

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 6

The Montana Administrative Register (MAR), 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 The notice section contains state agencies' proposed new, amended or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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 indicates that the proposed rule action is adopted and lists any changes made since the proposed stage. The interpretation section contains the attorney general's opinions and state declaratory rulings. Special notices and tables are found at the back 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 Administrative Rules Bureau at (406) 444-2055.

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BEFORE THE MONTANA STATE LIBRARY
OF THE STATE OF MONTANA

In the matter of the proposed) NOTICE OF PUBLIC HEARING
amendment of ARM 10.102.5102) ON PROPOSED AMENDMENT
pertaining to the allocation of)
funding between federations and)
grant programs)

TO: All Concerned Persons

1. On April 19, 2004, at 2:00 p.m., a public hearing will be held in the conference room of the Montana State Library, at 1515 East 6th Ave., Helena, Montana to consider the amendment of the above-stated rule.

2. The State Library will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the State Library no later than 5:00 p.m. on April 12, 2004, to advise us of the nature of the accommodation that you need. Please contact Barbara Duke, Montana State Library, 1515 East 6th Ave., P.O. Box 201800, Helena, MT 59620-1800, (406) 444-3384, (406) 444-3005 (TDD), (406) 444-0266 (fax), baduke@state.mt.us (email).

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

10.102.5102 ALLOCATION OF FUNDING BETWEEN FEDERATIONS AND GRANT PROGRAMS (1) through (1)(b) remain the same.

~~(e)(2)~~ The state library commission ~~does have~~ has the responsibility and authority to approve federation plans of service and ~~does have the responsibility and authority~~ to approve or deny funding for the components of the plans of service.

(a) A federation and individual member libraries of a federation may not receive an appropriation a distribution of appropriated funds from the state library commission until ~~its~~ the federation's annual plan of service for federation activities is approved by the commission.

(b) Following approval of a federation's plan of service, the state library commission, through the state library, will distribute appropriated funds to libraries that are members of the federation according to the federation's approved plan of service.

(c) The state library commission can disapprove a plan of service only because:

(i) it was not prepared according to the procedures and forms established by the state library commission; ~~or because~~

(ii) it does not address the authorized purposes and/or priorities as established by the state library commission to implement its state long range plan for libraries.

~~(d)~~(3) Each federation's annual plan of service shall be based upon direction given by the state library commission from its consideration of the state long range plan for libraries. The annual plan of service is submitted to the state library each ~~January~~ April for consideration and action by the state library commission ~~at its February meeting~~. Changes or appeals related to the plans of service ~~occur during February/March~~. ~~These changes or appeals~~ are acted upon by the state library commission in ~~April~~ May and June of each year.

~~(e)~~(4) Each federation member shall expend the federation funds according to the purposes stipulated in the federation's plan of service. Each member shall annually report how the funds were used for the stated purposes to the federation coordinator and a copy of the report will be provided to the state library commission. If the federation member does not use funds as set forth in the annual plan of service, the federation coordinator shall notify the state library commission within 30 days.

~~(f)~~(5) If a federation member does not use funds in accordance with the proposals set forth in the annual plan of service, then the member will be notified by the state library commission and the member shall return the funds to the state library commission within 60 days. The state library commission shall revert such funds to the appropriate state account.

~~(g)~~(6) Each federation shall ensure equal opportunity for representation of its member libraries and shall have approved bylaws ~~which that~~ shall address approval procedures for the annual plan of service, proxy voting, quorum requirements and other procedural matters necessary for conducting federation business.

~~(h)~~(7) An appeals process shall be available for any federation ~~which that~~ is denied funding or for any member library that is required to revert funds. This appeals process shall follow the appeals process for denial of a grant as set forth in ARM 10.101.206.

AUTH: 22-1-413, MCA
IMP: 22-1-413, MCA

REASON: The Commission finds it is reasonably necessary to amend the rule so that the Commission can more efficiently disburse state funds to federation libraries according to the federation plan of service. The Commission also finds it reasonably necessary to provide a process to recover state funds if federation libraries do not expend funds as approved and to provide an appeal process.

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 Barbara Duke, Montana State Library, 1515 East 6th Ave., P.O. Box 201800, Helena, MT 59620-1800 no later than 5:00 p.m. on April 29, 2004. Data, views or arguments may also be submitted by facsimile to (406) 444-0266 or by email to baduke@state.mt.us.

5. An electronic copy of this Notice of Public Hearing is available through the State Library's website at <http://msl.state.mt.us>. The State Library 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 State Library 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 email address do not excuse late submission of comments.

6. Karen Strege, State Librarian, has been designated to preside over and conduct this hearing.

7. The Montana State Library maintains a list of persons who wish to receive notices of rulemaking actions proposed by the State Library. 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 State Library administrative rulemaking proceedings or other administrative proceedings. Such written requests may be mailed to Barbara Duke, Montana State Library, 1515 East 6th Ave., P.O. Box 201800, Helena, MT 59620-1800, faxed to the Library at (406) 444-0266, emailed to baduke@state.mt.us 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 do not apply.

By: /s/ Al Randall
State Library Commission
Al Randall, Chairperson

By: /s/ Karen Strege
Karen Strege, State Librarian
Rule Reviewer
Montana State Library

Certified to the Secretary of State March 15, 2004.

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

In the matter of the proposed) NOTICE OF PUBLIC
amendment of ARM 8.52.624,) HEARING ON PROPOSED
8.52.801, 8.52.802, 8.52.803,) AMENDMENT AND ADOPTION
8.52.804 and 8.52.805, to clarify)
record retention and defined)
professional relationships of)
psychologists, and the proposed)
adoption of NEW RULE I relating to)
foreign-educated psychologists)

TO: All Concerned Persons

1. On April 15, 2004, at 9:30 a.m., a public hearing will be held in room 471 of the Park Avenue Building, 301 South Park Avenue, Helena, Montana, to consider the proposed amendment and adoption of the above-stated rules.

2. The Department of Labor and Industry will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the Board no later than 5:00 p.m., on April 9, 2004 to advise us of the nature of the accommodation you need. Please contact Cheryl Brandt, Board of Psychologists, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2394; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail dlibspsy@state.mt.us.

3. The rules proposed to be amended are as follows:
(deleted matter stricken, new matter underlined)

8.52.624 DEFINITION OF ONE YEAR'S RESIDENCY DEFINITIONS
As used in this chapter, the following definitions apply:

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

(1) "Defined professional relationship" means a relationship in which a licensee or license applicant provides diagnostic, assessment and/or therapeutic services to a client. A defined professional relationship shall be established in a context where services are provided:

(a) in person and face-to-face; or

(b) transmitted via electronic or related methods. If provided under this subsection, the context must also be:

(i) two-way;

(ii) interactive;

(iii) real-time;

(iv) simultaneous;

(v) continuous; and

(vi) providing for both audio and visual interaction.

AUTH: 37-1-131, 37-17-202, MCA
IMP: 37-1-131, ~~37-17-302~~, 37-17-101, MCA

REASON: The Board has determined that it is reasonable and necessary to delineate the conditions under which licensed Montana psychologists may provide diagnostic, assessment, and/or therapeutic services using electronic means. The practice of psychology relies extensively on direct observation of patient behavior. If these types of services are to be offered via electronic or other similar methods, protection of the public must be addressed by setting forth parameters for establishing the initial appropriate psychologist-patient relationship. The Board has received numerous inquiries seeking clarification on the guidelines for the appropriate provision of psychological services via the Internet, audio-visual teleconferencing, email, etc. The Board convened a working group consisting of Board representatives, licensees and members of the Montana Psychological Association to research and address this issue. This proposed rule amendment is the culmination of several meetings of the working group.

This rule change corrects an erroneous implementation cite. The proposed rule amendment would affect all licensed psychologists in Montana who practice using electronic means.

8.52.801 REPRESENTATION OF SELF AND SERVICES

(1) through (3)(d) remain the same.

(e) shall, when providing advice or comment ~~by means of public lectures, demonstrations, radio or television programs, prerecorded tapes, printed articles, mailed material, computer or other electronically transmitted media, or other media,~~ when a defined professional relationship does not exist, take reasonable precautions to ensure that the statements are based on appropriate psychological literature and practice. Furthermore, the psychologist shall take reasonable precautions to ensure that the recipient of ~~the~~ such information does not infer that a defined professional relationship has been established with the psychologist personally;

(f) and (g) remain the same.

AUTH: 37-1-131, 37-1-319, 37-17-202, MCA
IMP: 37-1-131, 37-1-316, ~~37-1-319~~, 37-17-101, MCA

REASON: It is both reasonable and necessary to clarify that when providing advice or comment in the public arena, and not pursuant to a defined professional relationship, Montana licensed psychologists must take precautions to ensure that recipients of the information do not infer that a defined professional relationship has been established. It is necessary to amend this rule to comport with the new definition of "defined professional relationship" and its application, and to correct an erroneous implementation cite.

This proposed rule amendment would affect all Montana licensed psychologists.

8.52.802 PRACTICE OF PSYCHOLOGY (1) and (1)(a) remain the same.

(b) shall not provide ~~diagnostic, therapeutic, teaching, research, supervisory, consultative or other psychological services, except in the context of a defined professional or scientific relationship or role based on their~~ any services in the practice of psychology except those services within the scope of the licensee's education, training, supervised experience or appropriate professional experience;

(c) remains the same.

(2) In regard to disclosure and obligation to report, a licensee:

(a) shall disclose fees and confidentiality prior to initiating the defined professional relationship with clients, except in the case of a clinical emergency. Upon initiating the defined professional relationship there ~~will~~ must be a discussion of the nature and anticipated course of contracted services, limitations of confidentiality and modalities of treatment, and mandated reporting situations. When services rendered involve more than one interested party, the psychologist shall clarify the dimensions of confidentiality and professional responsibility to all participating parties;

(b) who has substantial reason to believe that there has been a violation of the statutes or rules of the board, shall so inform the board in writing. However, when the information regarding such violation is obtained in a defined professional relationship with a client, the psychologist shall report it only with the written permission of the client;

(c) through (3) remain the same.

AUTH: 37-1-131, 37-1-319, 37-17-202, MCA

IMP: 37-1-131, 37-1-316, ~~37-1-319~~, 37-17-101, MCA

REASON: The Board determined there is reasonable necessity to amend this rule to clarify that a psychologist shall provide only those services within the practice of psychology for which the psychologist has the appropriate experience and training. This amendment also standardizes the references to a "defined professional relationship" throughout the rule to comport with the new definition proposed in this notice. It is also necessary to add the requirement that modalities of treatment must be discussed during the initiation of a defined professional relationship to ensure the protection of the public from the outset of this type of relationship. The proposed rule change will correct an erroneous implementation cite. This rule will affect all licensed psychologists in Montana.

8.52.803 PROFESSIONAL RESPONSIBILITY (1) through (1)(c) remain the same.

(d) shall take reasonable steps to avoid harming the psychologist's clients, ~~research participants, students and others~~ with whom there is a defined professional relationship, and to minimize harm where it is foreseeable and unavoidable;

(e) through (g) remain the same.

(h) shall continue the defined professional relationship with the client until a relationship is established with the professional person to whom the client is referred or until the relationship has been terminated by mutual agreement. In situations where referral, consultation or other changes in the conditions of the treatment are indicated, and the client refuses referral, the psychologist shall carefully weigh the possible harm to the client, the psychologist and the psychologist's profession that might ensue from continuing the relationship.

(2) and (2)(a) remain the same.

(b) who performs interventions or administers, scores, interprets or uses assessment techniques shall be familiar with the reliability, validation and related standardization or outcome studies of, and proper applications and uses of, the techniques they use; and

(i) shall recognize limits to the certainty with which diagnoses, ~~judgements~~ judgments or predictions can be made about individuals;

(ii) through (3) remain the same.

(4) In regard to the therapeutic relationship, a licensee:

(a) shall provide psychological services for the purpose of diagnosis, assessment or treatment ~~or personalized advice~~ only in the context of a defined professional relationship, and shall not be given by means of public lectures or demonstrations, newspaper or magazine articles, radio or television programs, mail or similar media. Psychologists shall perform evaluations, diagnostic services or interventions only within the context of a defined professional relationship;

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

(c) shall not undertake or continue a defined professional relationship with a client when the psychologist is, or could reasonably be expected to be impaired due to mental, emotional, physiologic, pharmacologic or substance abuse conditions. If such a condition develops after a defined professional relationship has been initiated, the psychologist shall terminate the relationship in an appropriate manner, shall notify the client in writing of the termination and shall assist the client in obtaining services from another professional;

(d) through (7) remain the same.

AUTH: 37-1-131, 37-1-319, 37-17-202, MCA

IMP: 37-1-131, 37-1-316, ~~37-1-319~~, 37-17-101, MCA

REASON: It is reasonable and necessary to amend this rule to clarify that psychological services offered for the purposes

of diagnosis, assessment, or treatment must be provided within the context of a defined professional relationship. The proposed amendment also clarifies the requirements for professional responsibility that accompany this type of relationship. This amendment standardizes the references to "defined professional relationships" throughout the rule, per the proposed new definition, and corrects an erroneous implementation cite. This rule will affect all Montana licensed psychologists.

8.52.804 RELATIONSHIPS (1) In regard to multiple relationships, a licensee:

(a) shall not undertake or continue a defined professional relationship with a client when the objectivity of the licensee is impaired because of present or previous familial, social, sexual, emotional, financial, supervisory, political, administrative or legal relationship with the client or a relevant person directly associated with or related to the client.

