

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 13

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 The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

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

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BEFORE THE STATE COMPENSATION INSURANCE FUND
OF THE STATE OF MONTANA

In the matter of the amendment of ARM) NOTICE OF PROPOSED
2.55.502 pertaining to the individual loss) AMENDMENT
sensitive dividend distribution plan)
) NO PUBLIC HEARING
) CONTEMPLATED

TO: All Concerned Persons

1. On September 19, 2014, the Montana State Fund proposes to amend the above-stated rule.

2. The Montana State Fund will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the Montana State Fund no later than 5:00 p.m. on August 1, 2014, to advise us of the nature of the accommodation that you need. Please contact Nancy Butler, Montana State Fund, P.O. Box 4759, 855 Front Street, Helena, Montana 59604-4759; telephone (406) 495-5138; fax (406) 495-5023; or e-mail nbutler@mt.gov.

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

2.55.502 INDIVIDUAL LOSS SENSITIVE DIVIDEND DISTRIBUTION PLAN

(1) through (9) remain the same.

~~(10) The State Fund has a security interest in all dividends to secure payment to the State Fund of any and all amounts owed to the State Fund by the policyholder, regardless of the policy years in relation to which the policyholder owes the State Fund, or to which the State Fund declares a dividend.~~

AUTH: 39-71-2315, 39-71-2323, MCA

IMP: 39-71-2323, MCA

REASON: This amendment to ARM 2.55.502 is reasonably necessary at this time for the following reasons: The board of directors of Montana State Fund may declare dividends. Dividends are not guaranteed, and are not payable until declared by the board. If a dividend is declared, a policyholder is then and only then entitled to its share of the dividend in accordance with statutes, rules, and board policies pertaining to the dividend declaration. Under the current rule, State Fund claims a security interest in any dividend. Under state law, for a security interest to attach to collateral, that is, the dividend in this case, it must be enforceable against the debtor. For a security interest to be enforceable, the debtor must have rights in the collateral. According to State Fund's dividend rule and policy, a policyholder debtor does not have a right to payment of a dividend. Thus, the debtor does not have rights in collateral against which a security interest is enforceable. Likewise, the

dividend does not become property of a debtor's estate in bankruptcy. See 11 U.S.C. 541. The existing language in ARM 2.55.502(10) has the potential to complicate State Fund's application of a dividend to a debtor's account by confusing this application with a claim of a security interest, and so is being removed from the rule.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to Nancy Butler, Montana State Fund, P.O. Box 4759, 855 Front Street, Helena, Montana 59604-4759; telephone (406) 495-5138; fax (406) 495-5023; or e-mail nbutler@mt.gov. Any comments must be received no later than 5:00 p.m., August 8, 2014.

5. If persons who are directly affected by the proposed action wish to express their data, views, or arguments, orally or in writing at a public hearing, they must make a written request for a hearing and submit this request along with any written comments to Nancy Butler at the above address no later than 5:00 p.m., August 8, 2014.

6. If the agency receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons who are directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 2600 persons based on 26,000 policyholders.

7. The Montana State Fund 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, e-mail, and mailing address of the person and specifies that the person wishes to receive notices regarding the Montana State Fund. If you prefer to receive notices by e-mail, please indicate this in your request. Such written request may be mailed or delivered to Nancy Butler, Montana State Fund, P.O. Box 4759, 855 Front Street, Helena, Montana 59604-4759; faxed to the office at (406) 495-5023; e-mail nbutler@mt.gov; or may be made by completing a request form at any rules hearing held by the Montana State Fund.

8. An electronic copy of this notice of proposed amendment is available through the Secretary of State's web site at <http://sos.mt.gov/ARM/Register>. The Secretary of State strives to make the electronic copy of the notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that if a discrepancy exists between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the Secretary of State works to keep its web site accessible at all times, concerned persons should be aware that

the web site may be unavailable during some periods, due to system maintenance or technical problems.

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 Montana State Fund has determined that the amendment of the above-referenced rule will not significantly and directly impact small businesses.

/s/ Nancy Butler
Nancy Butler, General Counsel
Rule Reviewer

/s/ Elizabeth Best
Elizabeth Best
Chair of the Board

/s/ Michael P. Manion
Michael P. Manion, Chief Legal Counsel
and Rule Reviewer

Certified to the Secretary of State June 30, 2014.

BEFORE THE FISH AND WILDLIFE COMMISSION
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF EXTENSION OF
ARM 12.11.645 pertaining to) COMMENT PERIOD ON
Whitefish River) PROPOSED AMENDMENT

TO: All Concerned Persons

1. On March 13, 2014, the Fish and Wildlife Commission (commission) published MAR Notice No. 12-406 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 434 of the 2014 Montana Administrative Register, Issue Number 5.

2. A public hearing was held on April 10, 2014, to consider the proposed amendments. The commission is proposing an alternative to be considered in conjunction with the original proposed amendments. An extension of the comment period is necessary to address the alternative language. The rule as proposed provides as follows, new matter underlined, deleted matter interlined:

12.11.645 WHITEFISH RIVER (1) Whitefish River is located in Flathead County.

(2) Whitefish River is limited to a controlled no wake speed, or minimum operating speed necessary to progress upstream, as defined in ARM 12.11.101(1), ~~in the following areas: from its confluence with Whitefish Lake to the bridge on JP Road.~~

~~(a) Whitefish River from its confluence with Whitefish Lake to the bridge on the JP Road.~~

(3) Whitefish River is limited to manually and electric powered watercraft from the railroad trestle south of Whitefish Lake outlet to the bridge on JP Road from July 5 through September 30.

