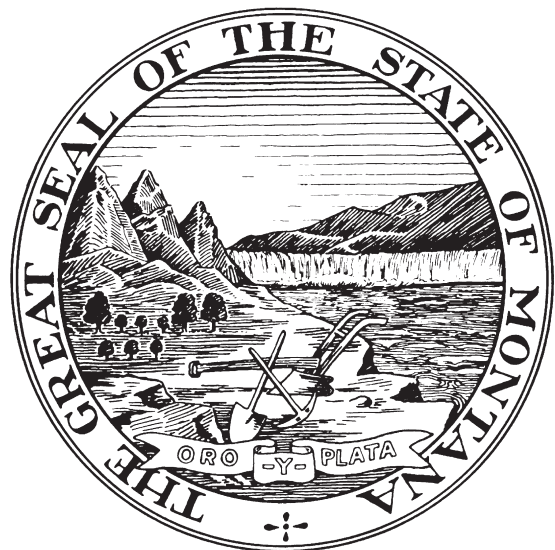


MONTANA ADMINISTRATIVE REGISTER

2019 ISSUE NO. 9
MAY 10, 2019
PAGES 509-557



MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 9

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 The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

Inquiries regarding the rulemaking process, including material found in the Montana Administrative Register and the Administrative Rules of Montana, may be made by calling the Secretary of State's Office, Administrative Rules Services, at (406) 444-9000.

Page Number

TABLE OF CONTENTS

PROPOSAL NOTICE SECTION

LABOR AND INDUSTRY, Department of, Title 24

24-165-24 (Board of Occupational Therapy Practice) Notice of Public Hearing on Proposed Amendment, Adoption, and Repeal - Definitions - Fees - Military Training or Experience - Examinations - Supervision - Deep Modality Endorsement - Recognized Education Programs - Standards of Practice - Approved Modality Instruction - Approved Training - Endorsement to Apply Topical Medications - Use of Topical Medications - Protocols for Use of Topical Medications - Debriding Agents Protocols - Anesthetic Agents Protocols - Nonsteroidal Anti-Inflammatory Agents Protocols - Antispasmodic Agents Protocols - Adrenocortico-Steroid Agent Protocols - Protocol for Use of an Approved Medication as a Neuropathic Pain Agent - Temporary Practice Permit - Inactive Status - Continuing Education - Continuing Education-Exemption - Unprofessional Conduct - Bactericidal Agents Protocols - Applications for Licensure - Pass-Fail Criteria - Supervision-Methods - Documentation of Instruction and Training - Approval to Use Sound and Electrical Physical Agent Modalities Endorsement - Documenting Education and Competence to Perform Sound and Electrical Physical Agent Modalities-Out-of-State Practitioners.

509-528

PUBLIC HEALTH AND HUMAN SERVICES, Department of, Title 37

37-883 Notice of Proposed Amendment - Updating the Federal Poverty Index Guidelines for the Montana Telecommunications Access Program (MTAP). No Public Hearing Contemplated. 529-531

RULE ADOPTION SECTION

AGRICULTURE, Department of, Title 4

4-19-255 Notice of Adoption and Amendment - Hemp. 532-536

4-19-256 Notice of Amendment - Financial Responsibility. 537

FISH, WILDLIFE AND PARKS, Department of, Title 12

12-507 (Fish and Wildlife Commission) Notice of Adoption and Amendment - No Wake Zones on Canyon Ferry Reservoir. 538-542

TRANSPORTATION, Department of, Title 18

18-173 Notice of Amendment - Motor Carrier Services Safety Requirements. 543

LABOR AND INDUSTRY, Department of, Title 24

24-117-33 Notice of Amendment and Repeal - Licensure and Regulation of Professional Boxing. 544

PUBLIC HEALTH AND HUMAN SERVICES, Department of, Title 37

37-879 Notice of Amendment - Low Income Weatherization Assistance Program (LIWAP). 545

37-881 Notice of Amendment - Healthy Montana Kids (HMK) Dental Benefits. 546

SPECIAL NOTICE AND TABLE SECTION

Function of Administrative Rule Review Committee. 547-548

How to Use ARM and MAR. 549

Recent Rulemaking by Agency. 550-557

BEFORE THE BOARD OF OCCUPATIONAL THERAPY PRACTICE
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of ARM) NOTICE OF PUBLIC HEARING ON
24.165.302 definitions, 24.165.401) PROPOSED AMENDMENT,
fees, 24.165.406 military training or) ADOPTION, AND REPEAL
experience, 24.165.407 examinations,)
24.165.501 supervision, 24.165.505)
deep modality endorsement,)
24.165.506 recognized educational)
programs, 24.165.507 standards of)
practice, 24.165.509 approved modality)
instruction, 24.165.510 approved)
training, 24.165.514 endorsement to)
apply topical medications, 24.165.516)
use of topical medications, 24.165.517)
protocols for use of topical medications,)
24.165.518 debriding agents protocols,)
24.165.519 anesthetic agents protocols,)
24.165.520 nonsteroidal anti-)
inflammatory agents protocols,)
24.165.521 antispasmodic agents)
protocols, 24.165.522 adrenocortico-)
steroid agent protocols, 24.165.524)
protocol for use of an approved)
medication as a neuropathic pain agent,)
24.165.601 temporary practice permit,)
24.165.604 inactive status, 24.165.2101)
continuing education, 24.165.2102)
continuing education – exemption,)
24.165.2301 unprofessional conduct,)
the adoption of New Rule I bactericidal)
agents protocols, and the repeal of)
24.165.404 applications for licensure,)
24.165.410 pass-fail criteria,)
24.165.502 supervision – methods,)
24.165.511 documentation of)
instruction and training, 24.165.513)
approval to use sound and electrical)
physical agent modalities endorsement,)
24.165.525 documenting education and)
competence to perform sound and)
electrical physical agent modalities –)
out-of-state practitioners)

TO: All Concerned Persons

1. On June 13, 2019, at 9:00 a.m., a public hearing will be held in the Large Conference Room, 301 South Park Avenue, 4th Floor, Helena, Montana, to consider the proposed amendment, adoption, and repeal of the above-stated rules.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Occupational Therapy Practice no later than 5:00 p.m., on June 6, 2019, to advise us of the nature of the accommodation that you need. Please contact L'Joy Griebenow, Board of Occupational Therapy Practice, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2258; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; or dlibsdotp@mt.gov (board's e-mail).

3. GENERAL REASONABLE NECESSITY STATEMENT: The 2019 Montana Legislature enacted Chapter 112, Laws of 2019 (Senate Bill 59), an act eliminating the requirement for occupational therapists to obtain an endorsement to utilize sound and electrical physical agent modalities in their practices. The board determined it is reasonably necessary to amend and repeal certain rules to remove references to this modality and further implement the legislation. The bill was signed by the Governor on April 3, 2019, and will become effective October 1, 2019.

As part of the periodic review of its administrative rules, the board is proposing revisions throughout the rules. Some of the proposed amendments are technical in nature, such as renumbering, reorganizing, or amending punctuation within certain rules following amendment and to comply with ARM formatting requirements. Other changes replace out-of-date terminology for current language and processes, delete unnecessary or redundant sections, update and improve grammar and language choices, and amend rules for accuracy, consistency, simplicity, better organization, and ease of use. Authority and implementation citations are being amended throughout to accurately reflect all statutes implemented through the rules and provide the complete sources of the board's rulemaking authority. Accordingly, the board has determined that it is reasonably necessary to generally amend certain rules at this time. Where additional specific bases for a proposed action exist, the board will identify those reasons immediately following that rule.

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

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

(1) "Clinician" means an occupational therapist endorsed by the board to administer topical medications.

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

(4) "Direct supervision" means the supervisor is physically present in the direct treatment area of the client-related activity being performed by the supervisee

and requires face-to-face communication, direction, observation, and daily evaluation.

(5) "Documentation" means evidence of successfully completing a formal instruction program and must include:

(a) an official certificate of attendance or completion indicating:

(i) name or title of the course attended;

(ii) number of hours of course instruction; and

(iii) date(s) the course was attended; and

(b) a course syllabus.

(6) "General supervision" means the supervisor provides face-to-face communication, direction, observation, and evaluation of a supervisee's delivery of client services at least monthly at the site of client-related activity, with interim supervision occurring by other methods, such as telephonic, electronic, or written communication.

(7) "Instruction" means didactic study presented in any of the following forums:

(a) continuing education unit course work;

(b) in-service training by licensed health care professionals;

(c) professional conference;

(d) professional workshop; or

(e) self-study course work pursuant to ARM 24.165.2101.

(3) and (4) remain the same but are renumbered (8) and (9).

(10) "Routine supervision" of temporary permit holders means direct contact at least daily at the site of work, with interim supervision by other methods, such as telephonic, electronic, or written communication.

(5) and (6) remain the same but are renumbered (11) and (12).

AUTH: 37-1-131, 37-24-201, 37-24-202, MCA

IMP: 37-1-101, 37-24-103, 37-24-105, 37-24-106, 37-24-107, 37-24-108,

MCA

REASON: The board determined it is reasonably necessary to have all pertinent definitions in a single location and is relocating several definitions from elsewhere in the rules.

24.165.401 FEES (1) Fees adopted by the board under 37-24-310, MCA, are as follows:

(a) through (e)(i) remain the same.

~~(ii) sound and electrical~~ _____ 35

(iii) remains the same but is renumbered (ii).

(f) through (3) remain the same.

AUTH: 37-1-131, 37-1-134, 37-24-201, 37-24-202, 37-24-310, MCA

IMP: 37-1-134, 37-1-141, 37-24-306, 37-24-310, MCA

REASON: The board determined it is reasonably necessary to amend this rule and eliminate the application fee for sound and electrical physical agent modality and

further implement Senate Bill 59. Because the legislation eliminates the requirement that occupational therapists obtain an endorsement to utilize these modalities, it is reasonably necessary to strike the fee. The board estimates that this fee elimination will affect approximately 3 persons and decrease annual revenue by \$105.

24.165.406 MILITARY TRAINING OR EXPERIENCE (1) and (2) remain the same.

(3) An applicant must submit satisfactory evidence of receiving military training, service, or education that is equivalent to relevant licensure requirements as an occupational therapist or occupational therapy assistant. ~~At a minimum, satisfactory~~ Satisfactory evidence ~~shall include~~ includes:

(a) a copy of the applicant's military discharge document (DD 214 or other discharge documentation);

(b) through (4) remain the same.

AUTH: 37-1-145, MCA

IMP: 37-1-145, MCA

REASON: Since adopting this rule, the board has become aware that certain military personnel (reservists and national guardsmen who have never been activated) in fact do not receive a DD 214 form upon discharge from the military. Because the current rule may be interpreted to require a DD 214 from all applicants who submit evidence of relevant military training, service, or education as part of the licensure process, the board is amending the rule to allow consideration of other evidence of military discharge in addition to or in lieu of a DD 214 form.

24.165.407 EXAMINATIONS (1) The board adopts the examination ~~offered and pass/fail criteria administered~~ through the National Board of Certification in Occupational Therapy (NBCOT).

~~(2) Arrangements and fees for examinations are the responsibility of the applicant and shall be made with the NBCOT.~~

~~(3) (2) It shall be the responsibility of the applicant to assure that his or her~~ Applicants must ensure that examination score is forwarded by the NBCOT forwards examination scores to the board.

