

# MONTANA ADMINISTRATIVE REGISTER

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# MONTANA ADMINISTRATIVE REGISTER

## ISSUE NO. 21

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 The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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) 444-9009.

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BEFORE THE DEPARTMENT OF AGRICULTURE  
OF THE STATE OF MONTANA

|                                      |   |                             |
|--------------------------------------|---|-----------------------------|
| In the matter of the adoption of New | ) | NOTICE OF PUBLIC HEARING ON |
| Rules I, II, III, and IV and the     | ) | PROPOSED ADOPTION AND       |
| amendment of ARM 4.19.101,           | ) | AMENDMENT                   |
| 4.19.102, 4.19.103, 4.19.104,        | ) |                             |
| 4.19.107, 4.19.108, and 4.19.110     | ) |                             |
| pertaining to Hemp                   | ) |                             |

TO: All Concerned Persons

1. On December 1, 2020, at 1:00 p.m., the Department of Agriculture will hold a public hearing in Room 225 of the Scott Hart Building, at Helena, Montana, as well as virtually through the meeting platform Zoom to consider the proposed adoption and amendment of the above-stated rules. For the virtual meeting details, please contact Virginia Corbett by email at [agr@mt.gov](mailto:agr@mt.gov) or by phone at (406) 444-3156.

2. The Department of Agriculture 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 Agriculture no later than 5:00 p.m. on November 24, 2020, to advise us of the nature of the accommodation that you need. Please contact Cort Jensen, Department of Agriculture, 302 N. Roberts, Helena, Montana, 59601; telephone (406) 444-5402; fax (406) 444-5409; or e-mail [agr@mt.gov](mailto:agr@mt.gov).

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

NEW RULE I RESEARCH PROGRAM (1) A grower must apply for and receive a hemp research license, in addition to the standard hemp grower license, before being allowed to conduct research and cultivate hemp plants (excluding research already exempted in 80-18-103(3), MCA) not intended for commercial use.

(2) The department may recognize certain lots or plants of hemp as research by a licensed grower provided the plants and plant parts:

- (a) do not enter commerce;
- (b) are not used for personal use or gain;
- (c) are only grown indoors unless granted an exception from the department;
- (d) are grown with the goal of establishing improved hemp genetics or other legitimate purposes approved by the department;
- (e) are tracked and reported to the department beginning with the license application and throughout the licensing year; and
- (f) shall be destroyed, other than seed for propagation used for further research and potential future genetics.

(3) All research findings must be reported to the department.

(4) The THC testing of research plants is the responsibility of the license holder.

(5) Proven and established varieties must be approved by the department before entering a non-research phase and entering commerce.

(6) Official Montana research facilities are exempt from (2)(c) and (d) of this rule.

AUTH: 80-1-102, 80-18-107, MCA

IMP: 80-18-103, MCA

REASON: Establishes a "research" licensing component that allows the department to register and track hemp not intended for commercial purposes.

NEW RULE II VOLUNTEER HEMP (1) A grower must take reasonable steps to prevent or destroy volunteer hemp plants that arise and may be responsible for the costs to control plants that spread into nearby properties.

AUTH: 80-1-102, 80-18-107, MCA

IMP: 80-18-103, MCA

REASON: To assign responsibility to uncontrolled hemp plants.

NEW RULE III INSPECTION AND LABORATORY FEES (1) An additional laboratory testing fee of \$250 will be charged for each additional sample tested.

(2) An additional inspection fee of \$250 will be charged for each inspection conducted after the initial inspection.

AUTH: 80-1-102, 80-18-107, MCA

IMP: 80-18-110, MCA

REASON: To implement costs for services beyond initial testing or inspection. Based on 2020 statistics, an estimated 12 growers will need additional testing and 25 will need additional inspections, resulting in an increase of \$250 each.

NEW RULE IV PROCESSING WITH A GROWER'S LICENSE (1) A licensed grower vertically integrated as a hemp processor must abide by all state, tribal, USDA, FDA, and DEA requirements related to the processing, handling, and distribution of hemp and hemp derivatives, including the transportation of interim products that contain greater than 0.3% Total THC.

AUTH: 80-1-102, 80-18-107, MCA

IMP: 80-18-102, 80-18-103, 80-18-111, MCA

REASON: To establish and clarify growers' responsibility to maintain legally compliant hemp.

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

4.19.101 DEFINITIONS (1) remains the same.

(2) "Hemp" means the plant species Cannabis sativa L. and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a total delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis. ~~the plant Cannabis sativa L. and any part of such plant, whether growing or not, with a delta-nine tetrahydrocannabinol (THC) concentration of no more than 0.3 percent on a dry weight basis.~~

(3) through (11) remain the same.

AUTH: 80-18-107, MCA

IMP: 80-18-101, 80-18-102, 80-18-103, 80-18-106, 80-18-107, 80-18-110, 80-18-111, MCA

4.19.102 APPLICATION FOR MONTANA STATE HEMP PROGRAM

LICENSE (1) An applicant must:

(a) remains the same.

(b) apply to the department for participation in the program by May 4 30 for outdoor grows; application for greenhouse and indoor grows is open all year unless the department extends the application deadline;

(c) through (2) remain the same.

(3) Licenses will expire on the last day of December of April following the year the license is issued, beginning in 2021.

(4) remains the same.

AUTH: 80-18-107, MCA

IMP: 80-18-102, 80-18-103, 80-18-106, MCA

REASON: To extend and clarify application deadlines.

4.19.103 MONTANA STATE HEMP PROGRAM (1) through (1)(b) remain the same.

(c) not grow Category D varieties listed in ARM 4.19.108; and

(d) apply to the department for participation in the program by May 1 ~~unless the department extends the application deadline.~~; and

(e) keep all records related to the planting, growing, harvesting, storage, destruction, distribution, sale and/or processing of hemp, and make those records available for inspection for a minimum of three years.

~~(2) The department may create a hemp seed repository as part of the pilot program. Only pilot program participants can buy from the repository. The varieties in the repository will be determined by the department. Availability of a particular variety or any seed is not guaranteed by the department.~~

~~(3) All post harvest commercial use of the hemp must be approved by the department so as to not jeopardize the continued existence of the federal approval of the pilot program.~~

~~(a) Pre-approved and disapproved uses will be listed on the department web site.~~

(2) Live hemp plants or propagatable hemp plant parts may only be sold to persons licensed to grow hemp. Viable hemp seed intended for propagation may only be sold to persons licensed to grow hemp or persons licensed to process, condition or sale seed for propagation. Hemp grain, sold as a commodity intended for use as an approved food ingredient or oil, may only be sold to persons licensed to purchase, handle, or process hemp grain.

AUTH: 80-18-107, MCA

IMP: 80-18-102, 80-18-103, 80-18-106, MCA

REASON: The changes in ARM 4.19.103 and 4.19.110 ensure that Montana meets federal guidelines.

4.19.104 PROGRAM FEES (1) The fee for a Montana State Hemp License is ~~\$1,100~~ 450.

~~(2) The planting fee is \$400 per Montana State Hemp License plus:~~

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

(2) The department may assess a processing fee of \$100 for any late (postmarked or sent electronically) or incomplete documentation associated with the licensing process.

(3) The department may assess a change fee of \$50 for a request for each new cultivar or location associated with a previously processed license application.

(4) The fee to license a research program under an existing license is \$500 annually.

AUTH: 80-1-102, 80-18-107, MCA

IMP: 80-18-102, 80-18-103, 80-18-106, 80-18-110, MCA

REASON: To collect one uniform fee for all growers. The consolidation of the license fee has no fiscal impact for growers who planted only Category C cultivars. For growers who only planted Category A or B cultivars in 2020, there will be an additional \$250 cost to pay for testing of their cultivar. Based on 2020 statistics, approximately 32 growers will see an increase of \$250 each. The department estimates approximately 100 change requests at \$50 each and 35 late fees at \$100 each. The department anticipates five research licenses at \$500 each.

4.19.107 HEMP VARIETY (1) Applicants must inform the department of ~~what varieties planted they are planting~~ and the location of each variety by sending the information to the department.

(2) The department will send the full Montana State Hemp License for the year after receiving the required variety information from the applicant.

(3) The department ~~recognizes will utilize~~ a four-category system, found in ARM 4.19.108, to illustrate the relative risk of hemp cultivars concerning THC levels. ~~determine the amount of testing required and frequency of random sampling.~~

(4) Persons distributing hemp seeds for planting must comply with the Montana Agricultural Seed and Patented Plant Material Act, ~~excluding exemptions listed in 80-5-130 (4), MCA.~~



(a) A person whose name and address appear on the label of hemp seed sold in Montana, as required by 80-5-123, MCA, shall obtain a seed labeler's license from the department before doing business in Montana;

(b) all facilities located in the state that condition hemp seed shall obtain a license from the department for each facility; and

(c) a person who sells hemp seed in Montana, whether from in-state or out-of-state shall obtain a seed dealer's license from the department for each place where seed is located or sold.

(5) remains the same

(6) The department will publish an annual list of approved varieties for planting in the current license season by March 1 each year.

AUTH: 80-18-107, MCA

IMP: 80-18-102, 80-18-103, 80-18-106, 80-5-123, 80-5-125, MCA

4.19.108 HEMP VARIETY CATEGORIES (1) Categories will be as follows: Category A are certified varieties formally approved by the department, Category B are certified varieties approved by other states or countries at a level equivalent to the department, Category C are all other hemp ~~varieties~~ cultivars that an applicant reasonably believes will not produce a plant with over 0.3 percent total THC at any time prior to harvest and are not in Category D, and Category D includes all ~~varieties~~ cultivars forbidden by any federal law or regulation or added by rule by the department because of its inability to consistently produce hemp.

(2) A list of approved Category A and Category B varieties can be found on the department's website at <https://agr.mt.gov/Industrial-Hemp>. The list will be updated annually.

(a) Category A GFX 1, GFX 2, CRS 1, Canda, Carmagnola, Carmagnola Select, Fedora 17, Grandi, Joey, Katani, Picolo.

(b) Category B: Altair, Alyssa, Angie, Anka, Armanca, Asso, B 11, Beniko, Bialobrzieskie, C S, CanMa, Cannakomp, Carma, Carmen, Carmaleonte, Chameleon, Codimono, CHA, CHY, Crag, Dacia Secuieni, Debbie, Delores, Delta 405, Deltalosa, Denise, Diana, Dioca 88, Deni, ESTA 1, Eco Aglegra, Eco Nebliss, Eletta Campana, Epsilon 68, Elite, Fasamo, Fedrina 74, Felina 32, Felina 34, Ferimon, Fibrol, Fibranova, Fibrante, Fibriko, Fibrimon 24, Fibrimon 56, Finola, Futura 75, Georgina, GranMa, Glécia, Gliana, Helena, Henola, Hiration, IDA-0103, Ivory, Judy, Jutta, KC Bonusz, KC Dora, KC Virtus, KC Zuzana, Kompolti, Kompolti Hibrid TC, Kompolti Sargaszaru, Laura Secord, Lipko, Lovrin 110, Marcell, Marina, Markant, Martha, Medicine Mother, Monoica, Nadine, Novosadska, Petera, Quida, Rajan, Ratza, Santhica 23, Santhica 27, Santhica 70, Secuieni Jubileu, Silesia, Silistrenski, Silvana, Succesiv, Szarvasi, Tiborszallási, Tisza, Tygra, UC-RGM, USO 14, USO 31, Uniko B, VC Star, Victoria, Villanova, Wojko, X-59 (Hemp Nut), Yvonne, Zenit, Zolotonosha 11, Zolotonosha 15.

(c) Category C: All other hemp varieties that an applicant reasonably believes will not produce a plant with over 0.3 percent THC at any time prior to harvest and is not listed in Category D.

(d) Category D: Any varieties forbidden by any federal law or regulation.

AUTH: 80-18-107, MCA

IMP: 80-18-102, 80-18-103, 80-18-106, MCA

REASON: The changes in ARM 4.19.107 and 4.19.108 clarify the department's use of variety categories and seed licensing or labeling regulations.

4.19.110 HEMP SAMPLING (1) The department is authorized to inspect and sample all lots of hemp to determine compliance with this Act. ~~may allow a grower to self-sample if the department believes the grower can successfully follow the protocol and it is in the best interest of the department to have the grower do so.~~

(2) Properly licensed growers may self-sample to determine THC levels and to indicate trends in THC levels, but these samples will not be considered official samples.

AUTH: 80-18-107, MCA

IMP: 80-18-102, 80-18-103, 80-18-106, MCA

REASON: To clarify the department's exclusive authority to collect and test official hemp samples.

5. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Cort Jensen, Department of Agriculture, 302 N. Roberts, Helena, Montana, 59601; telephone (406) 444-5402; fax (406) 444-5409; or e-mail [agr@mt.gov](mailto:agr@mt.gov), and must be received no later than 5:00 p.m., December 4, 2020.

6. Zach Coccoli, Department of Agriculture, has been designated to preside over and conduct this hearing.

7. 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 paragraph 5 or may be made by completing a request form at any rules hearing held by the department.

8. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted by email on October 26, 2020.

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

/s/ Cort Jensen  
Cort Jensen  
Rule Reviewer

/s/ Ben Thomas  
Ben Thomas  
Director  
Department of Agriculture

Certified to the Secretary of State October 27, 2020.

BEFORE THE FISH AND WILDLIFE COMMISSION  
OF THE STATE OF MONTANA

|                                      |   |                             |
|--------------------------------------|---|-----------------------------|
| In the matter of the adoption of New | ) | NOTICE OF PUBLIC HEARING ON |
| Rule I and the amendment of ARM      | ) | PROPOSED ADOPTION AND       |
| 12.11.501 and 12.11.4101 pertaining  | ) | AMENDMENT                   |
| to closing the Boulder River to all  | ) |                             |
| motorized watercraft                 | ) |                             |

TO: All Concerned Persons

1. On November 30, 2020, at 2:00 p.m., the Fish and Wildlife Commission (commission) will hold a telephonic public hearing via ZOOM meeting platform to consider the proposed adoption and amendment of the above-stated rules. Because there currently exists a state of emergency in Montana due to the public health crisis by the novel coronavirus, COVID-19, there will be no in-person hearing. Interested parties may access the remote conferencing in the following way:

(a) Dial by telephone, 1-646-558-8656  
Meeting ID: 917 4172 8506  
Password: 600214

The hearing will begin with a brief introduction by staff to explain the use of the telephonic platform. All participants will be muted except when it is their time to speak.

2. The commission 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 no later than 5:00 p.m. on November 20, 2020, to advise us of the nature of the accommodation that you need. Please contact Kaedy Gangstad, Department of Fish, Wildlife and Parks, P.O. Box 200701, Helena, Montana, 59620-0701; telephone (406) 444-4594; or e-mail [kgangstad@mt.gov](mailto:kgangstad@mt.gov).

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

NEW RULE I BOULDER RIVER (1) The Boulder River is located in Park and Sweet Grass counties.

(2) The Boulder River and its tributaries are closed to any motorized watercraft from the headwaters of the Boulder River to the confluence with the Yellowstone River.

AUTH: 87-1-303, MCA  
IMP: 87-1-303, MCA

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

12.11.501 LIST OF WATER BODIES The following is a list of specific regulations on bodies of water with the reference where the rules regarding those bodies of water are located:

(1) through (17) remain the same.

(18) Boulder River [NEW RULE I]

(18) through (120) remain the same but are renumbered (19) through (121).

AUTH: 87-1-301, 87-1-303, MCA

IMP: 87-1-303, MCA

12.11.4101 PARK COUNTY (1) All rivers and streams in Park County east of the continental divide are closed to the use of all watercraft propelled by machinery of over 10 horsepower with the following exceptions:

(a) on the Yellowstone River, downriver from Highway 89 bridge (near the mouth of the Shields River); and

(b) the Boulder River, which is closed to all motorized watercraft pursuant to [NEW RULE I].

AUTH: ~~23-4-106~~, 87-1-303, MCA

IMP: ~~23-4-106~~, 87-1-303, MCA

REASON: At their October 22, 2020 meeting, the commission initiated rulemaking on a petition to ban motorized use on the Boulder River from the headwaters to its confluence with the Yellowstone River and all tributaries of the Boulder River. The petition was submitted by Tom Patterson on behalf of co-petitioners Kristi Patterson, Dan Rostad, Stuart and Dava Stenberg, Brian and Mary Ann Finnan, and Keith and Marie Engle. The petition also included a letter in support signed by 47 persons. The petition references safety concerns with jet boats that can operate at high rates of speed when stream flows are very low. The petition states that the Boulder River is a small river with many blind turns and narrow channels and motorized boats moving up and down the river at high rates of speed create a public health hazard for boaters and other users, including the dangerous possibility of collisions between a jet boat and irrigation equipment, livestock, children swimming, floating on inner tubes and rafts, and residents fishing.

The commission is proposing to amend ARM 12.11.501 and 12.11.4101 and to adopt NEW RULE I to ban all motorized use on the Boulder River pursuant to the petition.

5. Concerned persons may submit their data, views, or arguments orally at the telephonic hearing. Written data, views, or arguments may also be submitted to: Phil Kilbreath, Department of Fish, Wildlife and Parks Enforcement Division, P.O. Box 200701, Helena, Montana, 59620-0701; or e-mail [pkilbreath@mt.gov](mailto:pkilbreath@mt.gov), and must be received no later than December 4, 2020.

6. Kaedy Gangstad or another hearing officer appointed by the department has been designated to preside over and conduct the hearing.

7. The department maintains a list of interested persons who wish to receive notice of rulemaking actions proposed by the department or commission. Persons who wish to have their name added to the list shall make a written request that includes the name and mailing address of the person to receive the notice and specifies the subject or subjects about which the person wishes to receive notice. Such written request may be mailed or delivered to: Fish, Wildlife and Parks, Legal Unit, P.O. Box 200701, 1420 East Sixth Avenue, Helena, MT 59620-0701, or may be emailed to kgangstad@mt.gov.

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

9. With regard to the requirements of 2-4-111, MCA, the commission has determined that the adoption and amendment of the above-referenced rules will not significantly and directly impact small businesses.

/s/ Rebecca Dockter  
Rebecca Dockter  
Rule Reviewer

/s/ Shane Colton  
Shane Colton  
Chair  
Fish and Wildlife Commission

Certified to the Secretary of State October 27, 2020.

BEFORE THE FISH AND WILDLIFE COMMISSION  
OF THE STATE OF MONTANA

In the matter of the adoption of New Rule I pertaining to the use of remote-controlled devices and drones while fishing ) NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION ) )

TO: All Concerned Persons

1. On December 1, 2020, at 10:00 a.m., the Fish and Wildlife Commission (commission) will hold a telephonic public hearing via ZOOM meeting platform to consider the proposed adoption of the above-stated rule. Because there currently exists a state of emergency in Montana due to the public health crisis by the novel coronavirus, COVID-19, there will be no in-person hearing. Interested parties may access the remote conferencing in the following way:

(a) Dial by telephone, 1-646-558-8656  
Meeting ID: 956 6313 6821  
Password: 198904

The hearing will begin with a brief introduction by staff to explain the use of the telephonic platform. All participants will be muted except when it is their time to speak.

2. The commission 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 no later than 5:00 p.m. on November 20, 2020, to advise us of the nature of the accommodation that you need. Please contact Kaedy Gangstad, Department of Fish, Wildlife and Parks, P.O. Box 200701, Helena, Montana, 59620-0701; telephone (406) 444-4594; or e-mail [kgangstad@mt.gov](mailto:kgangstad@mt.gov).

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

NEW RULE I UNLAWFUL USE OF REMOTE-CONTROLLED DEVICES WHILE FISHING (1) The use of unmanned aerial vehicles (drones) and all other remote-controlled devices while fishing is prohibited. The prohibition on these devices includes, but is not limited to, the following:

- (a) carrying a hook or bait to any location on water;
- (b) trolling or otherwise carrying a hook or bait through water;
- (c) scouting the location of fish for the purposes of fishing; and
- (d) hooking and/or landing a fish.

AUTH: 87-1-301, MCA  
IMP: 87-1-301, MCA

REASON: The Department of Fish, Wildlife and Parks (department) has increasingly been asked the question of whether it is permissible to use an RC boat, drone, or other remote-controlled device to fish. Section 87-6-501, MCA, does not specifically address remote-controlled devices or drones, and gives the commission discretion to allow or disallow this activity. Possible uses of remote-controlled devices and drones while fishing include transporting bait and hooks long distances beyond where anglers can physically cast, transporting bait and hooks to areas that normally are unable to be accessed such as closed areas near dams, scouting large areas above water quickly for fish and filming fish in real time, dropping hooks or bait with exceptional accuracy, and landing fish. This proposed rule would represent a proactive approach in regulating this activity and would make it clear that the use of remote-controlled devices for the purposes of fishing is prohibited.

4. Concerned persons may submit their data, views, or arguments either orally at the hearing or in writing. Written data, views, or arguments may also be submitted to: Phil Kilbreath, Department of Fish, Wildlife and Parks Enforcement Division, P.O. Box 200701, Helena, Montana, 59620-0701; or e-mail [pkilbreath@mt.gov](mailto:pkilbreath@mt.gov), and must be received no later than December 4, 2020.

5. Kaedy Gangstad or another hearing officer appointed by the department has been designated to preside over and conduct the hearing.

6. The department maintains a list of interested persons who wish to receive notice of rulemaking actions proposed by the department or commission. Persons who wish to have their name added to the list shall make a written request that includes the name and mailing address of the person to receive the notice and specifies the subject or subjects about which the person wishes to receive notice. Such written request may be mailed or delivered to: Fish, Wildlife and Parks, Legal Unit, P.O. Box 200701, 1420 East Sixth Avenue, Helena, MT 59620-0701, or may be emailed to [kgangstad@mt.gov](mailto:kgangstad@mt.gov).

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

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

/s/ Aimee Hawkaluk  
Aimee Hawkaluk  
Rule Reviewer

/s/ Shane Colton  
Shane Colton  
Chair  
Fish and Wildlife Commission

Certified to the Secretary of State October 27, 2020.



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

In the matter of the adoption of NEW ) NOTICE OF PUBLIC HEARING ON  
RULES I through VII pertaining to ) PROPOSED ADOPTION  
HELP-Link )

TO: All Concerned Persons

1. On December 4, 2020, at 1:00 p.m., the Department of Labor and Industry (department) will hold a public hearing via remote conferencing to consider the proposed adoption of the above-stated rules. Because there currently exists a state of emergency in Montana due to the public health crisis caused by the coronavirus, there will be no in-person hearing. Interested parties may access the remote conferencing platform in the following ways:

- (a) Join Zoom Meeting, <https://mt-gov.zoom.us/j/98242535528>  
Meeting ID: 982 4253 5528; or
- (b) Dial by telephone, +1 406 444 9999 or +1 646 558 8656  
Meeting ID: 982 4253 5528

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m., November 27, 2020, to advise us of the nature of the accommodation that you need. Please contact Laura Ducolon, Legal Division, P.O. Box 1728, Helena, Montana 59624-1728; telephone (406) 444-4493; facsimile (406) 444-4140; Montana TTD (406) 444-5549; or e-mail [Laura.Ducolon@mt.gov](mailto:Laura.Ducolon@mt.gov).

3. GENERAL STATEMENT OF REASONABLE NECESSITY: There is reasonable necessity to adopt these rules in order to implement the employer grant provisions of Chapter 415, Laws of 2019, codified at Title 39, chapter 12, part 1, MCA. There is reasonable necessity to offer the grants on a "first come, first served" basis, rather than limiting grant awards to a portion of available funds in each of specific calendar periods so that Montana employers and workers can benefit from training programs sooner rather than at a later date. The department recognizes that due to the COVID-19 pandemic Montana employers and workers are facing significantly different challenges than they did a year ago, and that those new challenges are likely to require new approaches to training just as many businesses are having to develop new ways of performing business operations. The rules are designed to have the applicant explain the training proposal and identify the clients that the proposal is intended to benefit. In order to provide maximum flexibility within the statutory framework, the grant application allows an employer to propose innovative training programs to meet the particular needs of the employer, rather than choosing from existing or established training models. The department will evaluate proposals by looking to see how likely the proposed training will provide the benefits envisioned by the statutes.

The department notes that it is also separately proposing other new rules for related programs, such as those under the EARN program act, that are similarly intended to promote worker self-sufficiency and economic independence. The department has endeavored to develop rules that allow similar programs to operate in the same general manner, and to work to the fullest amount feasible in coordination with related programs within the department as well as those operated or administered by sister agencies, such as the Department of Commerce and the Department of Public Health and Human Services. As an example, the department, in awarding grants, may take into account whether the employer has responsibly fulfilled the employer's obligations under other grant programs administered by the department.

Finally, there is reasonable necessity to adopt these rules at this time because the department has finished its unprecedented "ramping up" of emergency unemployment insurance benefits response that has been occasioned by the outbreak of the COVID-19 pandemic, and is now able to return some of department staff to their customary duties following their temporary assignment to assist with unemployment insurance benefits claims.

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

NEW RULE I DEFINITIONS As used in [NEW RULES I through VII], the following definitions apply:

- (1) "Applicant" means an employer that is seeking a grant.
- (2) "Client" means an individual participating in the HELP-Link program offered by the department, or an individual who is eligible to participate in the HELP-Link program.
- (3) "Department" means the Department of Labor and Industry.
- (4) "Employer" means a for-profit business, a nonprofit business, or a public entity that:
  - (a) is properly registered with the secretary of state to conduct business as:
    - (i) a sole proprietor, if required;
    - (ii) a corporation;
    - (iii) a partnership;
    - (iv) a limited liability company; or
    - (v) an unincorporated association; and
  - (b) has Montana operations.
  - (c) The term does not include an entity of state government or temporary services contractors as defined by 39-8-102, MCA.
- (5) "HELP-Link" means the workforce development program operated by the department to identify workforce development opportunities focusing on specific labor force needs within the state of Montana and for other purposes as provided by Title 39, chapter 12, part 1, MCA.
- (6) "Skills-based training" means training which allows the client to obtain job-specific knowledge and abilities that are relevant to work performed by employees of the employer. Skills-based training must increase the quality of tasks a client can perform, increase the number of tasks a worker can successfully

perform, or provide the ability to demonstrate that a worker can execute old tasks in new ways as a direct result of the training.

AUTH: 39-12-107, MCA

IMP: 39-12-103, 39-12-106, MCA

NEW RULE II INDIVIDUALS ELIGIBLE FOR GRANT FUNDING (1) Grant funding may only be provided to employers on behalf of clients.

(2) An employer seeking to apply for grant funding may contact the department to verify the employer's employee is a client. The department may verify the employee's client status upon a sufficient showing that the employer employs the employee. Requests for verification of client status may be addressed to HelpLinkmailbox@mt.gov.

(3) A client's eligibility for grant funding is determined on the date of application and approval of the application. Eligibility does not terminate if the client loses eligibility to participate in the HELP-Link program during the grant period.

AUTH: 39-12-107, MCA

IMP: 39-12-103, 39-12-106, MCA

NEW RULE III EXPENSES FOR WHICH GRANT FUNDS MAY BE USED

(1) The following are examples of expenses for which grant funds may be used by employers for clients to meet the purposes set forth in 39-12-106, MCA:

- (a) fees (tuition) for training program provided by third party vendor;
- (b) cost of training materials purchased;
- (c) tools and durable personal protective equipment (PPE);
- (d) reasonable travel and per diem for out-of-town travel to attend training, at an amount not to exceed the rates allowed to public employees traveling on official business; and
- (e) other reasonable out-of-pocket employer-paid expenses, including client wages, if approved as part of the grant award.

(2) The department reserves the right to reimbursement for grant funds paid which are used for any non-approved purpose.

AUTH: 39-12-107, MCA

IMP: 39-12-103, 39-12-106, MCA

NEW RULE IV GRANT APPLICATION PROCESS (1) The department shall make available workforce development grant application forms which an applicant must complete for the purpose of applying for a grant award. At minimum the application must address the purpose of the grant and its benefit to the client.

(2) Upon receipt of an application, the department will determine whether the application is complete. The department may at its sole discretion and at any time request additional information from an applicant for use in evaluating the application. The applicant may amend or withdraw a grant application before the department notifies the applicant of its decision whether to fund the grant.

(3) The department will review all applications pursuant to [NEW RULE V].

(4) The department shall notify the applicant in writing of the department's decision to approve or reject a grant application following evaluation of the application. A notice approving the application must specify the amount approved for the grant.

(5) An applicant aggrieved by the department's decision may utilize the procedure set forth in [NEW RULE VII].

AUTH: 39-12-107, MCA

IMP: 39-12-103, 39-12-106, MCA

#### NEW RULE V EVALUATION CRITERIA FOR GRANT APPLICATION

(1) The department shall evaluate a grant application on the basis of the content of the written grant application and any documents or materials submitted by the applicant as part of the application.

(2) The department shall evaluate grant applications in the order in which they are received. The date of receipt is the date on which the application is determined to be complete or the last date on which it is amended, whichever is later.

(3) In addition to the criteria set forth in 39-12-106, MCA, the department shall consider the following matters when evaluating a grant application:

(a) whether the proposal reasonably relates to the employer's Montana business operations;

(b) whether the proposed outcomes (completion rate and amount of economic improvement) are readily measurable;

(c) whether the proposal duplicates other resources that are available to the applicant; and

(d) the significance of the impact of the grant in furthering the purposes of the HELP Act.

(4) The department may consider such other matters as may be pertinent to the evaluation, including but not limited to whether the employer has complied with other grants previously awarded by the department.

(5) The department may award a grant for less than the full amount requested.

(6) In the event that an employer applies for multiple grants, or for multiple clients, the department may, in its discretion, deny some or all of those multiple applications in order to provide equitable treatment to other grant applicants in the distribution of grant awards. Such denial does not preclude an employer from applying in the future, so long as the client remains eligible

AUTH: 39-12-107, MCA

IMP: 39-12-103, 39-12-106, MCA

NEW RULE VI AWARD OF GRANTS AND PAYMENTS (1) Grant funding is limited by the appropriations available for the grants.

(2) The amount of a grant that is awarded is the maximum payable for the grant. The actual disbursement of grant funds is conditioned as provided by this rule.

- (3) A client is eligible for a maximum \$5,000 grant.
- (4) Grants are generally funded on a "first come, first served" basis, based upon the evaluation of the applications as provided by [NEW RULE V].
- (5) Payment of a grant may either be made directly to a vendor or as a reimbursement to an employer. Only preapproved, verified, and actual expenses are eligible for payment.
  - (a) For direct payment to a vendor, the employer must provide the department the invoice for the grant-covered purchase. If approved, the department will make payment within 30 days.
  - (b) For a reimbursement payment, the employer must provide the department documentation of the purchase made, including without limitation, proof of purchase and cost within 30 days of the purchase. If approved, the department will make payment within 30 days.
- (6) The department shall require that the employer enter into a financial agreement regarding use of the grant funds, audit rights, and other matters related to ensuring the proper expenditure of public funds.

AUTH: 39-12-107, MCA

IMP: 39-12-103, 39-12-106, MCA

NEW RULE VII DISPUTE RESOLUTION (1) Only an applicant has standing to request a hearing. A request for a hearing may be made when there has been a denial of:

- (a) a grant application;
  - (b) the full amount requested in a grant application that has otherwise been awarded; or
  - (c) a reimbursement request for a specific expense.
- (2) A request for a hearing must be made in writing within 30 days of the date of mailing of the notice of denial. The request must identify the denial being disputed, and the basis upon which the dispute is being made. The request for the hearing must be sent to [HelpLinkmailbox@mt.gov](mailto:HelpLinkmailbox@mt.gov).
- (3) A hearing requested pursuant to this rule will be conducted under the informal contested case procedures provided by 2-4-604, MCA, under the Montana Administrative Procedure Act.
- (4) In a hearing under this rule:
- (a) the applicant has the burden to show that the department abused its discretion in making a determination or otherwise failed to provide a fundamentally fair process in its decision making; and
  - (b) the applicant bears the burden of proof and the burden of production of evidence.
- (5) A party that receives an adverse final decision under this rule may appeal to District Court in the manner provided by the Montana Administrative Procedure Act.

AUTH: 39-12-107, MCA

IMP: 39-12-103, 39-12-106, MCA

5. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Laura Ducolon, P.O. Box 1728, Helena, MT 59624-1728; fax (406) 444-4140; or e-mail to Laura.Ducolon@mt.gov, and must be received no later than 5:00 p.m., December 7, 2020.

6. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and e-mail or mailing address of the person to receive notices and specifies the particular subject matter or matters regarding which the person wishes to receive notices. Such written request may be mailed or delivered to the Department of Labor and Industry, attention: Mark Cadwallader, 1315 E. Lockey Avenue, P.O. Box 1728, Helena, Montana 59624-1728, faxed to the department at (406) 444-1394, or e-mailed to mcadwallader@mt.gov, or may be made by completing a request form at any rules hearing held by the agency.

7. An electronic copy of this notice of public hearing is available through the department's web site at <http://dli.mt.gov/events/calendar.asp>, under the Calendar of Events, Administrative Rules Hearings Section. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems, and that a person's difficulties in sending an e-mail do not excuse late submission of comments.

8. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted on October 26, 2020, by electronic mail.

9. Pursuant to 2-4-111, MCA, the department has determined that the rule changes proposed in this notice will have a significant and direct impact upon small businesses. In line with the purposes of the HELP Act, these rules will provide direct benefit to workers and employers across Montana by investing in Montana's citizens and striving to improve employee access to and ability to succeed in improved employment, employment with health care benefits or the ability to purchase health care, and financial security. Therefore, these direct impacts on small businesses are expected to be positive by allowing employers to access grant funding to allow these purposes to be met.

10. The department's Office of Administrative Hearings has been designated to preside over and conduct this hearing.

/s/ QUINLAN L. O'CONNOR  
Quinlan L. O'Connor  
Alternate Rule Reviewer

/s/ BRENDA NORDLUND  
Brenda Nordlund, Acting Commissioner  
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State October 27, 2020.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY  
STATE OF MONTANA

In the matter of the amendment of ) NOTICE OF PUBLIC HEARING ON  
ARM 24.21.102, 24.21.202, ) PROPOSED AMENDMENT  
24.21.302, and 24.21.421 pertaining )  
to the apprenticeship and training )  
program )

TO: All Concerned Persons

1. On December 4, 2020, at 10:00 a.m., the Department of Labor and Industry (department) will hold a public hearing via remote conferencing to consider the proposed amendment of the above-stated rules. Because there currently exists a state of emergency in Montana due to the public health crisis caused by the novel coronavirus, there will be no in-person hearing. Interested parties may access the remote conferencing platform in the following ways:

- (a) Join Zoom Meeting, <https://mt-gov.zoom.us/j/94933880879>  
Meeting ID: 949 3388 0879; or
- (b) Dial by telephone, +1 646 558 8656 or +1 406 444 9999  
Meeting ID: 949 3388 0879

The hearing will begin with a brief introduction by department staff to explain the use of the videoconference and telephonic platform. All participants will be muted except when it is their time to speak.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m., November 27, 2020, to advise us of the nature of the accommodation that you need. Please contact Jay Reardon, Registered Apprenticeship Workforce Services Division, P.O. Box 1728, Helena, Montana 59624-1728; telephone (406) 444-3556; facsimile (406) 444-4140; Montana TTD (406) 444-5549; or e-mail [james.reardon@mt.gov](mailto:james.reardon@mt.gov).