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

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

3. 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 July 25, 2014, to advise us of the nature of the accommodation that you need. Please contact Jessica Snyder, Department of Fish, Wildlife and Parks, P.O. Box 200701, Helena, Montana, 59620-0701; telephone (406) 444-9785; fax (406) 444-7456; or e-mail jesssnyder@mt.gov.

4. Concerned persons may submit their data, views, or arguments concerning the proposed actions in writing to: Department of Fish, Wildlife and Parks Region 1 Office, 490 North Meridian Road, Kalispell, Montana, 59901; fax

(406) 257-0349; or e-mail cjust@mt.gov, and must be received no later than August 8, 2014.

/s/ Dan Vermillion
Chairman
Fish and Wildlife Commission

/s/ Zach Zipfel
Zach Zipfel
Rule Reviewer

Certified to the Secretary of State June 30, 2014.

BEFORE THE DEPARTMENT OF FISH, WILDLIFE AND PARKS
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF PROPOSED
ARM 12.10.103 and 12.10.104) AMENDMENT
pertaining to shooting range grants)
) NO PUBLIC HEARING
) CONTEMPLATED

TO: All Concerned Persons

1. On October 9, 2014, the Department of Fish, Wildlife and Parks (department) proposes to amend the above-stated rules.

2. The department 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 July 25, 2014, to advise us of the nature of the accommodation that you need. Please contact Jessica Snyder, Department of Fish, Wildlife and Parks, P.O. Box 200701, Helena, Montana, 59620-0701; telephone (406) 444-9785; fax (406) 444-7456; or e-mail jesssnyder@mt.gov.

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

12.10.103 GRANT APPLICATION PROCEDURE (1) remains the same.
(2) Applications must be postmarked on or before ~~May~~ February 1.
(3) and (4) remain the same.

AUTH: 87-1-201, 87-1-279, MCA
IMP: 87-1-201, 87-1-276, 87-1-277, 87-1-278, 87-1-279, 87-2-105, MCA

12.10.104 REIMBURSEMENT OF COSTS (1) All billing on a proposed project must be completed by ~~the end of each biennium~~ June 15 of the fiscal year the money is awarded.

(2) and (3) remain the same.

(4) Per 87-1-278, MCA, existing assets and shooting range developments may not be applied to the matching funds or in-kind contributions. Existing assets and shooting range developments are fixed improvements to the shooting range owned or made prior to the award of the grant.

AUTH: 87-1-201, 87-1-279, MCA
IMP: 87-1-201, 87-1-276, 87-1-278, 87-1-279, 87-2-105, MCA;

REASON: The proposed amendment of the application date provides application approval, award letter, and contract negotiations to be complete by July 1 instead of August or September. This provides the shooting range grant recipients more time

in Montana's construction season to complete their project. Also, the department is proposing a definition of existing assets for clarity and consistency.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to: Department of Fish, Wildlife, and Parks, Communications and Education Division, P.O. Box 200701, Helena, Montana, 59620-0701; fax (406) 443-2561; or e-mail wacooperider@mt.gov, and must be received no later than August 8, 2014.

5. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to the above address no later than August 8, 2014.

6. If the agency receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be more than 25 persons based on the number of members of shooting ranges across Montana.

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 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, faxed to the office at (406) 444-7456, or may be made by completing the request form at any rules hearing held by the department.

8. An electronic copy of this proposal notice is available through the Secretary of State's web site at <http://sos.mt.gov/ARM/Register>. The Secretary of State strives to make the electronic copy of this notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the Secretary of State works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

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 amendment of the above-referenced rules will not significantly and directly impact small businesses.

/s/ M. Jeff Hagener

M. Jeff Hagener

Director

Department of Fish, Wildlife and Parks

/s/ Aimee Fausser

Aimee Fausser

Rule Reviewer

Certified to the Secretary of State June 30, 2014.

BEFORE THE DEPARTMENT OF TRANSPORTATION
OF THE STATE OF MONTANA

In the matter of the repeal of ARM	)	NOTICE OF PROPOSED REPEAL
18.6.101, 18.6.102, 18.6.103,)	
18.6.111, 18.6.121, 18.6.131,	)	NO PUBLIC HEARING
18.6.141, 18.6.151 pertaining to	)	CONTEMPLATED
junkyard regulations)	

TO: All Concerned Persons

1. On August 10, 2014, the Department of Transportation proposes to repeal the above-stated rules.

2. The Department of Transportation 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 Transportation no later than 5:00 p.m. on July 31, 2014, to advise us of the nature of the accommodation that you need. Please contact Robert Stapley, Department of Transportation, Right-of-Way Bureau, P.O. Box 201001, Helena, Montana, 59620; telephone (406) 444-6063; fax (406) 444-7254; TTY (406) 444-7696 or 800-335-7592; or e-mail rostapley@mt.gov.