~~(4) Applicants who fail an examination may be reexamined upon payment of another examination fee to the NBCOT.~~

~~(5) Examinations will be given as set by the NBCOT.~~

AUTH: 37-1-131, 37-24-201, 37-24-202, MCA

IMP: 37-1-131, 37-24-303, MCA

24.165.501 SUPERVISION - GENERAL STATEMENT (1) ~~(Adapted from the American Occupational Therapy Association Position Statement on Supervision, 1993). The supervisor~~ Supervisors shall determine the degree of required level of supervision to administer to the supervisee based on the supervisor's estimation of the supervisee's clinical experience, responsibilities, and competence at a minimum.

~~(2) A fully licensed occupational therapist shall~~ Occupational therapists do

not require supervision except for the direct supervision required for of proctored treatments.

(3) ~~A certified~~ Except per 37-24-105(2) and 37-24-106(2), MCA, certified occupational therapist assistant ~~therapy assistants, in accordance with 37-24-103, MCA, shall~~ must work under the general supervision of a licensed an occupational therapist.

(4) Temporary practice permit holders ~~under 37-1-305, MCA, shall~~ must work under the routine supervision of a certified occupational therapist therapy assistant or a licensed an occupational therapist.

(5) ~~Entry level practitioners shall be defined as practitioners having less than six month's experience in the specific practice setting and may on a case-by-case basis, require supervision as determined by the board.~~

(6) (5) Occupational therapy aides ~~under 37-24-103, MCA, shall~~ must work under the direct supervision of a licensed an occupational therapist or a certified an occupational therapist therapy assistant. ~~Occupational therapy aides shall have no supervisory capacity.~~

AUTH: 37-1-131, 37-1-319, 37-24-201, 37-24-202, MCA

IMP: 37-1-305, 37-24-103, 37-24-106, 37-24-107, MCA

24.165.505 DEEP MODALITY ENDORSEMENT (1) The board ~~may grant a will issue a~~ deep modality endorsement to a licensed occupational therapist who has ~~met~~ therapists meeting the requirements of 37-24-105, 37-24-106, and 37-24-107, MCA, in the use of sound and electrical physical agent modalities and occupational therapy techniques involving topical medications.

AUTH: 37-1-131, 37-24-202, MCA

IMP: 37-1-131, 37-24-105, 37-24-106, 37-24-107, MCA

24.165.506 QUALIFYING EDUCATION RECOGNIZED EDUCATIONAL PROGRAMS (1) ~~In accordance with 37-24-105 and 37-24-106, MCA, educational programs that would satisfy education requirements for use of superficial physical agent modalities or sound and electrical physical agent modalities must be~~ For licensure as an occupational therapist, the board recognizes those educational programs approved or recognized either by the American Occupational Therapy Association or the American Society of Hand Therapists ~~or be approved by the board.~~

AUTH: 37-24-202, MCA

IMP: ~~37-24-105, 37-24-106,~~ 37-24-303, MCA

24.165.507 STANDARDS OF PRACTICE (1) The board adopts by reference the ~~2010~~ 2015 American Occupational Therapy Association's Standards of Practice. A copy of these standards is available ~~from the office of the Board of Occupational Therapy Practice~~ at aota.org.

AUTH: 37-24-202, MCA

IMP: 37-24-105, 37-24-106, MCA

- 24.165.509 APPROVED MODALITY INSTRUCTION (1) ~~The term "instruction" refers to didactic study that is presented in any of the following forums:~~
- ~~(a) continuing education unit course work;~~
 - ~~(b) in-service training by licensed health care professionals;~~
 - ~~(c) professional conference;~~
 - ~~(d) professional workshop; or~~
 - ~~(e) self study course work pursuant to ARM 24.165.2101.~~
- (2) ~~(1) Any of the~~ The board has approved the following sponsors or providers of instruction ~~are approved by the board to provide instruction to licensees who wish seeking endorsement to provide sound and electrical physical agent modalities or superficial physical agent modalities:~~
- (a) through (d) remain the same.
- (3) ~~(2)~~ The board will approve instruction provided by licensed health care professionals whose competency in teaching the use of ~~sound and electrical physical agent modalities and superficial physical agent modalities~~ is demonstrated to the satisfaction of the board.
- (4) ~~(3)~~ To be approved by the board, the instructor must ~~submit proof that the instructor:~~
- ~~(a) is be~~ a licensed or otherwise regulated professional allowed to use ~~sound and electrical physical agent modalities or superficial physical agent modalities;~~ and
 - ~~(b) has have~~ more than one year of clinical experience in the use of ~~sound and electrical physical agent modalities or superficial physical agent~~ these modalities.

AUTH: 37-1-131, 37-24-201, 37-24-202, MCA

IMP: 37-1-131, 37-24-105, ~~37-24-106~~, 37-24-107, MCA

- 24.165.510 APPROVED TRAINING (1) ~~The term "training" Approved training~~ includes proctored sessions provided by example and observation ~~by a qualified person.~~
- (2) ~~A qualified person, within the meaning of this rule, is any person who is of either:~~
- (a) a licensed an occupational therapist:
 - (i) and (ii) remain the same.
 - (b) a licensed health care professional ~~who has with~~ more than one year of clinical experience in the use of sound and electrical physical agent modalities or superficial physical agent modalities as within the professional's licensed scope of practice.

AUTH: 37-1-131, 37-24-201, 37-24-202, MCA

IMP: 37-1-131, 37-24-105, ~~37-24-106~~, 37-24-107, MCA

- 24.165.514 QUALIFICATIONS ENDORSEMENT TO APPLY TOPICAL MEDICATIONS – CLINICIAN DEFINED (1) ~~Prior to~~ To obtain an endorsement for

the administration or use of topical medications on a patient, an occupational therapist shall:

~~(a) successfully complete instruction or training provided in 37-24-106, MCA, and ARM 24.165.513, for the use of sound and electrical physical agent modalities; and~~

~~(b) successfully complete five hours of instruction or training approved by the board in:~~

~~(i) through (iv) remain the same.~~

~~(e) (b) perform one proctored treatment in direct application of topical medications under the direct supervision of a licensed medical practitioner, as described in ARM 24.165.510(2), and either:~~

~~(i) two proctored treatments in phonophoresis under the direct supervision of a licensed medical practitioner; or~~

~~(ii) three proctored treatments of iontophoresis under the direct supervision of a licensed medical practitioner.~~

~~(2) For the purposes of the rules related to application of topical medications by occupational therapists, the term "clinician" means an occupational therapy licensee who has been approved by the board to administer topical medications. All proctored treatments required in (1) must be under the direct supervision of a person offering training per ARM 24.165.510.~~

AUTH: 37-24-201, 37-24-202, MCA

IMP: 37-24-106, 37-24-107, 37-24-108, MCA

24.165.516 USE OF TOPICAL MEDICATIONS (1) Topical medication prescribed for a patient on a specific or standing basis by a licensed medical practitioner with prescriptive authority must be obtained by the patient or an authorized representative from a licensed Montana pharmacy. ~~The topical medication may be obtained by either:~~

~~(a) the clinician who will be administering the topical medication; or~~

~~(b) the patient.~~

~~(2) All prescribed topical medications, whether obtained by the clinician or directly by the patient,;~~

~~(a) must be stored at the clinician's place of business in compliance with proper storage guidelines under Title 37, chapter 7, MCA, or as otherwise developed by the Board of Pharmacy, or as noted by the pharmacist,;~~

~~(a) Any particular requirements for storage as noted by the pharmacist must be followed by the clinician.~~

~~(b) Topical medications must be stored in the environmental conditions as prescribed by the labeled drug directions.~~

~~(c) (b) All topical medications obtained by the patient directly and brought to the clinician's place of business must be returned to the patient's possession at the termination of the course of treatment with the patient,; and~~

~~(d) (c) No topical medications obtained by the patient directly may not be transferred to or used in treatment of any other occupational therapy patient.~~

~~(3) remains the same.~~

~~(4) A copy of the written prescription specifying the topical medication to be applied and the method of application (direct application, phonophoresis or iontophoresis) must be retained in the patient's occupational therapy medical records.~~

AUTH: 37-24-201, 37-24-202, MCA

IMP: 37-24-107, 37-24-108, MCA

24.165.517 PROTOCOLS FOR USE OF TOPICAL MEDICATIONS

(1) Only those classes of topical medications approved for use by 37-24-108, MCA, and prescribed for the patient by a licensed medical practitioner with prescriptive authority, may be applied by the a clinician to a patient.

~~(2) Each clinician must: is responsible for understanding the use of approved topical medications. The medications must be prescribed for the patient by a licensed medical practitioner with prescriptive authority.~~

(a) understand the use of approved topical medications;

~~(a) (b) The clinician is responsible for reading and understanding read and understand the medication's medication package inserts for indications, and contraindications, as well as and actions;~~

~~(b) (c) The clinician is responsible for consulting consult the Physician's Desk Reference ("PDR") whenever the clinician needs to supplement the information contained in the package insert in order to appropriately understand the use of the medication when necessary; and~~

~~(c) (d) The clinician is responsible for keeping maintain appropriate records with respect to the of all topical medication(s) applied or administered in the course of the clinician's practice. Such record keeping The records must:~~

(i) be part of included in the patient's chart;

~~(ii) and must verify that the topical medication is properly labeled and packaged as required proper labeling and packaging; Moreover, the record must include a verification that the topical medication was purchased~~

(iii) demonstrate purchase from a licensed Montana pharmacy; and

(iv) include a record of the written prescription specifying the topical medication to be applied and the method of application (direct application, phonophoresis, or iontophoresis).

~~(3) The following list identifies the classes of topical medications which are approved for use by the clinician. The list also cross-references the rule that provides more detailed information concerning each class of approved topical medications:~~

(a) bactericidal agents (see NEW RULE I);

~~(a) (b) debriding agents, including bactericidal agents (see ARM 24.165.518);~~

~~(b) through (e) remain the same but are renumbered (c) through (f).~~

~~(4) The use of an approved class of topical medications is subject to the conditions and requirements established by the administrative rule applicable to that class.~~

~~(5) (4) In the event a licensee works Occupational therapists working at a facility that has facilities with different protocols for the use of topical medications by occupational therapy practitioners, the licensee may apply to the for board for~~

authorization to use topical medications pursuant to the protocols adopted by the facility protocols. The board, in the exercise of its sound judgment and discretion, and in consultation with such health care providers as it deems appropriate, may grant a licensee such authorization on a case by case basis. In no instance will the board will not authorize the use of any topical medications medication that are not within the classes of topical medications authorized by statute for use by occupational therapy practitioners 37-24-108, MCA.

AUTH: 37-24-201, 37-24-202, MCA

IMP: 37-24-108, 37-24-109, MCA

24.165.518 DEBRIDING AGENTS PROTOCOLS (1) Within the class of debriding agents, only the following subclasses are approved for use by the a clinician on a patient:

(a) through (d) remain the same.

(e) endogenous platelet-derived growth factors; and

~~(f) antibiotic ointments;~~

~~(g) (f) fibrinolytics;~~

~~(h) antimicrobial agents; and~~

~~(i) bactericidal agents.~~

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

(b) Papain-based ointments are indicated ~~when there is a need to debride~~ for debriding necrotic tissue and ~~liquefy~~ liquefying slough in acute and chronic lesions, trauma wounds, or infected lesions.