3. GENERAL STATEMENT OF REASONABLE NECESSITY: Reasonable necessity to amend these rules exists because the department proposes to adopt and incorporate by reference additional provisions from the U.S. Department of Labor, Code of Federal Regulations, Labor Standards for Registration of Apprenticeship Programs, 29 CFR 29, to provide consistency in administering its apprenticeship program and because the department seeks to obtain U.S. Department of Labor approval for its apprenticeship program.

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

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

(1) "Apprenticeship agreement" has the meaning provided for by ~~39-6-104~~ 39-6-105, MCA, ~~and includes an indenture agreement.~~

(2) "Department" means the Montana Department of Labor and Industry, as provided for by 2-15-1701, MCA. The department is the state apprenticeship agency.

~~(3) "Indenture agreement" means the specific written agreement between a sponsor and an individual apprentice regarding the terms and conditions of the apprentice's apprenticeship.~~

~~(4) "Joint apprenticeship committee" means a local or statewide committee operating pursuant to 39-6-104, MCA, and recognized by the department.~~

~~(5)~~ (3) "Registered apprentice" means an individual whose indenture apprenticeship agreement has been officially recognized and registered with a registration agency the department.

~~(6) "Registration agency" means any of the following:~~

~~(a) the department;~~

~~(b) the U.S. Department of Labor, acting through its employment and training administration; and~~

~~(c) the federally recognized apprenticeship registration agency of another state or U.S. territory.~~

~~(7) "Sponsor" means an employer or a joint apprenticeship committee which operates an apprenticeship training program recognized by the department.~~

~~(8)~~ (4) "State apprenticeship advisory council" means the advisory body designated by the department pursuant to ARM 24.21.205. The term "State Apprenticeship Council" as defined by 29 CFR 29.2 shall be interpreted to refer to the same body.

(9) remains the same but is renumbered (5).

AUTH: 39-6-101, MCA

IMP: 39-6-101, 39-6-105, MCA

REASON: Reasonable necessity exists to amend this rule because the department proposes to adopt definitions from 29 CFR 29.2 by amending ARM 24.21.202. That adoption will provide uniformity in interpreting terms. Section (2) is proposed to be amended to clarify that the department is the state apprenticeship agency. Section (3) is proposed to be repealed because the term "indenture agreement" will be replaced by the term "apprenticeship agreement" which is defined in 39-6-105, MCA. Section (4) is proposed to be repealed because the term "joint apprenticeship committee" will be replaced with the term "apprenticeship committee" as defined in 29 CFR 29.2 which the department proposes to adopt in ARM 24.21.302(1)(a). Section (5) is proposed to be amended to replace the term "indenture" with "apprenticeship" and to replace the term "registration agency" with "the department" because the terms "indenture" and "registration agency" are proposed to be repealed. Section (6) is proposed to be repealed because the term "registration agency" will be replaced with the term "state apprenticeship agency" as defined in 29 CFR 29.2 which the department proposes to adopt in ARM 24.21.302(1)(a).



Section (7) is proposed to be repealed because the department proposes to adopt the definition of "sponsor" defined in 29 CFR 29.2 which the department proposes to adopt in ARM 24.21.302(1)(a). Section (8) is proposed to be amended to clarify that the term "state apprenticeship advisory council" shall be interpreted to refer to the same body as "State Apprenticeship Council" defined in 29 CFR 29.2 and proposed to be adopted in ARM 24.21.302(1)(a).

Three terms are expressly excepted from adoption: "apprentice," "apprenticeship agreement," and "department" because these terms are defined by Montana statute and therefore are unable to be changed by administrative rule.

#### 24.21.202 STATE APPRENTICESHIP AND TRAINING PROGRAM

(1) There exists with the department's workforce services division an office which operates the state's apprenticeship and training program. The office functions as Montana's state apprenticeship agency and state office for apprenticeship, as those terms are used within 29 CFR part 29, subpart A. The office is organized as the apprenticeship and training program within the 21st century workforce technology, apprenticeship, and training bureau of the workforce services division of the department.

(2) and (3) remain the same.

(4) The state apprenticeship and training program's main office is located at the Walt Sullivan Building, 4327 1315 Lockey Avenue, Helena, Montana, 59601.

(a) through (d) remain the same.

AUTH: 39-6-101, MCA

IMP: 39-6-101, MCA

REASON: Reasonable necessity exists to amend ARM 24.21.202 to correct typographical errors. The word "is" was inadvertently omitted from the third sentence in the previous version and the department's address in (4) was incorrect. The addition of subpart A to the citation for 29 CFR part 29 is the specific subpart in the Code of Federal Regulations.

#### 24.21.302 FEDERAL REGULATIONS INCORPORATED BY REFERENCE

(1) The department adopts and incorporates by reference the following federal regulations for use in the operation of its state apprenticeship and training program:

(a) 29 CFR section 29.2, definitions, as in effect on May 11, 2020. The department expressly excludes from this adoption the definitions of "apprentice," "apprenticeship agreement," and "department";

(~~a~~) (~~b~~) 29 CFR section 29.3, eligibility and criteria for registration of an apprenticeship program, as in effect on ~~July 1, 2010~~ May 11, 2020;

(b) and (c) remain the same but are renumbered (c) and (d).

(~~d~~) (~~e~~) 29 CFR section 29.6, program performance standards, as in effect on ~~July 1, 2010~~ May 11, 2020;

(e) and (f) remain the same but are renumbered (f) and (g).

(h) 29 CFR section 29.9, reinstatement of program registration, as in effect on October 29, 2008;

(g) remains the same but is renumbered (i).

~~(h) (i)~~ 29 CFR section 29.11, limitations, as in effect on ~~July 1, 2010~~ May 11, 2020; and

(k) 29 CFR section 29.13, recognition of state apprenticeship agencies, as in effect on May 11, 2020; and

(i) remains the same but is renumbered (l).

(2) The department is not formally adopting by reference the various other portions of 29 CFR part 29 because those portions either address matters related to the internal operations of government or are otherwise addressed by the administrative rules contained in this subchapter. As an example, the provisions of 29 CFR ~~section 12~~ 29.12 regarding complaint procedures, are addressed in ARM 24.21.416, and more generally under the Montana Administrative Procedure Act. ~~Likewise, while the department is subject to 29 CFR section 29.13 for purposes of its recognition as the state apprenticeship agency, those provisions are by their terms not applicable to sponsors, employers, apprentices, or the public at large.~~

(3) remains the same.

AUTH: 2-4-201, 39-6-101, MCA

IMP: 2-4-201, 39-6-101, MCA

REASON: Reasonable necessity exists to adopt and incorporate by reference 29 CFR 29.2, definitions, 29 CFR 29.9, reinstatement of program registration, and 29 CFR 29.13, recognition of state apprenticeship agencies. This rule also adopts updated versions of previously adopted CFR provisions: 29 CFR 29.3, 29 CFR 29.6, and 29 CFR 29.11. The department is adopting 29 CFR 29.2, 29 CFR 29.9, and 29 CFR 29.13 now and adopting the updated versions of previously adopted rules to obtain U.S. Department of Labor approval for its apprenticeship program. The citation to "section 12" was deleted in favor of the more precise citation to 29.12.

24.21.421 EQUAL EMPLOYMENT OPPORTUNITY (1) ~~Title 29, C.F.R. Part 30~~ 29 CFR part 30 is a federal regulation which was implemented by the Apprenticeship Bureau to retain federal recognition as the apprenticeship regulatory agency. The Apprenticeship Bureau has drawn up a state plan entitled "Equal Employment in Apprenticeship." Copies of the ~~proposed~~ final approved state plan, effective ~~June 2019~~ January 2020, are available and can be accessed electronically at ~~http://apprenticeship.mt.gov/state-eeo-plan~~ apprenticeship.mt.gov. ~~The department consented to omission of the~~ The text of the plan which is omitted because it is cumbersome and inexpedient. Printed copies are available at no cost and may be obtained at the Apprenticeship Bureau office.

AUTH: 39-6-101, MCA

IMP: 39-6-101, 39-6-105, MCA

REASON: Reasonable necessity exists to amend this rule because the U.S. Department of Labor has approved the department's proposed EEO State Plan and to update the URL where the plan is available. "Title 29, C.F.R. Part 30" was deleted in favor of "29 CFR part 30" for consistent citation form.

5. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Jay Reardon, Registered Apprenticeship Workforce Services Division, P.O. Box 1728, Helena, MT 59624-1728; fax (406) 444-4140; or e-mail to james.reardon@mt.gov, and must be received no later than 5:00 p.m., December 7, 2020.

6. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and e-mail or mailing address of the person to receive notices, and specifies the particular subject matter or matters regarding which the person wishes to receive notices. Such written request may be mailed or delivered to the Department of Labor and Industry, attention: Mark Cadwallader, 1315 E. Lockey Avenue, P.O. Box 1728, Helena, Montana 59624-1728, faxed to the department at (406) 444-1394, or e-mailed to mcadwallader@mt.gov, or may be made by completing a request form at any rules hearing held by the agency.

7. An electronic copy of this notice of public hearing is available through the department's web site at <http://dli.mt.gov/events/calendar.asp>, under the Calendar of Events, Administrative Rules Hearings Section. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems, and that a person's difficulties in sending an e-mail do not excuse late submission of comments.

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

9. Pursuant to 2-4-111, MCA, the department has determined that the rule changes proposed in this notice will not have a significant and direct impact upon small businesses. To the extent that there is an impact, it will be beneficial because the proposed changes provide uniformity and clarity to the apprenticeship rules. There are no direct cost implications to apprenticeship sponsors.

10. The department's Office of Administrative Hearings has been designated to preside over and conduct this hearing.

/s/ QUINLAN L. O'CONNOR

Quinlan L. O'Connor  
Alternate Rule Reviewer

/s/ BRENDA NORDLUND

Brenda Nordlund, Acting Commissioner  
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State on October 27, 2020.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY  
STATE OF MONTANA

In the matter of the adoption of New        )  
Rules I through VIII pertaining to the        )  
implementation of the Montana                )  
Employment Advancement Right Now        )  
Program Act                                        )

NOTICE OF PUBLIC HEARING ON  
PROPOSED ADOPTION

TO: All Concerned Persons

1. On December 2, 2020, at 2:00 p.m., the Department of Labor and Industry (department) will hold a public hearing via remote conferencing to consider the proposed adoption of the above-stated rules. Because there currently exists a state of emergency in Montana due to the public health crisis caused by the novel coronavirus, there will be no in-person hearing. Interested parties may access the remote conferencing platform in the following ways:

- (a) Join Zoom Meeting, <https://mt-gov.zoom.us/j/94258673882>  
Meeting ID: 942 5867 3882; or
- (b) Dial by telephone, +1 406 444 9999 or +1 646 558 8656,  
Meeting ID: 942 5867 3882

The hearing will begin with a brief introduction by department staff to explain the use of the videoconference and telephonic platform. All participants will be muted except when it is their time to speak.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m., November 25, 2020, to advise us of the nature of the accommodation that you need. Please contact Nisan Burbridge, Department of Labor and Industry, P.O. Box 1728, Helena, Montana, 59624-1728; telephone (406) 444-3079; or e-mail [nburbridge@mt.gov](mailto:nburbridge@mt.gov).

3. GENERAL STATEMENT OF REASONABLE NECESSITY: There is a reasonable necessity to adopt these rules to implement the Montana Employment Advancement Right Now (EARN) Program Act, Title 39, chapter 11, part 3, MCA, that was passed by the 2019 Montana Legislature.

The Montana Employment Advancement Right Now program is intended to promote the creation of industry sector partnerships and public-private collaboration by funding one or more pilot programs from industry-led partnerships to impact current industry workforce challenges by either increased skills training and/or job readiness assistance for target populations.

The Montana EARN grant is intended for projects designed to solve local or regional challenges related to applicant pipeline skills gaps or applicant pipeline sector workforce shortages. The grant is also intended to encourage sector

partnerships within regions and across the state. The EARN program is designed to encourage long-term statewide economic growth by assisting employers to train workers and fill positions, as well as to ensure meaningful economic advancement for trainees.

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

NEW RULE I DEFINITIONS As used in [NEW RULES I through VIII], the following definitions apply:

(1) "Application" means the grant application submitted by a lead applicant to the department seeking an EARN program grant.

(2) "Business-related nonprofit organizations" means an organization such as a trade association or organizations functioning as a workforce intermediary for the express purpose of serving the needs of an industry or industry-sector partnership.

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

(4) "EARN program grant" means a grant awarded by the department pursuant to 39-11-305, MCA.

(5) "Industry workforce shortages" means a documented shortage of skilled employees for a sustained period of time in a particular target industry.

(6) "Lead applicant" mean a business, a business-related nonprofit organization, or an economic development agency that is a member of the strategic industry partnership. The lead applicant is an entity recognized by the state and must be in good standing with the Montana Secretary of State or local tribal government. The lead applicant shall act as the fiscal agent for receiving any awarded grant funds.

(7) "Matching funds" means any amount of direct financial or in-kind contribution provided by a member of the strategic industry partnership that is identified in the application. Matching funds can be at any amount in relation to the amount requested in the application.

(8) "Skills gap" means the difference in skills required for an occupation in a particular target industry and the skills possessed by the target population.

AUTH: 39-11-305, MCA

IMP: 39-11-302, 39-11-304, 39-11-305, MCA

NEW RULE II GRANT APPLICATION SUBMISSION (1) A lead applicant shall submit a written application to the department to be considered for an EARN program grant. The application may be submitted to the department by e-mail or mail:

(a) An e-mail application shall be submitted to MontanaEARN@mt.gov. An e-mail submission shall be in .PDF format. Any submission totaling over ten MB shall be sent to the department over the State File Transfer Service.

(b) A mail application shall be mailed to the Department of Labor and Industry, Montana EARN Program Grants, P.O. Box 1728, Helena MT 59624-1728.

(2) An application is submitted for evaluation when a complete application or amended application is received by the department, and not upon mailing.

AUTH: 39-11-305, MCA

IMP: 39-11-305, MCA

NEW RULE III GRANT APPLICATION CONTENTS (1) Each application must identify the lead applicant, list each member of the strategic industry partnership, and include the name, mailing address, phone number, and e-mail address for each of the following members:

- (a) one local government;
- (b) one education institution; and
- (c) two or more businesses representing one or more target industries. For each target industry, the application must include the following:
  - (i) describe each "high-demand occupation," as defined by 39-11-302, MCA, or the set of occupations within the target industry; and
  - (ii) evidence of industry workforce shortages.

(2) Each application shall describe the target population for the program and any specific job readiness assistance needed by the target population.

(3) Programs that are eligible for funding pursuant to these rules are for planning or implementation activities designed to address skill gaps in the target population and/or train workers for specific occupations. Priority will be given to implementation activities. No program shall last more than 12 months. Each application shall include the following about the program:

- (a) identify a program budget, including a cost breakdown of expenses;
- (b) describe the requirements of the program, and how the program relates to the target industry; and
- (c) describe what constitutes successful completion of the program, including any credential earned at completion of the program.

(4) Each application must describe the expected economic benefits to individuals who successfully complete the described program, including expected wages and opportunities for career advancement.

(5) Each application shall identify the amount and sources of any matching funds provided by or on behalf of the strategic industry partnership, including the identity of the persons or entities providing a significant amount of matching funds. Matching funds are not required to submit an application, but matching funds will be considered favorably in evaluation of the application pursuant to [NEW RULE IV].

(6) The applicant is encouraged to provide documentation to support the statements contained in the application.

(7) Grant applications and any supporting documents may be subject to inspection by the public pursuant to Montana's public records laws.

AUTH: 39-11-305, MCA

IMP: 39-11-305, MCA

NEW RULE IV EVALUATION CRITERIA FOR GRANT APPLICATION

(1) The department shall award funds based on the written grant application and any supporting documentation submitted by the lead applicant as part of the application. The department shall determine an initial application cycle for submission of applications and awarding of grant funds. If more than one

application is submitted during the initial cycle, the applications shall be ranked according to the criteria in (3). If no applications are received during the initial cycle or if funding is still available after the initial cycle, the department will determine a subsequent cycle for submission of applications and awarding of grant funds.

(a) An application may be amended at the department's discretion.

(b) No lead applicant shall be awarded more than one award during a state fiscal year.

(c) A lead applicant who is denied funding during the initial cycle for submission may submit an application in any subsequent cycle.

(d) A lead applicant may withdraw a grant application before the department undertakes its evaluation of the application.

(2) An application is submitted for evaluation once the complete application or amended application is received by the department.

(3) The department shall evaluate submitted applications and award grants, based on the following:

(a) whether the application is complete pursuant to [NEW RULE III];

(b) whether the training reasonably relates to the employer's Montana business operations;

(c) whether the training outcomes for the target population (completion rate and amount of economic improvement) are readily measurable;

(d) whether any matching funds are available for the project, and the amount of matching funds compared to the amount of funds requested in the application;

(e) the significance of the impact of the grant on the target population, and any other considerations the department deems relevant for furthering the purposes of the EARN program.

(4) The department may consider such other matters as may be pertinent to the evaluation, including but not limited to whether the lead applicant has provided timely reporting and compliance with regards to other grants previously awarded by the department.

(5) The department shall notify the lead applicant in writing of the department's decision to approve or reject a grant application following evaluation of the application. The notice approving the application must specify the amount approved for the grant.

AUTH: 39-11-305, MCA

IMP: 39-11-305, MCA

NEW RULE V AWARD OF GRANTS AND PAYMENTS (1) Grant funding is limited by the appropriations available for the grants.

(2) The maximum available for a lead applicant awarded a grant is \$5,000. The department may award a grant for less than the full amount requested. The amount of a grant that is awarded is the maximum payable for the grant.

(3) Grants are funded based upon the evaluation of the applications as provided by [NEW RULE IV].

(4) Upon an award of grant funds, the department shall enter into a fiscal agreement with the successful lead applicant. The funding agreement must address the following:

- (a) the terms of the grant;
  - (b) audit rights of the department and/or state;
  - (c) intellectual property;
  - (d) the grant reporting requirements; and
  - (e) any other matters related to the proper expenditure of public funds.
- (5) Upon an award of grant funds, the successful lead applicant must:
- (a) sign the financial agreement within 14 calendar days; and
  - (b) submit a completed state of Montana form SW9 (Substitute W-9) or IRS form W-9.

AUTH: 39-11-305, MCA

IMP: 39-11-305, MCA

NEW RULE VI GRANT REPORTING REQUIREMENTS (1) The grant award recipient shall submit a first progress report to the department within six months of receipt of the grant award. The progress report shall address the following:

- (a) status of the project;
- (b) metrics to date;
- (c) benefits to the target populations and strategic industry partners; and
- (d) any other relevant information.

(2) The grant award recipient shall submit a second progress report to the department within 12 months of receipt of the grant award. The second progress report shall address the factors listed in (1)(a) through(d), and also describe the projects' outcomes and benefits upon completion.

(3) The department may use information contained in the employer reports for any of the following purposes:

- (a) to evaluate the effect of the training on individual income, financial independence, and other matters consistent with the purposes of the EARN Program Act;

- (b) to provide non-personally identifiable information to the legislative and executive branches regarding program operations and outcomes;

- (c) for audit purposes, including review by legislative auditors.

(4) A grant award recipient shall keep and maintain records regarding all transactions for which the recipient received grant funding, including, at a minimum, supporting documentation (e.g., invoices) for each expenditure that verifies an expenditure is allowable under the terms of the grant award.

(5) A grant award recipient shall maintain the records described in (4) for a period of five years following grant expiration. The department may determine a grant award recipient does not comply with these rules if records are not kept and maintained as provided in this rule.

(6) The failure of a lead applicant to timely report matters as required by this rule and the financial agreement may negatively affect the department's evaluation of other grant applications submitted by the lead applicant, as provided by [NEW RULE IV].

AUTH: 39-11-305, MCA



IMP: 39-11-305, MCA

NEW RULE VII REVOCATION OF GRANT AWARDS (1) A grant award may be revoked in whole or in part for reasons including, but not limited to, the following:

- (a) failure to follow the terms of the funding agreement;
- (b) failure to follow reporting requirements; or
- (c) failure to fund the program for the target population as described in the grant application.

(2) The revocation of a grant award or partial grant under this subchapter may negatively affect the department's evaluation of other grant applications submitted by the lead applicant, as provided by [NEW RULE IV].

AUTH: 39-11-305, MCA

IMP: 39-11-305, MCA

NEW RULE VIII DISPUTE RESOLUTION (1) A lead applicant or grant recipient has the right to appeal when the department:

- (a) decides not to award funding for a grant application;
- (b) awards less grant funding than requested in the application; or
- (c) revokes a grant award or a portion of a grant award.

(2) If a lead applicant disagrees with the department's decision to not approve an application, or to approve less funding than was requested, the lead applicant may either:

- (a) submit a written request for administrative review within 30 calendar days of the date of the notice of the department's decision regarding the application. The request shall be submitted to the Department of Labor and Industry, Montana EARN Program Grants, P.O. Box 1728, Helena MT 59624-1728, or electronically to MontanaEARN@mt.gov; or

- (b) submit a written request for a contested case proceeding, pursuant to the informal procedures provided in 2-4-604, MCA, within 30 calendar days of the date of the notice of final decision of the department. The final decision of the department may be the result of an administrative review requested pursuant to (2)(a). The request shall be submitted to the address in (2)(a).

(3) In any request for review or hearing under this rule:

- (a) the lead applicant has the burden to show that the department abused its discretion in making a determination or otherwise failed to provide a fundamentally fair process in its decision making; and

- (b) the lead applicant bears the burden of proof and the burden of production of evidence.

(4) A party that receives an adverse final decision under this rule may file a petition for judicial review in District Court pursuant to 2-4-702, MCA.

AUTH: 39-11-305, MCA

IMP: 39-11-305, MCA

5. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Nisan Burbridge, Department of Labor and Industry, P.O. Box 1728, Helena, Montana, 59624-1728; telephone (406) 444-3079; or e-mail [nburbridge@mt.gov](mailto:nburbridge@mt.gov), and must be received no later than 5:00 p.m., December 7, 2020.

6. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and e-mail or mailing address of the person to receive notices, and specifies the particular subject matter or matters regarding which the person wishes to receive notices. Such written request may be mailed or delivered to the Department of Labor and Industry, attention: Mark Cadwallader, 1315 E. Lockey Avenue, P.O. Box 1728, Helena, Montana 59624-1728, faxed to the department at (406) 444-1394, or e-mailed to [mcadwallader@mt.gov](mailto:mcadwallader@mt.gov), or may be made by completing a request form at any rules hearing held by the agency.

7. An electronic copy of this notice of public hearing is available through the department's web site at <http://dli.mt.gov/events/calendar.asp>, under the Calendar of Events, Administrative Rules Hearings Section. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems, and that a person's difficulties in sending an e-mail do not excuse late submission of comments.

8. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted on October 26, 2020, by phone.

9. Pursuant to 2-4-111, MCA, the department has determined that the rule adoptions proposed in this notice will have a significant and direct impact upon small businesses.

The Montana EARN program is a voluntary program that will not have a significant and direct impact on small businesses that do not qualify or choose not to participate in the program.

The EARN program grants present a positive, significant, and direct impact on small businesses that qualify for the program and choose to participate. A small business within a target industry may join a strategic industry partnership, and the strategic industry partnership may apply for an EARN program grant. The EARN program grant can be used to fund programs to meet the small business's specific workforce needs. A strategic industry partnership that is awarded an EARN program grant is subject to program compliance requirements, including reporting requirements and possible audits. The creation of a strategic industry partnership and the designation of the lead applicant to act as fiscal agent for receipt of grant funds allow a small business to share the responsibility of grant reporting with other

members of the partnership. The reporting requirements and possible audits do not require a small business to engage any specialized services beyond those required for standard business record-keeping and accounting practices.

10. The department's Office of Administrative Hearings has been designated to preside over and conduct this hearing.

/s/ QUINLAN L. O'CONNOR

Quinlan L. O'Connor  
Alternate Rule Reviewer

/s/ BRENDA NORDLUND

Brenda Nordlund, Acting Commissioner  
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State on October 27, 2020.

BEFORE THE BOARD OF PERSONNEL APPEALS  
DEPARTMENT OF LABOR AND INDUSTRY  
STATE OF MONTANA

|  |   |                             |
|--|---|-----------------------------|
| In the matter of the amendment of      | ) | NOTICE OF PUBLIC HEARING ON |
| ARM 24.26.102, 24.26.204, 24.26.207,   | ) | PROPOSED AMENDMENT,         |
| 24.26.209, 24.26.229, 24.26.518,       | ) | AMENDMENT AND TRANSFER,     |
| 24.26.523, 24.26.530, the amendment    | ) | ADOPTION, REPEAL, AND       |
| and transfer of 24.26.603, 24.26.604,  | ) | TRANSFER                    |
| 24.26.651, 24.26.665, 24.26.667,       | ) |                             |
| 24.26.695, 24.26.695A, 24.26.697,      | ) |                             |
| 24.26.698, 24.26.698A, the adoption of | ) |                             |
| New Rules I through XLVII, and the     | ) |                             |
| repeal of ARM 24.25.101, 24.25.102,    | ) |                             |
| 24.25.103, 24.25.104, 24.25.105,       | ) |                             |
| 24.25.107, 24.25.201, 24.25.203,       | ) |                             |
| 24.25.204, 24.25.301, 24.25.302,       | ) |                             |
| 24.25.303, 24.25.304, 24.25.305,       | ) |                             |
| 24.25.306, 24.25.307, 24.25.308,       | ) |                             |
| 24.25.401, 24.25.501, 24.25.502,       | ) |                             |
| 24.25.503, 24.25.504, 24.25.505,       | ) |                             |
| 24.25.601, 24.25.701, 24.25.702,       | ) |                             |
| 24.25.703, 24.25.704, 24.25.801,       | ) |                             |
| 24.25.802, 24.25.803, 24.25.804,       | ) |                             |
| 24.26.101, 24.26.202, 24.26.203,       | ) |                             |
| 24.26.205, 24.26.206, 24.26.208,       | ) |                             |
| 24.26.210, 24.26.211, 24.26.212,       | ) |                             |
| 24.26.215, 24.26.219, 24.26.221,       | ) |                             |
| 24.26.222, 24.26.224, 24.26.230,       | ) |                             |
| 24.26.501, 24.26.502, 24.26.503,       | ) |                             |
| 24.26.508, 24.26.601, 24.26.602,       | ) |                             |
| 24.26.610, 24.26.611, 24.26.612,       | ) |                             |
| 24.26.614, 24.26.616, 24.26.617,       | ) |                             |
| 24.26.618, 24.26.620, 24.26.622,       | ) |                             |
| 24.26.630, 24.26.643, 24.26.644,       | ) |                             |
| 24.26.645, 24.26.646, 24.26.647,       | ) |                             |
| 24.26.648, 24.26.649, 24.26.650,       | ) |                             |
| 24.26.655, 24.26.656, 24.26.657,       | ) |                             |
| 24.26.658, 24.26.659, 24.26.660,       | ) |                             |
| 24.26.661, 24.26.662, 24.26.663,       | ) |                             |
| 24.26.664, 24.26.666, 24.26.680,       | ) |                             |
| 24.26.680A, 24.26.680B, 24.26.681,     | ) |                             |
| 24.26.682, 24.26.683, 24.26.684,       | ) |                             |
| 24.26.685, and the transfer of         | ) |                             |
| 24.25.206 pertaining to the practices  | ) |                             |
| and procedures before the Board of     | ) |                             |
| Personnel Appeals                      | ) |                             |

TO: All Concerned Persons

1. On November 30, 2020, at 10:00 a.m., the Department of Labor and Industry (department) will hold a public hearing via remote conferencing to consider the proposed amendment, adoption, repeal, and transfer of the above-stated rules. Because there currently exists a state of emergency in Montana due to the public health crisis caused by the novel coronavirus, there will be no in-person hearing. Interested parties may access the remote conferencing platform in the following ways:

- (a) Join Zoom Meeting: <https://mt-gov.zoom.us/j/99352760453>  
Meeting ID: 993 5276 0453

OR

- (b) Dial by Telephone: +1 646 558 8656 or +1 406 444 9999  
Meeting ID: 993 5276 0453  
Find your local number: <https://mt-gov.zoom.us/u/acHOsrTlhp>

The hearing will begin with a brief introduction by department staff to explain the use of the videoconference and telephonic platform. All participants will be muted except when it is their time to speak.

2. The 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 Personnel Appeals no later than 5:00 p.m., November 23, 2020, to advise us of the nature of the accommodation that you need. Please contact Theresa McGowan-Sroczyk, Board of Personnel Appeals, P.O. Box 201503, Helena MT 59620-1503; telephone (406) 444-1389; Montana TTY (406) 444-0532; facsimile (406) 444-4140; or [dlierbopa@mt.gov](mailto:dlierbopa@mt.gov).

3. GENERAL STATEMENT OF REASONABLE NECESSITY: There is a reasonable necessity to amend existing rules, adopt new rules, and repeal existing rules to update and clarify the board's processes and procedures. The changes adopt current business practices used by the board, including use of e-mail, electronic documents, and electronic signatures. The rules clarify and define the roles of a board agent and the board, terms that were often used interchangeably under the old rules. The changes clarify the investigation, hearing, and appeal procedures for any grievance, appeal, petition, or complaint filed with the board. This update to the rules reduces the number of rules, removes duplicative rules, and removes rules that only duplicate statutory language.

There is also a reasonable necessity to amend existing rules, adopt new rules, and repeal existing rules to reflect the repeal of ARM Title 24, chapter 25, Collective Bargaining for Nurses. ARM Title 24, chapter 25 contains rules that are

the same in substance and language to rules in ARM Title 24, chapter 26, Board of Personnel Appeals. ARM Title 24, chapter 25 also contains rules that cross-reference the procedures in ARM Title 24, chapter 26. The few differences between ARM Title 24, chapters 25 and 26, based on the statutory differences between Title 39, chapters 31 and 32, MCA, are reflected in the rules below. Where appropriate, the rules have been amended to include the appropriate authorizing and implementing statutes found in Title 2, chapter 4, MCA, and Title 39, chapters 31 and 32, MCA.

When new rules are cross-referenced in this notice, the catchphrases are included with the number of the new rule as follows: [NEW RULE V (HEARING OFFICER PROCEEDINGS AND RECOMMENDED ORDER)]. The catchphrases are included in this notice for ease of the reader only and will not appear in the final adopted rule.

4. The board proposes the amendment of the following rules, stricken matter interlined, new matter underlined:

24.26.102 BOARD MEETINGS, QUORUM (1) The Board of Personnel Appeals shall meet upon the call of the ~~chair~~ presiding officer or at the written request of at least three members. The board shall meet at a time and place designated by the ~~chair~~ presiding officer or members calling the meeting.

(2) For the purpose of these rules, the term "representative quorum" means at least one of the appointed management board members, one of the appointed labor union or association members, and the presiding officer or the presiding officer's substitute.

~~(2) (a) A majority of the membership, provided that the chairperson is present, constitutes a quorum to do business. A representative quorum of at least three members is required to do substantive business, including adopt any resolution, motion, or other decision that is not purely procedural in nature. For the purpose of this rule, the term "representative quorum" means at least one of the appointed management board members, one of the appointed labor union or association members, and the chair or his or her substitute.~~

(b) A favorable vote of the representative quorum is sufficient to adopt any resolution, motion, or other decision that is not purely procedural.

(c) All board members shall serve as impartial decisionmakers and are not appointed to serve the organizations they represent.

(3) A single board member may issue a purely procedural order in a proceeding before the board. For example, a single board member may sign an order regarding a briefing schedule, or an order extending the time in which a party may file a brief.

(4) Unless otherwise provided by statute and not subject to modification, upon a showing of good cause the board may suspend, waive, or modify these rules to expedite decision, to prevent manifest prejudice to a party, to assure fair proceedings, or to afford substantial justice.

~~(3) The board shall select a member or an agent to act as administrator of the board.~~

AUTH: 2-4-201, 39-31-104, 39-32-103, MCA  
IMP: 2-4-201, 2-15-124, 2-15-1705, MCA

REASON: The proposed amendments clarify the board's definition of a "representative quorum," and the procedures for completing both substantive and procedural matters. The amendments also clarify that the board has the power to suspend, waive, or modify its own rules, unless those rules are based on statutory requirements.

24.26.204 INTERVENTION (1) Any state employee, group of state employees, employee exclusive representative, labor organization, or public employer may be permitted to intervene in any grievance, appeal, petition, or complaint before the board by serving a motion to intervene ~~upon~~ on the parties and the board. The motion shall be accompanied by affidavit(s) establishing a basis for intervention. The board agent shall determine the validity of the basis for intervention.

AUTH: 2-4-201, 39-31-104, 39-32-103, MCA  
IMP: 2-4-201, 2-18-1011, 2-18-1012, 39-31-201, 39-31-207, 39-31-208, 39-31-405, 39-31-406, 39-32-112, 39-32-113, MCA

REASON: The proposed amendments clarify who may file a motion to intervene in any grievance, appeal, petition, or complaint before the board. The amendments also combine the existing rule with ARM 24.25.103 INTERVENTION.

24.26.207 DEFINITIONS (1) "Board" means the Board of Personnel Appeals and ~~in the appropriate context may also mean an agent appointed by the board to perform certain board functions.~~  
(2) "Board agent" means ~~any~~ a person designated by the board to act on its behalf.  
(3) "CBA" means a collective bargaining agreement, as defined in 39-31-306, MCA. Any CBA negotiated between a public employer and a labor organization pursuant to Title 39, chapter 31 or 32, MCA, shall be for a duration of a minimum of 12 months.  
(4) "Complainant" means a party or authorized lay representative who alleges a ULP by a public employer or labor organization.  
(3) and (4) remain the same but are renumbered (5) and (6).  
(7) "Department" means the Montana Department of Labor and Industry, unless otherwise specified in these rules.  
(8) "Department designee" means any person authorized by one of the 20 principal departments within the executive branch, as provided by the constitution, to act on behalf of a department in a personnel matter.  
(9) "Department head" means a director, commission, board, commissioner, or constitutional officer in charge of one of the 20 principal departments within the executive branch, as defined in 2-15-102, MCA.

(10) "Employee" means any person employed by the state of Montana, except persons exempted under 2-18-103 and 2-18-104, MCA.

