

# MONTANA ADMINISTRATIVE REGISTER

## ISSUE NO. 8

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 The Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

Inquiries regarding the rulemaking process, including material found in the Montana Administrative Register and the Administrative Rules of Montana, may be made by calling the Secretary of State's Office, Administrative Rules Bureau, at (406) 444-2055.

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BEFORE THE DEPARTMENT OF ADMINISTRATION  
OF THE STATE OF MONTANA

In the matter of the proposed adoption ) NOTICE OF PUBLIC HEARING ON  
of new rules I through VIII concerning ) PROPOSED ADOPTION  
the Montana Land Information Act )

TO: All Concerned Persons

1. On May 17, 2006, at 1:00 p.m., a public hearing will be held in Conference Room 160, Mitchell Building, 125 N. Roberts, Helena, Montana to consider the proposed adoption of the above-stated rules.

2. The Department of Administration will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Administration no later than 5:00 p.m. on May 8, 2006, to advise us of the nature of the accommodation that you need. Please contact Stewart Kirkpatrick, Chief, Geographic Information Services Bureau, Weinstein Building, 101 North Rodney, Helena, MT 59620, telephone (406) 444-9013, fax (406) 444-1955, e-mail skirkpatrick@mt.gov.

3. The proposed new rules provide as follows:

NEW RULE I INTRODUCTION (1) The following rules define the development of an annual land information plan, the application and granting processes, the grant monitoring process, and the process for coordination of technological standards for creating land information as provided in 90-1-404, MCA.

AUTH: 90-1-413, MCA

IMP: 90-1-404, MCA

STATEMENT OF REASONABLE NECESSITY: This new rule is reasonably necessary to provide a basis of understanding to those involved or interested in the processes related to the Montana Land Information Act.

NEW RULE II DEFINITIONS In addition to the definitions found in 90-1-403, MCA, the following definitions apply:

(1) "Available grant funds" means the balance of the Montana land information account on March 31 of each fiscal year, plus an estimate of not-yet-deposited state funds held by counties as of that date, less the department's budget associated with duties and responsibilities defined in 90-1-404, MCA, for the fiscal year and any funds committed to grants.

(2) "Grant criteria" mean any specific grant conditions set forth by the department, with the advice of the council, pertaining to subject matter of grant applications, applicable standards, or other conditions that define the nature of

applications that will be accepted.

(3) "Grant review subcommittee" means a subcommittee established by the council that, together with the department, will formulate grant criteria consistent with the purpose of the Montana Land Information Act, and review grant applications.

(4) "Land information plan subcommittee" means a subcommittee established by the council that, together with the department, will formulate land information plans.

(5) "Montana spatial data infrastructure" or "MSDI" means digitally formatted land information that is identified by the council as necessary to meet the land information needs of the state of Montana and its citizens. The MSDI can and does include data themes identified in the National Spatial Data Infrastructure and where collaborative opportunities exist, presents an opportunity to support framework data for the nation.

(6) "State agency" means any entity of the executive branch, including the university system as defined in 2-15-102, MCA.

(7) "Statement of work" means a description of scope of a project including any background statements, a comprehensive listing of responsibilities for buyers and sellers, deliverables and their schedules, acceptance criteria, and special terms and conditions of performance.

(8) "Theme champions" means those agencies or organizations recognized by the council as having responsibility for promoting land information that is considered part of the Montana spatial data infrastructure.

AUTH: 90-1-413, MCA

IMP: 90-1-404, MCA

STATEMENT OF REASONABLE NECESSITY: This new rule is reasonably necessary to provide a basis of understanding of terms associated with the land information planning, granting, and standards process not found in statute.

NEW RULE III APPOINTMENT OF LAND INFORMATION PLAN AND GRANT REVIEW SUBCOMMITTEES (1) By July 1 of each fiscal year, the council will appoint a land information plan subcommittee and grant review subcommittee from existing council members to advise the department, on behalf of the council, on the land information plan, grant criteria, and prioritization of grant submittals.

(2) The subcommittees will minimally consist of:

- (a) a state agency representative;
- (b) a federal agency representative;
- (c) a tribal representative;
- (d) a local government representative;
- (e) a private sector representative;
- (f) a member representing a Montana association of GIS professionals; and
- (g) one of the legislative members.

(3) The subcommittees shall elect a chair from their membership.

(4) The subcommittees shall gather and distribute materials to the entire council in a manner determined by the council.

AUTH: 90-1-413, MCA  
IMP: 90-1-404, MCA

STATEMENT OF REASONABLE NECESSITY: This new rule is reasonably necessary to establish the process for appointment of council subcommittees to advise the department on planning and granting procedures not found in statute.

NEW RULE IV ANNUAL LAND INFORMATION PLAN (1) Annual land information plans will be developed to meet the purpose of the Montana Land Information Act, including the coordination, creation, collection, maintenance, integration, or dissemination of MSDI themes, or other associated work.

(2) By July 1 of each fiscal year, theme champions may provide to the land information plan subcommittee suggested specific goals and objectives relating to the theme they represent for the fiscal year beginning one year from that date.

(3) The department shall prepare its suggested goals and objectives for the same time period, and shall provide the land information plan subcommittee the budget necessary to carry out these duties and responsibilities.

(4) By August 1 of each fiscal year, the department will compile the theme champion goals and the department's goals and objectives, and will post the summary on the department web site for public comment. Public comment will be taken for a minimum period of 30 days from the day of posting.

(5) By November 1 of each fiscal year, the department, with advice of the land information plan subcommittee, shall develop a draft land information plan for the next fiscal year. The plan shall include specific goals and objectives based upon input from theme champions, the department, and comments received during the public comment period.

(6) By November 15 of each fiscal year, the department shall submit the draft land information plan to the council and a budget for the department's duties and responsibilities as defined in 90-1-404, MCA.

(7) By December 15 of each fiscal year, the council shall advise the department on recommended changes to the draft plan and the department's budget.

(8) By January 15 of each fiscal year, the department shall complete the land information plan. The department shall publish the final plan on the department web site.

AUTH: 90-1-413, MCA  
IMP: 90-1-404, MCA

STATEMENT OF REASONABLE NECESSITY: This new rule is reasonably necessary to establish the process for compiling the annual land information plan not found in statute.

NEW RULE V ESTABLISHING THE GRANT APPLICATION AND GRANTING PROCESS (1) By January 15 of each fiscal year, the department, with advice from the grant review subcommittee, shall develop the grant criteria for the fiscal year beginning on the following July 1, based upon the goals and objectives

from the land information plan, and shall publish the grant criteria, grant application forms, and instructions for submitting grant applications to the department web site. Grant criteria may allow for funding multi-year projects.

(2) Grant applications received by the department before 5:00 p.m. on February 15 will be considered.

(3) Upon receipt, the department will advise applicants of incomplete grant applications. Applications initially incomplete, but completed and received by March 1, will be evaluated for possible funding.

(4) By May 1 of each fiscal year, the department, based on grant criteria and with advice of the grant review subcommittee, shall identify grant applications that meet the grant criteria and warrant approval and shall rank them in priority order. Previously approved multi-year projects may be placed at the top of the priority list. The grant review subcommittee chair shall distribute the results to the council, consider additional comments, and report those comments to the department if necessary.

(5) On May 15 of each fiscal year, the department, with advice of the grant review subcommittee, shall finalize the priority order of the grants.

(6) The department shall disperse available grant funds to grant applicants in the order of priority set forth under (5). Available grant funds in excess of the funding necessary for the applications that meet the grant criteria shall be added to the available grant funds for the subsequent grant period.

AUTH: 90-1-413, MCA

IMP: 90-1-404, MCA

STATEMENT OF REASONABLE NECESSITY: This new rule is reasonably necessary to establish the grant and account distribution processes not found in statute.

NEW RULE VI MONITORING THE MONTANA LAND INFORMATION ACCOUNT FUNDS (1) The department shall monitor each grant, contracted service, or federal matching fund. Depending upon the deliverables or types of services, the department may require additional quarterly or other reports that verify the deliverables or services are meeting documented specifications.

(2) The department will notify the council of actions the department takes when any grants or contracted services do not meet the specific deliverables or timelines defined in the statement of work.

AUTH: 90-1-413, MCA

IMP: 90-1-404, MCA

STATEMENT OF REASONABLE NECESSITY: This new rule is reasonably necessary to provide financial accountability for the distribution of the land information account.

NEW RULE VII COMPLIANCE WITH STANDARDS, STATUTES, AND RULES (1) The department, with advice from the council, will establish any

appropriate standards through an approved state standard setting process.

(2) All grants must comply with accepted state or federal standards unless waived, for cause, by the department.

(3) All standards waivers will be reviewed with the council at the next general meeting of the council.

AUTH: 90-1-413, MCA

IMP: 90-1-404, MCA

STATEMENT OF REASONABLE NECESSITY: This new rule is reasonably necessary to provide a basis of understanding regarding the application of standards to the granting process.

NEW RULE VIII OFF-CYCLE GRANTS (1) The department, with advice of the council, may approve requests for funding that fall outside of the regular grant cycle.

AUTH: 90-1-413, MCA

IMP: 90-1-404, MCA

STATEMENT OF REASONABLE NECESSITY: This new rule is reasonably necessary to allow the department, with advice of the council, the flexibility to take advantage of opportunities to use grant funds to leverage other funding sources, or in emergency situations, outside the regular grant cycle.

4. 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 in writing to Stewart Kirkpatrick, Chief, Geographic Information Services Bureau, Weinstein Building, 101 North Rodney, Helena, MT 59620, telephone (406) 444-9013, fax (406) 444-1955, e-mail [skirkpatrick@mt.gov](mailto:skirkpatrick@mt.gov). Any comments must be received no later than 5:00 p.m. on May 18, 2006.

5. The Geographic Information Services Bureau of the Department of Administration 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 this list shall make a written request that includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notice regarding rulemaking associated with geographic information technology issues. Such written request may be mailed or delivered to Stewart Kirkpatrick, Chief, Geographic Information Services Bureau, Weinstein Building, 101 North Rodney, Helena, MT 59620, telephone (406) 444-9013, fax (406) 444-1955, e-mail [skirkpatrick@mt.gov](mailto:skirkpatrick@mt.gov), or may be made by completing a request form at any rules hearing held by the Department of Administration.

6. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled.



7. Jeffrey Brandt, Deputy CIO, has been designated to preside over and conduct this hearing.

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

/s/ Dal Smilie  
DAL SMILIE, Rule Reviewer

Certified to the Secretary of State April 10, 2006.

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

In the matter of the proposed transfer and	)	NOTICE OF PUBLIC HEARING
amendment of ARM 8.32.301 through	)	ON PROPOSED TRANSFER
8.32.308, 8.32.401 through 8.32.405, 8.32.408,	)	AND AMENDMENT,
8.32.411 through 8.32.413, 8.32.415, 8.32.417,	)	ADOPTION, REPEAL,
8.32.426 through 8.32.430, 8.32.501, 8.32.502,	)	AND TRANSFER
8.32.507, 8.32.601, 8.32.604 through 8.32.606,	)	
8.32.801, 8.32.802, 8.32.806 through 8.32.808,	)	
8.32.1102, 8.32.1104 through 8.32.1111,	)	
8.32.1113, 8.32.1116, 8.32.1118, 8.32.1119,	)	
8.32.1402 through 8.32.1412, 8.32.1414,	)	
8.32.1501 through 8.32.1505, 8.32.1508,	)	
8.32.1509, 8.32.1601 through 8.32.1604,	)	
8.32.1606, 8.32.1607, 8.32.1609 through	)	
8.32.1611, 8.32.1721, 8.32.1722, 8.32.1725,	)	
and 8.32.1732, adoption of NEW RULE I,	)	
repeal of 8.32.504 through 8.32.506, 8.32.1101,	)	
and 8.32.1401, and transfer of 8.32.101,	)	
8.32.201, 8.32.202, 8.32.409, 8.32.410,	)	
8.32.416, 8.32.425, 8.32.603, 8.32.608,	)	
8.32.610, 8.32.804, 8.32.1103, 8.32.1112,	)	
8.32.1114, 8.32.1413, 8.32.1506, 8.32.1510,	)	
8.32.1605, 8.32.1608, 8.32.1612, 8.32.1723,	)	
8.32.1724, 8.32.1726 through 8.32.1731,	)	
and 8.32.1733 pertaining to nursing	)	

TO: All Concerned Persons

1. On May 12, 2006, at 9:00 a.m., a public hearing will be held in room 471, 301 South Park Avenue, Helena, Montana to consider the proposed transfer and amendment, adoption, repeal, and transfer of the above-stated rules.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m., May 5, 2006, to advise us of the nature of the accommodation that you need. Please contact Marilyn Kelly-Clark, Board of Nursing, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2355; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail dlibsdnur@mt.gov.

3. GENERAL REASONABLE NECESSITY STATEMENT: The Board of Nursing was transferred from the Department of Commerce to the Department of Labor and Industry by the 2001 legislature by Chapter 483, Laws of Montana 2001.

The Board of Nursing is using this transfer as an opportunity to not only transfer the rules to put them into a more user-friendly order in Title 24, the Department of Labor and Industry, but to also amend the rules to break the rules into license type (LPN, RN, APRN, Medication Aide) and insert all license type rules together in individual subchapters.

It is necessary to rearrange the rules in order to group related rules together and to group together rules by license type because licensees, board members, and others have complained that the current rules are not user-friendly, are poorly or illogically arranged, and that information being sought is sometimes found embedded in seemingly unrelated rules.

Insufficient rule numbers had been reserved in each subchapter in the past and as a result, some rules got codified in illogical places. In addition, when the arrangement of the current rules was initially undertaken, the board believed that an arrangement by topic was the best approach. Currently, a rule on any given topic will contain several paragraphs describing how the rule applies to each license type. Upon reconsideration, the board now believes that arrangement by license type would be more user-friendly.

As part of the general review of the rules, the proposed amendments are intended to ensure consistent use of terminology rather than use of various terms that mean the same thing. For instance, references to the Board of Nursing are proposed to be amended to "board" and references to licensed practical nurse is proposed to be amended to "practical nurse" which are the defined references.

Amendments in this notice also provide clarity and consistency, eliminate outdated terminology, make references gender neutral, and provide for overall effectiveness in the rules. Grammatical and format errors are also being amended in order to comply with recent changes adopted by the Secretary of State.

Also, repetitious references to statutory requirements were identified and proposed for deletion, as well as deleting statutes that have been repealed.

Transferring and amending the rules in this manner will find rules applicable to all licensees found in subchapters 1 through 4, 6, 16, 20, and 21. The medication aide rules will be found in subchapter 9, practical nurse (PN) rules will be found in subchapter 10, registered nurse (RN) rules will be found in subchapter 12, and advanced practice registered nurse (APRN) rules will be found in subchapter 14.

This general statement of reasonable necessity is applicable to all the proposed actions. When warranted, specific reasonable necessity statements are listed as applicable.

Numerous rules have been proposed to be transferred to more than one location because they are applicable to each license type. Rules will also be amended as

necessary to make the rule specific to the license type found in that subchapter. These rules are as follows:

<u>OLD</u>	<u>PROPOSED</u>		
8.32.401	24.159.1022	24.159.1222	24.159.1415
8.32.402	24.159.1024	24.159.1224	24.159.1417
8.32.405	24.159.1028	24.159.1228	24.159.1418
8.32.408	24.159.1021	24.159.1221	
8.32.409	24.159.1036	24.159.1236	24.159.1426
8.32.410	24.159.1040	24.159.1240	24.159.1430
8.32.411	24.159.1037	24.159.1237	24.159.1427
8.32.412	24.159.1038	24.159.1238	24.159.1428
8.32.416	24.159.1041	24.159.1241	24.159.1431
8.32.417	24.159.1046	24.159.1246	24.159.1436
8.32.501	24.159.1023	24.159.1223	24.159.1416
8.32.502	24.159.1052	24.159.1252	24.159.1442
8.32.507	24.159.1053	24.159.1253	24.159.1443
8.32.1409A	24.159.1006	24.159.1206	

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

8.32.415 (24.159.301) DEFINITIONS As used in Title 37, chapter 8, MCA, and this chapter, unless defined specifically in a particular subchapter, the following definitions apply:

(1) "Board" means the Montana Board of Nursing.

(2) "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.

(3) "Health team" means a group of health care providers which may, in addition to health care practitioners, include the client, family, and significant others.

(4) "Nursing procedures" means those nursing actions selected and performed in the delivery of safe and effective patient/client care.

(5) "Nursing process" means the traditional systematic method nurses use when they provide:

(a) nursing care including assessment;

(b) nursing analysis;

(c) planning;

(d) nursing intervention; and

(e) evaluation.

(6) "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.

(7) "PRN medication" ("pro re nata", Latin for "according as circumstances may require") means medication taken as necessary for the specific reason stated in the medication order, together with specific instructions for its use.

(8) "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.

(9) "Routine medication" means medication taken regularly at the same time each day using the same route, or on the same days of the week, at the same time, using the same route.

(10) "Standard" means an authoritative statement by which the board can judge the quality of nursing education or practice.

(2) (11) "Standardized procedures" means routinely executed nursing actions for which there is an established level of knowledge and skill.

(12) "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, 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.

(3) (13) "Supervision" means provision of guidance by a qualified nurse or a person specified in 37-8-102, MCA, for the accomplishment of a nursing task or activity with initial direction of the task or activity and periodic inspection of the actual act of accomplishing the task or activity.

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: It is reasonable and necessary to amend this rule to incorporate definitions from ARM 8.32.1401 that are applicable to all license types. By consolidating these definition rules, this amendment will provide clarity and make the definitions more user-friendly. The substance of the definitions from ARM 8.32.1401 is not being substantially changed, but small format changes are being modified to make all definitions consistent. ARM 8.32.1401 is proposed to be repealed in this notice.

The board has determined it is also reasonable and necessary to indicate the various identifiers for the license types of practical nursing and professional nursing. These references to these license types are commonly used, and the board feels it is necessary to identify that the references can be used interchangeably unless the context dictates otherwise.

8.32.428 (24.159.402) FEE ABATEMENT (1) The board of nursing adopts and incorporates by reference the September 24, 2004, fee abatement rule of the Department of Labor and Industry found at ARM 24.101.301.

(2) remains the same.

AUTH: 37-1-131, MCA

IMP: 17-2-302, 17-2-303, 37-1-134, MCA

8.32.601 (24.159.406) BOARD OBJECTIVES (1) The board of nursing shall function in the field of nursing as an administrative and supervisory agency within the governmental structure and shall:

- (a) implement the Nursing Practice Act by promulgating and enforcing rules and regulations to protect the public health, safety, and welfare;
- (b) prescribe standards for the evaluation of nursing education programs preparing persons for registration and licensure and approve those ~~nursing education~~ programs which have achieved and are maintaining these minimum standards;
- (c) assure safe standards of nursing practice through examination, licensure, and renewal of licenses of qualified applicants including endorsement of qualified registered and practical nurses from other jurisdictions;
- (d) through (f) remain the same.

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

REASON: It is reasonable and necessary to amend this rule for clarity and syntax. It is proper to describe the type of program in the first instance rather than the second.

8.32.604 (24.159.407) MEETINGS OF THE BOARD (1) The annual meeting shall be held in the first quarter of the state fiscal year.

(2) Special meetings may be called by the president or at the written request of two board members. The reason for the special meeting shall be stated in the call.

(3) remains the same.

(4) ~~The agenda for board members to review shall be mailed to board members~~ Board members shall receive a meeting agenda and other information as applicable to review prior to each meeting.

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

REASON: It is reasonable and necessary to amend this rule for clarity and syntax.

8.32.605 (24.159.409) DUTIES OF THE PRESIDENT OF THE BOARD

(1) remains the same.

(a) preside at all board meetings. In the event that the president is absent from ~~any a board~~ meeting, a president pro-tem shall be elected by members present at the meeting to serve for that meeting;

(b) remains the same.

(c) serve as the official representative of the board in its contacts with governmental, civic, business, and other organizations;

(d) and (e) remain the same.

AUTH: 37-8-202, MCA

IMP: 37-8-202, MCA

REASON: It is reasonable and necessary to amend this rule to clarify that the president does not preside over committee meetings.

8.32.606 (24.159.410) DUTIES OF MEMBERS OF THE BOARD (1) The members acting as the board ~~of nursing~~ shall:

- (a) transact the general business of the board ~~of nursing~~;
- (b) through (e) remain the same.

AUTH: 37-8-202, MCA

IMP: 37-8-202, MCA

8.32.1102 (24.159.601) STATEMENT OF PURPOSE FOR NURSING EDUCATION PROGRAM STANDARDS (1) These requirements provide a basis for the board to evaluate and approve nursing education programs and a format for nursing faculty and administrators to plan, implement, and evaluate nursing education for the following professional and practical nursing programs:

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

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

IMP: 37-8-301, MCA

8.32.1109 (24.159.605) ORGANIZATION AND ADMINISTRATION OF THE NURSING EDUCATION PROGRAMS (1) and (2) remain the same.

(a) Cooperative agreements between nursing programs and clinical facilities must be current, in writing, and signed by the responsible officers of each, and must include the following:

- (i) through (4) remain the same.

(5) Faculty and administration should participate in governance of the parent institution and policy development, including but not limited to, matters related to appeals and grievances. Policies governing faculty employment, promotion, and tenure must be in writing and consistent with those of the parent institution.

- (6) remains the same.

(a) admission, readmission, progression, dismissal, and graduation requirements;

- (b) through (8) remain the same.

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

IMP: 37-8-301, MCA

8.32.1116 (24.159.606) EDUCATIONAL FACILITIES FOR NURSING EDUCATION PROGRAMS (1) remains the same.

(2) Physical facilities must be designed to meet the educational and clinical needs of the program. Classrooms, laboratories, offices, and conference rooms must be of adequate size, number, and type according to the number of students and purposes for which these areas are to be used.

(3) and (3)(a) remain the same.

(b) adequate and convenient access by students and faculty to library/ and information resources, including sufficient titles, periodicals, computer data bases, and similar media resources.

(4) through (4)(b) remain the same.

(5) Each program director, with faculty input, shall determine appropriate student- to instructor ratios in the clinical setting. The ratio must provide safe, accessible, and appropriate supervision based on client health status, care setting, and student level of preparation. The ratio must not exceed ~~40~~ ten students to one instructor.

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

IMP: 37-8-301, MCA

8.32.1108 (24.159.609) PROGRAM EVALUATION (1) through (2)(b) remain the same.

(c) policies governing recruitment, selection, progression, graduation, and other matters affecting education and health of students;

(d) and (e) remain the same.

(f) the adequacy of educational facilities including classrooms, technology, skills laboratories, and library/ and information resources; and

(g) and (3) remain the same.

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

IMP: 37-8-301, MCA

8.32.806 (24.159.612) PROGRAM ANNUAL REPORT (1) through (2)(c)(i) remain the same.

(ii) policies or practices used for selection, progression, and graduation of students;

(iii) remains the same.

(iv) curriculum plan, course descriptions, resources, and facilities;

(d) through (f) remain the same.

(g) current enrollment by course, including student- to teacher ratios for clinical experiences;

(h) through (l) remain the same.

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

IMP: 37-8-301, 37-8-302, MCA

8.32.1118 (24.159.615) RECOGNIZED ACCREDITATION BODIES (1) The board recognizes the following national accreditation bodies for purposes of approving nursing education programs:

(a) and (b) remain the same.

(2) The board recognizes the following regional accreditation body for purposes of approving nursing education programs:

(a) remains the same.



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

IMP: 37-8-301, 37-8-302, MCA

REASON: It is reasonable and necessary to amend this rule to identify why the board recognizes accreditation bodies. This amendment is proposed in order to clarify the rule and put it in context with the nursing education programs.

8.32.801 (24.159.625) APPLICATION FEASIBILITY STUDY FOR INITIAL APPROVAL OF NURSING PROGRAM (1) through (2)(a) remain the same.

(b) purpose and classification of program;

(c) availability of qualified faculty;

(d) budgeted faculty positions;

(e) remains the same.

(f) evidence of financial resources adequate for the planning, implementation, and continuation of the program;

(g) through (i) remain the same.

(3) When the data submitted in the feasibility study are reviewed, the board may request additional information and may conduct a site visit to evaluate the information submitted. ~~The board will review the feasibility study at their January or October board meeting.~~

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

(c) For programs under the jurisdiction of the Montana Board of Regents, the board will make a recommendation to the Montana Board of Regents concerning the quality of the proposed program's curriculum, faculty, and clinical experiences and will make its final decision on approval only after receiving notification of the program's approval from the Board of Regents. The program may then admit students who shall be eligible upon completion of the program to take the licensing examination.

(6) and (7) remain the same.

(8) Following graduation of the first class, a self-study report of compliance with ~~ARM Title 8, chapter 32, subchapter 11~~ Title 24, chapter 159, subchapter 6, shall be submitted and a site visit may be made.

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

IMP: 37-8-202, 37-8-301, 37-8-302, MCA

REASON: It is reasonable and necessary to amend the catchphrase of this rule to more accurately indicate the content of the rule substance. Also, the rule is amended to remove the specific time identifier for board review of feasibility studies, thereby removing a potential restriction on board process, and to identify the correct rules implied by the internal reference in (8). Normally, in a rule transfer, internal references are just modified to indicate the new reference. However, with the proposed numbering structure planned with this notice, subchapter 6 will include applicable rules other than just rules from subchapter 11. Therefore, this is a substantive change and must be identified as an amendment to the rule.

8.32.802 (24.159.630) CONTINUED APPROVAL OF SCHOOLS SITE VISITS AND CONTINUED APPROVAL OF SCHOOLS (1) through (8)(a) remain the same.

(b) The second consecutive year a program's average pass rate is 40 ~~ten~~ percentage points or more below the national average, the program will be placed on conditional ~~approval~~ status by the board. The program must submit to the board a written plan to improve the pass rate.

(c) and (d) remain the same.

AUTH: 37-8-202, MCA

IMP: 37-8-301, 37-8-302, MCA

REASON: It is reasonable and necessary to amend this rule to correctly identify the consequence for failing to meet the national average by using the correct terminology. The board can put a deficient program on conditional or approval status. This amendment remedies the use of an incorrect word.

8.32.807 (24.159.635) REQUIREMENTS FOR SPECIAL REPORTS ON CHANGES AFFECTING PROGRAM INCLUDING PROGRAM EXPANSION

(1) remains the same.

(a) changes in legal status, control, ownership, or resources of the institution;

(b) through (f) remain the same.

(i) an increase in the number of students served by a program that equals or exceeds the numerator in the student/faculty ratio requirements for clinical settings set by the board and national nursing accrediting agency standards; and

(ii) through (10) remain the same.

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

IMP: 37-8-301, 37-8-302, MCA

8.32.808 (24.159.640) CHANGE IN APPROVAL STATUS (1) through (6) remain the same.

(7) A program on conditional ~~approval~~ status cannot be considered for any type of program expansion.

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

IMP: 37-8-301, 37-8-302, MCA

REASON: It is reasonable and necessary to amend this rule to use the correct terminology. The board can put a deficient program on conditional or approval status. This amendment remedies the use of an incorrect word.

8.32.1110 (24.159.650) NURSING EDUCATION PROGRAM DIRECTOR

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

(3) The director of the associate of science degree RN program shall possess a master's degree in nursing or public health with a major in nursing, from a

nationally recognized accredited program, with preparation in education and administration.

(4) and (4)(a) remain the same.

(b) a master's degree with a major in nursing or a minimum of a baccalaureate degree in nursing, supplemented by courses in curriculum development, principles and methods of teaching, and measurement and evaluation;

(c) through (5) remain the same.

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

IMP: 37-8-301, MCA

8.32.1111 (24.159.655) NURSING EDUCATION FACULTY

RESPONSIBILITY (1) through (6) remain the same.

(a) planning, implementing, and evaluating learning experiences;

(b) through (d) remain the same.

(e) providing opportunity for creative student activities that contribute to positive changes in nursing, nursing education, or health care;

(f) providing service to the parent institution, nursing program, profession, and community; and

(g) through (9) remain the same.

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

IMP: 37-8-301, MCA

8.32.1113 (24.159.662) FACULTY - FOR PRACTICAL NURSE NURSING EDUCATION PROGRAMS (1) All nursing faculty, including part-time, shall hold at least a baccalaureate in nursing or a master's degree from a nationally accredited program supplemented by courses in curriculum development, principles and methods of teaching, and measurement and evaluation.

(2) through (4) remain the same.

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

IMP: 37-8-301, MCA

8.32.1119 (24.159.666) USE OF CLINICAL RESOURCE REGISTERED NURSES (CRRNS) IN NURSING EDUCATION PROGRAMS (1) A clinical resource registered nurse (CRRN) is an RN with an unencumbered Montana nursing license who provides supervision, demonstration, and evaluation of direct patient care in a clinical or laboratory setting to students enrolled in a nursing education program.

(2) remains the same.

(3) Although a CRRN is not considered to be a faculty member of a program, a CRRN may be used by the program to maintain a 10: to 1 student-to-instructor supervision ratio in a clinical or laboratory setting.

(4) remains the same.

(a) ensuring safe, accessible, and appropriate supervision based on client health status, care setting, course objectives, and student level of preparation; and

(b) remains the same.

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

IMP: 37-8-301, 37-8-302, MCA

8.32.1104 (24.159.670) CURRICULUM - GOALS AND GENERAL REQUIREMENTS FOR PROFESSIONAL NURSING EDUCATION: IN BACCALAUREATE AND ASSOCIATE DEGREE PROGRAMS (1) remains the same.