3. The department proposes to repeal the following rules:

18.6.101 GENERAL POLICY

AUTH: 75-15-204, 75-15-222, MCA
IMP: 75-15-204, 75-15-222, MCA

18.6.102 DEFINITIONS

AUTH: 75-15-204, 75-15-222, MCA
IMP: 75-15-204, 75-15-222, MCA

18.6.103 BASIC PROVISIONS

AUTH: 75-15-214, MCA
IMP: 75-15-214, MCA

18.6.111 NEW JUNKYARDS

AUTH: 75-15-214, 75-15-222, MCA
IMP: 75-15-214, 75-15-222, MCA

18.6.121 EXISTING JUNKYARDS

AUTH: 75-15-204, 75-15-222, MCA
IMP: 75-15-204, 75-15-222, MCA

18.6.131 LICENSES

AUTH: 75-15-214, MCA
IMP: 75-15-214, MCA

18.6.141 FENCING AND/OR SCREENING

AUTH: 75-15-222, MCA
IMP: 75-15-222, MCA

18.6.151 ENFORCEMENT

AUTH: 75-15-204, 75-15-205, 75-15-222, MCA
IMP: 75-15-204, 75-15-205, 75-15-222, MCA

REASON: The proposed rule repeal is necessary because the Montana Department of Transportation's biennial rule review identified this subchapter as archaic and no longer in use. The rules are duplicative of junkyard programs which already exist under Title 75, chapter 10, part 2 and Title 75, chapter 10, part 5, MCA, and local government regulation by cities and counties. Those existing programs meet the federal requirement, found at 23 CFR Section 751, for junkyard control.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to: Robert Stapley, Department of Transportation, Right-of-Way Bureau, P.O. Box 201001, Helena, Montana, 59620; telephone (406) 444-6063; fax (406) 444-7254; TTY (406) 444-7696 or 800-335-7592; or e-mail rostapley@mt.gov, and must be received no later than 5:00 p.m., August 7, 2014.

5. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to Robert Stapley at the above address no later than 5:00 p.m., August 7, 2014.

6. If the agency receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 18 persons based on 129 incorporated cities and 56 counties.

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 4 above or may be made by completing a request form at any rules hearing held by the department. An Administrative Rules Notice Interested Person's List request form is located at the Department of Transportation's web site at the following address:
http://www.mdt.mt.gov/publications/docs/forms/mdt-leg-003_interested-persons-list.pdf.

8. An electronic copy of this proposal notice is available through the Secretary of State's web site at <http://sos.mt.gov/ARM/Register>. The Secretary of State strives to make the electronic copy of this notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the Secretary of State works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

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 repeal of the above-referenced rules will not significantly and directly impact small businesses.

/s/ Carol Grell Morris
Carol Grell Morris
Rule Reviewer

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

Certified to the Secretary of State June 30, 2014.

BEFORE THE DEPARTMENT OF TRANSPORTATION
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF PROPOSED
ARM 18.8.202, 18.8.408, 18.8.509A,	)	AMENDMENT AND REPEAL
18.8.1301, 18.8.1401, 18.8.1505 and)	
the repeal of ARM 18.8.411,	)	NO PUBLIC HEARING
18.8.413, and 18.8.430 pertaining to	)	CONTEMPLATED
Motor Carrier Services housekeeping)	

TO: All Concerned Persons

1. On August 10, 2014, the Department of Transportation proposes to amend and repeal the above-stated rules.

2. The Department of Transportation 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 Transportation no later than 5:00 p.m. on July 31, 2014, to advise us of the nature of the accommodation that you need. Please contact Dan Moore, Department of Transportation, Motor Carrier Services Division, P.O. Box 201001, Helena, Montana, 59620-1001; telephone (406) 444-0454; fax (406) 444-6136; TTY Service (406) 444-7696 or (800) 335-7592; or e-mail dmoore@mt.gov.

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

18.8.202 MOTOR CARRIERS OPERATING INTERSTATE (1) and (2) remain the same.

(3) By reference, the department adopts the rules established by the UCR Board in accordance with 49 USC 14504 (2009), a copy of which may be found at the offices of the Montana Department of Transportation, Motor Carrier Services Division, 2701 Prospect, P.O. Box 4639, Helena, MT 59620-4639.

(4) By reference, the department adopts the rules of the Federal Motor Carriers Safety Administration codified as Title 49, Subtitle B, Chapter III, of the Code of Federal Regulations (2011), a copy of which may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

(5) remains the same

AUTH: 61-3-710, 61-10-155, MCA

IMP: 61-3-708, 61-3-711, 61-3-712, 61-3-713, 61-3-714, 61-3-715, 61-3-716, 61-3-717, 61-3-718, 61-3-719, 61-3-720, 61-3-721, 61-3-722, 61-3-723, 61-3-724, 61-3-725, 61-3-726, 61-3-727, 61-3-728, 61-3-729, 61-3-730, 61-3-731, 61-3-732, 61-3-733, MCA

REASON: The proposed amendment is necessary to establish the dates of adoption of the federal rules incorporated by reference in ARM 18.8.202. Under 2-4-307, MCA, a rule must establish a date for all rules incorporated by reference and may not adopt later amendments except through the rulemaking procedure.

18.8.408 TOW CARS/(WRECKERS) (1) G.V.W. fees paid on tow cars/
{wreckers} as defined in 61-8-905, MCA, shall be the 100% G.V.W. fee as shown in
section 61-10-201, MCA, schedule I.

(2) remains the same.

(3) All tow cars/{wreckers} are to display truck registration plates.

(4) Dealer plates are not valid on tow cars/{wreckers}.

AUTH: 61-10-155, ~~61-10-201~~, MCA

IMP: 61-10-201, MCA

REASON: The proposed rule changes are necessary to clarify the tow cars/wreckers rule, and to incorporate the statutory definition of commercial tow trucks into the rule. The proposed amendment will help avoid confusion as to the applicability of the rule to certain vehicles. The implementation statute is being deleted as an incorrect rule authority citation.

18.8.509A EMERGENCY TRAVEL AND EMERGENCY VEHICLES (1)
through (4) remain the same.

(5) A special permit shall be required when performing an emergency move
is made.

(6) The Motor Carrier Services Division administrator or designee may
exempt the following vehicles from restricted hours of operation in an emergency
situation:

(a) through (7) remain the same.