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

(b) Papain with urea additive indications are ~~to treat~~ for treating acute and chronic lesions ~~such as~~ including but not limited to:

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

(b) Anti-inflammatory agents are indicated ~~to relieve~~ for relieving inflammation and pruritis caused by dermatosis.

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

(b) Collagenase agents are indicated for ~~the debridement of~~ debriding chronic dermal ulcers and severely burned areas.

(c) through (6)(b) remain the same.

(c) Endogenous platelet-derived growth factor agents are contraindicated for patients with known hypersensitivity, ~~such as~~ including but not limited to parabens. Endogenous platelet-derived growth factor agents are not for use with wounds that close by primary intention because they are a nonsterile, low bioburden, preserved product.

~~(7) Clinicians may use antibiotic ointments as directed by a licensed medical practitioner with prescriptive authority.~~

~~(a) Antibiotic ointments act to kill bacteria and microbes.~~

~~(b) Antibiotic ointments are indicated on culture-proven infected wounds.~~

~~(c) Antibiotic ointments are contraindicated in patients with proven sensitivities or allergic reactions to the antibiotic prescribed.~~

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

(c) Fibrinolytics are contraindicated in patients who are allergic or exhibit a

sensitivity to steroids. Fibrinolytics are also contraindicated when used alone in the treatment of wounds.

~~(9) Clinicians may use antimicrobial agents as directed by a licensed medical practitioner with prescriptive authority.~~

~~(a) Antimicrobial agents contain a broad spectrum silver cascade that acts to reduce the bioburden in wounds for up to seven days.~~

~~(b) Antimicrobial agents are indicated for managing full and partial thickness wounds and may be used over debrided or grafted partial thickness wounds.~~

~~(c) Antimicrobial agents have no known contraindications.~~

~~(10) Clinicians may use bacterial agents only for debridement as directed by a licensed medical practitioner with prescriptive authority.~~

~~(a) Bactericidal agents act by killing bacteria.~~

~~(b) Bactericidal agents are indicated for the presence of bacteria.~~

~~(c) Bactericidal agents are contraindicated in patients with allergic or sensitive response to the agent.~~

AUTH: 37-24-201, 37-24-202, MCA

IMP: 37-24-108, 37-24-109, MCA

REASON: Following an in-depth review and with input from representatives of the boards of medical examiners and pharmacy, the board is amending the protocol rules for topical medications. The board determined it is reasonably necessary to generally amend ARM 24.165.518 through 24.165.522 to improve grammar and language choices, and simplify and streamline for consistency, simplicity, better organization, and ease of use for the reader. The rules have not been revised since their 2005 adoption.

The board is moving the bactericidal agent protocol provisions from ARM 24.165.518 into a separate rule for simplicity and ease of use. The bactericidal protocols are being adopted in New Rule I to align with statutory language and better reflect that while there may be some overlap in specific medications' ability to be prescribed for use as either type of agent, the functions, indications, etc. of each class of agent are not necessarily identical.

24.165.519 ANESTHETIC AGENTS PROTOCOLS (1) and (2) remain the same.

(3) Anesthetic agents are indicated ~~to relieve~~ for relief of pain and inflammation associated with minor skin disorders and for acute inflammatory conditions.

(4) Anesthetic agents are contraindicated if there is sensitivity to the topical anesthetic. ~~They~~ Anesthetic agents are also contraindicated if there are abrasions, openings, or a local infection at the site of application.

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

(vi) hydrocortisone menthol (See also ARM 24.165.522(4)); and

(vii) remains the same.

AUTH: 37-24-201, 37-24-202, MCA

IMP: 37-24-108, 37-24-109, MCA

24.165.520 NONSTEROIDAL ANTI-INFLAMMATORY AGENTS

PROTOCOLS (1) Clinicians may use nonsteroidal anti-inflammatory agents as directed by a licensed medical practitioner with prescriptive authority.

(2) remains the same.

(3) Nonsteroidal anti-inflammatory agents are indicated for acute inflammation ~~such as~~ including but not limited to tendonitis, arthritis, and bursitis.

(4) Nonsteroidal anti-inflammatory agents are contraindicated when there is a local infection or abrasion at the site of application. Nonsteroidal anti-inflammatory agents are also contraindicated when there is sensitivity to topical anti-inflammatory agents, especially when there is a local infection or abrasion at the site of application.

(5) remains the same.

AUTH: 37-24-201, 37-24-202, MCA

IMP: 37-24-108, 37-24-109, MCA

24.165.521 ANTISPASMODIC AGENTS PROTOCOLS

(1) Clinicians may use antispasmodic agents as directed by a licensed medical practitioner with prescriptive authority.

(2) remains the same.

(3) Antispasmodic agents are indicated ~~to reduce~~ for reduction of the volume of perspiration by inhibiting sweat gland secretions to reduce muscle spasms and pain.

(4) and (5) remain the same.

AUTH: 37-24-201, 37-24-202, MCA

IMP: 37-24-108, 37-24-109, MCA

24.165.522 ADRENOCORTICO-STEROID AGENTS PROTOCOLS

(1) and (2) remain the same.

(3) Adrenocortico-steroid agents are indicated for inflammation (~~such as~~ including but not limited to tendonitis, bursitis, arthritis, or myositis), and for antipruritic and vasoconstrictor actions.

(4) Adrenocortico-steroid agents are contraindicated or require special care when used with children, growing adolescents, and pregnant women. ~~The use of adrenocortico-steroids is~~ Adrenocortico-steroid agents are also contraindicated:

(a) through (5) remain the same.

AUTH: 37-24-201, 37-24-202, MCA

IMP: 37-24-108, 37-24-109, MCA

24.165.524 PROTOCOL FOR USE OF AN APPROVED MEDICATION AS A NEUROPATHIC PAIN AGENT (1) through (4) remain the same.

AUTH: ~~This rule is advisory only, but may be a correct interpretation of the law,~~ 37-24-201, 37-24-202, MCA

IMP: 37-24-108, 37-24-109, MCA

REASON: The board is amending this rule to remove the advisory rule statement from the rule's historical notations. The rule was initially adopted in 2005 to codify the board's interpretation of statute at the time. Advisory rules do not have the full force and effect of law.

After reviewing the rule and considering board statutes and current occupational therapy practice, the board acknowledged that topical medications are now prescribed as neuropathic pain agents on a much more routine basis than 14 years ago. The board is removing the advisory statement to reflect the board's conclusion that occupational therapy clinicians may safely apply or administer approved topical medications even when prescribed as neuropathic pain agents.

24.165.601 TEMPORARY PRACTICE PERMIT (1) ~~All temporary~~ Temporary permit holders shall work under the supervision of a licensed an occupational therapy practitioner therapist in accordance with ARM 24.165.501 and 24.165.502.

~~(2) Applicants under 37-1-305(2), MCA, who have previously taken the national examination and failed, are not eligible for a temporary practice permit.~~

AUTH: 37-1-305, 37-1-319, ~~37-24-201, 37-24-202~~, MCA

IMP: 37-1-319, MCA

REASON: The board determined it is reasonably necessary to amend this rule to align with standardized department licensing procedures and ensure compliance with the implemented statute, 37-1-305, MCA.

24.165.604 INACTIVE STATUS (1) ~~A licensee who wishes to retain a license, but who will not be practicing occupational therapy, may obtain an inactive status by indicating this intention on the annual renewal form or by submission of an application and payment of the appropriate fee. An active status licensee may convert to inactive status on the renewal form or by informing the board office. Inactive licensees must inform the board of any change of address while on inactive status and must pay the inactive renewal fee annually to avoid license expiration or termination.~~

~~(2) An individual licensed on inactive status~~ Inactive licensees may not practice occupational therapy during the period in which he or she remains on inactive status.

~~(2) (3) An individual licensed on inactive status~~ licensee may convert his or her license to active status by submission of an appropriate application upon request and payment of the renewal required fee for the year in question. The application licensee must demonstrate contain evidence of one or more of the following, in the board's discretion:

(a) full-time practice of occupational therapy in another state and completion of continuing education for each year of inactive status; that is substantially equivalent to Montana's, in the opinion of the board, to that required under these rules, or;

(b) completion of a minimum of six ~~contact~~ hours of continuing education within the six months prior to ~~application for reinstatement~~, converting to active status if the licensee has not practiced occupational therapy for more than two years; or

(c) remains the same.

AUTH: 37-1-131, 37-1-319, ~~37-24-201, 37-24-202~~, MCA

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

REASON: The board is amending this rule to align with standardized department licensing procedures and streamline the rule for better organization and ease of use. The board is amending (3)(b) to require proof of six hours of continuing education (CE) for licensees converting from inactive to active status after not practicing for two years. The board determined that to protect the public and ensure continued competence, it is necessary to require a balance between a relatively short period of non-practice and the requirement of only six hours of CE to convert to active status.

24.165.2101 CONTINUING EDUCATION (1) ~~All licensees~~ Licensees must complete ten hours of continuing education (CE) annually and shall affirm on the an understanding of the recurring duty to comply with CE requirements as part of license renewal form that they have completed ten contact hours of continuing education as provided in this rule. The continuing education CE requirement will does not apply until the a licensee's first full year of licensure.

(2) The board may randomly audit up to 50 percent of renewed licensees.

~~(2) (3)~~ (3) The licensee shall maintain records and documentation of completed CE and make the records available upon board request ~~completion of continuing education activities such as verification of participation forms, conference brochures, certificates, college or university transcripts or grade reports, articles, book reviews, and apprenticeship evaluations.~~

~~(3) It is the sole responsibility of each licensee to meet the continuing education requirement, and to provide documentation of compliance if so requested during a random audit. A random audit of ten percent of renewed active licensees will be conducted on an annual basis.~~

~~(4) All continuing education CE must be germane to the profession and must contribute to the professional competence of an occupational therapist as determined by the board in its sole discretion.~~

(5) The board shall accept any continuing education CE offered or approved by the Montana Occupational Therapy Association, the American Occupational Therapy Association, the American Society of Hand Therapists, the National Board for Certification in Occupational Therapy (NBCOT), or the American Journal of Occupational Therapy.

(6) The board recognizes the maintenance of current NBCOT certification as fulfilling the continuing education CE requirements of this rule.

(7) through (7)(a)(i) remain the same.

(ii) one semester credit shall equal 15 contact hours of continuing education CE; and

(iii) one quarter credit shall equal ten contact hours of continuing education

CE.

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

(iv) apprenticeships must be served under the supervision of a licensed an occupational therapist whose license is in good standing.

(d) remains the same.

(e) by attending and participating in a live presentation (workshop, seminar, conference, in-service education program) or other ~~continuing education~~ CE activity requiring a formal assessment of learning (electronic or web-based courses, formalized self-study courses), according to the following limitations:

(i) through (iii) remain the same.

(8) All Internet courses must meet the same criteria as in-person ~~continuing education~~ CE courses.

(9) Licensees found to be in noncompliance with CE requirements may be subject to administrative suspension.

AUTH: 37-1-131, 37-1-319, ~~37-24-202~~, MCA

IMP: 37-1-131, 37-1-306, 37-1-319, ~~37-24-202~~, MCA

REASON: The board is amending this rule and ARM 24.165.2102 to align with and further facilitate the department's standardized renewal, administrative suspension, and audit procedures, and streamline for better organization and ease of use for the reader.