(2) The faculty shall develop, review, and update the curriculum on an ongoing basis. The curriculum for the professional nursing educational programs must meet the following general criteria:

(a) reflect the philosophy, organizational framework, purpose, and educational objectives of the nursing education program and be consistent with the laws governing the practice of professional nursing;

(b) through (f) remain the same.

(3) The curriculum shall include concepts related to the promotion, maintenance, and restoration of the health of clients across the lifespan. ~~Board~~ Content areas and learning activities include, but are not limited to:

(a) through (d) remain the same.

(4) The curriculum shall include non-nursing courses that provide knowledge in relevant physical sciences, social sciences, and arts and humanities.

(a) through (b)(vi) remain the same.

(5) The length, organization, and placement of courses must be consistent with the philosophy and objectives of the program. Course organization and sequencing shall assure that prerequisite concepts and understanding are used and further developed as the program progresses. Course instruction should focus on understanding and application of knowledge, and extend throughout the program.

(6) remains the same.

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

IMP: 37-8-301, MCA

8.32.1105 (24.159.674) CURRICULUM - GOALS SPECIFIC TO BACCALAUREATE DEGREE REGISTERED NURSE (1) The baccalaureate degree nurse graduate shall be prepared to plan, deliver, and coordinate care for clients including individuals, families, and communities in a variety of structured and unstructured settings with an emphasis on care management, complex care situations, and clients with unpredictable outcomes. The baccalaureate degree nurse functions as a change agent in the health care system and utilizes nursing research findings in the delivery of care. ~~(Adapted from America Association of Colleges of Nursing Position Statement: Nursing Education's Agenda for the 21st Century.)~~

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

IMP: 37-8-301, MCA

REASON: It is reasonable and necessary to amend ARM 8.32.1105 (24.159.674) to delete unnecessary information.

8.32.1106 (24.159.677) CURRICULUM - GOALS SPECIFIC TO ASSOCIATE DEGREE REGISTERED NURSE (1) The role of the associate degree nurse graduate is to provide direct care to clients, individuals, or groups, in a variety of structured settings with clear policies and procedures. Within this context, the curriculum must relate to the roles of the provider of the associate degree nurse as provider of care, manager of care, and member of the discipline of nursing. ~~(Adapted from the National League for Nursing, Educational Outcomes of Associate Degree Nursing Programs: Roles and Competencies, 1990.)~~

- (a) through (a)(iii) remain the same.
- (iv) effective communication with clients, families, and health team members;
- (v) remains the same.
- (vi) collaboration with members of the health care team; and
- (vii) through (c)(iii) remain the same.
- (iv) political, economic, and societal forces affecting nursing practice and health care delivery; and
- (v) remains the same.
- (2) Non-nursing courses must provide graduates with basic knowledge in the relevant physical sciences, social sciences, and arts and humanities.

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

IMP: 37-8-301, MCA

REASON: It is reasonable and necessary to amend ARM 8.32.1106 (24.159.677) to delete unnecessary information and to correct punctuation within the rule. Also, (1)(a)(vi) is proposed to be amended to make the reference to health team consistent throughout the rules and to use the language that has been defined.

8.32.1107 (24.159.680) CURRICULUM GOALS AND REQUIREMENTS FOR PRACTICAL NURSING EDUCATION PROGRAMS (1) The primary role of the practical nurse graduate is to provide nursing care for clients in structured health care settings who are experiencing common, well-defined health problems. In their roles as members of the discipline of nursing, practical nurses actively participate in and subscribe to the legal and ethical tenets of the discipline. The practical nurse functions under supervision as set forth in 37-8-102, MCA. ~~(Adapted from National League for Nursing, Council of Practical Nursing Programs, 1989.)~~

- (2) through (2)(d) remain the same.
- (3) The curriculum must provide for progressive development of knowledge, skills, and professional conduct.
- (4) The choice and placement of courses, selection of learning activities, and the organization of these must provide continuity, sequence, and integration in the total curriculum.
- (5) Learning experiences must be based on written behavioral objectives which include demonstration of knowledge, comprehension, and application.
- (6) through (7)(g) remain the same.

(h) delivery of long-term care.

(8) Content of the course work related to the role of charge nurse shall be developed in recognition of the role of charge nurse as supervisor of care provided as well as care needed, assessment of clients, notifying the professional nurse supervisor, notifying physicians, and the administration of medications and treatments.

(9) and (9)(a) remain the same.

(b) the following types of intravenous solutions ~~[of the following types]:~~

(i) isotonic;

(ii) hypotonic; and

(iii) hypertonic; ;

(c) through (i) remain the same.

(10) Content of the courses shall be developed in recognition of the role of the ~~licensed~~ practical nurse to perform intravenous therapy in accordance with the standards set forth at ARM 8.32.1409.

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

IMP: 37-8-301, MCA

REASON: It is reasonable and necessary to amend ARM 8.32.1107 (24.159.680) to delete unnecessary information, correct punctuation, and for clarity.

8.32.427 (24.159.905) GENERAL REQUIREMENTS FOR MEDICATION AIDE TRAINING PROGRAMS AND INSTRUCTORS (1) through (1)(f) remain the same.

(g) adverse reactions, side effects, and allergies to medications;

(h) through (5)(a) remain the same.

(b) have at least two years of nursing experience in the last five years, one year of which shall be in long-term care, or home health, hospice, assisted living, or other community based setting; or be a state certified nursing assistant instructor; and

(c) remains the same.

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

IMP: 37-8-101, 37-8-202, 37-8-422, MCA

8.32.426 (24.159.910) GENERAL REQUIREMENTS FOR LICENSURE AS MEDICATION AIDE (1) The applicant for licensure may apply to take the Montana medication aide exam if the applicant:

(a) ~~the applicant~~ has completed a board approved medication aide training program as outlined in these rules; or

(b) ~~the applicant~~ holds an unencumbered certification or license in another state or U.S. jurisdiction to administer medications.

(2) through (6) remain the same.

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

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

8.32.1414 (24.159.915) STANDARDS RELATED TO THE MEDICATION AIDE'S RESPONSIBILITIES AS A MEMBER OF HEALTH TEAM (1) through (1)(c)(ii) remain the same.

(d) administer only PRN and routine medications as defined in ARM  
~~8.32.1404~~ 8.32.415;

(e) administer medications only by allowable routes as defined in ARM  
~~8.32.1404~~ [NEW RULE I], except:

(i) insulin may be subcutaneously injected from a pre-filled, labeled, unit dose syringe; and

(f) through (f)(ii) remain the same.

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

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

8.32.1405 (24.159.1003) PURPOSE OF STANDARDS OF NURSING PRACTICE FOR THE LICENSED PRACTICAL NURSE (1) The purpose of the standards is to:

~~(1)~~ (a) establish minimal acceptable levels of safe and effective practice for the ~~licensed~~ practical nurse; and

~~(2)~~ (b) serve as a guide for the board to evaluate safe and effective nursing care.

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

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

REASON: It is reasonable and necessary to amend this rule to conform to administrative rule format requirements and make the rule consistent with other rules when describing practice levels.

8.32.1406 (24.159.1004) STANDARDS RELATED TO THE LICENSED PRACTICAL NURSE'S CONTRIBUTION TO THE NURSING PROCESS (1) The ~~licensed~~ practical nurse shall:

~~(1)~~ contribute to the nursing assessment by:

(a) collecting, reporting, and recording objective and subjective data in an accurate and timely manner. Data collection includes;

(i) observation about the condition or change in condition of the client; and

(ii) remains the same.

(2) The practical nurse shall participate in the development of the strategy of care by:

(a) and (b) remain the same.

(c) contributing to setting realistic and measurable goals; and

(d) assisting in the identification of measures to maintain comfort, support human functions and responses, maintain an environment conducive to well-being, and provide health teaching.

(3) The practical nurse shall participate in the implementation of the strategy of care by:

- (a) providing care for clients under the supervision of a registered nurse, a physician, dentist, osteopath, or podiatrist;
- (b) remains the same.
- (c) documenting nursing interventions and responses to care; and
- (d) remains the same.
- (4) The practical nurse shall contribute to the evaluation of the responses of individuals or groups to nursing interventions;
- ~~(a)~~ (5) ~~e~~Evaluation data shall be documented and communicated to appropriate members of the health ~~care~~ team;
- ~~(b)~~ (6) ~~t~~The ~~licensed~~ practical nurse shall contribute to the modification of the strategy of care on the basis of the evaluation.

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

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

8.32.1407 (24.159.1005) STANDARDS RELATING RELATED TO THE LICENSED PRACTICAL NURSE'S RESPONSIBILITIES AS A MEMBER OF THE HEALTH TEAM (1) The ~~licensed~~ practical nurse shall:

- ~~(1)~~ (a) have knowledge of the statutes and ~~regulations~~ rules governing nursing and function within the legal boundaries of practical nursing practice;
- ~~(2)~~ (b) accept responsibility for individual nursing actions and competence;
- ~~(3)~~ (c) function under the supervision of a registered nurse, a physician, dentist, osteopath, or podiatrist;
- ~~(4)~~ (d) consult with registered nurses and/or other health team members and seek guidance as necessary;
- ~~(5)~~ (e) obtain instruction and supervision as necessary when implementing nursing techniques or practices;
- ~~(6)~~ (f) function as a member of the health team;
- ~~(7)~~ (g) contribute to the formulation, interpretation, implementation, and evaluation of the objectives and policies related to practical nursing practice within the employment setting;
- ~~(8)~~ (h) participate in the evaluation of nursing through peer review;
- ~~(9)~~ (i) report unsafe nursing practice to the board and unsafe practice conditions to recognized authorities;
- ~~(10)~~ (j) report the practice of nursing by unlicensed individuals to the board;
- ~~(11)~~ (k) conduct practice without discrimination on the basis of age, race, religion, sex, sexual preference, national origin, or handicap;
- ~~(12)~~ (l) respect the dignity and rights of clients regardless of social ~~and~~ or economic status, personal attributes, or nature of health problems;
- ~~(13)~~ (m) respect the client's right to privacy by protecting confidential information, unless obligated by law to disclose such information; and
- ~~(14)~~ (n) respect the property of clients, family, significant others, and the employer.

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

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



8.32.1409A (24.159.1006) STANDARDS RELATED TO THE LICENSED PRACTICAL NURSE'S ROLE IN COSMETIC PROCEDURES (1) A ~~licensed~~ practical nurse who has the proper training and on-going competency may perform the following tasks and procedures only under the on-site supervision of a physician:  
(a) through (g)(v) remain the same.

AUTH: 37-8-202, MCA

IMP: ~~37-2-402,~~ 37-8-102, MCA

REASON: It is reasonable and necessary to amend the implementing cite to correct a typographical error.

8.32.1408 (24.159.1010) STANDARDS RELATING RELATED TO THE LICENSED PRACTICAL NURSE'S ROLE IN INTRAVENOUS (IV) THERAPY

- (1) through (4)(k) remain the same.  
(l) discontinue peripheral IVs except for PICC line;  
(m) through (6)(d) remain the same.

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

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

8.32.1409 (24.159.1011) PROHIBITED IV THERAPIES (1) through (1)(b)(xiii) remain the same.  
(xiv) hypertonic solutions, except as in ARM 8.32.1408(3);  
(xv) and (xvi) remain the same.  
(xvii) thrombolytic agents;  
(c) through (d) remain the same.

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

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

8.32.408 (24.159.1021) TEMPORARY PRACTICE PERMIT (1) Graduates of approved ~~professional or practical~~ United States nursing education programs may be granted a temporary permit to practice ~~professional or practical nursing,~~ practical nursing provided that:

(a) application for Montana licensure, supporting credentials, and fee have been submitted and approved by the ~~executive director of the Montana~~ board of nursing; and

(b) remains the same.

(2) The temporary permit issued to a graduate who ~~fails~~ does not pass the exam referred to in (1)(b) becomes null, void, and invalid three days after the board mails notification to the graduate of the ~~said~~ exam result. Mailing is completed when ~~said~~ notification is deposited in the U.S. mail. The graduate shall immediately return the temporary permit to the board office upon receipt of the notice that ~~s/he~~ the graduate failed the exam referred to in (1)(b). Failure to do so is grounds for denial of a subsequent license application from the graduate and such other remedies as are provided by law.

(3) The temporary permit issued to a graduate who passes the exam referred to in (1)(b) remains valid until the license is granted or until two weeks after the board mails notification to the graduate of the ~~said~~ exam result, whichever occurs first. Mailing is completed when ~~said~~ notification is deposited in the U.S. mail.

(4) An applicant for licensure by endorsement in Montana may be granted a temporary permit to practice ~~professional~~ or practical nursing provided the applicant has submitted a completed application as described in ARM ~~8.32.405(1)(a)~~ 24.159.1028 and that the initial screening by board staff shows no current discipline as identified in ARM ~~8.32.405(2)~~ 24.159.1028 in the last two years. The temporary permit will remain valid until a license is granted or until notice of proposal to deny license is served, whichever occurs first. In the event that neither contingency has occurred within 90 days of issuance of the temporary permit to the endorsement applicant, the temporary permit shall expire on the 90th day following its issuance unless an extension is granted by the board.

(5) Any practical nurse who is employed under a temporary practice permit shall function only under the supervision of a registered nurse, physician, dentist, osteopath, or podiatrist, who is on the premises where and when the permittee is working and is specifically assigned the responsibility of supervising the performance of the temporary practice permittee.

AUTH: 37-8-202, MCA

IMP: 37-1-305, 37-8-103, MCA

REASON: It is reasonable and necessary to amend this rule for the reasons stated in the general necessity statement and to modify internal references. Normally, in a rule transfer, internal references are just modified to indicate the new reference. However, with the proposed numbering structure planned with this notice, ARM 8.32.405 is proposed to be transferred and amended into multiple locations specific to the license type. Therefore, it is reasonable and necessary to identify that the intent of the reference is to be to the rule applicable to practical nurses only. This is a substantive change and must be identified as an amendment to the rule.

#### 8.32.401 (24.159.1022) GENERAL REQUIREMENTS FOR LICENSURE

(1) The requirements for licensure of ~~registered and~~ practical nurses in Montana include the provision that the applicant has written a state board test pool examination/ or national council licensing examination (NCLEX) in a state of the United States.

AUTH: 37-8-202, MCA

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

#### 8.32.501 (24.159.1023) GROUNDS FOR DENIAL OF A LICENSE

(1) through (1)(b) remain the same.

(c) fraud or misrepresentation in association with the examination application, licensure application, or licensure examination;

(d) and (e) remain the same.

AUTH: 37-1-136, 37-8-202, MCA  
IMP: 37-1-136, 37-1-137, 37-1-316, MCA

8.32.402 (24.159.1024) LICENSURE BY EXAMINATION REQUIREMENTS

- (1) The board shall administer the national council licensing examinations for ~~registered nurse licensure and~~ practical nurse licensure by computerized adaptive testing (CAT). Each examination differs from any other administered examination.
- (2) The executive director is authorized to negotiate the contract ~~with the national council of state boards of nursing, inc.~~ for licensing examination services.
- (3) All candidates desiring to take the licensing examination for ~~registered nursing or~~ practical nursing shall make application for licensure to the board on a form provided by the board and shall make application for the examination to the national council licensing examinations (NCLEX) on a form distributed by the board as provided by the National Council of State Boards of Nursing.
- (4) and (5) remain the same.
- (6) A passing score on the appropriate NCLEX examination shall be required for licensure as a ~~professional or~~ practical nurse. The National Council of State Boards of Nursing's panel of content experts determines the passing score.
- (7) and (8) remain the same.
- (9) Candidates who pass shall receive ~~the results of the examination and~~ a license to practice as a ~~registered/~~ practical nurse.
- (10) through (13) remain the same.

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

REASON: It is reasonable and necessary to amend this rule to remove references to registered nurses since this version of the rule is applicable to practical nurses. It is also necessary to amend this rule to remove the specific vendor name listed in (2). In the event the contract is awarded to a different vendor, the rule will not need to be amended, thereby avoiding a potential conflict.

8.32.404 (24.159.1025) ~~RE-EXAMINATION~~ - PRACTICAL NURSE

REEXAMINATION (1) Candidates who ~~fail~~ do not pass the licensing examination will be permitted to retake the examination one time after 45 days from the first examination. ~~Effective October 1, 2000, a candidate may retake the examination one time.~~

- (2) If a candidate does not pass the retake, the candidate will be required to present a plan of study to the board before becoming eligible to take the examination again.
- (3) A candidate may take the test a maximum of five times in three years.
  - (a) The individual will be required to complete a school of nursing program before being able to test a sixth time.

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

8.32.405 (24.159.1028) LICENSURE BY ENDORSEMENT

REQUIREMENTS (1) through (1)(a)(i) remain the same.

(ii) the application will be kept on file for one year. If the applicant fails to complete the application requirements for application licensure by endorsement within one year, a new application will be required;

(b) and (c) remain the same.

(d) verification and documentation of licensure status from all jurisdictions of licensure for preceding two years; and

~~(e) professional nurse applicants shall present evidence of having passed a licensure examination as follows:~~

~~(i) a passing score on a state-constructed licensure examination prior to the use of the state board test pool examination in the original state of licensure; or~~

~~(ii) 350 on each part of the state board test pool examination for registered nurses; or~~

~~(iii) a minimum scaled score of 1600 on a NCLEX-RN (national council licensure examination for registered nurses) examination taken prior to September, 1988; or~~

~~(iv) a passing score on a NCLEX-RN examination taken after September, 1988;~~

~~(f)~~ (e) practical nurse applicants shall present evidence of having passed a licensure examination as follows:

(i) remains the same.

~~(ii) (iii)~~ a minimum scaled score of 350 on a NCLEX-PN (national council licensure examination for practical nurses) examination taken prior to September, 1988; or

~~(iii) (ii)~~ a passing score on a NCLEX-PN examination taken after September, 1988; or

~~(g) (f)~~ the required fees for licensure by endorsement as specified in ~~subchapter 11 ARM 8.32.425~~; and

~~(h) (g)~~ if the applicant's education was obtained in a foreign country, the applicant must also meet the conditions of ARM 8.32.429 and 8.32.430.

(2) remains the same.

(3) An applicant for licensure by endorsement in Montana may be granted a temporary permit to practice ~~professional or~~ practical nursing pursuant to the provisions of ARM ~~8.32.408(3)~~ 24.159.1021.

(4) remains the same.

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

IMP: 37-1-304, MCA

REASON: It is reasonable and necessary to amend this rule to arrange sections listing the current requirements first in order to aid the user.

Also, is it reasonable and necessary to amend (1)(g) to delete the internal reference to ARM 8.32.429 that is applicable to registered nurses. Also, normally, in a rule transfer, internal references are just modified to indicate the new reference. However, with the proposed numbering structure planned with this notice, ARM

8.32.408 is proposed to be transferred and amended into multiple locations specific to the license type. Therefore, it is reasonable and necessary to identify the intent of the reference in (3) is to be to the rule applicable to practical nurses only. This is a substantive change and must be identified as an amendment to the rule.

8.32.430 (24.159.1029) FOREIGN EDUCATED APPLICANTS FOR PRACTICAL NURSE LICENSURE REQUIREMENTS (1) and (2) remain the same.

(a) fulfill the requirements of ARM ~~8.32.402~~ 24.159.1024;

(b) through (3) remain the same.

(a) fulfill the requirements of ARM ~~8.32.405~~ 24.1159.1028;

(b) through (d) remain the same.

(4) The provisions of (2)(d) and (3)(d) do not apply if the foreign educated applicant graduated from a nursing program at a college, university, or professional nurses' training school in one of the following countries:

(a) through (g) remain the same.

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

IMP: 37-8-101, 37-8-405, 37-8-415, MCA

REASON: It is reasonable and necessary to amend this rule to modify internal references. Normally, in a rule transfer, internal references are just modified to indicate the new reference. However, with the proposed numbering structure planned with this notice, ARM 8.32.402 and 8.32.405 are proposed to be transferred and amended into multiple locations specific to the license type. Therefore, it is reasonable and necessary to identify that the intent of the reference is to be to the rule applicable to practical nurses only. This is a substantive change and must be identified as an amendment to the rule.

8.32.411 (24.159.1037) RENEWALS (1) In November of each even-numbered year, the board of nursing shall mail an application for renewal of license to all currently licensed, ~~registered nurses and licensed~~ practical nurses. The licensee must fill out the application and return it to the board ~~BEFORE~~ prior to January 1 of the next year, together with the renewal fee. Upon receiving the renewal application and fee, the board shall issue a certificate of renewal for the current year beginning January 1 of the odd-numbered year, and expiring December 31 of the even-numbered year. If the renewal application is postmarked ~~subsequent to~~ after December 31 of the renewal year, it is subject to a late fee of two times the renewal fee.

(2) A license shall be renewed by January 1 of the odd-numbered years. Any person practicing nursing during the time a license has elapsed ~~elapsed~~ lapsed shall be considered an illegal practitioner and may be subject to the penalties provided for violators under the provisions of this chapter.

~~(3) In November of even-numbered years, the board shall mail an application for renewal of license to all currently licensed advanced practice registered nurses (APRNs). The licensee shall complete the application and return it, the proof of continuing education required by ARM 8.32.411, and the renewal fee to the board before January 1. Upon receiving the completed renewal application and fee, the~~

~~board shall issue a certificate of renewal for the current two-year period beginning January 1 and expiring December 31. If the renewal application is postmarked subsequent to December 31, it is subject to a late fee of two times the renewal fee. Any person practicing during the time a license has lapsed shall be considered an illegal practitioner and may be subject to the penalties provided for violators under the provisions of this chapter.~~

~~(a) The renewal application includes a declaration made under penalty of perjury of the laws of Montana. The declaration must include:~~

~~(i) a description of how the individual will implement the plan of quality assurance, including identification of the reviewer(s);~~

~~(ii) an acknowledgement of the scope of the individual's practice;~~

~~(iii) a description of the continuing education units earned or applicable to the renewal period;~~

~~(iv) the location of practice site(s); and~~

~~(v) the individual's current DEA registration number, if applicable.~~

~~(4) All APRNs shall complete 20 continuing education units per year, or 40 units per renewal period, pertaining to the areas of the individual's certification.~~

~~APRNs who practice in a subspecialty setting shall complete the majority of the required continuing education credits in the area of the individual's subspecialty.~~

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

IMP: 37-1-134, 37-8-202, ~~37-8-431~~, MCA

8.32.412 (24.159.1038) INACTIVE STATUS (1) A licensed practical nurse who wishes to retain a license but who will not be practicing nursing may obtain an inactive status license upon submission of an application and payment of the appropriate fee. An individual licensed on inactive status may not practice nursing during the period in which ~~he or she~~ the licensee remains on inactive status.

(2) An individual may not remain licensed on inactive status for longer than two years without re-establishing qualifications for licensure, including, but not limited to, passage of the licensing examination.

(3) ~~An individual licensed~~ A licensee on inactive status may convert ~~his or her~~ an inactive status license to active status by submission of an appropriate application and payment of the renewal fee for the current renewal period.

~~(4) An APRN must also hold a registered nurse license.~~

~~(5) An APRN may request inactive status if the APRN's RN license is either active or inactive.~~

~~(6) To reactivate an inactive APRN license, the APRN shall submit proof of 20 continuing education units obtained within the 12 month period preceding reactivation.~~

~~(a) If prescriptive authority is requested, an additional five continuing education units are required in pharmacology or pharmaceutical management.~~

AUTH: 37-1-131, 37-1-319, 37-8-202, MCA

IMP: ~~37-8-431~~, 37-1-131, 37-1-319, MCA

8.32.417 (24.159.1046) SUPERVISION OF PROBATIONARY LICENSES  
LICENSEES (1) Any practical nurse working pursuant to a probationary license must work under the direct supervision of another nurse or physician, as follows:

~~(a) The supervisor for an LPN on probation must be an RN, APRN, or physician with a current, unencumbered license;~~

~~(b) the supervisor for an RN on probation must be an RN, APRN or physician with a current, unencumbered license; and~~

~~(c) the supervisor for an APRN on probation must be an APRN or a physician with a current, unencumbered license.~~

AUTH: 37-1-136, 37-1-319, 37-8-202, MCA

IMP: 37-1-136, 37-1-319, 37-8-202, MCA

8.32.502 (24.159.1052) LICENSEE PROBATION OR REPRIMAND OF A  
LICENSEE (1) A licensee may be placed on probation or reprimanded based on grounds specified in 37-1-316, MCA, or ARM 8.32.413~~(2)~~.

AUTH: 37-1-136, 37-8-202, MCA

IMP: 37-1-136, 37-1-137, 37-1-316, MCA

8.32.507 (24.159.1053) LICENSE REAPPLICATION CONSIDERATIONS  
OF REAPPLICATION FOR A LICENSE AFTER PREVIOUS DENIAL,  
REVOCATION, OR SUSPENSION (1) Reapplication for a license previously denied, revoked, or suspended must include evidence of rehabilitation, or elimination or cure of the conditions for denial, revocation, or suspension.

(2) Evaluation of reapplication for a license denied ~~under section 37-8-441,~~ MCA will be based upon, but not limited to:

(a) through (c) remain the same.

(d) compliance with any condition the board may have stipulated as a prerequisite for reapplication; and/or

(e) and (f) remain the same.

AUTH: 37-8-202, MCA

IMP: 37-1-136, 37-8-202, MCA

8.32.1402 (24.159.1203) PURPOSE OF STANDARDS OF NURSING  
PRACTICE FOR THE REGISTERED NURSE (1) The purpose of the standards is to:

~~(1) (a) to~~ establish minimal acceptable levels of safe and effective practice for the registered nurse; and

~~(2) (b) to~~ serve as a guide for the board to evaluate safe and effective nursing care.

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

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

8.32.1403 (24.159.1204) STANDARDS RELATED TO THE REGISTERED NURSE'S RESPONSIBILITY TO APPLY THE NURSING PROCESS (1) The registered nurse shall:

(1) conduct and document nursing assessments of the health status of individuals and groups by:

(a) collecting objective and subjective data from observations, examinations, interviews, and written records in an accurate and timely manner. The data includes, but is not limited to:

(i) biophysical, emotional, and mental status;

(ii) remains the same

(iii) cultural, spiritual, and socio-economic background;

(iv) through (ix) remain the same.

(x) environmental factors (e.g., physical, social, emotional, and ecological);

and

(xi) available and accessible human and material resources;

(b) sorting, selecting, reporting, and recording the data;

(c) validating, refining, and modifying the data by utilizing available resources, including interactions with the client, family, significant others, and health team members.

(2) The registered nurse shall establish and document nursing analysis which serves as the basis for the strategy of care;

(3) The registered nurse shall develop the strategy of care based upon data gathered in the assessment and conclusions drawn in the nursing analysis. This includes:

(a) and (b) remain the same.

(c) prescribing nursing intervention(s) based on the nursing analysis; and

(d) identifying measures to maintain comfort, to support human functions and positive responses, and to maintain an environment conducive to teaching to include appropriate usage of health care facilities.

(4) The registered nurse shall implement the strategy of care by:

(a) initiating nursing interventions through;

(i) and (ii) remain the same.

(iii) assigning and delegating care; and

(iv) ~~collaboration~~ collaborating and/or ~~referral~~ referring when appropriate;

(b) remains the same.

(c) documenting nursing interventions and responses to care to other members of the health team; and

(d) remains the same.

(5) The registered nurse shall evaluate the responses of individuals or groups to nursing interventions. Evaluation shall involve the client, family, significant others, and health team members.

(a) Evaluation data shall be documented and communicated to appropriate members of the health care team.

(b) Evaluation data shall be used as a basis for reassessing client health status, modifying nursing analysis, revising strategies of care, and prescribing changes in nursing interventions.

(c) remains the same.



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

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

8.32.1404 (24.159.1205) STANDARDS RELATED TO THE REGISTERED NURSE'S RESPONSIBILITIES AS A MEMBER OF THE NURSING PROFESSION

- (1) remains the same.
- (a) have knowledge of the statutes and ~~regulations~~ rules governing nursing and function within the legal boundaries of nursing practice;
- (b) through (f) remain the same.
- (g) contribute to the formulation, interpretation, implementation, and evaluation of the objectives and policies related to nursing practice within the employment setting;
- (h) remains the same.
- (i) report unsafe nursing practice to immediate supervisor and the board of ~~nursing~~, and unsafe practice conditions to any and all recognized federal, state, county, municipal, or private bodies organized with powers to regulate and enforce nursing practice conditions;
- (j) report practice of nursing by unlicensed individuals to the board of ~~nursing~~;
- (k) through (m) remain the same.
- (n) conduct practice without discrimination on the basis of age, race, religion, sex, sexual preference, national origin, or handicap;
- (o) respect the dignity and rights of clients regardless of social or economic status, personal attributes, or nature of health problems;
- (p) respect the client's right to privacy by protecting confidential information unless obligated by law to disclose the information; and
- (q) respect the property of clients, family, significant others, and the employer.

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

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

8.32.1409A (24.159.1206) STANDARDS RELATED TO THE LICENSED REGISTERED NURSE'S ROLE IN COSMETIC PROCEDURES (1) A licensed registered nurse who has the proper training and on-going competency may perform the following tasks and procedures only under the on-site supervision of a physician:

- (a) through (g)(v) remain the same.

AUTH: 37-8-202, MCA

IMP: ~~37-2-102~~, 37-8-102, MCA

REASON: It is reasonable and necessary to amend the implementing cite to correct a typographical error.

8.32.408 (24.159.1221) TEMPORARY PRACTICE PERMIT (1) Graduates of approved professional or ~~practical~~ United States nursing education programs may

be granted a temporary permit to practice ~~professional or practical nursing, respectively,~~ registered nursing provided that:

(a) application for Montana licensure, supporting credentials, and fee have been submitted and approved by the ~~executive director of the Montana board of nursing;~~ and

(b) remains the same.