AUTH: 61-10-155, MCA; ~~This rule is advisory only but may be a correct
interpretation of the law. 61-10-155, MCA; IMPLIED, 61-10-121, 61-10-122, MCA;
61-10-129, 61-10-155, MCA~~

IMP: 61-10-101, 61-10-102, 61-10-103, 61-10-104, 61-10-106, 61-10-107, 61-10-
108, 61-10-109, 61-10-110, 61-10-113, 61-10-121, 61-10-122, 61-10-123, 61-10-
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141, 61-10-142, 61-10-143, 61-10-144, 61-10-145, 61-10-146, 61-10-147, 61-10-
148, MCA

REASON: The proposed rule change is necessary to clarify/clean up the language
with the intent of improving efficiencies associated with Motor Carrier Services'
management of emergency travel operations, including streamlining the approval
process. The proposed change will update the rule to reflect current practices which
allows greater flexibility for permit holders. The proposed amendment is also
necessary to delete the reference to the advisory nature of the rule. The department
has full rulemaking authority under 61-10-155, MCA, to adopt rules to implement

Title 61, chapter 10, MCA; thus the rule is not adopted under "implied" rulemaking authority, and the "advisory" designation is not appropriate under 2-4-308, MCA.

18.8.1301 COMPLIANCE WITH WEIGHING LOCATION SIGNS (1) remains the same.

(2) Drivers operating vehicles for carriers enrolled in electronic weigh station bypass programs may follow in-cab signals at equipped weigh station sites which signals shall indicate whether the vehicle must stop, subject to jurisdictional bypass restrictions.

(3) Under jurisdictional bypass restrictions, a driver receiving a green light in-cab signal must stop at the weighing location regardless of the signal when any of the following conditions apply:

- (a) overweight (including permitted loads);
 - (b) overwide (greater than nine feet);
 - (c) overheight (greater than 14 feet 6 inches).
- (2) remains the same but is renumbered (4).

AUTH: 61-10-155, MCA

IMP: 61-10-141, MCA

REASON: The proposed rule change is necessary to provide clarity for motor carriers enrolled in Montana electronic bypass programs. The department has provided weigh station bypass capabilities at select Montana weigh stations since 1997. Since that time, carriers with a safe operating record and who obtain the proper registration and fuel credentials are allowed to enroll in Montana's electronic bypass program, which may signal the vehicle to stop or bypass the weigh station, subject to jurisdictional bypass restrictions as set forth in the rule.

18.8.1401 QUALIFICATIONS AND TRAINING FOR M.C.S. PERSONNEL AS PEACE OFFICERS (1) remains the same.

(2) Each employee shall successfully complete any Montana ~~law enforcement academy~~ Law Enforcement Academy courses required by the ~~motor carrier services division~~ Motor Carrier Services Division.

(3) remains the same.

~~(4) An entry level officer must also successfully serve a probationary period of nine months.~~

~~(5)~~(4) Prior to making arrests as provided in 61-12-206, MCA, an employee must execute the prescribed code of ethics in ARM 23.13.203 and take an official oath of office.

~~(6) The employee must also take the official oath of office, which is filed with the secretary of state.~~

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

AUTH: 61-12-202, MCA

IMP: 61-12-201, 61-12-202, MCA

REASON: The proposed rule change to (4) is necessary because the requirement is contrary to state statute and is addressed through the MPEA agreement which has different probationary periods. Section (6) was combined with (5) to include the specific code of ethics required by the Public Safety Officer Standards of training council (POST). The practice of filing the oaths of office with the Secretary of State was discontinued several years ago.

18.8.1505 SAFETY INSPECTION PROGRAM: PURPOSE AND OUT-OF-SERVICE CRITERIA (1) remains the same.

(2) In addition to the federal regulations adopted in ARM 18.8.1502, the safety inspection program will follow Commercial Vehicle Safety Alliance (CVSA), North American Standard Out-of-Service Criteria (April 1, ~~2013~~ 2014), incorporated by reference. A copy of the North American Standard Out-of-Service Criteria may be obtained from the Commercial Vehicle Safety Alliance, 6303 Ivy Lane, Suite 310, Greenbelt, MD 20770-6319 or on the internet at www.cvsa.org.

(3) remains the same.

AUTH: 61-10-155, MCA

IMP: 61-10-154, MCA

REASON: The proposed rule change is necessary to adopt the most current Commercial Vehicle Safety Alliance (CVSA) North American Uniform "Out-of-Service" criteria. The CVSA North American out-of-service criteria is a standard used by all CVSA-certified safety inspectors in the U.S., Canada, and Mexico to inspect commercial vehicles and drivers.

4. The department proposes to repeal the following rules:

18.8.411 STATION WAGONS, SPORT UTILITY VEHICLES, AND VANS

AUTH: 61-10-155, MCA

IMP: 61-10-107, 61-10-201, MCA

REASON: The proposed rule repeal is necessary because the Montana Department of Transportation's biennial rule review under 2-4-314, MCA, identified this rule as archaic and no longer in use. GVW fees for these vehicle types are a flat fee based on weight being carried. Section 61-10-201, MCA, already sets fees for the vehicles listed in this rule, by categories of weight.

18.8.413 DEALER PLATES

AUTH: 61-10-155, MCA

IMP: 61-10-214, MCA

REASON: The proposed rule repeal is necessary because the language in this rule is already found at 61-10-214, MCA. Under 2-4-305, MCA, the rules may not unnecessarily repeat statutory language.

18.8.430 DETERMINING THE WEIGHT OF A TRAILER

AUTH: 61-10-155, MCA

IMP: 61-10-201, MCA

REASON: The proposed rule repeal is necessary because the Montana Department of Transportation's biennial rule review under 2-4-314, MCA, identified this rule as archaic and no longer in use. Previously, the GVW was paid on truck and trailer separately, now they are paid only on truck/towing unit. This procedure was changed in the 1993 legislative session.