(11) "Ex parte communication" means any communication between a party, or the party's authorized representative, and the board, board member(s), board agent, or hearing officer assigned to the case concerning a fact in dispute or merits of the case. A communication is only considered an ex parte communication once the matter has been referred for a hearing before a hearing officer or the board.

(12) "Excelsior list" means the list of employees who are included in the bargaining unit or proposed bargaining unit when a petition for election is filed with the board. The excelsior list must include the employees' current name, address, phone number, position, and job classification.

(13) "Grievance" means a grievance filed with the board contesting or challenging the operation of the broadband classification and pay plan, Title 2, chapter 18, parts 1 through 3, MCA.

(14) "Grievance form" means the state employee classification and compensation appeal form.

(15) "Hearing officer" means a board agent from the department's Office of Administrative Hearings designated by the board to conduct hearings on matters before the board.

(5) (16) "Party" is any person, labor organization, or employer filing a ~~petition, complaint, charge, or appeal~~ grievance, appeal, petition, or complaint with the board; any person, labor organization, or employer named as a party in a ~~petition, complaint, charge, or appeal~~, grievance, appeal, petition, or complaint; or any other person, labor organization, or employer whose timely motion to intervene has been granted.

(6) remains the same but is renumbered (17).

(7) (18) "Petitioner" means ~~a party~~ any person, labor organization, or employer who files a petition with the board.

(19) "Probable merit" means supported by substantial competent evidence. It is more than a scintilla of evidence, but it may be less than a preponderance of the evidence.

(20) "Proof of interest" means the confidential authorization cards defined in ARM 24.26.604.

(21) "Question of representation" means there is a question of whether a group of employees support a labor organization or existing exclusive representative to represent the group of employees for collective bargaining purposes.

(8) remains the same but is renumbered (22).

(9) (23) "Respondent" means ~~a party~~ any person, labor organization, or employer who is required to respond to a ~~complaint, petition, or charge~~ grievance, appeal, petition, or complaint filed with the board.

(24) "State Human Resources Division" means the State Human Resources Division of the Department of Administration, or any successor division or agency.

(25) "ULP" means an unfair labor practices complaint filed with the board alleging an unfair labor practice against a public employer or a labor organization, as defined in 39-31-103(12), 39-31-401, and 39-31-402, MCA.

AUTH: 2-4-201, 39-31-104, 39-32-103, MCA



IMP: 2-4-201, 2-18-1011, 39-31-101, 39-31-103, 39-31-207, 39-31-401, 39-31-402, 39-31-405, 39-32-112, 39-32-113, MCA

REASON: The proposed amendments consolidate the board's definitions into one rule. The amendment combines and replaces ARM 24.25.201 DEFINITIONS, 24.26.502 DEFINITIONS, and 24.26.601 DEFINITIONS. The amendments add definitions for the board's election procedures for collective bargaining units, including "excelsior list," "proof of interest," and "question of representation." The amendments also clarify the difference between the "board," a "board agent," and a "hearing officer."

24.26.209 LAY REPRESENTATION BEFORE THE BOARD OR BOARD AGENT (1) A lay representative, authorized by a party to the proceedings, may be ~~permitted to appear in proceedings before the board or before an agent of the~~ a board agent on behalf of interested parties so long as this lay representative does not charge a fee to provide representation and is not otherwise compensated for the representation except for the remuneration that he or she may receive as a permanent employee of the party to the proceedings.

AUTH: ~~2-4-201~~, 39-31-104, 39-32-103, MCA

IMP: 2-4-201, 39-31-201, 39-32-112, 39-32-113, MCA

REASON: The proposed amendments modernize the language of the existing rule. The proposed amendments apply this rule to Title 39, chapter 32, MCA, Collective Bargaining for Nurses.

24.26.229 EX PARTE COMMUNICATIONS (1) At any time that petitions, complaints, ~~objections~~ exceptions, election challenges, or other contested case matters have been set for hearing ~~by the board or its agents before the hearing officer or the board,~~ ex parte communications are prohibited.

~~(2) If any party or counsel in the case communicates with the board, board member, or the board agent assigned to such case, concerning any fact in dispute the case,~~ an ex parte communication occurs, the board, board member, or board agent, or hearing officer as appropriate, shall notify all other parties of the communication in writing. ~~and counsel in the case of such communications, either orally or in writing, and~~ The board member, board agent, or hearing officer shall expressly include a written statement of such communication, notification to other parties and counsel, and responses received thereto in the record of the case.

~~(2)~~ (3) The mere noting of such ex parte communications in the record will not be considered evidence of the facts in dispute or merits of the case unless otherwise agreed by all parties to the case. The board and its agents shall rely only on the admissible evidence of record in determining the merits of any disputed issue in a case.

~~(3)~~ (4) This rule shall not apply to matters presented or obtained during preliminary investigation of the petition, complaint, ~~objections~~ exceptions, or challenge, made by board agents prior to the referral to a hearing officer or the

board or service of the notice of hearing in a case, and shall not apply to requests for subpoenas.

(5) This rule shall not apply to purely procedural questions for the board agent or department staff such as discussions of extensions of time, scheduling, administrative matters, and/or questions of procedure.

AUTH: ~~2-4-201~~, 39-31-104, 39-32-103, MCA

IMP: 2-4-201, 39-31-105, 39-32-112, 39-32-113, MCA

REASON: The proposed amendments clarify the procedure for ex parte communications with the board. The amendments also clarify what is and is not an ex parte communication. The proposed amendments apply this rule to Title 39, chapter 32, MCA, Collective Bargaining for Nurses.

24.26.518 FAILURE OF DEPARTMENT HEAD, DESIGNEE, OR STATE HUMAN RESOURCES DIVISION TO ACT WITHIN PRESCRIBED TIME LIMIT

(1) remains the same.

AUTH: ~~2-18-1011~~, 39-31-104, MCA

IMP: 2-18-1011, MCA

REASON: The proposed amendments reflect the proper authorizing statute for board rulemaking under Title 39, chapter 31, MCA.

24.26.523 FILING OF A NEW PETITION FOR HEARING AFTER FINAL ORDER ISSUED (1) and (2) remain the same.

(3) The petition and the affidavit shall proceed through the appeals procedure as prescribed in ~~ARM 24.26.508 up to step three (b)~~ [NEW RULE IX (GRIEVANCE PROCEDURE – STEP 1: DEPARTMENT HEAD OR DESIGNEE)], [NEW RULE X (GRIEVANCE PROCEDURE – STEP 2: STATE HUMAN RESOURCES DIVISION)], [NEW RULE XI (GRIEVANCE PROCEDURE – STEP 3: REVIEW BY BOARD AGENT)].

(4) The board ~~or its designee agent~~ shall then conduct a preliminary investigation to determine if the alleged substantial change warrants a new hearing.

(a) If it is determined that the alleged substantial change warrants a new hearing, the ~~appeal grievance~~ procedure shall proceed as prescribed in ~~ARM 24.26.508~~ [NEW RULE XI (GRIEVANCE PROCEDURE – STEP 3: REVIEW BY BOARD AGENT)].

(b) If it is determined that the alleged substantial change does not warrant a new hearing, the ~~petition shall be dismissed~~ board agent shall issue a written order dismissing the petition.

~~(5) The order to dismiss shall be an appealable order.~~

(i) If a party disputes the dismissal, the board agent may refer the matter to the hearing officer pursuant to [NEW RULE V (HEARING OFFICER PROCEEDINGS AND RECOMMENDED ORDER)]. The hearing officer is not bound by the statutory or common law rules of evidence in this hearing.

(ii) If the employee or the department disputes the recommended order of the hearing officer, either party may file exceptions pursuant to [NEW RULE VI (BOARD REVIEW OF HEARING OFFICER'S RECOMMENDED ORDER)] within 20 days of service of the hearing officer's recommended order.

AUTH: ~~2-18-1011~~, 39-31-104, MCA

IMP: 2-18-1011, 2-18-1012, MCA

REASON: The proposed amendments update the cross-references to the new grievance procedure for a classification and compensation grievance. The amendments clarify the appeal process for a classification and compensation grievances.

24.26.530 FREEDOM FROM INTERFERENCE, RESTRAINT, COERCION, OR RETALIATION (1) through (3) remain the same.

(4) After ten days have elapsed from the date of service of the complaint, ~~the board shall commence with step four (d) of the formal appeals procedure~~ a board agent shall refer the matter to a hearing officer pursuant to [NEW RULE V (HEARING OFFICER PROCEEDINGS AND RECOMMENDED ORDER)].

(5) If the employee or the department disputes the recommended order of the hearing officer, either party may file exceptions pursuant to [NEW RULE VI (BOARD REVIEW OF HEARING OFFICER'S RECOMMENDED ORDER)] within 20 days of service of the hearing officer's recommended order.

AUTH: ~~2-18-1011~~, 39-31-104, MCA

IMP: 2-18-1011, MCA

REASON: The proposed amendments update and clarify the appeal procedure for a claim of interference, restraint, coercion, or retaliation made against a department employer by an employee who has filed a classification and compensation grievance.

5. The board proposes to transfer and amend the following rules:

24.26.603 (24.26.XXX) FILING OF LABOR ORGANIZATION'S BYLAWS (1) and (2) remain the same.

AUTH: 39-31-104, 39-32-103, MCA

IMP: 39-31-206, 39-32-113, MCA

REASON: The proposed amendments apply this rule to Title 39, chapter 32, MCA, Collective Bargaining for Nurses and combine the existing rule with ARM 24.25.203 FILING OF LABOR ORGANIZATION'S BYLAWS.

24.26.604 (24.26.XXX) REQUIREMENTS FOR PROOF OF INTEREST AUTHORIZATION DOCUMENTS – CONFIDENTIALITY (1) and (2) remain the same.

AUTH: 39-31-104, 39-32-103, MCA  
IMP: 39-31-207, 39-32-113, MCA

REASON: The proposed amendments apply this rule to Title 39, chapter 32, MCA, Collective Bargaining for Nurses and combine the existing rule with ARM 24.25.204 PROOF OF INTEREST CONFIDENTIAL.

24.26.651 (24.26.XXX) MERGERS AND CONSOLIDATIONS (1) remains the same.

AUTH: 39 31 104, 39-32-103, MCA  
IMP: 39-31-206, 39-31-207, 39-32-113, MCA

REASON: The proposed amendments apply this rule to Title 39, chapter 32, MCA, Collective Bargaining for Nurses.

24.26.665 (24.26.XXX) RUNOFF (1) through (3) remain the same.

AUTH: 39-31-104, 39-32-103, MCA  
IMP: 39-31-208, 39-32-113, MCA

REASON: The proposed amendments apply this rule to Title 39, chapter 32, MCA, Collective Bargaining for Nurses.

24.26.667 (24.26.XXX) CERTIFICATION (1) If an election occurred and no ~~objections~~ exceptions are filed within the time set forth above, or if the challenged ballots are insufficient in number to affect the result of the election, the board shall ~~forthwith issue to~~ serve the parties a certification of exclusive representative, where appropriate.

(2) In order to be certified by the board as the exclusive representative for any bargaining unit that existed before July 1, 1973, and is presently in existence, the labor organization must submit a copy of the existing ~~collective bargaining agreement~~ CBA as support of its claim.

AUTH: 39-31-104, 39-32-103, MCA  
IMP: 39-31-208, 39-32-113, MCA

REASON: The proposed amendments apply this rule to Title 39, chapter 32, MCA, Collective Bargaining for Nurses and modernize the language of the rule. The proposed amendments also clarify terms used for consistency throughout these rules.

24.26.695 (24.26.XXX) INTEREST MEDIATION (1) ~~When a dispute over the negotiation of a collective bargaining agreement exists between the~~ If a public employer and a labor organization after a reasonable period of negotiation or upon expiration of the collective bargaining agreement, either have a dispute over the

negotiation of a new or expired CBA, one or both of the parties shall file a written petition with the board for interest mediation. The original of the petition shall be signed by the petitioner or the authorized representative. The petitioner shall serve a copy of the petition simultaneously upon any party named in the petition. The petition shall contain:

(2) The petition shall be filed with the board pursuant to [NEW RULE I (DOCUMENT FORM)] and [NEW RULE II (DOCUMENT SERVICE)]. The petition shall contain:

(a) the name, address, and telephone number of the ~~petitioner or~~ labor organization and the organization's authorized representative;

(b) and (c) remain the same.

~~(d) the name, address, and telephone number of the recognized or certified labor organization and authorized representative thereof;~~

(e) through (g) remain the same but are renumbered (d) through (f).

(2) remains the same but is renumbered (3).

~~(3) (4) Upon petition for interest mediation, the board shall designate a qualified labor mediator who is an agent of the board to mediate the dispute. Upon the written request of both parties, the board may instead request a mediator from the federal mediation and conciliation service, if one is available.~~

~~(4) (5) Any information disclosed to the mediator in the performance of these duties shall not be divulged unless approved by the parties involved. All files, records, reports, documents, or other papers received or prepared by the mediator shall be classified as confidential and not as a public record. All communications, oral or written, from the parties to the mediator and any information and evidence presented to the mediator during the proceeding are confidential. Such matters shall not be disclosed to anyone a non-party to the mediation without the prior written consent of the board all parties to the mediation.~~

~~(5) (6) The mediator shall not testify or produce any confidential records or testimony evidence with regard to any mediation on behalf of a party to any case pending to a non-party without written consent of all parties or in any proceeding before any court, board, investigatory body, arbitrator, or fact finder without the written consent of the board all parties.~~

~~(6) (7) The mediator may hold separate or joint meetings with the parties or their representatives, and such meetings shall be private and nonpublic, except if otherwise mutually agreed upon by the parties. Unless otherwise required by the constitution, mediations pursuant to this rule shall be held in private unless both parties agree in writing to waive private meetings.~~

AUTH: 39-31-104, 39-32-103, MCA

IMP: 39-31-307, 39-31-308, 39-32-112, MCA

REASON: The proposed amendments simplify the existing language. The proposed amendments clarify that the right of privacy in mediation proceedings is held by the parties, not the board as previously stated in the rules. The proposed amendments combine the existing rule with ARM 24.25.801 PETITION and 24.25.802 MEDIATION. The proposed amendments apply this rule to Title 39, chapter 32, MCA, Collective Bargaining for Nurses.

24.26.695A (24.26.XXX) GRIEVANCE MEDIATION (1) through (3) remain the same.

AUTH: 39-31-104, 39-32-103, MCA

IMP: 39-31-306, 39-31-307, 39-32-112, MCA

REASON: The proposed amendments apply this rule to Title 39, chapter 32, MCA, Collective Bargaining for Nurses and combine the existing rule with ARM 24.25.801 PETITION and 24.25.802 MEDIATION.

24.26.697 (24.26.XXX) FACT FINDER (1) ~~Either party to a dispute the public employer or the exclusive representative may petition the board to initiate factfinding or, if it is apparent that matters in disagreement might be more readily settled if facts involved were determined and publicly known if public determination of facts and disagreements will expediate settlement,~~ the board may initiate factfinding in accordance with 39-31-308, MCA.

(2) Within three days of receipt of a party's petition for factfinding, the board agent shall submit a list of five qualified, disinterested persons to each of the parties to the dispute.

(3) remains the same but is renumbered (a).

(4) ~~(b)~~ The parties shall ~~immediately~~ notify the board agent of the name of the fact finder.

~~(3)~~ The board shall notify the fact finder along with a request to immediately shall establish dates and places of hearings.

(5) remains the same but is renumbered (4).

~~(6)~~ (5) The fact finder may request the board agent to make the report public five days after the parties are served with the findings.

~~(7)~~ (6) Fifteen days after the parties are served the board agent shall ~~provide that publicly post the fact finder's report is open to public inspection.~~

~~(8)~~ (7) When a party petitions the board to initiate factfinding, the cost of factfinding must be equally borne by the parties. ~~The fact finder shall, within ten working days of the written findings, send a copy of the invoice to both parties on which they will be billed for one-half of the total.~~ The parties shall pay directly to the fact finder within ~~five~~ ten days.

~~(9)~~ (8) When the board initiates factfinding, the cost of factfinding proceedings must be equally borne by the board and the parties concerned. ~~The fact finder shall, within ten working days of the written findings, submit an invoice of the costs and fees to the board which shall send copies of the invoice to both parties on which they will be billed for one-third of the total.~~ The parties shall pay the board within ~~five~~ ten days and the board shall forward the total amount to the fact finder.

(9) Nothing in these rules prohibit the factfinder from mediating a matter that has been submitted for factfinding.

AUTH: 39-31-104, 39-32-103, MCA

IMP: 39-31-309, 39-32-112, MCA

REASON: The proposed amendments apply this rule to Title 39, chapter 32, MCA, Collective Bargaining for Nurses, combine the existing rule with ARM 24.25.803 FACT FINDER, and simplify the existing language.

24.26.698 (24.26.XXX) ARBITRATION (1) The parties may, ~~at any period in the negotiations, agree to~~ submit the issues to binding arbitration in accordance with 39-31-310, MCA.

~~(2) Both parties shall jointly notify the board in writing of this decision and of the identity of the arbitrator.~~

~~(3) (2)~~ The parties may petition the board to ~~assist in the selection of the arbitrator by requesting that the board submit to them a panel~~ provide a list of qualified arbitrators.

(3) Nothing in these rules shall be construed to limit the right of parties to select jointly any arbitrators or arbitration procedure acceptable to them.

AUTH: 39-31-104, 39-32-103, MCA

IMP: 39-31-310, 39-32-112, MCA

REASON: The proposed amendments apply this rule to Title 39, chapter 32, MCA, Collective Bargaining for Nurses, combine the existing rule with ARM 24.25.804 ARBITRATION, and simplify the language.

24.26.698A (24.26.XXX) PANEL OF ARBITRATORS AND FACT FINDERS

(1) The board shall maintain a panel of qualified labor arbitrators and fact finders, ~~for referral, upon request,~~

(2) Upon request by one or more parties to a labor dispute, a board agent shall provide the parties with a list of arbitrators or fact finders randomly selected from the board's panel to the parties to the dispute.

(3) Panel members are expected to conform to the ethical standards and procedures set forth in the code of professional responsibility for arbitrators of labor disputes as approved by the national academy of arbitrators. ~~The board has established procedures to compile lists and appoint arbitrators or fact finders from such lists and considers such facts as background, experience, availability, acceptability, geographical location, and the expressed preferences of the parties.~~

~~(2) Persons seeking to be listed on the panel must complete and submit an application form. The form may be obtained from the board offices, 1805 Prospect Avenue, Helena, or by writing to the board, P.O. Box 1728, Helena, MT 59624-1728. Upon receipt of an executed form, the board will review the application, assure that it is complete, and make any necessary inquiries. The board will review the completed application in light of the criteria set forth below and will decide whether an applicant should be listed on the panel. Each applicant will be notified in writing of the board's decision.~~

(4) Arbitrators or fact finders may submit a resume to the board at P.O. Box 201503, Helena, MT 59620, or by e-mailing the resume to [dlierdbopa@mt.gov](mailto:dlierdbopa@mt.gov). Upon receipt of the resume and request to be included on the panel of arbitrators and fact finders, a board agent shall review the resume and make any necessary inquiries.

- (3) (5) Applicants will be accepted on the panel if they:
- (a)(i) are experienced in decision-making roles in the resolution of labor-management disputes; or
  - (ii) have extensive experience in relevant positions in collective bargaining; and
- (b) and (c) remain the same.
- (4) ~~The qualifications listed in subsection (3) of this rule are best demonstrated by the submission of actual arbitration awards and/or fact finding reports prepared by the applicant while serving as an impartial arbitrator chosen by the parties to disputes. Equivalent experience acquired in training, internship or other development programs, or experience such as that acquired as a hearing officer or judge in labor relations controversies also may be considered by the board.~~
- (5) remains the same but is renumbered (6).
- (6) (7) Initial listing on the panel may be for a period not to exceed three years and may be renewed for periods not to exceed two years, provided upon review the listing is not canceled by the board as set forth below. Notice of cancellation may be given to the member whenever the member: A board agent shall review the panel of arbitrators and fact finders on a yearly basis and contact panel members to verify contact information, qualifications, and to ensure that panel members still wish to remain on the panel.
- (a) ~~no longer meets the criteria for admission;~~
  - (b) ~~has been repeatedly and flagrantly delinquent in submitting awards;~~
  - (c) ~~has refused to make reasonable and periodic reports to the board as required;~~
  - (d) ~~has been the subject of complaints by parties who use board panels and the board, after appropriate inquiry, concludes that just cause for cancellation has been shown; or~~
  - (e) ~~is determined by the board to be unacceptable by the parties, based on board records showing the number of times the arbitrator or fact finder's name has been proposed to the parties and the number of times the person has been selected.~~
- (7) (8) When, pursuant to a request, the board submits a list of arbitrators or fact finders to the parties to a dispute, the names on the lists shall be drawn at random from the panel described above. However, the board will attempt to comply with a joint request of the parties to restrict the lists in any of the following ways:
- (a) only arbitrators who are listed on the labor arbitration panel of the American Arbitration Association; ~~or the federal mediation and conciliation service or~~
  - (b) only arbitrators who are members of the National Academy of Arbitrators; or
  - (b) ~~only arbitrators whose resumes filed with the board show that they are engaged exclusively or primarily in the practice of arbitration or fact finding; or~~
  - (c) remains the same.
- (8) (9) ~~If they desire, the~~ The parties may jointly request a second list of arbitrators or fact finders. A second list will consist of names drawn at random from the panel without regard to any restrictions requested by the parties.
- (9) (10) Arbitrators and fact finders selected by the parties pursuant to referral of their name by the board shall notify the board of acceptance of



appointments, scheduling of hearing, continuances or postponements, and cancellations.

~~(10)~~ (11) Arbitrators and fact finders listed on the panel shall provide the board with ~~one~~ a copy of all written decisions or recommendations issued.

~~(11) Nothing contained herein should be construed to limit the right of parties to select jointly any arbitrators or arbitration procedure acceptable to them.~~

AUTH: 39-31-104, 39-32-103, MCA

IMP: 39-31-308, 39-31-310, 39-32-112, MCA

REASON: The proposed amendments apply this rule to Title 39, chapter 32, MCA, Collective Bargaining for Nurses, and simplify the board's process for creating and maintaining a panel of arbitrators and factfinders.

6. The board proposes to adopt the following new rules:

a. New Rules – General Board Procedure

NEW RULE I DOCUMENT FORM (1) All petitions, exceptions, motions, requests for enlargement of time, briefs, documents, and other papers filed with the board shall be eight and one-half inches by eleven inches (8½" x 11") in size, standard quality, opaque, unglazed paper, and in 12-point font or larger, double-spaced, and clearly legible. Exhibits or other documents shall be reproduced in like size unless the original exhibit is required. The board may require the reproduction of an oversized demonstrative or other exhibit in a size appropriate for the record.

(2) All submissions to the board should be captioned with the case's title and the assigned case number.

(3) All submissions to the board must be signed by a party or a party's authorized representative. The board shall accept electronic signatures as defined in 1-5-602, MCA, in using the "/s/," for example, "/s/ James W. Murry."

AUTH: 39-31-104, 39-32-103, MCA

IMP: 39-31-105, 39-32-112, 39-32-113, MCA

REASON: The proposed new rule replaces ARM 24.26.211 BRIEFS and 24.25.102 SERVICE, FILING, COMPUTATION OF TIME, combines those rules with sections in ARM 24.26.215 HEARINGS and 24.25.107 HEARINGS. The new rule clarifies the formatting requirements for all submissions made to the board.

NEW RULE II DOCUMENT SERVICE (1) All exceptions, motions, request for enlargement of time, briefs, and exhibits filed with the board must be served upon all parties of record, including intervenors or other parties allowed to appear for special purposes.

(a) The documents must contain or be accompanied by a certificate of service showing proof of the method of service and the date upon which such service was made.

(b) Service shall be made by personal delivery, first class mail, postage prepaid, electronic submission, or by any other method reasonably calculated to effect actual notice to all parties to the action.

(2) A party shall inform the board of any change of address within five days of the change.

AUTH: 39-31-104, 39-32-103, MCA

IMP: 39-31-105, 39-32-112, 39-32-113, MCA

REASON: The proposed new rule replaces ARM 24.26.203 SERVICE AND FILING and 24.25.102 SERVICE, FILING, COMPUTATION OF TIME. The new rule clarifies what documents must be served on all parties to a proceeding before the board.

NEW RULE III FILINGS WITH THE BOARD (1) Any document required or permitted to be filed with the board may be filed electronically or by hard copy.

(2) The electronic mail address for document filing is to dlierdbopa@mt.gov. Documents to be filed by e-mail must be attached in a .pdf format. Filings may be submitted in multiple attachments if necessary, and attachments totaling over ten MB may be sent to the board over the State's File Transfer Service.

(3) Hard copy filings may be mailed to the following address: Board of Personnel Appeals, P.O. Box 201503, Helena, MT 59620. The board's physical location is 1805 Prospect Avenue, Helena, MT 59601.

(4) A document is filed with the board, no matter how it is transmitted, on the date it is received by the board, not the date it is mailed. It is the responsibility of the filing party to ensure that documents are timely received by the board.

AUTH: 39-31-104, 39-32-103, MCA

IMP: 39-31-105, 39-32-112, 39-32-113, MCA

REASON: The proposed new rule replaces and combines ARM 24.26.202 BOARD OF PERSONNEL APPEALS ADDRESS, 24.26.203 SERVICE AND FILING, 24.25.101 BOARD OF PERSONNEL APPEALS ADDRESS, and 24.25.102 SERVICE, FILING, COMPUTATION OF TIME. The new rule updates and clarifies the acceptable methods for filing documents with the board and eliminates facsimile filing. The new rule also updates the board's e-mail address, mailing address, and physical address.

NEW RULE IV TIME (1) For the purposes of these rules, the term "day" means calendar day, unless otherwise specified.

(2) In computing any period of time for acts required by the board's rules, time will be computed by excluding the first day and including the last day unless the last day falls upon a Saturday, Sunday, or legal holiday. In that event, the period runs until the end of the next day which is not a Saturday, Sunday, or legal holiday.

(3) The date of service is computed from the date on which service is made, as shown by the certificate of service or date of mailing. Service made by mail is complete upon mailing.

(4) Except as to dates fixed by statute and not subject to modification, the board may enlarge the time to perform an act required by these rules upon a written request of a party and good cause shown. A written request for an enlargement of time shall indicate that every other party has been contacted and whether any other party objects to the request.

AUTH: 39-31-104, 39-32-103, MCA  
IMP: 39-31-105, 39-32-112, 39-32-113

REASON: The proposed new rule replaces ARM 24.26.206 COMPUTATION OF TIME and 24.25.102 SERVICE, FILING, COMPUTATION OF TIME. The new rule clarifies and simplifies the method for calculating time in any proceeding before the board and specifies the method for requesting an enlargement of time.

NEW RULE V HEARING OFFICER PROCEEDINGS AND RECOMMENDED ORDER (1) The board may refer matters to a hearing officer for consideration.

(2) All documents, pleadings, and papers filed with the Office of Administrative Hearings must comply with [NEW RULE I (DOCUMENT FORM)] and [NEW RULE II (DOCUMENT SERVICE)].

(3) Documents may be filed with the Office of Administrative Hearings by mail or by other means deemed acceptable by the hearing officer. The address to mail documents is the Office of Administrative Hearings, Department of Labor and Industry, P.O. Box 1728, Helena, Montana 59624-1728.

(4) Filing with the Office of Administrative Hearings is effective upon actual receipt at the offices of the department or by the hearing officer and not upon mailing.

(5) A hearing officer shall conduct a hearing and related proceedings, consider evidence presented by the parties, and produce a written recommended order. The hearing officer shall serve the recommended order on all parties of record, including any intervenors.

AUTH: 39-31-104, 39-32-103, MCA  
IMP: 2-18-1011, 39-31-105, 39-32-112, 39-32-113, MCA

REASON: The proposed new rule replaces and combines ARM 24.26.215 HEARINGS and 24.25.107 HEARINGS. The new rule clarifies and simplifies the method for referring matters to the department's Office of Administrative Hearings.

NEW RULE VI BOARD REVIEW OF HEARING OFFICER'S RECOMMENDED ORDER (1) A party may request review of the hearing officer's recommended order by filing exceptions with the board within 20 days of service of the hearing officer's recommended order. Any exception must include all the party's specific exceptions and reasons for the exceptions. The exceptions serve as the party's opening brief. A party requesting review of the transcript must so state in the party's objection.

(a) If review of the transcript is not requested, briefs shall be due as follows:

(i) A party who wishes to file a response brief to an opposing party's exceptions must file and serve the response brief within 34 days of service of the hearing officer's recommended order.

(ii) A party who wishes to file a reply brief to an opposing party's response brief must file and serve the reply brief within 14 days of service of the response brief.

(b) If one or both parties request review of the transcripts, the requesting party shall file an original and an electronic version of the transcript with the board within 28 days service of the hearing officer's recommended order, and briefs shall be due as follows:

(i) A party who wishes to file a response brief to an opposing party's exceptions must file and serve the response brief within 14 days of the board's receipt of the transcript.

(ii) A party who wishes to file a reply brief to an opposing party's response brief must file and serve the reply brief within 14 days of service of the response brief.

(2) The following requirements apply to the preparation of the transcript:

(a) A transcript must be prepared by an impartial person with no affiliation to any party and with no interest in the outcome of the contested case. A transcript must be a verbatim and complete account of all proceedings on the record of the hearing and must be in the form commonly accepted by the courts of record of this state. The preparer of a transcript shall certify that the transcript is a complete and accurate account of the stenographic or electronic recording of the hearing and that the preparer has no affiliation with any party and has no interest in the outcome of the contested case.

(b) Preparation of the transcript is the responsibility of the party requesting review of the transcript. If more than one party requests review of the transcript, all parties requesting the review shall share equally in the cost of the transcript and copies.

(3) A brief and any exhibits must comply with the formatting standards in [NEW RULE I (DOCUMENT FORM)] and [NEW RULE II (DOCUMENT SERVICE)]. A brief may not exceed 20 pages in length.

(4) The board's review of the hearing officer's recommended order shall be confined to the complete record. The complete record for the purposes of this rule is comprised of all documents cited or referred to in the briefing before the board. If a party intends to challenge any finding of fact of the hearing officer, the complete record additionally includes the transcript of the hearing.

(a) The party citing or referring to a document in its briefing is required to attach as an exhibit to its brief the entirety of such document. If a party fails to attach required documents to its briefing, the board may deny the appeal.

(b) Documents which may be included in the complete record are those enumerated at 2-4-614, MCA. Failure of a party to submit documents enumerated in that statute constitutes a stipulation by that party that the board need not review those documents.

(c) Exhibits not admitted at hearing may not be attached to briefs on appeal, unless the failure to admit such exhibit is a reason for appeal. On timely motion by any party, any exhibit improperly attached may be stricken from the appeal.

(5) Exceptions will be considered at the next board meeting after conclusion of the briefing schedule.

(6) Each objecting party will be granted 20 minutes for oral argument before the board. Each objecting party may reserve a portion of the 20 minutes for rebuttal. Oral argument may be waived by the parties, except where it is requested by the board. The board may allow additional time for oral argument upon request of an objecting party.

(7) The board shall review the recommended order to determine if the recommended order's findings of fact are supported by a preponderance of the evidence and whether the conclusions of law are correct.

(8) The board shall issue a written decision which affirms, rejects, modifies, or remands the hearing officer decision as follows:

(a) For a matter arising under [subchapter to be determined: (REPRESENTATION PETITIONS and ELECTIONS)], the written decision shall be issued within 14 days of the hearing of the appeal.

(b) For a ULP complaint arising under [subchapter to be determined: (UNFAIR LABOR PRACTICES)], the written decision shall be issued within five months of the hearing on the appeal.

(c) For all other matters, the written decision shall be issued within 90 days of the hearing of the appeal.

(9) The final decision of the board is a final agency decision.

AUTH: 39-31-104, 39-32-103, MCA

IMP: 2-18-1011, 2-18-1012, 39-31-406, 39-32-112, 39-32-113, MCA

REASON: The proposed new rule replaces ARM 24.26.221 EXCEPTIONS, 24.26.222 OBJECTIONS TO BOARD'S AGENT'S RECOMMENDED ORDER, 24.26.224 BOARD REVIEW, 24.26.683 PROPOSED FINDINGS, and 24.26.684 EXCEPTIONS. The new rule specifies the board's process for reviewing a hearing officer's recommended order, including specific instructions for the parties about briefs, the transcript, the record, and oral argument. The subchapters referenced in (8) are for the ease of the reader, and the subchapters will be numbered and cross-referenced in the final adopted rule.

#### b. New Rules – Classification and Compensation Grievance

NEW RULE VII CLASSIFICATION AND COMPENSATION GRIEVANCE PROCEDURE – GENERAL PROVISIONS (1) Any employee, group of employees not represented by a labor organization, an exclusive representative, or an authorized representative may utilize this grievance process to grieve a classification or compensation issue under Title 2, chapter 18, parts 1 through 3, MCA.

(a) A grievant must obtain a state employee classification and compensation grievance form and follow the accompanying instructions.

(b) Grievance forms may be obtained from the Board of Personnel Appeals, P.O. Box 201503, Helena, Montana, 59620, from the human resource office of any department within the executive branch, or from the department's web site: [erd.dli.mt.gov/labor-standards](http://erd.dli.mt.gov/labor-standards).

(2) The completed grievance form shall be submitted with the current position description, signed by the employee and the employee's immediate supervisor. If the current position description is disputed, the employee may include a proposed position description, signed by the employee, that represents the employee's understanding of the duties and responsibilities of the position.

(a) The completed grievance form must identify and explain all issues motivating the grievance. The grievance form shall include a list of issues that may be grieved.

(b) Classification standards are not appealable subjects on the grievance form under 2-18-1011 through 2-18-1013, MCA. The grievance shall be described in terms of the following appealable issues:

(i) substantial changes have occurred in this position to warrant reclassification. Specifically, this position should be allocated to (list band level and occupation title);

(ii) this position was incorrectly allocated to (list band level and occupation title) and should be allocated to (list band level and occupation title);

(iii) the classification rules have been incorrectly applied to this position (specific rule(s) should be cited); and

(iv) "other," but the issue must specifically relate to classification.

(3) The period of time for which retroactive pay for a compensation or classification appeal may be awarded under 2-18-1011 through 2-18-1013, MCA, or under Title 2, chapter 18, parts 1 through 3, MCA, may not extend beyond 30 days prior to the date on which the appeal was filed.

AUTH: 39-31-104, MCA

IMP: 2-18-203, 2-18-1011, 2-18-1012, MCA

REASON: The proposed new rule clarifies the first steps for filing a classification and compensation grievance, and substantively it is the first section of ARM 24.26.508 GRIEVANCE PROCEDURE. The proposed new rule also reflects the statutory limits on retroactive pay in 2-18-203, MCA. The proposed new rule also replaces ARM 24.26.503 INFORMAL RESOLUTION OF APPEALS.