Following a recommendation by department legal staff, the board is amending (1) to align the affirmation of CE requirements at renewal with the provisions of 37-1-306, MCA. The amendments fall within standardized department procedures that licensees with mandatory CE affirm an understanding of their CE requirements as part of a complete renewal application, instead of affirming CE completion.

The board is adding (2) to allow flexibility in conducting random CE audits. This amendment will allow the board to respond to staffing and budget issues by adjusting the number of licensees audited, while remaining consistent with the statutory maximum of 50 percent in 37-1-306, MCA.

The board is clarifying in (9) that licensees not in compliance with CE may be subject to administrative suspension per 37-1-321, MCA, and in accordance with standardized department audit processes.

Authority and implementation citations are being amended to accurately reflect all statutes implemented through the rule and provide the complete sources of the board's rulemaking authority.

24.165.2102 CONTINUING EDUCATION – ~~WAIVER EXEMPTION~~ (1) The board may grant waivers or extensions of time within which to fulfill continuing education requirements in cases involving A licensee may request an exemption from CE requirements due to physical disability or undue hardship. Requests will be considered by the board.

~~(2) To be considered for a waiver, an applicant shall submit a written application on forms provided by the board.~~

~~(3) Waivers may be granted for periods not to exceed two calendar years. Should the reason for granting a waiver continue beyond the waiver period, the~~

licensee must apply for an extension.

~~(4) The board will not grant any waiver to applicants who:~~

~~(a) have attested to meeting continuing education requirements at renewal;~~

or

~~(b) are currently subject to a random audit.~~

AUTH: 37-1-131, 37-1-319, ~~37-24-202~~, MCA

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

REASON: The board is amending this rule by removing licensees' ability to request CE extensions to align CE provisions with standardized department procedures. Under the standardized audit processes, licensees are provided with adequate time to cure any audit deficiencies and additional extensions are no longer necessary. The board is further simplifying the requirements for licensees to request CE exemptions.

24.165.2301 UNPROFESSIONAL CONDUCT (1) ~~For the purpose of implementing Title 37, chapter 1, MCA, and in addition to the provisions at 37-1-316, MCA, the board defines "unprofessional conduct" as follows:~~

~~(a) diagnosing or treating individual disorders by correspondence;~~

~~(b) remains the same.~~

~~(c) inaccurately recording, falsifying, altering, or failing to make essential entries of any record of a client or health care provider;~~

~~(d) intentionally making or filing a false or misleading report or failing to file a report when it is required by law or third person, or intentionally obstructing or attempting to obstruct another person from filing such report;~~

~~(e) remains the same but is renumbered (c).~~

~~(f) using a firm name, letterhead, publication, term, title, designation, or document which states or implies an ability, relationship, or qualification that does not exist;~~

~~(g) practicing the profession under a false name or name other than the name under which the license is held;~~

~~(h) impersonating any licensee or representing oneself as a licensee for which one has no current license;~~

~~(i) charging a client or a third party payor for a service not performed;~~

~~(j) submitting an account or charge for services that are false or misleading.~~

~~This does not apply to charging for an unkept appointment;~~

~~(k) filing a complaint with, or providing information to the board which the licensee knows, or ought to know, is false or misleading. This provision does not apply to any filing of complaint or providing information to the board when done in good faith;~~

~~(l) (d) violating, or attempting to violate, directly or indirectly, or assisting or abetting the violation of, or conspiring to violate any provision of Title 37, chapter 24, MCA, or rule promulgated thereunder, or any order of the board;~~

~~(m) (e) violating any state, federal, provincial, or tribal statute or administrative rule governing or affecting the professional conduct profession of any licensee;~~

- ~~(n) being convicted of a misdemeanor or any felony involving the use, consumption, or self-administration of any dangerous drug, controlled substance, or alcoholic beverage, or any combination of such substances;~~
- ~~(o) using any dangerous drug or controlled substance illegally while providing professional services;~~
- ~~(p) acting in such a manner as to present a danger to public health or safety, or to any client including but not limited to incompetence, negligence, or malpractice;~~
- (q) remains the same but is renumbered (f).
- ~~(r) failing to obtain an appropriate consultation or make an appropriate referral when the problem of the client is beyond the licensee's training, experience, or competence;~~
- (s) and (t) remain the same but are renumbered (g) and (h).
- ~~(u) promoting for personal gain any drug, device, treatment, procedure, product, or service which is unnecessary, ineffective, or unsafe;~~
- (v) remains the same but is renumbered (i).
- ~~(w) (j) failing to render adequate supervision, management, training, or control of auxiliary staff or supervisees other persons, including licensees practicing under the licensee's supervision or control according to generally accepted standards of practice;~~
- (x) remains the same but is renumbered (k).
- ~~(y) (l) delegating a professional responsibility to a person when the licensee knows, or has reason to know, that the person is not qualified by training, experience, license, or certification to perform the delegated task;~~
- ~~(z) failing to cooperate with a board inspection or investigation in any material respect;~~
- ~~(aa) (m) failing to report an incident of unsafe practice or unethical conduct of another licensee to the licensing authority board;~~
- ~~(ab) (n) failing to obtain informed consent from client or client's representative prior to providing any therapeutic intervention or treatment;~~
- ~~(ac) failing to complete 40 hours of instruction or training under proctoring of sound and electrical physical agent modalities done on patients directly supervised by the instructor/proctor;~~
- ~~(ad) employing a nontraditional or experimental treatment or diagnostic process without informed consent from client or client's representative prior to such diagnostic procedure or treatment, or research, or which is inconsistent with the health or safety of the client or public;~~
- ~~(ae) (o) guaranteeing that a cure will result from the performance of medical occupational therapy services;~~
- ~~(af) ordering, performing, or administering, without clinical justification, tests, studies, x-rays, treatments, or services;~~
- ~~(ag) (p) failing to provide to a client, client's representative, or an authorized health care practitioner, upon a written request, the medical record or a copy of the client's medical record relating to the client which is in the possession or under the control of the professional. Prior payment for professional services to which the records relate, other than photocopy charges, may not be required as a condition of making the records available;~~
- (ah) and (ai) remain the same but are renumbered (q) and (r).

~~(aj)~~ (s) engaging in sexual contact, sexual intrusion, or sexual penetration, as defined in Title 45, chapter 2, MCA, with a client during a period of time in which when a professional relationship exists, or for up to six months after the relationship has terminated;

~~(ak)~~ (t) failing to account for funds received in connection with any services rendered or to be rendered; and

~~(al)~~ (u) failing to supply continuing education documentation as requested by the audit procedure set forth in ARM 24.165.2101 or supplying misleading, incomplete, or false information relative to continuing education taken by the licensee respond to board or department inquiry, audit, or request for information.

AUTH: 37-1-131, 37-1-136, 37-1-319, ~~37-24-201~~, 37-24-202, MCA

IMP: 37-1-136, 37-1-307, 37-1-308, 37-1-309, 37-1-311, 37-1-312, 37-1-316, ~~37-24-106, 37-24-107, 37-24-202~~, MCA

REASON: Following an in-depth review, board legal counsel recommended several amendments to this rule to ensure no unnecessary duplication with 37-1-316, MCA, the unprofessional conduct statute. The board determined it is reasonably necessary to update this rule to remove duplication with statute, simplify and streamline the rule for ease of use and readability, and more clearly set forth the actions considered by the board as unprofessional conduct. The board is striking (1)(ac) to align with the provisions of Senate Bill 59.

5. The proposed new rule is as follows:

NEW RULE I BACTERICIDAL AGENTS PROTOCOLS (1) Within the class of bactericidal agents, only the following subclasses are approved for use by the clinician on a patient:

- (a) antibiotic ointments;
- (b) antimicrobial agents; and
- (c) bactericidal agents.

(2) Clinicians may use antibiotic ointments as directed by a licensed medical practitioner with prescriptive authority.

- (a) Antibiotic ointments act to kill bacteria and microbes.
- (b) Antibiotic ointments are indicated on culture-proven infected wounds.
- (c) Antibiotic ointments are contraindicated in patients with proven sensitivities or allergic reactions to the antibiotic prescribed.

(3) Clinicians may use antimicrobial agents as directed by a licensed medical practitioner with prescriptive authority.

(a) Antimicrobial agents contain a broad spectrum-silver cascade that acts to reduce the bioburden in wounds for up to seven days.

(b) Antimicrobial agents are indicated for managing full and partial thickness wounds and may be used over debrided or grafted partial thickness wounds.

- (c) Antimicrobial agents have no known contraindications.

(4) Clinicians may use bactericidal agents only for debridement as directed by a licensed medical practitioner with prescriptive authority.

- (a) Bactericidal agents act by killing bacteria.

- (b) Bactericidal agents are indicated for the presence of bacteria.
- (c) Bactericidal agents are contraindicated in patients with allergic or sensitive response to the agent.

AUTH: 37-24-201, 37-24-202, MCA
IMP: 37-24-108, 37-24-109, MCA

REASON: The board is adopting this new rule to separate the debriding and bactericidal agents protocols into discreet rules by relocating the bactericidal agent protocols from ARM 24.165.518. These changes will more clearly track statutory language and better highlight that while these specific medications can be prescribed for use as either type of agent, the functions, indications, etc. of each class of agent are not necessarily identical.

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

24.165.404 APPLICATIONS FOR LICENSURE

AUTH: 37-1-131, 37-24-201, 37-24-202, MCA
IMP: 37-1-131, 37-24-302, 37-24-303, MCA

REASON: The department administers a standardized application process for all professional and occupational licensure boards.

24.165.410 PASS-FAIL CRITERIA

AUTH: 37-1-131, 37-24-201, 37-24-202, MCA
IMP: 37-24-304, MCA

REASON: It is reasonably necessary to repeal this rule as the provision has been relocated to ARM 24.165.407.

24.165.502 SUPERVISION - METHODS

AUTH: 37-1-131, 37-24-202, MCA
IMP: 37-1-131, 37-24-103, 37-24-105, 37-24-106, 37-24-107, MCA

REASON: It is reasonably necessary to repeal this rule as the provision has been relocated to ARM 24.165.302.

24.165.511 DOCUMENTATION OF INSTRUCTION AND TRAINING

AUTH: 37-24-201, 37-24-202, MCA
IMP: 37-24-105, 37-24-106, 37-24-107, MCA

REASON: It is reasonably necessary to repeal this rule as the provision has been relocated to ARM 24.165.302.

24.165.513 APPROVAL TO USE SOUND AND ELECTRICAL PHYSICAL AGENT MODALITIES

AUTH: 37-1-131, 37-24-201, 37-24-202, MCA
IMP: 37-24-106, 37-24-107, MCA

REASON: The board is repealing this rule and ARM 24.165.525 as Senate Bill 59 eliminated the need for the sound and electrical physical agent modality endorsement.

24.165.525 DOCUMENTING EDUCATION AND COMPETENCE TO PERFORM SOUND AND ELECTRICAL PHYSICAL AGENT MODALITIES – OUT-OF-STATE PRACTITIONERS

AUTH: 37-24-201, 37-24-202, MCA
IMP: 37-1-304, 37-24-302, 37-24-303, MCA

7. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Board of Occupational Therapy Practice, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or e-mail to dlibsdotp@mt.gov, and must be received no later than 5:00 p.m., June 13, 2019.