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

(vii) any statements or actions made by the licensee during the defined professional relationship suggesting or inviting the possibility of post termination sexual or romantic relationship with the client.

(3) remains the same.

AUTH: 37-1-131, 37-1-319, 37-17-202, MCA

IMP: 37-1-131, 37-1-316, ~~37-1-319~~, 37-17-101, MCA

REASON: The Board finds reasonable necessity to amend this rule to standardize the references to a "defined professional relationship" throughout the rule in accordance with the proposed new definition, and to correct an erroneous implementation cite. This change will affect all licensed psychologists in Montana.

8.52.805 PRIVILEGED INFORMATION AND RECORDS (1) through (1)(b)(v) remain the same.

(vi) a copy of all test or other evaluative reports prepared as part of the defined professional relationship.

(c) and (d) remain the same.

(e) shall continue to treat as confidential information regarding a client after the defined professional relationship between the psychologist and the client has ceased.

(2) Licensees shall maintain and not destroy patient records:

(a) for a period of seven years after the patient reaches the age of 18, for patients who are minors; and

(b) for a period of seven years after the last professional patient contact, including a release of records, for patients who are adults.

AUTH: 37-1-131, 37-1-319, ~~and~~ 37-17-202, MCA

IMP: 37-1-131, 37-1-316 ~~and~~ ~~37-1-319~~, 37-17-101, MCA

REASON: The Board determined it is reasonable and necessary to amend this rule to establish a requirement for retention of patient records applicable to all licensed psychologists. The Board has received inquiries as to the length of time that licensees are required to maintain patient records. The Board researched various entity requirements for record retention and, for the Board's purposes of psychologist licensure and regulation for the protection of the public, proposes the seven-year requirement. The Board determined that having a clear record retention requirement for licensees may also aid in obtaining information during investigation, contested cases and litigation. Licensees should be aware that other entities, such as specialty credentialing groups, might have different, independent record retention requirements. This rule change also standardizes the references to a "defined professional relationship" throughout the rule and corrects an erroneous implementation cite.

4. The board proposes to adopt NEW RULE I as follows:

NEW RULE I LICENSURE OF FOREIGN-TRAINED PSYCHOLOGISTS

(1) Foreign-trained applicants shall fulfill all requirements for licensure as stated in this chapter.

(2) In addition, foreign-trained applicants shall provide documentation of receipt of a doctoral degree in clinical psychology with educational standards substantially equivalent to those established by a graduate program approved by the American psychological association, as evidenced by the evaluation of educational credentials by the national register of health service providers in psychology, inc., 1120 G Street NW, Suite 330, Washington, DC, 20005, www.nationalregister.org. A fee is required by this service and shall be paid by the applicant. Final approval of the substantial equivalence of the educational standards lies with the board.

(3) Foreign-trained applicants shall provide proof of either:

(a) successful completion of a college undergraduate program taught in the English language. Official notice of such completion shall be submitted to the board directly from the registrar, dean or provost of the undergraduate institution; or

(b) for applicants who received their undergraduate degree from a program not taught in English, evidence of successful completion of and a minimum score of level 8 on the international English language testing system (IELTS) English proficiency examination.

AUTH: 37-1-131, 37-17-202, MCA

IMP: 37-1-131, 37-17-302, 37-17-309, MCA

REASON: The Board proposes to adopt NEW RULE I to clarify the requirements for licensure of foreign-trained psychologists.

Pursuant to 37-17-309, MCA, the Board is required to approve an agency to perform evaluation of the education of foreign-trained applicants. The Board convened a subcommittee to evaluate various credentialing entities and now proposes that the National Register of Health Service Providers in Psychology be designated to evaluate the education of foreign-trained applicants. The Board also determined a reasonable necessity to establish standards for minimum competency in the English language to further ensure the safety of members of the public who use the services of foreign-trained psychologists in Montana. The new rule will affect all foreign-trained psychologist applicants.

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 Psychologists, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to dlibspsy@state.mt.us, and must be received no later than 5:00 p.m., April 23, 2004.

6. An electronic copy of this Notice of Public Hearing is available through the Department's site on the World Wide Web at <http://discoveringmontana.com/dli/bsd> under the Board of Psychologists rule notice section. The Department strives to make the electronic copy of this notice conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version, 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 comment forum do not excuse late submission of comments.

7. The Board of Psychologists maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this Board. Persons who wish to have their name added to the list shall make a written request that includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding all Board of Psychologists administrative rulemaking proceedings or other administrative proceedings. Such written request may be mailed or delivered to the Board of Psychologists, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, faxed to the office at (406) 841-2305, e-mailed to dlibspsy@state.mt.us or may be made by completing a request form at any rules hearing held by the Department.

8. The bill sponsor notice requirements of 2-4-302,
6-3/25/04

MAR Notice No. 8-52-26

MCA, apply and have been fulfilled.

9. Darcee Moe, attorney, has been designated to preside over and conduct this hearing.

BOARD OF PSYCHOLOGISTS
PAUL SILVERMAN, PhD, CHAIR

/s/ WENDY J. KEATING
Wendy J. Keating, Commissioner
DEPARTMENT OF LABOR & INDUSTRY

/s/ MARK CADWALLADER
Mark Cadwallader
Alternate Rule Reviewer

Certified to the Secretary of State March 15, 2004.

BEFORE THE BOARD OF VETERINARY MEDICINE
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the proposed) NOTICE OF PUBLIC HEARING
amendment of ARM 8.64.402,) ON PROPOSED AMENDMENT
fee schedule and the proposed) AND ADOPTION
adoption of NEW RULES I-X,)
relating to animal euthanasia)
technicians and agencies)

TO: All Concerned Persons

1. On April 15, 2004, at 1:30 p.m., a public hearing will be held in room 471, of the Park Avenue Building, 301 South Park Avenue, Helena, Montana to consider the proposed amendment and adoption of the above-stated rules.

2. The Department of Labor and Industry 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 Veterinary Medicine no later than 5:00 p.m., on April 9, 2004, to advise us of the nature of the accommodation that you need. Please contact Cheryl Brandt, Board of Veterinary Medicine, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2394, Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail dlibsdrv@state.mt.us.

3. GENERAL STATEMENT OF REASONABLE NECESSITY: These rules are proposed to implement the certification of euthanasia technicians and agencies in response to Chapter 60, L. 2003 (House Bill 181) passed by the 2003 Legislature. The Board is also proposing fee increases for embryo transfer technicians and veterinarians.

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

<u>8.64.402 FEE SCHEDULE</u>	
(1) Veterinarians	
(a) Annual renewal of certificate of registration	\$ 35 <u>65</u>
(b) through (2)(a) remain the same.	
(b) Annual renewal of certification	<u>25</u> 65
(c) <u>Late renewal fee</u>	<u>50</u>
<u>(3) Euthanasia technicians and agencies</u>	
(a) <u>Technician application</u>	<u>80</u>
(b) <u>Technician renewal</u>	<u>70</u>
(c) <u>Technician late renewal</u>	<u>50</u>
(d) <u>Agency application</u>	<u>150</u>
(e) <u>Agency renewal</u>	<u>125</u>
(f) <u>Agency late renewal</u>	<u>50</u>

(g) Agency inspection

200

AUTH: 37-1-134, 37-18-202, 37-18-603, MCA
IMP: 37-1-134, 37-1-304, 37-1-305, 37-18-302, 37-18-307, 37-18-603, MCA

REASON: Section 37-1-134, MCA requires licensing boards to establish fees commensurate with costs. The proposed amendment to (1)(a) will raise renewal fees for veterinarians in the amount of \$30, from \$35 to \$65. Based on 998 active veterinary licenses, the Board estimates that its revenue will increase by \$29,940 annually. Increased administrative recharges from the Department in the amount of \$4,685 for the biennium, and increased workload necessitate raising the revenue base to meet the expected expenditures. The Board finds that this increase is reasonable and necessary as at the current level of revenue, the program is projected to have a negative cash balance in early FY 05. This change will affect all Montana-licensed veterinarians.

The proposed amendment to (2)(b) will raise renewal fees for embryo transfer technicians (ETTs) in the amount of \$40, from \$25 to \$65. Based on the current number of ETTs, this change will affect 11 embryo transfer technicians currently licensed, resulting in an estimated annual fee increase of \$440. The proposed addition of (2)(c) will add a late renewal fee for embryo transfer technicians as is standard with all the Board's professions. The additional costs of tracking, certified mailings, and both the administrative and Board time involved in the late renewal process should be borne only by those who renew after the deadline date. It is anticipated that this change will affect approximately two ETTs annually who renew after the required date, resulting in \$100 additional revenue for the Board each year. The Board believes these changes are reasonable and necessary as the costs of the embryo transfer program, particularly the Board-prepared examination, are not commensurate with the current amount of revenue collected from these 11 licensees.

There is reasonable necessity to implement application, renewal, and inspection fees (3)(a)-(g), to fund the certification program for animal euthanasia technicians and agencies pursuant to Chapter 60, L. 2003 (House Bill 181) that was passed by the 2003 Legislature. The law became effective January 1, 2004. The fee amounts proposed are based on the anticipated number of licensees, as estimated by the Humane Society of the United States - Northern Rockies Office, and are expected to generate revenue sufficient to cover projected program expenses. The Board estimates that 11 agencies will seek licensed status and 36 certified euthanasia technician (CET) licenses will be issued. The fees implemented here will affect all those seeking certification in Montana to obtain and/or administer a controlled substance for the purpose of animal euthanasia. During the first year, the Board estimates

that the initial application for license fees and inspection fees will total approximately \$6,730. After the initial licenses are issued, the Board estimates that renewal and inspection fees will generate annual revenue of \$6,095. The Board has no historical evidence upon which to estimate the number of agency or individual CET licenses that will be subject to a late fee.

5. The proposed new rules provide as follows:

NEW RULE I DEFINITIONS As used in this sub-chapter, the following definitions apply:

- (1) "Animal" means any animal other than a human.
- (2) "Approved euthanasia drugs" means those controlled substances approved by the board for the purpose of euthanizing animals.
- (3) "Drug enforcement administration" or "DEA" means the federal agency for enforcement of narcotics laws.

AUTH: 37-18-202, 37-18-603, MCA
IMP: 37-18-603, MCA

NEW RULE II APPLICATION FOR INITIAL CERTIFICATION AS A CERTIFIED EUTHANASIA TECHNICIAN - QUALIFICATIONS - ENDORSEMENT

- (1) Application for certification as a certified euthanasia technician (CET) must be made on forms prescribed by the board.
- (2) Applications must include:
 - (a) a current, within two years, photograph of the applicant, certified by a notary;
 - (b) documentation of successful completion of a board-approved training program taken within three years from the application date;
 - (c) documentation of successful completion of a board-approved written and practical examination;
 - (d) verification of all current employment at certified agencies;
 - (e) Montana department of justice background check verifying that the applicant has no previous criminal convictions involving dangerous drugs and/or controlled substances, domestic violence, or animal cruelty;
 - (f) verification from any other state or province where the applicant is certified as a euthanasia technician, that the applicant has never had certification revoked, suspended or denied;
 - (g) verification that applicant is at least 18 years of age or an emancipated minor; and
 - (h) payment of the proper application fee.
- (3) The board may allow submission of a current euthanasia technician license from another state or province to meet the requirements of (2)(b) and (c), if the board determines that the other state's or province's standards for the euthanasia certification are substantially equivalent to or greater than the standards of this state.

AUTH: 37-1-131, 37-18-202, 37-18-603, MCA
IMP: 37-18-603, MCA

NEW RULE III BOARD-APPROVED TRAINING PROGRAM CRITERIA

- (1) To qualify for approval under [New Rule II], a euthanasia training program must:
- (a) be conducted by a qualified instructor;
 - (b) include but not be limited to instruction in:
 - (i) proper dosage and handling of approved euthanasia drugs;
 - (ii) human safety and proper injection techniques;
 - (iii) pharmacology of approved euthanasia drugs;
 - (iv) proper animal handling to ease trauma and stress;
 - (v) animal anatomy;
 - (vi) proper security precautions;
 - (vii) proper record keeping; and
 - (viii) appropriate verification of death; and
 - (c) issue a certificate of approval containing:
 - (i) name of applicant;
 - (ii) name of instructor;
 - (iii) title of course;
 - (iv) date of course;
 - (v) number of hours;
 - (vi) presentation format.

AUTH: 37-1-131, 37-18-202, 37-18-603, MCA
IMP: 37-18-603, MCA

NEW RULE IV CERTIFIED EUTHANASIA TECHNICIAN TEST CRITERIA (1) A board-approved written and practical test for CETs must include:

- (a) Montana regulations governing CETs;
 - (b) state and DEA drug record keeping requirements including disposal of out-of-date drugs and reporting of loss or theft of drugs;
 - (c) human safety in administration of animal euthanasia;
 - (d) pharmacology of sodium pentobarbital;
 - (e) proper dosage and injection techniques of approved euthanasia drugs;
 - (f) animal anatomy; and
 - (g) verification of death.
- (2) A passing score on the written portion of the examination of 70% is required.
- (3) A passing score on the practical test will be determined by the successful completion of hands-on demonstrations which indicate that the applicant has been properly trained in procedures which enable the applicant safely and effectively to perform humane euthanasia with sodium pentobarbital. The practical examination will be graded on a pass/fail basis.
- (4) Applicants who fail to achieve a passing score on any portion of the exam will not be eligible for certification.

AUTH: 37-1-131, 37-18-202, 37-18-603, MCA
IMP: 37-18-603, MCA

NEW RULE V INITIAL APPLICATION FOR CERTIFIED EUTHANASIA AGENCIES

(1) A certified euthanasia agency (CEA) may purchase and possess controlled substances approved for the purpose of euthanasia. The application for initial certification as a CEA must be made on forms provided by the board.