NEW RULE VIII CONSOLIDATION OF GRIEVANCES (1) If more than one grievance affects more than one employee in the same manner, the grievances may be consolidated at any step of the grievance process. Appeals may be consolidated by board order upon a showing of good cause by any party.

(a) A consolidation may be altered or amended at any time before the final order of the board.

(b) If an employee or the employee's authorized representative opposes altering or amending the consolidation, the employee may request a hearing to be held before the final order of the board is issued.

(2) If the appeals are consolidated, the timelines in this rule will run from the dates associated with the latest appeal included in the consolidation.

(3) An employee who is not represented by a labor organization may opt out of consolidation of the appeal unless the appeals are consolidated by board order.

(4) An employee who is represented by a labor organization may not contradict the labor organization's representative on the issue of consolidating appeals.

AUTH: 39-31-104, MCA

IMP: 2-18-203, 2-18-1011, MCA

REASON: The proposed new rule clarifies and simplifies the board's ability to consolidate classification and compensation grievances. The new rule replaces one section of ARM 24.26.508 GRIEVANCE PROCEDURE.

NEW RULE IX GRIEVANCE PROCEDURE – STEP 1: DEPARTMENT

HEAD OR DESIGNEE (1) The employee shall submit the appeal form and accompanying material to the department head or department designee. The department head or designee shall have 14 days to review the appeal, record his or her findings, record steps taken to resolve the appeal, and return it to the employee.

(2) The department head or designee is not limited to the issues raised by the employee in the appeal form but may address any other classification issue listed in [NEW RULE VIII (CONSOLIDATION OF GRIEVANCES)] deemed by the department head or designee to be important to the appeal.

(3) If the employee disputes the findings of the department head or designee, the employee shall have 14 days to appeal to the State Human Resources Division pursuant to [NEW RULE X (GRIEVANCE PROCEDURE – STEP 2: STATE HUMAN RESOURCES DIVISION)].

AUTH: 39-31-104, MCA

IMP: 2-18-203, 2-18-1011, MCA

REASON: The new rule replaces the first step of the grievance process in ARM 24.26.508 GRIEVANCE PROCEDURE. The proposed new rule clarifies the first step in the classification and compensation grievance process.

NEW RULE X GRIEVANCE PROCEDURE – STEP 2: STATE HUMAN

RESOURCES DIVISION (1) If an employee does not agree with the decision of the department head or designee, the employee shall submit the appeals form to the State Human Resources Division within 14 days of the date of the department head's or designee's decision. The employee must identify and explain, in writing, how he or she disputes the findings of the department head or designee.

(2) The State Human Resources Division shall have 30 days to review the matter, record its findings in the appropriate section of the form, and return it to the employee or the proper representative.

(3) The review and findings of the State Human Resources Division is not limited to the issues raised by the employee in the appeal form. The State Human Resources Division may review any additional classification issues or facts relevant to the appeal, including any additional issues raised upon consolidation of appeals pursuant to [NEW RULE VIII (CONSOLIDATION OF GRIEVANCES)].

(4) The State Human Resources Division must prepare clear written findings explaining its position regarding each relevant issue.

(5) If the employee disputes the State Human Resources Division's findings and recommendations, the employee shall have 14 days to appeal to the board pursuant to [NEW RULE XI (GRIEVANCE PROCEDURE – STEP 3: REVIEW BY BOARD AGENT)].

AUTH: 39-31-104, MCA

IMP: 2-18-203, 2-18-1011, MCA

REASON: The new rule replaces the second step of the grievance process in ARM 24.26.508 GRIEVANCE PROCEDURE. The proposed new rule clarifies the second step in the classification and compensation grievance process.

NEW RULE XI GRIEVANCE PROCEDURE – STEP 3: REVIEW BY BOARD AGENT (1) If the employee wishes to continue the grievance, the employee may submit the completed form to the Board of Personnel Appeals within 14 days of the date of the State Human Resources Division's decision.

(2) The board agent shall serve the grievance upon the appropriate department employer, and the department employer shall have 14 days to respond to the grievance.

(3) The board agent shall have 30 days from the receipt of the form to investigate the grievance and render a written preliminary decision.

(4) If the employee or the department disputes the preliminary decision of the board agent, either party may file exceptions within 14 days of service of the board decision, and the matter will be referred to a hearing officer pursuant to [NEW RULE V (HEARING OFFICER PROCEEDINGS AND RECOMMENDED ORDER)]. The hearing officer is not bound by the statutory or common law rules of evidence in this hearing.

(5) If the employee or the department disputes the recommended order of the hearing officer, either party may file exceptions pursuant to [NEW RULE VI (BOARD REVIEW OF HEARING OFFICER'S RECOMMENDED ORDER)] within 20 days of service of the hearing officer's recommended order.

AUTH: 39-31-104, MCA

IMP: 2-18-203, 2-18-1011, 2-18-1012, MCA

REASON: The proposed new rule replaces the third step in the grievance process in ARM 24.26.508 GRIEVANCE PROCEDURE. The new rule clarifies the third step in the classification and compensation grievance process.

#### c. New Subchapter – Representation Petitions

NEW RULE XII APPROPRIATE UNIT (1) The board may consider a bargaining unit that consists of all the employees in any department, division, bureau, section, or combination thereof.



(2) The board shall determine whether a bargaining unit is appropriate by determining whether the employees share a community of interest. A community of interest is determined by considering the following factors:

- (a) wages;
- (b) hours;
- (c) fringe benefits and other working conditions;
- (d) the history of collective bargaining;
- (e) common supervision;
- (f) common personnel policies;
- (g) extent of integration of work functions and interchange among employees affected; and
- (h) desires of the employees.

(3) The board shall consider the following factors in addition to those listed in (2) when considering a proposed bargaining unit for nurses working at a health care facility, as defined in 39-32-102, MCA:

- (a) similarity of duties;
- (b) licensure; and
- (c) conditions of employment.

AUTH: 39-31-104, 39-32-103, MCA

IMP: 39-31-202, 39-32-102, 39-32-106, 39-32-113, MCA

REASON: The proposed new rule combines ARM 24.26.610 COMPOSITION OF UNIT, 24.26.611 APPROPRIATE UNIT, 24.25.301 COMPOSITION OF UNIT, and 24.25.302 APPROPRIATE UNIT. The new rule also defines community of interest as being the combined consideration of all the relevant factors used to determine an appropriate bargaining unit. The new rule also considers the additional considerations for an appropriate unit for nurses working in a health care facility pursuant to 39-32-106, MCA.

NEW RULE XIII PETITIONS FILED WITH THE BOARD – AMENDMENTS – WITHDRAWAL (1) All petitions filed with the board pursuant to this subchapter must comply with the following:

- (a) The petition shall meet the formatting requirements of [NEW RULE I (DOCUMENT FORM)].
- (b) The petition must contain the name, address, and phone number of the petitioner or an authorized representative.
- (c) The petition must identify the name, address, and phone number for the relevant public employer and any exclusive representative and/or labor organization involved in the proceedings.
- (d) The petition must be signed by the petitioner or an authorized representative.
- (2) The petition shall be filed with the board pursuant to [NEW RULE III (FILINGS WITH THE BOARD)].
- (3) Upon receipt of the petition, a board agent shall be assigned to review and process the petition according to this subchapter.

(4) A petition may be amended at the board agent's or hearing officer's discretion or at the request of a party, but no petitions may be amended as follows:

(a) after ballots are mailed in a mail-ballot election, or after the first ballot is cast in an in-person election; or

(b) after an objection is filed with the board to a hearing officer's recommended order under [NEW RULE XIV (HEARING ON REPRESENTATION MATTERS)].

(5) The petitioner may withdraw a petition for an election at any time before the first ballot is cast in the election.

AUTH: 39-31-104, 39-32-103, MCA

IMP: 39-31-207, 39-32-113, MCA

REASON: The proposed new rule replaces ARM 24.26.205 AMENDING PETITIONS and 24.25.104 AMENDING PETITIONS. The new rule replaces repetitive language in the rules for petitions filed with the board and clarifies the general requirements for all petitions filed with the board pursuant to this subchapter.

NEW RULE XIV HEARING ON REPRESENTATION MATTERS (1) The board agent may refer matters to a hearing officer for consideration under this subchapter.

(2) The hearing officer shall conduct an informal hearing for matters under this subchapter.

(a) The hearing officer shall consider evidence submitted by the parties and take testimony from witnesses.

(b) The hearing officer is not bound by common law or statutory rules of evidence.

(3) The hearing officer shall issue a written order within 28 days of the board agent's referral of the matter to the hearing officer.

(4) A hearing officer may, at the hearing officer's discretion or upon good cause shown by a party, extend the order deadline for an additional period not to exceed a total of 35 days from the matter's referral to the hearing officer.

(5) Unless the rule specifically states otherwise, the hearing officer's orders issued under this rule are subject to review by the board under [NEW RULE VI (BOARD REVIEW OF HEARING OFFICER'S RECOMMENDED ORDER)].

AUTH: 39-31-104, 39-32-103, MCA

IMP: 39-31-202, 39-31-207, 39-31-208, 39-32-113, MCA

REASON: The proposed new rule provides for an expedited and informal process for consideration of matters under this subchapter by the department's Office of Administrative Hearings.

NEW RULE XV UNIT DETERMINATION PETITIONS (1) A labor organization or a group of employees may file a unit determination petition (UD petition) with the board alleging there is a question concerning representation and

seeking an election to determine whether employees wish to be represented by the petitioner.

(2) The UD petition shall contain:

(a) a description of the unit to be determined specifying inclusions and exclusions;

(b) a statement as to whether there is any known disagreement between the employer and the petitioner as to the nature and scope of the proposed unit and the reasons for the disagreement;

(c) the names of all labor organizations known to the petitioner who claim to represent employees in the proposed unit;

(d) the expiration dates and brief description of any contracts covering any employees in the proposed unit;

(e) the approximate number of employees in the proposed unit; and

(f) any other relevant facts.

(3) The UD petition must be accompanied by proof of interest, consisting of authorization cards, or copies thereof.

(a) The board agent shall promptly issue a certification of representative because no question of representation exists, an election is not required, and an appropriate unit has been determined, if the following requirements of this subsection are met:

(i) the number of authorization cards submitted exceeds 50 percent of the number of employees in the proposed bargaining unit;

(ii) an employer counter petition is not filed within seven days of the date the board mailed the petition for unit determination to the employer, as provided by [NEW RULE XVII (EMPLOYER COUNTER PETITION)];

(iii) a petition to intervene has not been filed within seven days of the employer posting notice of unit determination proceedings, as provided by [NEW RULE XVIII (PETITION TO INTERVENE IN UNIT DETERMINATION)]; and

(iv) the showing of interest is adequate because more than 50 percent of the employees on the excelsior list have submitted an authorization card.

(b) An election is required pursuant to [NEW RULE XXXIII (ELECTION DIRECTED)] when at least 30 percent but not more than 50 percent of the employees on the excelsior list have submitted an authorization card.

AUTH: 39-31-104, 39-32-103, MCA

IMP: 39-31-207, 39-32-113, MCA

REASON: The proposed new rule replaces ARM 24.26.612 PETITIONS FOR NEW UNIT DETERMINATION and 24.25.304 PETITIONS FOR NEW UNIT DETERMINATION AND ELECTION. The new rule clarifies the requirements for a unit determination petition.

NEW RULE XVI NOTICE OF UNIT DETERMINATION PROCEEDINGS

(1) Upon receipt of the petition, the employer shall post the notice of unit determination in a conspicuous manner for a period of 20 days.

(2) If employees do not work in a central location, the employer shall disseminate the notice to all affected employees, consistent with typical business practices for disseminating information.

(3) The employer shall confirm in writing to the board that it has received, posted, and or disseminated the notice, and the employer shall continue posting the notice for the required 20 days.

AUTH: 39-31-104, 39-32-103, MCA

IMP: 39-31-207, 39-32-113, MCA

REASON: The proposed new rule replaces and combines ARM 24.26.616 NOTICE OF UNIT DETERMINATION PROCEEDINGS and 24.25.306 NOTICE OF UNIT DETERMINATION PROCEEDINGS. The new rule acknowledges that employees may not all work in a central location, and it provides for a method of providing notice to employees by other reasonable means.

NEW RULE XVII EMPLOYER COUNTER PETITION (1) The employer may file an employer counter petition (EC petition) with the board within seven days of the board's service of the petition for a new unit determination on the employer if the employer disagrees with the appropriateness of the proposed unit as described in the petition.

(2) The EC petition shall contain:

(a) the employer's disagreement with the petitioner's proposed appropriate unit;

(b) a detailed description of the employer's proposed appropriate unit;

(c) the number of employees in the employer's proposed unit;

(d) the expiration dates and brief description of any contracts covering any employees in the employer's proposed unit;

(e) an excelsior list for the employees in the proposed counter-unit; and

(f) any other relevant facts.

(3) The employer shall serve a copy of the EC petition upon the petitioner.

(4) A board agent shall have five business days to work with the parties to resolve issues raised in the EC petition. If the issue of the unit description is not resolved, the board agent shall transfer the counter petition to a hearing officer pursuant to [NEW RULE XIV (HEARING ON REPRESENTATION MATTERS)].

(a) If a party disputes the recommended order of the hearing officer, the party may file exceptions pursuant to [NEW RULE VI (BOARD REVIEW OF HEARING OFFICER'S RECOMMENDED ORDER)] within 20 days of service of the hearing officer's recommended order.

(b) Orders issued by the board on the composition of the unit under this rule are not subject to further appeal.

(c) Once the order of the board is issued that determines the appropriate unit, the matter shall proceed pursuant to [NEW RULE XX (NURSE UNIT AT HEALTH CARE FACILITY – PROFESSIONAL EMPLOYEE SPECIAL ELECTION)] if appropriate or [NEW RULE XXXIII (ELECTION DIRECTED)].

(5) If the employer does not file an EC petition and the time for intervention has passed, the board agent shall review the petitioned-for unit to determine that it is

appropriate under [NEW RULE XII (APPROPRIATE UNIT)], and then proceed pursuant to [NEW RULE XX (NURSE UNIT AT HEALTH CARE FACILITY – PROFESSIONAL EMPLOYEE SPECIAL ELECTION)] if appropriate or [NEW RULE XXXIII (ELECTION DIRECTED)].

AUTH: 39-31-104, 39-32-103, MCA

IMP: 39-31-202, 39-31-207, 39-32-113, MCA

REASON: The proposed new rule replaces and combines ARM 24.26.614 EMPLOYER COUNTER PETITION and 24.25.305 EMPLOYER COUNTER PETITION. The new rule clarifies the requirements for an employer counter petition. The new rule also clarifies the appeal procedure for an employer counter petition when the employer disputes the composition of the bargaining unit. Under 39-31-202, MCA, the legislature has given the board the authority to determine the composition of an appropriate bargaining unit. "In order to ensure employees the fullest freedom in exercising the rights guaranteed by this chapter, the board or an agent of the board shall decide the unit appropriate for the purpose of collective bargaining[.]" 39-31-202, MCA. Employees' rights include forming and joining any labor organization without unnecessary delay. 39-31-201, MCA. Therefore, the board's determination of an appropriate bargaining unit is not subject to further challenge or appeal so that the matter may proceed to an election without unnecessary delay.

Furthermore, this interpretation is in line with the National Labor Relations Board (NLRB)'s interpretation of the National Labor Relations Act (NLRA). The Montana Supreme Court has long held that it is appropriate to consider interpretations of the NLRA when interpreting Montana's law Collective Bargaining for Public Employees. *Bonner Sch. Dist. No. 14 v. Bonner Educ. Ass'n*, 2008 MT 9, ¶ 18, 341 Mont. 97, 102, 176 P.3d 262, 265 (citing *State by Dep't of Highways v. Pub. Emps. Craft Council*, 165 Mont. 349, 353, 529 P.2d 785, 787 (1974)).

"The [NRLB's] certification decisions are not final orders subject to direct judicial review." *Warren Unilube, Inc. v. NLRB*, 690 F.3d 969, 973 (8th Cir. 2012) (citing *Boire v. Greyhound Corp.*, 376 U.S. 473, 476-77 (1964)).

Furthermore, Congress "rejected a House amendment which would have permitted any interested person to obtain review immediately after a certification because, as Senator Taft noted, 'such provision would permit *dilatory tactics* in representation proceedings.'" *Boire*, 376 U.S. at 479 (emphasis added).

There is a reasonable necessity to adopt this new rule to create a just and speedy process for elections in unit determination proceedings. By not allowing the composition of a unit to be reviewed beyond the board before the election, pursuant to 39-31-202, MCA, the board is making the processing of unit determination petitions more efficient, further ensuring the rights of employees to form and join labor unions pursuant to 39-31-201, MCA.

NEW RULE XVIII PETITION TO INTERVENE IN UNIT DETERMINATION

(1) Any labor organization, employee, or group of employees may file a petition to intervene within seven days of the first day of posting of the notice of unit determination proceedings.

(2) The petition shall be accompanied by proof of interest, consisting of authorization cards, or copies thereof, from at least ten percent of the employees in the unit. The cards shall indicate the signatories' choice of exclusive representative.

(3) The petition to intervene shall conform in all other respects to the requirements for a UD petition.

(4) The board agent shall review the petition and the authorization cards for compliance with these rules and serve a copy of the petition to intervene upon all other parties.

AUTH: 39-31-104, 39-32-103, MCA

IMP: 39-31-207, 39-32-113, MCA

REASON: The proposed new rule replaces and combines ARM 24.26.618 PETITION TO INTERVENE and 24.25.307 PETITION TO INTERVENE. The new rule clarifies the requirements for intervention in a unit determination proceeding.

NEW RULE XIX UNIT DETERMINATION PETITION INVESTIGATION AND HEARING (1) The board agent shall serve a copy of the UD petition on the public employer, and the board agent shall include with the UD petition the notice of unit determination. The notice shall be posted pursuant to [NEW RULE XVI (NOTICE OF UNIT DETERMINATION PROCEEDINGS)].

(2) The board agent shall investigate all questions and facts concerning the proposed unit, and shall have the following options:

(a) to direct a unit determination hearing after the time for intervening has passed; or

(b) to dispense with a unit determination hearing under the following conditions:

(i) the employer has not filed a counter petition;

(ii) no intervenors contest the petitioner's proposed unit; or

(iii) the parties have entered into a consent election agreement pursuant to [NEW RULE XXXIV (CONSENT ELECTION)].

(3) The excelsior list must be provided to the board agent and the petitioner within ten days of the board agent's mailing of the UD petition to the public employer.

(4) If the board agent directs a hearing, the matter shall be referred to a hearing officer, pursuant to [NEW RULE XIV (HEARING ON REPRESENTATION MATTERS)]. Orders issued by the hearing officer under this rule are not subject to appeal to the board.

(5) If the unit does not include nurses working for a health care facility under 39-32-106, MCA, within seven days of the board agent's determination to dispense with the hearing, or within seven days of service of the hearing officer's order, the board agent shall direct the election and schedule the pre-election conference pursuant to [NEW RULE XXXIII (ELECTION DIRECTED)]. Either party shall raise

any challenges for individual inclusions and exclusions to the unit at the pre-election conference.

(6) If the unit approved in the hearing officer's order includes nurses working for a health care facility under 39-32-106, MCA, the board agent must also comply with [NEW RULE XX (NURSE UNIT AT HEALTH CARE FACILITY – PROFESSIONAL EMPLOYEE SPECIAL ELECTION)].

AUTH: 39-31-104, 39-32-103, MCA

IMP: 39-31-207, 39-32-113, MCA

REASON: The proposed new rule replaces and combines ARM 24.26.620 PROCEDURE FOLLOWING FILING OF PETITION FOR NEW UNIT DETERMINATION AND ELECTION, 24.25.303 PROFESSIONAL EMPLOYEES, and 24.25.308 PROCEDURE FOLLOWING FILING OF PETITION FOR NEW UNIT DETERMINATION AND ELECTION. Pursuant to 39-32-106, MCA, the professional employees in a unit that includes nurses working in a health care facility, as defined in 39-32-102, MCA, must be given the opportunity to vote on whether or not they wish to join a bargaining unit. Under 39-31-202, MCA, the legislature has given the board the authority to determine the composition of an appropriate bargaining unit. "In order to ensure employees the fullest freedom in exercising the rights guaranteed by this chapter, the board or an agent of the board shall decide the unit appropriate for the purpose of collective bargaining[.]" 39-31-202, MCA. Therefore, the board agent's determination of an appropriate bargaining unit under this rule is not subject to further challenge or appeal.

NEW RULE XX NURSE UNIT AT HEALTH CARE FACILITY – PROFESSIONAL EMPLOYEE SPECIAL ELECTION (1) This rule applies to UD petitions for a health care facility that include professional nursing staff in the proposed unit, as defined in 39-32-106, MCA.

(2) If a hearing officer issues an order pursuant to [NEW RULE XIV (HEARING ON REPRESENTATION MATTERS)], and the approved unit includes both professional nursing employees, as defined in 39-32-102, MCA, and nonprofessional employees, the board agent shall conduct a special election among professional employees to determine whether they wish to be included in the proposed unit.

(a) The board agent shall conduct the election by secret ballot in a prompt and efficient manner. Notice of the special election shall be posted by the employer no less than five days prior to the special election.

(b) If a majority of the professional employees in the proposed unit do not desire to be included in the proposed unit, the professional employees shall be excluded from the unit. If a majority of the professional employees in the proposed unit desire to be included in the unit, the professional employees shall be included in the unit.

(c) The board agent shall issue a written certification of the results of the special election and serve it on the parties.

(3) Within seven days of service of the board agent's certification of the special election, the board agent shall direct the election and schedule the pre-

election conference pursuant to [NEW RULE XXXIII (ELECTION DIRECTED)]. Either party shall raise any challenges for individual inclusions and exclusions to the unit at the pre-election conference.

AUTH: 39-32-103, MCA

IMP: 39-32-102, 39-32-105, 39-32-106, 39-32-113, MCA

REASON: The proposed new rule replaces ARM 24.25.303 PROFESSIONAL EMPLOYEES. Pursuant to 39-32-106, MCA, the professional employees in a unit that includes nurses working in a health care facility, as defined in 39-32-102, MCA, must be given the opportunity to vote on whether or not they wish to join a bargaining unit. The new rule clarifies the procedure for complying with 39-32-106, MCA, within the process for forming a bargaining unit under these rules.

NEW RULE XXI EMPLOYER RECOGNITION PETITION (1) An employer may file an employer recognition petition (ER petition) with the board alleging that one or more labor organizations have presented to it a claim to be recognized as the exclusive representative in an appropriate unit.

(2) ER petitions may be filed under the following circumstances:

(a) during the period not more than 90 days, and not less than 60 days prior to the termination date of the existing CBA;

(b) during January of the year the existing CBA terminates if the bargaining unit is comprised of employees of school districts, units of the university system, or a community college;

(c) after the termination date of the existing CBA; or

(d) when the proposed exclusive representative gives notice to the employer that it desires to begin negotiations of a CBA.

(3) The ER petition shall contain:

(a) a statement naming all labor organizations making a claim to the employer to be recognized as the exclusive representative and bargaining agent;

(b) a concise statement of how the demands for recognition took place;

(c) a description of the bargaining unit the labor organizations demand to represent, including the approximate number of employees in the unit or units that are in dispute, and an enumeration, by job title, of the inclusions and exclusions proposed by the labor organizations;

(d) a brief description, including expiration dates, of all contracts covering employees in the proposed unit; and

(e) any other relevant facts.

(4) A board agent shall review and investigate the employer petition.

(5) If the board agent determines there are not sufficient grounds to act on the ER petition, the agent shall issue a written determination of the reasons for not proceeding with the recognition proceedings. The agent shall serve the determination on the employer.

(a) The petitioner may file exceptions to the board agent's determination within 14 days of the service of the determination.

(b) The exceptions shall be forwarded to the hearing officer for consideration pursuant to [NEW RULE XIV (HEARING ON REPRESENTATION MATTERS)].



(6) If the board agent finds there is sufficient, objective criteria to doubt the certified or recognized exclusive representative's majority status, meaning there is a question of representation, then the board agent shall serve a copy of the petition on all parties claiming to be the exclusive representative and bargaining agent. After service of the petition, the procedures for unit determination and elections, including the right to intervene, will then proceed pursuant to [NEW RULE XV (UNIT DETERMINATION PETITIONS)].

AUTH: 39-31-104, 39-32-103, MCA

IMP: 39-31-207, 39-32-113, MCA

REASON: The proposed new rule replaces ARM 24.26.622 EMPLOYER PETITION. The new rule clarifies the timing and requirements for an employer recognition petition.

NEW RULE XXII DECERTIFICATION PETITION (1) An employee, a group of employees, or a labor organization may file a decertification petition (DC petition), provided that 12 months have elapsed since the last election.

(2) DC petitions may be filed under the following circumstances:

(a) during the period not more than 90 days, and not less than 60 days prior to the termination date of the existing CBA; or

(b) during January of the year the existing CBA terminates, if the bargaining unit is comprised of employees of school districts, units of the university system, or a community college; or

(c) after the termination date of the existing CBA.

(3) The DC petition shall contain:

(a) a statement that the labor organization that has been certified or is currently being recognized by the employer as the exclusive representative no longer represents the interests of the majority of the employees in the unit;

(b) the name of the labor organization, if any, which claims to be the majority representative;

(c) a description of the bargaining unit involved and the approximate number of employees; and

(d) any other relevant facts.

(4) The petition shall be accompanied by proof of interest, consisting of authorization cards, or copies thereof, from at least 30 percent of the employees in the unit. The cards shall indicate that the signatories do not desire to be represented for collective bargaining purposes by the board-certified or employer-recognized exclusive representative.

AUTH: 39-31-104, 39-32-103, MCA

IMP: 39-31-207, 39-32-113, MCA

REASON: The proposed new rule replaces and combines ARM 24.26.643 PETITION FOR DECERTIFICATION and 24.25.501 PETITION FOR DECERTIFICATION. The new rule clarifies the timing and requirements for a decertification petition.

NEW RULE XXIII ANSWER TO DECERTIFICATION PETITION (1) Each party may file an answer to the DC petition with the board within 14 days of the board's service of the DC petition on the parties.

(2) The composition of the unit is not a proper matter to be considered in a decertification proceeding. Eligible voters for any decertification election shall be those who are members of the bargaining unit at the time of the filing of the DC petition.

AUTH: 39-31-104, 39-32-103, MCA

IMP: 39-31-207, 39-32-113, MCA

REASON: The proposed new rule replaces and combines ARM 24.26.644 ANSWER and 24.25.502 ANSWER. The new rule allows the parties to have 14 days to file an answer rather than ten days in the previous rule.

NEW RULE XXIV NOTICE OF DECERTIFICATION PROCEEDINGS

(1) Upon receipt of the petition, the employer shall post the notice of decertification proceedings in a conspicuous manner for a period of 20 days.

(2) If employees do not work in a central location, the employer shall disseminate the notice to all affected employees, consistent with typical business practices for disseminating information.

(3) The employer shall confirm in writing to the board that it has received, posted, and shall continue posting of the notice for the required 20 days.

AUTH: 39-31-104, 39-32-103, MCA

IMP: 39-31-207, 39-32-113, MCA

REASON: The proposed new rule replaces and combines ARM 24.26.645 NOTICE OF DECERTIFICATION PROCEEDINGS and 24.25.503 NOTICE OF DECERTIFICATION PROCEEDINGS. The new rule acknowledges that employees may not all work in a central location, and it provides for a method of providing notice to employees by other reasonable means.

NEW RULE XXV PETITION TO INTERVENE IN DECERTIFICATION

(1) Any labor organization, employee, or group of employees may file a petition to intervene within ten days of the first day of posting of the notice of decertification proceedings.

(2) The petition shall be accompanied by proof of interest, consisting of authorization cards, or copies thereof, from at least ten percent of the employees in the unit. The cards shall indicate that the signatories do not desire to be represented for collective bargaining purposes by the current board-certified or employer-recognized exclusive representative, and the cards shall identify the signatories' choice of a new exclusive representative.

(3) The petition to intervene shall conform in all other respects to the requirements for a UD petition.

(4) The board agent shall review the petition and the authorization cards for compliance with these rules and serve a copy of the petition to intervene upon all other parties.

AUTH: 39-31-104, 39-32-103, MCA

IMP: 39-31-207, 39-32-113, MCA

REASON: The proposed new rule replaces and combines ARM 24.26.646 PETITION TO INTERVENE and 24.25.504 PETITION TO INTERVENE. The new rule clarifies the requirements for filing a petition to intervene in decertification proceedings.

NEW RULE XXVI DECERTIFICATION PETITION INVESTIGATION AND HEARING (1) The board shall serve a copy of the DC petition upon the labor organization(s) concerned and the public employer, and the board agent shall include the notice of unit decertification with the petition. The notice shall be posted pursuant to [NEW RULE XXIV (NOTICE OF DECERTIFICATION PROCEEDINGS)].

(2) The board agent shall investigate all questions and facts concerning the DC petition and shall have the following options:

(a) to direct a hearing after the time for intervening has passed;

(b) to dispense with a hearing and schedule the election and a pre-election conference; or

(c) dismiss the DC petition if it does not meet the requirements as outlined in [NEW RULE XXII (DECERTIFICATION PETITION)].

(3) If the board agent directs a hearing, the matter shall be referred to a hearing officer, pursuant to [NEW RULE XIV (HEARING ON REPRESENTATION MATTERS)]. Orders issued by the hearing officer under this rule are not subject to appeal to the board.

(4) Within seven days of the board agent's determination to dispense with the hearing, or within seven days of service of the hearing officer's order, the board agent shall direct the election and schedule the pre-election conference pursuant to [NEW RULE XXXIII (ELECTION DIRECTED)].

AUTH: 39-31-104, 39-32-103, MCA

IMP: 39-31-207, 39-32-113, MCA

REASON: The proposed new rule replaces and combines ARM 24.26.647 PROCEDURE FOLLOWING FILING OF PETITION FOR DECERTIFICATION and 24.25.505 PROCEDURE FOLLOWING FILING OF PETITION FOR DECERTIFICATION.

NEW RULE XXVII DISAFFIRMANCE OF REPRESENTATION BY BARGAINING REPRESENTATIVE DURING DECERTIFICATION (1) An exclusive representative may file an affidavit of disaffirmance of representation with the board agent under the following circumstances:

(a) a minimum of 12 months has passed since the date of certification by the board or recognition by the employer of the exclusive representative; and

- (b) a DC petition has been filed by an employee or group of employees.
- (2) The affidavit must be signed by the exclusive representative, dated, and notarized by a notary public of the State of Montana. Electronic notarization is acceptable under these rules.
- (3) Upon the filing of the affidavit, the board agent shall remove the exclusive representative's name from the ballot in the DC election. If no other bargaining representative appears on the ballot, no election shall be conducted.

AUTH: 39-31-104, 39-32-103, MCA

IMP: 39-31-207, 39-32-113, MCA

REASON: The proposed new rule replaces ARM 24.26.648 DISAFFIRMANCE OF REPRESENTATION BY BARGAINING REPRESENTATIVE. The new rule clarifies that a disaffirmance may only occur during a decertification proceeding, and the new rule clarifies the requirements for a disaffirmance.

NEW RULE XXVIII PETITION FOR UNIT CLARIFICATION OF BARGAINING UNIT (1) The public employer or exclusive representative of the bargaining unit in question may file a unit clarification petition (UC petition) under the following circumstances:

- (a) there is no question concerning representation; and
  - (b) the parties to the CBA are neither engaged in negotiations nor within 120 days of the expiration date of the CBA, unless the parties mutually agree to permit the petition; and
  - (c) a UC petition has not been filed with the board concerning substantially the same unit within the past 12 months immediately preceding the filing of the UC petition; and
  - (d) no election has been held in substantially the same unit within the past 12 months immediately preceding the filing of the UC petition.
- (2) A UC petition shall contain the following:
- (a) the identification and description of the existing bargaining unit;
  - (b) a description of the proposed clarification of the unit;
  - (c) the job classification(s) of employees as to whom the clarification issue is raised, and the number of employees on each such classification;
  - (d) a statement setting forth the reason why the petitioner desires a clarification of the unit;
  - (e) a statement that no other employee organization is certified to represent any of the employees who would be directly affected by the proposed clarification; and
  - (f) a brief and concise statement of any other relevant facts.

AUTH: 39-31-104, 39-32-103, MCA

IMP: 39-31-202, 39-31-207, 39-32-113, MCA

REASON: The proposed new rule replaces and combines ARM 24.26.630 PETITION FOR UNIT CLARIFICATION OF BARGAINING UNIT and 24.25.401 PETITION FOR UNIT CLARIFICATION OF BARGAINING UNIT.

NEW RULE XXIX BOARD AGENT REVIEW OF UNIT CLARIFICATION PETITION (1) A board agent will review the UC petition to ensure it is timely filed under [NEW RULE XXVIII (PETITION FOR UNIT CLARIFICATION OF BARGAINING UNIT)]. If it is not, the board agent will issue a written determination dismissing the petition.

(a) If either party disputes the determination, the party may submit additional information to the board agent within 14 days of service of the board agent's determination, and the board agent shall issue a redetermination.

(b) If either party objects to the redetermination, they may file written exceptions with the board agent within 14 days of service of the board agent's redetermination. The board agent shall then refer the matter to a hearing officer pursuant to [NEW RULE XIV (HEARING ON REPRESENTATION MATTERS)].

(2) If the board agent finds the UC petition is timely filed under [NEW RULE XXVIII (PETITION FOR UNIT CLARIFICATION OF BARGAINING UNIT)], the board agent shall serve the petition on the parties.

(a) The parties will have 14 days from service of the UC petition to file a response to the UC petition.

(b) Failure to respond will result in the board agent issuing a recommended order granting the relief requested by the petitioner.

AUTH: 39-31-104, 39-32-103, MCA

IMP: 39-31-202, 39-31-207, 39-32-113, MCA

REASON: The proposed new rule replaces and combines ARM 24.26.630 PETITION FOR UNIT CLARIFICATION OF BARGAINING UNIT and 24.25.401 PETITION FOR UNIT CLARIFICATION OF BARGAINING UNIT.

NEW RULE XXX BOARD INVESTIGATION OF UNIT CLARIFICATION PETITION, AGREEMENT, MEDIATION, APPEAL (1) If the board agent serves the petition on the parties, the board agent shall investigate the UC petition. If no question of fact exists and the parties agree with the modification of the existing unit, the board agent shall issue an order consistent with the agreement of the parties. The order shall be signed by the board agent and all parties.

(2) If the board agent determines that a question of fact exists, the parties shall mediate the dispute before an agency mediator. Mediation will be concluded within 45 days of assignment unless the parties mutually agree to an extension.

(3) If the parties are unable to mediate the dispute, the board agent shall transfer the matter to the hearing officer pursuant to [NEW RULE XIV (HEARING ON REPRESENTATION MATTERS)].