(2) The temporary permit issued to a graduate who ~~fails~~ does not pass the exam referred to in (1)(b) becomes null, void, and invalid three days after the board mails notification to the graduate of the ~~said~~ exam result. Mailing is completed when ~~said~~ notification is deposited in the U.S. mail. The graduate shall immediately return the temporary permit to the board office upon receipt of the notice that ~~s/he~~ the graduate failed the exam referred to in (1)(b). Failure to do so is grounds for denial of a subsequent license application from the graduate and such other remedies as are provided by law.

(3) The temporary permit issued to a graduate who passes the exam referred to in (1)(b) remains valid until the license is granted or until two weeks after the board mails notification to the graduate of the ~~said~~ exam result, whichever occurs first. Mailing is completed when ~~said~~ notification is deposited in the U.S. mail.

(4) An applicant for licensure by endorsement in Montana may be granted a temporary permit to practice ~~professional or practical~~ registered nursing provided the applicant has submitted a completed application as described in ARM ~~8.32.405(1)(a)~~ 24.159.1228 and that the initial screening by board staff shows no current discipline as identified in ARM ~~8.32.405(2)~~ 24.159.1228 in the last two years. The temporary permit will remain valid until a license is granted or until notice of proposal to deny license is served, whichever occurs first. In the event that neither contingency has occurred within 90 days of issuance of the temporary permit to the endorsement applicant, the temporary permit shall expire on the 90th day following its issuance unless an extension is granted by the board.

(5) Any registered nurse who is employed under a temporary practice permit shall function only under the supervision of a registered nurse, physician, dentist, osteopath, or podiatrist, who is on the premises where and when the permittee is working and is specifically assigned the responsibility of supervising the performance of the temporary practice permittee.

AUTH: 37-8-202, MCA

IMP: 37-1-305, 37-8-103, MCA

REASON: It is reasonable and necessary to amend this rule for the reasons stated in the general necessity statement and to modify internal references. Normally, in a rule transfer, internal references are just modified to indicate the new reference. However, with the proposed numbering structure planned with this notice, ARM 8.32.405 is proposed to be transferred and amended into multiple locations specific to the license type. Therefore, it is reasonable and necessary to identify that the intent of the reference is to be to the rule applicable to registered nurses only. This is a substantive change and must be identified as an amendment to the rule.

8.32.401 (24.159.1222) GENERAL REQUIREMENTS FOR LICENSURE

(1) The requirements for licensure of registered and ~~practical~~ nurses in Montana include the provision that the applicant has written a state board test pool examination/ or national council licensing examination (NCLEX) in a state of the United States.

AUTH: 37-8-202, MCA

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

8.32.501 (24.159.1223) GROUNDS FOR DENIAL OF A LICENSE

(1) through (1)(b) remain the same.

(c) fraud or misrepresentation in association with the examination application, licensure application, or licensure examination;

(d) and (e) remain the same.

AUTH: 37-1-136, 37-8-202, MCA

IMP: 37-1-136, 37-1-137, 37-1-316, MCA

8.32.402 (24.159.1224) LICENSURE BY EXAMINATION REQUIREMENTS

(1) The board shall administer the national council licensing examinations for registered nurse licensure and ~~practical nurse licensure~~ by computerized adaptive testing (CAT). Each examination differs from any other administered examination.

(2) The executive director is authorized to negotiate the contract ~~with the national council of state boards of nursing, inc.~~ for licensing examination services.

(3) All candidates desiring to take the licensing examination for registered nursing or ~~practical nursing~~ shall make application for licensure to the board on a form provided by the board and shall make application for the examination to the national council licensing examinations (NCLEX) on a form distributed by the board as provided by the National Council of State Boards of Nursing.

(4) and (5) remain the same.

(6) A passing score on the appropriate NCLEX examination shall be required for licensure as a ~~professional or practical~~ registered nurse. The National Council of State Boards of Nursing's panel of content experts determines the passing score.

(7) and (8) remain the same.

(9) Candidates who pass shall receive ~~the results of the examination and a license to practice as a registered/practical nurse.~~

(10) through (13) remain the same.

AUTH: 37-8-202, MCA

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

REASON: It is reasonable and necessary to amend this rule to remove references to practical nurses since this version of the rule is applicable to registered nurses. It is also necessary to amend this rule to remove the specific vendor name listed in (2). In the event the contract is awarded to a different vendor, the rule will not need to be amended, thereby avoiding a potential conflict.

8.32.403 (24.159.1225) RE-EXAMINATION-- REGISTERED NURSE REEXAMINATION (1) Candidates who ~~fail~~ do not pass the licensing examination will be permitted to retake the examination one time after 45 days from the first examination. ~~Effective October 1, 2000, a candidate may retake the examination one time.~~

(2) If a candidate does not pass the retake, the candidate will be required to present a plan of study to the board before becoming eligible to take the examination again.

(3) A candidate may take the test a maximum of five times in three years.

(a) The individual will be required to complete a school of nursing program before being able to test a sixth time.

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

IMP: 37-8-202, 37-8-406, MCA

8.32.405 (24.159.1228) LICENSURE BY ENDORSEMENT REQUIREMENTS (1) through (1)(a)(i) remain the same.

(ii) the application will be kept on file for one year. If the applicant fails to complete the application requirements for application licensure by endorsement within one year, a new application will be required;

(b) and (c) remain the same.

(d) verification and documentation of licensure status from all jurisdictions of licensure for preceding two years; ~~and~~

(e) ~~professional~~ registered nurse applicants shall present evidence of having passed a licensure examination as follows:

(i) and (ii) remain the same.

~~(iii)(iv)~~ (iv)(iii) a minimum scaled score of 1600 on a NCLEX-RN (~~national council licensure examination for registered nurses~~) examination taken prior to September, 1988; ~~or~~

~~(iv)(iii)~~ (iii)(iv) a passing score on a NCLEX-RN examination taken after September, 1988; ~~or~~

~~(f) practical nurse applicants shall present evidence of having passed a licensure examination as follows:~~

~~(i) 350 on the state board test pool examination for practical nurses; or~~

~~(ii) a minimum scaled score of 350 on a NCLEX-PN (national council licensure examination for practical nurses) examination taken prior to September, 1988; or~~

~~(iii) a passing score on a NCLEX-PN examination taken after September, 1988;~~

~~(g)(f)~~ (f)(g) the required fees for licensure by endorsement as specified in subchapter 14 ARM 8.32.425; and

~~(h)(g)~~ (g)(h) if the applicant's education was obtained in a foreign country, the applicant must also meet the conditions of ARM 8.32.429 ~~and 8.32.430~~.

(2) remains the same.

(3) An applicant for licensure by endorsement in Montana may be granted a temporary permit to practice ~~professional or practical~~ registered nursing pursuant to the provisions of ARM ~~8.32.408(3)~~ 24.159.1221.

(4) remains the same.

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

IMP: 37-1-304, MCA

REASON: It is reasonable and necessary to amend this rule to arrange sections listing the current requirements first in order to aid the user.

Also, it is reasonable and necessary to amend (1)(g) to delete the internal reference to ARM 8.32.430 that is applicable to practical nurses. Also, normally, in a rule transfer, internal references are just modified to indicate the new reference. However, with the proposed numbering structure planned with this notice, ARM 8.32.408 is proposed to be transferred and amended into multiple locations specific to the license type. Therefore, it is reasonable and necessary to identify that the intent of the reference in (3) is to be to the rule applicable to registered nurses only. This is a substantive change and must be identified as an amendment to the rule.

8.32.429 (24.159.1229) FOREIGN EDUCATED APPLICANTS FOR REGISTERED NURSE LICENSURE REQUIREMENTS (1) and (2) remain the same.

(a) fulfill the requirements of ARM ~~8.32.402~~ 24.159.1224;

(b) through (3) remain the same.

(a) fulfill the requirements of ARM ~~8.32.405(1)(a), (b), and (c)~~ 24.159.1228;

(b) through (e) remain the same.

(4) The provisions of (2)(c)(i) and (3)(d) do not apply if the foreign educated applicant graduated from a nursing program at a college, university, or professional nurses' training school in one of the following countries:

(a) through (g) remain the same.

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

IMP: 37-8-101, 37-8-405, 37-8-415, MCA

REASON: It is reasonable and necessary to amend this rule to modify internal references. Normally, in a rule transfer, internal references are just modified to indicate the new reference. However, with the proposed numbering structure planned with this notice, ARM 8.32.402 and 8.32.405 are proposed to be transferred and amended into multiple locations specific to the license type. Therefore, it is reasonable and necessary to identify the intent of the reference is to be to the rule applicable to registered nurses only. This is a substantive change and must be identified as an amendment to the rule.

8.32.411 (24.159.1237) RENEWALS (1) In November of each even-numbered year, the board of nursing shall mail an application for renewal of license to all currently licensed registered nurses and ~~licensed practical nurses~~. The licensee must fill out the application and return it to the board ~~BEFORE~~ prior to January 1 of the next year, together with the renewal fee. Upon receiving the renewal application and fee, the board shall issue a certificate of renewal for the

current year beginning January 1 of the odd-numbered year, and expiring December 31 of the even-numbered year. If the renewal application is postmarked ~~subsequent to~~ after December 31 of the renewal year, it is subject to a late fee of two times the renewal fee.

(2) A license shall be renewed by January 1 of the odd-numbered years. Any person practicing nursing during the time a license has ~~elapsed~~ lapsed shall be considered an illegal practitioner and may be subject to the penalties provided for violators under the provisions of this chapter.

~~(3) In November of even-numbered years, the board shall mail an application for renewal of license to all currently licensed advanced practice registered nurses (APRNs). The licensee shall complete the application and return it, the proof of continuing education required by ARM 8.32.411, and the renewal fee to the board before January 1. Upon receiving the completed renewal application and fee, the board shall issue a certificate of renewal for the current two-year period beginning January 1 and expiring December 31. If the renewal application is postmarked subsequent to December 31, it is subject to a late fee of two times the renewal fee. Any person practicing during the time a license has lapsed shall be considered an illegal practitioner and may be subject to the penalties provided for violators under the provisions of this chapter.~~

~~(a) The renewal application includes a declaration made under penalty of perjury of the laws of Montana. The declaration must include:~~

~~(i) a description of how the individual will implement the plan of quality assurance, including identification of the reviewer(s);~~

~~(ii) an acknowledgement of the scope of the individual's practice;~~

~~(iii) a description of the continuing education units earned or applicable to the renewal period;~~

~~(iv) the location of practice site(s); and~~

~~(v) the individual's current DEA registration number, if applicable.~~

~~(4) All APRNs shall complete 20 continuing education units per year, or 40 units per renewal period, pertaining to the areas of the individual's certification. APRNs who practice in a subspecialty setting shall complete the majority of the required continuing education credits in the area of the individual's subspecialty.~~

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

IMP: 37-1-134, 37-8-202, ~~37-8-431~~, MCA

8.32.412 (24.159.1238) INACTIVE STATUS (1) A licensed registered nurse who wishes to retain a license but who will not be practicing nursing may obtain an inactive status license upon submission of an application and payment of the appropriate fee. An individual licensed on inactive status may not practice nursing during the period in which ~~he or she~~ the licensee remains on inactive status.

(2) An individual may not remain licensed on inactive status for longer than two years without re-establishing qualifications for licensure, including but not limited to, passage of the licensing examination.

(3) An individual licensed A licensee on inactive status may convert his or her an inactive status license to active status by submission of an appropriate application and payment of the renewal fee for the current renewal period.

~~(4) An APRN must also hold a registered nurse license.~~

~~(5) An APRN may request inactive status if the APRN's RN license is either active or inactive.~~

~~(6) To reactivate an inactive APRN license, the APRN shall submit proof of 20 continuing education units obtained within the 12 month period preceding reactivation.~~

~~(a) If prescriptive authority is requested, an additional five continuing education units are required in pharmacology or pharmaceutical management.~~

AUTH: 37-1-131, 37-1-319, 37-8-202, MCA

IMP: 37-8-434, 37-1-131, 37-1-319, MCA

#### 8.32.417 (24.159.1246) SUPERVISION OF PROBATIONARY LICENSEES

LICENSEES (1) Any registered nurse working pursuant to a probationary license must work under the direct supervision of another nurse or physician, as follows:

~~(a) the supervisor for an LPN on probation must be an RN, APRN or physician with a current, unencumbered license;~~

~~(b) tThe supervisor for an RN on probation must be an RN, APRN, or physician with a current, unencumbered license; and.~~

~~(c) the supervisor for an APRN on probation must be an APRN or a physician with a current, unencumbered license.~~

AUTH: 37-1-136, 37-1-319, 37-8-202, MCA

IMP: 37-1-136, 37-1-319, 37-8-202, MCA

#### 8.32.502 (24.159.1252) LICENSEE PROBATION OR REPRIMAND OF A

LICENSEE (1) A licensee may be placed on probation or reprimanded based on grounds specified in 37-1-316, MCA, or ARM 8.32.413~~(2)~~.

AUTH: 37-1-136, 37-8-202, MCA

IMP: 37-1-136, 37-1-137, 37-1-316, MCA

#### 8.32.507 (24.159.1253) LICENSE REAPPLICATION CONSIDERATIONS OF REAPPLICATION FOR A LICENSE AFTER PREVIOUS DENIAL,

REVOCATION, OR SUSPENSION (1) Reapplication for a license previously denied, revoked, or suspended must include evidence of rehabilitation, or elimination or cure of the conditions for denial, revocation, or suspension.

(2) Evaluation of reapplication for a license denied ~~under section 37-8-441, MCA~~ will be based upon, but not limited to:

(a) through (c) remain the same.

(d) compliance with any condition the board may have stipulated as a prerequisite for reapplication; and/or

(e) and (f) remain the same.

AUTH: 37-8-202, MCA

IMP: 37-1-136, 37-8-202, MCA

8.32.1502 (24.159.1401) DEFINITIONS The following definitions apply in and for this subchapter.

(1) "Accrediting organization" ~~is~~ means that professional organization which establishes standards and criteria for continuing education programs approved by the board of nursing.

(2) "Advanced practice registered nurse" or "APRN" ~~is~~ means a registered nurse recognized by the board to practice as an advanced practice registered nurse pursuant to 37-8-202, MCA, and ARM 8.32.305.

(a) and (b) remain the same.

(3) "Certifying body" ~~is~~ means a national certifying organization which uses psychometrically sound examinations to examine and validate competency of APRNs and which has been approved by the board of nursing as a certifying agency for APRN recognition.

(4) "Committee" ~~refers to~~ means the APRN committee, as established in ARM 8.32.1503.

(5) "Continuing education" ~~is~~ means that education either provided or approved by an academic institution of higher learning or a recognized certifying body. One continuing education unit equals 50 minutes of instruction.

(6) remains the same.

(7) "Drug" ~~is~~ means a substance defined by 37-7-101, MCA.

~~(9) (8) "Peer" means a licensed independent practitioner whose credentials and practice encompass the APRN's scope and setting of practice. If the APRN has prescriptive authority, the peer shall also have prescriptive authority.~~

(9) "Peer review" means the process of evaluating the practice of nursing, conducted by other nurses with similar qualifications.

(10) remains the same.

(11) "Prescribing" means specifying nursing intervention(s) intended to implement the defined strategy of care. This includes the nursing behaviors that nurses shall perform when delivering nursing care, though not necessarily sequentially or all in each given situation:

(a) assessment;

(b) nursing analysis;

(c) planning;

(d) nursing intervention; and

(e) evaluation.

~~(8)(12)~~ "Prescription" is means an order for a drug, as defined by 37-7-101, MCA, or any medicine, devices, or treatments, including controlled substances listed in schedule II-V, as defined by federal law in the Code of Federal Regulations (CFR), Title 21, section 1306.

AUTH: 37-8-202, MCA

IMP: 37-8-202, MCA

REASON: It is reasonable and necessary to amend this rule to insert the definitions of peer review and prescribing from ARM 8.32.1401 into this rule. The board has determined that these definitions are applicable to APRNs only and should therefore be in the APRN subchapter. It is further amended to put the existing definitions into



alphabetical order for ease in use and to conform to current ARM standards for definition rules.

8.32.1410 (24.159.1403) PURPOSE OF STANDARDS OF PRACTICE FOR THE ADVANCED PRACTICE REGISTERED NURSE (1) remains the same.

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

AUTH: 37-8-202, MCA

IMP: 37-8-202, MCA

8.32.1411 (24.159.1404) STANDARDS RELATED TO THE ADVANCED PRACTICE REGISTERED NURSE'S RESPONSIBILITY TO APPLY THE NURSING PROCESS (1) through (1)(a)(ii) remain the same.

- (b) establish and document an appropriate diagnosis, treatment plan, and strategy of care based on the assessment, including:
  - (i) through (v) remain the same.
- (c) provide and document expert guidance and education when working with clients, families, and other members of the health team;
- (d) and (e) remain the same.

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

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

8.32.1412 (24.159.1405) STANDARDS RELATED TO THE ADVANCED PRACTICE REGISTERED NURSE'S RESPONSIBILITIES AS A MEMBER OF THE NURSING PROFESSION (1) and (1)(a) remain the same.

- (b) possess the requisite knowledge, judgement, and skill to safely and competently perform any function that the APRN undertakes;
- (c) through (c)(ii) remain the same.
- (d) immediately file with the board of nursing any proposed change in the method for referral, client record documentation, or quality assurance method. Any change will be subject to approval by the board of nursing;
- (e) and (f) remain the same.

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

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

8.32.308 (24.159.1411) TEMPORARY PERMITS FOR GRADUATE ADVANCED PRACTICE REGISTERED NURSES (APRN) (1) and (1)(a) remain the same.

- (2) If the graduate passes the certifying examination, the temporary permit shall remain valid until the Montana board of nursing grants full APRN recognition. If the graduate does not pass the certifying examination, privileges granted by the temporary practice permit are voided and the temporary practice permit shall be returned to the board office immediately.

(3) and (4) remain the same.

AUTH: 37-1-305, 37-8-202, MCA

IMP: 37-1-305, 37-1-319, 37-8-202, MCA

8.32.306 (24.159.1412) APPLICATION FOR RECOGNITION (1) through (2)(f) remain the same.

(g) payment of non-refundable statutory fee.

(3) remains the same.

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

IMP: 37-1-134, 37-8-202, ~~37-8-431~~, MCA

8.32.304 (24.159.1413) ADVANCED PRACTICE NURSING TITLE

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

(b) has submitted application with supporting credentials for advanced practice nursing title and application has been approved by the board of nursing;

(c) through (2)(h) remain the same.

AUTH: 37-8-202, MCA

IMP: 37-8-202, MCA

8.32.305 (24.159.1414) EDUCATIONAL REQUIREMENTS AND OTHER QUALIFICATIONS APPLICABLE TO ADVANCED PRACTICE REGISTERED NURSING (1) remains the same.

~~(a)~~ (b) Successful completion of a post-basic professional nursing education program in the advanced practice registered nurse area of specialty with the minimum length of one academic year consisting of at least 250 hours of didactic instruction and 400 hours under a preceptor; and, individual certification from a board-approved certifying body for those recognized prior to July 1, 1995; ;

(b) ~~(a)~~ For original recognition after June 30, 1995, a master's degree from an accredited nursing education program, or a certificate from an accredited post master's program as defined in (1)~~(a)~~ (b), which prepares the registered nurse for the APRN recognition sought; and, individual certification from a board-approved certifying body. APRNs who completed an accredited APRN program and obtained national certification prior to June 30, 1995, may be recognized in Montana; ;

(2) through (5) remain the same.

AUTH: 37-1-319, 37-8-202, MCA

IMP: 37-8-202, 37-8-409, MCA

REASON: It is reasonable and necessary to amend this rule to arrange sections listing the current requirements first in order to aid the user.

8.32.401 (24.159.1415) GENERAL REQUIREMENTS FOR LICENSURE

(1) The requirements for licensure of registered ~~and practical~~ nurses in Montana include the provision that the applicant has written a state board test pool

examination/ or national council licensing examination (NCLEX) in a state of the United States.

AUTH: 37-8-202, MCA

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

8.32.501 (24.159.1416) GROUNDS FOR DENIAL OF A LICENSE

(1) through (1)(b) remain the same.

(c) fraud or misrepresentation in association with the examination application, licensure application, or licensure examination;

(d) and (e) remain the same.

AUTH: 37-1-136, 37-8-202, MCA

IMP: 37-1-136, 37-1-137, 37-1-316, MCA

8.32.402 (24.159.1417) LICENSURE BY EXAMINATION REQUIREMENTS

(1) The board shall administer the national council licensing examinations for registered nurse licensure ~~and practical nurse licensure~~ by computerized adaptive testing (CAT). Each examination differs from any other administered examination.

(2) The executive director is authorized to negotiate the contract ~~with the national council of state boards of nursing, inc.~~ for licensing examination services.

(3) All candidates desiring to take the licensing examination for registered nursing ~~or practical nursing~~ shall make application for licensure to the board on a form provided by the board and shall make application for the examination to the national council licensing examinations (~~NCLEX~~) on a form distributed by the board as provided by the National Council of State Boards of Nursing.

(4) and (5) remain the same.

(6) A passing score on the appropriate NCLEX examination shall be required for licensure as a ~~professional or practical~~ registered nurse. The National Council of State Boards of Nursing's panel of content experts determines the passing score.

(7) and (8) remain the same.

(9) Candidates who pass shall receive ~~the results of the examination and a license to practice as a registered/practical nurse.~~

(10) through (13) remain the same.

AUTH: 37-8-202, MCA

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

REASON: It is reasonable and necessary to amend this rule to remove references to practical nurses since this version of the rule is applicable to APRNs. It is also necessary to amend this rule to remove the specific vendor name listed in (2). In the event the contract is awarded to a different vendor, the rule will not need to be amended, thereby avoiding a potential conflict.

8.32.405 (24.159.1418) LICENSURE BY ENDORSEMENT REQUIREMENTS (1) through (1)(a)(i) remain the same.

(ii) the application will be kept on file for one year. If the applicant fails to complete the application requirements for application licensure by endorsement within one year, a new application will be required;

(b) and (c) remain the same.

(d) verification and documentation of licensure status from all jurisdictions of licensure for preceding two years; and

(e) ~~professional~~ registered nurse applicants shall present evidence of having passed a licensure examination as follows:

(i) and (ii) remain the same.

~~(iii)~~ (iv) a minimum scaled score of 1600 on a NCLEX-RN (~~national council licensure examination for registered nurses~~) examination taken prior to September, 1988; or

~~(iv)~~ (iii) a passing score on a NCLEX-RN examination taken after September, 1988; or

~~(f)~~ practical nurse applicants shall present evidence of having passed a licensure examination as follows:

~~(i)~~ 350 on the state board test pool examination for practical nurses; or

~~(ii)~~ a minimum scaled score of 350 on a NCLEX-PN (~~national council licensure examination for practical nurses~~) examination taken prior to September, 1988; or

~~(iii)~~ a passing score on a NCLEX-PN examination taken after September, 1988;

~~(g)~~ (f) the required fees for licensure by endorsement as specified in subchapter 14 ARM 8.32.425; and

~~(h)~~ (g) if the applicant's education was obtained in a foreign country, the applicant must also meet the conditions of ARM 8.32.429 and ~~8.32.430~~.

(2) remains the same.

(3) An applicant for licensure by endorsement in Montana may be granted a temporary permit to practice ~~professional or practical~~ registered nursing pursuant to the provisions of ARM ~~8.32.408(3)~~ 24.159.1221.

(4) remains the same.

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

IMP: 37-1-304, MCA

REASON: It is reasonable and necessary to amend this rule to arrange sections listing the current requirements first in order to aid the user.

Also, it is reasonable and necessary to amend (1)(g) to delete the internal reference to ARM 8.32.430 that is applicable to practical nurses. Also, normally, in a rule transfer, internal references are just modified to indicate the new reference. However, with the proposed numbering structure planned with this notice, ARM 8.32.408 is proposed to be transferred and amended into multiple locations specific to the license type. Therefore, it is reasonable and necessary to identify that the intent of the reference in (3) is to be to the rule applicable to registered nurses only. This is a substantive change and must be identified as an amendment to the rule.

8.32.411 (24.159.1427) RENEWALS (1) ~~In November of each even-numbered year, the board of nursing shall mail an application for renewal of license to all currently licensed registered nurses and licensed practical nurses. The licensee must fill out the application and return it to the board BEFORE January 1 of the next year, together with the renewal fee. Upon receiving the renewal application and fee, the board shall issue a certificate of renewal for the current year beginning January 1 of the odd-numbered year, and expiring December 31 of the even-numbered year. If the renewal application is postmarked subsequent to December 31 of the renewal year, it is subject to a late fee of two times the renewal fee.~~

~~(2) A license shall be renewed by January 1 of the odd-numbered years. Any person practicing nursing during the time a license has elapsed shall be considered an illegal practitioner and may be subject to the penalties provided for violators under the provisions of this chapter.~~

(3) In November of even-numbered years, the board shall mail an application for renewal of license to all currently licensed advanced practice registered nurses (APRNs). The licensee shall complete the application and return it, the proof of continuing education required by ARM 8.32.411 (3), and the renewal fee to the board before January 1. Upon receiving the completed renewal application and fee, the board shall issue a certificate of renewal for the current two-year period beginning January 1 and expiring December 31. If the renewal application is postmarked subsequent to after December 31, it is subject to a late fee of two times the renewal fee.

(4) Any person practicing during the time a license has lapsed shall be considered an illegal practitioner and may be subject to the penalties provided for violators under the provisions of this chapter.

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

(i) through (v) remain the same, but are renumbered (a) through (e).

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

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

IMP: 37-1-134, 37-8-202, ~~37-8-431~~, MCA

REASON: It is reasonable and necessary to amend existing (3) to modify the reference to "proof of continuing education as required by ARM 8.32.411", which is a reference to this rule, and make the reference specific to the applicable section of the rule that pertains to the continuing education requirements listed in the section that will become (3). This change makes the reference more clear and accurate.

8.32.412 (24.159.1428) INACTIVE STATUS (1) A licensed advanced practice registered nurse who wishes to retain a license but who will not be practicing nursing may obtain an inactive status license upon submission of an application and payment of the appropriate fee. An individual licensed on inactive status may not practice nursing during the period in which ~~he or she~~ the licensee remains on inactive status.

(2) An individual may not remain licensed on inactive status for longer than two years without re-establishing qualifications for licensure, including but not limited to, passage of the licensing examination.

(3) An individual licensed A licensee on inactive status may convert his or her an inactive status license to active status by submission of an appropriate application and payment of the renewal fee for the current renewal period.

(4) through (6)(a) remain the same.

AUTH: 37-1-131, 37-1-319, 37-8-202, MCA

IMP: ~~37-8-431~~, 37-1-131, 37-1-319, MCA

8.32.417 (24.159.1436) SUPERVISION OF PROBATIONARY LICENSEES  
LICENSEES (1) Any APRN nurse working pursuant to a probationary license must work under the direct supervision of another nurse or physician, as follows:

~~(a) the supervisor for an LPN on probation must be an RN, APRN or physician with a current, unencumbered license;~~

~~(b) the supervisor for an RN on probation must be an RN, APRN or physician with a current, unencumbered license; and~~

~~(c) The supervisor for an APRN on probation must be an APRN or a physician with a current, unencumbered license.~~

AUTH: 37-1-136, 37-1-319, 37-8-202, MCA

IMP: 37-1-136, 37-1-319, 37-8-202, MCA

8.32.502 (24.159.1442) LICENSEE PROBATION OR REPRIMAND OF A LICENSEE (1) A licensee may be placed on probation or reprimanded based on grounds specified in 37-1-316, MCA, or ARM 8.32.413~~(2)~~.

AUTH: 37-1-136, 37-8-202, MCA

IMP: 37-1-136, 37-1-137, 37-1-316, MCA

8.32.507 (24.159.1443) LICENSE REAPPLICATION CONSIDERATIONS OF REAPPLICATION FOR A LICENSE AFTER PREVIOUS DENIAL, REVOCATION, OR SUSPENSION (1) Reapplication for a license previously denied, revoked, or suspended must include evidence of rehabilitation, or elimination or cure of the conditions for denial, revocation, or suspension.

(2) Evaluation of reapplication for a license denied ~~under section 37-8-441, MCA~~ will be based upon, but not limited to:

(a) through (c) remain the same.

(d) compliance with any condition the board may have stipulated as a prerequisite for reapplication; and/or

(e) and (f) remain the same.

AUTH: 37-8-202, MCA

IMP: 37-1-136, 37-8-202, MCA

8.32.1501 (24.159.1461) PRESCRIPTIVE AUTHORITY FOR ELIGIBLE APRNS (1) ~~This subchapter will be known and may be cited as the APRN prescriptive authority rules.~~

(2) An APRN granted prescriptive authority by the board of nursing may prescribe and dispense drugs pursuant to applicable state and federal laws. If the APRN has prescriptive authority, the peer shall also have prescriptive authority.

(a) and (b) remain the same.

(3) (2) Prescriptive authority permits the APRN to receive pharmaceutical samples, and to prescribe, dispense, and administer prescription drugs in the prevention of illness, the restoration of health, and/or the maintenance of health in accordance with 37-2-104, MCA.

(4) (3) The Board of Pharmacy will be notified in a timely manner by the board when the prescriptive authority of an APRN is terminated, suspended, or reinstated.

AUTH: 37-8-202, MCA

IMP: 37-8-202, MCA

8.32.1503 (24.159.1462) ADVANCED PRACTICE NURSING COMMITTEE

(1) There is an advanced practice nursing committee. The committee is composed of at least three members of the board of nursing, two of whom shall be RNs.