(2) Applications must include:

(a) documentation of passage of an inspection by a board-approved inspector;

(b) a copy of completed application sent to the DEA to possess and store controlled substances approved by the board for the purpose of euthanasia, DEA number to be reported to board when issued;

(c) a list of all CETs or veterinarians employed by the agency with the day, month, and year that each individual began employment;

(d) indication of which CET is responsible for all aspects of euthanasia at the agency; and

(e) payment of the proper fee.

AUTH: 37-1-131, 37-18-202, 37-18-603, MCA
IMP: 37-18-603, 37-18-604, MCA

NEW RULE VI CERTIFIED EUTHANASIA AGENCY INSPECTION CRITERIA - NOTIFICATION OF DEFICIENCIES AND CORRECTIONS

(1) An inspection of a CEA must be conducted annually by the board or a person authorized by the board with its full authority.

(2) The inspection must include:

(a) verification that the area and equipment is appropriate for animal euthanasia;

(b) verification of the correct security, storage, disposal and labeling of euthanasia drugs;

(c) verification of correct drug record keeping;

(d) appropriate sanitation; and

(e) any other condition that the board determines is relevant to the proper euthanasia of animals.

(3) If the inspector determines that a deficiency substantially affects the public health, safety, or welfare or jeopardizes animals under the control of the CEA, the inspector must immediately inform law enforcement and the board which may summarily suspend the CEA's certificate pursuant to 2-4-631, MCA and applicable Montana law. If a less serious deficiency is found after inspection, it must be communicated to the agency and the board in writing. The CEA must correct any such deficiency within 30 days from the date of the inspection. If a second inspection is required, a second inspection fee must be paid by the agency. Failure to sufficiently correct a noted deficiency will be addressed as a

disciplinary matter by the screening panel of the board and the board may notify the DEA.

AUTH: 37-1-131, 37-18-202, 37-18-603, MCA
IMP: 37-18-603, MCA

NEW RULE VII TERMINATION OF CERTIFIED EUTHANASIA TECHNICIAN EMPLOYMENT - LAPSE OF CERTIFICATE (1) A CEA must notify the board in writing within 10 days of the date of termination of a CET. The certificate of the CET must be lapsed by the board upon notification that the technician is no longer employed by a CEA as required by law.

(2) A CET must notify the board in writing within 10 days of the change in employer or addition of a new CEA employer.

AUTH: 37-1-131, 37-18-202, 37-18-603, MCA
IMP: 37-18-603, MCA

NEW RULE VIII APPROVED EUTHANASIA DRUGS (1) The following drug is an approved euthanasia drug:

(a) sodium pentobarbital.

AUTH: 37-1-131, 37-18-603, MCA
IMP: 37-18-603, MCA

NEW RULE IX ANNUAL RENEWAL OF CERTIFICATE - TECHNICIANS - CERTIFIED AGENCIES (1) CETs must re-certify on a form or by a method approved by the board on or before May 30 of every year, beginning in 2005. The certification renewal application must include:

(a) verification of satisfactory completion of a board-approved euthanasia course and examination documenting continued competency taken within the 36 months immediately preceding the current renewal deadline date;

(b) verification of current employment at a CEA; and

(c) payment of the proper fee.

(2) CEAs must renew certification on a form or by a method approved by the board on or before May 30 of every year, beginning in 2005. The renewal application must include:

(a) verification of completion of satisfactory inspection within 12 months of the current renewal deadline date;

(b) a list of currently employed CETs or veterinarians with day, month, and year that each individual began employment and indication of which CET is responsible for all aspects of euthanasia at the agency;

(c) the proper fee; and

(d) verification of current DEA registration.

(3) A renewal notice will be sent by the board to each certificate holder at the current certified agency address in the board's files at least 30 days prior to the renewal deadline. Failure to receive such notice must not relieve the

certificate holder of the certificate holder's obligation to pay certification renewal fees in such a manner that they are received by the department on or before the certification renewal date.

(4) A CET's or CEA's renewal certificate shall be valid for one year following the expiration date of the previously held certificate.

(5) The fee for any certificate holder who fails to re-certify or submit the proper fee prior to the expiration date must be increased by an amount determined by the board and specified in the fee schedule. Certification renewal forms may not be processed until all required documentation is received in the board office and all fees are paid.

(6) The board will randomly audit 10 renewals for CEAs and 10 renewals for CETs each year.

(7) Any certificate holder failing to renew a certificate within 90 days of the expiration date will be considered to have forfeited the certificate. If 90 days have passed, the CET or CEA must reapply to the board for an initial certificate to function as a CET or CEA and pay the required fee.

AUTH: 37-1-131, 37-18-202, 37-18-603, MCA
IMP: 37-18-603, MCA

NEW RULE X UNPROFESSIONAL CONDUCT (1) For the purposes of implementing the provisions of 37-1-319, MCA and in addition to 37-1-316, MCA, the board further defines unprofessional conduct as follows:

(a) violation of any state or federal statute or administrative rule regulating the practice of animal euthanasia, including any statute or rule defining or establishing standards of animal euthanasia or professional conduct or practice;

(b) cruel or inhumane treatment of animals;

(c) incompetence, negligence, cruelty, or use of any practice or procedure in the practice of animal euthanasia, which creates an unreasonable risk of physical harm to the animal, staff or public;

(d) possession, use, addiction to, diversion or distribution of controlled substances in any way other than for legitimate euthanasia purposes, or violation of any drug law;

(e) failure to cooperate with an investigation or inspection authorized by the board of veterinary medicine;

(f) failure to maintain sanitary facilities or apply sanitary procedures for euthanizing animals;

(g) practicing as a CEA or as a CET without a current certificate;

(h) willful or repeated violations of rules established by any health agency or authority of the state or a political subdivision thereof;

(i) resorting to fraud, misrepresentation or deception in the euthanasia of an animal;

- (j) failure to have current DEA registration;
- (k) failure to report to the board termination or change of employment for a CET within 10 days;
- (l) use of unapproved drugs for euthanasia; or
- (m) euthanasia of an animal for which the CET has not received training.

AUTH: 37-1-131, 37-1-319, 37-18-202, 37-18-603, MCA
IMP: 37-1-131, 37-1-316, 37-1-319, 37-18-603, MCA

REASON: The Board of Veterinary Medicine proposes to adopt these rules for the certification of euthanasia agencies and technicians in response to Chapter 60, L. 2003 (House Bill 181) that was passed by the 2003 Legislature. The law became effective January 1, 2004. The Board believes it is reasonable and necessary for public protection to adopt rules that will outline the process for initial certification, training, testing, renewal, and discipline of both certified euthanasia agencies and euthanasia technicians. These rules will affect all those seeking certification in Montana to obtain and/or administer a controlled substance for the purpose of animal euthanasia.

6. Concerned persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Board of Veterinary Medicine, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to dlibsdrvvet@state.mt.us, and must be received no later than 5:00 p.m., April 23, 2004.

7. An electronic copy of this Notice of Public Hearing is available through the Department and Board's site on the World Wide Web at <http://www.discoveringmontana.com/dli/vet>. 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.

8. The Board of Veterinary Medicine 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 must 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 Veterinary Medicine administrative rulemaking proceedings or other administrative proceedings. Such written request may be mailed or delivered to the Board of Veterinary Medicine, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, faxed to the office at (406) 841-2305, e-mailed to dlibsdrvvet@state.mt.us, or may be made by completing a request form at any rules hearing held by the agency.

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

10. Anne O'Leary, attorney, has been designated to preside over and conduct this hearing.

BOARD OF VETERINARY MEDICINE
John Smith, DVM, PRESIDENT

/s/ WENDY J. KEATING
Wendy J. Keating, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

/s/ MARK CADWALLADER
Mark Cadwallader
Alternate Rule Reviewer

Certified to the Secretary of State March 15, 2004.

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

In the matter of the)
amendment of ARM 37.86.1102)
pertaining to outpatient)
drugs, requirements)

NOTICE OF PUBLIC HEARING
ON PROPOSED AMENDMENT

TO: All Interested Persons

1. On April 14, 2004, at 10:00 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 rule.

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 April 5, 2004, 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; Email dphhslegal@state.mt.us.

2. The rule as proposed to be amended provides as follows. Matter to be added is underlined. Matter to be deleted is interlined.

37.86.1102 OUTPATIENT DRUGS, REQUIREMENTS (1) These requirements are in addition to those contained in ARM 37.85.401 through 37.85.415.

(2) Drugs may not be filled or refilled without the authorization of the physician or other licensed practitioner who is authorized by law to prescribe drugs and is recognized by the medicaid program.

(3) The department will only participate ~~only~~ in the payment of legend ~~drugs~~ and ~~those~~ over the counter drugs ~~which are included in~~ listed on the department drug formulary, as determined by the medicaid drug formulary committee established by the department. The formulary committee is the drug use review board, established and operating in accordance with 42 USC 1396r-8 (2004), which governs medicaid drug programs. The drug formulary includes a preferred drug list (PDL) of selected drugs that have a significant clinical benefit over other agents in the same therapeutic class and also represents good value to the department based on total cost. Prescribers must prescribe from the preferred drug list if medically appropriate.

(a) The PDL includes drugs subject to a centers for medicare and medicaid services (CMS) approved supplemental rebate agreement between the manufacturer and the department.

Drugs in the same therapeutic class as those identified on the preferred drug list but not identified as a preferred drug are subject to prior authorization as outlined in (6)(c).

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

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

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

(b) Notwithstanding the above, prescriptions may not be dispensed in quantities greater than a 34-day supply.

(6) The department will not participate in the payment of a prescription drugs:

(a) which the secretary of health and human services (HHS) has determined ~~the prescription drug or its generic equivalent, to be~~ is less than effective for all conditions of use prescribed, recommended or suggested in the drug's labeling; ~~and~~

(b) ~~of a manufacturer with which that is not subject to a rebate agreement between the manufacturer and the secretary of HHS has not signed a drug rebate agreement as required by 42 USC 1396r-8 (2004).~~ ; and

(c) ~~subject to that does not meet~~ criteria as determined by the medicaid drug formulary committee, established and operating in accordance with 42 USC 1396r-8 (2004), without the existence of a prior authorization request approved by the department or its designated representative. A ~~copy~~ list of drugs subject to prior authorization, known as the prior authorization drug list, will be provided to interested medicaid providers.

(7) The drug formulary, PDL and the prior authorization drug list will be updated by the department on a monthly basis, on the last day of each month. A copy of this the most current listings may be obtained from the department website at www.dphhs.state.mt.us, or by writing to the Department of Public Health and Human Services, Health Policy and Services Division Child and Adult Health Resources Division (CAHRD), Medicaid Acute Services Bureau, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

~~(d)~~(8) The department hereby adopts and incorporates by reference 42 USC 1396r-8 (~~1997~~ 2004) as a part of these rules. This section of the federal law sets forth the requirements that must be met by the department, drug manufacturers and providers in order to receive reimbursement for outpatient drugs that have been dispensed. This statute describes rebate agreements, covered drugs, prior authorization, reimbursement limits and drug use review programs. A copy of 42 USC 1396r-8 (~~1997~~ 2004)

can be obtained by writing to the Department of Public Health and Human Services, ~~Health Policy and Services Division~~ Child and Adult Health Resources Division (CAHRD), Medicaid Acute Services Bureau, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

AUTH: Sec. 53-6-113, MCA

IMP: Sec. 53-6-101, 53-6-113 and 53-6-141, MCA

3. ARM 37.86.1102 defines outpatient drug requirements. The rule further defines prescription fills and refills, the drug formulary, inappropriate usage of drugs, drug dispensing limitations and drug payment policies. The proposed rule change further defines the drug formulary by including a preferred drug list, clarifies the medicaid drug formulary committee and its composition, allows for the collection of supplemental drug rebates, allows for prior authorization of drugs not identified as preferred, corrects grammatical errors and updates the division's name changes and USC references.

The development of drug formularies and drug prior authorization programs are pursuant to 42 USC 1396-r. The drug formulary committee develops the drug formulary, the preferred drug list and the drug prior authorization list. The State Medicaid Director Letter SMDL 02-014, from Centers for Medicare and Medicaid Services (CMS) to the State Medicaid Program, clarifies issues related to supplemental drug rebate agreements and prior authorization of Medicaid covered outpatient drugs.

Prescription drugs are among the most costly Medicaid services and expenditures for drugs continue to rise. Costs to the pharmacy program increased 16.5% on average over the past five years, which results in a projected budget of \$98 million for State Fiscal Year (SFY) 2004. If costs continue to increase at that rate, the pharmacy budget is expected to be over \$114 million in SFY 05 and over \$155 million by the end of the next biennium (SFY 07). Section 53-6-113(2), MCA, requires the Department of Public Health and Human Services to provide Medicaid services in a cost effective manner. The Department is attempting to control cost increases by creating a preferred drug list (PDL) and requiring supplemental rebates from drug manufacturers.

In its 2002 Survey of Montana Community Pharmacies, The Montana Pharmacy Association identified pharmaceutical industry profits as the number one cost driver for prescription drugs. The report identifies the pharmaceutical industry as the most profitable industry in the United States, averaging a net profit rate exceeding 18% in 2000 and again in 2001. One of the ways the Department is able to control this cost driver would be to develop a Preferred Drug List (PDL) and the ability to receive Supplemental Rebates from drug manufacturers.