5. Concerned persons may submit their data, views, or arguments concerning the proposed actions in writing to: Dan Moore, Department of Transportation, Motor Carrier Services Division, P.O. Box 201001, Helena, Montana, 59620-1001; telephone (406) 444-0454; fax (406) 444-6136; TTY Service (406) 444-7696 or (800) 335-7592; or e-mail dmoore@mt.gov. and must be received no later than 5:00 p.m., August 7, 2014.

6. If persons who are directly affected by the proposed actions wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to Dan Moore at the above address no later than 5:00 p.m., August 7, 2014.

7. If the agency receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 9,039 persons based on 90,390 permits issued in the 2013 calendar year.

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 5 above or may be made by completing a request form at any rules hearing held by the department. An Administrative Rules Notice Interested Person's List request form is located at the Department of Transportation's web site at the following address:
http://www.mdt.mt.gov/publications/docs/forms/mdt-leg-003_interested-persons-list.pdf.

9. An electronic copy of this proposal notice is available through the Secretary of State's web site at <http://sos.mt.gov/ARM/Register>. The Secretary of State strives to make the electronic copy of this notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the Secretary of State works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

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

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

/s/ Carol Grell Morris
Carol Grell Morris
Rule Reviewer

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

Certified to the Secretary of State June 30, 2014.

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

In the matter of the amendment of	)	NOTICE OF PUBLIC HEARING ON
ARM 24.156.508 approved residency,	)	AMENDMENT AND ADOPTION
24.156.606 examination, 24.156.607)	
graduate training requirements,)	
24.156.611 occasional case)	
exemption, 24.156.625, 24.156.1005,)	
24.156.1307, 24.156.1412,)	
24.156.1625, and 24.156.2705)	
unprofessional conduct, 24.156.1301)	
definitions, 24.156.1304 initial)	
license, 24.156.1306 professional)	
conduct and standards, 24.156.1620)	
physician assistant license renewal,)	
and the adoption of NEW RULE I)	
podiatry postgraduate training)	

TO: All Concerned Persons

1. On August 1, 2014, at 1:30 p.m., a public hearing will be held in the Large Conference Room, 301 South Park Avenue, 4th Floor, Helena, Montana, to consider the proposed amendment and adoption of the above-stated rules.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Medical Examiners (board) no later than 5:00 p.m., on July 25, 2014, to advise us of the nature of the accommodation that you need. Please contact Ian Marquand, Board of Medical Examiners, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2360; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; or dlibsmed@mt.gov (board's e-mail).

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

24.156.508 APPROVED RESIDENCY (1) and (1)(a) remain the same.
 (b) has been approved by the ~~American~~ Accreditation Council ~~on~~ for
 Graduate Medical Education or the American Osteopathic Association.
 (2) and (2)(a) remain the same.
 (b) carries malpractice insurance; and
~~(c) has been approved for certification by the American Board of Medical~~
Specialties;

~~(d) (c)~~ requires residents to have sufficient fluency in spoken and written English to practice medicine with reasonable skill and safety;₂

~~(e) has an internal examination process (if written examinations are conducted, the residency will provide the board with reports or access to examination results); and~~

~~(f) provides that residents are supervised by a mentor who:~~

~~(i) is a licensed physician; and~~

~~(ii) provides written evaluations and/or reports to the training program, and to the board upon request.~~

AUTH: 37-1-131, ~~37-3-202~~, 37-3-203, MCA

IMP: 37-3-102, 37-3-203, MCA

REASON: The board determined that it is reasonably necessary to amend this rule to accurately reflect the current environment of graduate medical education. The board discovered the incorrect or outdated provisions in early 2014 following review of a physician applicant's residency.

Authority citations are amended to accurately reflect the board's rulemaking authority.

24.156.606 EXAMINATION (1) remains the same.

(a) an M.D. or D.O. degree;₁ ~~and~~

(b) completion₇ or near completion₇ of one year of postgraduate training in a program of graduate medical education accredited by the Accreditation Council for Graduate Medical Education or the American Osteopathic Association;₂ ~~and~~

(c) remains the same.

(i) National Board of Medical Examiners examination ("NBME") Parts I and II, taken before January 1, 2000; or

(ii) Federation Licensing Examination ("FLEX") Component I, taken before January 1, 2000; or

(iii) USMLE Steps I and II;₁ and

(d) remains the same.

(2) USMLE Step III must be taken within seven years of the applicant's first examinations under (1)(c)₁ unless the applicant is or has been a student in a recognized M.D./Ph.D. program in a field of biological sciences tested in the Step I content. Applicants seeking an exception to the seven-year rule shall present a verifiable and rational explanation for being unable to meet the seven-year limit.

(3) If an applicant fails to obtain a score ~~or~~ of 75 or more in the first attempt at USMLE Step III, the applicant may be reexamined no more than ~~two~~ five additional times.

(4) remains the same.

(a) NBME Parts I, II₁ and III; or

(b) through (e) remain the same.

(5) For exams taken after January 1, 2000, the board will accept only USMLE Steps 1, 2₁ and 3, passed with a score of 75 or more for each step.

(6) remains the same.

AUTH: 37-3-203, MCA

IMP: 37-3-306, 37-3-307, 37-3-308, 37-3-311, MCA

REASON: After learning that the current limit on reexaminations for the United States Medical Licensing Examination (USMLE) Step III is out-of-date with the USMLE's own rules, the board is amending this rule to increase the number of allowed reexaminations from two to five to match USMLE rules.

