card immediately and would render the caregiver to be ineligible for a card reinstatement.

RESPONSE #18: This comment exceeds the scope of proposed Rule III (37.107.104) and would require a statutory change to the Act.

COMMENT #19: Section 50-46-201, MCA, states that "a qualifying patient or caregiver...may not be arrested, prosecuted or penalized in any manner...for the medical use or assisting in the medical use of marijuana." We know what the intent of the legislature is. However, the way it was written unfortunately might convey to the caregiver that they are also protected by law to use marijuana even though it says "medical use". It seems to me that the wording of the law needs to clearly separate who is protected for medical use of marijuana and who is protected for cultivating or providing (caregiving) marijuana to the patient.

RESPONSE #19: The department thanks the commentors for their comment. This comment exceeds the scope of proposed Rule I (37.107.101) and would require a statutory change to the Act.

COMMENT #20 I think the fact that proposed Rule V allows for "extenuating circumstances" gives a great deal of latitude for the department to decide when things are getting abused or too confused and should be there. The commentor is a little concerned that it may limit competition between caregivers, and requests the department try and avoid that. It seems reasonable that there are going to be some unreliable types out there who want to be caregivers and who do not ultimately meet a patient's reasonable expectations for whatever reason. The caregiver out there that can actually meet that need should not be restricted from doing business with patients because of the errors of the lousy previous caregivers. As long as that situation can be taken into account as an "extenuating circumstance", then the commentor would have no objection.

RESPONSE #20 Due to comments and suggestions received regarding limiting caregiver changes, the department will not adopt proposed Rule V at this time.

/s/ Lisa A. Swanson  
Rule Reviewer

/s/ Anna Whiting Sorrell  
Anna Whiting Sorrell, Director  
Public Health and Human Services

Certified to the Secretary of State March 2, 2009.

## **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 December 31, 2008. This table includes those rules adopted during the period January 1, 2009, through March 31, 2009, and any proposed rule action that was pending during the past six-month period. (A notice of adoption must be published within six months of the published notice of the proposed rule.) This table does not include the contents of this issue of the Montana Administrative Register (MAR or Register).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through December 31, 2008, 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 2008 and 2009 Montana Administrative Register.

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

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- 2.44.301A and other rules - Administration of the Teachers' Retirement System of the State of Montana, p. 2313, 2619, 3

(State Compensation Insurance Fund)

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