A PDL is a list of preferred prescriptions categorized by

therapeutic class and developed by a state's Formulary Committee for prescriber consideration to use in meeting the drug therapy needs of their patients. Medications are preferred if they met clinical and therapeutic criteria established by the Formulary Committee or if the manufacturer offered supplemental rebates making their product cost-effective. Supplemental rebates are in addition to the baseline standard CMS rebates that all pharmaceutical manufacturers must pay states to participate in the Medicaid program.

Preferred drugs on the PDL can be prescribed and reimbursed by Medicaid without prior authorization. Medications that are not included on the PDL can be prescribed and reimbursed by Medicaid based on a clinical review of appropriateness for a particular patient situation through a prior authorization program. The Department researched how other states were handling their prescription drug programs and containing costs, and found in general they were utilizing preferred drug management systems of this nature. The preferred drug management systems implemented in other states have been effective tools to help them manage pharmacy costs and maintain access to pharmacy benefits for vulnerable, low-income populations.

While PDLs are commonly used in private sector or commercial drug programs where they are also known as drug formularies, and also in other states' Medicaid managed care plans, they have only recently been implemented in Medicaid fee-for-service programs. Michigan and Vermont are two of the first state Medicaid programs to implement a preferred drug list and supplemental rebate program to help contain the costs of pharmaceutical drugs in a clinically appropriate way.

The alternative is to not implement the preferred drug list or pursue the ability to receive Supplemental Rebates from drug manufacturers. The Department is employing as many strategies as are realistic for cost containment, including prior authorization, mandatory generic substitution, drug utilization review and pharmacy case management. However, because drug expenditures continue to rise, the alternative to implementing a PDL and receiving supplemental rebates would be a change in the reimbursement methodology or to make across the board cuts (as was employed in January 1, 2002 through June 30, 2002). Across the board cuts prove to be more punitive to pharmacy providers because in some cases, the cuts result in pharmacies being reimbursed below their actual cost when providers bill using their acquisition cost as their usual and customary charge. Based on these factors, the Department rejected this option.

By implementing the preferred drug list and receiving supplemental rebates from drug manufacturers, the Department can reduce the main cost driver for prescription drugs without adverse action toward pharmacy providers or clients.

The implementation of the preferred drug list and receipt of

supplemental rebates from drug manufacturers will result in the approximate savings of \$1.5 to \$2.1 million general fund annually. However, the Department can expect the savings to change as the figures are projected forward. The change implementing a PDL and Supplemental Rebates would affect all Medicaid pharmacy providers (420), drug manufacturers (500), physicians, mid-level providers (5,221) and Medicaid clients (80,280).

The rule amendment updates ARM 37.86.1102 by adding text to (3) to set forth the methodology under which the preferred drug list and prior authorization list will be determined and established through the Medicaid Drug Formulary Committee as required by 42 USC 1396r-8 (2004), the federal law which governs Medicaid Drug Programs.

ARM 37.86.1102 is being amended to update the division's name and address. The name change from Health Policy and Services Division to Child and Adult Health Resources Division is being shown in the rule.

ARM 37.86.1102(6) is being amended to clarify what drugs the Department will not pay for and establishes the prior authorization drug list.

ARM 37.86.1102(6)(d) has been renumbered to (8) simply as a clerical change and the date of the federal regulation which governs the Medicaid Drug Program has been updated to reflect the most current edition.

ARM 37.86.1102(7) is a new section which provides the basis for how often the drug formulary, preferred drug list and the prior authorization list are updated and how a copy of the most current lists can be obtained.

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 Kathy Munson, 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 April 22, 2004. Data, views or arguments may also be submitted by facsimile (406)444-9744 or by electronic mail via the Internet to dphhslegal@state.mt.us. 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.

Russ Cater
Rule Reviewer

John Chappuis for
Director, Public Health
and Human Services

Certified to the Secretary of State March 15, 2004.

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the amendment)	
of ARM 23.7.101A, 23.7.301,)	
23.7.302, 23.7.303, 23.7.304,)	
23.7.306, and 23.7.308 to adopt)	NOTICE OF AMENDMENT
NFPA 1 Uniform Fire Code, and)	AND REPEAL
repeal of ARM 23.7.305,)	
23.7.307, 23.7.309, and 23.7.310)	
which are superseded by the)	
adoption of NFPA 1 Uniform Fire)	
Code)	

TO: All Concerned Persons

1. On January 15, 2004, the Department of Justice published MAR Notice 23-7-144 regarding a notice of public hearing on the proposed amendment and repeal of the above-stated rules at page 17, 2004 Montana Administrative Register, Issue Number 1.

2. The Department has amended 23.7.101A and 23.7.303 exactly as proposed. The Department has amended 23.7.301, 23.7.302, 23.7.304, 23.7.306 and 23.7.308 as proposed, but with the following changes, deleted matter interlined, new matter underlined:

23.7.301 ADOPTION OF NFPA 1 UNIFORM FIRE CODE (1) The fire prevention and investigation program (FPIP) adopts and incorporates by reference the NFPA 1 Uniform Fire Code, 2003 edition (2003 NFPA 1/UFC) ~~and annexes~~ with the additions, amendments, and deletions enumerated in this subchapter. Copies of the 2003 NFPA 1/UFC and related materials may be obtained from the National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02169. This document is available for free online access at www.nfpa.org. Copies of the 2003 NFPA 1/UFC and Montana's amendments thereto may be obtained from the ~~Fire Services Training School, P.O. Box 6010, Great Falls, MT 59406 6010, (406) 771 4336~~ State Fire Marshal's Office, 303 North Roberts, P.O. Box 201415, Helena, MT 59620-1415, (406) 444-2050.

(2) through (4) remain as proposed.

(5) The following NFPA 1/UFC sections are modified as shown to be in accordance with the Building Code regarding design and construction requirements:

~~(a) Section 1.1.1 The scope includes, but is not limited to, the following:~~

~~1.1.1(3) Review of design and construction plans, drawings, and specifications for life safety systems, fire protection systems, access, water supplies, processes, and hazardous materials and other fire and life safety issues shall be in accordance with requirements of the Building Code.~~

(b) remains as proposed, but is renumbered (a).

~~(e)~~ (b) Section 1.3.8 Repairs, renovations, alterations, reconstruction, change of occupancy, and additions to buildings shall conform with the Fire Code and the Building Code.

(d) through (i) remain as proposed, but are renumbered (c) through (h).

AUTH: 50-3-102, MCA
IMP: 50-3-103, MCA

23.7.302 ADMINISTRATION (1) remains as proposed.

(2) The following annexes are adopted as part of this code:

(a) Annex A Explanatory Material;

(a) and (b) remain as proposed, but are renumbered (b) and (c).

~~(e)~~(d) Annex H Fire Flow Requirements for Buildings; and

~~(d)~~(e) Annex I Fire Hydrant Locations and Distribution; and.

~~(e) Annex J Additional Adoptable NFPA Codes and Standards.~~

23.7.304 GENERAL (1) Chapters 10 through 19 of the 2003 NFPA 1/UFC are adopted with the following exceptions and additions:

(a) Section 10.18 Parade Floats (including all subsections) is not adopted; ~~and~~

(b) Section 10.7.3 False Alarms is not adopted; ~~i~~

(c) Section 10.15.1 is not adopted; and

(d) 10.15.9.5 Christmas trees shall be properly treated with an approved flame retardant. The chief may, however, waive this requirement when the tree is fresh (recently harvested) and all other provision of section 10.15.9 are met. Consideration should also be given to humidity, temperature and the dryness of the tree at the time of setup.

(2) remains as proposed.

(3) Fire escapes shall comply with the following:

(a) through (c) remain as proposed.

(d) Egress from the building shall be by a clear opening having a minimum dimension of not less than 29 inches (737 mm) in both height and width. Such openings shall be openable from the inside without the use of a key or special knowledge or effort. The sill of an opening giving access shall not be more than 30 inches (762 mm) above the floor of the building or balcony;

(e) through (j) remain as proposed.

(k) Fire escapes shall be kept clear and unobstructed at all times and maintained in good working order. ~~;~~ ~~and~~

~~(l) The sprinkler system may be supplied from the domestic water supply if of adequate volume and pressure. Vertical openings need not be protected if the building is protected by an approved automatic sprinkler system.~~

(4) 19.2.1.4 Rubbish within Dumpsters. Dumpsters and containers with an individual capacity of 1.5 yd³ [40.5 ft³

(1.15 m³)] or more shall not be stored in buildings or placed within 5 feet of combustible walls, openings or combustible roof eave lines.

(5) 19.2.1.4.2 Structures of Types I and II fire resistive construction used for dumpster or container storage shall be located not less than 5 feet from openings and other buildings.

AUTH: 50-3-102, MCA
IMP: 50-3-103, MCA

23.7.306 PROCESSES (1) and (1)(a) remain as proposed.

(b) Section 42.2.1.2 General. When performed in the operation of a farm or ranch, or when approved by the chief, liquids used as fuels may be transferred from tank vehicles into the tanks of motor vehicles or special equipment, provided:

1. The tank vehicle's specific function is that of supplying fuel to motor vehicle fuel tanks;

2. The dispensing line does not exceed 50 feet (15,240 mm) in length;

3. The dispensing nozzle is an approved type;

4. The dispensing hose is properly placed on the approved reel or in a compartment provided before the tank vehicle is moved;

5. Signs prohibiting smoking or open flame within 25 feet (7620 mm) of a tank vehicle or the point of refueling are prominently posted on the tank vehicle;

6. Electrical devices and wiring in areas where fuel dispensing is conducted are in accordance with the Electrical Code;

7. Tank vehicle dispensing equipment is operated only by designated personnel who are trained to handle and dispense motor fuels; and

8. Provisions are made for controlling and mitigating unauthorized discharges.

(b) through (j) remain as proposed, but are renumbered (c) through (k).

AUTH: 50-3-102, MCA
IMP: 50-3-102, MCA

23.7.308 HAZARDOUS MATERIALS (1) Chapters 60 through 73 of the 2003 NFPA 1/UFC are adopted with the following exceptions and additions:

~~(a) Section 42.2.1.2 General. When performed in the operation of a farm or ranch, or when approved by the chief, liquids used as fuels may be transferred from tank vehicles into the tanks of motor vehicles or special equipment, provided:~~

~~1. The tank vehicle's specific function is that of supplying fuel to motor vehicle fuel tanks;~~

~~2. The dispensing line does not exceed 50 feet (15,240 mm) in length;~~

- ~~3. The dispensing nozzle is an approved type;~~
- ~~4. The dispensing hose is properly placed on the approved reel or in a compartment provided before the tank vehicle is moved;~~
- ~~5. Signs prohibiting smoking or open flame within 25 feet (7620 mm) of a tank vehicle or the point of refueling are prominently posted on the tank vehicle;~~
- ~~6. Electrical devices and wiring in areas where fuel dispensing is conducted are in accordance with the Electrical Code;~~
- ~~7. Tank vehicle dispensing equipment is operated only by designated personnel who are trained to handle and dispense motor fuels; and~~
- ~~8. Provisions are made for controlling and mitigating unauthorized discharges.~~

~~(a) (b)~~ Section 65.9 Storage. The maximum quantities, storage conditions, and fire-protection requirements for gunpowder and ammunition stored in a building shall be as follows:

1. Smokeless powder--In accordance with 50-61-120 and 50-61-121, MCA.
2. Commercially manufactured sporting black powder--25 pounds (11.3 kg) in a separate, portable Type 4 magazine.
3. Small arms primers or percussion caps--In accordance with 50-61-120 and 50-61-121, MCA.

(b) Section 65.11 Sale, Handling, and Storage of Consumer Fireworks is not adopted.

(c) through (d)(iii) remain as proposed.

AUTH: 50-3-102, MCA
IMP: 50-3-102, MCA

3. The Department has repealed ARM 23.7.305, 23.7.307, 23.7.309, and 23.7.310 as proposed.

4. The following comments were received and appear with the Department of Justice's responses.

COMMENT #1: At the public hearing, Nate Nunnally, Assistant Fire Marshal for the Missoula Fire Department, testified on behalf of his Department and on behalf of the Fire Marshal's forum in support of the rules. Mr. Nunnally noted that much consideration had gone into the decision to adopt the 2003 NFPA 1/IFC.

RESPONSE: The Department appreciates Mr. Nunnally's support and comments.

COMMENT #2: At the public hearing, Bruce Suenram, President of Fire Logistics Inc., testified as a proponent of the rules. Mr. Suenram provided the following suggestions for improving/clarifying the adoption of the rules:

A. Mr. Suenram recommended leaving references to the Life Safety Code in the rules and then make changes to address any conflicts created with the Building Code.

B. Mr. Suenram suggested deleting the reference to NFPA 5000 from section 2.2. He also expressed concern that it was not clear what sections of the NFPA 2003 the Department had adopted.

C. Mr. Suenram recommended the adoption of Annex A and recommended against the adoption of Annex J.

D. Mr. Suenram testified that the adoption of section 10.11.2.1 relating to open burning and 10.15.1 relating to Christmas trees, and section 65.11 relating to sale, handling, and storage of commercial fireworks would create significant enforcement concerns.