24.156.607 GRADUATE TRAINING REQUIREMENTS FOR FOREIGN MEDICAL GRADUATES (1) remains the same.

(a) the graduate has had three years of postgraduate training education in a postgraduate institution that has been approved by the ~~Council on Medical Education of the American Medical Association~~ Accreditation Council for Graduate Medical Education or the American Osteopathic Association or successors; or

(b) the graduate has had three years of postgraduate training education in a program approved by or affiliated with the World Health Organization and has sufficient fluency in spoken and written English to practice medicine with reasonable skill and safety; or

~~(b)~~ (c) the graduate has been granted board certification ~~board certification~~ by a specialty board which is approved by, and a member of, the American Board of Medical Specialties or the American Osteopathic Association, or provides verification of being a certificant of the College of Family Physicians of Canada, a fellow of the Royal College of Physicians, or a fellow of the Royal College of Surgeons.

AUTH: 37-3-203, MCA

IMP: 37-3-305, MCA

REASON: The board has determined that this rule is out of date and incomplete regarding organizations that approve graduate training programs. The board is amending this rule to accurately reflect current programs.

24.156.611 OCCASIONAL CASE EXEMPTION (1) remains the same.

(a) ~~submits a written request~~ an application to the board, describing the date, place, and the scope of practice and/or the procedure to be performed, and a statement detailing the need for the physician's expertise in Montana, at least 15 days prior to such service;

(b) through (d) remain the same.

(2) An occasional case is defined as not more than two cases per year. A single case may include rendering medical services to multiple patients on no more than five consecutive or nonconsecutive days.

(3) An occasional case exemption is valid for two months from the date of issuance.

AUTH: 37-3-203, MCA

IMP: 37-3-103, MCA

REASON: After staff noticed confusion among Montana hospitals about what constitutes a written request, the board is amending (1)(a) to require information on a standardized, board-approved application form and help eliminate the confusion. To document that hospitals bring specialists in for certain procedures because no licensed physician in Montana has the required expertise, the board is proposing to require a statement as to why an unlicensed physician is needed to perform services under an exemption. Lastly, the board is removing the 15-day advance notice requirement in response to hospitals stating that the requirement is not feasible and because the board has previously granted exemptions outside the time frame.

The board determined it is reasonably necessary to implement a more limited time frame for the occasional licensure exemptions. Concerned that the definition of "case" is overly vague and open to abuse, and to clarify the board's conclusion that an occasional case may go beyond single cases, the board is amending (2) and (3). The board concluded the amendments will also address questions on specialists treating patients for a full year, and using an exemption to keep unlicensed specialists "on call" whether or not an immediate need for services exists.

24.156.625 UNPROFESSIONAL CONDUCT (1) and (1)(a) remain the same.

(b) fraud, misrepresentation, deception, or concealment of a material fact in applying for or securing a license, or license renewal, or in taking an examination required for licensure; ~~as~~ As used herein, "material" means any false or misleading statement or information;

(c) conduct likely to deceive, defraud, or harm the public;

(d) remains the same.

(e) resorting to fraud, misrepresentation, or deception in the examination or treatment of a person; or in billing, giving, or receiving a fee related to professional services; or reporting to a person, company, institution, or organization, including fraud, misrepresentation, or deception with regard to a claim for benefits under Title 39, chapter 71 or 72, MCA;

(f) use of a false, fraudulent, or deceptive statement in any document connected with the practice of medicine;

(g) having been subject to disciplinary action of another state or jurisdiction against a license or other authorization to practice medicine, based upon acts or conduct by the licensee similar to acts or conduct that would constitute grounds for disciplinary action under Title 37, chapter 3, MCA, or these rules; ~~a~~ A certified copy of the record of the action taken by the other state or jurisdiction is evidence of unprofessional conduct;

(h) willful disobedience of a rule adopted by the board, or an order of the board, regarding evaluation or enforcement of discipline of a licensee;

(i) habitual intemperance or excessive use of an addictive drug, alcohol, or any other substance to the extent that the use impairs the user physically or mentally;

(j) and (k) remain the same.

(l) failing to report to the board any adverse judgment, settlement, or award arising from a medical liability claim or other unprofessional conduct;

(m) obtaining a fee or other compensation, either directly or indirectly, by the misrepresentation that a manifestly incurable disease, injury, or condition of a person can be cured;

(n) remains the same.

(o) commission of an act of sexual abuse, sexual misconduct, or sexual exploitation, whether or not related to the licensee's practice of medicine. The use of or the failure to use a chaperone for patient encounters in which the potential for sexual exploitation exists shall be considered in evaluating complaints of sexual exploitation related to the licensee's practice of medicine;

(p) administering, dispensing, prescribing, or ordering a controlled substance, as defined by the federal Food and Drug Administration or successors, otherwise than in the course of legitimate or reputable professional practice;

(q) conviction or violation of a federal or state law regulating the possession, distribution, or use of a controlled substance, as defined by the federal Food and Drug Administration or successors, whether or not an appeal is pending;

(r) remains the same.

(s) conspiring to misrepresent or willfully misrepresenting medical conditions improperly to increase or decrease a settlement, award, verdict, or judgment;

(t) except as provided in this subsection, practicing medicine as the partner, agent, or employee of, or in joint venture with, a person who does not hold a license to practice medicine within this state; however, this does not prohibit:

(i) and (ii) remain the same.

(iii) the organization of a professional limited liability company under Title 35, chapter 8, MCA, for the providing of professional services as defined in Title 35, chapter 8, MCA; or

(iv) practicing medicine as the partner, agent, or employee of, or in joint venture with, a hospital, medical assistance facility, or other licensed health care provider; however,

(A) the partnership, agency, employment, or joint venture must be evidenced by a written agreement containing language to the effect that the relationship created by the agreement may not affect the exercise of the physician's independent judgment in the practice of medicine; and

(B) the physician's independent judgment in the practice of medicine must in fact be unaffected by the relationship; and

(C) remains the same.