(a) If a party disputes the recommended order of the hearing officer, the party may file exceptions pursuant to [NEW RULE VI (BOARD REVIEW OF HEARING OFFICER'S RECOMMENDED ORDER)] within 14 days of service of the hearing officer's recommended order.

(b) Orders of the board that determine the appropriate unit under this rule are not subject to further appeal or challenge.

AUTH: 39-31-104, 39-32-103, MCA

IMP: 39-31-202, 39-31-207, 39-32-113, MCA

REASON: The proposed new rule replaces and combines ARM 24.26.630 PETITION FOR UNIT CLARIFICATION OF BARGAINING UNIT and 24.25.401 PETITION FOR UNIT CLARIFICATION OF BARGAINING UNIT. Under 39-31-202, MCA, the legislature has given the board the authority to determine the composition of an appropriate bargaining unit. "In order to ensure employees the fullest freedom in exercising the rights guaranteed by this chapter, the board or an agent of the board shall decide the unit appropriate for the purpose of collective bargaining[.]" 39-31-202, MCA. Therefore, the board's determination of an appropriate bargaining unit under this rule is not subject to further challenge or appeal.

NEW RULE XXXI PETITION TO REVOKE CERTIFICATION OR RECOGNITION (1) The employer or the exclusive representative of a bargaining unit may file a petition to revoke board certification or employer recognition of an exclusive representative (RC petition).

(2) The board agent assigned to review the RC petition will order revocation only upon an unequivocal showing that:

(a) no CBA is in effect; and

(b) the exclusive representative disclaims further interest in representing the bargaining unit.

(3) The board agent shall issue a written determination explaining their grant or denial of the revocation. If either party disagrees with the determination, they may submit additional information to the board agent within 14 days of service of the board agent's determination, and the board agent shall issue a redetermination.

(4) If either party objects to the redetermination, they may file written exceptions with the board agent within 14 days of service of the board agent's redetermination. The board agent shall then refer the matter to a hearing officer pursuant to [NEW RULE XIV (HEARING ON REPRESENTATION MATTERS)].

AUTH: 39-31-104, 39-32-103, MCA

IMP: 39-31-207, 39-32-113, MCA

REASON: The proposed new rule replaces ARM 24.26.649 PETITIONS TO REVOKE CERTIFICATION OR RECOGNITION. The new rule provides clarification and detail for the process of revoking certification or recognition of a bargaining unit by requiring the board agent to review the request for revocation and issue a written determination. The new rule also provides for a right to appeal the board agent's determination.

NEW RULE XXXII PETITIONS TO AMEND CERTIFICATION OF EXCLUSIVE REPRESENTATIVE (1) A labor organization may file a petition to amend the certification of an exclusive representative (AC petition) when there is no question of representation and one of the following circumstances exists:

(a) the name or affiliation of the exclusive representative has changed; or

(b) the name of the employer has changed.

(2) AC petitions to affiliate exclusive representatives of bargaining units with other labor organizations shall show that members of the bargaining unit were afforded due process and will have continuity of representation.

(a) Due process in the affiliation process shall be demonstrated by a showing that members of the bargaining unit were:

- (i) given notice of the impending affiliation vote;
- (ii) given an opportunity to discuss the proposed affiliation at a meeting prior to voting; and
- (iii) permitted to vote by secret ballot on the affiliation question.

(b) Continuity of representation shall be demonstrated by a showing that:

- (i) there will be a continuation of bargaining unit autonomy;
- (ii) local officers will be retained;
- (iii) financial arrangements are not substantially different under the affiliation than before; and
- (iv) procedures regulating grievance handling, voting, and by-law changes are continued.

(3) The board agent shall investigate all questions and facts concerning the proposed affiliation and shall have the following options:

(a) The board agent may issue a written determination approving the affiliation and allowing the certification.

(b) The board agent may issue a written determination denying the petition.

(4) If either party disagrees with the determination, they may submit additional information to the board agent within 14 days of service of the board agent's determination, and the board agent shall issue a redetermination.

(5) If either party objects to the redetermination, they may file written exceptions with the board agent within 14 days of service of the board agent's redetermination. The board agent shall then refer the matter to a hearing officer pursuant to [NEW RULE XIV (HEARING ON REPRESENTATION MATTERS)].

AUTH: 39-31-104, 39-32-103, MCA

IMP: 39-31-206, 39-31-207, 39-32-113, MCA

REASON: The proposed new rule replaces ARM 24.26.650 PETITIONS TO AMEND CERTIFICATION OF EXCLUSIVE REPRESENTATIVE. The new rule provides clarification and detail for the process of amending a certification of an exclusive representative by requiring the board agent to review the request for revocation and issue a written determination. The new rule also provides for a right to appeal the board agent's determination.

#### d. New Subchapter – Representation Elections

NEW RULE XXXIII ELECTION DIRECTED (1) The board agent shall issue a written order directing an election to occur and scheduling a pre-election conference within five days of completion of the requirements of [NEW RULE XIX (UNIT DETERMINATION PETITION INVESTIGATION AND HEARING)], [NEW RULE XXVI (DECERTIFICATION PETITION INVESTIGATION AND HEARING)], or

[NEW RULE XX (NURSE UNIT AT HEALTH CARE FACILITY – PROFESSIONAL EMPLOYEE SPECIAL ELECTION)].

(2) The pre-election conference shall occur no more than five days after the election is directed.

(3) The board agent shall coordinate with the parties to determine the date of the pre-election conference and the date of the election.

(4) The election shall be conducted under the direction and supervision of the board agent. The full board has discretion to review any determinations made by the board agent regarding the election.

(5) Elections shall be held by mail ballot unless a party submits a written request for an on-site election to the board agent. The board agent shall grant an on-site election only upon a clear and convincing showing that a mail ballot election is not feasible.

AUTH: 39-31-104, 39-32-103, MCA

IMP: 39-31-208, 39-32-113, MCA

REASON: The proposed new rule replaces and combines ARM 24.26.655 ELECTION DIRECTED, 24.26.656 CONDITIONS, and 24.25.601 ELECTION DIRECTED. The new rule specifies the procedure and timing for a board agent to direct an election and schedule a pre-election conference. The new rule includes a timeline for an election to be directed and a pre-election conference to occur.

NEW RULE XXXIV CONSENT ELECTION (1) If there are no challenges to the unit composition or to the question of representation, the parties may waive the hearing and enter into a consent election agreement after the time to intervene has passed.

(2) The board agent shall draft the consent agreement that includes a description of the unit and the time and place for the election.

(3) The agreement must be signed by all parties. The bargaining unit set out in the consent agreement shall be deemed an appropriate bargaining unit once it is signed by the parties.

AUTH: 39-31-104, 39-32-103, MCA

IMP: 39-31-209, 39-32-113, MCA

REASON: The proposed new rule replaces ARM 24.26.617 CONSENT ELECTIONS. The new rule clarifies the requirements for a consent election. The new rule lists the requirements for a consent election and clarifies the role of the board agent.

NEW RULE XXXV ELIGIBLE VOTERS (1) The employees eligible to vote shall be those within the unit on the date of the filing of the UD petition or the DC petition with the board, excluding those employees who voluntarily terminated their employment after the filing date.

(2) The excelsior list shall be used to determine the unit members employed on the date of filing of the petition.



(3) Any challenges to eligible voters shall be raised at the pre-election conference.

AUTH: 39-31-104, 39-32-103, MCA

IMP: 39-31-208, 39-32-113, MCA

REASON: The proposed new rule replaces ARM 24.26.658 ELIGIBLE VOTERS. The new rule clarifies that the excelsior list is used to determine the employees and that any challenges to eligible voters must be raised at the pre-election conference.

NEW RULE XXXVI PRE-ELECTION CONFERENCE (1) Prior to distributing the notice of election, the board agent shall hold a pre-election conference with all parties. The pre-election conference may be held telephonically, by videoconference, by e-mail, or in person.

(2) The parties shall submit any challenges to voters in writing to the board agent before or during the pre-election conference.

(3) The board agent shall certify the list of eligible voters, specifically designating any voters who will be challenged.

(4) The parties shall determine the order of labor organization names to appear on the ballot pursuant to [NEW RULE XXXVIII (BALLOTS)]. If the parties cannot agree on the order of names, the board agent shall determine the order.

AUTH: 39-31-104, 39-32-103, MCA

IMP: 39-31-208, 39-32-113, MCA

REASON: The proposed new rule specifies the procedures and issues that must be addressed at a pre-election conference. Requiring the parties to communicate during the pre-election conference is an important part of the election process because it reduces the number of questions, issues, and conflicts that may arise in the election process.

NEW RULE XXXVII NOTICE OF ELECTION (1) Within five days after an election is directed, but not before the pre-election conference, the board agent shall distribute a notice of election to the parties. This notice of election will specify:

(a) whether the election will be by mail or held on-site;

(i) for an on-site election, the notice shall specify the location and date of the election; or

(ii) for a mail-ballot election, the notice shall specify the date ballots will be mailed, the location for returning ballots, the deadline for returning ballots, and the date ballots shall be counted which is the date of the election;

(b) a description of the unit;

(c) rules concerning eligibility to vote;

(d) a sample ballot; and

(e) any additional information and instruction the board agent considers appropriate.

(2) The board agent shall send copies of the notice of election and the sample ballot to all labor organizations appearing on the ballot and to the public employer.

(3) The public employer shall post the notice of election and the sample ballot in a conspicuous manner at work locations where notices are normally posted for the benefit of employees in the appropriate unit as follows:

(a) for an on-site election, the notice of election shall be posted for a minimum of five working days prior to the election; or

(b) for a mail-ballot election, the notice of election shall be posted for a minimum of fifteen days prior to the date of the election.

(4) If employees do not work in a central location, the employer shall disseminate the notice to all affected employees, consistent with typical business practices for disseminating information.

(5) The employer shall confirm in writing to the board that it has received, posted, and or disseminated the notice, and the employer shall continue posting of the notice for the required period of time in (3).

AUTH: 39-31-104, 39-32-103, MCA

IMP: 39-31-208, 39-32-113, MCA

REASON: The proposed new rule replaces ARM 24.26.659 NOTICE. The new rule clarifies what must be contained in the notice of election by specifically listing the requirements. The new rule distinguishes between mail-ballot and on-site elections. The new rule further acknowledges that employees may not work in one central location, and therefore the notice may need to be distributed electronically or by other reasonable means.

NEW RULE XXXVIII BALLOTS (1) All elections shall be by secret ballot.

(2) The order of labor organization names to appear on the ballot shall be determined during the pre-election conference.

(a) The current exclusive representative shall always be on the ballot unless otherwise agreed or a proper affidavit of disaffirmance has been filed pursuant to [NEW RULE XXVII (DISAFFIRMANCE OF REPRESENTATION BY BARGAINING REPRESENTATIVE DURING DECERTIFICATION)].

(b) "No Representation" will always be listed as the last choice on the ballot.

(3) Only those labor organizations which have been designated by proof of interest of more than ten percent of the employees in the unit shall be placed on the ballot.

(4) Absentee ballots shall not be allowed in an on-site election.

AUTH: 39-31-104, 39-32-103, MCA

IMP: 39-31-208, 39-32-113, MCA

REASON: The proposed new rule combines and replaces ARM 24.26.660 BALLOTS and 24.26.657 SECRET BALLOT. The new rule clarifies how to determine which labor organizations must appear on the ballot and how a current exclusive representative can be removed from the ballot.

NEW RULE XXXIX MAIL BALLOT ELECTIONS (1) Ballots may be mailed the same time as the notice of election.

(2) Ballots shall include a security envelope and instructions for completing the ballot.

(3) Ballots may be returned by mail or by hand delivery to a location determined by the board agent and included in the notice of election.

(4) Ballots shall be counted not less than ten or more than 20 days after they are mailed. For a mail-ballot election, the date ballots are counted is the date of the election.

(5) Ballots shall be counted at a date, time, and location determined by the board agent. Ballots must be received by the board agent by that date and time to be counted.

(6) All parties are entitled to have observers present for the ballot count. Failure or refusal of one party to send an observer to the ballot count does not infringe on the right of another party to send an observer to that place.

AUTH: 39-31-104, 39-32-103, MCA

IMP: 39-31-208, 39-32-113, MCA

REASON: The proposed new rule replaces ARM 24.26.661 POLL WATCHERS and specifies the procedures for a mail-ballot election. There is a reasonable necessity to have a clear rule because the majority of elections under this rule occur over mail ballot.

NEW RULE XL ON-SITE ELECTIONS – POLL WATCHERS AND POLLING AREA ELECTIONEERING (1) Prior to the commencement of an on-site election, the board agent shall designate the polling area, and no electioneering of any kind shall be permitted within this area. Any violation of this rule by any party or its representative or agent may be grounds for setting aside the election.

(2) Each party to the election is entitled to be represented by an equal number of observers at each polling place.

(3) The failure or refusal of one party to send an observer to a polling place does not infringe on the right of another party to send an observer to that place.

(4) Observers shall be employees eligible to vote, or in the case of employer's observers, shall be any appropriate persons who are not on the list of eligible voters. Each party may observe the ballot counting.

AUTH: 39-31-104, 39-32-103, MCA

IMP: 39-31-208, 39-32-113, MCA

REASON: The proposed new rule combines and replaces ARM 24.26.661 POLL WATCHERS, and 24.26.662 POLLING AREA ELECTIONEERING. The new rule clarifies specific procedures for on-site elections and preserves the historic protections for voters in an on-site election.

NEW RULE XLI CHALLENGES TO BALLOTS (1) All employees whose names appear on the list certified by the board agent at the pre-election conference shall be eligible to vote.

(2) Either party may challenge a prospective voter for cause.

(a) For a mail ballot election, a ballot will be mailed to all certified and challenged voters.

(b) For an on-site election, any employee who wishes to vote, but whose name is not on the certified list, will be permitted to vote, but will be challenged by the board agent.

(3) A challenged voter shall be permitted to vote but the ballot shall not be counted. The ballot shall instead be sealed in a separate, unmarked envelope under the supervision of the board agent and inserted in a special identifiable form envelope to be held by the board pending determination of the eligibility of the challenged voter.

AUTH: 39-31-104, 39-32-103, MCA

IMP: 39-31-208, 39-32-113, MCA

REASON: The proposed new rule replaces ARM 24.26.663 CHALLENGES. The new rule distinguishes between on-site and mail-ballot elections, and it clarifies the board agent's procedure to addressing challenged ballots.

NEW RULE XLII BALLOT TALLY AND EXCEPTIONS (1) The majority of the valid votes cast shall determine the election. In the case of a tie vote, no certification shall be issued.

(2) The board agent shall notify the parties of the ballot tally on the day the ballots are counted by e-mail or by other means reasonably calculated to confer the information on the parties. However, in either on-site or mail-ballot elections, the burden is on the parties to confirm the election tally with the board agent assigned to the election.

(3) The parties to the election may file exceptions with the board relating to the conduct of the election or conduct affecting the results of the election, including challenged ballots, within five days of the tally of the ballots.

(4) Exceptions shall be in writing and shall contain a brief statement of the facts upon which the exceptions are based. Exceptions shall be served upon all parties to the election.

(5) The board agent shall review the exceptions and refer the matter to a hearing officer pursuant to [NEW RULE XIV (HEARING ON REPRESENTATION MATTERS)].

(6) An order of the hearing officer issued under this part shall be appealable to the board pursuant to [NEW RULE VI (BOARD REVIEW OF HEARING OFFICER'S RECOMMENDED ORDER)].

AUTH: 39-31-104, 39-32-103, MCA

IMP: 39-31-208, 39-32-113, MCA

REASON: The proposed new rule combines and replaces ARM 24.26.664 MAJORITY and 24.26.666 BALLOT TALLY AND OBJECTIONS. The new rule clarifies the specific requirements for filing exceptions to an election, and the new rule clarifies the appeal procedure for exceptions to an election.

e. New Subchapter – Unfair Labor Practices

NEW RULE XLIII ULP COMPLAINT (1) A ULP may be filed by an employee, a group of employees, a labor organization, or a public employer.

(2) Any ULP must be filed with the board within six months of the alleged unfair labor practice, unless the complainant is a member of the armed forces who was prevented from filing the charge because of serving in the armed forces as described in 39-31-404, MCA, in which case the charge must be filed within six months from the day of the service member's discharge.

(3) A ULP shall be in writing.

(4) The ULP shall be by the complainant or the exclusive representative, and the complaint shall contain the following:

(a) the name, address, and telephone number of the complainant;

(b) the name, address, and telephone number of the party against whom the charge is made;

(c) a clear and concise statement of facts constituting the alleged violation, including the time and place of occurrence of the particular acts; and

(d) a statement of the statute or rules alleged to have been violated.

(5) If an individual employee is filing an unfair labor practice against an employer, the ULP complaint form shall include the signature of the employee's exclusive representative.

(a) If the employee does not have an exclusive representative, the ULP must so state.

(b) If the employee has an exclusive representative, and the ULP complaint form does not contain a signature of the exclusive representative, the complaint must include an explanation about why the exclusive representative is not involved.

(6) A board agent shall conduct an informal investigation of the ULP complaint.

AUTH: 39-31-104, 39-32-103, MCA

IMP: 39-31-401, 39-31-402, 39-31-404, 39-32-109, 39-32-112, MCA

REASON: The proposed new rule replaces ARM 24.26.680 COMPLAINT and 24.25.701 COMPLAINT. The new rule clarifies the requirements for a ULP complaint. The new rule also includes the exception to the six-month deadline for filing a ULP for members of the armed forces found in 39-31-404, MCA.

NEW RULE XLIV STAY OF INFORMAL ULP INVESTIGATION (1) If during the course of the informal investigation of the ULP, the board agent determines the charge may be resolved through the final and binding arbitration provisions contained in the applicable CBA, the board agent may issue a recommended order staying the informal investigation.

(2) A party may appeal the board agent's recommended order to stay proceedings by filing an objection with the board agent within 14 days after service of the recommended order.

(3) The board agent shall refer an appeal of the recommended order to stay the informal investigation to a hearing officer pursuant to [NEW RULE XIV (HEARING ON REPRESENTATION MATTERS)].

(4) If the hearing officer affirms and adopts the board agent's recommended order to stay the informal investigation, the stay remains in place until there is a subsequent request to review the stay, or the hearing officer's order staying the informal investigation dissolves by operation of law.

(5) The board agent may dissolve the stay and continue with the informal investigation into the ULP if a party provides a written request to the board agent and a showing of at least one of the following:

- (a) the ULP has not been resolved in a reasonable amount of time; or
- (b) the arbitration decision has not resolved the ULP; or
- (c) the decision to stay the proceedings was inconsistent with the laws governing collective bargaining in Montana.

(6) A decision by the board's agent to dissolve a stay is not appealable or subject to review.

AUTH: 39-31-104, 39-32-103, MCA

IMP: 39-31-405, 39-32-112, MCA

REASON: The proposed new rule replaces ARM 24.26.680A STAY OF INFORMAL INVESTIGATION. The new rule clarifies that the stay may be granted by a board agent, rather than the full board.

#### NEW RULE XLV INFORMAL INVESTIGATION OF ULP BY BOARD AGENT

(1) The board agent assigned to investigate the ULP shall serve the complaint on each respondent charged with an unfair labor practice.

(2) The respondent shall file a written response to the complaint with the board within ten days of the board service of the ULP on the respondent.

(3) The board agent shall investigate the ULP and make a written finding of whether there is probable merit to support the ULP. The written finding will include a short summary of the investigation and the reasons for the board agent's determination. The board agent shall serve the finding on all complainants and respondents.

(a) If the board agent determines the ULP is supported by probable merit, the matter shall be set for a hearing before a hearing officer pursuant to [NEW RULE XLVII (HEARING OFFICER REVIEW OF ULP COMPLAINT)]. A minimum of five working days must pass between the date of service of the finding on all parties and the date of the hearing.

(b) If the board agent determines that the ULP is not supported by probable merit, the board agent shall issue a notice of intent to dismiss the ULP complaint.

(4) A party may request review of the notice of intent to dismiss the ULP complaint within ten days of receipt of the notice of intention to dismiss pursuant to [NEW RULE XLVI (BOARD REVIEW OF DISMISSAL OF ULP COMPLAINT)].

AUTH: 39-31-104, 39-32-103, MCA  
IMP: 39-31-405, 39-32-112, MCA

REASON: The proposed new rule replaces ARM 24.26.680B RESPONSE TO COMPLAINT AND INVESTIGATION OF COMPLAINT and 24.25.701 COMPLAINT. The new rule clarifies the board agent's investigation of a ULP.

NEW RULE XLVI BOARD REVIEW OF DISMISSAL OF ULP COMPLAINT

- (1) If a party disputes the board agent's notice of intent to dismiss the ULP complaint, the party shall file a written request for review by the board within ten days of receipt of the notice of intention to dismiss. The request for review must contain the specific factual and/or legal reasons that the board agent's finding of no probable merit was in error.
- (2) If a board agent has received a request for review, the board agent shall issue a notice of time and place and briefing schedule as follows:
  - (a) A party who wishes to file a response brief to the request for review must file and serve the response brief within 14 days of service of the notice of time and place and briefing schedule.
  - (b) A party who wishes to file a reply brief to an opposing party's response brief must file and serve the reply brief within 14 days of service of the response brief.
- (3) Briefing must comply with the formatting standards in [NEW RULE I (DOCUMENT FORM)]. A brief may not exceed 20 pages in length.
- (4) Each party will be granted 20 minutes for oral argument before the board for each objection. The appellant party may reserve a portion of that time for rebuttal. Oral argument may be waived by the parties, except where it is requested by the board.
- (5) On review, the board will consider the record as prepared by the board's agent in reaching the decision of no probable merit, any report detailing the investigation and analysis of the board's agent, and any argument set forth by interested parties.
- (6) The board will review the board agent's notice of intent to dismiss.
  - (a) If the board determines that the charge is not supported by probable merit, the board shall issue a written order affirming the board agent's notice of intent to dismiss. The board order affirming the dismissal is the final agency decision of the board.
  - (b) If the board determines that the ULP complaint is supported by probable merit, the board shall issue a written order remanding the matter to a hearing officer pursuant to [NEW RULE XLVII (HEARING OFFICER REVIEW OF ULP COMPLAINT)].

AUTH: 39-31-104, 39-32-103, MCA  
IMP: 39-31-405, 39-32-112, MCA

REASON: The proposed new rule replaces ARM 24.26.680B RESPONSE TO COMPLAINT AND INVESTIGATION OF COMPLAINT and 24.25.701 COMPLAINT.

The new rule clarifies the board's review of a dismissal of a ULP and the unique timeline and standards of review provided in statute at 39-31-405, MCA.

NEW RULE XLVII HEARING OFFICER REVIEW OF ULP COMPLAINT

(1) If the board agent or the board determines that the ULP complaint is supported by probable merit, the board shall refer the matter to a hearing officer to review the ULP complaint.

(2) The hearing officer shall issue a notice of time and place for the hearing. A minimum of five working days must pass between the date of service of the board's finding on all parties and the date of the hearing.

(3) In addition to any rights under 2-4-611, MCA, each party may move to disqualify the hearing officer appointed by the board, without cause. Each party may exercise this right one time, and the motion must be made within five days of service of the hearing officer's notice of time and place of the hearing.

(4) The respondent shall file a written answer with the hearing officer within a deadline set by the hearing officer. The respondent's answer shall address each allegation in the ULP complaint, including allegations raised by the board or the board agent during subsequent proceedings on the ULP complaint.

(5) The hearing officer shall review the ULP to determine if the ULP complaint is supported by a preponderance of the evidence.

(a) The hearing officer is not bound by the rules of evidence in this review.

(b) The hearing officer may allow persons to intervene and testify at the hearing.

(6) The hearing officer must issue a written recommended order including a written summary of testimony taken, recommended findings of fact, conclusions of law, and order.

(7) If a preponderance of the evidence does not support the ULP complaint, the hearing officer shall file a recommended order with the board dismissing the ULP complaint.

(8) If a preponderance of the evidence supports the ULP complaint, the hearing officer shall file an order with the board that orders respondent(s) to cease and desist from the unfair labor practice. The hearing officer shall order appropriate affirmative relief.

(a) The hearing officer may order reinstatement of an employee(s) or backpay.

(b) The hearing officer may order the respondent(s) to report to the board to ensure compliance with the order.

(c) The hearing officer and the board may not order reinstatement or backpay for an employee that was terminated for cause.

(9) A party that disputes the hearing officer's recommended order may file exceptions pursuant to [NEW RULE VI (BOARD REVIEW OF HEARING OFFICER'S RECOMMENDED ORDER)] within 20 days after service of the hearing officer's recommended order.

AUTH: 39-31-104, 39-32-103, MCA

IMP: 39-31-405, 39-31-406, 39-32-112, MCA



REASON: The proposed new rule replaces ARM 24.26.681 ANSWER, 24.26.682 NOTICE OF HEARING, 24.26.683 PROPOSED FINDINGS, 24.26.684 EXCEPTIONS, 24.26.685 DISQUALIFICATION OF HEARING OFFICER, 24.25.702 ANSWER, 24.25.703 NOTICE OF HEARING, and 24.25.704 PROPOSED FINDINGS. The new rule clarifies the process for a hearing officer's review of a ULP complaint pursuant to the unique statutory timelines and standards under 39-31-405 and 39-31-406, MCA. The new rule condenses five rules from ARM Title 24, chapter 26 and three rules from ARM Title 24, chapter 25, into one rule.

7. The board proposes to repeal the following rules:

24.25.101 BOARD OF PERSONNEL APPEALS ADDRESS, AUTH: 2-4-201, 39-32-103, MCA, IMP: 2-4-201, 39-32-112, MCA

REASON: The proposed repeal is because this rule is duplicative of ARM 24.1.101.

24.25.102 SERVICE, FILING, COMPUTATION OF TIME, AUTH: 2-4-201, 39-32-103, MCA, IMP: 2-4-201, 39-32-112, MCA

REASON: The proposed repeal of ARM 24.25.102 through 24.25.105, 24.25.107, 24.25.201, 24.25.203, 24.25.204, 24.25.301, 24.25.306, 24.25.502, 24.25.503, 24.25.701 through 24.25.704, 24.25.801, and 24.25.802 removes the rules in ARM Title 24, chapter 25, that substantively duplicate rules in ARM Title 24, chapter 26. The proposed repeal eliminates redundant rules.

The proposed repeal of ARM 24.25.304, 24.25.305, 24.25.307, 24.25.308, 24.25.401, 24.25.501, 24.25.504, 24.25.505, 24.25.601, 24.25.803, and 24.25.804 removes the rules in ARM Title 24, chapter 25, that directly cross-reference the processes and procedures found in ARM Title 24, chapter 26. The proposed repeal eliminates redundant rules and cross-referencing between chapters.

24.25.103 INTERVENTION, AUTH: 2-4-201, 39-32-103, MCA, IMP: 2-4-201, 39-32-112, MCA

24.25.104 AMENDING PETITIONS, AUTH: 2-4-201, 39-32-103, MCA, IMP: 2-4-201, 39-32-112, MCA

24.25.105 CONTESTED CASES, DEFAULT ORDER WHEN PARTY FAILS TO APPEAR AT HEARING, AUTH: 2-4-201, 39-32-103, MCA, IMP: 2-4-201, 39-32-112, MCA

24.25.107 HEARINGS, AUTH: 2-4-201, 39-32-103, MCA, IMP: 2-4-201, 39-32-112, MCA

24.25.201 DEFINITIONS, AUTH: 2-4-201, 39-32-103, MCA, IMP: 39-32-103, MCA

24.25.203 FILING OF LABOR ORGANIZATION'S BYLAWS, AUTH: 39-32-103, MCA, IMP: 39-32-103, MCA

24.25.204 PROOF OF INTEREST CONFIDENTIAL, AUTH: 39-32-108, MCA, IMP: 39-32-108, MCA

24.25.301 COMPOSITION OF UNIT, AUTH: 39-32-103, MCA, IMP: 39-32-106, MCA

24.25.302 APPROPRIATE UNIT, AUTH: 39-32-103, MCA, IMP: 39-32-106, MCA

REASON: The proposed repeal of this rule is to eliminate a rule that is largely duplicative of the equivalent rule defining an appropriate unit found in ARM Title 24, chapter 26. The substantive differences requiring consideration of duties, licensure, and conditions of employment for bargaining units for nurses working at a health care facility found in 39-32-106, MCA, are included in NEW RULE XII APPROPRIATE UNIT.

24.25.303 PROFESSIONAL EMPLOYEES, AUTH: 39-32-103, MCA, IMP: 39-32-106, MCA

REASON: The proposed repeal is because the substance of this rule is included in NEW RULE XIX UNIT DETERMINATION PETITION INVESTIGATION AND HEARING and NEW RULE XX NURSE UNIT AT HEALTH CARE FACILITY – PROFESSIONAL EMPLOYEE SPECIAL ELECTION.

24.25.304 PETITIONS FOR NEW UNIT DETERMINATION AND ELECTION, AUTH: 39-32-103, MCA, IMP: 39-32-106, MCA

24.25.305 EMPLOYER COUNTER PETITION, AUTH: 39-32-103, MCA, IMP: 39-32-106, MCA

24.25.306 NOTICE OF UNIT DETERMINATION PROCEEDINGS, AUTH: 39-32-103, MCA, IMP: 39-32-106, MCA

24.25.307 PETITION TO INTERVENE, AUTH: 39-32-103, MCA, IMP: 39-32-106, MCA

24.25.308 PROCEDURE FOLLOWING FILING OF PETITION FOR NEW UNIT DETERMINATION AND ELECTION, AUTH: 39-32-103, MCA, IMP: 39-32-106, MCA

24.25.401 PETITION FOR UNIT CLARIFICATION OF BARGAINING UNIT, AUTH: 39-32-103, MCA, IMP: 39-32-106, MCA

24.25.501 PETITION FOR DECERTIFICATION, AUTH: 39-32-103, MCA, IMP: 39-32-113, MCA

24.25.502 ANSWER, AUTH: 39-32-103, MCA, IMP: 39-32-113, MCA

24.25.503 NOTICE OF DECERTIFICATION PROCEEDINGS, AUTH: 39-32-103, MCA, IMP: 39-32-113, MCA

24.25.504 PETITION TO INTERVENE, AUTH: 39-32-103, MCA, IMP: 39-32-113, MCA

24.25.505 PROCEDURE FOLLOWING FILING OF PETITION FOR DECERTIFICATION, AUTH: 39-32-103, MCA, IMP: 39-32-113, MCA

24.25.601 ELECTION DIRECTED, AUTH: 39-32-103, MCA, IMP: 39-31-207, 39-31-208, 39-31-209, 39-31-210, 39-32-113, MCA

24.25.701 COMPLAINT, AUTH: 39-32-103, MCA, IMP: 39-32-109, 39-32-112, MCA

24.25.702 ANSWER, AUTH: 39-32-103, MCA, IMP: 39-32-109, 39-32-112, MCA

24.25.703 NOTICE OF HEARING, AUTH: 39-32-103, MCA, IMP: 39-32-109, 39-32-112, MCA

24.25.704 PROPOSED FINDINGS, AUTH: 39-32-103, MCA, IMP: 39-32-109, 39-32-112, MCA

24.25.801 PETITION, AUTH: 39-32-103, MCA, IMP: 2-4-201, MCA

24.25.802 MEDIATION, AUTH: 39-32-103, MCA, IMP: 2-4-201, MCA

24.25.803 FACT FINDER, AUTH: 39-32-103, MCA, IMP: 2-4-201, MCA

24.25.804 ARBITRATION, AUTH: 39-32-103, MCA, IMP: 2-4-201, MCA

24.26.101 ORGANIZATION OF BOARD OF PERSONNEL APPEALS, AUTH: 2-4-201, MCA, IMP: 2-4-201, MCA

REASON: The proposed repeal is because this rule is duplicative of ARM 24.1.101.

24.26.202 BOARD OF PERSONNEL APPEALS ADDRESS, AUTH: 2-4-201, MCA, IMP: 2-4-201, MCA

REASON: The proposed repeal of ARM 24.26.202, 24.26.203, 24.26.205, 24.26.206, 24.26.208, 24.26.210 through 24.26.212, 24.26.215, 24.26.219,

24.26.221, 24.26.222, 24.26.224, 24.26.230, 24.26.501 through 24.26.503, 24.26.508, 24.26.601, 24.26.602, 24.26.610 through 24.26.612, 24.26.614, 24.26.616 through 24.26.618, 24.26.620, 24.26.622, 24.26.630, 24.26.643 through 24.26.650, 24.26.655 through 24.26.664, 24.26.666, and 24.26.680 through 24.26.685 is because all the chapter 26 rules have been replaced by combining and reorganizing the old rules.