(2) The committee or its designee will review and approve complete, typed, or word processed applications from individuals seeking advanced practice and/or prescriptive authority. The committee will recommend action to the full board of nursing. The application must describe the individual's proposed:

(a) through (e) remain the same.

(3) The committee will review all non-routine, complete, typed, or word processed applications for advanced practice licensure and will recommend action to the full board of nursing.

AUTH: 37-8-202, MCA

IMP: 37-8-202, MCA

8.32.1504 (24.159.1463) INITIAL APPLICATION REQUIREMENTS FOR PRESCRIPTIVE AUTHORITY

(1) The advanced practice registered nurse shall submit a completed application provided by the board of nursing, and a non-refundable fee. The application must include:

(a) evidence of completion of a minimum of 15 education hours in pharmacology and/or the clinical management of drug therapy from an accredited body which have been obtained within a three-year period immediately prior to the date the application is received at the board office. No more than two hours may concern the study of herbal or complementary therapies. Six of the 15 continuing education hours must have been obtained within one year immediately prior to the date the application is received at the board office. One-third of all education hours must be face-to-face meetings or interaction;

(b) through (e) remain the same.

(2) The committee will make a recommendation only with respect to completed, typed, or word processed applications. The board of nursing may deny the application if the applicant has a license which is encumbered.

AUTH: 37-8-202, MCA

IMP: 37-8-202, MCA

8.32.1505 (24.159.1464) PRESCRIBING PRACTICES (1) and (2) remain the same.

(a) name, title, address, and phone number of the advanced practice registered nurse who is prescribing;

(b) through (3) remain the same.

(4) ~~(a)~~ The advanced practice registered nurse with prescriptive authority who wishes to prescribe schedule II-V drugs will comply with federal Drug Enforcement Administration requirements prior to prescribing controlled substances.

~~(b)~~ (5) The advanced practice registered nurse will immediately file any and all of his or her the nurse's DEA registrations and numbers with the board of nursing.

~~(c)~~ (6) The board of nursing will maintain current records of all advanced practice registered nurses with DEA registration and numbers.

~~(d)~~ (7) In an emergency situation, schedule II drugs may be phoned in to the pharmacist pursuant to 21 CFR 1306.11(d).

~~(5)~~ (8) An advanced practice registered nurse with prescriptive authority will not delegate the prescribing or dispensing of drugs to any other person.

~~(6)~~ (9) An APRN with prescriptive authority who also possesses inpatient care privileges shall practice pursuant to a written agreement between the agency and the APRN which is consistent with the rules, regulations, and guidelines set forth in 37-8-202 and 37-2-104, MCA, and ~~ARM 8.32.301 through 8.32.303, and this subchapter~~ ARM [24.159.1461 through 24.159.1468] , and 8.32.301, 8.32.302, and 8.32.303.

~~(7)~~ (10) An APRN with prescriptive authority from the board of nursing will comply with the requirements of 37-2-104, MCA.

AUTH: 37-8-202, MCA

IMP: 37-8-202, MCA

8.32.1508 (24.159.1466) QUALITY ASSURANCE OF ADVANCED PRACTICE REGISTERED NURSE PRACTICE (1) An advanced practice

registered nurse performing direct patient care shall submit a method of quality assurance for evaluation of the advanced practice registered nurse's practice. The quality assurance method must be approved by the board of nursing prior to licensure.

(2) remains the same.

(a) 15 charts or 5% of all charts handled by the advanced practice registered nurse, whichever is less, must be reviewed quarterly. The charts being reviewed must be evaluated by a peer review, by a physician of the same practice specialty, or by others as approved by the board. Each evaluator shall hold an unencumbered license;

(b) through (e) remain the same.



(3) An advanced practice registered nurse shall immediately file with the board of nursing any proposed change in the quality assurance method. Any change is subject to prior approval by the board of nursing.

(4) remains the same.

AUTH: 37-8-202, MCA

IMP: 37-8-202, MCA

8.32.1509 (24.159.1467) TERMINATION OF PRESCRIPTIVE AUTHORITY

(1) The board of nursing may impose discipline up to and including termination of an advanced practice registered nurse's prescriptive authority when one or more of the following criteria apply:

(a) the advanced practice registered nurse has not met the requirements for renewal of prescriptive authority in accordance with ~~this subchapter~~ ARM [24.159.1461 through 24.159.1468];

(b) through (d)(ii) remain the same.

(iii) otherwise violated the provisions of the prescriptive authority rules contained in ~~this subchapter~~ ARM [24.159.1461 through 24.159.1468]; or

(e) remains the same.

(2) An advanced practice registered nurse whose prescriptive authority has terminated will not prescribe until the advanced practice registered nurse has received written notice from the board of nursing that ~~his or her~~ the nurse's prescriptive authority has been reinstated by the board.

AUTH: 37-8-202, MCA

IMP: 37-8-202, MCA

8.32.301 (24.159.1470) NURSE PRACTITIONER PRACTICE (1) Nurse practitioner practice means the independent and/or collaborative management of primary and/or acute health care of individuals, families, and communities including:

(a) assessing the health status of individuals and families using methods appropriate to the client population and area of practice such as:

(i) health history taking;

(ii) physical examination; and

(iii) assessing developmental health problems;

(b) through (d) remain the same.

(e) providing instruction and counseling to individuals, families, and groups in the areas of health promotion and maintenance, including involving such persons in planning for their health care; and

(f) remains the same.

AUTH: 37-8-202, MCA

IMP: 37-8-202, MCA

8.32.302 (24.159.1475) NURSE MIDWIFERY PRACTICE (1) Nurse midwifery practice means the independent management of care of essentially normal newborns and women, antepartally, intrapartally, postpartally, and/or

gynecologically. This occurs within a health care system that provides for medical consultation, collaborative management, and referral.

(2) remains the same.

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

IMP: 37-8-202, 37-8-409, MCA

8.32.303 (24.159.1480) NURSE ANESTHETIST PRACTICE (1) Nurse anesthetist practice is the independent and/or collaborative performance of or the assistance in any act involving the determination, preparation, administration, or monitoring of any drug used in the administration of anesthesia or related services for surgical and other therapeutic procedures which require the presence of persons educated in the administration of anesthetics.

(2) remains the same.

AUTH: 37-8-202, MCA

IMP: 37-8-202, MCA

8.32.307 (24.159.1485) CLINICAL NURSE SPECIALIST PRACTICE

(1) through (1)(b) remain the same.

(c) plan for health promotion, disease prevention, and/or therapeutic intervention in collaboration with the client. The goal is to enhance the problem-solving and self-care abilities of the client whenever and to whatever extent possible. The clinical nurse specialist works with other health care providers to maximize resources available to the client and family;

(d) through (g) remain the same.

(h) educate clients, families, other health care professionals, and the public;

(i) and (j) remain the same.

AUTH: 37-8-202, MCA

IMP: 37-8-202, MCA

8.32.307A (24.159.1490) PSYCHIATRIC-MENTAL HEALTH PRACTITIONER PRACTICE (1) Psychiatric-mental health NP or psychiatric CNS practice means the independent and/or collaborative management of primary mental health care for individuals, families, and communities throughout the life span and for those who have or are at risk for developing mental health problems. The psychiatric-mental health practitioner may be educated as an NP or a CNS in the area of psychiatric-mental health advanced practice nursing. The practice of psychiatric-mental health practitioners includes:

(a) through (h) remain the same.

(i) instructing and counseling individuals, families, and groups in mental health promotion and maintenance, including involving the clients in planning for their health care; and

(j) remains the same.

AUTH: 37-8-202, MCA

IMP: 37-8-202, MCA

8.32.1721 (24.159.1601) PURPOSE (1) The purpose of these rules relating to delegation and assignment is to:

- (a) ~~to~~ serve as a standard for nurses who hire, supervise, and/or serve as a delegator to unlicensed assistive personnel (UAP); and
- (b) ~~to~~ establish minimal acceptable levels of safe and effective delegation.

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

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

8.32.1722 (24.159.1602) DEFINITIONS The following words and terms as used in this subchapter have the following meanings:

- (1) through (6) remain the same.
- (7) "Competency" means performance standards including demonstrated skills, knowledge, abilities, and understanding of specific tasks that are required in a specific role and setting.
- (8) through (19) remain the same.
- (20) "Pharmacology course" means a nursing course that introduces the student to the basic principles of pharmacology in nursing practice and the skills necessary to safely administer medications. Students will be able to demonstrate accurate dosage calculations, correct medication administration, knowledge of drug classifications, and therapeutic and nursing implications of medication administration.

(21) through (23) remain the same.

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

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

8.32.1725 (24.159.1605) STANDARDS RELATED TO THE FACILITY'S CHIEF NURSING OFFICER REGARDING DELEGATION PRACTICES (1) and (1)(a) remain the same.

- (b) the UAP's skills are observed, evaluated, and documented;
- (c) through (2) remain the same.

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

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

8.32.1732 (24.159.1631) ADVANCED DELEGATION TO UAP NURSING STUDENTS (1) through (1)(b)(ii) remain the same.

(iii) whose satisfactory completion of ~~a course in the~~ fundamentals of nursing course, as defined in ARM 8.32.1722, has been verified by the facility's chief nursing officer; and

(iv) through (3)(l) remain the same.

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

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

8.32.1601 (24.159.2001) INTRODUCTION OF THE NURSES' ASSISTANCE PROGRAM (1) The nurses' assistance program (NAP) is a specially designed program to assist Montana nurses whose competency may be impaired due to the abuse of drugs or alcohol. The NAP will have two tracks:

- (a) the disciplinary track; and
- (b) the non-disciplinary track.

(2) The NAP will monitor the nurses' rehabilitation process to ensure public safety. Information that relates to the abuse of addictive drugs, alcohol, or any other drug or substance, may be reported by the licensee to the NAP in lieu of reporting to the board.

AUTH: 37-8-202, MCA

IMP: 37-8-202, MCA

8.32.1610 (24.159.2002) ADMINISTRATION OF THE PROGRAM (1) The ~~nurses' assistance program~~ NAP will be under the jurisdiction of the board of nursing. The board may contract with a consultant to administer the NAP.

AUTH: 37-8-202, MCA

IMP: 37-8-202, MCA

8.32.1611 (24.159.2003) CONSULTANT REQUIREMENTS (1) remains the same.

(a) a an unencumbered license as a registered nurse in Montana with a minimum of a baccalaureate degree in nursing;

(b) through (e) remain the same.

(f) two years employment experience in a recognized treatment program for chemical dependency.

AUTH: 37-8-202, MCA

IMP: 37-8-202, MCA

8.32.1602 (24.159.2010) DISCIPLINARY TRACK (1) Participation in the ~~nurses' assistance program~~ NAP may be mandated as a part of disciplinary action by the board of nursing or if a complaint against the licensee has been submitted to the board of nursing.

AUTH: 37-8-202, MCA

IMP: 37-8-202, MCA

8.32.1603 (24.159.2011) ADMISSION CRITERIA - DISCIPLINARY TRACK (1) remains the same.

(a) the licensee has violated the statutes ~~and~~ or rules related to nursing practice which involved alcohol and/or drugs and whom the board has stipulated the NAP as a part of disciplinary action;

(b) the licensee agrees to abide by the terms of the NAP; or

(c) the nurse is from another state, has applied for a nursing license in Montana, and is mandated by ~~stipulation~~/ final order of that state board of nursing to attend a NAP program.

AUTH: 37-8-202, MCA

IMP: 37-8-202, MCA

REASON: It is reasonable and necessary to amend this rule to indicate that a licensee does have to violate both statute and rule relating to nursing practice involving alcohol and/or drugs. It could be possible for a violation of one and not the other if using a literal interpretation of the current language. Also, it is reasonable and necessary to delete the reference to stipulation to correctly identify that a final order mandating an assistance program is necessary.

8.32.1604 (24.159.2012) PROGRAM REQUIREMENTS - DISCIPLINARY TRACK (1) through (2)(a) remain the same.

(b) reporting to the board any violations of the NAP contract or any reasonable suspicion that the licensee may not be able to practice safe nursing to ~~the board~~.

AUTH: 37-8-202, MCA

IMP: 37-8-202, MCA

8.32.1606 (24.159.2020) NON-DISCIPLINARY TRACK (1) The non-disciplinary track of the NAP is open to:

(a) any licensee who identifies a drug/alcohol problem and requests admission to the NAP; ~~and or~~

(b) ~~to~~ those licensees referred by the board.

(2) Licensees may be reported directly to the NAP in lieu of a formal complaint to the board. The identity of participants in the non-disciplinary track of the NAP will remain unknown to the board unless there is a failure to enroll or comply with the requirements of the NAP. Failure to enroll/ or comply with the NAP will result in a formal complaint to the board by the NAP.

AUTH: 37-8-202, MCA

IMP: 37-8-202, MCA

8.32.1607 (24.159.2021) ADMISSION CRITERIA - NON-DISCIPLINARY TRACK (1) A licensee may be admitted to the NAP non-disciplinary track if ~~he/she~~ the licensee is a:

(a) a licensed nurse or previously licensed nurse in the state of Montana who requests admission;

(b) a licensed nurse from another state who has applied for a nursing license in Montana and is in a similar monitoring program in another state;

(c) a licensee without a previous disciplinary action from any licensing board;

(d) a licensee against whom no notice of proposed board action or similar notice issued by a licensing board is pending; or

(e) a licensee who successfully completed the NAP or similar monitoring program when enrolled.

(2) remains the same.

(3) A licensee who has diverted controlled substances or caution legend drugs for purposes of sale, ~~or~~ distribution, or personal use is not eligible for the non-disciplinary track.

AUTH: 37-8-202, MCA

IMP: 37-8-202, MCA

8.32.1609 (24.159.2023) DISCHARGE CRITERIA - NON-DISCIPLINARY TRACK (1) ~~The licensee~~ Licensee shall be discharged from the NAP non-disciplinary track when the licensee:

(a) ~~the licensee~~ successfully completes the NAP;

(b) ~~the licensee~~ does not comply with the NAP. The NAP will submit a report to the board; or

(c) ~~the licensee~~ voluntarily withdraws from the NAP. The NAP will submit a complaint to the board.

(2) ~~The~~ A licensee may be discharged if ~~he/she~~ the licensee violates any of the statutes ~~and~~ or rules related to nursing which results in disciplinary action by the board.

AUTH: 37-8-202, MCA

IMP: 37-8-202, MCA

8.32.413 (24.159.2301) CONDUCT OF NURSES (1) remains the same.

(a) While working as a nurse, all nurses will identify themselves with a name badge disclosing their first and last name, as it appears on their nursing license, and license type. The identification badge will be written in a standard bold face font with a font size of no less than 18.

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

(h) falsifying patients' records, ~~or~~ intentionally charting incorrectly, or failing to chart;

(i) through (n) remain the same.

(o) practicing professional or practical nursing as a registered or ~~licensed~~ practical nurse in this state without a current active Montana license or permit;

(p) failing to report, to the board ~~of nursing~~ information known to the individual regarding any possible violation of the statutes ~~and~~ or rules relating to nursing;

(q) and (r) remain the same.

(s) refusing to sign for or accept a certified mailing from the board office; or

(t) failing to participate and cooperate in a ~~professional and occupational licensing division~~ Department of Labor and Industry investigation; and

(u) remains the same.

AUTH: 37-1-319, 37-8-202, MCA

IMP: 37-1-316, 37-1-319, 37-8-202, MCA

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

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

(1) "Allowable routes" means oral, sublingual, topical, ophthalmic, otic, nasal, and inhalant methods of administration, except as otherwise provided by rule.

(2) "General supervision", with respect to a medication aide, means at least quarterly on-site review, by a supervising nurse, of a medication aide'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" 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 8.32.415, to residents of the assisted living facility, and who:

(a) is 18 years of age or older;

(b) has a high school diploma; and

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

AUTH: 37-8-202, MCA

IMP: 37-8-202, MCA

REASON: It is reasonable and necessary to adopt this rule to insert the definitions of allowable routes, general supervision, and medication aide from ARM 8.32.1401 into this rule. The board has determined that these definitions are applicable to medication aides only and should therefore be in the medication aide subchapter.

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

8.32.504 DISCIPLINARY PROCEDURES IN ANOTHER JURISDICTION  
found at ARM page 8-980.11.

AUTH: 37-8-202, MCA

IMP: 37-1-136, 37-8-202, 37-8-441, MCA

8.32.505 NOTIFICATION OF DENIAL OR DISCIPLINARY ACTION found at  
ARM page 8-980.12.

AUTH: 37-8-202, MCA

IMP: 37-1-136, MCA

8.32.506 REQUEST FOR HEARING found at ARM page 8-980.12.

AUTH: 37-8-202, MCA

IMP: 37-1-121, 37-1-136, 37-8-441, 37-8-442, MCA

REASON: It is reasonable and necessary to repeal ARM 8.32.504, 8.32.505, and 8.32.506 because discipline and due process issues are adequately covered in Title 37, chapter 1, MCA and the Montana Administrative Procedure Act, Title 2, chapter 4, MCA. Therefore, these rules are unnecessary and should be removed instead of transferring into Title 24, Department of Labor and Industry.

8.32.1101 EFFECTIVE DATE OF ARM 8.32.1101 THROUGH 8.32.1116  
found at ARM page 8-1005.

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

REASON: It is reasonable and necessary to repeal ARM 8.32.1101 because this rule is no longer needed and has served its original purpose. These rules have been in place for over eight years. The original effective date of these rules is easily recognized by the notation in the history note identifying each rule as being new and effective on July 1, 1997.

8.32.1401 DEFINITIONS found at ARM page 8-1013.

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: It is reasonable and necessary to repeal this rule in order to consolidate definition rules that were located in several subchapters. The substance of the words defined in this rule is proposed to be inserted into the other proposed definition rules.

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

<u>OLD</u>	<u>NEW</u>	
8.32.101	24.159.101	Board Organization
8.32.201	24.159.201	Procedural Rules
8.32.202	24.159.202	Public Participation
8.32.409	24.159.1036	Preparation of Licenses
	24.159.1236	Preparation of Licenses
	24.159.1426	Preparation of Licenses
8.32.410	24.159.1040	Duplicate or Lost Licenses
	24.159.1240	Duplicate or Lost Licenses
	24.159.1430	Duplicate or Lost Licenses
8.32.416	24.159.1041	Verification of Licensure
	24.159.1241	Verification of Licensure
	24.159.1431	Verification of Licensure



8.32.425	24.159.401	Fees
8.32.603	24.159.408	Officers <u>of the Board</u>
8.32.608	24.159.411	Parliamentary Authority
8.32.610	24.159.416	<u>Qualifications for Executive Director--</u> <u>Qualifications of the Board</u>
8.32.804	24.159.656	Faculty Qualification Report
8.32.1103	24.159.604	Philosophy, Educational Objectives, and Expected Outcomes <u>of Nursing Education Programs</u>
8.32.1112	24.159.659	Faculty for Registered Nursing <u>Education Programs</u>
8.32.1114	24.159.665	Preceptors <u>in Nursing Education Programs</u>
8.32.1413	24.159.903	Purpose of Standards of Practice for the Licensed Medication Aide
8.32.1506	24.159.1465	Special Limitations Related to the Prescribing of Controlled Substances
8.32.1510	24.159.1468	<del>Renewal of Prescriptive Authority</del> <u>Renewal Requirements</u>
8.32.1605	24.159.2013	Discharge Criteria - Disciplinary Track
8.32.1608	24.159.2022	Program Requirements - Non-Disciplinary Track
8.32.1612	24.159.2004	Consultant Activities
8.32.1723	24.159.1610	Accountability
8.32.1724	24.159.1611	Criteria for Delegation of Nursing Tasks
8.32.1726	24.159.1612	Standards Related to the Nurse Functioning as a Delegator
8.32.1727	24.159.1616	Nursing Tasks Related to Medications That May be Delegated
8.32.1728	24.159.1625	General Nursing Functions and Tasks That May Not be Delegated
8.32.1729	24.159.1630	Advanced Delegation, Generally
8.32.1730	24.159.1636	Advanced Delegation to UAPs Working in the Emergency Department
8.32.1731	24.159.1640	Advanced Delegation to UAPs Working in the Dialysis Unit
8.32.1733	24.159.1604	Tasks Which May be Routinely Assigned to an Unlicensed Person in any Setting When a Nurse-Patient Relationship Exists

8. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to 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 [dlibsdnur@mt.gov](mailto:dlibsdnur@mt.gov), and must be received no later than 5:00 p.m., May 22, 2006.

9. An electronic copy of this Notice of Public Hearing is available through the department's and board's site on the World Wide Web at [www.nurse.mt.gov](http://www.nurse.mt.gov). The department strives to make the electronic copy of this Notice of Public Hearing 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 website accessible at all times, concerned persons should be aware that the website may be unavailable during some periods, due to system maintenance or technical problems, and that a person's technical difficulties in accessing or posting to the e-mail address do not excuse late submission of comments.

10. The Board of Nursing 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 which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding all Board of Nursing administrative rulemaking proceedings or other administrative proceedings. Such written request may be mailed 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 [dlibsdnur@mt.gov](mailto:dlibsdnur@mt.gov), or may be made by completing a request form at any rules hearing held by the agency.

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

12. Lorraine Schneider, attorney, has been designated to preside over and conduct this hearing.

BOARD OF NURSING  
KAREN POLLINGTON, R.N., CHAIRPERSON

/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 April 10, 2006

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY  
STATE OF MONTANA

In the matter of the proposed ) NOTICE OF PUBLIC HEARING  
amendment of ARM 24.29.1401, ) ON PROPOSED AMENDMENT AND  
24.29.1402, 24.29.1404, ) ADOPTION  
24.29.1415, 24.29.1430, )  
24.29.1510, 24.29.1517, )  
24.29.1521, and 24.29.1582, )  
and the adoption of NEW RULES )  
I and II, all related to )  
allowable medical service )  
billing rates for workers' )  
compensation claims )

TO: All Concerned Persons

1. On May 11, 2006, at 1:30 p.m., the Department of Labor and Industry will hold a public hearing in the Lewis Room, Room 4, Walt Sullivan Building, 1327 Lockey, Helena, Montana, to consider the proposed amendment and adoption of the above-stated rules.

2. The Department of Labor and Industry will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m., May 4, 2006, to advise us of the nature of the accommodation that you need. Please contact the Employment Relations Division, Workers' Compensation Regulations Bureau, Attn: Jeanne Johns, P.O. Box 8011, Helena, Montana 59624-8011; telephone (406) 444-7710; fax (406) 444-3465; TDD (406) 444-5549; or e-mail jjohns@mt.gov.

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

24.29.1401 INITIAL LIABILITY (1) and (2) remain the same.

(3) Pursuant to 39-71-743, MCA, when a claim is covered under the Workers' Compensation or Occupational Disease acts, providers may not bill the injured worker for the difference between the initial amount billed and the amount reimbursed to the provider by the insurer as set by applicable statutes and rules, except for the copay provided by 39-71-704, MCA.

(a) For injured workers who are receiving benefits from the uninsured employers' fund pursuant to 39-71-503, MCA, the provisions of this rule are subject to 39-71-510, MCA.

(3)(4) The injured worker is responsible for charges incurred for treatment of conditions which were not the result of the injury or for treatment when medical benefits have terminated according to 39-71-704(1)-(d), MCA.

AUTH: 39-71-203, MCA

IMP: 39-71-704, 39-71-510, 39-71-743, MCA

REASON: The Workers' Compensation Act (Act) is intended in part to function as a statutory system of regulation of the allowable amounts of insurance coverage for a workers' compensation claim. In other words, parts of the Act function as a form of managed care to regulate health care costs. Therefore, it is reasonably necessary to clarify that providers may not bill claimants the excess amounts due after the providers are reimbursed by an insurer according to the fee schedule set by these rules and other applicable statutes and rules. Providers may bill for the copay provided for in 39-71-704(7), MCA. It is also reasonably necessary to include the language in (3)(a) to provide for the contingency that the Uninsured Employers' Fund ("the UEF") may someday not have sufficient funds to fully pay on claims, and that 39-71-510, MCA, may be applicable, at the same time the rule is otherwise being amended.

24.29.1402 PAYMENT OF MEDICAL CLAIMS (1) through (4) remain the same.

(5) For claims arising before July 1, 1993, no fee or charge ~~shall be~~ is payable by the injured worker for treatment of injuries sustained if liability is accepted by the insurer.

(6) For claims arising on or after July 1, 1993, no fee or charge is payable by the injured worker for treatment of injuries sustained if liability is accepted by the insurer, other than:

(a) the co-payment provided by 39-71-704, MCA. The decision whether to require a co-payment rests with the insurer, not the medical provider. If the insurer does not require a co-payment by the worker, the provider may not charge or bill the worker any fee. The insurer must give enough advance notice to known medical providers that it will require co-payments from a worker so that the provider can make arrangements with the worker to collect the co-payment;

(b) the charges for a non-preferred provider, after notice is given as provided in 39-71-1102, MCA; or

(c) the charges for medical services obtained from other than a managed care organization, once an organization is designated by the insurer as provided in 39-71-1101, MCA; or shall be payable by the injured worker for treatment of injuries sustained if liability is accepted by the insurer. The decision whether to require a co-payment rests with the insurer, not the medical provider. If the insurer does not require a co-payment by the worker, the provider may not charge or bill the worker any fee. The insurer must give enough advance notice to known medical providers that it will require co-payments from a worker so that the provider can make arrangements with the worker to collect the co-payment.

(d) the charges for medical services denied by the insurer on the basis that the services meet both of the following criteria:

- (i) the medical services do not return the injured worker to employment; and
- (ii) the medical services do not sustain medical stability.

(7) For injured workers who are receiving benefits from the uninsured employers' fund pursuant to 39-71-503, MCA, the provisions of this rule are subject to 39-71-510, MCA.

AUTH: 39-71-203, MCA

IMP: 39-71-203, 39-71-510, 39-71-704, MCA

REASON: Hiett v. Missoula County Public Schools, 2003 MT 213, ¶ 35, 317 Mont. 95, 75 P.3d 341, interpreted 39-71-704, MCA, to provide that medical services will be covered by the workers' compensation act if those services are necessary to sustain medical stability, even if the services do not return a worker to employment. Therefore, it is reasonably necessary to incorporate this precedent into the rule in order to clarify when an injured worker is responsible for payment of medical care pursuant to 39-71-704, MCA. Because Hiett interpreted language that became effective on July 1, 1993, and that still exists in statute today, it is appropriate to indicate this rule change applies to all claims after July 1, 1993.

It is also reasonably necessary to clarify that for any injured workers receiving benefits from the UEF, any requirements in the rule are subject to the statutory provisions that govern the UEF. Specifically, if the UEF reduces benefits payments to prorated amounts as provided by 39-71-510, MCA, it is possible that claimants may be liable to medical providers for the difference between the amount paid by the UEF and the amount allowed under the fee schedule. So as not to mislead readers, the proposed rule clarifies that it is subject to 39-71-510, MCA. Finally, it is necessary to amend the rule to make it easier to read for users.

24.29.1404 DISPUTED MEDICAL CLAIMS (1) Disputes arising over the following issues are resolved by a hearing before the department upon written application of a party to the dispute or the injured worker:

(a) ~~Amounts~~ amounts payable to medical providers, when benefits available directly to claimants are not an issue;<sub>1</sub>

(b) ~~Access~~ access to medical records;<sub>1</sub>

(c) ~~Timeliness~~ timeliness of payments to medical providers;<sub>1</sub> or

(d) requirements for documentation submitted by a provider to an insurer pursuant to ARM 24.29.1513 as a condition of the payment of medical fees.

(2) All other disputes arising over medical claims, including travel expense reimbursement to injured workers, shall be brought before a department mediator as provided in part 24 of the Workers' Compensation Act.

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

AUTH: 39-71-203, MCA

IMP: 39-71-203 and 39-71-704, MCA

REASON: It is reasonably necessary to clarify the disputes that must be resolved by a hearing rather than mediation, pursuant to 39-71-704(6), MCA. Specifically, disputes between insurers and medical providers related to medical service fees and concerning documentation requirements or disallowed procedures must go to

hearing rather than mediation. There is also reasonable necessity to make technical corrections in earmarking, capitalization, and punctuation matters while the rule is otherwise being amended.

24.29.1415 IMPAIRMENT RATING DISPUTE PROCEDURE (1) This section applies to dates of injury beginning July 1, 1987, through June 30, 1991. An evaluator must be a qualified physician licensed to practice in the state of Montana under Title 37, chapter 3, MCA, and board certified ~~or board eligible~~ in his an area of specialty appropriate to the injury of the claimant, except that if the claimant's treating physician is a chiropractor, the evaluator may be a chiropractor who is certified as an impairment evaluator under Title 37, chapter 12, MCA. The claimant's treating physician may not be one of the evaluators to whom the claimant is directed by the department.

(2) remains the same.

(3) The department shall give written notice to the parties of the time and place of the examination. If the claimant fails to give 48 hours notice of ~~his~~ the claimant's inability to attend the examination, ~~he~~ the claimant is liable for payment of the evaluator's charges.

(4) and (5) remain the same.

(6) The impairment evaluators shall operate according to the following procedures:

(a) The evaluator shall submit a report of ~~his~~ the evaluator's findings to the department, claimant, and insurer within 15 days of the date of the examination.

(b) remains the same.

(c) The second evaluator shall submit a report of ~~his~~ the second evaluator's findings to the department, claimant, and insurer, within 15 days of the date of the examination.

(d) through (f) remain the same.

AUTH: 39-71-203, MCA

IMP: 39-71-711, MCA

REASON: It is reasonably necessary to delete the "board eligible" qualification because the department has recently been advised the term is no longer used within the medical profession. It is also reasonably necessary to make the rule gender neutral while the rule is otherwise being amended.