(u) failing to transfer pertinent and necessary medical records to another licensed health care provider, the patient, or the patient's representative when requested to do so by the patient or the patient's legally designated representative; or failing to make appropriate arrangements to transfer or secure patient medical records when closing or selling a practice;

~~(v)~~ (ad) any other act, whether specifically enumerated or not, that in fact constitutes unprofessional conduct;

~~(w)~~ (v) failing to comply with an agreement the licensee has entered into with the program established by the board under 37-3-203(4), MCA;

~~(x)~~ (w) failing, as a medical director, to supervise, appropriately direct, and train emergency medical technicians (EMTs) practicing under the licensee's supervision, according to scope of practice and current board-approved USDOT

curriculum standards, including revisions and board-approved statewide protocols for patient care;

~~(y)~~ (x) failing to supervise, manage, appropriately delegate, and train medical assistants under the licensee's supervision, according to scope of practice and generally accepted standards of practice;

~~(z)~~ (y) failing to supervise, appropriately delegate, and train physician assistants-certified practicing under the licensee's supervision, according to board-approved utilization plans, scope of practice, and generally accepted standards of practice;

~~(aa)~~ (z) failing to supervise and appropriately train residents, as defined in 37-3-305, MCA, practicing under the licensee's supervision, according to scope of practice and generally accepted standards of practice; ~~or~~

~~(ab)~~ (aa) having voluntarily relinquished or surrendered a license or privileges, or having withdrawn an application for licensure or privileges, while under investigation or prior to the granting or denial of an application in this state, or in another state or jurisdiction;

(ab) terminating an existing relationship with a patient, for whatever reason, without verifiable written notice prior to terminating the relationship, and sufficiently far in advance to allow other medical care to be secured;

(ac) failing to place patient medical records in a secure location preceding, during, or following a change in a practice location; or termination of a patient relationship or a medical practice; or knowingly breaching the confidentiality of patient medical records with an individual unauthorized to receive medical records;
or

AUTH: 37-1-319, 37-3-203, MCA

IMP: 37-1-131, 37-3-202, 37-3-305, 37-3-309, 37-3-323, MCA

REASON: Following advisement by department and legal staff, the board directed staff to draft rule language to address chaperone use, patient abandonment, and protection of medical records, conduct that was previously included in board position papers and advisories that were rescinded in fall of 2013. The board is now amending all unprofessional conduct rules to clearly establish in rule the board's intent that such conduct is unprofessional and subject to licensure discipline.

The board is amending the rule throughout to update punctuation and grammar in compliance with the ARM formatting rules of the Montana Secretary of State.

24.156.1005 UNPROFESSIONAL CONDUCT (1) In addition to those forms of unprofessional conduct defined in 37-1-316, MCA, the following is unprofessional conduct for a licensee or license applicant under Title 37, chapter 6, MCA:

~~(1)~~ (a) Conviction conviction, including conviction following a plea of nolo contendere, of an offense involving moral turpitude, whether misdemeanor or felony, and whether or not an appeal is pending;

~~(2)~~ (b) Fraud fraud, misrepresentation, deception, or concealment of a material fact in applying for or securing a license, or license renewal, or in taking an

examination required for licensure; ~~as.~~ As used herein, "material" means any false or misleading statement or information;

(3) ~~(c)~~ Conduct conduct likely to deceive, defraud, or harm the public;

(4) ~~(d)~~ Making making a false or misleading statement regarding the licensee's skill or the effectiveness or value of the medicine, treatment, or remedy prescribed by the licensee or at the licensee's direction in the treatment of a disease or other condition of the body or mind;

(5) ~~(e)~~ Resorting resorting to fraud, misrepresentation, or deception in the examination or treatment of a person; or in billing, giving, or receiving a fee related to professional services; or reporting to a person, company, institution, or organization, including fraud, misrepresentation, or deception with regard to a claim for benefits under Title 39, chapter 71 or 72, MCA;

(6) ~~(f)~~ Use use of a false, fraudulent, or deceptive statement in any document connected with the practice of podiatric medicine;

(7) ~~(g)~~ Having having been subject to disciplinary action of another state or jurisdiction against a license or other authorization to practice podiatric medicine, based upon acts or conduct by the licensee, similar to acts or conduct that would constitute grounds for disciplinary action under Title 37, chapter 6, MCA, or these rules; ~~a.~~ A certified copy of the record of the action taken by the other state or jurisdiction is evidence of unprofessional conduct;

(8) ~~(h)~~ Willful willful disobedience of a rule adopted by the board, or an order of the board regarding evaluation or enforcement of discipline of a licensee;

(9) ~~(i)~~ Habitual habitual intemperance or excessive use of an addictive drug, alcohol, or any other substance to the extent that the use impairs the user physically or mentally;

(10) ~~(j)~~ Failing failing to furnish to the board or its investigators or representatives information legally requested by the board;

(11) ~~(k)~~ Failing failing to cooperate with a lawful investigation conducted by the board;

(12) ~~(l)~~ Failing failing to report to the board any adverse judgment, settlement, or award arising from a medical liability claim or other unprofessional conduct;

(13) ~~(m)~~ Obtaining obtaining a fee or other compensation, either directly or indirectly, by the misrepresentation that a manifestly incurable disease, injury, or condition of a person can be cured;

(14) ~~(n)~~ Abusive abusive billing practices;