8. An electronic copy of this notice of public hearing is available at ot.mt.gov (department and board's web site). Although the department strives to keep its web sites accessible at all times, concerned persons should be aware that web sites may be unavailable during some periods, due to system maintenance or technical problems, and that technical difficulties in accessing a web site do not excuse late submission of comments.

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

10. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted on April 8, 2019, by telephone.

11. Regarding the requirements of 2-4-111, MCA, the board has determined that the amendment of ARM 24.165.302, 24.165.401, 24.165.406, 24.165.407, 24.165.501, 24.165.505, 24.165.506, 24.165.507, 24.165.509, 24.165.510, 24.165.514, 24.165.516, 24.165.517, 24.165.518, 24.165.519, 24.165.520, 24.165.521, 24.165.522, 24.165.524, 24.165.601, 24.165.604, 24.165.2101, 24.165.2102, and 24.165.2301 will not significantly and directly impact small businesses.

Regarding the requirements of 2-4-111, MCA, the board has determined that the adoption of New Rule I will not significantly and directly impact small businesses.

Regarding the requirements of 2-4-111, MCA, the board has determined that the repeal of ARM 24.165.404, 24.165.410, 24.165.502, 24.165.511, 24.165.513, and 24.165.525 will not significantly and directly impact small businesses.

Documentation of the board's above-stated determinations is available upon request to the Board of Occupational Therapy Practice, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2258; facsimile (406) 841-2305; or to dlibsdotp@mt.gov.

12. L'Joy Griebenow, Executive Officer, has been designated to preside over and conduct this hearing.

BOARD OF OCCUPATIONAL THERAPY
PRACTICE
BRENDA TONER, OT
PRESIDING OFFICER

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

/s/ GALEN HOLLENBAUGH
Galen Hollenbaugh, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State April 30, 2019.

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

In the matter of the amendment of) NOTICE OF PROPOSED
ARM 37.36.604 pertaining to) AMENDMENT
updating the federal poverty index)
guidelines for the Montana)
telecommunications access program) NO PUBLIC HEARING
(MTAP)) CONTEMPLATED

TO: All Concerned Persons

1. The Department of Public Health and Human Services proposes to amend the above-stated rule.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Public Health and Human Services no later than on May 20, 2019, to advise us of the nature of the accommodation that you need. Please contact Gwen Knight, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena MT 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

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

37.36.604 FINANCIAL ELIGIBILITY CRITERIA (1) Individuals whose annual family income during the 12 months immediately preceding the month of application is less than 250% of the ~~2018~~ 2019 poverty guidelines published by the U.S. Department of Health and Human Services (HHS) are eligible for a loan of specialized telecommunications equipment based on income. 250% of the HHS ~~2018~~ 2019 annual poverty guidelines for families of various sizes is shown in (2).

(2) 250% of the annual poverty guidelines is as follows:

FAMILY SIZE	250% OF ANNUAL POVERTY GUIDELINE
One	\$30,350 <u>\$31,225</u>
Two	\$41,150 <u>\$42,275</u>
Three	\$51,950 <u>\$53,325</u>
Four	\$62,750 <u>\$64,375</u>
Five	\$73,550 <u>\$75,425</u>

Six	\$84,350 <u>\$86,475</u>
Seven	\$95,150 <u>\$97,525</u>
Eight	\$105,950 <u>\$108,575</u>
Each Additional Person, Add	\$10,450 <u>\$11,050</u>

(3) remains the same.

AUTH: 53-19-305, 53-19-307, MCA

IMP: 53-19-305, 53-19-307, MCA

4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) is proposing to amend ARM 37.36.604. This rule sets the criteria that allows the department to pay for services provided to persons who are eligible for Montana Telecommunications Access Program (MTAP) services. The rule provides that the payment for services by the department may occur if the consumer's income and financial resources do not exceed maximum levels for income and resources established through the rule.

This rule amendment revises the maximum level of allowable income. Currently the rule provides that the maximum level is 250% of the 2018 United States Department of Health and Human Services federal poverty guidelines (FPL) for households. The rule amendment will revise this level by replacing the year 2018 guidelines with 2019 guidelines.

Fiscal Impact

There is no fiscal impact due to the increase in the Federal Poverty Index level (FPL). A minimal number of clients served by MTAP exceed the FPL, and the majority are well under the FPL. An increase in the FPL would not yield any additional costs to MTAP.

5. The department intends to apply these rule amendments retroactively to February 1, 2019. A retroactive application of the proposed rule amendments does not result in a negative impact to any affected party.

6. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to: Gwen Knight, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena MT 59604-4210, no later than 5:00 p.m. on June 7, 2019. Comments may also be faxed to (406) 444-9744 or e-mailed to dphhslegal@mt.gov.

7. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written

comments to Gwen Knight at the above address no later than 5:00 p.m., June 7, 2019.

8. If the agency receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 161 persons based on 1,609 with an open case currently being served by the program.

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

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

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

/s/ Nicholas Domitrovich
Nicholas Domitrovich
Rule Reviewer

/s/ Laura Smith, Deputy Director
for Sheila Hogan, Director
Public Health and Human Services

Certified to the Secretary of State April 30, 2019.

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the adoption of New Rules I, II, III, and IV and the amendment of ARM 4.12.3104 and 4.19.101 through 4.19.106 pertaining to hemp) NOTICE OF ADOPTION AND) AMENDMENT))))

TO: All Concerned Persons

1. On March 15, 2019, the Department of Agriculture published MAR Notice No. 4-19-255 pertaining to the public hearing on the proposed adoption and amendment of the above-stated rules at page 254 of the 2019 Montana Administrative Register, Issue Number 5.

2. The department has adopted the following rules as proposed: New Rule I (4.19.107), New Rule II (4.19.108), New Rule III (4.19.109), and New Rule IV (4.19.110).

3. The department has amended the following rules as proposed: ARM 4.12.3104, 4.19.101, 4.19.102, 4.19.103, 4.19.105, and 4.19.106.

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

4.19.104 FEES (1) The fee for a Montana State Hemp License is \$450.

(2) The planting fee for location registration is \$400 per location of a single owner Montana State Hemp License plus:

(a) ~~\$5 per acre or partial acre outdoors;~~ or

(b) ~~\$0.35 per 1,000 square feet indoors.~~

(a) an additional \$250 for Category C seed varieties.

~~(3) The total fees under (2) may not exceed \$10,000.~~

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

COMMENT #1: Multiple commenters referred to the full legalization of hemp and expressed their belief that no state regulation is necessary since hemp is no longer a controlled substance.

RESPONSE #1: The department disagrees with these comments. While the 2018 Farm Bill decriminalized the cultivation of hemp under compliant state, tribal, or federal programs, it did not deregulate hemp completely. Hemp remains a highly regulated plant, although its jurisdiction moved from the Drug Enforcement Agency

(DEA) to the United States Department of Agriculture (USDA). States and tribes are expected to comply with requirements to assure hemp (plants with less than 0.3% THC) and not marijuana is cultivated. To be cost-effective and compliant with the 2018 Farm Bill, the Montana Department of Agriculture included the proposed New Rules I through IV in its State Plan which was submitted to the USDA. Additionally, state law requires the department administer a self-sufficient (non-reliant on general funding, taxes) licensing program.

COMMENT #2: Multiple commenters requested lower fees.

RESPONSE #2: Following extensive consideration and strategic planning, the department estimates a cost-effective hemp program will cost between \$150,000 and \$250,000 annually. Program costs are contingent on the number of licensed growers and their distribution in areas across the state. Training requirements and associated costs for potential new, seasonal, or temporary staff may also be necessary to include in this growing season's regulatory framework. Cost-saving measures, such as self-sampling, were included in Montana's State Plan, but the department recognizes it may not be able to fully implement them in the first year (2019) since the USDA has not approved of them yet. Montana's hemp program fees are low relative to other states. The department determined it cannot significantly lower the proposed fees without risking the hemp program being unable to cover its own expenses. However, by eliminating the location and acreage fee and replacing it with a planting fee, the department did lower the grower license for nearly all entities.

COMMENT #3: Multiple commenters questioned the necessity for two department employees and recommended utilizing volunteers or MSU Extension staff instead.

RESPONSE #3: Upon review, the department maintains that at least two additional employees are necessary to operate the state hemp program. For example, one position will likely be full-time, working year-round to support the hemp program, while the second position may be comprised of multiple, seasonal, part-time employees. Ideally, seasonal employees will be located near growing areas, located outside of Helena, to reduce travel time and expense. It's possible such seasonal positions may be filled by contractual agreements with other entities, like MSU Extension, but the department is not legally able to employ volunteers for regulatory work.

COMMENT #4: Many commenters anticipate a lot more hemp growers this year. Since there are more growers, the commenters ask the department to consider lowering fees.

RESPONSE #4: The department concurs with the expectation for an increased number of hemp growers in Montana during the 2019 growing season. However, as the number of growers increases, the costs for operating a state program also increase. If the fees generated in the first growing season (2019) are more than regulation costs, fees may be lowered the following year.

COMMENT #5: Several comments were received that suggested Medical Marijuana money/fees be used to pay for the hemp program.

RESPONSE #5: Since the fees for Medical Marijuana are currently allotted to the Montana Department of Public Health and Human Services (DPHHS), and for administering their Montana Medical Marijuana Program, the Department of Agriculture does not foresee appropriating these funds for its hemp program. Additionally, a change in state law is necessary to modify these fees and the Montana Legislature will not meet again until 2021 (absent a special session).

COMMENT #6: Many of the commenters indicated that most or more of the hemp program costs are associated with Category C seeds and recommended Category C producers pay a higher fee.

RESPONSE #6: While the department disputes Category C costs being more or most of the hemp program costs, it recognizes Category C growers require more testing than Category A or B growers. All Category C hemp will be tested each year. Therefore, the department amended its fee schedule to reflect the additional time staff will spend assuring compliance. Category C growers must pay a \$250 testing surcharge prior to issuance of their full grower license. An additional \$250 fee is required for each Category C variety officially sampled. Category A and Category B growers are not subject to the same testing schedule or surcharge fee, but are required to have a functional, regulatory agency in place in order to grow, process, and/or transport hemp in compliance with the law. As such, all growers are required to pay the \$400 planting fee.

COMMENT #7: Multiple commenters inquired about an exception for non-commercial hemp growers, especially those who are producing for home use.

RESPONSE #7: According to state law for Industrial Hemp – Licensing (80-18-103, MCA), the department must provide license requirements for any individuals growing hemp for commercial purposes. The federal government (USDA) has not created a regulatory framework for non-commercial growth. While the department understands the proposed fee and regulatory structure is not conducive for a garden or personal-use hemp production, it is not possible to provide this oversight under the current federal law without charging the proposed fees. Individuals wishing to grow hemp for their own personal medical needs may receive guidance from the Montana Medical Marijuana Program, operated by DPHHS, by calling (406) 444-0596.

COMMENT #8: Several commenters requested an exception be made or fees be lowered for small acreage growers.