24.29.1430 HOSPITAL RATES BEGINNING FROM JULY 1, 1998, THROUGH JUNE 30, 2001 (1) through (3) remain the same.

AUTH: 39-71-203, MCA

IMP: 39-71-704, MCA

REASON: It is reasonably necessary to amend the catchphrase of this rule due to proposed New Rule I, discussed below.

24.29.1510 SELECTION OF PHYSICIAN FOR CLAIMS ARISING ON OR AFTER JULY 1, 1993 (1) For claims arising on or after July 1, 1993, "treating physician" has the meaning provided by 39-71-116(29), MCA (1993).

(2) remains the same.

(3) Selection of the treating physician, referrals made by the treating physician, and changes of treating physician must all be made in accordance with the provisions of 39-71-1101, MCA (1993). Treatment from a physician's assistant or an advanced practice nurse, when the treatment is under the direction of the treating physician, does not constitute a change of physician and does not require prior authorization pursuant to ARM 24.29.1517.

(4) Subject to 39-71-1101, MCA, ARM 24.29.1517, and any other applicable rule or statute, nothing in this rule prohibits the claimant from receiving treatment from more than one physician if required by the claimant's injury or occupational disease.

AUTH: 39-71-203, MCA

IMP: 39-71-704, MCA

REASON: It is reasonably necessary to amend (1) to delete the reference to (29) because statutory changes have caused renumbering of the reference. It is also reasonably necessary to delete the reference to the year 1993 in (3) because the later versions of the statute are applicable to later claims.

In addition, Anderson v. Albertson's, Inc., 2004 MT WCC 59, WCC No. 2004-1058, held that 39-71-704, MCA, does not limit the number of physicians who can treat a claimant. Therefore, it is reasonably necessary to indicate that a claimant may receive treatment from as many physicians as required by their injury or occupational disease.

Also, Travelers Property Casualty v. Martini, 2002 MT WCC 31, held that prior authorization is not required for treatment by an advance practice nurse employed by the treating physician when the treating physician is still primarily responsible for the claimant's treatment. Therefore, it is reasonably necessary to clarify that treatment by a physician's assistant or advance practice nurse under the direction of the treating physician does not require prior authorization.

24.29.1517 PRIOR AUTHORIZATION (1) When prior authorization is required as provided by (4), the provider must request the authorization a reasonable amount of time in advance of the time the procedure is scheduled to be performed. The request must contain enough information to allow the insurer to make an informed decision regarding authorization. The insurer may not unreasonably withhold its authorization. An ~~insurers'~~ insurer's denial must contain an explanation of the reasons for its denial. Reasonableness will be judged in light of the circumstances surrounding the medical procedure and the claim.

(2) through (6) remain the same.

(7) If medical services related to the injury or occupational disease are denied pursuant to this rule because a provider failed to try to obtain prior

authorization, an injured worker cannot be billed for those denied medical services pursuant to 39-71-743, MCA.

(8) When an insurer denies liability for an injury or occupational disease, and the insurer then later assumes liability for a particular condition, the insurer may not deny payment for the medical services provided for that condition during the period of denial based solely on failure to obtain prior authorization.

AUTH: 39-71-203, MCA

IMP: 39-71-704, 39-71-743, MCA

REASON: It is reasonably necessary to amend this rule to clarify that an injured worker cannot be excess billed for medical services if the medical provider does not obtain prior authorization pursuant to this rule. This proposed change is a specific clarification in addition to the proposed change to ARM 24.29.1401 discussed above.

Further, the department has become aware of situations in which an insurer initially denies liability for an injury, then when the insurer later assumes liability for the injury, but the insurer denies past treatment due to the provider's failure to obtain prior authorization. Because it is impossible for a provider to obtain prior authorization for a specific procedure or treatment when an insurer denies all liability for a claim, the department believes it is reasonably necessary to clarify the rule. Specifically, when an insurer later assumes liability for a particular condition, the proposed amendments provide that the insurer also assumes liability for any medical services that were denied pursuant to this rule. It is also reasonably necessary to add the internal cross-reference to make the rule clearer for the reader and to correct the typographical error.

24.29.1521 MEDICAL EQUIPMENT AND SUPPLIES (1) Reimbursement for ~~provider-supplied~~ medical equipment and supplies dispensed through a medical provider is limited to the lesser of \$30.00 or 30% above the cost of the item including freight, except prescription medicines are limited to charges allowed under 39-71-727, MCA. An invoice documenting the cost of the equipment or supply must be sent to the insurer upon the insurer's request.

(2) remains the same.

(3) This rule does not apply to:

(a) equipment supply houses that are not also health care providers;;

(b) hospitals; or

(c) pharmacies.

AUTH: 39-71-203, MCA

IMP: 39-71-704, MCA

REASON: It is reasonably necessary to clarify reimbursement of medical supplies dispensed by a medical provider because the former wording proved confusing for readers of the rule. It is also reasonably necessary to set out (earmark) the subsections of (3) for clarity.



24.29.1582 PROVIDER FEES--OCCUPATIONAL AND PHYSICAL THERAPY SPECIALTY AREA FOR SERVICES PROVIDED ON OR AFTER FROM JULY 1, 2002, THROUGH SEPTEMBER 30, 2003 (1) through (8) remain the same.

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

REASON: It is reasonably necessary to amend the catchphrase of this rule due to proposed New Rule II, discussed below.

4. The proposed new rules provide as follows:

NEW RULE I HOSPITAL RATES BEGINNING JULY 1, 2001 (1) Any hospital, other than one licensed as a medical assistance facility or critical access hospital under Title 50, chapter 5, MCA, that changes its usual and customary charges on or after July 1, 2001, must have its rates adjusted by the use of a discount factor. The discount factor is computed by taking the existing discount factor for that hospital, divided by the quantity  $1 + \text{ORI}$ , where ORI is the overall percentage rate change adopted by the hospital, divided by 100.

(2) For hospital services rendered by a hospital not licensed as a medical assistance facility or critical access hospital under Title 50, chapter 5, MCA, the amount payable by an insurer for those services performed during the fiscal year starting July 1, 2001, is that hospital's discount factor in effect on June 30, 2001, plus the percentage increase in the state's average weekly wage. The adjusted discount factor is computed by multiplying the existing discount factor for that hospital times  $(1 + \text{the percentage increase})$ .

(3) The department will thereafter recalculate each hospital's discount factor to take into account changes to the hospital's usual and customary charges. The department will also annually recalculate, effective July 1 of each year, each hospital's discount factor to take into account the percentage increase in the state's average weekly wages made during the previous calendar year. If for any year the state's average weekly wage does not increase, the rates will be held at the existing level until there is a net increase in the state's average weekly wage.

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

REASON: Chapter 192, L. of 2001 (Senate Bill 194), added critical access hospitals to the facilities with rates designated by 39-71-704(3)(g), MCA. It is reasonably necessary to conform the hospital rate rules to the statute by adding critical access hospitals to the language of the rules. Proposed New Rule I copies the text of the rule for the previous time period, ARM 24.29.1430, adds critical access hospitals to medical assistance facilities as required by 39-71-704(3)(g), MCA, and updates the date used for the effective date of the discount factor. It is reasonably necessary to adopt New Rule I rather than amend ARM 24.29.1430 because all the users of these

rules are accustomed to rules that are set out by time period, and because providers have requested a specific rule on the matter, rather than mere reference to the applicable statute.

NEW RULE II PROVIDER FEES--OCCUPATIONAL AND PHYSICAL THERAPY SPECIALTY AREA FOR SERVICES PROVIDED ON OR AFTER OCTOBER 1, 2003

(1) Fees for services provided by occupational therapists and physical therapists are payable only for the procedure codes listed below, and unless otherwise specified are payable according to the unit values listed in the RVP.

(2) Nothing in this rule is to be construed so as to broaden the scope of a provider's practice. Each provider is to limit services to those that can be performed within the limits and restrictions of the provider's professional licensure. Providers may only charge for services performed that are consistent with the scope of their practice and licensure.

(3) Except as provided by (6), the conversion factor used depends on the date the service was rendered:

(a) Effective July 1, 2002, the conversion factor for services performed by a licensed occupational therapist, or a licensed physical therapist within their scope of practice, is set at \$4.25.

(b) Beginning January 1, 2003, the conversion factor will be adjusted in the manner specified by ARM 24.29.1536.

(4) Only the following codes found in the RVP may be billed for services provided by occupational therapists and physical therapists:

(a) All physical medicine and rehabilitation codes, except 97770 through 97781, may be billed. Code 97799 may be billed only for providing the following services and requires a separate written report describing the service provided when billing for this code:

(i) face-to-face conferences with payor representative(s) to update the status of a patient upon request of the payor;

(ii) a report associated with non-physician conferences required by the payor; or

(iii) completion of a job description or job analysis form requested by the payor.

(b) Special services, procedures, and report codes 99070 and 99080 Nt bw billed. A separate written report must be submitted describing the service provided when billing for these codes.

(5) The explanations, protocols, comments, and directions for use contained in both the CPT manual and the RVP are to be applied to the procedure codes contained in this rule.

(6) Effective July 1, 2002, code 97750 is payable at \$26.50 per 15-minute unit for a maximum of 24 15-minute increments of service per day. Beginning January 1, 2003, and each year annually thereafter, the amount payable per 15-minute unit for code 97750 shall increase by the percentage increase in the state's annual average weekly wage. If for any year the state's average weekly wage does not increase, the rate will be held at the existing level until there is a net increase in the state's average weekly wage.

(7) When physical or occupational therapists are billing code 97033 (iontophoresis), medication charges and electrode charges must each be billed separately for each visit using CPT code 99070.

(8) When occupational therapists or physical therapists are performing orthotics fitting and training (code 97504) or checking for orthotic/prosthetic use (code 97703), supplies and materials provided may be billed separately for each visit using CPT code 99070.

AUTH: 39-71-203, MCA

IMP: 39-71-704, MCA

REASON: Chapter 101, L. of 2003 (House Bill 542) allows occupational therapists to perform iontophoresis. It is reasonably necessary to amend the provider fee rule for physical and occupational therapists to clarify that occupational therapists may now bill for iontophoresis under procedure code 97033. Chapter 101 became effective on October 1, 2003. Proposed New Rule II copies the text of the rule for the previous time period, ARM 24.29.1582, and amends (4) and (7) in order to add iontophoresis to the procedures billable by occupational therapists. It is reasonably necessary to adopt New Rule II rather than amend ARM 24.29.1582 because all the users of these rules are accustomed to rules that are set out by time period, and because providers have requested a specific rule on the matter, rather than mere reference to the applicable statute.

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:

Jeanne Johns  
Workers' Compensation Regulations Bureau  
Employment Relations Division  
Department of Labor and Industry  
P.O. Box 8011  
Helena, Montana 59624-8011

and must be received by no later than 5:00 p.m., May 18, 2006. Comments may also be submitted electronically as noted in the following paragraph.

6. An electronic copy of this Notice of Public Hearing is available through the department's website at <http://dli.mt.gov/events/calendar.asp>, under the Calendar of Events, Administrative Rules Hearings section. Interested persons may make comments on the proposed rules by sending an e-mail to Jeanne Johns at her e-mail address: [jjohns@mt.gov](mailto:jjohns@mt.gov), but those comments must be received by 5:00 p.m., May 18, 2006. The department strives to make the electronic copy of this Notice of Public Hearing 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 website accessible at all times, concerned persons should be aware that the website may be unavailable during some periods, due to system maintenance or technical problems, and that a person's difficulties in sending an e-mail do not excuse late submission of comments.

7. The department maintains lists 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 mailing lists shall make a written request which includes the name and mailing address of the person to receive notices and any specific topic or topics over which the department has rulemaking authority. Such written requests may be delivered to Mark Cadwallader, 1327 Lockey St., Room 412, Helena, Montana, mailed to Mark Cadwallader, P.O. Box 1728, Helena, MT 59624-1728, faxed to the office at (406) 444-1394, e-mailed to [mcadwallader@mt.gov](mailto:mcadwallader@mt.gov), or made by completing a request form at any rules hearing held by the department.

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

9. The Hearings Bureau of the Centralized Services Division of the department has been designated to preside over and conduct the hearing.

/s/ MARK CADWALLADER  
Mark Cadwallader,  
Rule Reviewer

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

Certified to the Secretary of State April 10, 2006.

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

In the matter of the proposed adoption of ) NOTICE OF PUBLIC HEARING  
NEW RULES I - IX pertaining to the ) ON PROPOSED ADOPTION  
professional assistance program )

TO: All Concerned Persons

1. On May 18, 2006, at 2:00 p.m., a public hearing will be held in room 489 of the Park Avenue Building, 301 South Park Avenue, Helena, Montana to consider the proposed adoption of the above-stated rules.

2. The Department of Labor and Industry 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 Medical Examiners no later than 5:00 p.m., on May 12, 2006, to advise us of the nature of the accommodation that you need. Please contact Evie Martin, Board of Medical Examiners, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2364; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail dlibsmed@mt.gov.

3. GENERAL STATEMENT OF REASONABLE NECESSITY:

The Board of Medical Examiners has determined that there is reasonable necessity to adopt New Rules I-IX in order to enable the screening panel of the board to oversee any rehabilitation program established pursuant to 37-3-203, MCA. While the board historically has been authorized to establish a program to assist and rehabilitate impaired licensees, prior to 2005 there was no mandate that the board's screening panel oversee the program. See 37-3-201, MCA, as amended by Chapter 126, L. of 2005 (House Bill 138). The New Rules identify terms relevant to impairment, specify the duties of the program, including reporting requirements, and to define the interaction between the board, the screening panel, and the program.

Because the board was cited by the Legislative Audit Division for not having rules in place defining the role of the endorsed professional assistance program, it is reasonably necessary that the board propose these rules.

4. The proposed new rules provide as follows:

NEW RULE I PROFESSIONAL ASSISTANCE PROGRAM PURPOSE

(1) The Montana Board of Medical Examiners has established a program which provides assistance, rehabilitation, and after-care monitoring to all licensed healthcare providers under the jurisdiction of the board who are suspected and/or found to be physically or mentally impaired by habitual intemperance or the

excessive use of addictive drugs, alcohol, or any other drug or substance, or by mental or chronic physical illness.

(2) The board encourages and shall permit the rehabilitation of licensees, if in the board's opinion, public health, safety, and welfare can be assured. Early intervention and referral are paramount to promoting public health, safety, and welfare.

AUTH: 37-1-131, 37-3-203, MCA

IMP: 37-1-131, 37-3-201, 37-3-203, MCA

NEW RULE II RESPONSIBILITIES OF PROFESSIONAL ASSISTANCE PROGRAM (1) The professional assistance program established by the board as set forth in 37-3-203 and 37-3-401, MCA, shall fulfill the terms of its contract with the board, which will include, but not be limited to the following:

(a) providing two tracks for assistance of licensees and license applicants under the board's jurisdiction:

(i) a disciplinary track; and

(ii) a nondisciplinary track;

(b) providing recommendations to licensees and license applicants for appropriate evaluation and treatment facilities;

(c) recommending to the board terms and conditions of treatment, rehabilitation, and monitoring of licensees or license applicants known to the board; and

(d) monitoring all aftercare of participants under contract, to ensure public safety and compliance with agreed treatment recommendations propounded by one or more of the following:

(i) the board, through stipulations and/or final orders;

(ii) treatment centers; and

(iii) the professional assistance program established by the board.

(2) The professional assistance program shall consult with the board regarding professional assistance program processes and procedures to ensure program responsibilities are met, consistent with board orders, requests and contract terms.

(3) The professional assistance program shall provide information to and consult with the board upon the board's request.

AUTH: 37-1-131, 37-3-203, MCA

IMP: 37-1-131, 37-3-201, 37-3-203, MCA

NEW RULE III REPORTING OF SUSPECTED IMPAIRMENT

(1) Individuals, entities, or associations may report information to the board of the suspected impairment of a licensee or new license applicant, as provided in 37-3-203 and 37-3-401, MCA.

(2) Individuals, entities, or associations may report information of suspected impairment of a licensee or new license applicant to the appropriate personnel of the professional assistance program established by the board in lieu of reporting to the board, as provided in 37-3-203 and 37-3-401, MCA.

(3) Reports received by the board of suspected impaired licensees or license applicants may be referred to the professional assistance program at the board's discretion through the nondisciplinary track without formal disciplinary action against the licensee or license applicant.

AUTH: 37-1-131, 37-3-203, MCA

IMP: 37-1-131, 37-3-201, 37-3-203, MCA

NEW RULE IV PROTOCOL FOR SELF-REPORTING TO A BOARD ENDORSED PROFESSIONAL ASSISTANCE PROGRAM (1) If a licensee or license applicant chooses to self-report to the board-established professional assistance program, and the professional assistance program has determined that the licensee or license applicant needs assistance or supervision, the licensee or license applicant shall be required to:

(a) enter into a contractual agreement with the professional assistance program for the specified length of time determined by the professional assistance program; and

(b) abide by all the requirements set forth by the professional assistance program.

(2) Self-reporting by a licensee or license applicant may still result in disciplinary action by the board, if:

(a) the professional assistance program determines that the self-reporting licensee or the license applicant poses a danger to themselves or to the public;

(b) the licensee or license applicant is noncompliant with a contractual agreement with the professional assistance program;

(c) the licensee or license applicant has not completed evaluation, treatment, or after-care monitoring as recommended by the professional assistance program; or

(d) the screening panel otherwise determines that disciplinary action is warranted.

(3) The professional assistance program shall notify the board, disclose the identity of the licensee or license applicant involved, and provide all facts and documentation to the board whenever:

(a) the licensee or license applicant:

(i) has committed an act described in 37-3-323 or 37-3-401, MCA;

(ii) is noncompliant with a recommendation of the professional assistance program for evaluation, treatment, or after-care monitoring contract; or

(iii) is the subject of credible allegations that the licensee or license applicant has put a patient or the public at risk or harm; or

(b) the screening panel otherwise determines disciplinary action is warranted.

AUTH: 37-1-131, 37-3-203, MCA

IMP: 37-1-131, 37-3-201, 37-3-203, MCA

NEW RULE V PROTOCOL FOR DISCIPLINARY TRACK (1) All licensees or license applicants under the jurisdiction of the board who participate in the

endorsed professional assistance program under the disciplinary track shall be reported to the board by name.

(2) A licensee or license applicant is placed in the disciplinary track by one or more of the following:

- (a) as a condition of licensure imposed by a board final order;
  - (b) as a result of a sanction imposed by a board final order;
  - (c) as a result of noncompliance with the licensee's or license applicant's contractual agreement with the program;
  - (d) pursuant to an agreement between the licensee and the screening panel;
- or
- (e) pursuant to an agreement between the license applicant and the full board.

AUTH: 37-1-131, 37-3-203, MCA

IMP: 37-1-131, 37-3-201, 37-3-203, MCA

#### NEW RULE VI PROTOCOL FOR NONDISCIPLINARY TRACK

(1) A licensee or license applicant under the jurisdiction of the board who participates in the professional assistance program under the nondisciplinary track shall be reported to the board by participant number.

(2) The identity of the participant who is noncompliant or refuses a reasonable request by the professional assistance program shall be reported to the board.

(3) If the board determined that a participant does not abide by all terms and conditions of the professional assistance program, the participant will be referred to the screening panel of the board for appropriate action under the disciplinary track.

AUTH: 37-1-131, 37-3-203, MCA

IMP: 37-1-131, 37-3-201, 37-3-203, MCA

NEW RULE VII REPORTING TO THE BOARD (1) The screening panel of the board must receive a written compliance status report from the professional assistance program, at intervals established by the contract between the program and the board, regarding each program participant:

- (a) under a monitoring agreement;
- (b) referred to the program; or
- (c) in the process of evaluation or treatment.

(2) The full board shall receive a written compliance status report from the professional assistance program, at intervals established by contract between the program and the board, regarding each participant:

- (a) under a monitoring agreement;
- (b) referred to the program; or
- (c) in the process of evaluation or treatment.

(3) The identity of a participant in the nondisciplinary track must be reported to the full board by participant number except as required by [New Rule VI].

(4) The identity of a participant in the disciplinary track must be reported to the full board by name.



AUTH: 37-1-131, 37-3-203, MCA

IMP: 37-1-131, 37-3-201, 37-3-203, MCA

NEW RULE VIII DISCHARGE REQUIREMENTS (1) The professional assistance program shall facilitate participant discharge from the program.

(2) The discharge criteria must be determined by the board in conjunction with the recommendations of the professional assistance program.

(3) The following are required upon discharge of a participant from the endorsed professional assistance program:

(a) report of the discharge of the participant to the board; and

(i) verification of satisfactory completion of monitoring, program requirements, and appropriate assurance of public safety;

(ii) completion of board final order terms and conditions with professional assistance recommendation for discharge and release;

(iii) request by a participant to transfer assistance into an appropriate endorsed professional assistance program in another jurisdiction, such transfer to be confirmed by the program.

AUTH: 37-1-131, 37-3-203, MCA

IMP: 37-1-131, 37-3-201, 37-3-203, MCA

NEW RULE IX RELAPSE REPORTING (1) The professional assistance program shall define what constitutes "relapse" for each particular participant and determine if and when relapse has occurred.

(a) A participant who has a single episode of relapse and/or early detection of relapse with nominal substance abuse may be reported to the board by the professional assistance program.

(b) A participant who has a second or severe relapse must be reported by the professional assistance program to the board screening panel for review.

(2) Any of the following may be required by the board, upon the recommendation of the professional assistance program, when a participant suffers relapse:

(a) the participant may be required to withdraw from practice;

(b) the participant may undergo further recommended evaluation and/or treatment as determined by the professional assistance program;

(c) the participant's monitoring agreement required by the professional assistance program must be reassessed and may be modified;

(d) the participant may be required to comply with other recommendations of the professional assistance program; or

(e) the participant may be subject to discipline as imposed by a board final order.

AUTH: 37-1-131, 37-3-203, MCA

IMP: 37-1-131, 37-3-201, 37-3-203, MCA

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 Board of Medical Examiners, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to [dlibsdmed@mt.gov](mailto:dlibsdmed@mt.gov), and must be received no later than 5:00 p.m., May 26, 2006.

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.medicalboard.mt.gov](http://www.medicalboard.mt.gov). The department strives to make the electronic copy of this Notice of Public Hearing 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 website accessible at all times, concerned persons should be aware that the website may be unavailable during some periods, due to system maintenance or technical problems, and that a person's technical difficulties in accessing or posting to the e-mail address do not excuse late submission of comments.

7. The Board of Medical Examiners maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this board. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding all Board of Medical Examiners administrative rulemaking proceedings or other administrative proceedings. Such written request may be mailed or delivered to the Board of Medical Examiners, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, faxed to the office at (406) 841-2305, e-mailed to [dlibsdmed@mt.gov](mailto:dlibsdmed@mt.gov), or may be made by completing a request form at any rules hearing held by the agency.

8. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled.

9. Anne O'Leary, attorney, has been designated to preside over and conduct this hearing.

BOARD OF MEDICAL EXAMINERS  
MICHAEL D. LAPAN, DPM, PRESIDENT

/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 April 10, 2006

BEFORE THE DEPARTMENT OF LIVESTOCK  
OF THE STATE OF MONTANA

In the matter of the proposed	)	NOTICE OF EXTENSION OF
amendment of ARM 32.6.701, 32.6.702,	)	COMMENT PERIOD ON
32.6.703, 32.6.704, 32.6.705, 32.6.706,	)	PROPOSED AMENDMENT
32.6.707, 32.6.708, 32.6.709, 32.6.710,	)	
32.6.711, 32.6.801, 32.6.802, 32.6.803,	)	
32.6.804, 32.6.805, 32.6.806, 32.6.807,	)	
32.6.808, 32.6.809, 32.6.810, 32.6.811,	)	
32.6.812, 32.6.813, 32.6.814, and	)	
32.6.815 pertaining to animal feeding,	)	
slaughter, and disposal		

TO: All Concerned Persons

1. On March 9, 2006, the Department of Livestock published MAR Notice No. 32-6-180 at page 657 of the 2006 Montana Administrative Register, issue number 5, regarding the proposed amendment of the above-stated rules. The department is extending the comment period for the proposed amendments.

2. The Department of Livestock will make reasonable accommodations for persons with disabilities who need an alternative accessible format of this notice. If you need to request an accommodation, contact the department no later than 5:00 p.m. on April 28, 2006, to advise us of the nature of the accommodation that you need. Please contact Marc Bridges, 301 N. Roberts St., Room 308, P.O. Box 202001, Helena, MT 59620-2001; phone: (406) 444-7323; TTD number: 1-800-253-4091; fax: (406) 444-1929; e-mail: mbridges@mt.gov.

3. No public hearing was requested. The deadline for submitting comments to the department was April 6, 2006. The department's interested persons mailing list did not include several interested parties. Given that the proposed amendment may affect these interested parties, the department is now formally extending the comment period to May 5, 2006.

4. Interested persons may submit their data, views, or arguments in writing to Marc Bridges, 301 N. Roberts St., Room 308, P.O. Box 202001, Helena, MT 59620-2001; phone: (406) 444-7323; TTD number: 1-800-253-4091; fax: (406) 444-1929; e-mail: mbridges@mt.gov. The department also maintains lists of persons interested in receiving notice of administrative rule changes. These lists are compiled according to subjects or programs of interest. For placement on the mailing list, please write to Marc Bridges at the above address.

/s/ Carol Grell Morris  
Rule Reviewer

/s/ Marc Bridges  
Executive Officer  
Department of Livestock

Certified to the Secretary of State April 10, 2006.

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

In the matter of the adoption of Rule I	)	NOTICE OF EXTENSION OF
through XV and the amendment of ARM	)	COMMENT PERIOD ON
37.106.1946 pertaining to outpatient	)	PROPOSED ADOPTION AND
crisis response facilities	)	AMENDMENT

TO: All Interested Persons

1. On December 8, 2005, the Department of Public Health and Human Services published MAR Notice No. 37-363 at page 2428 of the 2005 Montana Administrative Register, issue number 23, regarding the proposed adoption and amendment of the above-stated rules. The department is extending the comment period for the proposed amendment.

The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who need an alternative accessible format of this notice. If you need to request an accommodation, contact the department no later than 5:00 p.m. on April 27, 2006, to advise us of the nature of the accommodation that you need. Please contact Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210; telephone (406)444-5622; FAX (406)444-1970; e-mail dphhslegal@mt.gov.

2. The hearing on the proposed amendment was held on January 4, 2006, at 2:30 p.m. in the auditorium of the Department of Public Health and Human Services Building, 111 N. Sanders, Helena, Montana. The deadline for submitting comments to the department was January 12, 2006. The time period for comment is being extended to May 4, 2006 at the request of a member of the public.

3. Interested persons may submit their data, views, or arguments in writing to Gwen Knight, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 202951, Helena, MT 59620-2951, no later than 5:00 p.m. on May 4, 2006. Data, views, or arguments may also be submitted by facsimile (406)444-9744 or by electronic mail via the Internet to dphhslegal@mt.gov. The department also maintains lists of persons interested in receiving notice of administrative rule changes. These lists are compiled according to subjects or programs of interest. For placement on the mailing list, please write to Gwen Knight at the above address.

/s/ Dawn Sliva  
Rule Reviewer

/s/ Russell E. Cater for  
Director, Public Health and  
Human Services

Certified to the Secretary of State April 10, 2006.

8-4/20/06

MAR Notice No. 37-377

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

In the matter of the amendment of ARM	)	NOTICE OF PUBLIC HEARING
37.40.307, 37.40.311, and 37.40.361	)	ON PROPOSED AMENDMENT
pertaining to Medicaid reimbursement	)	
of nursing facilities	)	

TO: All Interested Persons

1. On May 10, 2006, at 10:30 a.m., a public hearing will be held in the auditorium of the Department of Public Health and Human Services Building, 111 N. Sanders, Helena, Montana to consider the proposed amendment of the above-stated rules.

The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who need an alternative accessible format of this notice or provide reasonable accommodations at the public hearing site. If you need to request an accommodation, contact the department no later than 5:00 p.m. on May 1, 2006, to advise us of the nature of the accommodation that you need. Please contact Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210; telephone (406)444-5622; FAX (406)444-1970; e-mail dphhslegal@mt.gov.

2. The rules as proposed to be amended provide as follows. Matter to be added is underlined. Matter to be deleted is interlined.

37.40.307 NURSING FACILITY REIMBURSEMENT (1) remains the same.

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

(a) and (b) remain the same.

(c) The statewide price for nursing facility services will be determined each year ~~though~~ through a public process. Factors that could be considered in the establishment of this price include the cost of providing nursing facility services, ~~m~~Medicaid recipients access to nursing facility services, and the quality of nursing facility care.

(d) The total payment rate available for the period July 1, ~~2005~~ 2006 through June 30, ~~2006~~ 2007 will be the rate as computed in (5), plus any additional amount computed in ARM 37.40.311.

(3) Providers who, as of July 1 of the rate year, have not filed with the department a cost report covering a period of at least six months participation in the ~~m~~Medicaid program in a newly constructed facility shall have a rate set at the statewide median price as computed on July 1, ~~2005~~ 2006. Following a change in provider as defined in ARM 37.40.325, the per diem rate for the new provider shall

be set at the previous provider's rate, as if no change in provider had occurred.  
(4) through (12) remain the same.

AUTH: 53-6-113, MCA

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

37.40.311 RATE ADJUSTMENT FOR COUNTY FUNDED RURAL NURSING FACILITIES (1) remains the same.

(2) A nursing facility is eligible to participate in this lump sum payment distribution if it is a nonstate government owned or operated facility.

(a) remains the same.

(b) In order to qualify for this lump sum adjustment, each county on behalf of its nonstate government owned or operated facility must enter into a written agreement to transfer local county funds to be used as matching funds by the department. This transfer option is voluntary, but those ~~facilities~~ counties that agree to participate must abide by the terms of the written agreement.