24.26.203 SERVICE AND FILING, AUTH: 2-4-201, 39-31-107, MCA, IMP: 2-4-201, 39-31-107, MCA

24.26.205 AMENDING PETITIONS, AUTH: 2 4 201, MCA, IMP: 2-4-201, MCA

24.26.206 COMPUTATION OF TIME, AUTH: 2 4 201, MCA, IMP: 2-4-201, MCA

24.26.208 NOTICE OF HEARINGS, AUTH: 2-4-201, 39-31-104, MCA, IMP: 2-4-201, MCA

24.26.210 CONTESTED CASES, DEFAULT ORDER WHEN PARTY FAILS TO APPEAR AT HEARING, AUTH: 2-4-201, MCA, IMP: 2-4-201, MCA

24.26.211 BRIEFS, AUTH: 2-4-201, 39-31-104, MCA, IMP: 2-4-201, MCA

24.26.212 MOTIONS, AUTH: 2-4-201, MCA, IMP: 2-4-201, MCA

24.26.215 HEARINGS, AUTH: 2-4-201, 39-31-104, MCA, IMP: 2-4-201, 39-31-105, MCA

24.26.219 SUSPENSION, AUTH: 2-4-201, MCA, IMP: 2-4-201, MCA

24.26.221 EXCEPTIONS, AUTH: 39-32-103, MCA, IMP: 39-32-112, MCA

24.26.222 OBJECTIONS TO BOARD'S AGENT'S RECOMMENDED ORDER, AUTH: 2-4-201, 39-31-104, MCA, IMP: 2-4-201, MCA

24.26.224 BOARD REVIEW, AUTH: 2-4-201, 39-31-104, MCA, IMP: 2-4-201, MCA

24.26.230 SEVERABILITY, AUTH: 2-4-201, MCA, IMP: 2-4-201, MCA

24.26.501 PURPOSE, AUTH: 2-18-1011, MCA, IMP: 2-18-1011, MCA

24.26.502 DEFINITIONS, AUTH: 2-18-1011, MCA, IMP: 2-18-1011, MCA

24.26.503 INFORMAL RESOLUTION OF APPEALS, AUTH: 2-18-1011, MCA, IMP: 2-18-1011, MCA

24.26.508 GRIEVANCE PROCEDURE, AUTH: 2-18-1011, MCA, IMP: 2-18-1011, MCA

24.26.601 DEFINITIONS, AUTH: 39-31-104, MCA, IMP: 39-31-104, MCA

24.26.602 DURATION OF NEGOTIATED AGREEMENTS, AUTH: 39-31-104, MCA, IMP: 39-31-104, MCA

24.26.610 COMPOSITION OF UNIT, AUTH: 39-31-104, MCA, IMP: 39-31-202, MCA

24.26.611 APPROPRIATE UNIT, AUTH: 39-31-104, MCA, IMP: 39-31-202, MCA

24.26.612 PETITIONS FOR NEW UNIT DETERMINATION, AUTH: 39-31-104, MCA, IMP: 39-31-207, MCA

24.26.614 EMPLOYER COUNTER PETITION, AUTH: 39-31-104, MCA, IMP: 39-31-207, MCA

24.26.616 NOTICE OF UNIT DETERMINATION PROCEEDINGS, AUTH: 39-31-104, MCA, IMP: 39-31-207, MCA

24.26.617 CONSENT ELECTIONS, AUTH: 2-4-201, 39-31-104, MCA, IMP: 2-4-201, 39-31-209, MCA

24.26.618 PETITION TO INTERVENE, AUTH: 39-31-104, MCA, IMP: 39-31-207, MCA

24.26.620 PROCEDURE FOLLOWING FILING OF PETITION FOR NEW UNIT DETERMINATION AND ELECTION, AUTH: 39-31-104, MCA, IMP: 39-31-207, MCA

24.26.622 EMPLOYER PETITION, AUTH: 39-31-104, MCA, IMP: 39-31-207(1)(b), MCA

24.26.630 PETITION FOR UNIT CLARIFICATION OF BARGAINING UNIT, AUTH: 39-31-104, MCA, IMP: 39-31-207, MCA

24.26.643 PETITION FOR DECERTIFICATION, AUTH: 39-31-104, MCA, IMP: 39-31-207, MCA

24.26.644 ANSWER, AUTH: 39-31-104, MCA, IMP: 39-31-207, MCA

24.26.645 NOTICE OF DECERTIFICATION PROCEEDINGS, AUTH: 39-31-104, MCA, IMP: 39-31-207, MCA

24.26.646 PETITION TO INTERVENE, AUTH: 39-31-104, MCA, IMP: 39-31-207, MCA

24.26.647 PROCEDURE FOLLOWING FILING OF PETITION FOR DECERTIFICATION, AUTH: 39-31-104, MCA, IMP: 39-31-207, MCA

24.26.648 DISAFFIRMANCE OF REPRESENTATION BY BARGAINING REPRESENTATIVE, AUTH: 39-31-104, MCA, IMP: 39-31-207, MCA

24.26.649 PETITIONS TO REVOKE CERTIFICATION OR RECOGNITION, AUTH: 39-31-104, MCA, IMP: 39-31-207, MCA

24.26.650 PETITIONS TO AMEND CERTIFICATION OF EXCLUSIVE REPRESENTATIVE, AUTH: 39-31-104, MCA, IMP: 39-31-207, MCA

24.26.655 ELECTION DIRECTED, AUTH: 39-31-104, MCA, IMP: 39-31-208, MCA

24.26.656 CONDITIONS, AUTH: 39-31-104, MCA, IMP: 39-31-208, MCA

24.26.657 SECRET BALLOT, AUTH: 39-31-104, MCA, IMP: 39-31-208, MCA

24.26.658 ELIGIBLE VOTERS, AUTH: 39-31-104, MCA, IMP: 39-31-208, MCA

24.26.659 NOTICE, AUTH: 39-31-104, MCA, IMP: 39-31-208, MCA

24.26.660 BALLOTS, AUTH: 39-31-104, MCA, IMP: 39-31-208, MCA

24.26.661 POLL WATCHERS, AUTH: 39-31-104, MCA, IMP: 39-31-208, MCA

24.26.662 POLLING AREA ELECTIONEERING, AUTH: 39-31-104, MCA, IMP: 39-31-208, MCA

24.26.663 CHALLENGES, AUTH: 39-31-104, MCA, IMP: 39-31-208, MCA

24.26.664 MAJORITY, AUTH: 39-31-104, MCA, IMP: 39-31-208, MCA

24.26.666 BALLOT TALLY AND OBJECTIONS, AUTH: 39-31-104, MCA, IMP: 39-31-208, MCA

24.26.680 COMPLAINT, AUTH: 39-31-104, MCA, IMP: 39-31-406, MCA

24.26.680A STAY OF INFORMAL INVESTIGATION, AUTH: 39-31-104, MCA, IMP: 39-31-405, MCA

24.26.680B RESPONSE TO COMPLAINT AND INVESTIGATION OF COMPLAINT, AUTH: 39-31-104, MCA, IMP: 39-31-405, MCA

24.26.681 ANSWER, AUTH: 39-31-104, MCA, IMP: 39-31-406, MCA

24.26.682 NOTICE OF HEARING, AUTH: 39-31-104, MCA, IMP: 39-31-406, MCA

24.26.683 PROPOSED FINDINGS, AUTH: 39-31-104, MCA, IMP: 39-31-406, MCA

24.26.684 EXCEPTIONS, AUTH: 39-31-104, MCA, IMP: 39-31-406, MCA

24.26.685 DISQUALIFICATION OF HEARING OFFICER, AUTH: 39-31-104, MCA, IMP: 39-31-405(5), MCA

8. The board proposes to transfer the following rule:

24.25.206 (24.26.XXX) NOTICE OF STRIKE

AUTH: 39-32-103, MCA

IMP: 39-32-110, MCA

REASON: The proposed renumbering allows for a logical organization of rules.

9. 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 Theresa McGowan-Sroczyk, Board of Personnel Appeals, P.O. Box 201503, Helena MT 59620-1503; telephone (406) 444-1389; Montana TTY (406) 444-0532; facsimile (406) 444-4140; or [dliedbopa@mt.gov](mailto:dliedbopa@mt.gov), and must be received no later than 5:00 p.m., December 7, 2020.

10. An electronic copy of this notice of public hearing is available through the department's web site at <http://dli.mt.gov/events/calendar.asp>, under the Calendar of Events, Administrative Rules Hearings Section. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems, and that a person's difficulties in sending an e-mail do not excuse late submission of comments.

11. 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, which includes the name and e-mail or mailing address of the person to receive notices and specifies

the particular subject matter or matters regarding which the person wishes to receive notices. Such written request may be mailed or delivered to the Department of Labor and Industry, attention: Mark Cadwallader, 1315 E. Lockey Avenue, P.O. Box 1728, Helena, Montana 59624-1728, faxed to the department at (406) 444-1394, or e-mailed to [mcadwallader@mt.gov](mailto:mcadwallader@mt.gov), or may be made by completing a request form at any rules hearing held by the agency.

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

13. Pursuant to 2-4-111, MCA, the department, on behalf of the board, has determined that the rule changes proposed in this notice will not have a significant and direct impact upon small businesses.

14. The department's Office of Administrative Hearings has been designated to preside over and conduct this hearing.

BOARD OF PERSONNEL APPEALS  
ANNE L. MACINTYRE  
PRESIDING OFFICER

/s/ QUINLAN L. O'CONNOR  
Quinlan L. O'Connor  
Alternate Rule Reviewer

/s/ BRENDA NORDLUND  
Brenda Nordlund, Acting Commissioner  
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State October 27, 2020.



BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY  
STATE OF MONTANA

|                                       |   |                             |
|---------------------------------------|---|-----------------------------|
| In the matter of the amendment of     | ) | NOTICE OF PUBLIC HEARING ON |
| ARM 24.29.1616 pertaining to the      | ) | PROPOSED AMENDMENT          |
| drug formulary in the Utilization and | ) |                             |
| Treatment Guidelines for Workers'     | ) |                             |
| Compensation and Occupational         | ) |                             |
| Disease                               | ) |                             |

TO: All Concerned Persons

1. On November 30, 2020, at 3:30 p.m., the Department of Labor and Industry (department) will hold a public hearing via remote conferencing to consider the proposed amendment of the above-stated rule. Because there currently exists a state of emergency in Montana due to the public health crisis caused by the novel coronavirus, there will be no in-person hearing. Interested parties may access the remote conferencing platform in the following ways:

- (a) Join Zoom Meeting, <https://mt-gov.zoom.us/j/93057189608>, Meeting ID: 930 5718 9608; or
- (b) Dial by telephone, +1 406 444 9999 or +1 646 558 8656, Meeting ID: 930 5718 9608

The hearing will begin with a brief introduction by department staff to explain the use of the videoconference and telephonic platform. All participants will be muted except when it is their time to speak.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 4:00 p.m., November 23, 2020, to advise us of the nature of the accommodation that you need. Please contact Jason Swant, Employment Relations Division, P.O. Box 8011, Helena, Montana 59604; telephone (406) 444-6451; facsimile (406) 444-4140; Montana TTD (406) 444-5549; or e-mail [JSwant@mt.gov](mailto:JSwant@mt.gov).

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

24.29.1616 INCORPORATION BY REFERENCE AND UPDATES TO THE FORMULARY (1) remains the same.

(2) The department adopts and incorporates by reference its formulary as follows:

(a) for prescriptions written between January 1, 2019 through December 31, 2019, the October 2018 edition of the ODG Drug Formulary; ~~and~~

(b) for prescriptions written ~~on or after~~ between January 1, 2020 through December 31, 2020, the October 2019 edition of the ODG Drug Formulary; and  
(c) for prescriptions written on or after January 1, 2021, the October 2020 edition of the ODG Drug Formulary.

(3) through (5) remain the same.

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

IMP: 39-71-704, MCA

REASON: There is reasonable necessity to amend ARM 24.29.1616 because the department has adopted a commercial drug formulary. The drug formulary rule must be updated annually via the administrative rule amendment process in order to comply with the provisions of 39-71-704(3)(b)(i) and (ii), MCA (2017). The automatic monthly update process is expressly provided for by 2-4-307(8), MCA.

4. Copies of the proposed 2021 ODG Drug Formulary are available and can be accessed online at: <http://erd.dli.mt.gov/work-comp-claims/medical-regulations/formulary>.

5. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Jason Swant, Employment Relations Division, P.O. Box 8011, Helena, MT 59604; fax (406) 444-4140; or e-mail to [JSwant@mt.gov](mailto:JSwant@mt.gov), and must be received no later than 5:00 p.m., December 7, 2020.

6. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and e-mail or mailing address of the person to receive notices and specifies the particular subject matter or matters regarding which the person wishes to receive notices. Such written request may be mailed or delivered to the Department of Labor and Industry, attention: Mark Cadwallader, P.O. Box 1728, Helena, Montana 59624-1728, faxed to the department at (406) 444-1394, or e-mailed to [mcadwallader@mt.gov](mailto:mcadwallader@mt.gov), or may be made by completing a request form at any rules hearing held by the agency.

7. An electronic copy of this notice of public hearing is available through the department's web site at <http://dli.mt.gov/events/calendar.asp>, under the Calendar of Events, Administrative Rules Hearings Section. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems, and that a person's difficulties in sending an e-mail do not excuse late submission of comments.

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

9. Pursuant to 2-4-111, MCA, the department has determined that the rule changes proposed in this notice will not have a significant and direct impact upon small businesses.

10. The department's Office of Administrative Hearings has been designated to preside over and conduct this hearing.

/s/ Quinlan L. O'Connor  
Quinlan L. O'Connor  
Alternate Rule Reviewer

/s/ Brenda Nordlund  
Brenda Nordlund, Acting Commissioner  
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State October 27, 2020.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY  
STATE OF MONTANA

|                                      |   |                             |
|--------------------------------------|---|-----------------------------|
| In the matter of the adoption of New | ) | NOTICE OF PUBLIC HEARING ON |
| Rules I through VII pertaining to    | ) | PROPOSED ADOPTION           |
| reimbursement of workers'            | ) |                             |
| compensation premiums due to         | ) |                             |
| providing high-quality work-based    | ) |                             |
| learning opportunities               | ) |                             |

TO: All Concerned Persons

1. On December 1, 2020, at 10:00 a.m., the Department of Labor and Industry (department) will hold a public hearing via remote conferencing to consider the proposed adoption of the above-stated rules. Because there currently exists a state of emergency in Montana due to the public health crisis caused by the novel coronavirus, there will be no in-person hearing. Interested parties may access the remote conferencing platform in the following ways:

- (a) Join Zoom Meeting, <https://mt-gov.zoom.us/j/924444094500>  
Meeting ID: 924 4409 4500; or
- (b) Dial by Telephone, +1 646 558 8656 or +1 406 444 9999  
Meeting ID: 924 4409 4500

The hearing will begin with a brief introduction by department staff to explain the use of the videoconference and telephonic platform. All participants will be muted except when it is their time to speak.

2. The Department of Labor and Industry will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Department of Labor and Industry no later than 5 p.m. on November 27, 2020, to advise us of the nature of the accommodation that you need. Please contact Nisan Burbridge, Department of Labor and Industry, P.O. Box 1728, Helena, Montana, 59624-1728; telephone (406) 444-3079; or e-mail [nburbridge@mt.gov](mailto:nburbridge@mt.gov).

3. GENERAL STATEMENT OF REASONABLE NECESSITY: There is reasonable necessity to adopt NEW RULES I through VII in order to implement Sec. 1, Chapter 400, Laws of 2019 (House Bill 0732) by its July 1, 2019, effective date, codified at 39-71-319, MCA. Private employers are a necessary and valued partner in providing high-quality work-based learning opportunities for students in Montana. The rules provide the parameters of the program, the application process for reimbursement of workers' compensation premium payments for students employed in high-quality work-based learning opportunities, components necessary to determine premium payments, and the attributes of high-quality work-based learning

opportunities. The department believes that the proposed rules are appropriate and reasonable in light of the statutory requirements of 39-71-319, MCA.

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

NEW RULE I DEFINITIONS For the purposes of this subchapter, the following definitions apply:

(1) "Declaration" means a sworn statement by the employer on the application for reimbursement that the requested reimbursement is only for the workers' compensation premiums paid for a student employed in a qualified high-quality work-based learning opportunity.

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

(3) "Employer" means a profit or non-profit business entity that hires a student pursuant to a learning partnership agreement.

(4) "Employment" means a student's term-limited, paid, on-the-job instruction in a high-quality work-based learning opportunity pursuant to a learning partnership agreement for academic credit.

(5) "Enrolled" means a student has successfully completed a qualified high-quality work-based learning opportunity.

(6) "Learning partnership agreement" means an agreement setting forth expectations and commitments for the student's employment in a high-quality work-based learning opportunity. Each agreement must include:

(a) a description of classroom and on-the-job instruction, including two hours of safety instruction;

(b) the days and hours of employment;

(c) the wage that the student will be paid;

(d) the criteria for determining how the high-quality work-based learning opportunity and the student's skill development will be evaluated;

(e) the criteria for earning academic credit;

(f) the number of credits to be earned; and

(g) signatures by the school or other educational provider, the employer, the participating student, and the student's parents if the student is a minor.

(7) "Notice of eligibility" means an e-mail sent to the employer by the department after the school, or other educational provider, completes registration at the end of a semester. The notice of eligibility notifies the employer that they can submit an application for reimbursement. The notice of eligibility is not a guarantee of reimbursement.

(8) "Portal" means a department-created online database for a school, or other educational provider, to register information relating to high-quality work-based learning programs and for employers to apply for reimbursement of workers' compensation premiums paid on behalf of a student.

(9) "Qualified high-quality work-based learning opportunity" means a successfully completed high-quality work-based learning opportunity. The school's registration of the employer in the department's portal confers qualification on the high-quality work-based learning opportunity.

(10) "Safety instruction" means learning activities, as generally described in ARM 24.30.2521, which teach about safety issues pertaining to the specific high-

quality work-based learning opportunity. The methods, materials, and resources should be standard for the industry of the employer.

(11) "Safety training program" means the process which provides employees with knowledge and skills to perform work in a way that is safe for the individual employee and their co-workers as generally described in ARM 24.30.2521. It includes instructions and guidelines to identify hazards, report them, and deal with incidents.

(12) "Student" means an individual enrolled in a high-quality work-based learning opportunity through a secondary school or equivalent educational provider.

(13) "Term-limited educational program" means a semester-long high-quality work-based learning opportunity.

(14) "Workers' compensation premium" means the premiums that the employer pays for each student's workers' compensation coverage while the student is employed in a high-quality work-based learning opportunity.

AUTH: 39-71-319, MCA

IMP: 39-71-319, MCA

NEW RULE II ATTRIBUTES OF A HIGH-QUALITY WORK-BASED LEARNING OPPORTUNITY (1) A high-quality work-based learning opportunity features a partnership between employers and schools or other educational providers to provide students with structured learning both in the classroom and at the employer's job site. It must include the following:

- (a) learning partnership agreement;
- (b) paid wages;
- (c) at the start of the student's employment, a minimum of two hours of safety instruction through a safety training program that is specific to the student's employment;
- (d) compliance with all federal, state, and local laws and regulations relating to the student's employment; and
- (e) academic credit.

AUTH: 39-71-319, MCA

IMP: 39-71-319, MCA

NEW RULE III GENERAL PROVISIONS RELATING TO REIMBURSEMENT

(1) The employer that is seeking reimbursement must pay the student's workers' compensation premiums "up front" and then seek reimbursement from the department for eligible expenses after the high-quality work-based learning opportunity is qualified.

(2) Reimbursement is limited to the employer's workers' compensation premiums for a student's completion of a qualified high-quality work-based learning opportunity. If the employer does not receive a notice of eligibility from the department, an employer is not eligible to apply for reimbursement.

(3) Reimbursement is not guaranteed. Reimbursement is subject to available funds and will be paid on a first-come, first-served basis as determined by the date of the application submitted on the department's portal.

AUTH: 39-71-319, MCA  
IMP: 39-71-319, MCA

NEW RULE IV REGISTRATION (1) For an employer to be eligible for reimbursement, a school or other educational provider must register the employer as an eligible high-quality work-based learning provider for that school in the department's portal within 30 days of the end of each semester. The following information is required:

(a) the name and address of the employer, including the employer's e-mail address;

(b) the dates of the term-limited educational program;

(c) the course code and the number of students in each course code;

(d) the total number of on-the-job instruction hours; and

(e) the student's wages per hour.

(2) The school's registration of the employer is not a guarantee of reimbursement. Reimbursement is contingent upon department review and approval of reimbursement.

AUTH: 39-71-319, MCA  
IMP: 39-71-319, MCA

NEW RULE V REIMBURSEMENT APPLICATION PROCESS (1) After the school registers an employer in the department's portal, the department will send a notice of eligibility to each registered employer.

(2) Within 45 days of the date of the department's notice of eligibility, the employer shall complete an application electronically through the department's portal and provide all required documents. The application must include:

(a) proof of payment from the employer's workers' compensation provider of the workers' compensation premiums paid for each student in each qualified high-quality work-based learning opportunity and that each student's payroll was included. If the business entity is self-insured, the employer must submit an affidavit or declaration attesting to the premiums;

(b) the amount of reimbursement that the employer seeks, with a calculation of the premium paid per student;

(c) that the employer adheres to safe working conditions and that the first two hours, at a minimum, of the student's employment were devoted to safety instruction through a safety training program that is specific to the student's employment;

(d) that the amount sought is only for the workers' compensation premiums for a student employed in a qualified high-quality work-based learning opportunity;

(e) that the employer complied with all federal, state, and local laws and regulations regarding student employment;

(f) any other documents that the department requires to process payment; and

(g) a declaration pursuant to 1-6-104, MCA, that the information is true and correct to the best of the employer's knowledge.

(3) An employer may amend a pending application for reimbursement by submitting an amended application or supporting documents on the department's portal. An amended application is deemed submitted on the date of the amendment.

(4) The department will verify the information submitted to ensure that it is complete and accurate.

AUTH: 39-71-319, MCA

IMP: 39-71-319, MCA

#### NEW RULE VI EVALUATION OF APPLICATION AND LIMITATIONS

(1) The department shall evaluate each application and make a determination as to:

- (a) whether the application is complete and accurate; and
- (b) the amount of the reimbursement.

(2) If the department is satisfied that an employer's application is complete and accurate, the department will issue the reimbursement subject to funding.

(3) Because funding is limited, consistent with the department's intent to encourage as many different employers as possible to hire students in high-quality work-based learning opportunities, the department reserves the right to defer reimbursement for multiple students employed by a single employer. In the event of deferral, the department will notify the employer in writing. Applications for which review has been deferred will be considered and evaluated on a quarterly basis as funding allows.

(4) If the department denies an application for reimbursement, the employer may submit an amended application.

AUTH: 39-71-319, MCA

IMP: 39-71-319, MCA

NEW RULE VII APPEALS (1) An employer has the right to appeal when the department:

(a) decides not to reimburse an employer for workers' compensation premiums; or

(b) awards less than the reimbursement requested.

(2) If an employer disagrees with the department's decision to not approve an application, or to approve less money than was requested, the employer may:

(a) request an administrative review within 30 calendar days of the date of the notice of the department's decision regarding the application by submitting a written request for an administrative review to the department: Department of Labor and Industry, Work-Based Learning Program, P.O. Box 1728, Helena, MT 59624-1728, or electronically to [WBLinfo@mt.gov](mailto:WBLinfo@mt.gov).

(b) If the employer is dissatisfied with the decision from the administrative review, the employer may submit a written request for a contested case proceeding, pursuant to Title 2, chapter 4, MCA, within 20 calendar days of the date of the notice of final decision of the department, which may be the result of an administrative review requested pursuant to (a).



(3) The employer bears the burden of demonstrating that the action by the department constitutes an abuse of discretion.

AUTH: 39-71-319, MCA

IMP: 39-71-319, MCA

5. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Nisan Burbridge, Department of Labor and Industry, P.O. Box 1728, Helena, Montana, 59624-1728; telephone (406) 444-3079; or e-mail [nburbridge@mt.gov](mailto:nburbridge@mt.gov), and must be received no later than 5:00 p.m., December 4, 2020.

6. An electronic copy of this notice of public hearing is available through the department's web site at <http://dli.mt.gov/events/calendar.asp>, under the Calendar of Events, Administrative Rules Hearings Section. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems, and that a person's difficulties in sending an e-mail do not excuse late submission of comments.

7. 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, which includes the name and e-mail or mailing address of the person to receive notices, and specifies the particular subject matter or matters regarding which the person wishes to receive notices. Such written request may be mailed or delivered to the Department of Labor and Industry, attention: Mark Cadwallader, 1315 E. Lockey Avenue, P.O. Box 1728, Helena, Montana 59624-1728, faxed to the department at (406) 444-1394, or e-mailed to [mcadwallader@mt.gov](mailto:mcadwallader@mt.gov), or may be made by completing a request form at any rules hearing held by the agency.

8. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted by e-mail on October 23, 2020.

9. With regard to the requirements of 2-4-111, MCA, the department has determined that the adoption of the above-referenced rules will not significantly and directly impact small businesses. To the extent that there is any impact, it is positive. These rules provide a process for employers to apply for reimbursement of workers' compensation premiums incurred due to hiring students in paid work-based learning opportunities. The intent of the rules is to encourage employers to hire more students to learn marketable skills in an on-the-job work experience by offsetting increased costs from providing workers' compensation coverage.

10. The Office of Administrative Hearings, Department of Labor and Industry, has been designated to preside over and conduct this hearing.

/s/ QUINLAN L. O'CONNOR  
Quinlan L. O'Connor  
Alternate Rule Reviewer

/s/ BRENDA NORDLUND  
Brenda Nordlund, Acting Commissioner  
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State October 27, 2020.

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

In the matter of the adoption of New ) NOTICE OF PUBLIC HEARING ON  
Rules I through IV and the ) PROPOSED ADOPTION AND  
amendment of ARM 37.5.118, ) AMENDMENT  
37.47.602, 37.47.610, 37.47.613, and )  
37.47.614 pertaining to substantiation )  
of abuse and neglect reports and )  
disclosure of information )

TO: All Concerned Persons

1. On November 30, 2020, at 9:00 a.m., the Department of Public Health and Human Services will hold a public hearing via remote conferencing to consider the proposed adoption and amendment of the above-stated rules. Because there currently exists a state of emergency in Montana due to the public health crisis caused by the coronavirus, there will be no in-person hearing. Interested parties may access the remote conferencing platform in the following ways:

(a) Join Zoom Meeting: <https://mt-gov.zoom.us/j/95560158987>; meeting ID: 955 6015 8987; or

(b) Dial by telephone +1 646 558 8656; meeting ID: 955 6015 8987. Find your local number: <https://mt-gov.zoom.us/u/adWuIYS4nP>.

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 5:00 p.m. on November 20, 2020, to advise us of the nature of the accommodation that you need. Please contact Heidi Clark, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail [dphhslegal@mt.gov](mailto:dphhslegal@mt.gov).

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

NEW RULE I DECLARATION OF PURPOSE: CHILD ABUSE AND NEGLECT INVESTIGATIONS DETERMINED AS "SUBSTANTIATED" (1) Section 41-3-205, MCA provides that the case records of investigations into child abuse and neglect are confidential.

(2) Section 41-3-205, MCA also provides that persons and entities carrying out background, employment-related, or volunteer-related activities on prospective employees or volunteers who may have unsupervised contact with children may request information from the department. The information that may be provided by the department to such a request is limited to confirmation that the department's

Protective Services Information System has information that indicates the person may pose a risk to children.

(3) The purpose of [New Rule I], [New Rule II], [New Rule III], and [New Rule IV] is to provide a process for which information in a child abuse or neglect investigation may be relied upon by the department in determining that a person may pose a risk to children and can be disclosed pursuant to 41-3-205, MCA.

(4) It is the policy of the department that any report of child abuse or neglect that is determined as "substantiated" may be disclosed to persons or entities requesting background checks on potential employees or volunteers who may have unsupervised access to children.

(5) Substantiated reports may be relied upon by the department to deny a person a foster care license, day care license, or employment in any field where a person has or may have unsupervised contact with children.

(6) Nothing in this rule prohibits the department or its personnel from using the facts discovered during an investigation and the associated case record of a child abuse or neglect report investigation, as necessary, to support district court actions under Title 41 of the Montana Code Annotated or an administrative process of the department.

AUTH: 2-4-201, 41-3-208, MCA

IMP: 2-4-201, 41-3-102, 41-3-202, 41-3-205, MCA

NEW RULE II WHEN THE RESULTS OF AN INVESTIGATION OF REPORTED CHILD ABUSE AND NEGLECT MAY BE DISCLOSED AS TO AN INDIVIDUAL THAT MAY POSE A RISK TO CHILDREN (1) After any investigation of a reported child abuse or neglect has been completed and the safety assessment set forth in 41-3-202, MCA is completed, the investigating worker and the local supervisor must determine how to list the report and investigation in the Protective Information System provided by ARM 37.47.613.

(2) The results of the investigation must be listed in the Protective Information System as either unsubstantiated, founded, or substantiated as defined in ARM 37.47.602.

(3) In order for an investigation to be determined and listed as substantiated against the subject of the report, the investigating worker and the local supervisor must determine that the preponderance of the evidence supports a finding that:

- (a) the reported abuse or neglect occurred;
- (b) the subject was the perpetrator of the abuse or neglect; and
- (c) the case file documents sufficient evidence under the totality of the circumstances to find that the subject may pose a risk to children.

(4) The factors considered in determining whether a subject in a child abuse or neglect report may pose a danger to children include but are not limited to:

- (a) the nature of the substantiated abuse or neglect;
- (b) any prior or subsequent child abuse or neglect reports or investigations involving the perpetrator;
- (c) any prior or subsequent Youth in Need of Care adjudications in District Court where the perpetrator was determined as an abuser;

(d) any prior or subsequent criminal convictions for crimes against children; and

(e) the degree to which a child was impacted by any prior or subsequent reported abuse or neglect, or any prior or subsequent criminal convictions.

AUTH: 2-4-201, 41-3-208, MCA

IMP: 2-4-201, 41-3-102, 41-3-202, 41-3-205, MCA

NEW RULE III EFFECT OF A DEPARTMENT DETERMINATION THAT AN INVESTIGATION OF CHILD ABUSE AND NEGLECT IS "SUBSTANTIATED" (1) If after an investigation, fair hearing, or any appeal thereof, the department has determined that the results of an investigation are "substantiated," then the department may:

(a) disclose to any person or entity requesting a background check pursuant to 41-3-205, MCA, that the department has information that indicates that a person may pose a risk to children; and

(b) rely on the information to deny a foster care license pursuant to ARM 37.51.216 or a day care license pursuant to ARM 37.95.176.

AUTH: 2-4-201, 41-3-208, MCA

IMP: 2-4-201, 41-3-102, 41-3-202, 41-3-205, MCA

NEW RULE IV CHILD ABUSE AND NEGLECT REPORTS DETERMINED AS SUBSTANTIATED PRIOR TO JANUARY 1, 2021 (1) Any child abuse or neglect report or investigation that was determined by the department as substantiated prior to January 1, 2021, may be disclosed to the appropriate persons or entities pursuant to 41-3-205, MCA.

(2) No hearing is available for child abuse or neglect reports that are not determined as substantiated.

AUTH: 2-4-201, 41-3-208, MCA

IMP: 2-4-201, 41-3-102, 41-3-202, 41-3-205, MCA

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

37.5.118 DETERMINATIONS OF REPORTS OF CHILD ABUSE, OR NEGLECT, AND EXPLOITATION: APPLICABLE HEARING PROCEDURES

(1) remains the same.

(2) No hearing is available for child abuse or neglect reports that are not determined as ~~unfounded, unsubstantiated, or founded~~ substantiated.

AUTH: 2-4-201, 41-3-208, MCA

IMP: 2-4-201, 2-4-612, 41-3-203, 41-3-204, MCA

37.47.602 CHILD PROTECTIVE SERVICES: DEFINITIONS For purposes of this subchapter, the following definitions apply:

(1) through (6) remain the same.

(7) "Founded report" means that, after an investigation, ~~the investigating worker has determined that there is probable cause to believe that an~~ the department has determined by a preponderance of the evidence that the reported act of child abuse or neglect occurred.

(8) and (9) remain the same.

(10) "Substantiated report" means that, after an investigation, the ~~investigating worker~~ department has determined by a preponderance of the evidence that the reported act of child abuse, or neglect, or exploitation occurred, ~~and that the perpetrator of the abuse, neglect, or exploitation may pose a danger to children~~ that the subject of the report may be disclosed to the appropriate entities as a person that may pose a danger to children.

(11) "Unsubstantiated" means that, after an investigation, the department could not determine by the preponderance of the evidence that the reported abuse or neglect occurred.

AUTH: 2-4-201, 41-3-208, 52-3-205, MCA

IMP: 2-4-201, 41-3-102, 41-3-202, 41-3-205, 52-3-205, MCA

37.47.610 CHILD PROTECTIVE SERVICES: RIGHT TO FAIR HEARING TO CONTEST SUBSTANTIATED REPORTS (1) The subject of a child abuse or neglect report that is determined by the department ~~to be~~ as substantiated pursuant to [New Rule II] may request a fair hearing.

(2) remains the same.

(3) Upon receipt of the request for a fair hearing, the department will conduct an informal review of the ~~substantiated report and~~ investigation including the entire case record information.

(a) The informal review is limited to the records and documentation ~~relevant to the case, in the case record~~ and any written material provided by the subject. ~~The informal review is not subject to the provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, MCA.~~

(b) If, after the informal review, the department determines that the results of the investigation are not substantiated ~~report is in error, pursuant to [New Rule II],~~ the department will amend the finding to reflect that the report is unfounded, unsubstantiated, or founded. The subject will be notified of the decision.

(c) If, after the informal review, the department determines that the investigation should be upheld as substantiated ~~report is not in error, pursuant to [New Rule II],~~ the department will notify the department's Office of Fair Hearings so that a fair hearing ~~date and time~~ may be scheduled.

(4) remains the same.

(5) Hearsay statements of the child victim are admissible as evidence in the fair hearing on a ~~substantiated~~ an investigation of child abuse or neglect report. The administrative law judge will determine the weight to give each child victim's hearsay statement. The factors to be considered in determining the weight of the child hearsay statement include:

(a) through (7) remain the same.

(8) A fair hearing is not available for reports that are determined to be ~~unfounded~~, unsubstantiated, or founded.

AUTH: 2-4-201, 41-3-208, MCA

IMP: 2-4-201, 2-4-612, 41-3-203, 41-3-204, MCA

37.47.613 CHILD PROTECTIVE SERVICES: LISTING OF DETERMINATION IN THE PROTECTION PROTECTIVE INFORMATION SYSTEM

(1) When the department ~~substantiates~~ determines that a report of child abuse, ~~or neglect or exploitation~~ is substantiated pursuant to [New Rule II], the department will initially list its determination in its protective services information system provided in ARM 37.47.315 that the report's final determination is pending. The report will be pending for a period of 30 days from the date of the department's initial notice of ~~its substantiation determination to the subject~~.

(2) If, after receiving the initial notice of the department's ~~substantiation determination that the results of any child abuse and neglect investigation are substantiated~~, the subject does not request a fair hearing within the 30-day time period required by ARM 37.47.610(2), the department will list the report in its protective services information system as ~~being~~ substantiated.

(3) remains the same.

(4) Reports of child abuse or neglect that are determined to be ~~unfounded or unsubstantiated~~ will be listed in the department's protective services information system described in ARM 37.47.315, ~~subject to the confidentiality provisions of ARM 37.47.614 until purged in accordance with 41-3-202, MCA for a period of three years from the date of the report, unless the report is associated with a prior or subsequent report that is substantiated.~~

(5) ~~Reports of child abuse or neglect that are determined to be founded will be listed in the department's protective services information system described in ARM 37.47.315 for a period of three years from the date of the report, subject to the confidentiality provisions of ARM 37.47.614 and the retention requirements contained in (8).~~

(6) remains the same but is renumbered (5).

(7) ~~Child abuse or neglect reports that are received by the department but are not investigated will be listed in the department's protective services information system described in ARM 37.47.315 for informational purposes for a period of one year from the date of the report.~~

(8) ~~Informational and founded reports that are associated with a prior or subsequent child abuse or neglect report that is investigated and determined as unsubstantiated or substantiated will be retained in the department's protective services information system described in ARM 37.47.315 for the applicable time period for the associated report.~~

AUTH: 2-4-201, 41-3-208, MCA

IMP: 2-4-201, 41-3-202, 41-3-204, MCA

37.47.614 USE OF DETERMINATIONS IN CHILD ABUSE OR NEGLECT REPORT INVESTIGATIONS (1) Findings, determinations, and associated case

records on child abuse or neglect reports that are determined as unfounded, unsubstantiated, or founded ~~are considered detrimental to the subject of the report and cannot be disclosed to any person other than the subject of the report~~ the following persons without either a valid court order or a signed release by the subject of the report:

(i) a parent, grandparent, aunt, uncle, brother, sister, or guardian;

(ii) foster and adoptive parents who are or may be providing care for a child.