RESPONSE: The Department appreciates Mr. Suenram's suggestions and comments. In response, the Department has amended the rules to specify that sections 10.15.1 and 65.11 and Annex J are not adopted. The Department has amended the rules to adopt Annex A. In response to Mr. Suenram's concerns regarding what chapters of NFPA 1 2003 were being adopted by the Department, the Department relies on the following language in ARM 23.7.301 ADOPTION OF NFPA 1 UNIFORM FIRE CODE: "The fire prevention and investigation program (FPIP) adopts and incorporates by reference NFPA 1 Uniform Fire Code, 2003 edition (2003 NFPA 1/UFC) ~~and annexes~~ with the additions, amendments, and deletions enumerated in this subchapter." This language reflects the Department's intent to adopt all sections of the 2003 NFPA 1/UFC with the additions, amendments, and deletions set forth in adoption proposal. Specific reference to every section is not necessary for adoption. The Department carefully considered all of Mr. Suenram's comments and appreciates his thorough review of the notice.

COMMENT #3: Brent Waters, Chair of the Fire Marshal's Advisory Board, testified as a proponent of the rules. Mr. Waters noted that the Advisory Board believed adoption of the 2003 NFPA 1/UFC would improve fire safety in Montana and better protect the public against fire hazards.

RESPONSE: The Department appreciates Mr. Waters' support and comments.

COMMENT # 4: Joe Le Lievre, Fire Marshal for the City of Great Falls, testified as a proponent of the rules and submitted written comments. Mr. Le Lievre testified that he was concerned about the language of section 1.1.1(3) and that it should be clear that the provisions of the fire code applied to review of fire protection systems, access, and water supplies. Mr. Le Lievre also provided several

suggestions to clarify the language of the rules and noted that references to the UFC needed to be deleted.

RESPONSE: The Department has stricken the amendment to the language of section 1.1.1(3) and that section is adopted as written in the 2003 NFPA 1/UFC. ARM 23.7.301(4) makes it clear that the Building Code adopted by the building codes bureau of the department of labor and industry controls all design and construction requirements in Montana making the changes to section 1.1.1(3) unnecessary. The Department appreciates Mr. Le Lievre's careful review of the rules and his constructive comments about how to make improvements.

COMMENT #5: Craig Trapp, Fire Marshal for the City of Helena testified as a proponent. Mr. Trapp testified that the sections 1.1.1(3) and section 1.3.8 needed to be reviewed to ensure that fire protection issues were properly addressed.

RESPONSE: As noted above, the amendment to section 1.1.1(3) was stricken and that section is adopted as written in the 2003 NFPA 1/UFC. The Department amended section 1.3.8 to include a reference to both the Fire Code and Building Code.

COMMENT #6: Butch Weeden testified as an informational witness and noted that the address listed for the Fire Training School in ARM 23.7.301 was incorrect and the School did not have copies of the fire code available to the public.

RESPONSE: The Department deleted the reference to the Fire Training School and amended the rule to reflect that copies of the 2003 NFPA 1/UFC would be available at the State Fire Marshal's Office.

COMMENT #7: The Department received written comments from Jim Stewart, Fire Marshal for the Kalispell Fire Department in support of the rules. Mr. Stewart expressed concerns about the proposed adoption of section 1.1.1(3). Mr. Stewart noted that section 19.2.1.5 of the 2003 NFPA 1/UFC was more restrictive than the current rule and would require a 10' separation between dumpsters and combustible walls, building openings and overhangs as opposed to the current requirement of 5'. Mr. Stewart was concerned this could create enforcement issues. Mr. Stewart also raised questions about the fire flow requirements of Annex H.

RESPONSE: As noted above, the amendment to section 1.1.1(3) was stricken and that section is adopted as written in the 2003 NFPA 1/UFC. The Department agrees with Mr. Stewart's comments concerning section 19.2.1.5 and has amended the rule to reflect a distance of 5'. The Department reviewed Annex H and determined that it should be adopted as written.

By: /s/ Mike McGrath
MIKE MCGRATH
Attorney General
Department of Justice

/s/ Ali Bovington
ALI BOVINGDON, Rule Reviewer

Certified to the Secretary of State March 15, 2004.

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

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 8.32.1118, relating to nursing) AND ADOPTION
education accrediting bodies,)
and the adoption of NEW RULE I)
(8.32.1409A), relating to the)
nurse's role in cosmetic procedures)

TO: All Concerned Persons

1. On October 30, 2003, the Department of Labor and Industry published MAR Notice No. 8-32-61 regarding the public hearing on the proposed amendment and adoption of the above-stated rules relating to nursing education accrediting bodies and the nurse's role in cosmetic procedures at pages 2359 of the 2003 Montana Administrative Register, issue no. 20.

2. On December 2, 2003, a public hearing on the proposed amendment and adoption of the above-stated rules was conducted in Helena.

3. No comments having been received concerning the proposed amendment of ARM 8.32.1118, the Board of Nursing amended ARM 8.32.1118, exactly as proposed.

4. Public comments were made at the hearing regarding proposed NEW RULE I, supplemented by written comments which were also received regarding proposed NEW RULE I. A summary of the comments and the Board's response are as follow:

Comment 1: Dr. Robert Korenberg, M.D., individually and on behalf of the Montana Academy of Dermatology, commented in favor of proposed NEW RULE I. He stated that defining and limiting the performance of the procedures as written in proposed NEW RULE I is appropriate and necessary to protect the public. He stated that the rule was needed because diagnosis is necessary before any of these cosmetic procedures are performed; preventable complications occur; a practitioner must diagnose the complications; the ability to prescribe is required to reverse some of the complications that can occur; and complications usually occur within 24 hours after the treatment and prompt attention is vital for the most favorable outcome.

Response 1: The Board of Nursing agrees with the comments.

5. After considering the comments, the Board of Nursing adopted NEW RULE I (8.32.1409A) exactly as proposed.

BOARD OF NURSING
KIM POWELL, RN, CHAIRMAN

/s/ WENDY J. KEATING
Wendy J. Keating, Commissioner
DEPARTMENT OF LABOR & INDUSTRY

/s/ MARK CADWALLADER
Mark Cadwallader
Alternate Rule Reviewer

Certified to the Secretary of State March 15, 2004.

BEFORE THE BOARD OF PUBLIC ACCOUNTANTS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the) NOTICE OF AMENDMENT,
amendment of ARM 8.54.410,) ADOPTION AND REPEAL
pertaining to fees, the)
adoption of NEW RULES)
I through VI, and the)
repeal of ARM 8.54.402 through)
8.54.405 and 8.54.407, all)
related to examinations)

TO: All Concerned Persons

1. On January 29, 2004, the Board of Public Accountants published MAR Notice No. 8-54-39 regarding the public hearing on the proposed amendment, adoption and repeal of the above-stated rules relating to fees and examinations at page 161 of the 2004 Montana Administrative Register, issue no. 2.

2. On February 20, 2004, a public hearing was held to consider the proposed amendment, adoption and repeal of the above-stated rules. No comments or testimony were received.

3. The Board has amended ARM 8.54.410 exactly as proposed.

4. The Board has adopted new rules I through VI exactly as proposed:

NEW RULE I (8.54.421) IMPLEMENTATION OF THE COMPUTER-BASED UNIFORM CERTIFIED PUBLIC ACCOUNTANT EXAMINATION

NEW RULE II (8.54.422) EXAMINATIONS

NEW RULE III (8.54.423) EXAMINATION CREDITS - OUT-OF-STATE CANDIDATES

NEW RULE IV (8.54.424) GRANTING OF EXAMINATION CREDIT

NEW RULE V (8.54.425) TRANSITION RULE FOR APPLICANTS WHO HAVE PRE-COMPUTER-BASED EXAMINATION CONDITIONAL CREDIT

NEW RULE VI (8.54.426) CHEATING

5. The Board has repealed the following rules exactly as proposed:

8.54.402 EXAMINATIONS

8.54.403 OUT-OF-STATE CANDIDATES FOR EXAMINATION

8.54.404 EXAMINATION CREDITS - OUT-OF-STATE CANDIDATES

8.54.405 CONSECUTIVE EXAMINATIONS AND REEXAMINATION
REQUIREMENTS

8.54.407 QUALIFICATION FOR A LICENSE AS LICENSED PUBLIC
ACCOUNTANT

BOARD OF PUBLIC ACCOUNTANTS
PATRICK W. HANLEY, CPA, CHAIR

/s/ WENDY J. KEATING
Wendy J. Keating, Commissioner
DEPARTMENT OF LABOR & INDUSTRY

/s/ MARK CADWALLADER
Mark Cadwallader,
Alternate Rule Reviewer

Certified to the Secretary of State March 15, 2004

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

In the matter of the)	NOTICE OF AMENDMENT,
amendment of ARM 24.29.902,)	ADOPTION, AND REPEAL
24.29.929, 24.29.954,)	
24.29.956, 24.29.966 and)	
24.29.971; the adoption of)	
NEW RULE I through)	
NEW RULE III, and the repeal)	
of ARM 24.29.905, 24.29.921)	
through 24.29.928, 24.29.951,)	
24.29.955 and 24.29.961,)	
relating to workers')	
compensation assessments)	

TO: All Concerned Persons

1. On December 11, 2003, the Department of Labor and Industry published MAR Notice No. 24-29-180 regarding a public hearing on the proposed amendment, adoption and repeal of the above-stated rules, relating to workers' compensation assessments, at page 2681, 2003 Montana Administrative Register, issue number 23.

2. A public hearing was held in Helena on January 9, 2004. Members of the public attended the hearing and offered comments. One written comment from a member of the public was also received prior to the closing of the comment period on January 16, 2004.

3. The Department has amended ARM 24.29.956 as proposed, has adopted NEW RULE I (24.29.907), II (24.29.962) and III (24.29.908) as proposed, and has repealed ARM 24.29.905, 24.29.921 through 24.29.928, 24.29.951, 24.29.955 and 24.29.961 as proposed.

4. After consideration of the comments received, the Department has amended ARM 24.29.902, 24.29.929, 24.29.954, 24.29.966 and 24.29.971 as proposed with the following changes, stricken matter interlined, new matter underlined:

24.29.902 DEFINITIONS (1) through (3) remain as proposed.
~~(4) "Indemnity" means all payments made to a claimant or beneficiary, other than medical benefits and the miscellaneous expense costs described in ARM 24.29.954 which are not included in the paid losses used for calculating the assessment and surcharge rate.~~

(5) through (12) remain as proposed, but are renumbered (4) through (11).

AUTH: 39-71-203, MCA

IMP: 39-71-201, 39-71-915, 39-71-1004 and 39-71-2352, MCA

24.29.929 ASSESSMENTS OTHER THAN THE ADMINISTRATION FUND ASSESSMENT (1) remains as proposed.

(2) The IARA assessment is due by July 1 of the year it is billed, which is consistent with the due date for the SIF assessment.

AUTH: 39-71-203, MCA

IMP: 39-71-201, 39-71-915 and 39-71-1004, MCA

24.29.954 CALCULATION OF AMOUNT OF ADMINISTRATION FUND ASSESSMENT (1) remains as proposed.

(2) Indemnity Compensation benefits paid include periodic and lump-sum payments for:

(a) through (1) remain the same.

(3) through (5) remain the same.

(6) Each insurer must report, in the format required by the department, the indemnity and compensation paid and the medical benefits paid in the preceding year no later than March 1 of each year.

(a) remains the same.

(7) through (7)(a) remain as proposed.

(b) a plan No. 2 insurer that has paid indemnity compensation or medical benefits in the prior year, and has reported no premium earned in that prior year, must pay directly to the department an administration fund assessment pursuant to 39-71-201, MCA; and

(c) through (8) remain as proposed.

(9) Miscellaneous expense costs are not included in the calculation of the administration fund assessment. Miscellaneous expense costs are all workers' compensation or occupational disease costs incurred by an insurer other than indemnity compensation or medical benefits paid. These costs include, but are not limited to:

(a) through (d) remain the same.

(e) various other miscellaneous costs that do not constitute a compensation an indemnity benefit or medical benefit provided to the claimant or beneficiary.

(10) In the event an insurer submits an amended report identifying compensation paid indemnity and medical benefits paid after the time specified in (6), the department will compare the amended report with the initial report and:

(a) through (c) remain as proposed.

(11) through (12)(d) remain as proposed.

(e) In making the adjustments for the assessment calculations for FY05, the department shall compare the collections and expenditures for both FY02 and FY03 and make the appropriate adjustments. Beginning with the assessment calculations for FY06, the department will look back to the most recent completed fiscal year.

AUTH: 39-71-203, MCA

IMP: 39-71-201, 39-71-203 and 39-71-209, MCA

24.29.966 INDUSTRIAL ACCIDENT REHABILITATION ACCOUNT ASSESSMENT (1) through (3) remain as proposed.

~~(4) The IARA assessment may be billed at the same time as the administration fund assessment and the SIF assessment. Payment of the IARA assessment is due by July 1 of the year it is billed. In the event that there is a supplemental IARA assessment, it will be due within 30 days of the billing date.~~

AUTH: 39-71-203, MCA
IMP: 39-71-1004, MCA

24.29.971 FAILURE OF INSURER TO TIMELY REPORT PAID LOSSES--DEPARTMENT ESTIMATE OF PAID LOSSES--RECALCULATION OF ASSESSMENT AND PREMIUM SURCHARGE (1) remains the same.

~~(2) The estimate will be used to bill the insurer for the calculate the administration fund assessments for those insurers who must pay their assessment directly to the department. For those insurers who are responsible to collect the administration fund assessment surcharge from its policyholders, the estimate will and may also be used in the computation of to compute the percentage rate of premium surcharges by April 30. The estimate will be used for April 30th calculations to bill the insurer.~~

(3) remains the same.

AUTH: 39-71-203, MCA
IMP: 39-71-201, 39-71-915 and 39-71-1004, MCA

5. The Department has thoroughly considered all of the comments made. The comments received, and the Department's responses, are as follows:

Comment 1: The Executive Secretary of the Montana Self-Insurers Association and the Director of a self-insured employer group both commented that while case law has broadened the definition of compensation in the Workers' Compensation Act, the statutes still reference compensation. Therefore, it is premature to amend the rules to replace the word "compensation" with "indemnity" until the legislature acts.