RESPONSE #8: The department requires more state-level information about the economics and agronomics of hemp farming to offer an exemption to current requirements for growing hemp. Small operations often require similar staff services

as large operations. Rather than acreage impacting department inspection processes, the department expects the number of varieties and/or high-risk varieties grown will have a larger impact on the time and effort staff will spend inspecting hemp plants. If federal testing regulations are established to include a framework for small acreage growers, the department is certainly willing to consider changing the rules.

COMMENT #9: Several commenters requested an alternative fee structure be considered for co-ops.

RESPONSE #9: It is not typical for the department to distinguish regulatory requirements based on the legal entity engaged in farming, whether it be a co-op, limited liability company, partnership, corporation, or private farm. The department cannot viably identify a rational basis for exempting growers from regulatory requirements, but intends to work directly with co-ops, such as the Bitterroot Hemp Cooperative, to consider whether practical regulatory savings may be incorporated into cooperative farming practices to reduce fees in future years.

COMMENT #10: Several commenters requested the proposed location/plot fee be removed and replaced with a graduated acreage fee system or flat fee.

RESPONSE #10: The department agrees with the notion to reform the fee structure. Defining a growing location is challenging. The Montana Hemp Advisory Committee discussed obstacles for applying location fees at its meeting on April 3, 2019. The department amended the fee structure to reflect seed risk categories (as seen in Response #6) to reduce unnecessary complexities and provide a fair system for growers.

COMMENT #11: A few commenters asked if hemp processors could be made to carry part of the regulatory burden since processors will benefit from growers.

RESPONSE #11: The department is currently considering regulations for hemp processors in Montana. However, regulations for processors are outside the scope of the rules proposed in MAR Notice No. 4-19-255.

COMMENT #12: Multiple commenters requested the department consider allowing a local testing and sampling "lab" which would require lower fees.

RESPONSE #12: More information, and potentially federal approval, is necessary for the department to determine whether local sampling and testing labs would significantly affect fees. The department is willing to discuss the suggested local sampling and testing lab with commenters which may influence fee structures in the future.

COMMENT #13: A few commenters expressed support for the proposed fees which will sufficiently fund the hemp program.

RESPONSE #13: The department concurs that the fees adequately support its Montana Hemp Program for the 2019 growing season.

/s/ Cort Jensen
Cort Jensen
Rule Reviewer

/s/ Ben Thomas
Ben Thomas
Director
Agriculture

Certified to the Secretary of State April 30, 2019.

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 4.10.101 through 4.10.103,)
4.10.108, 4.10.401, 4.10.403, and)
4.10.404 pertaining to financial)
responsibility)

TO: All Concerned Persons

1. On March 15, 2019, the Department of Agriculture published MAR Notice No. 4-19-256 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 264 of the 2019 Montana Administrative Register, Issue Number 5.

2. The department has amended the following rules as proposed: ARM 4.10.102, 4.10.103, 4.10.108, 4.10.401, 4.10.403, and 4.10.404.

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

4.10.101 FINANCIAL RESPONSIBILITIES (1) and (2) remain as proposed.
(3) The department will facilitate a one-year phase-in period starting January 2020, to allow pesticide applicators to begin transitioning to the new requirements before January 2021.

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

COMMENT #1: By omitting the deductible requirement, we feel that the proposed rule assures required pesticide applicator insurance is both available and affordable. Our only request is to allow for a phase-in period of the rule so that applicators can begin transitioning to new financial responsibility requirements before January 2021.

RESPONSE #1: The department concurs with the request and will include a phase-in period, beginning January 2020.

/s/ Cort Jensen
Cort Jensen
Rule Reviewer

/s/ Ben Thomas
Ben Thomas
Director
Agriculture

Certified to the Secretary of State April 30, 2019.

BEFORE THE FISH AND WILDLIFE COMMISSION
OF THE STATE OF MONTANA

In the matter of the adoption of NEW) NOTICE OF ADOPTION AND
RULE I and the amendment of ARM) AMENDMENT
12.11.3201 and 12.11.3205)
pertaining to No Wake Zones on)
Canyon Ferry Reservoir)

TO: All Concerned Persons

1. On November 2, 2018, the Fish and Wildlife Commission (commission) published MAR Notice No. 12-507 pertaining to the public hearing on the proposed adoption and amendment of the above-stated rules at page 2163 of the 2018 Montana Administrative Register, Issue Number 21. On March 15, 2019, the commission published a notice of extension of comment period on the amended proposed adoption and amendments at page 273 of the 2019 Montana Administrative Register, Issue Number 5.

2. The commission has adopted the following rule as proposed and published in the original proposal notice published on November 2, 2018, page 2163, Issue number 21: NEW RULE I (12.11.1002).

3. The commission has amended the following rules as proposed in the original proposal notice published on November 2, 2018, page 2163, Issue Number 21: ARM 12.11.3201 and 12.11.3205.

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

COMMENT #1: The commission received comments requesting that Magpie Bay have a no-wake zone in the entire bay or surrounding all docks in the bay for safety reasons as the bay gets extremely busy and congested.

RESPONSE #1: Magpie Bay currently has a no-wake zone restriction of 300 feet from docks or as buoyed per ARM 12.11.3201.

COMMENT #2: The commission received a comment requesting that a no-wake buoy be placed in the bay of lots 39 to 52 on the east side of the reservoir.

RESPONSE #2: The commission adopts no-wake zones, and the Department of Fish, Wildlife and Parks (department or FWP) may mark them with a buoy where needed. If the bay in question has been adopted as a no-wake zone there will likely be a buoy placed if it is needed. If there is not a no-wake zone in the area, there will not be a buoy placed.

COMMENT #3: The commission received a comment requesting that no-wake zones be established around private docks as well as public docks.

RESPONSE #3: The commission feels that most private docks that exist in busy bays will now be covered by a no-wake zone by the adoption and amendment of these rules.

COMMENT #4: The commission received a few comments suggesting that a 200- to 300-foot no-wake zone be put in place around the shorelines of the reservoir, just as the lakes in the Western Fishing District are.

RESPONSE #4: In response to these comments, the commission extended public comment on an amended alternative proposal of a 200-foot no-wake zone around the northern end of the lake, starting from Kayley Bay and continuing to Crittenden Bay, so as to cover all docks, homes, cabins, and campgrounds.

COMMENT #5: The commission received comments in support of a no-wake zone on the northern end of the reservoir to include all cabins, homes, and docks. Comments in support referenced safety, erosion, and boat and dock damage, and that creating this no-wake zone would only affect 5% of the lake shore, leaving lots of room for boating in the middle of the lake and on the southern shores.

RESPONSE #5: The commission does agree that there are areas of the reservoir that have become busy and congested and need no-wake zones for safety. The commission has adopted their first proposal which will put no-wake zones in many of the areas where there are docks and where complaints have been received.

COMMENT #6: The commission received comments regarding enforcement of no-wake zone restrictions on the reservoir, including questioning how they will be enforced and requesting more enforcement patrols especially on weekends.

RESPONSE #6: FWP wardens will work during the summer season to enforce the boating regulations on Canyon Ferry including the newly adopted regulations. Questions, concerns, and violation reports should be directed to the FWP Helena Area Resource Office enforcement staff.

COMMENT #7: The commission received a comment suggesting that the no-wake zones be marked by buoys.

RESPONSE #7: Newly established no-wake zones will be marked with a buoy where needed and appropriate.

COMMENT #8: The commission received comments in opposition to a no-wake zone on the northern end of the reservoir and to no-wake zones around private docks and cabins. Some comments were received by property owners who expressed that the no-wake zones would limit their recreation at their docks and in front of their cabins. One comment stated that one of the original purposes of the

creation of Canyon Ferry Reservoir was for recreation and that many people purchased cabin sites specifically for this reason. Some comments in opposition were received by non-property owners, who expressed that no-wake zones around private docks and cabins would provide exclusivity for property owners and deter other boats from using those bays.

RESPONSE #8: The commission decided not to adopt the 200-foot no-wake zone on the entire northern end of the reservoir as it is broad and was likely a larger no-wake zone than is needed at this time. The commission has adopted their first proposal which will put no-wake zones in many of the areas that are heavily congested, where there are docks, and where the most complaints have been received.

COMMENT #9: The commission received comments requesting that the entirety of Kayley Bay should be no-wake.

RESPONSE #9: The commission has adopted its original proposal, creating a 500-yard no-wake zone from the mouth of Kayley Bay, or as buoyed.

COMMENT #10: The commission received a comment suggesting that no-wake zone distance should be defined in the ARM as "approximate," and that certain boats with deep hulls may need to be addressed differently.

RESPONSE #10: The commission has described all no-wake zones in ARM by either feet or yards or as marked by buoys. The commission realizes that it may be difficult to judge exact distances when there are not buoys, but FWP enforcement has the discretion to determine whether or not boaters are at the approximate distances. While it may be true that bigger boats with deep hulls can create larger wakes, it would be difficult to enforce restrictions on different sized boats.

COMMENT #11: The commission received a comment questioning what the fiscal impact of the no-wake zones would be, including the cost of education.

RESPONSE #11: FWP wardens currently conduct enforcement patrols and boating education activities in the Helena area. The new regulations will have a minimal fiscal impact as boating safety enforcement and education are already part of warden duties.

COMMENT #12: The commission received a comment in support of a ban of all motorized recreation on Canyon Ferry Reservoir. The commission also received a comment in support of a ban of motorized use in all bays.

RESPONSE #12: While the commission believes that there are busy areas and bays of the reservoir that need to have a no-wake zone for safety reasons, the rest of the reservoir is vast and open and should be left for the enjoyment of all forms of recreation. The commission hopes that the no-wake zones that are designated on the reservoir will provide safe areas for non-motorized recreational use.

COMMENT #13: The commission received a comment questioning how the no-wake zones would impact boats that cause big wakes outside of the wake zone, but whose wakes carry thousands of feet and still reach the shores.

RESPONSE #13: The no-wake zones will not have an impact on boats creating wakes outside of the no-wake zones. Wakes are bound to happen in the no-wake zones from both boats outside of the zones and from winds, making it impossible to prevent all wakes from hitting shores. The no-wake zones are not being put in place to try and eliminate every wake from hitting the shores, but to make congested areas around docks safer.

COMMENT #14: The commission received a comment suggesting that the proposed no-wake zone in Court Sheriff Bay be scaled back to about half the distance that is proposed in the original proposal.

RESPONSE #14: The commission needs to be able to accurately describe where a no-wake zone exists in ARM and felt the best way to make Court Sheriff's no-wake zone clear to the public was to use the mouth of the bay which is defined as the area from the peninsula that extends southeast from Canyon Ferry Village to the opposite shore. It would be difficult to accurately describe in the ARM a smaller no-wake area clearly. The proposal does state that the no-wake zone is at the mouth of the bay "or as buoyed" giving FWP enforcement the discretion to move the buoy further into the bay if they deem it can safely be scaled back.

COMMENT #15: The commission received comments in general opposition to new no-wake zones. Reasons included lack of ability or inability to enforce, opposition to more regulations, erosion occurring more from wind than from wakes, and that no-wake zones are already in place where they are needed.

RESPONSE #15: Distance-related no-wake zones are a common method of regulating high-use boating areas in both Montana and other states and are successfully enforced. Regulations are the only substantive tool the department has to fairly address complaints. Erosion is not a consideration when implementing wake zone regulations as it is impossible to quantify erosion caused by watercraft versus natural processes.