(2) Child abuse or neglect reports that are determined to be ~~unfounded, unsubstantiated, or founded~~ cannot be ~~the sole basis~~ solely relied upon by the department to deny a person a license to provide foster care, kinship care, or to be employed in a capacity where they have unsupervised access to children.

(3) Findings, determinations, and associated case records on child abuse or neglect reports that are determined to be substantiated are confidential, but may be disclosed pursuant to 41-3-205, MCA, and [New Rule II].

(4) remains the same.

(5) Nothing in this rule prohibits the department or its personnel from using the facts discovered during an investigation and the associated case record of a child abuse or neglect report investigation, as necessary, to support district court actions under Title 41 of the Montana Code Annotated or ~~the department's~~ an administrative process of the department.

(6) All disclosures of information on findings, determinations, and associated case records on child abuse or neglect reports are subject to the specific restrictions provided in 41-3-205, MCA.

AUTH: 41-3-205, 41-3-304, MCA

IMP: 41-3-205, 41-3-304, MCA

## 5. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) is proposing to adopt New Rules I through IV and make amendments to ARM 37.5.118, 37.47.602, 37.47.610, 37.47.613, and 37.47.614 pertaining to substantiation of abuse and neglect reports and disclosure of confidential information.

The department proposes these new rules and changes to reflect statute changes made during the 2019 legislature in House Bill 502 which deleted the statutory definition of determinations and replaced them with the safety assessment model. Even though the department no longer relies on definitions in conducting safety assessment, the department does use definitions in its administrative process of determining which investigations will be reported to prospective employers and licensing agencies, including the department's own licensing for foster care, adoptive homes, and day care licensing.

Proposed New Rules I through IV are proposed to provide standards for when the department will release information about persons who have been investigated by the department for child abuse and neglect. The new rules are written to conform with the narrow exception to 41-3-205, MCA, that allows the department to release



information to prospective employers about persons who may pose a danger to children.

New Rule I is proposed in order to set forth the basic standards and purpose of New Rule II, New Rule III, and New Rule IV for the use of child abuse and neglect determinations in disclosing whether a person may pose a risk to children.

New Rule II is proposed in order to set forth the process and standards to determine that a report is substantiated and can be disclosed to employers and volunteer organizations pursuant to 41-3-205, MCA.

New Rule III is proposed in order to grant the department the authority to disclose the information on a substantiated report of child abuse and neglect pursuant to 41-3-205, MCA.

New Rule IV is proposed in order to clarify that reports that were substantiated prior to the effective date of these rules may also be disclosed pursuant to 41-3-205, MCA.

Proposed changes to ARM 37.5.118 are necessary to clarify what determinations are afforded the opportunity for a fair hearing. The term "unfounded" was removed from the statute and will no longer be used in the administrative process.

Proposed changes to ARM 37.47.602 are necessary to amend the definitions of "founded" and "substantiated" in order to reflect the department's administrative process of determining when to disclose investigations of persons that may pose a danger to children pursuant to 41-3-205, MCA.

Proposed changes to ARM 37.47.610 are necessary to clarify the right to a fair hearing by referencing New Rule II.

Proposed changes to ARM 37.47.613 are necessary to clarify how reports will be listed in the Protective Information System.

Proposed changes to ARM 37.47.614 are necessary to clarify that information related to investigations that are determined as unfounded, unsubstantiated and founded reports may be disclosed to law enforcement and other state agencies as applicable under 41-3-205, MCA.

#### Fiscal Impact

The department does not believe that the proposed adoptions and amendments will have any fiscal impact.

The department intends for the adoption and amendment of these rules to be effective January 1, 2021.

6. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Heidi Clark, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail [dphhslegal@mt.gov](mailto:dphhslegal@mt.gov), and must be received no later than 5:00 p.m., December 4, 2020.

7. The Office of Legal Affairs, Department of Public Health and Human Services, has been designated to preside over and conduct this hearing.

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

9. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was notified by phone on October 27, 2020.

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

/s/ Mark Prichard  
Mark Prichard  
Rule Reviewer

/s/ Sheila Hogan  
Sheila Hogan, Director  
Public Health and Human Services

Certified to the Secretary of State October 27, 2020.

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

In the matter of the amendment of        ) NOTICE OF PUBLIC HEARING ON  
ARM 37.85.105 pertaining to                ) PROPOSED AMENDMENT  
updating Medicaid provider rates, fee     )  
schedules, and effective dates            )

TO: All Concerned Persons

1. On November 30, 2020, at 10:00 a.m., the Department of Public Health and Human Services will hold a public hearing via remote conferencing to consider the proposed amendment of the above-stated rule. Because there currently exists a state of emergency in Montana due to the public health crisis caused by the coronavirus, there will be no in-person hearing. Interested parties may access the remote conferencing platform in the following ways:

(a) Join Zoom Meeting at: <https://mt-gov.zoom.us/j/94117725120>; meeting ID: 941 1772 5120;

(b) Dial by telephone +1 646 558 8656; meeting ID: 941 1772 5120. Find your local number: <https://mt-gov.zoom.us/j/94117725120>.

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 5:00 p.m. on November 20, 2020, to advise us of the nature of the accommodation that you need. Please contact Heidi Clark, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail [dphhslegal@mt.gov](mailto:dphhslegal@mt.gov).

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

37.85.105 EFFECTIVE DATES, CONVERSION FACTORS, POLICY ADJUSTERS, AND COST-TO-CHARGE RATIOS OF MONTANA MEDICAID PROVIDER FEE SCHEDULES (1) remains the same.

(2) The department adopts and incorporates by reference, the resource-based relative value scale (RBRVS) reimbursement methodology for specific providers as described in ARM 37.85.212 on the date stated.

(a) Resource-based relative value scale (RBRVS) means the version of the Medicare resource-based relative value scale contained in the Medicare Physician Fee Schedule adopted by the Centers for Medicare and Medicaid Services (CMS) of the U.S. Department of Health and Human Services and published at 84 Federal Register 221, page 62568 (November 12, 2019) effective January 1, 2020 which is adopted and incorporated by reference. Procedure codes created after ~~January 1,~~

2020 January 1, 2021 will be reimbursed using the relative value units from the Medicare Physician Fee Schedule in place at the time the procedure code is created.

(b) Fee schedules are effective ~~July 1, 2020~~ January 1, 2021. The conversion factor for physician services is \$39.51. The conversion factor for allied services is \$24.66. The conversion factor for mental health services is \$23.40. The conversion factor for anesthesia services is \$30.57.

(c) through (k) remain the same.

(3) The department adopts and incorporates by reference, the fee schedule for the following programs within the Health Resources Division, on the date stated.

(a) and (b) remain the same.

(c) The hearing aid services fee schedule, as provided in ARM 37.86.805, is effective ~~July 1, 2020~~ January 1, 2021.

(d) The Relative Values for Dentists, as provided in ARM 37.86.1004, reference published in 2020 resulting in a dental conversion factor of \$34.71 and fee schedule is effective ~~July 1, 2020~~ January 1, 2021.

(e) through (j) remain the same.

(k) Montana Medicaid adopts and incorporates by reference the Region D Supplier Manual, effective ~~July 1, 2020~~ January 1, 2021, which outlines the Medicare coverage criteria for Medicare covered durable medical equipment, local coverage determinations (LCDs), and national coverage determinations (NCDs) as provided in ARM 37.86.1802, effective ~~July 1, 2020~~ January 1, 2021. The prosthetic devices, durable medical equipment, and medical supplies fee schedule, as provided in ARM 37.86.1807, is effective ~~July 1, 2020~~ January 1, 2021.

(l) through (p) remain the same.

(q) The ambulance services fee schedule, as provided in ARM 37.86.2605, is effective ~~July 1, 2020~~ January 1, 2021.

(r) and (s) remain the same.

(t) The optometric services fee schedule, as provided in ARM 37.86.2005, is effective ~~July 1, 2020~~ January 1, 2021.

(u) remains the same.

(v) The lab and imaging services fee schedule, as provided in ARM 37.85.212(2) and 37.86.3007, is effective ~~July 1, 2020~~ January 1, 2021.

(w) through (y) remain the same.

(z) The licensed direct-entry midwife fee schedule, as provided in ARM 37.85.212, is effective ~~July 1, 2020~~ January 1, 2021.

(aa) remains the same.

(4) The department adopts and incorporates by reference, the fee schedule for the following programs within the Senior and Long Term Care Division on the date stated:

(a) The home and community-based services for elderly and physically disabled persons fee schedule, as provided in ARM 37.40.1421, is effective ~~July 1, 2020~~ October 1, 2020.

(b) through (5) remain the same.

(6) For the Developmental Services Division, the department adopts and incorporates by reference the Medicaid youth mental health services fee schedule, as provided in ARM 37.87.901, effective ~~July 1, 2020~~ January 1, 2021.

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

IMP: 53-2-201, 53-6-101, 53-6-125, 53-6-402, MCA

#### 4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) is proposing to amend ARM 37.85.105, pertaining to updating the effective dates of Medicaid fee schedules.

The department administers the Montana Medicaid program to provide health care to Montana's qualified low income, elderly, and disabled residents. Medicaid is a public assistance program paid for with state and federal funds appropriated to pay health care providers for the covered medical services they deliver to Medicaid members.

The proposed rule amendments are necessary so that the Montana Medicaid Program can adopt updated Medicare procedure codes that the federal Centers for Medicare and Medicaid Services (CMS) will enact in January 2021. Montana Medicaid uses Medicare procedure codes, and in order to ensure providers can accurately and timely bill for services they provide to Medicaid members, the department must adopt CMS's updated Medicare rates. The updated codes include new code additions, code deletions, and changes to existing code descriptions and rates.

In addition to updating codes, the proposed amendments include revisions to the youth mental health services fee schedule and the fee schedule for the Big Sky waiver, which are explained below.

The proposed amendments are explained below, with reference to the specific subsection of ARM 37.85.105.

##### (2)(a) and (b) Resource-Based Relative Value Scale (RBRVS)

The department proposes to reimburse procedure codes created on or after January 1, 2021, using the relative value units currently in place, and then revise the fee schedule effective date to January 1, 2021, which is being revised to reflect the updated Medicare procedure codes adopted by the federal Medicare program.

##### (3)(c), (q), (t), (v), and (z) Fee Schedules

The department proposes to revise the effective date for the following fee schedules to January 1, 2021, to reflect the updated Medicare procedure codes adopted by CMS: hearing aid services; dentist; prosthetic devices, ambulance; optometric; lab and imaging; and licensed direct-entry midwives.

##### (3)(d) Dentist fee schedule

The department proposes to update the dentist fee schedule effective January 1, 2021, to reflect changes to the Current Dental Terminology (CDT) 2021 by removing applicable deleted covered codes and including their updated replacements.

(3)(k) Prosthetic Devices, Durable Medical Equipment, and Medical Supplies

The department proposes to revise the effective date of the reference to the Region D Supplier Manual to January 1, 2021, and revise the effective date of local coverage determinations (LCDs) and national coverage determinations (NCDs), that are provided in ARM 37.86.1802 to January 1, 2021.

The department is also proposing to revise the effective dates for the durable medical equipment fee schedule to January 1, 2021 to reflect the Calendar Year 2021 Medicare Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS) fee schedule. This will allow the department to update Medicare fees, additions, deletions, or changes to procedure codes when Medicare releases and updates their fee schedule

(4)(a) – Home and Community-based Services for Elderly and Physically Disabled Persons Fee Schedule

The department proposes to adopt and incorporate by reference a revised fee schedule, dated October 1, 2020, to add an additional procedure code of Independence Advisor for Big Sky Bonanza (self-option) members at the rate of \$177.44 per month. This proposed rule change is necessary to implement a waiver application amendment recently approved by the Centers for Medicare and Medicaid Services and to ensure providers receive reimbursement for the service. Independence Advisor services have historically been provided as an administrative function by department staff due to the lack of availability of any willing and qualified providers. The department has recently identified a willing and qualified provider to offer the Independence Advisor service. This proposed rule change will allow members to receive Independence Advisor services from a Medicaid provider rather than from department staff who also oversee service delivery and effectiveness. The department anticipates no negative impact to members resulting from this transition in services.

(6) Fee Schedule for Children's Mental Health Bureau with Serious Emotional Disturbance

The department proposes to adopt and incorporate by reference a revised fee schedule, dated January 1, 2021, which reflects a reimbursement rate of \$18.50 per 15-minute unit of time for Home Support Services (HSS). The updated rate is intended to address the additional cost providers will incur as a result of the HSS program redesign, which is proposed in MAR Notice No. 37-934, filed on October 27, 2020.

The revised fee schedule, dated January 1, 2021, also reflects a reimbursement rate of \$17.67 per 15-minute unit of time for Comprehensive School and Community Treatment (CSCT). This rate does not change the amount of money received by mental health centers that provide services to students in Montana public schools. CMS directed Montana Medicaid to change the funding methodology so that the CSCT rate no longer includes the in-kind match provided by public school districts. Mental health centers do not receive the in-kind match, so the updated rate more accurately reflects the rate in dollars that mental health centers receive for CSCT services. The current CSCT funding methodology is updated in EPSDT SPA MT 20-0014 effective July 1, 2020.

#### Fiscal Impact

The proposed rule amendments for (2)(a) and (b) and (3)(c), (d), (k), (q), (t), (v), and (z) will be budget neutral.

The fiscal impact for the addition of the Independence Advisor code to the Big Sky waiver program is as follows:

FY21 - \$41,520 (\$177 X 26 members X 9 months)  
FY22 - \$55,361 (\$177 X 26 members X 12 months)

The fiscal impact for home support services is as follows:

| Service                        | Federal Fiscal<br>Year FFY | Total Funds | Federal<br>Funds | State Funds |
|--------------------------------|----------------------------|-------------|------------------|-------------|
| Home Support<br>Services (HSS) | FFY21                      |             |                  |             |
|                                | (9 months)                 | \$1,539,693 | \$1,018,142      | \$521,551   |
|                                | FFY22                      |             |                  |             |
|                                | (12 months)                | \$3,830,228 | \$2,542,736      | \$1,287,492 |

The department intends for these amendments to be effective January 1, 2021.

5. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Heidi Clark, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail [dphhslegal@mt.gov](mailto:dphhslegal@mt.gov), and must be received no later than 5:00 p.m., December 4, 2020.

6. The Office of Legal Affairs, Department of Public Health and Human Services, has been designated to preside over and conduct this hearing.

7. 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 5 above or may be made by completing a request form at any rules hearing held by the department.

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

9. 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.

10. Section 53-6-196, MCA, requires that the department, when adopting by rule proposed changes in the delivery of services funded with Medicaid monies, make a determination of whether the principal reasons and rationale for the rule can be assessed by performance-based measures and, if the requirement is applicable, the method of such measurement. The statute provides that the requirement is not applicable if the rule is for the implementation of rate increases or of federal law.

The department has determined that the proposed program changes presented in this notice are not appropriate for performance-based measurement and therefore are not subject to the performance-based measures requirement of 53-6-196, MCA.

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

/s/ Sheila Hogan  
Sheila Hogan, Director  
Public Health and Human Services

Certified to the Secretary of State October 27, 2020.



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

|                                      |   |                             |
|--------------------------------------|---|-----------------------------|
| In the matter of the adoption of New | ) | NOTICE OF PUBLIC HEARING ON |
| Rules I and II and the amendment of  | ) | PROPOSED ADOPTION AND       |
| ARM 37.87.903, 37.87.1401,           | ) | AMENDMENT                   |
| 37.87.1402, 37.87.1407, 37.87.1408,  | ) |                             |
| and 37.87.1410 pertaining to home    | ) |                             |
| support services (HSS) program       | ) |                             |
| redesign                             | ) |                             |

TO: All Concerned Persons

1. On November 30, 2020, at 2:00 p.m., the Department of Public Health and Human Services will hold a public hearing via remote conferencing to consider the proposed adoption and amendment of the above-stated rules. Because there currently exists a state of emergency in Montana due to the public health crisis caused by the coronavirus, there will be no in-person hearing. Interested parties may access the remote conferencing platform in the following ways:

(a) Join Zoom Meeting at: <https://mt-gov.zoom.us/j/97693174287>; meeting ID: 976 9317 4287; or

(b) Dial by telephone +1 646 558 8656; meeting ID: 976 9317 4287. Find your local number: <https://mt-gov.zoom.us/u/abX4Jyop6q>.

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 5:00 p.m. on November 20, 2020, to advise us of the nature of the accommodation that you need. Please contact Heidi Clark, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail [dphhslegal@mt.gov](mailto:dphhslegal@mt.gov).

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

NEW RULE I HOME SUPPORT SERVICES (HSS), PROVISIONS OF SERVICE

(1) Home support services (HSS) providers must support the strengths of youth and caregivers by:

(a) identifying behavioral health abilities and needs across key areas such as school, family, social, community, and vocational environments;

(b) identifying strengths that can form the basis of the treatment plan in the areas of school, family, social, community, and vocational functioning; and

(c) prioritizing the most critical behavioral health needs and concerns as the focus of the treatment planning and delivery.

(2) HSS providers must engage in treatment planning that:

- (a) clearly states the treatment goals identified in the clinical eligibility recommendation;
  - (b) is based on the functional assessment conducted pursuant to the manual adopted and incorporated by reference in ARM 37.87.903;
  - (c) is a collaborative process that involves youth and caregivers in developing a treatment plan with a manageable number of prioritized needs along with goals and strategies for addressing each need and goal;
  - (d) includes goals with measurable and observable outcomes;
  - (e) includes monthly summaries and updates every 90 days, which include outcome measurements of treatment goals; and
  - (f) unifies treatment plans with a targeted case manager, if applicable, and identifies all services and supports to caregivers.
- (3) The provider must conduct a treatment team meeting with the caregiver to develop an individualized treatment plan in accordance with ARM 37.106.1916.
- (4) The provider must measure progress on individualized treatment goals, using both the department-approved standardized assessment and treatment goal indicators to measure progress from baseline. Progress towards individualized treatment goals must be considered as part of discharge planning.
- (5) The provider must collaborate and coordinate with the TCM provider, if youth and caregivers are engaged in TCM services.
- (6) The provider must collaborate with youth and caregivers to identify and address suicidality, risk, and safety concerns at home, in school, and in the community to develop an individualized safety plan for each youth. Individual safety plans must be completed within 21 days of admission to HSS and must be reviewed monthly and after crisis with updates as necessary. Individual safety plans must contain the following components:
- (a) delineate required safety planning and processes, youth and caregiver involvement, and plan dissemination;
  - (b) identification of what is considered a crisis for youth and caregivers;
  - (c) natural supports currently accessible to the youth and caregivers;
  - (d) current resources and skills accessible to the youth and caregivers;
  - (e) crisis escalation patterns and triggers;
  - (f) de-escalation strategies that are easily understood and can be implemented by the youth and caregivers;
  - (g) if indicated by suicidality screening, a specific plan to address suicidal thoughts or ideations;
  - (h) when to call the HSS team; and
  - (i) when to call 911.
- (7) The provider must maintain requirements for crisis response as defined in ARM 37.106.1945. Individual treatment and safety plans must be immediately available to mental health center employees engaged in crisis response.

AUTH: 53-2-201, 53-6-113, MCA  
IMP: 53-2-201, 53-6-101, MCA

NEW RULE II HOME SUPPORT SERVICES (HSS), PROVIDER

REQUIREMENTS (1) The HSS provider must be a mental health center as described in ARM Title 37, chapter 106, subchapter 19.

(2) HSS teams should consist of a family support specialist (FSS) and a clinical lead.

(3) HSS providers must ensure caseload sizes are sufficiently small to permit home support teams to respond flexibly to differing service needs of youth and families, including frequency of contact. FSS caseloads may vary between 4 to 14 families.

(4) HSS providers must provide coaching to an FSS on in-home behavioral health skills. The clinical lead shall provide feedback based on observation of practice, review of plans of care and other documentation, and progress for each youth and caregiver. The FSS must meet with their clinical lead regularly. Frequency must be at least once a week, or more frequently based on documented skills and competencies.

(5) Coaching and mentoring must be skills-based and include coaching to promote competencies in key skill sets such as safety planning, behavior management, cognitive behavioral interventions, caregivers and systemic interventions, and psychoeducation.

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

IMP: 53-2-201, 53-6-101, MCA

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

37.87.903 MEDICAID MENTAL HEALTH SERVICES FOR YOUTH, AUTHORIZATION REQUIREMENTS (1) through (6) remain the same.

(7) In addition to the requirements contained in rule, the department has developed and published a provider manual entitled Children's Mental Health Bureau, Medicaid Services Provider Manual (Manual), dated ~~March 1, 2020~~ January 1, 2021, for the purpose of implementing requirements for utilization management. The department adopts and incorporates by reference the Children's Mental Health Bureau, Medicaid Services Provider Manual, dated ~~March 1, 2020~~ January 1, 2021. A copy of the manual may be obtained from the department by a request in writing to the Department of Public Health and Human Services, Developmental Services Division, Children's Mental Health Bureau, 111 N. Sanders, P.O. Box 4210, Helena, MT 59604-4210 or at <http://dphhs.mt.gov/dsd/CMB/Manuals.aspx>.

(8) and (9) remain the same.

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

IMP: 53-2-201, 53-6-101, 53-6-111, MCA

37.87.1401 HOME SUPPORT SERVICES AND THERAPEUTIC FOSTER CARE, SERVICES REIMBURSEMENT (1) and (2) remain the same.

(3) ~~HSS and~~ The TFC providers ~~are~~ is reimbursed a daily rate.

(a) ~~To receive the daily rate for HHS, the provider must have contact as described in ARM 37.87.1410(6). The department will not reimburse the daily rate for any telephone contacts that exceed the number of face-to-face contacts reimbursed in a four-week period. Reimbursement is limited to one contact per day.~~

~~(b) For TFC services, the department will reimburse the providers the daily rate for every day of a four-week period if the provider meets the minimum number of contacts as described in ARM 37.87.1410(6) during the four-week period.~~

(4) The HSS provider is reimbursed on a fee per unit of service basis. For purposes of this rule, a unit of service is based on a 15-minute unit increment. A unit of service is a period of 15 minutes as follows:

(a) one unit of service is equal to 8 minutes but fewer than 23 minutes;

(b) two units of service are greater than or equal to 23 minutes but fewer than 38 minutes;

(c) three units of service are greater than or equal to 38 minutes but fewer than 53 minutes;

(d) four units of service are greater than or equal to 53 minutes but fewer than 68 minutes;

(e) five units of service are greater than or equal to 68 minutes but fewer than 83 minutes;

(f) six units of service are greater than or equal to 83 minutes but fewer than 98 minutes;

(g) seven units of service are greater than or equal to 98 minutes but fewer than 113 minutes; and

(h) eight units of service are greater than or equal to 113 minutes but fewer than 128 minutes.

(4) remains the same but is renumbered (5).

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

IMP: 53-2-201, 53-6-101, MCA

37.87.1402 HOME SUPPORT SERVICES (HSS) AND THERAPEUTIC FOSTER CARE (TFC), DEFINITIONS (1) and (2) remain the same.

(3) "Clinical lead" means a person who is an employee of the provider agency who is responsible for the supervision and overall provision of treatment services to youth in HSS and TFC. ~~Effective January 31, 2014, the~~ The clinical lead must be a licensed mental health professional as defined in ARM 37.87.102 or an individual providing in-training mental health services as defined in ARM 37.87.702.

(4) remains the same.

(5) "Family support specialist" (FSS) means a person who is an employee of the provider agency who provides therapeutic interventions to youth who are receiving HSS and TFC. The FSS must have a bachelor's degree in a human services field or a combination of experience and education equivalent to a bachelor's degree. For an FSS, six years of human services experience equates to a bachelor's degree, and each year of post-secondary education in human services equates to one year of experience.

~~(5) (6) "Home support services (HSS)" is defined in the Manual adopted and incorporated by reference in ARM 37.87.903 and "therapeutic foster care (TFC)"~~

~~means medically necessary, intensive in-home services delivered by providers with specialized training and experience working with caregivers and youth in their homes, with temporary services available when a youth is homeless for less than 90 days.~~

~~(6) "Home support services specialist" means a person who is an employee of the provider agency who provides therapeutic interventions to youth who are receiving HSS and TFC. The home support services specialist (HSS-S) must have a bachelor's degree in a human services field, or a combination of experience and education equivalent to a bachelor's degree. For a HSS-S, six years of human services experience equates to a bachelor's degree and each year of post-secondary education in human services equates to one year experience.~~

~~(7) "Natural supports" means relationships and supports that occur within the community in everyday life including but not limited to relationships with family members, friends, neighbors, and community acquaintances.~~

~~(8) "Therapeutic foster care (TFC)" means medically necessary, intensive in-home services delivered by a provider with specialized training and experience working with caregivers and youth in their homes, with temporary services available when a youth is homeless for fewer than 90 days.~~

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

IMP: 53-2-201, 53-6-101, MCA

37.87.1407 HOME SUPPORT SERVICES (HSS) AND THERAPEUTIC FOSTER CARE (TFC), PROVISIONS OF SERVICE

(1) The main focus of the service is to address the mental health needs and strengthen the structure and support for youth and the caregivers. HSS and TFC serves the youth and the caregivers in their home and community environment through understanding the needs of the youth and the dynamics of the caregivers. HSS and TFC requires a structured, consistent, strength based therapeutic relationship between the provider and the youth and the caregiver for the purpose of treating the behavioral health needs of the youth, including improving the caregiver's ability to provide effective support for the youth and to promote healthy functioning.

(2) through (4) remain the same.

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

IMP: 53-2-201, 53-6-101, MCA

37.87.1408 HOME SUPPORT SERVICES (HSS) AND THERAPEUTIC FOSTER CARE (TFC), DISCHARGE PLANNING AND DOCUMENTATION

(1) and (2) remain the same.

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

IMP: 53-2-201, 53-6-101, MCA

37.87.1410 HOME SUPPORT SERVICES (HSS) AND THERAPEUTIC FOSTER CARE (TFC), PROVIDER REQUIREMENTS

(1) ~~Effective January 31,~~

2014, HSS and The TFC providers must be a mental health center as described in ARM Title 37, chapter 106, subchapter 19.

(2) ~~Providers of therapeutic foster care~~ The provider must also be a child-placing agency.

(3) A full-time clinical lead is responsible for not more than five full-time ~~home~~ family support services specialists (~~HSS-S~~) (FSS).

(4) The clinical lead must:

(a) provide direction and consultation to the ~~HSS-S~~ FSS to address the clinical needs of the youth and the caregiver as identified in the individualized treatment plan (ITP);

(b) respond to the youth and the caregiver's needs when the ~~HSS-S~~ FSS is not available;

(c) orient, train, and coach the ~~HSS-S~~ FSS; and

(d) provide one-on-one supervision at least monthly to the ~~HSS-S~~ FSS.

(5) A full-time ~~HSS-S~~ FSS is responsible for not more than ten youths at a time.

(6) The following requirements must be met by either the clinical lead, the ~~HSS-S~~ FSS, or both:

(a) through (7) remain the same.

(8) The providers of HSS and TFC must use a research-based practice curriculum specific to provide family-based services. Staff training in the research-based practice must be documented in the provider personnel records

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

IMP: 53-2-201, 53-6-101, MCA

## 5. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) is proposing to amend ARM 37.87.903, 37.87.1401, 37.87.1402, 37.87.1407, 37.87.1408, and 37.87.1410.

In addition, the department proposes adding New Rule I and New Rule II.

The following summaries explain programmatic changes and the reasonable necessity for the proposed rule amendments.

### Home Support Services for Youth with Serious Emotional Disturbances

The department's Children's Mental Health Bureau (CMHB) worked in collaboration with a taskforce of children's mental health stakeholders to review the home support services (HSS) for youth with serious emotional disturbance program and make program changes to enhance the quality of services provided to youth and caregivers while ensuring a fiscally sound program. The redesigned program has the following components:

(a) Providers will determine medical necessity criteria using an evidence-based standardized assessment tool, Child and Adolescent Service Intensity

Instrument (CASII). Also, providers must make clinical outcome recommendations that can be achieved through the services provided to youth. Caregivers must be willing to participate in treatment. This provision is found in the Children's Mental Health Bureau, Medicaid Services Provider Manual, dated January 1, 2021 (manual), which is adopted and incorporated by reference through the administrative rules.

(b) Providers are required to provide a variety of interventions including family meetings, psychoeducation, skill building for the youth and caregivers, cognitive behavioral interventions for the youth, and family and systemic interventions. This provision is found in the manual.

(c) Providers must incorporate the strengths of the youth and caregivers in treatment planning with focus on all key life domains including school, family, social, community, and vocational functioning based on results of the CASII.

(d) Caregiver engagement standards and requirements will be incorporated into the treatment planning process to ensure caregivers understand the treatment and participate in the HSS process. In addition, the proposed rule changes require providers to establish clear treatment goals with monthly summaries and updates of the treatment goals.

(e) Requirements for safety and crisis response planning have been added to ensure plans are current and promptly accessible when needed.

(f) The proposed fee structure for home support services is part of MAR Notice No. 37-933, which was filed on October 27, 2020. The fiscal impact of the redesigned HSS program may be found in that rulemaking notice.

(g) HSS will use a team structure consisting of a family support specialist (FSS) and clinical lead. The clinical lead will provide regular skills-based coaching and feedback to the FSS and meet with the FSS regularly. The department proposes to define HSS caseload as being sufficiently small to permit providers to respond flexibly to varying service needs of youth and their families. FSS may carry a caseload of 4 to 14 families, with size based on complexity of cases, skills, and competencies.

The reasonable necessity for proposing the amendment and adoption of the following rules is to enact the redesigned HSS program, described above, which will provide eligible youth and families greater access to enhanced services: ARM 37.87.903, 37.87.1401, 37.87.1402, 37.87.1407, 37.87.1408, 37.87.1410, New Rule I, and New Rule II.

### Rule Clean Up

The department proposes to update language in ARM 37.87.903 to accurately reflect current practices.

### Fiscal Impact

The rule changes proposed in this rule notice will not result in a fiscal impact to the department's budget. The rate change for Home Support Services is proposed in MAR Notice No. 37-933, and the fiscal impact relating to the rate change is included in that notice.

The department intends for the adoption and amendment of these rules to be effective January 1, 2021.

6. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Heidi Clark, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail [dphhslegal@mt.gov](mailto:dphhslegal@mt.gov), and must be received no later than 5:00 p.m., December 4, 2020.

7. The Office of Legal Affairs, Department of Public Health and Human Services, has been designated to preside over and conduct this hearing.

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

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

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

11. Section 53-6-196, MCA, requires that the department, when adopting by rule proposed changes in the delivery of services funded with Medicaid monies, make a determination of whether the principal reasons and rationale for the rule can be assessed by performance-based measures and, if the requirement is applicable, the method of such measurement. The statute provides that the requirement is not applicable if the rule is for the implementation of rate increases or of federal law.

The department has determined that the proposed program changes presented in this notice are not appropriate for performance-based measurement and therefore are not subject to the performance-based measures requirement of 53-6-196, MCA.

/s/ Brenda K. Elias

Brenda K. Elias  
Rule Reviewer

/s/ Sheila Hogan

Sheila Hogan, Director  
Public Health and Human Services

Certified to the Secretary of State October 27, 2020.



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

In the matter of the adoption of New ) NOTICE OF PUBLIC HEARING ON  
Rules I through VIII and the ) PROPOSED ADOPTION AND  
amendment of ARM 37.84.101, ) AMENDMENT  
37.84.102, 37.84.103, 37.84.106, and )  
37.84.107 pertaining to Health and )  
Economic Livelihood Partnership )  
(HELP) Act )

TO: All Concerned Persons

1. On November 30, 2020, at 11:00 a.m., the Department of Public Health and Human Services will hold a public hearing via remote conferencing to consider the proposed adoption and amendment of the above-stated rules. Because there currently exists a state of emergency in Montana due to the public health crisis caused by the coronavirus, there will be no in-person hearing. Interested parties may access the remote conferencing platform in the following ways:

(a) Join Zoom Meeting at: <https://mt-gov.zoom.us/j/91377667402>; meeting ID: 913 7766 7402; or

(b) Dial by telephone +1 646 558 8656; meeting ID: 913 7766 7402. Find your local number: <https://mt-gov.zoom.us/u/abzYOS0KD0>.

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 5:00 p.m. on November 20, 2020, to advise us of the nature of the accommodation that you need. Please contact Heidi Clark, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail [dphhslegal@mt.gov](mailto:dphhslegal@mt.gov).

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

NEW RULE I HELP ACT: COMMUNITY ENGAGEMENT ACTIVITY  
PARTICIPATION: REQUIREMENTS (1) A participant shall participate in a minimum average of 80 hours per month of qualifying community engagement activities each reporting period unless exempt from participation as defined in (2).

(2) A participant is not subject to the community engagement activity participation requirements if the participant meets any of the following:

(a) is 55 years of age or older;

(b) qualifies for an income-based exemption as provided under [NEW RULE IV];

(c) qualifies for a standard exemption under [NEW RULE V]; or

(d) qualifies for a hardship exemption under [NEW RULE VI].

(3) A participant may communicate exemption from or compliance with community engagement activity participation to the department electronically, telephonically, or by mail.

(4) The department shall implement and enforce this rule only upon receiving approval from the U.S. Secretary of Health and Human Services of the department's 1115 waiver application filed August 30, 2019, and in accordance with the terms and conditions of the approval.

AUTH: 53-2-215, 53-6-113, 53-6-1309, 53-6-1318, MCA

IMP: 53-2-215, 53-6-101, 53-6-113, 53-6-1302, 53-6-1303, 53-6-1304, 53-6-1305, 53-6-1308, 53-6-1309, MCA

#### NEW RULE II HELP ACT: COMMUNITY ENGAGEMENT ACTIVITY

PARTICIPATION: DATA REVIEW (1) The department shall make reasonable efforts to review available electronic data sources on a monthly basis to identify and document compliance with or exemption from community engagement activity participation requirements.

(2) The department shall only request supportive documentation or certification from a participant if no electronic data verification is available to demonstrate compliance with or an exemption from community engagement activity participation as required in [NEW RULES III, IV, V, and VI].

(3) This information will be used only for community engagement activity participation tracking. All information required to be reported by the member to other programs must continue to be reported according to those program rules and policies.

(4) The department shall implement and enforce this rule only upon receiving approval from the U.S. Secretary of Health and Human Services of the department's 1115 waiver application filed August 30, 2019, and in accordance with the terms and conditions of the approval.