Response 1: The Department agrees with the comments received and has amended the rules to delete the proposed definition of "indemnity" and not to adopt the proposed wording changes from "compensation" to "indemnity" throughout the rules.

Comment 2: The Executive Secretary of the Montana Self-Insurers Association commented that there is no due date in the statute for the IARA assessment and recommended that a due date should be added in the rules that is consistent with the SIF assessment of July 1.

Response 2: The department agrees with the comment and has added the July 1 due date for the IARA assessment to the rule.

Comment 3: The Executive Secretary of the Montana Self-Insurers Association commented that the proposed rules did not allow the department authority to reconcile collections and expenditures back more than a single fiscal year. The commenter stated his understanding was that there are two fiscal years (FY2002 and FY2003) where the Administration Fund Assessment has generated more revenue than the Department expended. The commenter provided language that would allow the department to compare the collections and expenditures for fiscal years 02 and 03 when making the assessment calculation for FY05 and beginning in FY06 provide for a look back of the single previous fiscal year. Another commenter concurred with this suggestion.

Response 3: The Department agrees with the comments received. It was the Department's intent to reconcile the collections and expenditures for all of the fiscal years since the administrative assessment methodology was amended in the 2001 session. The rule has been amended to reflect the commenter's suggested language.

Comment 4: The Executive Secretary of the Montana Self-Insurers Association recommended striking the first sentence of ARM 24.29.966(4) because it was duplicative of language found in ARM 24.29.929. The commenter further suggested that the second sentence in ARM 24.29.966(4) be moved to ARM 24.29.929(2).

Response 4: The Department agrees that the suggestions help to clarify the rules and has revised the rules accordingly.

Comment 5: The Executive Secretary of the Montana Self-Insurers Association commented that the language in ARM 24.29.971 was confusing and unnecessarily repeated statutory language. The commenter provided language to clarify the intent of the rule.

Response 5: The Department agrees with the comments made and has revised the rule accordingly.

Comment 6: The Executive Secretary of the Montana Self-Insurers Association suggested that NEW RULE III provide that any assessment payment, surcharge remittance, or quarterly expenditure postmarked past the due date be considered late.

Response 6: The Department believes that considering any assessment payment, surcharge remittance or quarterly expenditure report received by the department more than five days past the due date as late, allows for differences in mail service and workweek days negating the need to track post marks.

/s/ MARK CADWALLADER
Mark Cadwallader,
Alternate Rule Reviewer

/s/ WENDY J. KEATING
Wendy J. Keating, Commissioner
DEPARTMENT OF LABOR & INDUSTRY

Certified to the Secretary of State March 15, 2004.

BEFORE THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION
OF THE STATE OF MONTANA

In the matter of the adoption) NOTICE OF ADOPTION
of new rule I regarding a)
present value formula for)
determining a severance fee in)
a petition to exclude a tract)
from future services,)
assessments, and liabilities)
of an irrigation district)

TO: All Concerned Persons

1. On February 12, 2004, the Montana Department of Natural Resources and Conservation published MAR Notice No. 36-12-96 regarding the proposed adoption of the above-stated new rule relating to establishing a present value formula for determining a severance fee in a petition to exclude a tract from future services, assessments, and liabilities of an irrigation district at page 242 of the Montana Administrative Register, issue no. 3.

2. The department has adopted NEW RULE I (36.12.109) exactly as proposed.

3. No comments or testimony were received.

DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION

By: /s/ Arthur R. Clinch
ARTHUR R. CLINCH
Director

By: /s/ Tim Hall
TIM HALL
Rule Reviewer

Certified to the Secretary of State March 15, 2004.

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

In the matter of the adoption)	CORRECTED NOTICE OF
of Rules I through XXI and the)	ADOPTION
amendment of ARM 37.40.406,)	
37.85.406, 37.86.2801,)	
37.86.2901, 37.86.2905,)	
37.86.2910, 37.86.3002,)	
37.86.3005, 37.86.3009,)	
37.86.3022, 37.86.3025,)	
37.86.3411, 37.88.205,)	
37.88.305, 37.88.605 and)	
37.88.906 pertaining to)	
medicaid reimbursement of)	
hospitals)	

TO: All Interested Persons

1. On November 26, 2003, the Department of Public Health and Human Services published notice of the proposed adoption and amendment of the above-stated rules at page 2580 of the 2003 Montana Administrative Register, issue number 22, and on February 26, 2004 published notice of the adoption and amendment on page 482 of the 2004 Montana Administrative Register, issue number 4.

2. This corrected notice is being filed to correct errors in the adoption notice in Rule XII (37.86.2928).

3. The rule is corrected as follows:

RULE XII [37.86.2928] INPATIENT HOSPITAL REIMBURSEMENT, HOSPITAL REIMBURSEMENT ADJUSTOR (1) remains as adopted.

(2) Part 1 of the HRA payment will be based upon medicaid inpatient utilization, and will be computed as follows:
~~HRA1=[M/D]*P~~ HRA1 = (M ÷ D) x P.

(a) through (a)(iii) remain as adopted.

(iv) "P" equals the total amount to be paid via Part 1 of the HRA. "P" consists of a state paid amount plus the applicable federal financial participation, FFP. The portion of "P" that is paid by the state will equal the amount of revenue generated by Montana's hospital utilization fee, ~~plus applicable federal financial participation,~~ less all of the following:

(A) the amount expended as match for supplemental DSH payments as provided in ~~ARM 37.56.2912~~ 37.86.2925;

(iv)(B) through (C) remain as adopted.

(3) Part 2 of the IRA payment will be based upon total hospital medicaid charges, and will be computed as follows:
~~HRA2=[I/D]*P~~ HRA2 = (I ÷ D) x P.

(a) through (b) remain as adopted.

AUTH: Sec. 2-4-201, 53-2-201 and 53-6-113, MCA
IMP: Sec. 2-4-201, 53-2-201, 53-6-101, 53-6-111, 53-6-113
and 53-6-149, MCA

4. The Department is correcting a typographical error that resulted in an incorrect cross-reference to ARM 37.56.2912 in Rule XII (ARM 37.86.2928). The correct cross-reference should have been to Rule X (ARM 37.86.2925) governing disproportionate share hospital (DSH) payments. No substantive change is intended.

The sentence structure in Rule XII (ARM 37.86.2928(2)(a)(iv)) made the provisions governing computation of the hospital reimbursement adjuster payment (HRA) ambiguous. The language of the rule as adopted did not take into consideration the structure of subsections (iv)(A) through (C) as proposed. In the proposed rule, the computation addressed only the state share. In subsection (iv) as adopted, reference was made to Federal Financial Participation (FFP), while (A) through (C) remained the same.

This correction is intended to reconcile the inconsistent language of subsection (iv) and subsections (iv)(A) through (C). No substantive change is intended.

Finally, the Department adjusted the appearance of the mathematical expression to standard mathematic form in (2) and (3) at the request of a member of the public who found it confusing to understand because it was not in standard mathematic form. No substantive change is intended.

5. All other rule changes adopted remain as adopted.

Dawn Sliva
Rule Reviewer

/s/ Gail Gray
Director, Public Health and
Human Services

Certified to the Secretary of State March 15, 2004.

BEFORE THE BOARD OF REALTY REGULATION
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the petition) NOTICE OF WITHDRAWAL
for declaratory ruling on the) OF AMENDED NOTICE
issue of whether a real) OF PETITION FOR
estate broker or) DECLARATORY RULING
salesperson, who is engaged)
in property management,) NOTICE OF CANCELLATION
shall provide relationship) OF HEARING
disclosures as are provided by)
§37-51-314, MCA, or as are provided)
by ARM 8.58.714(3)(n))

TO: All Concerned Persons

1. At the request of Petitioners and with the concurrence of the Board of Realty Regulation, Notice is hereby given that the Amended Notice of Petition for Declaratory Ruling in this matter is withdrawn. The Amended Petition pertained to the following question:

"Shall a real estate broker or salesperson, who is engaged in property management, provide the relationship disclosures as are provided by MCA §37-51-314 or the disclosures as are provided by ARM §8.58.714(3)(n)?"

2. The original Notice of Petition for Declaratory Ruling was submitted at the request of Merilynn J. Foss, Chair of the Property Managers Working Group of the Montana Association of REALTORS®, and the Montana Association of REALTORS®, Inc. (MAR) (Collectively the Petitioners).

3. The original Notice of Petition for Declaratory Ruling was published in the Montana Administrative Register in the Interpretation Section on November 13, 2003 at page 2557, issue no. 21. Hearing on the original notice was set for December 12, 2003. The Department extended the time for comment and set another date for hearing on this matter. The Amended Notice of Petition for Declaratory Ruling was published in the Montana Administrative Register in the Interpretation Section on February 12, 2004 at page 342, issue no. 3. Hearing on the Amended Notice of Petition for Declaratory Ruling was set for March 4, 2004, at 9:00 a.m., in room 471, Park Avenue Building, 301 South Park Avenue, Helena, Montana.

4. Prior to the March 4, 2004 hearing, Petitioners made their request to withdraw the Petition. The Board, having no objection, agreed to the withdrawal. However, the request arrived too late for publication prior to the hearing. Consequently, the Board notified the interested parties via mail that the Petition would be withdrawn. A representative

from the board appeared at the time and place for the hearing in order to notify any persons who appeared that the hearing was canceled. No persons appeared at the time and place for hearing.

5. The March 4, 2004 hearing on this matter was and is hereby canceled. Comments are no longer accepted and comments already submitted will not be considered. No further Order of the Board of Realty Regulation will be forthcoming.

BOARD OF REALTY REGULATION
LAURA ODEGAARD, CHAIRPERSON

/s/ WENDY J. KEATING
Wendy J. Keating, Commissioner
DEPARTMENT OF LABOR & INDUSTRY

Certified to the Secretary of State March 15, 2004.

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

Use of the Administrative Rules of Montana (ARM):

- | | |
|-------------------------------------|---|
| Known
Subject | 1. Consult ARM topical index.
Update the rule by checking the accumulative table and the table of contents in the last Montana Administrative Register issued. |
| Statute
Number and
Department | 2. Go to cross reference table at end of each title which lists MCA section numbers and 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, 2003. This table includes those rules adopted during the period January 1, 2004 through March 31, 2004 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).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through December 31, 2003, 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 2003 and 2004 Montana Administrative Registers.

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

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BOARD APPOINTEES AND VACANCIES

Section 2-15-108, MCA, passed by the 1991 Legislature, directed that all appointing authorities of all appointive boards, commissions, committees and councils of state government take positive action to attain gender balance and proportional representation of minority residents to the greatest extent possible.

One directive of 2-15-108, MCA, is that the Secretary of State publish monthly in the *Montana Administrative Register* a list of appointees and upcoming or current vacancies on those boards and councils.

In this issue, appointments effective in February 2004, appear. Vacancies scheduled to appear from April 1, 2004, through June 30, 2004, 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 March 12, 2004.

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 FEBRUARY 2004

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Appellate Defender Commission (Administration)			
Ms. Beverly Kolar	Governor	not listed	2/9/2004
Geyser			1/1/2007
Qualifications (if required): public member			
Board of Personnel Appeals (Labor and Industry)			
Mr. Jack Holstrom	Governor	Holstrom	2/25/2004
Clancy			1/1/2008
Qualifications (if required): attorney with labor-management experience			
Board of Regents of Higher Education (Commissioner of Higher Education)			
Mr. Mike Foster	Governor	Jasmin	2/1/2004
Billings			2/1/2011
Qualifications (if required): representative of District 2 and a Republican			
Board of Veterans' Affairs (Military Affairs)			
Sen. Joe Tropila	Governor	not listed	2/25/2004
Great Falls			8/1/2006
Qualifications (if required): representative of the State Administration and Veterans' Affairs Interim Committee			
Capital Finance Advisory Council (Administration)			
Mr. Dick Anderson	Governor	not listed	2/9/2004
Helena			2/9/2006
Qualifications (if required): representative of the Board of Investments			
Ms. Michelle Barstad	Governor	not listed	2/9/2004
Helena			2/9/2006
Qualifications (if required): representative of the Montana Facility Finance Authority			

BOARD AND COUNCIL APPOINTEES FROM FEBRUARY 2004

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Capital Finance Advisory Council (Administration) cont.			
Mr. Bud Clinch Helena	Governor	not listed	2/9/2004 2/9/2006
Qualifications (if required): representative of the Department of Natural Resources and Conservation			
Mr. Jim Currie Helena	Governor	not listed	2/9/2004 2/9/2006
Qualifications (if required): representative of the Department of Transportation			
Sen. Royal C. Johnson Billings	Governor	not listed	2/9/2004 2/9/2006
Qualifications (if required): legislator			
Sen. Bea McCarthy Anaconda	Governor	not listed	2/9/2004 2/9/2006
Qualifications (if required): legislator			
Mr. W. Ralph Peck Helena	Governor	not listed	2/9/2004 2/9/2006
Qualifications (if required): representative of the Department of Agriculture			
Mr. Mark Semmens Great Falls	Governor	not listed	2/9/2004 2/9/2006
Qualifications (if required): representative of the Board of Regents			
Ms. Jan Sensibaugh Helena	Governor	not listed	2/9/2004 2/9/2006
Qualifications (if required): representative of the Department of Environmental Quality			
Mr. Mark A. Simonich Helena	Governor	not listed	2/9/2004 2/9/2006
Qualifications (if required): representative of the Department of Commerce			