(3) through (5)(a) remain the same.

(6) "Normal operating expenses" and "costs" include, but are not limited to:

(a) through (c) remain the same.

(d) payment of facility construction bonds or loans;

(e) remains the same.

~~(f) human resources management;~~

~~(g) management services;~~

~~(h) (f) payments in lieu of taxes (PILT)~~ rent based on depreciation cost of county buildings occupied by nursing facility;

~~(i) (g) mortgage or rent payments;~~

~~(j) (h) payment of building insurance;~~

~~(k) forgiveness of rent or other debts;~~

~~(l) (i) other business relationships with county governments unrelated to mMedicaid in which there is no connection to mMedicaid payments; and~~

~~(m) (j) legitimate in-kind services provided by the county to the nursing facility without actual charge, such as building maintenance, legal services, accounting, and advertising.~~

(7) Charges for ~~in-kind~~ services must be reasonable and the services must be documented.

(a) Documentation supporting charges ~~for in-kind services~~ are subject to the audit and record retention provisions in ARM 37.85.414.

AUTH: 53-6-113, MCA

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

37.40.361 DIRECT CARE WAGE REPORTING/ADDITIONAL PAYMENTS FOR DIRECT CARE WAGE AND BENEFITS INCREASES (1) remains the same.

(2) The department will pay mMedicaid certified nursing care facilities located in Montana that submit an approved request to the department a per day add-on payment in addition to the amount paid as provided in (1) as an add-on to their computed mMedicaid payment rate to be used only for wage and benefit increases

for direct care workers in nursing facilities.

(a) through (c) remain the same.

(d) The department shall make retroactive adjustment to the facility payment rate established on July 1, 2005 that will reduce the ~~the~~ Medicaid per day payment amount by the amount of funds that have been designated for the direct care wage add-on for any nonparticipating or nonqualifying facility. Any amount paid by the department up to that time for the direct care wage add-on shall be recovered by the department.

(3) remains the same.

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

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

3. The Department of Public Health and Human Services (the department) is proposing the amendment of ARM 37.40.307, Nursing Facility Reimbursement, 37.40.311, Rate Adjustment for County Funded Rural Nursing Facilities, and 37.40.361, Direct Care Wage Reporting/Additional Payments for Direct Care Wage and Benefits Increases, rules pertaining to Medicaid reimbursement of nursing facilities. These amendments are intended to implement legislative appropriations for state fiscal year 2007 for the purpose of increasing Medicaid reimbursement for nursing facilities. No changes in the methodology for computation of reimbursement is proposed. The proposed rule changes are necessary to preserve the viability of Montana's nursing facilities and to assure the availability of quality nursing services to Medicaid eligible residents.

The department did not have available, at the time of publication, all of the information that will be necessary to establish final payment rates for nursing facility providers effective July 1, 2006. The department will provide rate sheets to all providers in advance of the rule hearing, for verification purposes and in order to facilitate comments, when final case mix information, Medicaid utilization data, and other details necessary to compute accurate reimbursement rates become available. The rate sheets will distribute the appropriated funding in order to meet the department goal of a price based system of reimbursement and the legislative goals facilitated by rate increases.

The 2005 Montana legislature, in House Bill 749 (Chapter 523, Laws of Montana, 2005) increased the nursing facility provider tax assessed on occupied nursing facility beds from \$7.05 to \$8.30 in fiscal year 2007 to provide additional state special revenue and appropriated it to fund nursing facility rate increases. The proposed rate increases are necessary to maintain the viability of Montana's nursing facilities and to assure that quality nursing facility services are available to Medicaid eligible residents.

The department considered and rejected the idea of maintaining nursing facility reimbursement rates at current levels. This would not have been sufficient to continue a price based nursing facility reimbursement approach. Under the alternative, the department would have been faced with the following issues. The



statewide occupancy rate is 75.2% and continues to decline in Montana nursing facilities. At the same time, the level of care needed by a typical nursing facility resident is increasing. Nursing facility residents are being admitted at an older age with medically fragile and complex care needs that can no longer be met in home or community settings. As the trends toward lower occupancy and increased acuity of care continue, it becomes more important that nursing facility providers receive rate increases that reflect the increased cost of doing business. If Medicaid rates do not keep pace with costs, small rural providers of nursing facility services will find it more difficult to keep their doors open. Decreasing occupancy levels and the inability to predict the level of Medicaid funding will make it difficult for nursing facilities to determine the best way to provide services in rural communities. Increased costs due to lower occupancy levels and unpredictability in the system of reimbursement are likely to be passed on to privately paying and privately insured residents.

The department is also proposing amendments to ARM 37.40.311 to incorporate additions to and deletions from the list of normal operating expenses and costs of conducting business allowable under that rule for "at risk" nursing facilities. These changes are necessary to obtain authorization from the Centers for Medicare and Medicaid Services (CMS), the federal agency responsible for regulating state Medicaid programs, to continue federal financial participation in the lump sum and "at risk" payments to nursing facilities. The department considered and rejected the alternative of abandoning the "at risk" payments entirely. This alternative would have had the same effects as maintaining nursing facility reimbursement at current levels, discussed in the previous paragraph.

The department is taking this opportunity to incorporate changes in terminology and to update the format of rules, where necessary, to clarify and make them more understandable. Minor format changes are proposed that would conform these rules to current Secretary of State standards. No substantive change is intended by these format changes.

The specific proposed changes are discussed below.

#### ARM 37.40.307

The proposed amendments to this rule are intended to update the period for which the department computes nursing facility reimbursement to coincide with state fiscal year 2007. They would also change the date as of which the statewide median price would be calculated to July 1, 2007. The proposed amendments would continue the existing mechanism for reimbursing nursing facilities for services provided to Medicaid eligible residents. No change in the methodology of computing rates is proposed.

#### ARM 37.40.311

The department proposes to add and delete some examples of normal operating expenses and costs of conducting business allowable under the "at risk" lump sum

payment program, in accordance with federal guidance from CMS. The proposed changes are intended to conform the rule to the department's augmented understanding of transactions allowed between a county owned or operated nursing facility and the county. Continued federal financial participation in the "at risk" program is conditioned on enactment of the changes proposed by the department. Failure to adopt the changes proposed for this rule would result in the loss of federal financial participation in and the discontinuation of the program.

#### ARM 37.40.361

The amendments proposed for this rule are intended to specify the rate referred to in the rule and to make the provision for retroactive rate adjustment easier for the department to maintain. The term "payment rate" would become "facility payment rate." This would make the terminology used in this rule specific, so that the reader will understand exactly which payment rate will be retroactively adjusted. The department is also proposing deletion of the reference to the date a facility payment rate is adjusted. The current rule text requires the department to amend the rule annually to keep pace with changing rates. The proposed deletion would refer simply to the facility payment rate. The department intends this provision to be interpreted as referring to the facility payment rate or rates in place throughout the period affected by the adjustment.

#### Estimated financial and budget impacts

The cost of the proposed rule changes is expected to equal legislative appropriations for nursing facility reimbursement in state fiscal year 2007. The total state and federal funding available for fiscal year 2007 is currently projected at \$143,851,379, including \$19,531,250 in state special and federal special revenue related to nursing facility provider taxes. This amount considers the increase in the nursing facility provider tax from \$7.05 per day to \$8.30 per day, an increase of \$1.25 per day in fiscal year 2007. The estimated total funding available for fiscal year 2007 for nursing facility reimbursement is estimated at approximately \$173,429,965 of combined state funds, federal funds, and patient contributions. Medicaid bed days for state fiscal year 2007 are estimated at 1,187,895 using estimates of Medicaid caseload. The estimated financial impact of the proposed provider utilization fee increases is an increase of approximately \$2,829,416 in state revenue, federal funds, and patient contributions in fiscal year 2007 over the fiscal year 2006 funding levels.

The estimated total funding impact of the one time payments to "at risk" nonstate governmental providers and other nursing facilities not determined to be "at risk", is approximately \$6,830,412 state special revenue funds and approximately \$23,266,500 total appropriated funding for the nursing facility program.

#### Persons and entities affected

A total of 91 nursing facilities enrolled in the Medicaid program in Montana would be

affected by the proposed reimbursement increases. There are 32 nonstate government owned or operated nursing facilities participating in the one time lump sum payments. There are 59 other "at risk" nursing facilities eligible to receive supplemental payments.

4. Interested 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 Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210, no later than 5:00 p.m. on May 18, 2006. Data, views, or arguments may also be submitted by facsimile (406)444-1970 or by electronic mail via the Internet to dphhslegal@mt.gov. The department also maintains lists of persons interested in receiving notice of administrative rule changes. These lists are compiled according to subjects or programs of interest. For placement on the mailing list, please write the person at the address above.

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

/s/ Dawn Sliva  
Rule Reviewer

/s/ Joan Miles  
Director, Public Health and  
Human Services

Certified to the Secretary of State April 10, 2006.

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

In the matter of the adoption of Rules I	)	NOTICE OF PUBLIC HEARING
through VII, and the amendment of	)	ON PROPOSED ADOPTION
ARM 37.86.2901, 37.86.2907,	)	AND AMENDMENT
37.86.3002, and 37.86.3005 pertaining	)	
to Medicaid reimbursement for inpatient	)	
and outpatient hospital services	)	
	)	

TO: All Interested Persons

1. On May 11, 2006, at 3:00 p.m., a public hearing will be held in the auditorium of the Department of Public Health and Human Services Building, 111 N. Sanders, Helena, Montana to consider the proposed adoption and amendment of the above-stated rules.

The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who need an alternative accessible format of this notice or provide reasonable accommodations at the public hearing site. If you need to request an accommodation, contact the department no later than 5:00 p.m. on May 1, 2006, to advise us of the nature of the accommodation that you need. Please contact Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210; telephone (406)444-5622; FAX (406)444-1970; e-mail [dphhslegal@mt.gov](mailto:dphhslegal@mt.gov).

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

RULE I OUTPATIENT HOSPITAL SERVICES, CARDIAC AND PULMONARY REHABILITATION SERVICES (1) Coverage for medically necessary outpatient cardiac and pulmonary rehabilitation services is effective January 1, 2006.

(2) All cardiac and pulmonary rehabilitative services must be medically necessary and prior authorized by the department's designated review organization.

(3) The following conditions are contraindications to cardiac or pulmonary rehabilitation, and except as provided in [Rule IV], patients with one or more contraindications are not eligible for cardiac or pulmonary rehabilitation:

(a) severe psychiatric disturbance including, but not limited to, dementia and organic brain syndrome; or

(b) significant or unstable medical conditions including, but not limited to, substance abuse, liver dysfunction, kidney dysfunction, and metastatic cancer.

AUTH: 53-2-201, 53-6-111, MCA

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

RULE II OUTPATIENT HOSPITAL SERVICES, CARDIAC REHABILITATION SERVICES (1) Cardiac rehabilitation services are limited to the following:

(a) Up to three visits per week for eight weeks, limited to the following cardiac events and diagnoses eligible for cardiac rehabilitation benefits:

- (i) myocardial infarction;
- (ii) coronary angioplasty;
- (iii) heart-lung transplant;
- (iv) valvular surgery;
- (v) congestive heart failure; and
- (vi) heart-lung transplant.

(b) Services are limited to Phase I cardiac rehabilitation provided in the hospital immediately following the cardiac event or diagnosis, and, after hospital discharge, Phase II services if they are initiated within four months of the event or diagnosis and require EKG monitoring with a medical doctor present in the same building.

AUTH: 53-2-201, 53-6-111, MCA

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

RULE III OUTPATIENT HOSPITAL SERVICES, PULMONARY REHABILITATION SERVICES (1) Pulmonary rehabilitation services are limited to the following:

(a) a maximum of 36 hours over a period not less than two weeks and not more than six weeks, limited to one of the following diagnoses:

- (i) persistent asthma;
- (ii) emphysema;
- (iii) chronic bronchitis;
- (iv) bronchiectasis;
- (v) interstitial lung disease; and
- (vi) chronic airway obstruction.

(2) If applicable, the patient must have ceased smoking or be in a smoking cessation class.

(3) The patient must have a referral to individual case management (ICM) before receiving pulmonary rehabilitation services.

(4) The following pulmonary rehabilitation services are not covered:

(a) education, treatment, and therapies that are not individualized to a specific patient need or are not an integral part of the treatment session;

(b) routine psychological screening and treatment where intervention is not indicated;

(c) films/videos;

(d) duplicate services;

(e) maintenance care when there is no expectation of further improvement;

(f) treatment that is not medically necessary because the patient requires a general strengthening and endurance program only; and

(g) treatment that is not medically necessary because the patient is at an early stage of pulmonary disease as demonstrated by a lack of significant findings in diagnostic testing.

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

RULE IV OUTPATIENT HOSPITAL SERVICES, CARDIAC AND PULMONARY REHABILITATION, WAIVER OF SERVICE LIMITATIONS

(1) The service limitations provided in [Rule II] and [Rule III] may be waived for extenuating circumstances on a case-by-case basis by the department.

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

RULE V OUTPATIENT CARDIAC AND PULMONARY REHABILITATION REIMBURSEMENT (1) Exempt hospital and critical access hospital (CAH) interim reimbursement is based on a hospital specific Medicaid outpatient cost to charge ratio, not to exceed 100%. Exempt hospitals and CAHs will be reimbursed their actual allowable costs determined according to ARM 37.86.2803.

(2) Prospective payment hospitals will be reimbursed on a rate-per-service basis using the outpatient prospective payment system (OPPS) schedules as provided in ARM 37.86.3020.

(3) Out-of-state hospitals will not be reimbursed for these services.

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

RULE VI INPATIENT HOSPITAL SERVICES, EXCLUSIONS (1) Inpatient hospital services do not include:

(a) services excluded from coverage by the Medicaid program under ARM 37.85.207;

(b) experimental or investigational services, clinical trials, off label or non-FDA approved use of drugs, biologicals, and devices;

(c) services that do not comply with national standards of medical care; and

(d) inpatient hospital services provided outside the borders of the United States will not be covered or reimbursed by the Montana Medicaid program.

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

RULE VII OUTPATIENT HOSPITAL SERVICES, EXCLUSIONS:

(1) Outpatient hospital services do not include:

(a) services excluded from coverage by the Medicaid program under ARM 37.85.207;

(b) exercise programs and programs primarily educational in nature, including but not limited to:

(i) cardiac rehabilitation exercise programs prior to January 1, 2006;

(ii) nutritional programs;

(iii) independent exercise programs, such as pool therapy, swim programs, or

health club memberships;

- (iv) pulmonary therapy prior to January 1, 2006;
- (c) outpatient physical therapy, occupational therapy, and speech therapy services that are primarily maintenance therapy as defined in ARM 37.86.601;
- (d) experimental services, clinical trials, off-label or non-FDA approved use of drugs, biologicals, and devices;
- (e) services that do not comply with national standards of medical care; and
- (f) outpatient hospital services provided outside the borders of the United States will not be covered or reimbursed by the Montana Medicaid program.

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

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

3. The rules as proposed to be amended provide as follows. Matter to be added is underlined. Matter to be deleted is interlined.

37.86.2901 INPATIENT HOSPITAL SERVICES, DEFINITIONS

(1) through (13) remain the same.

~~(14) "Large referral hospital" means an acute care hospital located in the state of Montana that serves as a referral center and has been determined by the department as of April 1, 1993 to have a case mix with a statistically demonstrated level of intensity of care which is higher than the norm for Montana acute care hospitals. Such facilities are Benefis Health Care (Great Falls), Deaconess Medical Center (Billings), Community Medical Center (Missoula), St. James Hospital (Butte), St. Patrick's Hospital (Missoula) and St. Vincent's Hospital (Billings).~~

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

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

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

37.86.2907 INPATIENT HOSPITAL PROSPECTIVE REIMBURSEMENT, DRG PAYMENT RATE DETERMINATION (1) The department's DRG prospective payment rate for inpatient hospital services is based on the classification of inpatient hospital discharges to DRGs. The procedure for determining the DRG prospective payment rate is as follows:

(a) through (a)(vi) remain the same.

(b) For each DRG, the department determines a relative weight, ~~depending upon whether or not the hospital is a large referral hospital, which~~ that reflects the cost of hospital resources used to treat cases in that DRG relative to the statewide average cost of all medicaid hospital cases. The relative weight for each DRG is available upon request from Department of Public Health and Human Services, Health Resources Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

(c) The department computes a Montana average base price per case. This average base price per case is \$1980 excluding capital expenses, medical education, and disproportionate share hospital payments effective for services

provided ~~on or after~~ from August 1, 2003 through December 31, 2005. For services provided January 1, 2006 through June 30, 2006, the average base price per case is \$2037 excluding capital expenses, medical education, and disproportionate share hospital payments. For services provided on or after July 1, 2006, the average base price is \$2118 excluding capital expenses, medical education, and disproportionate share hospital payments.

(d) through (2)(c) remain the same.

(3) The Montana Medicaid DRG relative weight values, average length of stay (ALOS), and outlier thresholds are contained in the DRG ~~Table of wWeights and tThresholds (October 2005)~~ (March 1, 2006). The ~~DRG table of weights and thresholds~~ is published by the department. The department adopts and incorporates by reference the DRG ~~Table of wWeights and tThresholds (October 2005)~~ (March 1, 2006). Copies may be obtained from the Department of Public Health and Human Services, Health Resources Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

AUTH: 2-4-201, 53-2-201, 53-6-113, MCA

IMP: 2-4-201, 53-2-201, 53-6-101, 53-6-111, 53-6-113, MCA

#### 37.86.3002 OUTPATIENT HOSPITAL SERVICES, SCOPE AND REQUIREMENTS (1) remains the same.

~~(2) Outpatient hospital services do not include:~~

~~(a) services excluded from coverage by the Medicaid program under ARM 37.85.207;~~

~~(b) exercise programs and programs primarily educational in nature, including but not limited to:~~

~~(i) cardiac rehabilitation exercise programs;~~

~~(ii) nutritional programs;~~

~~(iii) independent exercise programs, such as pool therapy, swim programs or health club memberships;~~

~~(iv) pulmonary therapy; or~~

~~(c) outpatient physical therapy, occupational therapy, and speech therapy services that are primarily maintenance therapy as defined in ARM 37.86.601.~~

~~(3)~~ (2) Outpatient hospital services are services that would also be covered by Medicaid if provided in a non-hospital setting and are limited to the following diagnostic and therapeutic services furnished by hospitals to outpatients:

(a) through (d)(ii) remain the same.

(e) diabetic education services provided by a hospital whose diabetic education protocol has been approved by the Medicare Part A Program, P.O. Box 5017, Great Falls, MT 59403. Coverage of diabetic education services is limited to those services meeting the requirements of the ~~Health Care Financing Administration Hospital Manual, CMS Publication 10, Coverage Issues, Appendix Section 80-2, 42 CFR, part 410, subpart H as amended revised through March 27, 2003~~ October 1, 2005. A copy of this section is adopted and incorporated by reference and is available through the Department of Public Health and Human Services, ~~Child and Adult~~ Health Resources Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.



~~(4) Outpatient hospital services provided outside the borders of the United States will not be covered or reimbursed by the Montana Medicaid program.~~

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

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

37.86.3005 OUTPATIENT HOSPITAL SERVICES, REIMBURSEMENT AND QUALIFIED RATE ADJUSTMENT PAYMENT (1) remains the same.

(2) Outpatient hospital services that are not provided by at exempt hospitals or critical access hospitals as defined in ARM 37.86.2901 will be reimbursed under ARM 37.86.3007, 37.86.3009, 37.86.3016, 37.86.3018, 37.86.3020, and 37.86.3025, and [Rule V] for medically necessary services.

(3) and (4) remain the same.

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

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

4. The Department of Public Health and Human Services (department) is proposing changes to the rules governing Medicaid reimbursement for inpatient and outpatient services. The entire 1% increase was applied to reimbursement of hospitals under the prospective payment system (PPS) to partially restore reimbursement rates that were cut in 2002 and 2003. If rates are not increased or realigned, Montana hospitals may not be financially able to offer rapidly changing technologically advanced services in-state. Failure to adopt these changes would result in more Medicaid patients being treated out-of-state. These rule changes would adjust Medicaid Diagnosis Related Group (DRG) reimbursement of hospitals under the PPS. The department uses the DRG prospective payment system to determine reimbursement for many inpatient hospital services. The department is proposing the adoption of an updated DRG Table of Weights and Thresholds effective July 1, 2006 to reflect current charges, services, and medical technology. This change will have an impact on all in-state PPS and border hospitals. Some will be affected positively and some negatively.

The department's proposal for coverage of cardiac and pulmonary rehabilitation therapy and the 1% increase to prospective payment hospitals is based on funding from an appropriation of tobacco tax revenue that took effect January 1, 2006.

ARM 37.86.3002, 37.86.3005, and Rules I, II, III, IV, and V

The department proposes to add two new services, cardiac and pulmonary rehabilitation. Traditionally, Medicaid has not covered these services because they were deemed to be exercise or education. There is, however, strong national data that shows these programs are successful in helping patients better manage their lung diseases or to prevent or lessen the impact of future heart attacks and strokes. When approached by legislators and asked for suggestions on use of I-149 tobacco funds, the department requested funding for these services since tobacco smoking is the cause of many of the diagnoses that require this type of rehabilitation. The

funding is \$385,558 for SFY 2006. Funds would not become available until January 1, 2006, therefore, only six months would be expended. For SFY 2007 the funds are \$403,576. Because of this, the department worked closely with the Montana Association of Cardiovascular and Pulmonary Rehabilitation to determine requirements and necessary caps for services.

#### Rule VI, VII, and ARM 37.85.3002

The department is proposing these two new rules and amendment of ARM 37.85.3002 regulating outpatient and inpatient hospital services eligible for Medicaid reimbursement to exclude services that are experimental or investigational in nature or are not consistent with national standards of medical care. This proposal is consistent with the definition of "medically necessary service" in ARM 37.82.102 and will make the policy easier to find and read. Out-of-state hospital providers have had difficulty finding the policy on experimental and investigation services. If the proposed rules and amendment are not adopted, confusion will continue to result in payments to which providers are not entitled. Recovery of the payments, also called "overpayments", is expensive for the department and can threaten a provider's financial stability.

#### ARM 37.86.2901, 37.86.2907, and 37.86.3002

The proposed changes are necessary to assure that high quality hospital services are available to Medicaid recipients in rural communities and to mitigate the shifting of costs from Medicaid to privately insured and privately paying individuals. The proposed changes would implement the legislative funding increases for fiscal years 2006 and 2007. The department did not consider any alternatives to an increase in rates for inpatient hospital services, since the existing rates are not sufficient to fully reimburse hospitals for the cost of providing services to Medicaid recipients and since the legislature appropriated funds for this purpose.

One of the proposed changes to ARM 37.86.2907 would implement a 1% rate increase appropriated by the Montana Legislature, to take effect January 1, 2006. This increase was funded at a total of \$902,406 for both SFY 2006 and SFY 2007. The DRG base amount was computed based on estimated expenditures for the full SFY 2006 even though funds were not available until January 1, 2006.

The other proposed changes are necessary to adjust reimbursement of PPS DRGs to reflect current charges and changes in services provided. The Montana Medicaid payment system for inpatient hospital services must be periodically re-evaluated and updated to maintain that the DRG system remains in good working order. Ideally, this should be done annually. The last time the department evaluated relative weights and cost outlier thresholds was March 2000 to compensate for appropriations. However, they have been adjusted three times since then in March 2001, July 2001, and August 2002. The department intends to rebase the DRG system in October of every year starting October 2007.

Montana's method of payment for inpatient PPS hospital services is prospective payment using the Diagnosis Related Groups (DRG). In most cases, payment equals the relative weight for the DRG times the base price plus all applicable add-ons, such as medical education, capital, and disproportionate share hospital payments. This payment method is also designed to give hospitals an added measure of financial support to help cover the costs of exceptionally expensive cases by also paying an "outlier" amount. The charges for medically necessary services are multiplied by the cost-to-charge ratio (56%) and then compared to the cost outlier threshold for the appropriate DRG. Costs exceeding the threshold are multiplied by a marginal cost ratio (60%) to determine the outlier reimbursement amount.

Montana Medicaid has chosen to develop its own set of relative weights because Montana's population differs significantly from Medicare's population. Also, because of Montana's sparse population, it is awkward to adopt relative weights that reflect much more urban styles of practice. The recommended relative weights are based on data from inpatient stays in Montana hospitals in SFY 2002 to 2005 that were paid using the DRG system. As of the date of this notice, SFY 2005 claims are still incomplete. The data set includes claims as of June 30, 2005. The geometric mean of the charge amounts for each individual DRG was calculated. These calculated charge amounts were used as the measure to calculate the relative weights. The new relative weights are set so they average to 1.0 for the claims that would be paid on a DRG basis. For example, if a given DRG had geomean charges of \$6,000, and the geomean charge for all DRGs was \$3,000, then that DRG would be assigned a relative weight of 2.0000. Some DRGs had very low volumes. If there were fewer than five cases within the time frame for a particular DRG, then that DRG was made exempt from prospective payment. These DRGs are paid on a state wide cost-to-charge ratio because they are so rare that stable weights cannot be calculated with confidence. A total of 530 valid DRGs were evaluated because 22 DRGs are no longer valid. Of these, 121 DRGs have a "0" relative weight because there were fewer than five cases per DRG.

When claims paid on a DRG basis are unusually expensive, they may become eligible for cost outlier payments. Cost outlier thresholds are set separately for each DRG so that outlier payments will not exceed an average of 10% of the payments for that DRG. The Medicare program aims for a range between 5% and 8%. The cost outlier thresholds are multiples of the DRG rate. The Montana Medicaid program has used this approach since at least 1993. The Medicare program uses a different approach under which the threshold is higher than the DRG rate by a fixed dollar amount that is the same for every DRG. As a rule of thumb, thresholds tend to be between two and four times as high as the DRG payment. The department calculated the proposed cost outlier thresholds by multiplying the gross DRG by four, on a DRG-by-DRG basis. Because cost outlier thresholds are set individually for each DRG and depend on the charges for that group, the thresholds for low-volume DRGs (those DRGs with less than five claims) cannot be calculated with confidence. These DRGs will have no relative weights and will be paid on a cost-to-charge ratio and therefore, will have no cost outlier thresholds.

Some DRGs were separated in the fee schedule that was effective October 2005 by the patient's age and also by whether the patient was treated in a large referral hospital or in another DRG hospital. The size of the hospital was removed as a consideration in the proposed calculations and rule amendments because the department believes that the cost to treat a patient is about the same no matter what the size of the hospital. Also, the determination of which facilities are large referral hospitals has not been updated since 1993. The cost to treat a patient with a mental health diagnosis, DRG 425 through 433, varied widely according to the age of the patient. The Addictive & Mental Disorders Division and the Children's Mental Health Bureau were consulted and the department is proposing that the mental health DRGs would be split by age when calculating the proposed relative weights and the proposed cost outlier thresholds. The relative weight and the cost outlier threshold for DRG 462, Rehabilitation, was negotiated with the rehabilitation facilities in 2004 and will, therefore, not be changed. Using the same methodology as all other DRGs, the relative weight for the rehabilitation DRG, 462, would have been 1.2290 instead of the current 6.0950 and the cost outlier threshold would have been \$9,734 instead of the current \$29,569. The DRG base rate or base price will be increased from \$2037, after the 1% increase, to \$2118 in this proposal to maintain budget neutrality.

#### Estimated Financial/Budget Impacts

The addition of cardiac and pulmonary rehabilitation services as reimbursable Medicaid services is expected to increase Medicaid expenditures a total of \$385,558 for state fiscal year 2006, however only six months will be expended. Of the total, approximately \$112,930 will be paid by state special revenue funds and \$272,628 by federal special revenue funds. In state fiscal year 2007, the addition of cardiac and pulmonary rehabilitation services are expected to increase Medicaid expenditures a total of \$403,576. Of this, approximately \$120,750 will be paid by state special revenue funds and \$282,826 by federal special revenue funds.

The proposed 1% increase in Medicaid reimbursement to PPS hospital facilities is expected to total \$902,406 for SFY 2006, however only six months will be expended. State special revenue will pay about \$264,324 and federal special revenue will pay about \$638,082 of the total. In state fiscal year 2007, the proposed increase will add a total of about \$902,406 in Medicaid expenditures. Of this, about \$270,009 will come from state special revenue and \$632,397 will come from federal special revenue.

The proposed DRG rebasing should be budget neutral to the SFY 2006 and 2007 appropriations. Although some DRGs will increase, others will decrease. Overall, rebasing DRG weights and thresholds will not affect the Medicaid budget.

5. The department intends that the amendments to ARM 37.86.2907(1)(c) and the changes to ARM 37.86.3002, 37.86.3005, and Rules I, II, III, IV and V are intended to be applied retroactively to January 1, 2006. No detrimental effects are

anticipated as a result. The changes to ARM 37.86.2901, 37.86.2907(1)(b) and (c), 37.86.2907(3), and Rules VI and VII are intended to become effective July 1, 2006.

6. Interested 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 Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210, no later than 5:00 p.m. on May 18, 2006. Data, views, or arguments may also be submitted by facsimile (406)444-1970 or by electronic mail via the Internet to dphhslegal@mt.gov. The department also maintains lists of persons interested in receiving notice of administrative rule changes. These lists are compiled according to subjects or programs of interest. For placement on the mailing list, please write the person at the address above.

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

/s/ Russ Cater  
Rule Reviewer

/s/ Russ Cater for  
Director, Public Health and  
Human Services

Certified to the Secretary of State April 10, 2006.