COMMENT #16: A comment was received suggesting that the no-wake regulations should be time-limited to busier hours on the lake, such as weekends and holidays.

RESPONSE #16: This approach has been used in a few other areas in Montana. This may be a consideration in the future if needed. The commission decided to adopt the less restrictive proposal of the two.

COMMENT #17: The commission received a comment in favor of the original proposal of no-wake zones in certain congested bays, over the alternative proposal of a 200-foot no-wake zone on the northern end of the reservoir. The comment

referenced the alternative being too broad, leading to conflict between users, and that some of the areas in the alternative proposal are the only places on the lake where it is calm to water ski. The comment suggested an alternative of a 200-foot no-wake zone from Cemetery Island to the dam, and then specific busy bays and campground areas.

RESPONSE #17: The commission has adopted its original proposal consisting of only establishing new no-wake zones in specific busy and congested bays for the purposes of safety around docks.

/s/ Aimee Hawkaluk
Aimee Hawkaluk
Rule Reviewer

/s/ Richard Stuker
Richard Stuker
Acting Chair
Fish and Wildlife Commission

Certified to the Secretary of State April 30, 2019.

BEFORE THE DEPARTMENT OF TRANSPORTATION
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 18.8.1502, 18.8.1503, and)
18.8.1505 pertaining to Motor Carrier)
Services Safety Requirements

TO: All Concerned Persons

1. On March 29, 2019, the Department of Transportation published MAR Notice No. 18-173 pertaining to the proposed amendment of the above-stated rules at page 314 of the 2019 Montana Administrative Register, Issue Number 6.
2. The department has amended the above-stated rules as proposed.
3. No comments or testimony were received.

/s/ Carol Grell Morris
Carol Grell Morris
Rule Reviewer

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

Certified to the Secretary of State April 30, 2019.

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

In the matter of the amendment of)	NOTICE OF AMENDMENT AND
ARM 24.101.413 and the repeal of)	REPEAL
ARM 24.117.201, 24.117.202,)	
24.117.301, 24.117.402, 24.117.403,)	
24.117.406, 24.117.409, 24.117.412,)	
24.117.415, 24.117.417, 24.117.503,)	
24.117.601, 24.117.702, 24.117.703,)	
24.117.704, 24.117.705, 24.117.709,)	
24.117.710, 24.117.801, 24.117.802,)	
24.117.803, 24.117.804, 24.117.805,)	
24.117.806, 24.117.810, 24.117.811,)	
24.117.812, 24.117.815, 24.117.901,)	
24.117.903, 24.117.904, 24.117.905,)	
24.117.909, and 24.117.2301)	
pertaining to the licensure and)	
regulation of professional boxing)	

TO: All Concerned Persons

1. On March 29, 2019, the Department of Labor and Industry (department) published MAR Notice No. 24-117-33 regarding the proposed amendment and repeal of the above-stated rules, at page 324 of the 2019 Montana Administrative Register, Issue No. 6.

2. No comments were received by the April 26, 2019, deadline.

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

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

/s/ GALEN HOLLENBAUGH
Galen Hollenbaugh, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State April 30, 2019.

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

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 37.71.601 and 37.71.602)
pertaining to low income)
weatherization assistance program)
(LIWAP))

TO: All Concerned Persons

1. On March 29, 2019, the Department of Public Health and Human Services published MAR Notice No. 37-879 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 331 of the 2019 Montana Administrative Register, Issue Number 6.
2. The department has amended the above-stated rules as proposed.
3. No comments or testimony were received.
4. These rule amendments are effective July 1, 2019.

/s/ Jennifer C. Kaleczyc
Jennifer C. Kaleczyc
Rule Reviewer

/s/ Laura Smith, Deputy Director
for Sheila Hogan, Director
Public Health and Human Services

Certified to the Secretary of State April 30, 2019.

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

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 37.79.326 pertaining to Healthy)
Montana Kids (HMK) Dental Benefits)

TO: All Concerned Persons

1. On March 29, 2019, the Department of Public Health and Human Services published MAR Notice No. 37-881 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 335 of the 2019 Montana Administrative Register, Issue Number 6.
2. The department has amended the above-stated rule as proposed.
3. No comments or testimony were received.
4. This rule amendment is effective July 1, 2019.

/s/ Brenda K. Elias
Brenda K. Elias
Rule Reviewer

/s/ Laura Smith, Deputy Director
for Sheila Hogan, Director
Public Health and Human Services

Certified to the Secretary of State April 30, 2019.

NOTICE OF FUNCTION OF ADMINISTRATIVE RULE REVIEW COMMITTEE

Interim Committees and the Environmental Quality Council

Administrative rule review is a function of interim committees and the Environmental Quality Council (EQC). These interim committees and the EQC have administrative rule review, program evaluation, and monitoring functions for the following executive branch agencies and the entities attached to agencies for administrative purposes.

Economic Affairs Interim Committee:

- Department of Agriculture;
- Department of Commerce;
- Department of Labor and Industry;
- Department of Livestock;
- Office of the State Auditor and Insurance Commissioner; and
- Office of Economic Development.

Education and Local Government Interim Committee:

- State Board of Education;
- Board of Public Education;
- Board of Regents of Higher Education; and
- Office of Public Instruction.

Children, Families, Health, and Human Services Interim Committee:

- Department of Public Health and Human Services.

Law and Justice Interim Committee:

- Department of Corrections; and
- Department of Justice.

Energy and Telecommunications Interim Committee:

- Department of Public Service Regulation.

Revenue and Transportation Interim Committee:

- Department of Revenue; and
- Department of Transportation.

State Administration and Veterans' Affairs Interim Committee:

- Department of Administration;
- Department of Military Affairs; and
- Office of the Secretary of State.

Environmental Quality Council:

- Department of Environmental Quality;
- Department of Fish, Wildlife and Parks; and
- Department of Natural Resources and Conservation.

Water Policy Interim Committee (where the primary concern is the quality or quantity of water):

- Department of Environmental Quality;
- Department of Fish, Wildlife and Parks; and
- Department of Natural Resources and Conservation.

These interim committees and the EQC have the authority to make recommendations to an agency regarding the adoption, amendment, or repeal of a rule or to request that the agency prepare a statement of the estimated economic impact of a proposal. They also may poll the members of the Legislature to determine if a proposed rule is consistent with the intent of the Legislature or, during a legislative session, introduce a bill repealing a rule, or directing an agency to adopt or amend a rule, or a Joint Resolution recommending that an agency adopt, amend, or repeal a rule.

The interim committees and the EQC welcome comments and invite members of the public to appear before them or to send written statements in order to bring to their attention any difficulties with the existing or proposed rules. The mailing address is P.O. Box 201706, Helena, MT 59620-1706.

HOW TO USE THE ADMINISTRATIVE RULES OF MONTANA
AND THE MONTANA ADMINISTRATIVE REGISTER

Definitions: **Administrative Rules of Montana (ARM)** is a looseleaf compilation by department of all rules of state departments and attached boards presently in effect, except rules adopted up to three months previously.

Montana Administrative Register (MAR or Register) is an online 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 recent rulemaking and the table of contents in the last Montana Administrative Register issued. |
| Statute | 2. Go to cross reference table at end of each number and title which lists MCA section numbers and department corresponding ARM rule numbers. |

RECENT RULEMAKING BY AGENCY

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, 2018. This table includes notices in which those rules adopted during the period November 6, 2018, through April 26, 2019, occurred and any proposed rule action that was pending during the past 6-month period. (A notice of adoption must be published within six months of the published notice of the proposed rule.) This table does not include the contents of this issue of the Montana Administrative Register (MAR or Register).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through December 31, 2018, this table, and the table of contents of this issue of the Register.

This table indicates the department name, title number, notice numbers in ascending order, the subject matter of the notice, and the page number(s) at which the notice is published in the 2018 or 2019 Montana Administrative Registers.

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

ADMINISTRATION, Department of, Title 2

2-13-580 Statewide Emergency Telephone System, p. 1991, 2399
2-59-572 Definitions for Credit Unions, p. 2357, 290

(Public Employees' Retirement Board)

2-43-578 Adopting by Reference the Amended State of Montana Public Employees Pooled Trust in the Defined Contribution Retirement Plan - Adopting by Reference the Amended Stable Value Fund Investment Policy Statement in the Defined Contribution Retirement Plan and the 457(b) Deferred Compensation Plan - Adopting by Reference the Amended State of Montana Public Employees Pooled Trust in the 457(b) Deferred Compensation Plan, p. 1, 288
2-43-582 Investment Policy Statements for the Defined Contribution Retirement Plan and the 457(b) Deferred Compensation Plan, p. 251, 424
2-43-583 Investment Policy Statements for the Defined Contribution Retirement Plan and the 457(b) Deferred Compensation Plan, p. 410

(State Lottery Commission)

2-63-579 General Provisions - Retailer Commission - Duplicate Licenses - Prizes - Acceptable Forms of Payment, p. 6, 291

AGRICULTURE, Department of, Title 4

- 4-18-251 Financial Responsibility, p. 2271
- 4-18-252 Potato Commodity Assessment Collection, p. 2359, 292
- 4-19-253 Industrial Hemp, p. 121
- 4-19-254 Industrial Hemp, p. 75
- 4-19-255 Hemp, p. 254
- 4-19-256 Financial Responsibility, p. 264
- 4-19-257 State Noxious Weed List, p. 413

STATE AUDITOR, Office of, Title 6

(Commissioner of Securities and Insurance)

- 6-245 Long-Term Care Insurance, p. 2120, 126
- 6-249 Replacement of Life Insurance or Annuities, p. 11, 293

COMMERCE, Department of, Title 8

- 8-22-161 Board of Horse Racing, p. 1847, 2400
- 8-94-163 Administration of the 2018 and 2019 Program Year Federal Community Development Block Grant (CDBG) Program - Public Facilities Projects - Affordable Housing Projects, p. 2277, 39
- 8-94-165 Administration of the 2020 Biennium Treasure State Endowment Program—Planning Grants, p. 415
- 8-99-159 Implementation of the Big Sky Economic Development Trust Program, p. 1850, 2401
- 8-99-160 Implementation of the Primary Sector Workforce Training Program, p. 1852, 2403
- 8-111-162 Definitions - Housing Credit Allocation Procedure, p. 1994, 2404
- 8-119-164 Tourism Advisory Council, p. 417

EDUCATION, Title 10

(Office of Public Instruction)

- 10-1-131 Soliciting Applications for Membership on a Negotiated Rulemaking Committee to Amend ARM 10.55.606 Pertaining to the Procedures in Determining Accreditation Status Using Student Performance Measures Based on Results of the Required Statewide Assessments, p. 80, 163
- 10-16-132 Special Education, p. 165

(Board of Public Education)

- 10-57-284 Teacher Licensure, p. 1940, 2405

(Montana State Library)

- 10-102-1801 Depository Procedures for State Publications, p. 2157, 2496

FISH, WILDLIFE AND PARKS, Department of, Title 12

- 12-509 Closing the Ennis Fishing Access Site and the Valley Garden Fishing Access Site in Madison County, p. 204
- 12-510 Closing the York's Islands Fishing Access Site in Broadwater County, p. 295
- 12-511 Closing the Rosebud Isle Fishing Access Site in Stillwater County, p. 297
- 12-512 Closing the Smith River From Camp Baker to Eden Bridge, p. 393
- 12-513 Closing the Mallard's Rest Fishing Access Site in Park County, p. 395