BOARD AND COUNCIL APPOINTEES FROM FEBRUARY 2004

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Capital Finance Advisory Council (Administration) cont.			
Sen. Chuck Swysgood Helena	Governor	not listed	2/9/2004 2/9/2006
Qualifications (if required): representative of the Budget Office			
Mr. Bob Thomas Stevensville	Governor	not listed	2/9/2004 2/9/2006
Qualifications (if required): representative of the Board of Housing			
Committee on Telecommunications Access Services (Public Health and Human Services)			
Ms. Linda Kirkland Helena	Governor	Brandt	2/9/2004 7/2/2004
Qualifications (if required): representative of the Department of Administration			
Developmental Disabilities Planning and Advisory Council (Commerce)			
Ms. Sylvia Danforth Miles City	Governor	reappointed	2/9/2004 1/1/2005
Qualifications (if required): representative of service providers			
Ms. JoAnn Dotson Helena	Governor	reappointed	2/9/2004 1/1/2005
Qualifications (if required): Title IV representative from the Department of Public Health and Human Services			
Ms. Kim Evermann Helena	Governor	reappointed	2/9/2004 1/1/2005
Qualifications (if required): representative of the Older Americans Act			
Ms. Bernadette Franks-Ongoy Helena	Governor	reappointed	2/9/2004 1/1/2005
Qualifications (if required): representative of the Protection and Advocacy System			

BOARD AND COUNCIL APPOINTEES FROM FEBRUARY 2004

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Developmental Disabilities Planning and Advisory Council (Commerce) cont.			
Mr. Rocky Hughes Kalispell	Governor	Brown, Jr.	2/9/2004 1/1/2005
Qualifications (if required): primary consumer and a Native American			
Rep. Bob Lawson Whitefish	Governor	reappointed	2/9/2004 1/1/2005
Qualifications (if required): legislator			
Mr. Dan McCarthy Helena	Governor	reappointed	2/9/2004 1/1/2005
Qualifications (if required): representative of the Office of Public Instruction and the IDEA Act			
Mr. Jeff Sturm Helena	Governor	Conselyea	2/9/2004 1/1/2005
Qualifications (if required): Title XIX representative from Department of Public Health and Human Services			
Dr. R. Timm Vogelsberg Missoula	Governor	reappointed	2/9/2004 1/1/2005
Qualifications (if required): representative of University Centers for Excellence			
Ms. Jan Wenaas Great Falls	Governor	Standing Rock	2/9/2004 1/1/2005
Qualifications (if required): secondary consumer and parent of a developmentally disabled adult			
Ms. Denise Wolf Helena	Governor	Disburg	2/9/2004 1/1/2005
Qualifications (if required): Rehabilitation Act representative			

BOARD AND COUNCIL APPOINTEES FROM FEBRUARY 2004

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
District Court Judge District 18 Department 1 (Justice)			
Judge Holly B. Brown Bozeman	Governor	Guenther	2/19/2004 1/1/2005
Qualifications (if required): nominee of the Judicial Nomination Commission			
Family Support Services Advisory Council (Public Health and Human Services)			
Ms. Mary Huston Richland	Governor	Grey Bear	2/24/2004 10/1/2004
Qualifications (if required): parent representative from Region 1			
Homeland Security Task Force (Military Affairs)			
Mr. Dan McGowan Helena	Governor	Knecht	2/23/2004 10/1/2004
Qualifications (if required): DES Administrator and Chairman			
Montana Correctional Enterprises Ranch Advisory Council (Corrections)			
Sen. Sherm Anderson Deer Lodge	Governor	not listed	2/25/2004 2/25/2006
Qualifications (if required): public member			
Sen. Thomas Beck Helena	Governor	not listed	2/25/2004 2/25/2006
Qualifications (if required): public member			
Mr. Don Davis Deer Lodge	Governor	not listed	2/25/2004 2/25/2006
Qualifications (if required): public member			
Rep. Edward (Ed) J. Grady Canyon Creek	Governor	not listed	2/25/2004 2/25/2006
Qualifications (if required): public member			

BOARD AND COUNCIL APPOINTEES FROM FEBRUARY 2004

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Montana Correctional Enterprises Ranch Advisory Council (Corrections) cont.			
Mr. Ray Lybeck Kalispell	Governor	not listed	2/25/2004 2/25/2006
Qualifications (if required):	public member		
Sen. Gerald Pease Lodge Grass	Governor	not listed	2/25/2004 2/25/2006
Qualifications (if required):	public member		
Rep. Allen Rome Garrison	Governor	not listed	2/25/2004 2/25/2006
Qualifications (if required):	public member		
Sen. Bill Tash Dillon	Governor	not listed	2/25/2004 2/25/2006
Qualifications (if required):	public member		
Rep. Robert Thoft Stevensville	Governor	not listed	2/25/2004 2/25/2006
Qualifications (if required):	public member		
Noxious Weed Seed Free Forage Advisory Council (Agriculture)			
Mr. Dennis Cash Bozeman	Director	not listed	2/11/2004 2/11/2006
Qualifications (if required):	ex officio		
Mr. Ray Ditterline Bozeman	Director	not listed	2/11/2004 2/11/2006
Qualifications (if required):	ex officio		
Mr. Kelly Flynn Townsend	Director	not listed	2/11/2004 2/11/2006
Qualifications (if required):	outfitters and guides		

BOARD AND COUNCIL APPOINTEES FROM FEBRUARY 2004

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Noxious Weed Seed Free Forage Advisory Council (Agriculture) cont.			
Mr. John Kelly Great Falls	Director	not listed	2/11/2004 2/11/2006
Qualifications (if required):	livestock/agriculture		
Mr. Keith Kirscher Townsend	Director	not listed	2/11/2004 2/11/2006
Qualifications (if required):	forage producer		
Mr. David Leininger Lewistown	Director	not listed	2/11/2004 2/11/2006
Qualifications (if required):	forage producer		
Mr. Jim Pfau Stevensville	Director	not listed	2/11/2004 2/11/2006
Qualifications (if required):	feed pellets/cubes products		
Mr. Tim Schaff Fishtail	Director	not listed	2/11/2004 2/11/2006
Qualifications (if required):	forage producer		
Ms. Sharon Scognamiglio Anaconda	Director	not listed	2/11/2004 2/11/2006
Qualifications (if required):	weed districts		
Mr. Ross Wagner Kalispell	Director	not listed	2/11/2004 2/11/2006
Qualifications (if required):	forage producer		
Mr. Clay Williams Livingston	Director	not listed	2/11/2004 2/11/2006
Qualifications (if required):	weed districts		

BOARD AND COUNCIL APPOINTEES FROM FEBRUARY 2004

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Peace Officers Standards and Training Advisory Council (Justice)			
Ms. Elaine Allestad Big Timber	Governor	not listed	2/9/2004 2/9/2006
Qualifications (if required): representative of the Board of Crime Control			
Mr. Mike Batista Helena	Governor	not listed	2/9/2004 2/9/2006
Qualifications (if required): representative of the Montana Law Enforcement Academy			
Ms. Shanna Bulik-Chism Great Falls	Governor	not listed	2/9/2004 2/9/2006
Qualifications (if required): representative of juvenile detention administrators			
Mr. Bill Dove Bozeman	Governor	not listed	2/9/2004 2/9/2006
Qualifications (if required): representative of the Police Protective Association			
Mr. Gary Fjelstad Forsyth	Governor	not listed	2/9/2004 2/9/2006
Qualifications (if required): representative of the Montana Association of Counties			
Mr. Greg Hintz Missoula	Governor	not listed	2/9/2004 2/9/2006
Qualifications (if required): representative of the Deputy Sheriff's Association			
Ms. Anne Kindness Billings	Governor	not listed	2/9/2004 2/9/2006
Qualifications (if required): representative of 9-1-1 services			
Mr. Dennis McCave Billings	Governor	not listed	2/9/2004 2/9/2006
Qualifications (if required): representative of the Montana Detention Officers Association			

BOARD AND COUNCIL APPOINTEES FROM FEBRUARY 2004

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Peace Officers Standards and Training Advisory Council (Justice) cont.			
Mr. Christopher Miller Deer Lodge	Governor	not listed	2/9/2004 2/9/2006
Qualifications (if required): representative of the Montana Attorneys Association			
Dr. Raymond Murray Missoula	Governor	not listed	2/9/2004 2/9/2006
Qualifications (if required): representative of the public			
Ms. Winnie Ore Helena	Governor	not listed	2/9/2004 2/9/2006
Qualifications (if required): representative of the Department of Corrections			
Mr. John Ramsey Helena	Governor	not listed	2/9/2004 2/9/2006
Qualifications (if required): representative of the Department of Fish, Wildlife, and Parks			
Mr. Jim Smith Helena	Governor	not listed	2/9/2004 2/9/2006
Qualifications (if required): representative of the League of Cities and Towns			
Mr. Bill Troutwine Winnett	Governor	not listed	2/9/2004 2/9/2006
Qualifications (if required): representative of the Sheriff's Association			
Mr. Mark Tymrak Bozeman	Governor	not listed	2/9/2004 2/9/2006
Qualifications (if required): representative of the Police Chiefs Association			
Mr. Jack Wiseman Helena	Governor	not listed	2/9/2004 2/9/2006
Qualifications (if required): representative of the Department of Livestock			

BOARD AND COUNCIL APPOINTEES FROM FEBRUARY 2004

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Peace Officers Standards and Training Advisory Council (Justice) cont.			
Mr. Randy Yaeger Helena	Governor	not listed	2/9/2004 2/9/2006
Qualifications (if required): representative of the Montana Highway Patrol			
Risk Management Advisory Council (Administration)			
Mr. Steve Bender Helena	Governor	Darkenwald	2/9/2004 6/20/2005
Qualifications (if required): Acting Director of the Department of Administration			
Traumatic Brain Injury Advisory Council (Public Health and Human Services)			
Ms. Ruby Clark Poplar	Governor	not listed	2/10/2004 1/1/2005
Qualifications (if required): family member of a survivor			
Mr. Ian Elliot Billings	Governor	not listed	2/10/2004 1/1/2007
Qualifications (if required): family member of a survivor			
Mr. Reg Gibbs Billings	Governor	not listed	2/10/2004 1/1/2005
Qualifications (if required): representative of injury control or prevention programs			
Mr. Jim Hunt Helena	Governor	not listed	2/10/2004 1/1/2007
Qualifications (if required): representative of advocates for brain injured persons			
Ms. Jane Lux Missoula	Governor	not listed	2/10/2004 1/1/2007
Qualifications (if required): representative of advocates for brain injured persons			

BOARD AND COUNCIL APPOINTEES FROM FEBRUARY 2004

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Traumatic Brain Injury Advisory Council (Public Health and Human Services) cont.			
Ms. Marilyn Patrick Butte	Governor	not listed	2/10/2004 1/1/2006
Qualifications (if required): family member of a survivor			
Youth Justice Council (Justice)			
Mr. Leroy Bingham Billings	Governor	Wagner	2/12/2004 6/20/2005
Qualifications (if required): public member and Native American			
Ms. Joan Cassidy Helena	Governor	Lucich	2/12/2004 6/20/2005
Qualifications (if required): public member			

VACANCIES ON BOARDS AND COUNCILS -- APRIL 1, 2004 through JUNE 30, 2004

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Board of Athletics (Commerce) Mr. Gary Langley, Helena Qualifications (if required): public member	Governor	4/25/2004
Board of Nursing Home Administrators (Commerce) Mr. Fred Patten, Helena Qualifications (if required): public member over the age of 55	Governor	5/28/2004
Board of Optometry (Commerce) Dr. Douglas McBride, Billings Qualifications (if required): optometrist	Governor	4/3/2004
Board of Plumbers (Commerce) Mr. Kim Beaudry, Billings Qualifications (if required): professional engineer qualified in mechanical engineering	Governor	5/4/2004
Board of Real Estate Appraisers (Commerce) Mr. Tim Moore, Helena Qualifications (if required): real estate appraiser	Governor	5/1/2004
Ms. Jennifer Seitz, Billings Qualifications (if required): public member	Governor	5/1/2004
Board of Real Estate Appraisers (Labor and Industry) Mr. Keith O'Reilly, Bozeman Qualifications (if required): real estate appraiser	Governor	5/1/2004
Board of Realty Regulation (Commerce) Ms. Laura Odegaard, Billings Qualifications (if required): realtor	Governor	5/9/2004

VACANCIES ON BOARDS AND COUNCILS -- APRIL 1, 2004 through JUNE 30, 2004

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Commission on Practice of the Supreme Court (Justice) Mr. Bruce A. Fredrickson, Billings Qualifications (if required): elected	elected	4/27/2004
District Court Council (Supreme Court) Judge Thomas M. McKittrick, Great Falls Qualifications (if required): none specified	elected	6/30/2004
Mr. Glen Welch Qualifications (if required): nonvoting member	Supreme Court	6/30/2004
Eastern Montana State Veterans Cemetery Advisory Council (Military Affairs) Mr. Tony Harbaugh, Miles City Qualifications (if required): Custer County Sheriff	Director	6/1/2004
Mr. James F. Jacobsen, Helena Qualifications (if required): none specified	Director	6/1/2004
Mr. Henry "Bill" Hopkins, Ismay Qualifications (if required): Disabled American Veterans	Director	6/1/2004
Ms. Betty Hopkins, Ismay Qualifications (if required): Disabled American Veterans Auxiliary	Director	6/1/2004
Mr. Bob Beals, Forsyth Qualifications (if required): American Legion	Director	6/1/2004
Ms. Linda Dolatta, Terry Qualifications (if required): American Legion Auxiliary	Director	6/1/2004
Mr. Bill Dolatta, Terry Qualifications (if required): Vietnam Veterans of America	Director	6/1/2004