BEFORE THE STATE LOTTERY COMMISSION  
DEPARTMENT OF ADMINISTRATION  
OF THE STATE OF MONTANA

In the matter of the amendment of ) CORRECTED NOTICE OF  
ARM 2.63.201, 2.63.204, and ) AMENDMENT  
2.63.602, pertaining to retailers, )  
licensing, scratch tickets, and prizes )

TO: All Concerned Persons

1. On January 12, 2006, the State Lottery Commission published MAR Notice No. 2-2-361 regarding the proposed amendment of the above-stated rules on page 1 of the 2006 Montana Administrative Register, issue no. 1. On February 23, 2006, the commission published the notice of amendment at page 526 of the 2006 Montana Administrative Register, issue no. 4.

2. In proofing the replacement pages for the first quarter of 2006, it was discovered that some of the statutes were updated incorrectly, reflecting the wrong AUTH and/or IMP citations. The rules, as amended in corrected form, read as follows, deleted matter interlined, new matter underlined.

2.63.201 PROCEDURAL RULES

(1) remains as adopted.

AUTH: 23-7-202, MCA

IMP: ~~23-5-1001 through 23-5-2036~~ 23-7-101, 23-7-102, 23-7-103, 23-7-110,  
MCA

2.63.204 GENERAL PROVISIONS

(1) through (7) remain as adopted.

AUTH: 23-7-202, MCA

IMP: ~~23-5-1001 through 23-5-1036~~ 23-7-101, 23-7-102, 23-7-103, 23-7-110,  
23-7-202, MCA

2.63.602 PROVISIONAL LICENSE

(1) remains as adopted.

AUTH: 23-7-202, ~~23-5-1012~~ 23-7-211, MCA

IMP: ~~23-5-1012~~ 23-7-211, 23-7-301, MCA

3. The corrected replacement pages were submitted to the Secretary of State's office on March 31, 2006.

By: /s/ Robert Crippen  
ROBERT CRIPPEN, CHAIR  
MONTANA LOTTERY COMMISSION

/s/ Dal Smilie  
DAL SMILIE, Rule Reviewer

Certified to the Secretary of State April 10, 2006.

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY  
OF THE STATE OF MONTANA

In the matter of the adoption of new	)	NOTICE OF ADOPTION
rules I through XVIII pertaining to	)	
decontamination of inhabitable property	)	(METHAMPHETAMINE CLEANUP
contaminated by clandestine	)	PROGRAM)
manufacture of methamphetamine	)	

TO: All Concerned Persons

1. On January 26, 2006, the Department of Environmental Quality published MAR Notice No. 17-243 regarding a notice of public hearing on the proposed adoption of the above-stated rules at page 142, 2006 Montana Administrative Register, issue number 2.

2. The department has adopted New Rules I through VIII (17.74.501 through 17.74.508) and X through XVIII (17.74.510 through 17.74.518) exactly as proposed and has adopted New Rules III (17.74.503) and IX (17.74.509) as proposed, but with the following changes, stricken matter interlined, new matter underlined:

NEW RULE III (17.74.503) INCORPORATION BY REFERENCE (1) through (1)(d) remain as proposed.

(2) Copies of these materials may be obtained from the Department of Environmental Quality, 1520 E. Sixth Avenue, P.O. Box 200901, Helena, MT 59620-0901. Copies of the CFR are available from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402; phone (202) 512-1800. The CFR also can be accessed electronically at ~~http://www.access.gpo.gov/nara/cfr/index.html~~ http://www.gpoaccess.gov/cfr/index.html.

NEW RULE IX (17.74.509) WORKER AND SUPERVISOR CERTIFICATION

(1) An applicant for department certification as a CML decontamination worker shall successfully complete a basic decontamination worker course and submit to the department within 60 days after completing the course:

(a) remains as proposed.

(b) evidence of successful completion of hazardous waste operations and emergency response (HAZWOPER) training including the initial 40-hour HAZWOPER and current eight-hour HAZWOPER refresher training, conducted pursuant to 29 CFR 1910.120;

(i) HAZWOPER training, required pursuant to (1)(b), must be completed prior to taking the basic decontamination worker course;

(c) through (5) remain as proposed.

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



COMMENT NO. 1: A comment was received requesting the amendment of NEW RULE VI to require the department to add to the department's list of contaminated properties maintained pursuant to 75-10-1306, MCA, contaminated properties identified by certified contractors.

RESPONSE: The department disagrees with the requested amendment. Section 75-10-1306(1), MCA, states that law enforcement agencies are required to report clandestine methamphetamine (meth) drug labs to the department. Notably absent from the statute is a requirement that certified contractors must report clandestine meth drug labs to the department. In the absence of authorization from the legislature to require certified contractors to file such reports, the department may not create such a requirement by rule.

Section 75-10-1306(2), MCA, states that the department shall maintain a list of properties that have been reported, but does not specify whether the department may accept reports only from state and local law enforcement agencies. The question arises, then, whether the department may accept voluntary reports from certified contractors or, for that matter, any other persons or entities. Upon consideration, the department has determined that accepting reports from entities other than those designated by the legislature potentially could pose significant problems, not the least of which would be ensuring that properties are not inappropriately listed. The department does not have the resources to investigate all reported properties itself and must rely on the accuracy of the reports. Accordingly, the department is taking the prudent course of accepting only reports as mandated by the legislature. However, any certified contractor or other citizen is free to report a suspected clandestine meth drug lab to a local or state law enforcement agency. The local or state law enforcement agency is required to report the property to the department once it becomes aware that the property was the site of a clandestine meth drug lab.

COMMENT NO. 2: New Rule I(3) states that this is a "voluntary program which provides a property decontamination process." Once the owner sees the cost involved there will not be a cleanup done in accordance with these rules.

RESPONSE: Section 75-10-1301, MCA, states: "The purpose of this part is to protect the public health, safety, and welfare by providing specific cleanup standards and authorizing the department to establish a voluntary program that will provide for a property decontamination process that will meet state standards." The department is authorized by the legislature only to establish a voluntary program. Therefore, the proposed administrative rules only can establish a voluntary program.

The department is aware that a property owner may believe that the prospective cost of cleanup might outweigh the benefits derived from remediation of inhabitable property. However, if the property owner declines to clean up the property, the statute still provides protection to the public by requiring the property owner to provide notice of the contamination to future occupants and purchasers.

COMMENT NO. 3: Please add language stating that the cleanup process provided for under these rules is to occur after removal of gross chemicals and lab equipment by law enforcement agencies and their contractors has been completed.

RESPONSE: This point would be addressed in the worker and supervisor

certification training classes.

COMMENT NO. 4: How will the cleanup contractor know that the building, room, etc. is released from legal investigation requirements and is ready for cleanup?

RESPONSE: This comment is outside the scope of this rulemaking. However, the department contacted the Missouri River Drug Task Force and was informed that a site always will be marked by law enforcement for purposes of their investigation. The property owner is responsible for hiring the cleanup contractor. It is the responsibility of the property owner to inform the cleanup contractor when the legal investigation has been completed and the property has been released for cleanup.

COMMENT NO. 5: Will homeowners be allowed to clean up their own property? If so, will they be allowed to transport the material to the landfill?

RESPONSE: The new rules do not prohibit homeowners from cleaning their own property and/or transporting solid waste material to a licensed landfill. However, if an owner of property used for clandestine meth manufacture that has been reported as contaminated to the department wants to have the property removed from the department's list of contaminated property, then the property owner must comply with New Rule VI, "Decontamination Performance, Assessment, and Inspection."

The property owner must adhere to Administrative Rules of Montana (ARM) Title 17, chapter 50, concerning the regulation of solid waste (landfills), and ARM Title 17, chapter 53, concerning the regulation of hazardous waste, including the transportation of hazardous waste. A property owner should call the department at (406) 444-5300 with any questions about transporting contaminated materials to landfills or any other issue regarding the proper cleanup of meth contaminated property.

COMMENT NO. 6: Who inspects the property and certifies it for re-occupancy?

RESPONSE: New Rule VI(2) states: "Upon confirmation by the department that an inhabitable property has been properly remediated to the standards provided in NEW RULE V, the department shall issue a certificate of fitness to the property owner of record." To ensure that a property has been remediated, the department will consider the analytical results provided by a certified contractor and, in certain cases, may also inspect the property.

COMMENT NO. 7: Has there been a cost analysis performed on how much it would cost to remediate an average house or room? As the department reviewed other states' programs, did they have cost analyses? Where is the money to do this work? Will insurance cover the average homeowner or commercial property owner? Insurance agents state that landlord protection policies list meth labs as contamination that is not covered under the "pollution or contamination exclusion" clause of the policy. If the average owner cannot afford to clean up the property and insurance does not cover cleanup, how can properties be cleaned under this

program? Will such property remain abandoned/vacant, awaiting a fire or deterioration?

RESPONSE: This comment is outside the scope of this rulemaking. However, the department provides the following response.

The department has not performed a formal cost analysis because of the variability in meth lab sites, amount of contamination, and rates charged by cleanup companies. The department hopes that, by providing a standard to which a property can be cleaned, and, by certifying cleanup contractors to perform the work, a fair market will develop to make it cost effective for property owners to restore dwellings to an inhabitable state.

COMMENT NO. 8: Are state and local governments going to maintain databases of meth lab contaminated properties?

RESPONSE: The department has developed a database for contaminated properties listed pursuant to 75-10-1306(2), MCA, certified workers, certified supervisors, and certified contractors.

COMMENT NO. 9: How will the cleanup and recertification process be enforced? Is it a voluntary program until a complaint is issued? What follow-up will be performed on these properties to assure that they are cleaned up? Is there a timeframe within which the owner is to take action or provide an action plan?

RESPONSE: The department will determine whether cleanup is complete by reviewing the cleanup contractor's sampling and analysis work and by comparing analytical results to the decontamination standards. Because it is a voluntary program, there are no timeframes for cleanup action. However, if an owner of property used for clandestine meth manufacture, that has been reported as contaminated to the department, wants to have the property removed from the department's list of contaminated property, the property owner must comply with New Rule VI, "Decontamination Performance, Assessment, and Inspection."

COMMENT NO. 10: How will someone know that a house was a former meth lab and that it has been certified for reoccupancy?

RESPONSE: A person won't necessarily know that a house was a former meth lab but that a person can check the department's list to determine whether the property currently is contaminated. As discussed in Response to Comment No. 6, upon confirmation by the department that an inhabitable property has been properly remediated to the required standards, the department will issue a certificate of fitness to the property owner of record and remove the property from the list of contaminated properties.

COMMENT NO. 11: Is there a disclosure requirement such as for lead based paint and radon?

RESPONSE: Section 75-10-1305, MCA, requires the owner of inhabitable property that has been contaminated by use as a clandestine meth drug lab to give written notice to any subsequent occupant or purchaser of that fact if the property has not been remediated by a certified contractor to the standards set forth in 75-10-1303, MCA.

Please also see the Response to Comment No. 12.

COMMENT NO. 12: What measures will be used to prevent reoccupancy without prior cleaning?

RESPONSE: Section 75-10-1305(1), MCA, states: "An owner of inhabitable property that is known by the owner to have been used as a clandestine meth drug lab shall notify in writing any subsequent occupant or purchaser of the inhabitable property of that fact if the inhabitable property has not been remediated to the standards established in 75-10-1303, MCA, by a contractor who is certified in accordance with 75-10-1304, MCA." However, the statute does not provide for enforcement by the department, and it is possible that subsequent occupants or purchasers would need to seek recourse through litigation against an owner who fails to give such notice.

COMMENT NO. 13: How will the public and local governments be notified of this program?

RESPONSE: The Montana Administrative Procedure Act specifies the rulemaking procedures, including public notification and participation procedures, applicable to this rulemaking. The department filed a notice of proposed rulemaking with the Secretary of State's Office on January 13, 2006, the notice was published in the Montana Administrative Register, and a public hearing was held on March 7, 2006. The department accepted comments on the proposed rules through March 14, 2006. Also, the department mailed the proposed rules to the meth cleanup program's interested parties list on January 23, 2006. The rules, in their final format, will be published in the Administrative Rules of Montana in approximately early September 2006 and may be obtained by contacting the Methamphetamine Lab Cleanup Program at P.O. Box 200901, Helena, Montana 59620-0901, phone (406) 444-5286, e-mail DGrimm@mt.gov, or on the department's website at <http://www.deq.mt.gov/dir/legal/title17.asp>.

COMMENT NO. 14: Although the department incorporated the state rules on hazardous waste and asbestos, how will a property owner know what to do?

RESPONSE: The department removed the incorporation of the hazardous waste and asbestos rules from the proposed rules. Property owners may call the department at (406) 444-5300 if they have questions about asbestos or hazardous waste. Property owners also may contact a certified contractor who, by training and agency oversight, will recognize these and other regulatory issues.

COMMENT NO. 15: The training provided by Marine & Environmental Testing, Inc., duplicates HAZWOPER training.

RESPONSE: This comment is outside the scope of the rulemaking. However, the department agrees that the inaugural training was duplicative, and the department is taking steps to ensure that future training is more focused on the specifics of meth cleanup. New Rule XIV requires training providers seeking certification to obtain department approval of instructors and course content. New Rule XV states that training providers must allow the department's representative to attend training courses as an observer to verify that the training provider conducts

the training in accordance with the training approved by the department.

COMMENT NO. 16: The proposed rules do not adequately address quality assurance and quality control.

RESPONSE: The department believes that the standardized methods and associated quality assurance and quality control publications incorporated by reference in New Rule III and included in the Montana Clandestine Methamphetamine Lab Decontamination Sampling and Analysis Plan provide the quality assurance and quality control requirements necessary for the meth cleanup program.

COMMENT NO. 17: The rules lack language requiring property owners to decontaminate their property. This is a voluntary program and does not include a decontamination requirement before a dwelling is used for habitation. Where is the incentive?

RESPONSE: Please see the department's Response to Comment No. 2.

COMMENT NO. 18: HAZWOPER training should be completed before a person can take the clandestine meth lab worker certification course.

RESPONSE: The department agrees with the comment, and the department has revised New Rule IX to include this requirement.

COMMENT NO. 19: The term "voluntary," as used in New Rule I, could be construed by a property owner to mean that the rules can be ignored if the owner so chooses, contrary to the legislature's intent that property be decontaminated or that written notification be provided to subsequent occupants that the property has been used as a clandestine meth lab.

RESPONSE: The sentence in New Rule I that contains the term "voluntary" is paraphrased from a similar sentence in the clandestine meth laboratory statute, Section 75-10-1301, MCA. The statutes and rules both make it clear that property owners may choose not to have their property decontaminated, and that the cleanup provisions, therefore, are voluntary. However, if decontamination is not performed, notification is mandatory.

COMMENT NO. 20: Of the three methods referenced in New Rule III for sampling and analysis of a CML, the method referenced in (1)(b) of the rule is for analysis of asbestos by transmission electron microscopy, the method in (1)(c) is for surfaces contaminated by lead paint, and the document referenced in (1)(d), apparently, does not exist as a stand-alone document. This could be very confusing to individuals or businesses seeking to evaluate a contaminated property prior to, and after, cleanup.

RESPONSE: The microvacuuming method (American Society for Testing and Materials, Method D5756-02, (November 2002), Standard Test Method for Microvacuum Sampling and Indirect Analysis of Dust by Transmission Electron Microscopy for Asbestos Mass Concentration) and the wipe sampling method (National Institute for Occupational Health and Safety, Manual of Analytical Methods, 4th Ed., Method 9100, Lead in Surface Wipe Samples (Issue 2, May 1996)) are

referenced in most, if not all, state clandestine meth lab cleanup programs. The Montana Clandestine Methamphetamine Lab Decontamination Sampling and Analysis Plan (August 2005) does exist as a stand-alone document and can be obtained from the Montana Methamphetamine Cleanup Program.

COMMENT NO. 21: Subsection (1)(b) of New Rule IV defines "basic course" as training for workers and supervisors. However, the rules require that a supervisor take an additional course beyond the basic course. There is no definition of "supervisor course" in the new rules, and a definition should be added.

RESPONSE: Sections (1) and (2) of New Rule XI define "supervisor course."

COMMENT NO. 22: The new rules should address the need for pre- and post-cleanup site assessments by qualified individuals, including sampling plans and analytical results. The pre- and post-cleanup assessments should be performed by third party professionals who are not affiliated with the contractor doing the actual cleanup.

RESPONSE: The clandestine meth laboratory statutes, 75-10-1301 through 75-10-1306, MCA, do not provide the authority for the department to adopt administrative rules to require pre- and post-cleanup assessments performed by third party professionals who are not affiliated with the contractor doing the actual cleanup. However, the department intends to perform random follow-up and on-site confirmation sampling to document post-assessment and/or cleanup effectiveness. If it becomes apparent that additional oversight is needed, the department may pursue a legislative amendment authorizing such a rule requirement.

Reviewed by:

DEPARTMENT OF ENVIRONMENTAL  
QUALITY

/s/ David Rusoff  
DAVID RUSOFF  
Rule Reviewer

By: /s/ Richard H. Oppen  
RICHARD H. OPPER  
Director

Certified to the Secretary of State, April 10, 2006.



/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 April 10, 2006



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

In the matter of the amendment of ) NOTICE OF AMENDMENT  
ARM 24.216.402, pertaining to fee )  
schedule )

TO: All Concerned Persons

1. On January 12, 2006, the Board of Sanitarians (board) published MAR Notice No. 24-216-17 regarding the public hearing on the proposed amendment of the above-stated rule, at page 61 of the 2006 Montana Administrative Register, issue no. 1.

2. On February 3, 2006, a public hearing was conducted in Helena, Montana and no members of the public appeared at the public hearing. In addition, no written comments were received prior to the closing of the comment period.

3. The board has amended ARM 24.216.402 exactly as proposed.

BOARD OF SANITARIANS  
TED KYLANDER, CHAIRPERSON

/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 April 10, 2006

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 37.36.604 and 37.36.610	)	
pertaining to the Montana	)	
Telecommunications Access Program	)	
(MTAP)	)	

TO: All Interested Persons

1. On February 23, 2006, the Department of Public Health and Human Services published MAR Notice No. 37-369 pertaining to the public hearing on the proposed amendment of the above-stated rules, at page 510 of the 2006 Montana Administrative Register, issue number 4.
2. The department has amended ARM 37.36.604 and 37.36.610 as proposed.
3. No comments or testimony were received.

/s/ Russell E. Cater  
Rule Reviewer

/s/ Joan Miles  
Director, Public Health and  
Human Services

/s/ Leada Kukland  
Chairman of the Montana  
Telecommunications Access Committee

Certified to the Secretary of State April 10, 2006.

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

In the matter of the adoption of Rule I	)	NOTICE OF ADOPTION AND
and amendment of ARM 37.89.103 and	)	AMENDMENT
37.89.106 pertaining to Mental Health	)	
Access Plan Prescription Drug Benefits	)	
for Persons Eligible for Medicare	)	
	)	

TO: All Interested Persons

1. On February 23, 2006, the Department of Public Health and Human Services published MAR Notice No. 37-370 pertaining to the public hearing on the proposed adoption and amendment of the above-stated rules, at page 513 of the 2006 Montana Administrative Register, issue number 4.

2. The department has adopted new Rule I (ARM 37.89.112) as proposed.

3. The department has amended ARM 37.89.103 and 37.89.106 as proposed.

4. No comments or testimony were received.

/s/ Dawn Sliva  
Rule Reviewer

/s/ Russell E. Cater for  
Director, Public Health and  
Human Services

Certified to the Secretary of State April 10, 2006.

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MONTANA

In the Matter of the Application	)	Utility Division
of Westech Energy Corporation	)	Docket No.
for an Order Recognizing It as	)	D2004.12.195
a Regulated Common Carrier	)	
	)	DECLARATORY
	)	RULING

DECLARATORY RULING

Introduction

1. On December 10, 2004, Westech Energy Corporation (Westech) filed before the Public Service Commission (commission) an application for an order recognizing it as a regulated common carrier, or in the alternative for an order recognizing Westech's consent to regulation as a common carrier (application).

2. On February 16, 2005, the commission issued a Notice of Application and Intervention Deadline (NAID) establishing March 7, 2005 as the deadline to intervene or comment. The NAID was served on the parties to the docket and the Montana Consumer Counsel and published in the Stillwater County News. No individual or entity filed a petition to intervene or comments.

3. On April 19, 2005, Westech filed a Motion to Convert Application to a Petition for Declaratory Ruling. On May 10, 2005, the commission granted Westech's motion.

4. Pursuant to § 2-4-501, MCA, and ARM 38.2.101 and 1.3.226 through 1.3.229, the commission exercises jurisdiction to make declaratory rulings as to the applicability of any statutory provision or any rule or order of the commission.

Facts Presented

5. Westech represents that it "proposes to build a natural gas transportation pipeline from the Dean Dome Field, an existing oil and gas field near Dean, Montana, to an interconnection with NorthWestern Energy Corporation's<sup>1</sup> major natural gas transportation pipeline just northeast of Absarokee, Montana." Application at 1.

6. Westech states that its "intent is to use the proposed pipeline to facilitate the production of stranded gas reserves throughout a large part of Stillwater

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<sup>1</sup> The commission is not aware of any entity named NorthWestern Energy Corporation. NorthWestern Energy is a division of NorthWestern Corporation. For purposes of this ruling the commission assumes that Westech means NorthWestern Energy's pipeline.

County." Application at 1.

7. Westech describes its intentions as follows:

We plan to utilize the proposed pipeline to provide non-discriminatory access to all producers who want to transport their natural gas. Our interconnect with NorthWestern Energy will allow us, and all other producers who share our line, to market natural gas to anyone in the state. We also anticipate the possibility of providing another source of natural gas to the local retail market through future extensions of our pipeline.

Application at 1.

Question Presented

8. Does crude petroleum or the products thereof include natural gas for purposes of § 69-13-101, MCA?

Applicable Law

9. Section 69-13-101(1), MCA, provides:

The following are hereby declared to be common carriers and subject to the provisions of this chapter: every person, firm, corporation, limited partnership, joint-stock association, or association of any kind whatsoever:

(a) owning, operating, or managing any pipeline or any part of any pipeline within the state for the transportation of crude petroleum, coal, or the products thereof to or for the public for hire or engaging in the business of transporting crude petroleum, coal, or the products thereof by pipeline;

(b) owning, operating, or managing any pipeline or any part of any pipeline for the transportation of crude petroleum, coal, or the products thereof to or for the public for hire, which pipeline is constructed or maintained upon, along, over, or under any public road or highway;

(c) owning, operating, or managing any pipeline or any part of any pipeline for the transportation of crude petroleum, coal, or the products thereof to or for the public for hire, which pipeline is or may be constructed, operated, or maintained across, upon, along, over, or under the right-of-way of any railroad, corporation, or other common carrier required by law to transport crude petroleum, coal, or the products thereof as a common carrier;

(d) owning, operating, or managing or participating in ownership, operation, or management, under lease, contract of purchase, agreement to buy or sell, or other agreement or

arrangement of any kind whatsoever, any pipeline or any part of any pipeline for the transportation from any oil field, coal mine or field, or place of production within the state to any distributing, refining, or marketing center or reshipping point thereof, within this state, of crude petroleum, coal, or the products thereof, bought of others; or

(e) made a common carrier by or under the terms of contract with or in pursuance of the law of the United States.

10. Section 69-13-102(1), MCA, provides:

It is declared that the operation of these pipelines, to which this chapter applies, for the transportation of crude petroleum, coal, or the products thereof, in connection with the purchase or purchase and sale of such crude petroleum, coal, or the products thereof, is a business in mode of the conduct of which the public is interested and as such is subject to regulation by law. The business of purchasing or of purchasing and selling crude petroleum, coal, or the products thereof, using in connection with such business a pipeline of the class subject to this chapter to transport the crude petroleum, coal, or the products thereof so bought or sold shall not be conducted unless such pipeline so used in connection with such business is a common carrier within the purview of this law and subject to the jurisdiction herein conferred upon the commission.

11. Section 69-13-103(2), MCA, provides:

Any person, firm, limited partnership, joint-stock association, or corporation may acquire the right to construct pipelines and such incidental telephone and telegraph lines along, across, or over any public road or highway in this state by filing with the commission acceptance of the provisions of this law, expressly agreeing in writing that in consideration of the right so acquired, it shall be and become a common carrier pipeline, subject to the duties and obligations conferred or imposed in this chapter. In the exercise of the privileges herein conferred, such pipelines shall compensate the county for any damage done to such public road in the laying of pipelines or telegraph or telephone lines along or across the same. Nothing herein shall be construed to grant any pipeline company the right to use any public street or alley in any incorporated city or town except by express permission from the city or governing authority thereof.

### Analysis

Does crude petroleum or the products thereof include natural gas for purposes of § 69-13-101, MCA?

12. The commission has not previously ruled on whether crude petroleum

or the products thereof include natural gas for purposes of Title 69, chapter 13, MCA. Currently, no natural gas pipeline companies are regulated by the commission as common carriers.

13. The commission has not been confronted with this issue due to the manner in which the natural gas industry has developed. In many cases, pipelines were interstate in nature and federal law preempted state regulation. In other situations, intrastate pipelines were owned and operated by a public utility and the pipeline was regulated under Title 69, chapter 3, MCA. In regulating these intrastate pipelines, the commission enabled the pipeline companies to claim "Hinshaw pipeline" status and avoid federal regulation.<sup>2</sup> See, e.g., In the Matter of the Application of the Montana Power Company for Authority to Establish New Rates Required to Implement Its Gas Transportation Plan, Docket No. 90.1.1, Order 5474c (September 26, 1991).

14. On the federal level, the Federal Energy Regulatory Commission (FERC) regulates both oil and natural gas pipelines. However, the source of regulatory authority and the scope of regulation are different for each type of pipeline. Natural gas pipelines are regulated under the Natural Gas Act; oil pipelines are regulated under the Interstate Commerce Act. See SFPP, L.P., 93 FERC ¶ 63,023, ¶ 65,090 (2000); Lakehead Pipe Line Co., 65 FERC ¶ 63,021, ¶ 65,124 (1993). Oil pipelines are common carriers. Natural gas pipelines, after restructuring and open access, have obligations similar to those of common carriers. Regulation of oil pipelines preceded by many decades regulation of natural gas pipelines.

15. The dichotomy of these regulatory schemes is somewhat artificial. Oil pipelines can be converted to natural gas pipelines and natural gas pipelines can be converted to oil pipelines. Compare River Co. v. Texas Eastern Transmission Corp., No. Civ. 93-209, 1954 U.S. Dist. LEXIS 3724, 1954 Trade Cas. (CCH) ¶ 67,840 (D.N.Y., 1954) (conversion of pipeline from transportation of natural gas to transportation of petroleum products) with Granite State Gas Transmission, Inc., 40 FERC ¶ 61,165 (1987) (lease and conversion of oil pipeline to transportation of natural gas).

16. The original source of chapter 13 of Title 69, MCA, is Ch. 8, Laws of Montana 1921, Extraordinary Session (1921 Act). Initially, only pipeline transporters of crude petroleum were common carriers. See §1, Ch. 8, Laws of Montana 1921, Extraordinary Session. The legislature did not define crude petroleum. In a portion of the 1921 Act the legislature limited certain of the commission's authority to oil.<sup>3</sup> This limitation would not have been necessary if the legislature intended crude

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<sup>2</sup> Pursuant to § 1(c) of the Natural Gas Act (15 U.S.C. § 717(c)) a Hinshaw pipeline is one within the boundaries of a state the natural gas from which is consumed in the state and the rates and service of which are regulated by a state commission.

<sup>3</sup> Section 5 of the 1921 Act provided, in pertinent part, "The [Commission] is also empowered and required to make rules for the ascertainment of the amount of water and other foreign matter in oil tendered for transportation." §5, Ch. 8, Laws of Montana 1921, Extraordinary Session (codified at § 3852, Revised Code of Montana of 1935 and §8-205, Revised Code of Montana of 1947).

petroleum to be synonymous with oil.

17. In 1955 the legislature extended the scope of the statute to include transportation of petroleum products. See Ch. 190, Laws of Montana 1955. However, the title of the act demonstrates that the legislature intended the act to apply to oil (An Act to Amend Chapter 2, of Title 8, and Particularly Sections 8-201, 8-202, 8-204, 8-205, 8-206, and 8-207 of the Revised Code of Montana of 1947, All Relating to Pipe Line Carriers of Oil . . .). The amendments that were adopted were in Senate Bill 73. The legislative history of the Senate Bill 73 is sparse. Nothing in either the House Journal or the Senate Journal explains the purpose of the amendments. The minutes of the Senate Committee on Oils and Leases for January 28, 1955 provide, "Senate Bill 73 was also discussed, and upon motion of Sen. Robins, which was seconded by Sen. Taylor, the committee unanimously agreed that it 'do pass'." The minutes of the House Committee on Oil and Gas for February 25, 1955 provide, "Senator Rex Hibbs appeared before the committee and explained Senate Bill No. 73. Discussion was had. Fulton made the motion that it be concurred in. It was seconded by Judeman. The motion was carried." Nothing in the amendment addressed the definition of crude petroleum.

18. In 1982, the commission approved Roughrider Pipeline Company's (Roughrider) acceptance of jurisdiction under § 69-13-101, et seq., MCA. See U-82.07.20.00-OP, Commission Files. Roughrider represented that its pipeline would be used to transport "wet natural gas" produced in association with crude oil. See U-82.05.21.00-OP, Commission Files, attachment. Roughrider cited Phillips Pipe Line Co. v. United States, 40 F. Supp. 981 (Ct. Cl. 1941), for the proposition that wet natural gas is a constituent of crude petroleum.