(Fish and Wildlife Commission)

- 12-484 Recreating on the Helena Valley Regulating Reservoir, p. 2160, 294
- 12-505 Grizzly Bear Demographic Objectives for the Northern Continental Divide Ecosystem, p. 1641, 2497
- 12-507 No Wake Zones on Canyon Ferry Reservoir, p. 2163, 273
- 12-508 Recreational Use on the Bitterroot River, p. 193

GOVERNOR, Office of, Title 14

- 14-5 Implementation of the Greater Sage-Grouse Stewardship Act, p. 1997, 41

ENVIRONMENTAL QUALITY, Department of, Title 17

- 17-401 Adoption by Reference of the Most Current Version of the Montana Risk-Based Corrective Action (RBCA) Guidance for Petroleum Releases, p. 2424, 174

(Board of Environmental Review)

- 17-399 401 Certification, p. 1645, 2517
- 17-402 Implementing a Registration System for Certain Facilities That Currently Require a Montana Air Quality Permit, p. 2430, 425
- 17-403 Ground Water Standards Incorporated by Reference Into Department Circular DEQ-7, p. 2446, 196
- 17-404 Definitions - Department Circulars DEQ-1, DEQ-2, and DEQ-3 - Setbacks Between Water Wells and Sewage Lagoons, p. 2455

TRANSPORTATION, Department of, Title 18

- 18-172 Motor Carrier Services Electronic Weigh Station Bypass Systems, p. 2479, 175
- 18-173 Motor Carrier Services Safety Requirements, p. 314

JUSTICE, Department of, Title 23

- 23-3-253 Third-Party CDL Skills Testing Program - Commercial Driver's License Testing, p. 1766, 176, 338
- 23-12-432 Locking Arrangements in Educational Occupancies, p. 299
- 23-16-256 Authorization and Regulation of 50/50 Raffles and 50/50 Raffle Electronic Processing Systems - Definitions - Grounds for a Denial of a License - Cross-References to Alcoholic Beverages Licenses - Credit Play - Administrative Procedure - Card Dealer Licensure - Raffles - Card Dealer Licensure, p. 2482, 302

(Public Safety Officers Standards and Training Council)

- 23-13-254 Certification of Public Safety Officers, p. 1342, 2518

LABOR AND INDUSTRY, Department of, Title 24

Boards under the Business Standards Division are listed in alphabetical order by chapter following the department notices.

- 24-11-341 Unemployment Insurance Contributions, p. 2005, 2525
- 24-17-342 Prevailing Wage Rates for Public Works Projects, p. 2280, 134
- 24-29-339 Workers' Compensation, p. 1506, 2527
- 24-29-340 Utilization and Treatment Guidelines - Drug Formulary - Workers' Compensation, p. 2010, 2531
- 24-29-343 Medical Utilization and Treatment Guidelines for Workers' Compensation Purposes, p. 317
- 24-29-345 Medical Fee Schedules for Workers' Compensation Purposes, p. 390
- 24-30-344 Occupational Safety and Health Rules for Public Sector Employees, p. 320
- 24-117-33 Licensure and Regulation of Professional Boxing, p. 324

(Board of Architects and Landscape Architects)

- 24-114-37 Architect Examination - Architect Licensure by Examination - Education and Experience Required for Landscape Architect Licensure - Architect Continuing Education Requirements - Unprofessional Conduct, p. 275

(Board of Athletic Trainers)

- 24-118-5 Definitions - Fee Schedule - Renewals - Unprofessional Conduct - Limit on Nonlicensee Conduct, p. 170, 427

(Board of Clinical Laboratory Science Practitioners)

- 24-129-18 Fees - Inactive Status - Continuing Education Requirements, p. 1943, 178

(Board of Dentistry)

24-138-75 Definition of Nonroutine Application - General Standards for Specialties - Specialty Advertising, p. 2361, 429

(Board of Hearing Aid Dispensers)

24-150-40 Fees - Inactive Status - Military Training or Experience - Continuing Education Requirements - Unprofessional Conduct - Proof of Attendance, p. 1948, 52

(Board of Medical Examiners)

24-156-85 Definitions - Unprofessional Conduct - Reporting to the Board - ECP Licensure Qualifications - ECP License Application - Substantially Equivalent Education - Continuing Education and Refresher Requirements - Expired License - Fees - Medical Direction - Levels of ECP Licensure Including Endorsements - Endorsement Application - Procedures for Revision of Montana ECP Practice Guidelines or Curriculum - Scope of Practice - Training Courses - Final Pre-Licensing Examinations - Complaints - ECP License Renewal - ECP Training Program/Course Application and Approval - Examinations - Initial ECP Course Requirements - Post-Course Requirements - ECP Clinical Requirements, p. 83, 431

(Board of Occupational Therapy Practice)

24-165-23 Fees - Continuing Education - Unprofessional Conduct - Board Filing Practices - Renewals, p. 2283, 140

(Board of Outfitters)

24-171-39 Fees - Outfitter Records - Safety and First Aid Provisions - Insurance for Outfitters - Guide License, p. 280

(Board of Professional Engineers and Professional Land Surveyors)

24-183-43 Definitions - Fee Schedule - Teaching of Advanced Engineering Subjects in Montana - Certificate of Authorization - Applications - Exhibits of Land Surveying Projects - Comity for Professional Engineers and for Professional Land Surveyors - Classification of Land Surveying Experience - Continuing Professional Competence-Continuing Education - Unprofessional Conduct, p. 13

(Board of Public Accountants)

24-201-51 Fee Schedule - Use of CPA/LPA Designation - Applicant for Initial License - Certified Public Accountant Examination - Out-of-State Licensees Seeking a Montana License - Foreign Licensees Seeking a Montana License - Application Review - Peer Review Enrollment - Alternatives and Exemptions - Approved Peer Review Sponsoring Organizations, Programs, and Peer Review Standards - Standards for CPE Reporting - Reporting Requirements - Extension or Hardship Exception, p. 1359, 2406

(Board of Real Estate Appraisers)

- 24-207-42 Appraisal Review - USPAP Exemption - Definitions - Examination - Application Requirements - Approval of Qualifying and Continuing Education Courses - Ad Valorem Appraisal Experience - Qualifying Experience - Inactive License/Certification - Inactive to Active License - Trainee Requirements - Mentor Requirements - Registration and Renewal of Appraisal Management Companies - Continuing Education-Compliance and Auditing - Unprofessional Conduct for Appraisers - Unprofessional Conduct for Appraisal Management Companies - Incorporation by Reference of the Real Property Appraiser Qualification Criteria - Appraiser Reporting Obligations to the Board - Appraisal Management Company Reporting Obligations to the Board - Regulatory Reviews - Experience-Number of Hours Required - Qualifying Education Requirements for Licensed Real Estate Appraisers - Qualifying Education Requirements for Residential Certification - Qualifying Education Requirements for General Certification - Scope of Practice - Continuing Education Noncompliance, p. 2166, 53
- 24-207-43 Ad Valorem Tax Appraisal Experience, p. 420

(Board of Respiratory Care Practitioners)

- 24-213-21 Abatement of Renewal Fees - Continuing Education Requirements, p. 106

(Board of Behavioral Health)

- 24-219-32 Renewal Dates and Requirements - Military Training or Experience - Continuing Education Procedures and Documentation - Procedural Rules - Fee Schedules - Continuing Education Requirements - Accreditation and Standards - Reporting Requirements - Continuing Education Noncompliance, p. 20, 339
- 24-219-33 Licensed Addiction Counselors, p. 207

(Board of Speech-Language Pathologists and Audiologists)

- 24-222-28 Renewal Dates and Requirements - Definitions - Supervisor Responsibility - Functions of Speech-Language Pathology Aides or Assistants - Delivery of Telepractice Services - Continuing Education-Speech Language Pathologists and Audiologists - Screening Panel - License Renewal - Schedule of Supervision-Contents, p. 1368, 2306

LIVESTOCK, Department of, Title 32

- 32-18-291 Quarantine and Release of Quarantine - Definitions - Official Health Certificate - Permits - Additional Requirements for Cattle - Horses, Mules, and Asses - Department Ordered Pseudorabies Testing - Procedure Upon Detection of Pseudorabies - Department Ordered Brucellosis Testing of Animals - Procedure Upon Detection of

- Brucellosis - Memorandum of Understanding - Designated Surveillance Area - Vaccination Within the Counties in Which the DSA Is Located - Contaminated Premises - Identification of Omnivores and Carnivores - Importation of Alternative Livestock - Domestic Bison - Quarantine and Retest of Suspect Animals in Negative Herd - Swine Identification Code: Assignment of Codes, p. 1225, 1525, 1960
32-18-294 Definitions - Testing of Exposed Equids, p. 1708, 2542
32-19-295 Manner, Positioning, and Size of Labeling, p. 285, 448

NATURAL RESOURCES AND CONSERVATION, Department of, Title 36

- 36-22-199 Burlington Northern and Santa Fe Somers Site Controlled Groundwater Area, p. 1781, 2408

(Board of Water Well Contractors)

- 36-22-194 Location of Wells, p. 2494, 111

PUBLIC HEALTH AND HUMAN SERVICES, Department of, Title 37

- 37-849 Home Health Program, p. 2287, 141
37-867 Big Sky Rx, p. 2293, 60
37-868 Hospice Reimbursement, p. 2297, 61
37-869 Updating the Effective Dates of Medicaid Fee Schedules, p. 2024, 2409
37-870 Updated Medicaid Rates Manual, p. 2034, 2543
37-871 Pools, Spas, and Other Water Features, p. 2301, 62
37-872 Clinic Services Requirements, p. 32, 341
37-874 Update of the Healthcare Effectiveness Date and Information Set (HEDIS), p. 198, 397
37-875 Updating the Composite Rate for Outpatient Maintenance Dialysis Clinic, p. 112, 343
37-876 Adult Protective Services, p. 35, 344
37-879 Low Income Weatherization Assistance Program (LIWAP), p. 331
37-881 Healthy Montana Kids (HMK) Dental Benefits, p. 335

PUBLIC SERVICE REGULATION, Department of, Title 38

- 38-5-242 Pipeline Safety, p. 2366, 179

REVENUE, Department of, Title 42

- 42-2-995 Deduction Provided Under IRC 199A - Not Allowed for the Determination of Montana Net Income, p. 1153, 2311
42-2-996 Reappraisal Cycles for Residential, Commercial, Forest, and Agricultural Properties - Development of a Reappraisal Plan and Valuation Manuals, p. 2038, 2410
42-2-997 Tax Increment Financing Districts, p. 2193, 345

- 42-2-998 Agricultural Land Valuation, p. 2205, 2546
42-2-999 Trended Depreciation Schedules for Valuing Personal Property, p.
2369, 115, 209

SECRETARY OF STATE, Office of, Title 44

(Commissioner of Political Practices)

- 44-2-231 Payment Threshold--Inflation Adjustment for Lobbyists, p. 2304, 63

MONTANA ADMINISTRATIVE
REGISTER

2019 ISSUE NO. 9
MAY 10, 2019
PAGES 509-557

COREY STAPLETON
SECRETARY OF STATE

P.O. BOX 202801
HELENA, MONTANA 59620