VACANCIES ON BOARDS AND COUNCILS -- APRIL 1, 2004 through JUNE 30, 2004

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Eastern Montana State Veterans Cemetery Advisory Council	(Military Affairs) cont.	
Mr. Jim Bertrand, Miles City	Director	6/1/2004
Qualifications (if required):	Veterans of Foreign Wars	
Mr. Stanley Watson, Forsyth	Director	6/1/2004
Qualifications (if required):	Marine Corps League	
Mr. Victor Leikam, Billings	Director	6/1/2004
Qualifications (if required):	40 & 8	
Mr. Frank Stoltz, Miles City	Director	6/1/2004
Qualifications (if required):	Prisoners of War	
Mr. Frederick S. Rambur, Miles City	Director	6/1/2004
Qualifications (if required):	Department of Military Affairs	
Mr. Tom Frank, Miles City	Director	6/1/2004
Qualifications (if required):	Custer County sheriff/coroner alternate	
Mr. Joe Stevenson, Miles City	Director	6/1/2004
Qualifications (if required):	Custer County Commissioner	
Ms. Edith Pawlowski, Circle	Director	6/1/2004
Qualifications (if required):	Veterans of Foreign Wars Auxiliary	
Mr. Alexander Russell, Melstone	Director	6/1/2004
Qualifications (if required):	Military Order of the Purple Heart	
Mr. David Peterson, Billings	Director	6/1/2004
Qualifications (if required):	Disabled American Veterans alternate	
Mr. Tom Handl, Miles City	Director	6/1/2004
Qualifications (if required):	Veterans of Foreign Wars alternate	

VACANCIES ON BOARDS AND COUNCILS -- APRIL 1, 2004 through JUNE 30, 2004

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Eastern Montana State Veterans Cemetery Advisory Council (Military Affairs) cont. Mr. Tom Handl, Miles City Qualifications (if required): Military Order of the Cooties	Director	6/1/2004
Ms. Myrtle Meissner, Circle Qualifications (if required): Veterans of Foreign Wars Auxiliary alternate	Director	6/1/2004
Ms. Sylvia Beals, Forsyth Qualifications (if required): American Legion alternate	Director	6/1/2004
Ms. Donna Dukart, Miles City Qualifications (if required): American Legion Auxiliary alternate	Director	6/1/2004
Mr. John S. Salazar, Miles City Qualifications (if required): Department of Military Affairs alternate	Director	6/1/2004
Helena College of Technology of the U of M Executive Board (University System) Mr. Ronald S. Mercer, Helena Qualifications (if required): public member	Governor	4/15/2004
Microbusiness Advisory Council (Commerce) Mr. Robert J. Jahner, Clancy Qualifications (if required): representing Congressional District 1 and an expert on self employment	Governor	6/30/2004
Ms. Andrea Main, Billings Qualifications (if required): representing Congressional District 2 and minorities	Governor	6/30/2004
Mr. Pat McDermott, Ramsay Qualifications (if required): representing Congressional District 1 and cities over 15,000	Governor	6/30/2004

VACANCIES ON BOARDS AND COUNCILS -- APRIL 1, 2004 through JUNE 30, 2004

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Microbusiness Advisory Council (Commerce) cont. Ms. Jenna Caplette, Bozeman Qualifications (if required): representing Congressional District 1 and cities over 15,000	Governor	6/30/2004
Ms. Denise Jordan, Billings Qualifications (if required): representing Congressional District 2	Governor	6/30/2004
Ms. Nancy Arnold, Missoula Qualifications (if required): representing Congressional District 1 and an expert on self employment	Governor	6/30/2004
Montana Heritage Preservation and Development Commission (Historical Society) Mr. Pat Keim, Helena Qualifications (if required): public member	Governor	5/23/2004
Ms. Judy McNally, Billings Qualifications (if required): public member	Governor	5/23/2004
Mr. John Lawton, Great Falls Qualifications (if required): experienced in community planning	Governor	5/23/2004
Ms. Rosana Skelton, Helena Qualifications (if required): businessperson	Governor	5/23/2004
Montana Potato Advisory Committee (Agriculture) Rep. Donald Steinbeisser, Sidney Qualifications (if required): none specified	Director	5/20/2004
Mr. John Venhuizen, Manhattan Qualifications (if required): none specified	Director	5/20/2004

VACANCIES ON BOARDS AND COUNCILS -- APRIL 1, 2004 through JUNE 30, 2004

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Montana Special Education Advisory Panel (Office of Public Instruction) Mr. Bob Maffit, Helena Qualifications (if required): state agency	Superintendent	6/30/2004
Ms. Gwen Beyer, Missoula Qualifications (if required): Part C/IDEA representative	Superintendent	6/30/2004
Rep. Holly Raser, Missoula Qualifications (if required): legislator	Superintendent	6/30/2004
Ms. Patrice MacDonald, Wolf Point Qualifications (if required): regular classroom teacher	Superintendent	6/30/2004
Ms. Karla Wohlwend, Havre Qualifications (if required): special education program administrator	Superintendent	6/30/2004
Ms. Judith Herzog, Billings Qualifications (if required): business concerned with transitions	Superintendent	6/30/2004
Mr. Russ Bean, Augusta Qualifications (if required): state/local administrator	Superintendent	6/30/2004
Mr. Steve Gibson, Helena Qualifications (if required): representative from juvenile and adult corrections	Superintendent	6/30/2004
Mr. Jeff Stelloh, Billings Qualifications (if required): private school representative	Superintendent	6/30/2004
Mr. Gary Perleberg, Bigfork Qualifications (if required): parent of a child with disabilities	Superintendent	6/30/2004
Ms. Norma Wadsworth, Billings Qualifications (if required): higher education	Superintendent	6/30/2004

VACANCIES ON BOARDS AND COUNCILS -- APRIL 1, 2004 through JUNE 30, 2004

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Montana Special Education Advisory Panel (Office of Public Instruction) cont. Ms. WyAnn Northrop, Missoula Qualifications (if required): teacher of children with disabilities	Superintendent	6/30/2004
Ms. Hanna Fries, East Helena Qualifications (if required): student	Superintendent	6/30/2004
Montana State University Billings Executive Board (University System) Ms. Carol Willis, Billings Qualifications (if required): public member	Governor	4/15/2004
Montana State University Executive Board (University System) Ms. Beatrice Taylor, Bozeman Qualifications (if required): public member	Governor	4/15/2004
Montana State University Great Falls College of Technology Executive Board (University System) Ms. Susan Humble, Great Falls Qualifications (if required): public member	Governor	4/15/2004
Montana State University Northern Executive Board (University System) Mr. Doug Ross, Havre Qualifications (if required): public member	Governor	4/15/2004
Montana Tech of the University of Montana Executive Board (University System) Mr. Tad Dale, Butte Qualifications (if required): public member	Governor	4/15/2004
Montana Vocational Rehabilitation Council (Public Health and Human Services) Ms. Myrle Tompkins, Helena Qualifications (if required): none specified	Director	6/17/2004

VACANCIES ON BOARDS AND COUNCILS -- APRIL 1, 2004 through JUNE 30, 2004

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Petroleum Tank Release Compensation Board (Environmental Quality)		
Mr. Gary Basso, Billings	Governor	6/30/2004
Qualifications (if required): representative of the insurance industry		
Mr. Joseph Murphy, Great Falls	Governor	6/30/2004
Qualifications (if required): petroleum services industry consultant		
Mr. Greg Cross, Billings	Governor	6/30/2004
Qualifications (if required): representative of independent petroleum markets		
Public Employees' Retirement Board (Administration)		
Mr. Jay Klawon, Hamilton	Governor	4/1/2004
Qualifications (if required): experienced in investment management		
Public Safety Communications Council (Administration)		
Mr. Dwight MacKay, Billings	Governor	6/18/2004
Qualifications (if required): representative of a federal agency		
Mr. John Blacker, Helena	Governor	6/18/2004
Qualifications (if required): representative of state government		
Mr. Larry Fasbender, Helena	Governor	6/18/2004
Qualifications (if required): designee of the Attorney General		
Mr. William Jameson, Bozeman	Governor	6/18/2004
Qualifications (if required): representative of citizens at large		
Mr. Gary Fjelstad, Forsyth	Governor	6/18/2004
Qualifications (if required): representative of county government		
Mr. Geoff Feiss, Helena	Governor	6/18/2004
Qualifications (if required): representative of utilities		

VACANCIES ON BOARDS AND COUNCILS -- APRIL 1, 2004 through JUNE 30, 2004

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Public Safety Communications Council (Administration) cont.		
Mr. Chuck Winn, Bozeman	Governor	6/18/2004
Qualifications (if required): representative of fire protection services		
Mr. Brian Wolf, Helena	Governor	6/18/2004
Qualifications (if required): designee of the Director of the Department of Administration		
Mr. Tim Burton, Helena	Governor	6/18/2004
Qualifications (if required): representative of local government		
Mr. Doug King, Billings	Governor	6/18/2004
Qualifications (if required): representative of federal government		
Mr. Stan Putnam, Helena	Governor	6/18/2004
Qualifications (if required): representative of state government		
Mr. Kevin Olson, Havre	Governor	6/18/2004
Qualifications (if required): representative of law enforcement and Montana Association of Chiefs of Police		
Mr. Chuck Maxwell, Billings	Governor	6/18/2004
Qualifications (if required): representative of law enforcement and the Sheriffs and Peace Officers Association		
Mr. Ken Mergenthaler, East Helena	Governor	6/18/2004
Qualifications (if required): representative of volunteer fire protection services		
Ms. Jane Ellis, Missoula	Governor	6/18/2004
Qualifications (if required): representative of the 9-1-1 community		
Mr. Larry Wetsit, Scobey	Governor	6/18/2004
Qualifications (if required): representative of the tribes		

VACANCIES ON BOARDS AND COUNCILS -- APRIL 1, 2004 through JUNE 30, 2004

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Public Safety Communications Council (Administration) cont. Mr. Ken Leighton-Boster, Helena Qualifications (if required): representative of emergency medical services and a state agency	Governor	6/18/2004
State Board of Hail Insurance (Agriculture) Mr. Keith Arntzen, Hilger Qualifications (if required): public member	Governor	4/18/2004
State Library Commission (State Library) Ms. Caroline Bitz, Box Elder Qualifications (if required): public member	Governor	5/22/2004
State Tribal Economic Development Commission (Governor) Mr. Noel Sansaver, Poplar Qualifications (if required): representative of the Fort Peck Tribes	Governor	6/30/2004
Mr. Andy Poole, Helena Qualifications (if required): representing the Department of Commerce	Governor	6/30/2004
Ms. Marilyn Parsons, Browning Qualifications (if required): representing the Blackfeet Tribe	Governor	6/30/2004
Mr. Mark Sansover, Poplar Qualifications (if required): representing the Fort Peck Tribe	Governor	6/30/2004
University of Montana Executive Board (University System) Ms. Arlene Breum, Missoula Qualifications (if required): public member	Governor	4/15/2004

VACANCIES ON BOARDS AND COUNCILS -- APRIL 1, 2004 through JUNE 30, 2004

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
University of Montana Western Executive Board (University System)		
Ms. Betty Iverson, Dillon	Governor	4/15/2004
Qualifications (if required): public member		
Upper Clark Fork River Remediation and Restoration Education Advisory Council (Environmental Quality)		
Mr. Larry Curran, Butte	Governor	4/1/2004
Qualifications (if required): member of the public active in conservation or recreation		
Mr. John Hollenback, Gold Creek	Governor	4/1/2004
Qualifications (if required): conservation district representative		
Ms. Judy H. Jacobson, Butte	Governor	4/1/2004
Qualifications (if required): representative of local government		
Ms. Sally Johnson, Missoula	Governor	4/1/2004
Qualifications (if required): representative of the public		
Mr. Haley Beaudry, Butte	Governor	4/1/2004
Qualifications (if required): engineer		
Mr. Jim Flynn, Anaconda	Governor	4/1/2004
Qualifications (if required): businessman		
Mr. Matt Clifford, Missoula	Governor	4/1/2004
Qualifications (if required): representative of a non-profit organization		
Ms. Carol Fox, Helena	Governor	4/1/2004
Qualifications (if required): Chief of the Natural Resource Damage Program		
Ms. Jan Sensibaugh, Helena	Governor	4/1/2004
Qualifications (if required): Director of the Department of Environmental Quality and a non-voting member		

VACANCIES ON BOARDS AND COUNCILS -- APRIL 1, 2004 through JUNE 30, 2004

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Upper Clark Fork River Remediation and Restoration Education Advisory Council		
(Environmental Quality) cont.		
Mr. M. Jeff Hagener, Helena	Governor	4/1/2004
Qualifications (if required):	Director of the Department of Fish, Wildlife, and Parks and a non-voting member	
Mr. Gene Vuckovich, Anaconda	Governor	4/1/2004
Qualifications (if required):	local development specialist	
Mr. Jules Waber, Deer Lodge	Governor	4/1/2004
Qualifications (if required):	representative of local government	
Mr. Jerry Harrington, Butte	Governor	4/1/2004
Qualifications (if required):	natural resource scientist	
Western Interstate Commission on Higher Education (Commissioner of Higher Education)		
Dr. Francis J. Kerins, Helena	Governor	6/19/2004
Qualifications (if required):	public member	