AUTH: 53-2-215, 53-6-113, 53-6-1309, 53-6-1318, MCA

IMP: 53-2-215, 53-6-101, 53-6-113, 53-6-1302, 53-6-1303, 53-6-1304, 53-6-1305, 53-6-1308, 53-6-1309, MCA

#### NEW RULE III HELP ACT: COMMUNITY ENGAGEMENT ACTIVITY

PARTICIPATION: QUALIFYING ACTIVITIES (1) Time spent in one or more of the following qualifying activities may be counted toward the community engagement activity participation requirements as provided under [NEW RULE I]:

(a) employment;

(b) work readiness or workforce training activities which include, but are not limited to, an education, training, coaching, or other related workforce readiness activity intended to support preparation for workforce participation;

(c) secondary, postsecondary, or vocational education including time spent completing assignments and preparing for exams;

(d) substance abuse education or substance use disorder treatment including prevention, treatment, medication assisted treatment, and recovery;

(e) other work or community engagement activities that promote work or work readiness or advance the health purpose of the Medicaid program;  
(f) community service or volunteer activities; or  
(g) any other activity required by the Centers for Medicare and Medicaid Services for the purpose of obtaining necessary waivers under HB 658, section 1, Ch. 1, L. 2019 MT.

(2) The department shall implement and enforce this rule only upon receiving approval from the U.S. Secretary of Health and Human Services of the department's 1115 waiver application filed August 30, 2019, and in accordance with the terms and conditions of the approval.

AUTH: 53-2-215, 53-6-113, 53-6-1309, 53-6-1318, MCA

IMP: 53-2-215, 53-6-101, 53-6-113, 53-6-1302, 53-6-1303, 53-6-1304, 53-6-1305, 53-6-1308, 53-6-1309, MCA

NEW RULE IV HELP ACT: COMMUNITY ENGAGEMENT ACTIVITY PARTICIPATION: INCOME-BASED EXEMPTION (1) A participant is exempt from community engagement activity participation requirements if a participant's income exceeds an amount equal to or above the average of 80 hours per month multiplied by the minimum wage for each reporting period.

(2) The department shall review available electronic data sources on a monthly basis to identify an exemption under this subsection.

(3) If the department is unable to verify an income-based exemption through data review, a participant may provide documentation to meet the exemption under this subsection. Such documents may include:

(a) documentation of income, including pay stubs or other means of employment certification; or

(b) income tax forms, financial statements, or other supporting income documentation of self-employment.

(4) The department shall implement and enforce this rule only upon receiving approval from the U.S. Secretary of Health and Human Services of the department's 1115 waiver application filed August 30, 2019, and in accordance with the terms and conditions of the approval.

AUTH: 53-2-215, 53-6-113, 53-6-1309, 53-6-1318, MCA

IMP: 53-2-215, 53-6-101, 53-6-113, 53-6-1302, 53-9-1303, 53-6-1304, 53-6-1305, 53-6-1308, 53-6-1309, MCA

NEW RULE V HELP ACT: COMMUNITY ENGAGEMENT ACTIVITY PARTICIPATION: STANDARD EXEMPTIONS (1) A participant is exempt from the community engagement activity participation requirements if the participant is:

(a) medically frail consistent with 42 C.F.R. 440.315.

(i) The department shall review healthcare claims on a monthly basis for receipt of services including, but not limited to, a personal care service or a diagnosis of severe and disabling mental or physical illness to identify an exemption under this subsection.

(ii) If the department is unable to verify a medical frailty exemption through a data review, a participant may provide a certification to meet an exemption under this subsection.

(b) blind or disabled.

(i) A blind or disabled individual shall include:

(A) Social Security Disability Insurance recipients;

(B) individuals who, as defined under the Americans with Disability Act, Section 50 or Section 1557, are unable to comply with the community engagement requirements due to disability-related reasons; or

(C) recipients of a state or federal benefit program due to a disability.

(ii) The department shall review available data sources on a monthly basis to identify an exemption under this subsection.

(iii) If the department is unable to verify a blind or disabled exemption through a data review, a participant may provide documentation to meet an exemption under this subsection.

(c) pregnant or up to six months post-partum.

(i) The department shall review healthcare claims on a monthly basis to identify an exemption under this subsection.

(ii) If the department is unable to verify pregnancy or up to six months post-partum through a data review, a participant may provide documentation or a certification to meet an exemption under this subsection.

(d) experiencing an acute medical condition.

(i) A participant who experiences a medical condition that requires medical treatment or that temporarily impacts activities of daily living shall meet an exemption under this subsection.

(ii) A participant shall provide documentation from a registered or licensed provider to meet an exemption under this subsection.

(e) unable to work due to a mental or physical condition.

(i) A participant shall provide documentation to meet an exemption under this subsection. Documentation may include:

(A) temporary or permanent disability benefits issued by governmental or private sources; or

(B) a statement provided by a physician, licensed or certified psychologist, physician assistant, nurse, nurse practitioner, designated representative of the physician's office, licensed or certified psychologist, social worker, or any other medical personnel.

(f) a primary caregiver of a person who is unable to provide self-care which shall include a child under the age of 19 residing in the household or an individual who is unable to provide self-care, regardless of age.

(i) A participant may provide a certification to meet an exemption under this subsection.

(ii) Only one participant may be deemed the primary caregiver for an individual.

(g) a foster care or kinship care provider.

(i) The department shall review available electronic records on a monthly basis to identify an exemption under this subsection.

(ii) If the department is unable to verify if a participant is a foster care or kinship care provider through a data review, a participant may provide documentation or a certification to meet an exemption under this subsection.

(h) Engaged in secondary, postsecondary, or vocational education.

(i) A participant in high school shall satisfy the requirements of this exemption.

(ii) A participant enrolled in the equivalent of at least six credits of community college or pursuing an associate degree, four-year undergraduate program, or post-graduate masters or doctoral program shall satisfy the requirements of this exemption.

(iii) A participant enrolled in the equivalent of at least six credits in a trade school, college, or career center program that provides specialized skills training shall satisfy the requirements of this exemption.

(iv) The department shall review available electronic records on a monthly basis to identify an exemption under this subsection.

(v) If the department is unable to verify if a participant is engaged in secondary, postsecondary, or vocational education through a data review, a participant may provide documentation to meet an exemption under this subsection.

(vi) A participant satisfies this exemption if they are participating in-person or virtually and such participation may be inside or outside of the State of Montana.

(i) Participating in or exempt from the work requirements of the Temporary Assistance for Needy Families or Supplemental Nutrition Assistance Program.

(i) The department shall review available electronic records on a monthly basis to identify an exemption under this subsection.

(ii) If the department is unable to verify if a participant is exempt from or compliant with Temporary Assistance for Needy Families or Supplemental Nutrition Assistance Program work requirements through a data review, a participant may provide documentation to meet an exemption under this subsection.

(j) Under the supervision of the Department of Corrections, a county jail, or another entity as directed by the court, the Department of Corrections, or the Board of Pardons and Parole.

(i) The department shall review available electronic records on a monthly basis to identify an exemption under this subsection.

(ii) If the department is unable to verify if a participant is under the supervision of the Department of Corrections, a county jail, or another entity as directed by the court, a participant may provide documentation to meet an exemption under this subsection.

(k) Experiencing chronic homelessness.

(i) Experiencing chronic homelessness includes a participant who:

(A) lacks a fixed and regular nighttime residence;

(B) primarily resides at nighttime in a supervised shelter designed to provide temporary accommodations;

(C) resides for no more than 90 days in the residence of another individual;  
or

(D) resides in a location that is not designed for, or ordinarily used to, accommodating individuals for sleep, home, or meals, including but not limited to hallways, bus station, or lobbies.

(l) The department shall review available data on a monthly basis to identify an exemption under this subsection.

(ll) If the department is unable to verify if a participant is chronically homeless through a data review, the participant may provide a certification to meet an exemption under this subsection.

(l) A victim of domestic violence as defined by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 42 U.S.C. 601, et seq.

(i) A victim of domestic violence shall include a participant who is a victim of physical, sexual, financial, mental, or emotional abuse by a person with whom the individual lives or has lived with in the last 24 months;

(ii) A participant may provide a certification to meet an exemption under this subsection.

(m) Living in an area with a high poverty designation which shall include a participant residing in a zip code area in Montana with a poverty rate greater than the U.S. poverty rate, for individuals in the age range of 18 to 64 years, as determined by the U.S. Census Bureau, estimated for the most current year available.

(i) The department shall review available data to identify an exemption under this subsection.

(ii) If the department is unable to verify if a participant is living in an area with a high poverty designation through a data review, the participant may provide documentation or certification to meet an exemption under this subsection.

(n) A member of an entity organized under 26 U.S.C. 501(d). A participant shall provide a certification to meet an exemption under this subsection.

(o) An American Indian or Alaska Native.

(i) The department shall review available data on a monthly basis to identify an exemption under this subsection.

(ii) If the department is unable to verify if a participant is a member of a federally recognized tribe through a data review, the participant may provide a certification to meet an exemption under this subsection.

(p) Otherwise exempt under federal law.

(2) The department shall implement and enforce this rule only upon receiving approval from the U.S. Secretary of Health and Human Services of the department's 1115 waiver application filed August 30, 2019, and in accordance with the terms and conditions of the approval.

AUTH: 53-2-215, 53-6-113, 53-6-1309, 53-6-1318, MCA

IMP: 53-2-215, 53-6-101, 53-6-113, 53-6-1302, 53-6-1303, 53-6-1304, 53-6-1305, 53-6-1308, 53-6-1309, MCA

NEW RULE VI HELP ACT: COMMUNITY ENGAGEMENT ACTIVITY PARTICIPATION: HARDSHIP EXEMPTIONS (1) A participant is exempt from community engagement activity participation requirements if the participant:

(a) is hospitalized or is caring for an immediate family member who has been hospitalized;

(i) the department shall review healthcare claims on a monthly basis for receipt of services that include an inpatient hospitalization to identify an exemption under this subsection;

(ii) if the department is unable to verify if a participant is hospitalized through a data review, a participant may provide a certification to meet the exemption under this subsection. A participant shall provide documentation of caring for a family member who has been hospitalized to meet the exemption under this subsection.

(b) has a serious illness or is caring for an immediate family member who has a serious illness. A participant shall provide documentation to meet an exemption under this subsection;

(c) is incapacitated or is caring for an immediate family member who is incapacitated. A participant shall provide documentation to meet an exemption under this subsection; or

(d) is experiencing a catastrophic event or hardship that prevents the participant from complying with the community engagement activity participation requirements. A catastrophic event or hardships includes, but is not limited to, public health emergencies, natural or human-caused disasters, or an unforeseen personal crisis. A participant may request a temporary reporting exemption for an unforeseen personal hardship.

(2) The department shall implement and enforce this rule only upon receiving approval from the U.S. Secretary of Health and Human Services of the department's 1115 waiver application filed August 30, 2019, and in accordance with the terms and conditions of the approval.

AUTH: 53-2-215, 53-6-113, 53-6-1309, 53-6-1318, MCA

IMP: 53-2-215, 53-6-101, 53-6-113, 53-6-1302, 53-6-1303, 53-6-1304, 53-6-1305, 53-6-1308, 53-6-1309, MCA

#### NEW RULE VII HELP ACT: COMMUNITY ENGAGEMENT ACTIVITY

PARTICIPATION: COVERAGE SUSPENSION (1) A participant who does not meet the age-based exclusion found in [New Rule II](2)(a) or an income, standard, or hardship exemption and fails to comply with the community engagement activity participation requirements will have a grace period of 180 days after the end of the reporting period to come into compliance.

(2) A participant who does not come into compliance within the 180-day grace period will have their coverage suspended.

(3) The suspension period will end 180 days after the date of suspension or upon determination by the department that the participant is:

(a) exempt from community engagement activity participation requirements;

(b) compliant with community engagement activity participation requirements for 30 days; or

(c) eligible for another category not subject to community engagement activity participation requirements.

(4) A participant who has their coverage reinstated during a suspension period shall be monitored by the department to ensure continued compliance.

(5) Upon the end of the suspension period, a participant will have coverage reinstated so long as the participant continues to be eligible for the HELP program.

(6) Prior written notice of an adverse action, which shall include information on how to come into compliance with community engagement activity participation requirements, will be sent to a participant informing them of the pending suspension of coverage.

(7) The department shall implement and enforce this rule only upon receiving approval from the U.S. Secretary of Health and Human Services of the department's 1115 waiver application filed August 30, 2019, and in accordance with the terms and conditions of the approval.

AUTH: 53-2-215, 53-6-113, 53-6-1309, 53-6-1318, MCA

IMP: 53-2-215, 53-6-101, 53-6-113, 53-6-1302, 53-6-1303, 53-6-1304, 53-6-1305, 53-6-1308, 53-6-1309, MCA

NEW RULE VIII HELP ACT: COMMUNITY ENGAGEMENT ACTIVITY

PARTICIPATION: AUDIT REQUIREMENTS (1) On a quarterly basis, the Quality Assurance Division shall prepare, plan, and execute an audit to test compliance with community engagement participation requirements from a random sample of participants subject to community engagement participation requirements.

(2) Participants who are found to be out of compliance with community engagement participation requirements will be notified in writing with information on how to become compliant. Participants who are out of compliance with community engagement reporting requirements are subject to the provisions of [NEW RULE VII].

(3) The Quality Assurance Division shall provide audit results to the Human and Community Services Division for program improvement and corrective action plans when appropriate.

(4) The Human and Community Services Division shall provide corrective action plans to the Quality Assurance Division, which shall use the plans along with audit results to assess risk and plan future quarterly audit cycles.

(5) The department shall implement and enforce this rule only upon receiving approval from the U.S. Secretary of Health and Human Services of the department's 1115 waiver application filed August 30, 2019, and in accordance with the terms and conditions of the approval.

AUTH: 53-2-215, 53-6-113, 53-6-1309, 53-6-1318, MCA

IMP: 53-2-215, 53-6-101, 53-6-113, 53-6-1302, 53-6-1303, 53-6-1304, 53-6-1305, 53-6-1308, 53-6-1309, MCA

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

37.84.101 HELP ACT: PURPOSE (1) The purpose of this subchapter is to implement the Montana Health and Economic Livelihood Partnership Act (HELP Act) enacted by the 64th Montana Legislature, Ch. 368, L. 2015 MT, and House Bill 658 enacted by the 66th Montana Legislature, Ch. 21, L. 2019 MT.

AUTH: 53-2-215, 53-6-113, ~~53-6-1305~~, 53-6-1309, 53-6-1318, MCA



IMP: 53-2-215, 53-6-101, 53-6-113, ~~53-6-131~~, 53-6-1302, 53-6-1303, 53-6-1304, 53-6-1305, 53-6-1306, 53-6-1307, 53-6-1308, 53-6-1309, MCA

37.84.102 HELP ACT: DEFINITIONS (1) ~~"Advanced practice registered nurse (APRN)" means a registered professional nurse who has completed educational requirements related to the nurse's specific practice role, in addition to basic nursing education, as specified by the Board of Nursing in ARM 24.159.1414.~~

(2) ~~"Medicaid Benefit Plan" means a service plan available to Medicaid and HELP members that is equivalent to the Medicaid services described in ARM Title 37.~~

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

(4) ~~"Benefit year" means the state fiscal year from July 1 through June 30.~~

(5) ~~"Benefits" means the services a person is eligible to receive. The HELP Program benefits are stated in the Medicaid Benefit Plan.~~

(6) ~~"Copayment" means a predetermined portion of the cost for a health care service or item that is owed by the member directly to a provider for a covered health care service.~~

(7) ~~"Cost Share" means the total of premium and copayment costs in relation to the delivery of health care services to the participant that are the responsibility of the participant to pay.~~

(2) "Certification" means attestation of compliance with or exemption from community engagement activities. A participant's certification may be included as part of the Medicaid application or provided separately with a dated signature electronically, telephonically, or by mail.

(3) "Community engagement activity" means any qualifying activity identified in [NEW RULE III] as counting towards the community engagement participation requirements outlined in [NEW RULE I].

(8) remains the same but is renumbered (4).

(9) ~~"Emergency medical condition" means a medical condition manifesting itself with acute symptoms of sufficient severity, including severe pain, such that a prudent layperson could reasonably expect the absence of immediate medical attention to result in any of the following:~~

(a) ~~serious jeopardy to the health of the member or the member's unborn child;~~

(b) ~~serious impairment of bodily function; or~~

(c) ~~serious dysfunction of any bodily organ or part.~~

(10) ~~"Experimental, investigational, and unproven" means any drug, device, treatment, or procedure that meets any of the following criteria:~~

(a) ~~prescription drugs not approved by the Food and Drug Administration (FDA) to be lawfully marketed for the proposed use, and it is not identified in the American Hospital Formulary Service, the AMA Drug Evaluation, or the Pharmacopoeia as an appropriate use;~~

(b) ~~it is subject to review or approval by an institutional review board (meaning that a hospital considered it experimental and put it under review to meet federal regulations, or review is required and defined by federal regulations, particularly those of the FDA or U.S. Department of Health and Human Services);~~

(c) it is the subject of an ongoing clinical trial that meets the definition of a Phase 1, 2, or 3 clinical trial set forth in FDA regulations, regardless of whether it is an FDA trial;

(d) it has not been demonstrated through prevailing, peer-reviewed medical literature to be safe and effective for treating or diagnosing the condition or illness for which its use is proposed;

(e) the predominant opinion among experts as expressed in the published authoritative literature is that further research is necessary in order to define safety, toxicity, and effectiveness (or effectiveness compared with conventional alternatives), or that usage should be substantially confined to research settings;

(f) it is not a covered benefit under Medicare, as determined by the Centers for Medicare and Medicaid Services (CMS), because it is considered experimental, investigational, or unproven;

(g) it is experimental, investigational, unproven, or not a generally acceptable medical practice in the predominant opinion of independent experts utilized by the administrator of each plan; or

(h) it is not experimental or investigational in itself pursuant to the above and would not be medically necessary, but it is being provided in conjunction with the provision of a treatment, procedure, device, or drug that is experimental, investigational, or unproven.

(11) "Eyeglasses" mean corrective lens, frames, or both prescribed by an ophthalmologist or by an optometrist to improve vision.

(12) remains the same but is renumbered (5).

(13) "Federally Qualified Health Center (FQHC)" means an entity as defined in 42 USC 1396d(l)(2)(B) (2015) and 42 CFR, part 491, subpart A (2015).

(14)(6) "Health and Economic Livelihood Partnership (HELP) program" means a Medicaid coverage program for persons as authorized at Title 53, chapter 6, part 13, MCA, and Title 39, chapter 12, part 1, MCA, and as implemented in accordance with that part, 53-2-215, MCA, 42 U.S.C. 1315 (2015), 42 U.S.C. 1396d(y) (2015), and other applicable state and federal authorities for those persons who are eligible for the HELP Program as authorized under 42 U.S.C. 1396a(a)(10)(A)(i)(VIII) (2015).

(15) "Healthy behavior plan" means a program implemented to improve the health of members by providing services focused on the promotion or maintenance of good health.

(16) "Indian Health Service (IHS)" means an agency within the U.S. Department of Health and Human Services that is responsible for providing federal health services to American Indians and Alaska Natives.

(17) "Inpatient hospital services" means services or supplies provided to the member who has been admitted to a hospital as a registered bed patient and who is receiving services under the direction of a participating provider with staff privileges at that hospital, including a critical access hospital. The facility must:

(a) be licensed or formally approved as an acute care or critical access hospital by the officially designated authority in the state where the institution is located; and

~~(b) except as otherwise permitted by federal law, meet the requirements for participation in Medicare as a hospital and have in effect a utilization review plan that meets the requirements of 42 CFR 482.30 (2015).~~

(7) "Medicaid alternative benefit plan" means covered services available to HELP members that is equivalent to the Medicaid services described in ARM Title 37.

(18) and (19) remain the same but are renumbered (8) and (9).

~~(20)(10) "Modified adjusted gross income (MAGI)" means income determined in accordance with 42 U.S.C. 1396a(e)(14) (2015) and 42 CFR 435.603(d)(4) (2015).~~

~~(21) "Outpatient facility services" means preventive, diagnostic, therapeutic, rehabilitative, or palliative services provided to an outpatient by or under the direction of a physician, dentist, or other practitioner as permitted by federal law. The facility must:~~

~~(a) be licensed or formally approved as an acute care or critical access hospital by the officially designated authority in the state where the institution is located; and~~

~~(b) except as otherwise permitted by federal law, meet the requirements for participation in Medicare as a hospital.~~

(22)(11) "Participant" means a member with a modified adjusted gross income between 50% and at or below 138% of the federal poverty level and is subject to premium payment provided for in the HELP Act, Title 53, chapter 6, part 13, MCA and enrolled in Medicaid under the HELP Act.

~~(23) "Participating provider" means a health care professional or facility that is participating in the Medicaid program.~~

~~(24) "Physician assistant (PA)" means a mid-level practitioner as defined in ARM 37.86.202.~~

(25) remains the same but is renumbered (12).

~~(26) "Preventative health care services" means routine health care that includes screenings, checkups, and patient counseling to prevent illnesses, disease, or other health problems, including secondary and tertiary preventive care.~~

~~(27) "Rural health clinic (RHC)" means a clinic determined by the U.S. Department of Health and Human Services to meet the rural health clinic conditions of certification specified in 42 U.S.C. 1396d(l)(1) (2015) and 42 CFR, part 491, subpart A (2015).~~

~~(28) "Tribal health services" means a service provided by a federally recognized American Indian Tribe or tribal organization under a P.L. 93-638 agreement.~~

(13) "Reporting period" means the required frequency for providing information to the department on community engagement activity participation. The reporting period is every six months.

(29) remains the same but is renumbered (14).

AUTH: 53-2-215, 53-6-113, ~~53-6-1305~~, 53-6-1309, 53-6-1318, MCA

IMP: 53-2-215, 53-6-101, 53-6-113, ~~53-6-131~~, 53-6-1304, 53-6-1305, 53-6-1306, 53-6-1307, 53-6-1308, 53-6-1309, MCA

37.84.103 HELP ACT: ELIGIBILITY FOR COVERAGE (1) An individual qualifies for Medicaid coverage under the HELP Program if the person is a Montana resident who meets the eligibility criteria for Medicaid ~~expansion~~ coverage as authorized at 42 U.S.C. 1396a(a)(10)(A)(i)(VIII) (2015) and 42 C.F.R. 435.119.

(2) HELP Program coverage, as specified in (1), is inclusive of a person who is 19 through 64 years of age, has a modified adjusted gross income at or below 138% of FPL as appropriate to the household size, and is not:

(a) remains the same.

(b) entitled to or enrolled in Medicare; or

(c) ~~disabled as determined for purposes of social security; or~~ otherwise eligible for and enrolled in mandatory coverage under the State Plan.

~~(d) in one of the other categories for Medicaid coverage that are excluded from Medicaid expansion coverage by the language of the applicable federal authority.~~

AUTH: 53-2-215, 53-6-113, ~~53-6-1305~~, 53-6-1318, MCA

IMP: 53-2-215, 53-6-101, ~~53-6-131~~, 53-6-1304, MCA

37.84.106 HELP ACT: BENEFITS (1) Coverage for a person in the HELP Program is provided through the Medicaid Alternative Benefit Plan.

AUTH: 53-2-215, 53-6-113, ~~53-6-1305~~, 53-6-1318, MCA

IMP: 53-2-215, 53-6-101, ~~53-6-1305~~, MCA

37.84.107 HELP ACT: PREMIUMS (1) remains the same.

(2) Except as provided in subsection (3), the premiums must:

(a) be set at 2% of a participant's income in the first two years the participant received coverage; and

(b) increase by 0.5% in each subsequent year that a participant receives coverage, up to a maximum of 4% of the participant's income.

(3) A participant who is exempt from the community engagement activity participation requirements as allowed under [NEW RULES IV, V, and VI] is exempt from the premium increases in (2)(b).

~~(2)(4)~~ A participant, except as provided in ~~(4)(6)~~ and ~~(5)(7)~~, for whom an overdue premium is owed, will be disenrolled from coverage as provided in ~~(3)(5)~~.

(3) through (7) remain the same but are renumbered (5) through (9).

(10) The department shall implement and enforce (2) and (3) only upon receiving approval from the U.S. Secretary of Health and Human Services of the department's 1115 waiver application filed August 30, 2019, and in accordance with the terms and conditions of the approval.

AUTH: 53-2-215, 53-6-113, ~~53-6-1305~~, 53-6-1318, MCA

IMP: 53-2-215, 53-6-101, ~~53-6-1307~~, MCA

## 5. STATEMENT OF REASONABLE NECESSITY

The 2019 Montana Legislature directed the Department of Public Health and Human Services (department) to pursue changes to the Montana Health and Economic Livelihood Partnership (HELP) Act, a program providing Medicaid coverage to adults between the ages of 19 and 65 with a household income at or below 138 percent of the current federal poverty level. The program changes outlined in this proposed rulemaking notice include the adoption of community engagement activity participation requirements and increases to premiums, as provided in House Bill (HB) 658 of the 2019 legislative session.

#### Community Engagement Activity Participation Requirements

The proposed rule amendments and adoptions are necessary to:

- (a) identify which HELP program participants are required to complete community engagement activity participation requirements;
- (b) describe the methods of receiving exemptions from community engagement activity participation requirements;
- (c) identify what qualifying activities may be counted toward the monthly requirement for community engagement activity participation;
- (d) describe the methods of reporting community engagement activity participation;
- (e) describe how the department will review electronic data sources to identify compliance with or exemption from community engagement activity participation;
- (f) outline the impact to HELP program participants who do not report a sufficient level of community engagement activity participation; and
- (g) describe how the department will audit community engagement activity participation compliance and exemptions to prevent fraud.

#### Increases to Premiums

The proposed amendments to ARM 37.84.107 are necessary to:

- (a) identify the circumstances in which HELP program participants will experience an increase in their premiums;
- (b) describe exemptions from the increase in premiums; and describe the premium increases over time.

#### Implementation and Enforcement

The HELP Program is authorized under section 1115 of the federal Social Security Act, which grants the Secretary of Health and Human Services (HHS) the authority to approve a state's request to waive compliance with provisions of federal Medicaid law. Significant changes to the program, such as the community engagement requirements and premium changes, require approval of a waiver amendment by the HHS secretary before a state may implement and enforce such changes.

The current HELP Program is set to expire on December 31, 2020. On August 30, 2019, the department submitted an 1115 waiver amendment and extension request to HHS, pursuant to Montana HB 658. As of the filing of this proposed rulemaking notice, the 1115 waiver amendment and extension have not been approved by HHS.

The rule proposal provides that the department will implement and enforce (2) and (3) of ARM 37.84.107 and New Rules I through VIII only upon receiving approval from the HHS secretary of the department's 1115 waiver request and in accordance with the terms and conditions of the approval.

### Fiscal Impact

The adoption of this proposed rule notice is expected to impact the number of adults eligible for Medicaid. It is estimated that some program participants will not report or will fail to meet the community engagement activity requirement. A decrease in the number of Montanans with health care coverage will impact health care providers and other businesses.

|  | Number                           | Percent of Total |
|--|----------------------------------|------------------|
| Program participants as of 9/1/2020  | 87,881*                          | 100%             |
| No reporting obligation; State determines through available administrative data that the enrollee is either exempt from or compliant with work/community engagement requirements | 64,034                           | 74%**            |
| Has reporting obligation   | 22,846                           | 26%**            |
| Estimated number of participants who do not report or fail to meet the work requirement  | 3,515– 10,575                    | 4 – 12%**        |
| Per Member Per Month Cost  | \$660                            |                  |
| Annual estimated impact to health care providers<br>10% state funds, 90% federal funds   | (\$27,838,000 -<br>\$83,754,000) |                  |

\*Source: DPHHS Medicaid Expansion Dashboard

\*\*Source: Montana Section 1115 Medicaid Demonstration Amendment and Extension Application "Montana Health and Economic Livelihood Partnership (HELP) Demonstration Program"

6. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Heidi Clark, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail [dphhslegal@mt.gov](mailto:dphhslegal@mt.gov), and must be received no later than 5:00 p.m., December 4, 2020.

7. The Office of Legal Affairs, Department of Public Health and Human Services, has been designated to preside over and conduct this hearing.

8. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have

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

9. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was notified by email on October 20, 2020.

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

11. Section 53-6-196, MCA, requires that the department, when adopting by rule proposed changes in the delivery of services funded with Medicaid monies, make a determination of whether the principal reasons and rationale for the rule can be assessed by performance-based measures and, if the requirement is applicable, the method of such measurement. The statute provides that the requirement is not applicable if the rule is for the implementation of rate increases or of federal law.

The department has determined that the proposed program changes presented in this notice are appropriate for performance-based measurement and therefore are subject to the performance-based measures requirement of 53-6-196, MCA.

The following matrix presents the department's intended performance monitoring scheme.

| Principle reason for the rule                                     | Measurement                                  | Data Collection Methods/Metrics                       | Period of Measurement |
|---|--|---|-----------------------|
| Provide coverage of health care services for low-income Montanans | HELP Act enrollment                          | Track enrollment via eligibility determination system | Monthly               |
| Implement community engagement reporting requirements             | Community engagement reporting participation | Community engagement reporting system                 | Monthly               |
| Implement community engagement reporting requirements             | Community engagement reporting exemptions    | Community engagement reporting system                 | Monthly               |

/s/ Brenda K. Elias

Brenda K. Elias  
Rule Reviewer

/s/ Sheila Hogan

Sheila Hogan, Director  
Public Health and Human Services

Certified to the Secretary of State October 27, 2020.



BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

In the matter of the amendment of ) NOTICE OF EXTENSION OF  
ARM 42.18.121 pertaining to updates ) COMMENT PERIOD ON  
to the Montana Reappraisal Plan and ) PROPOSED AMENDMENT  
Classification and Valuation Manuals )

TO: All Concerned Persons

1. On October 9, 2020, the Department of Revenue published MAR Notice No. 42-1024 pertaining to the public hearing on the proposed amendment of the above-referenced rule at page 1832 of the 2020 Montana Administrative Register, Issue Number 19.

2. A public hearing was held on October 30, 2020. The department has extended the public comment period through 5:00 p.m., December 9, 2020, to allow the Forest Land Taxation Advisory Committee, established in 15-44-103, MCA, and other interested persons additional time to comment on the proposed amendment of the above-referenced rule.

3. The Department of Revenue 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, please advise the department of the nature of the accommodation needed, no later than 5 p.m. on November 13, 2020. Please contact Todd Olson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or [todd.olson@mt.gov](mailto:todd.olson@mt.gov).

4. Concerned persons may submit their data, views, or arguments concerning the proposed rulemaking, in writing, to: Todd Olson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or e-mail [todd.olson@mt.gov](mailto:todd.olson@mt.gov) and must be received no later than 5:00 p.m., December 9, 2020.

/s/ Todd Olson  
Todd Olson  
Rule Reviewer

/s/ Shauna Helfert  
for Gene Walborn  
Director of Revenue

Certified to the Secretary of State October 27, 2020.

BEFORE THE DEPARTMENT OF AGRICULTURE  
OF THE STATE OF MONTANA

In the matter of the adoption of New     ) NOTICE OF ADOPTION  
Rules I through IV pertaining to the     )  
Montana Hemp Research and Market     )  
Development Program                     )

TO: All Concerned Persons

1. On July 24, 2020, the Department of Agriculture published MAR Notice No. 4-20-269 pertaining to the public hearing on the proposed adoption of the above-stated rules at page 1319 of the 2020 Montana Administrative Register, Issue Number 14.

2. The department has adopted the following rules as proposed: New Rules II (4.6.602), III (4.6.603), and IV (4.6.604).

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

NEW RULE I (4.6.601) MONTANA HEMP ADVISORY COMMITTEE

(1) The committee shall be an eight member committee consisting of six voting members ~~actively~~ involved in the production of hemp, one non-voting processing industry representative, and one non-voting representative from the Montana State University System.

(2) and (3) remain as proposed.

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

COMMENT #1: The department should require that at least one of the growers on the committee be from each district within the state.

RESPONSE #1: The geographic representation will be accounted for by the director when selecting committee members.

COMMENT #2: Committee members should not be required to actively be producing hemp, but rather, have been involved in the production of hemp.

RESPONSE #2: The department has amended NEW RULE I (4.6.601), deleting the word "actively."

/s/ Cort Jensen  
Cor Jensen  
Rule Reviewer

/s/ Ben Thomas  
Ben Thomas  
Director  
Department of Agriculture

Certified to the Secretary of State October 27, 2020.

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

|                                     |   |                     |
|-------------------------------------|---|---------------------|
| In the matter of the amendment of   | ) | NOTICE OF AMENDMENT |
| ARM 24.189.401 fee schedule,        | ) |                     |
| 24.189.601 psychologist application | ) |                     |
| procedures, 24.189.610 examination, | ) |                     |
| 24.189.633 temporary permit, and    | ) |                     |
| 24.189.910 behavior analyst         | ) |                     |
| experience and supervision          | ) |                     |

TO: All Concerned Persons

1. On July 10, 2020, the Board of Psychologists published MAR Notice No. 24-189-41 regarding the public hearing on the proposed amendment of the above-stated rules, at page 1272 of the 2020 Montana Administrative Register, Issue No. 13.

2. On August 5, 2020, a public hearing was held on the proposed amendment of the above-stated rules in Helena. Several comments were received by the August 7, 2020 deadline.

3. The board has thoroughly considered the comments received. A summary of the comments and the board responses are as follows:

**ARM 24.189.401**

COMMENT 1: Several commenters stated that the behavior analyst "per supervisee" fee of \$50 is excessive and cannot be evenly applied. Additionally, the commenters believed the language in the same rule regarding the \$25 behavior analyst renewal supervision fee rule is unclear.

RESPONSE 1: The board notes the concerns are outside the scope of this notice as the board proposed no changes to the referenced fees. The board may address the commenters' concerns in a future rule project.

**ARM 24.189.910**

COMMENT 2: One commenter stated that increasing from one to three the number of student interns a behavior analyst may supervise will allow more opportunities for the interns to obtain the required supervision experience.

RESPONSE 2: The board notes the comment is consistent with the board's reason for the rule change.

COMMENT 3: Several commenters suggested revising the rule to define a suitable range of numbers of supervisees that apply to university student pre-service supervision different from the number for school or agency in-service supervision (for assistant behavior analysts and behavior technicians who are under an employment contract).

RESPONSE 3: The board is unable to address the suggestions as they are beyond the scope of this rule proposal. The board is therefore amending the rule exactly as proposed to reflect a consensus reached with stakeholders and will address the commenters' suggestions in a future rule project.

4. The board has amended ARM 24.189.401, 24.189.601, 24.189.610, 24.189.633, and 24.189.910 exactly as proposed.

BOARD OF PSYCHOLOGISTS  
LORETTA BOLYARD, Ph.D.  
CHAIRPERSON

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

/s/ BRENDA NORDLUND  
Brenda Nordlund, Acting Commissioner  
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State October 27, 2020.

## **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 June 3, 2020. This table includes notices in which those rules adopted during the period May 15, 2020, through October 23, 2020, 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 June 30, 2020, 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 2020 Montana Administrative Register.

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

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