19. In Phillips Pipe Line Co., the court interpreted the Revenue Act of 1932 which imposed a tax on transportation by pipeline of crude petroleum and the liquid products thereof. 40 F. Supp. at 986. The court reasoned that natural gasoline and straight-run gasoline were essentially the same product, that the tax applied to straight-run gasoline and that a natural construction of the revenue act required the application of the tax to natural gasoline. 40 F. Supp. at 988. The court placed substantial emphasis on language in the act that was changed during the legislative process. The bill originally provided for a tax on the transportation of oil by pipeline. Id. The Senate committee changed the language to provide for a tax on the transportation by pipeline of crude petroleum and the liquid products thereof. Id. The Committee Report explained that the change made transportation of gasoline as well as crude oil taxable. Id. The Conference Report also explained that the change in wording made the tax applicable to crude petroleum and its liquid products instead of to oil only. Id. The court held that natural gasoline was a liquid product of crude petroleum for purposes of the Revenue Act of 1932. 40 F. Supp at 988. The court stated:

There are many chemical names for the different types of gas and liquid hydrocarbons. Crude petroleum contains all of them in greater or less degree.



In the following chart we have indicated some of them:<sup>4</sup>

Crude Petroleum		Methane	Essentially natural gas at normal temperatures and pressures
		Ethane	
		Propane	
	Constituents of straight-run gasoline	Butanes	Constituents of natural gasoline
		Pentanes	
		Hexanes	
		Heptanes	
		Octanes	
		Nonanes	
		Decanes, etc.	

40 F. Supp. at 987. The court rejected the argument that crude petroleum was synonymous with oil stating, "there would be no term applicable to petroleum in its natural state with all its original ingredients." Id.

20. In General Petroleum Corp. of Cal. v. United States, the court reached a similar result. 24 F. Supp. 285, 289 (S.D. Cal. 1938). The court wrote, "In view of the state of the law at the time of the enactment and its avowed purpose, I am of opinion that the Congress intended to designate by the words 'crude petroleum' all the hydrocarbon substances – whether in liquid, solid or gaseous form coming out of an oil well . . . ." Id.

21. A comparable result was reached in Standard Oil of Cal. v. United States, 39 F. Supp. 180 (N.D. Cal. 1941). The court opined, " . . . natural gasoline, which is derived from wet natural gas, is a product of petroleum . . . ." 39 F. Supp. at 182.

22. For purposes of chapter 13 of Title 69, MCA, crude petroleum includes natural gas. Natural gas is a part of, not a product of, crude petroleum. A natural gas pipeline is declared to be a common carrier by § 69-13-101, MCA.

#### Declaratory Ruling

On the petition of Westech Energy Corporation for a declaratory ruling, the commission rules that Westech's proposed natural gas pipeline, if built, would be a common carrier pipeline as defined by § 69-13-101, MCA, and that Westech Energy Corporation would be subject to the jurisdiction of the commission.

Done and dated this 23rd day of August 2005 by a vote of 3 to 2.

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<sup>4</sup> The chart has been reformatted to fit the software used in preparing this order.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

/s/ Greg Jergeson

GREG JERGESON, Chairman

/s/ Brad Molnar

BRAD MOLNAR, Vice Chairman (dissenting)

/s/ Doug Mood

DOUG MOOD, Commissioner

/s/ Robert H. Raney

ROBERT H. RANEY, Commissioner (dissenting)

/s/ Thomas J. Schneider

THOMAS J. SCHNEIDER, Commissioner

ATTEST:

Connie Jones  
Commission Secretary

(SEAL)

## **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 PO 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<br>Subject | 1. Consult ARM topical index.<br>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, 2005. This table includes those rules adopted during the period January 1 through March 31, 2006 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, however, 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, 2005, 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 2005 and 2006 Montana Administrative Registers.

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## BOARD APPOINTEES AND VACANCIES

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

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

In this issue, appointments effective in March 2006 appear. Vacancies scheduled to appear from May 1, 2006, through July 31, 2006, are listed, as are current vacancies due to resignations or other reasons. Individuals interested in serving on a board should refer to the bill that created the board for details about the number of members to be appointed and necessary qualifications.

Each month, the previous month's appointees are printed, and current and upcoming vacancies for the next three months are published.

### IMPORTANT

Membership on boards and commissions changes constantly. The following lists are current as of April 1, 2006.

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

## BOARD AND COUNCIL APPOINTEES FROM MARCH 2006

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>Board of Chiropractors</b> (Labor and Industry)			
Ms. Lucy Heger Livingston Qualifications (if required): public representative	Governor	Ausk	3/17/2006 1/1/2009
Dr. John Sando Butte Qualifications (if required): practicing chiropractor	Governor	Blanchard	3/17/2006 1/1/2009
<b>Board of Outfitters</b> (Governor)			
Rep. Carol Gibson Billings Qualifications (if required): sportsperson	Governor	Cote	3/3/2006 10/1/2008
Mr. John Redman Sidney Qualifications (if required): public representative	Governor	Dolezal	3/3/2006 10/1/2008
Mr. Thomas Sather Bozeman Qualifications (if required): sportsperson	Governor	Underwood	3/3/2006 10/1/2008
<b>Board of Personnel Appeals</b> (Governor)			
Mr. Jerry Brobst Bigfork Qualifications (if required): full-time management employee in an organization with a collective bargaining unit	Governor	Alberi	3/3/2006 1/1/2009

## BOARD AND COUNCIL APPOINTEES FROM MARCH 2006

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>Board of Public Education</b> (Commissioner of Higher Education)			
Ms. Angela McLean Anaconda	Governor	Masolo	3/22/2006 2/1/2013
Qualifications (if required): resident of District 1			
<b>Board of Veterinary Medicine</b> (Labor and Industry)			
Mr. Tony Belcourt Box Elder	Governor	Hinebauch	3/9/2006 7/31/2010
Qualifications (if required): consumer			
Ms. Joan Marshall Ekalaka	Governor	Kauffman	3/9/2006 7/31/2010
Qualifications (if required): veterinarian			
<b>Children's Trust Fund</b> (Governor)			
Ms. Nancy Anderson Great Falls	Governor	McCall	3/3/2006 1/1/2009
Qualifications (if required): public representative			
Ms. Tara Jensen Helena	Governor	Lombardi	3/3/2006 1/1/2007
Qualifications (if required): representative of the Office of Public Instruction			
Ms. Margaret (Peg) Shea Missoula	Governor	Dowell	3/3/2006 1/1/2007
Qualifications (if required): public representative			

## BOARD AND COUNCIL APPOINTEES FROM MARCH 2006

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>Children's Trust Fund</b> (Governor) cont.			
Ms. Mylene Widner	Governor	Bullis	3/3/2006
Billings			1/1/2009
Qualifications (if required): public representative			
<b>Commission on Practice of the Supreme Court</b> (Supreme Court)			
Ms. Tracy Axelberg	elected	not listed	3/28/2006
Kalispell			3/28/2010
Qualifications (if required): elected			
<b>Corrections Advisory Council</b> (Justice)			
Ms. Penny Kipp	Governor	Stratemeyer	3/3/2006
Pablo			9/8/2007
Qualifications (if required): having competency in addressing problems facing youth			
<b>Historical Records Advisory Board</b> (Historical Society)			
Mr. Kim Allen Scott	Governor	Crain	3/2/2006
Bozeman			9/7/2006
Qualifications (if required): Public Representative			
<b>Judicial Nomination Commission</b> (Justice)			
Judge Ted O. Lympos	District Court	not listed	3/22/2006
Kalispell			1/1/2010
Qualifications (if required): elected			

## BOARD AND COUNCIL APPOINTEES FROM MARCH 2006

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>Mental Disabilities Board of Visitors</b> (Governor)			
Ms. Teresa Lewis	Governor	Driscoll	3/3/2006
Harlem			7/1/2007
Qualifications (if required): consumer of mental health services			
<b>State-Tribal Economic Development Commission</b> (Governor)			
Mr. Joseph Durglo	Governor	Irvine	3/7/2006
Pablo			6/30/2008
Qualifications (if required): representative of the Confederated Salish & Kootenai Tribes			
<b>Trauma Care Committee</b> (Public Health and Human Services)			
Dr. James Bentler	Governor	Kuntzweiler	3/7/2006
Billings			11/2/2007
Qualifications (if required): American College of Emergency Physicians representative			
Ms. Carol Kussman	Governor	Nemec	3/7/2006
Helena			11/2/2008
Qualifications (if required): Central Region Trauma Care Advisory Committee representative			
Dr. Dennis Maier	Governor	Orcutt	3/7/2006
Billings			11/2/2007
Qualifications (if required): American College of Surgeons/Trauma Committee representative			
Dr. J. Bradley Pickhardt	Governor	not listed	3/7/2006
Missoula			11/2/2008
Qualifications (if required): Western Region Trauma Care Advisory Committee representative			

## BOARD AND COUNCIL APPOINTEES FROM MARCH 2006

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>Trauma Care Committee</b> (Public Health and Human Services) cont.			
Mr. Jay Pottenger Fort Benton	Governor	Mootry	3/7/2006 11/2/2008
Qualifications (if required): Montana Hospital Association representative			
Dr. Charles Swannack Missoula	Governor	Kattine	3/7/2006 11/2/2008
Qualifications (if required): Montana Medical Association representative			
<b>Youth Justice Council</b> (Governor)			
Mr. Reuben Runsabove Billings	Governor	not listed	3/3/2006 8/15/2007
Qualifications (if required): youth representative			
Ms. Donnalyn Strangeowl Ashland	Governor	not listed	3/3/2006 8/15/2007
Qualifications (if required): youth representative			
Ms. Katie Yother Bozeman	Governor	Kleeman	3/3/2006 8/15/2007
Qualifications (if required): youth representative			

## VACANCIES ON BOARDS AND COUNCILS -- MAY 1, 2006 through JULY 31, 2006

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Aging Advisory Council</b> (Public Health and Human Services) Ms. Eloise England, Heart Butte Qualifications (if required): public member	Governor	7/18/2006
Ms. Wesleta Branstetter, Billings Qualifications (if required): public member	Governor	7/18/2006
Mr. George Erickson, Great Falls Qualifications (if required): public member	Governor	7/18/2006
<b>Board of Banking</b> (Administration) Mr. Jon Redlin, Lambert Qualifications (if required): state bank officer of a large size bank	Governor	7/1/2006
<b>Board of Landscape Architects</b> (Labor and Industry) Mr. Robert Broughton, Victor Qualifications (if required): licensed landscape architect	Governor	7/1/2006
<b>Board of Nursing</b> (Labor and Industry) Reverend Steven Rice, Miles City Qualifications (if required): public member	Governor	7/1/2006
Ms. Jeanine Thomas, Ronan Qualifications (if required): licensed practical nurse	Governor	7/1/2006

# **VACANCIES ON BOARDS AND COUNCILS -- MAY 1, 2006 through JULY 31, 2006**

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Board of Nursing</b> (Labor and Industry) Ms. Lorena Erickson, Corvallis Qualifications (if required): public member	Governor	7/1/2006
Ms. Karen Pollington, Havre Qualifications (if required): registered professional nurse	Governor	7/1/2006
<b>Board of Nursing Home Administrators</b> (Commerce) Ms. Greta Chaffin, Dillon Qualifications (if required): public member	Governor	5/28/2006
Mr. Tom Miller, Helena Qualifications (if required): public member	Governor	5/28/2006
<b>Board of Pharmacy</b> (Labor and Industry) Mr. William D. Burton, Helena Qualifications (if required): licensed pharmacist	Governor	7/1/2006
<b>Board of Physical Therapy Examiners</b> (Labor and Industry) Ms. Brenda T. Mahlum, Missoula Qualifications (if required): physical therapist	Governor	7/1/2006
Ms. Judy Cole, Forsyth Qualifications (if required): public member	Governor	7/1/2006
Dr. Paul Melvin, Helena Qualifications (if required): physician	Governor	7/1/2006



**VACANCIES ON BOARDS AND COUNCILS -- MAY 1, 2006 through JULY 31, 2006**

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Board of Plumbers</b> (Labor and Industry)		
Mr. Terry Tatchell, Helena Qualifications (if required): journeyman plumber	Governor	5/4/2006
Mr. Timothy E. Regan, Miles City Qualifications (if required): master plumber	Governor	5/4/2006
<b>Board of Professional Engineers and Professional Land Surveyors</b> (Labor and Industry)		
Ms. Janet Markle, Glasgow Qualifications (if required): public member	Governor	7/1/2006
Mr. Steve Wright, Columbia Falls Qualifications (if required): professional engineer	Governor	7/1/2006
Mr. Denis Applebury, Victor Qualifications (if required): professional surveyor	Governor	7/1/2006
<b>Board of Public Accountants</b> (Labor and Industry)		
Mr. Wayne Hoffman, Billings Qualifications (if required): licensed public accountant	Governor	7/1/2006
Mr. Gary Kasper, Fairfield Qualifications (if required): licensed public accountant	Governor	7/1/2006

## VACANCIES ON BOARDS AND COUNCILS -- MAY 1, 2006 through JULY 31, 2006

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Board of Radiologic Technologists</b> (Labor and Industry) Mr. Thomas A. Carter, Shelby Qualifications (if required): radiologic technologist	Governor	7/1/2006
Ms. Anne Delaney, Missoula Qualifications (if required): radiologic technologist	Governor	7/1/2006
<b>Board of Real Estate Appraisers</b> (Labor and Industry) Mr. David Heine, Kalispell Qualifications (if required): real estate appraiser	Governor	5/1/2006
Ms. Janeth Martin, Helena Qualifications (if required): public member	Governor	5/1/2006
<b>Board of Realty Regulation</b> (Labor and Industry) Mr. Terry W. Hilgendorf, Great Falls Qualifications (if required): public member and a Republican	Governor	5/9/2006
<b>Board of Research and Commercialization Technology</b> (Governor) Mr. Michael Dolson, Hot Springs Qualifications (if required): Native American	Governor	7/1/2006
<b>Board of Sanitarians</b> (Board of Sanitarians) Ms. Denise Moldroski, Livingston Qualifications (if required): registered sanitarian	Governor	7/1/2006

## VACANCIES ON BOARDS AND COUNCILS -- MAY 1, 2006 through JULY 31, 2006

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Board of Veterinary Medicine</b> (Commerce) Dr. Jack Newman, Great Falls Qualifications (if required): licensed veterinarian	Governor	7/31/2006
<b>Board of Water Well Contractors</b> (Natural Resources and Conservation) Mr. Kevin Haggerty, Bozeman Qualifications (if required): water well contractor	Governor	7/1/2006
<b>Commission on Community Service</b> (Labor and Industry) Ms. Nancy Coopersmith, Helena Qualifications (if required): representative of K-12 education	Governor	7/1/2006
Mr. George Dennison, Missoula Qualifications (if required): representative of higher education	Governor	7/1/2006
Lt. Col. John Walsh, Helena Qualifications (if required): representative of Military Affairs	Governor	7/1/2006
Mr. Donald Kettner, Glendive Qualifications (if required): representative of private citizens	Governor	7/1/2006
<b>Committee on Telecommunications Access Services</b> (Public Health and Human Services) Ms. Cheryl Gillespie, Helena Qualifications (if required): representative of the largest local exchange company in Montana	Governor	7/2/2006
Ms. Lynn Harris, Missoula Qualifications (if required): audiologist	Governor	7/1/2006

## VACANCIES ON BOARDS AND COUNCILS -- MAY 1, 2006 through JULY 31, 2006

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Committee on Telecommunications Access Services</b> (Public Health and Human Services) cont. Mr. David Davis, Great Falls Qualifications (if required): non-disabled senior citizen	Governor	7/1/2006
Ms. Christy Keto, Havre Qualifications (if required): representative of an interLATA interexchange carrier	Governor	7/1/2006
<b>Community Service Commission</b> (Labor and Industry) Mr. John Ilgenfritz, Helena Qualifications (if required): representative of disaster and emergency services	Governor	7/1/2006
<b>Economic Development Advisory Council</b> (Commerce) Mr. Steve Holland, Bozeman Qualifications (if required): public member	Governor	7/23/2006
Mr. Jim Atchison, Colstrip Qualifications (if required): public member	Governor	7/23/2006
Ms. Erin Lutts, Glendive Qualifications (if required): public member	Governor	7/23/2006
Ms. Elizabeth Harris, Whitefish Qualifications (if required): public representative	Governor	7/23/2006

## VACANCIES ON BOARDS AND COUNCILS -- MAY 1, 2006 through JULY 31, 2006

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Family Education Savings Oversight Committee</b> (Commissioner of Higher Education) Mr. Frank D'Angelo, Missoula Qualifications (if required): public member	Governor	7/1/2006
<b>Information Technology Managers Council</b> (Administration) Mr. Mike Boyer, Glasgow Qualifications (if required): none specified	Director	7/1/2006
Mr. Barney Benkelman, Helena Qualifications (if required): none specified	Director	7/1/2006
Mr. David Nagel, Helena Qualifications (if required): none specified	Director	7/1/2006
Mr. Hank Trenk, Helena Qualifications (if required): none specified	Director	7/1/2006
Ms. Karen Hruska, Helena Qualifications (if required): none specified	Director	7/1/2006
Ms. Kathy James, Helena Qualifications (if required): none specified	Director	7/1/2006
Mr. Homer Young, Helena Qualifications (if required): none specified	Director	7/1/2006
Ms. Dulcy Hubbert, Helena Qualifications (if required): none specified	Director	7/1/2006

## VACANCIES ON BOARDS AND COUNCILS -- MAY 1, 2006 through JULY 31, 2006

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Information Technology Managers Council</b> (Administration) cont.		
Mr. Bob Morris, Helena Qualifications (if required): none specified	Director	7/1/2006
Mr. Jeff Brandt, Qualifications (if required): none specified	Director	7/1/2006
Mr. Mike Jacobson, Helena Qualifications (if required): none specified	Director	7/1/2006
Mr. Ken Kops, Helena Qualifications (if required): none specified	Director	7/1/2006
Mr. Dan Chelini, Helena Qualifications (if required): none specified	Director	7/1/2006
Ms. Edwina Dale, Helena Qualifications (if required): none specified	Director	7/1/2006
Mr. Steve Tesinsky, Helena Qualifications (if required): none specified	Director	7/1/2006
Mr. Paul Gilbert, Helena Qualifications (if required): none specified	Director	7/1/2006
Mr. Mark Sheehan, Qualifications (if required): none specified	Director	7/1/2006

## VACANCIES ON BOARDS AND COUNCILS -- MAY 1, 2006 through JULY 31, 2006

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Information Technology Managers Council</b> (Administration) cont.		
Mr. Dan Forbes, Helena Qualifications (if required): none specified	Director	7/1/2006
Mr. Dick Clark, Helena Qualifications (if required): none specified	Director	7/1/2006
Mr. Robin Trenbeath, Helena Qualifications (if required): none specified	Director	7/1/2006
Mr. John Daugherty, Helena Qualifications (if required): none specified	Director	7/1/2006
Mr. Mike Walsh, Helena Qualifications (if required): none specified	Director	7/1/2006
Mr. Damon Murdo, Helena Qualifications (if required): none specified	Director	7/1/2006
Ms. Karen Nelson, Helena Qualifications (if required): none specified	Director	7/1/2006
Mr. Aaron Mook, Helena Qualifications (if required): none specified	Director	7/1/2006
Ms. Kristin Han, Helena Qualifications (if required): none specified	Director	7/1/2006

## VACANCIES ON BOARDS AND COUNCILS -- MAY 1, 2006 through JULY 31, 2006

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Information Technology Managers Council</b> (Administration) cont.		
Mr. Jack Zanto, Helena Qualifications (if required): none specified	Director	7/1/2006
Mr. David de Gil, Helena Qualifications (if required): none specified	Director	7/1/2006
Ms. Margaret Kauska, Helena Qualifications (if required): none specified	Director	7/1/2006
Mr. James Thomas, Helena Qualifications (if required): none specified	Director	7/1/2006
Ms. Stacy Ripple, Helena Qualifications (if required): none specified	Director	7/1/2006
<b>Mental Disabilities Board of Visitors</b> (Governor)		
Ms. Joan-Nell Macfadden, Great Falls Qualifications (if required): experienced with emotionally disturbed children	Governor	7/1/2006
Mr. Graydon Davies Moll, Polson Qualifications (if required): experienced with adults with developmental disabilities	Governor	7/1/2006
Mr. Steve Cahill, Clancy Qualifications (if required): experienced with welfare of the mentally ill	Governor	7/1/2006



# **VACANCIES ON BOARDS AND COUNCILS -- MAY 1, 2006 through JULY 31, 2006**

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Montana Cherry Advisory Committee</b> (Agriculture) Mr. Jan Tusick, Ronan Qualifications (if required): none specified	Director	5/3/2006
<b>Montana Health Coalition</b> (Public Health and Human Services) Ms. Tanya M. Ask, Missoula Qualifications (if required): none specified	Director	7/1/2006
Mr. Paul Peterson, Missoula Qualifications (if required): none specified	Director	7/1/2006
Mr. Larry Robinson, Ronan Qualifications (if required): none specified	Director	7/1/2006
Ms. Kristianne Wilson, Billings Qualifications (if required): none specified	Director	7/1/2006
Rep. Edith J. Clark, Sweet Grass Qualifications (if required): none specified	Director	7/1/2006
Ms. Deborah M. Wilson, Kalispell Qualifications (if required): none specified	Director	7/1/2006
Mr. Garfield Little Light, Billings Qualifications (if required): none specified	Director	7/1/2006
Mr. Dave Young, Bozeman Qualifications (if required): none specified	Director	7/1/2006

# **VACANCIES ON BOARDS AND COUNCILS -- MAY 1, 2006 through JULY 31, 2006**

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Montana Health Coalition</b> (Public Health and Human Services) cont. Dr. Gary Mihelish, Helena Qualifications (if required): none specified	Director	7/1/2006
Mr. Alan Kesselheim, Bozeman Qualifications (if required): none specified	Director	7/1/2006
Mr. Robert Ross, Billings Qualifications (if required): none specified	Director	7/1/2006
Ms. Cindy McAfee, Missoula Qualifications (if required): none specified	Director	7/1/2006
Mr. Kurt Kubicka, Helena Qualifications (if required): none specified	Director	7/1/2006
Mr. Gary Meyers, Billings Qualifications (if required): none specified	Director	7/1/2006
Mr. Jim Christenson, Conrad Qualifications (if required): none specified	Director	7/1/2006
Ms. Mary McCue, Helena Qualifications (if required): none specified	Director	7/1/2006
Mr. Peter Wolfgram, Butte Qualifications (if required): none specified	Director	7/1/2006

## VACANCIES ON BOARDS AND COUNCILS -- MAY 1, 2006 through JULY 31, 2006

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Montana Heritage Preservation and Development Commission</b> (Montana Historical Society) Mr. F.W. Bill Howell, West Yellowstone Qualifications (if required): manager of a tourist facility	Governor	5/23/2006
Ms. Mary Oliver, Ennis Qualifications (if required): businessperson	Governor	5/23/2006
<b>Montana Historical Society Board of Trustees</b> (Historical Society) Mr. Robert Morgan, Clancy Qualifications (if required): public member	Governor	7/1/2006
Mr. Larry McRae, Missoula Qualifications (if required): public member	Governor	7/1/2006
Ms. Judy Cole, Forsyth Qualifications (if required): public member	Governor	7/1/2006
Mr. Thomas Siebel, Wolf Creek Qualifications (if required): public member	Governor	7/1/2006
<b>Montana Mint Committee</b> (Agriculture) Mr. Ken Smith, Kalispell Qualifications (if required): mint grower	Governor	7/1/2006
Mr. Charlie Jaquette, Kalispell Qualifications (if required): mint grower	Governor	7/1/2006

## VACANCIES ON BOARDS AND COUNCILS -- MAY 1, 2006 through JULY 31, 2006

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Montana Public Safety Communications Council</b> (Administration) Commissioner Kathy Bessette, Havre Qualifications (if required): local government representative	Governor	6/14/2006
Mr. Chuck Lee, Baker Qualifications (if required): representative of the 9-1-1 community	Governor	6/14/2006
<b>Petroleum Tank Release Compensation Board</b> (Environmental Quality) Mr. Frank Schumacher, Great Falls Qualifications (if required): service station dealer	Governor	6/30/2006
Mr. Thomas Bateridge, Missoula Qualifications (if required): public member	Governor	6/30/2006
<b>Postsecondary Scholarship Advisory Council</b> (Higher Education) Mr. LeRoy Schramm, Helena Qualifications (if required): having experience in postsecondary education	Governor	6/20/2006
<b>Public Defender Commission</b> (Administration) Mr. Doug Kaercher, Havre Qualifications (if required): public representative nominated by the Senate President	Governor	7/1/2006
Mr. Stephen Nardi, Kalispell Qualifications (if required): attorney nominated by the Montana State Bar	Governor	7/1/2006
Ms. Theda New Breast, Babb Qualifications (if required): member of an organization advocating on behalf of racial minorities	Governor	7/1/2006

## VACANCIES ON BOARDS AND COUNCILS -- MAY 1, 2006 through JULY 31, 2006

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Public Safety Communications Council</b> (Administration)		
Mr. Dwight MacKay, Billings Qualifications (if required): representative of federal government	Governor	6/14/2006
Chief Robert Jones, Great Falls Qualifications (if required): representative of Montana Association of Chiefs of Police	Governor	6/14/2006
Mr. Larry Fasbender, Helena Qualifications (if required): designee of the Attorney General	Governor	6/14/2006
Mr. William Jameson, Bozeman Qualifications (if required): representative of citizens at large	Governor	6/14/2006
Mr. Geoff Feiss, Helena Qualifications (if required): representative of private utilities participating as private entities	Governor	6/14/2006
Mr. Jeff Brandt, Helena Qualifications (if required): designee of the Director of the Department of Administration	Governor	6/14/2006
Mr. Harold Blattie, Helena Qualifications (if required): representative of county government	Governor	6/14/2006
Mr. Chuck Winn, Bozeman Qualifications (if required): representative of fire protection services	Governor	6/14/2006
Mr. Tim Burton, Helena Qualifications (if required): representative of local government	Governor	6/14/2006

## VACANCIES ON BOARDS AND COUNCILS -- MAY 1, 2006 through JULY 31, 2006

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Public Safety Communications Council</b> (Administration) cont.		
Mr. Doug King, Billings Qualifications (if required): representative of federal government	Governor	6/14/2006
Colonel Stan Putnam, Helena Qualifications (if required): representative of state government	Governor	6/14/2006
Mr. Chuck Maxwell, Billings Qualifications (if required): representative of law enforcement	Governor	6/14/2006
Mr. Ken Mergenthaler, East Helena Qualifications (if required): representative of volunteer fire protection services	Governor	6/14/2006
Ms. Jane Ellis, Missoula Qualifications (if required): representative of the 9-1-1 community	Governor	6/14/2006
Mr. Larry Wetsit, Scobey Qualifications (if required): representative of the Tribes	Governor	6/14/2006
Mr. Jim DeTienne, Helena Qualifications (if required): representative of the emergency medical services community	Governor	6/14/2006
Rep. George Groesbeck, Butte Qualifications (if required): representative of citizens at large	Governor	6/14/2006
Mr. John Blackler, Helena Qualifications (if required): representative of state government	Governor	6/14/2006

## VACANCIES ON BOARDS AND COUNCILS -- MAY 1, 2006 through JULY 31, 2006

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>State Banking Board</b> (Administration) Mr. Russ Ritter, Helena Qualifications (if required): public member	Governor	7/1/2006
<b>State Electrical Board</b> (Commerce) Mr. Tony Martel, Bozeman Qualifications (if required): public member	Governor	7/1/2006
<b>State Library Commission</b> (State Library) Mr. Donald Allen, Billings Qualifications (if required): public member	Governor	5/22/2006
<b>State Tribal Economic Development Commission</b> (Governor) Ms. Darrel Koke, Great Falls Qualifications (if required): representative of the Little Shell Tribe	Governor	6/30/2006
Ms. Caroline Brown, Harlem Qualifications (if required): representative of the Fort Belknap Tribe	Governor	6/30/2006
Mr. Shawn Real Bird, Crow Agency Qualifications (if required): representative of the Crow Tribe	Governor	6/30/2006
<b>Teachers' Retirement Board</b> (Administration) Ms. Mona Bilden, Miles City Qualifications (if required): teacher who is active in the retirement system	Governor	7/1/2006
Mr. Darrell Layman, Glendive Qualifications (if required): retired teacher	Governor	7/1/2006

## VACANCIES ON BOARDS AND COUNCILS -- MAY 1, 2006 through JULY 31, 2006

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Telecommunications Access Services</b> (Public Health and Human Services)		
Mr. Eric Eck, Helena	Governor	7/1/2006
Qualifications (if required): representative of the Montana Public Service Commission		
<b>Tourism Advisory Council</b> (Commerce)		
Mr. Clark Whitehead, Lewistown	Governor	7/1/2006
Qualifications (if required): representative of Russell County and a federal agency		
Mr. Richard J. Young, Brockton	Governor	7/1/2006
Qualifications (if required): representative of Missouri River Country and Tribal Government		
Ms. Mary Ellen Schnur, Townsend	Governor	7/1/2006
Qualifications (if required): representative of Gold West Country		
Mr. Mark Browning, Miles City	Governor	7/1/2006
Qualifications (if required): representative of Custer Country		
Mr. Michael Morrison, Great Falls	Governor	7/1/2006
Qualifications (if required): representing Russell County		
Ms. Dyani Bingham, Billings	Governor	7/1/2006
Qualifications (if required): public member from Custer Country		
<b>Western Interstate Commission for Higher Education</b> (Commissioner of Higher Education)		
Rep. Cindy Younkin, Bozeman	Governor	6/19/2006
Qualifications (if required): legislator		