(15) ~~(o)~~ Commission commission of an act of sexual abuse, misconduct, or exploitation related to the licensee's practice of podiatric medicine. The use of or the failure to use a chaperone for patient encounters in which the potential for sexual exploitation exists shall be considered in evaluating complaints of sexual exploitation related to the licensee's practice of podiatric medicine;

(16) ~~(p)~~ Administering administering, dispensing, prescribing, or ordering a controlled substance, as defined by the federal Food and Drug Administration or successors, otherwise than in the course of legitimate or reputable professional practice;

(17) ~~(q)~~ Conviction conviction or violation of a federal or state law regulating the possession, distribution, or use of a controlled substance, as defined by the

federal Food and Drug Administration or successors, whether or not an appeal is pending;

~~(18)~~ (r) ~~Testifying~~ testifying in court on a contingency basis;

~~(19)~~ (s) ~~Conspiring~~ conspiring to misrepresent or willfully misrepresenting medical conditions improperly to increase or decrease a settlement, award, verdict, or judgment;

~~(20)~~ (t) ~~Except~~ except as provided in this subsection, practicing podiatric medicine as the partner, agent, or employee of, or in joint venture with, a person who does not hold a license to practice podiatric medicine within this state; however, this does not prohibit:

(a) and (b) remain the same, but are renumbered (i) and (ii).

~~(e)~~ (iii) practicing podiatric medicine as the partner, agent, or employee of, or in joint venture with, a hospital, medical assistance facility, or other licensed health care provider; however,

(i) through (iii) remain the same, but are renumbered (A) through (C).

~~(21)~~ (u) ~~Failing~~ failing to transfer pertinent and necessary medical records to another licensed health care provider, the patient, or the patient's representative when requested to do so by the patient or the patient's legally designated representative;

(v) terminating an existing relationship with a patient, for whatever reason, without verifiable written notice prior to terminating the relationship, and sufficiently far in advance to allow other medical care to be secured;

(w) failing to place patient medical records in a secure location preceding, during, or following a change in practice location or termination of a patient relationship or a podiatric medical practice; or knowingly breaching confidentiality of patient medical records with an individual unauthorized to receive medical records;
or

~~(22)~~ (x) ~~Any~~ any other act, whether specifically enumerated or not, that in fact constitutes unprofessional conduct.

AUTH: 37-1-319, 37-6-106, MCA

IMP: 37-6-311, MCA

REASON: Please see the reasonable necessity statement for ARM 24.156.625.

The board is amending punctuation and grammar throughout to comply with ARM formatting rules of the Montana Secretary of State.

24.156.1301 DEFINITIONS (1) remains the same.

(2) "~~Association~~ Academy" means the ~~American Dietetic Association~~ Academy of Nutrition and Dietetics or its successor.

(3) remains the same.

(4) "Standards of dietetic practice" means ~~American Dietetic Association~~ the Academy of Nutrition and Dietetics Standards of Practice and Standards of Professional Performance for Registered Dietitians.

(5) Further, for the purpose of this subchapter, the definitions contained in subchapter ~~5~~ five of the administrative rules of the Montana State Board of Medical Examiners apply.

AUTH: 37-1-131, 37-25-201, MCA
IMP: 37-25-201, 37-25-302, MCA

REASON: The board is amending this rule to reflect that the American Dietetic Association is now known as the Academy of Nutrition and Dietetics.

24.156.1304 INITIAL LICENSE (1) and (1)(a) remain the same.

(b) the initial license fee; and

(c) a copy of the registration by the commission;

~~(d) a copy of the diploma or a complete transcript from an accredited college or university in the field of dietetics, food and nutrition or public health;~~

~~(e) a recent photograph, taken within one year of application.~~

AUTH: 37-1-131, 37-25-201, MCA
IMP: 37-25-302, MCA

REASON: The board has determined that the requirement in (1)(c) for registry by the Commission for Dietary Registration is sufficient to verify the educational credentials of nutritionist license applicants. The board has determined that a photograph is no longer necessary for applications since it is not needed for identification, and forces applicants to spend additional time and money to obtain and submit them. Additionally, all application documents are scanned and maintained electronically, which renders photographs nearly unrecognizable.

24.156.1306 PROFESSIONAL CONDUCT AND STANDARDS OF PROFESSIONAL PRACTICE (1) remains the same.

(2) A licensee who demonstrates appropriate education and experience may engage in the practice of diabetes education as defined and credentialed by the ~~American Dietetic Association~~ Academy and the American Association of Diabetes Educators.

(3) remains the same.

AUTH: 37-1-131, 37-25-201, MCA
IMP: 37-25-201, 37-25-301, MCA

REASON: In conjunction with the proposed change to ARM 24.156.1301, the board is amending this rule to correct a reference to the American Dietetic Association to the "Academy."

24.156.1307 UNPROFESSIONAL CONDUCT (1) In addition to those forms of unprofessional conduct defined in 37-1-316, MCA, the following is unprofessional conduct for a licensee or license applicant under Title 37, chapter 25, MCA:

~~(1) (a) Conviction~~ conviction, including conviction following a plea of nolo contendere, of an offense involving moral turpitude whether misdemeanor or felony, and whether or not an appeal is pending;

(2) ~~(b)~~ Fraud ~~fraud~~, misrepresentation, deception, or concealment of a material fact in applying for or securing a license, or license renewal, or in taking an examination required for licensure; ~~as.~~ As used herein, "material" means any false or misleading statement or information;

~~(3)~~ ~~(c)~~ Conduct ~~conduct~~ likely to deceive, defraud, or harm the public;

~~(4)~~ ~~(d)~~ Making ~~making~~ a false or misleading statement regarding the licensee's skill or the effectiveness or value of the treatment, or remedy prescribed by the licensee, or at the licensee's direction in the treatment of a disease or other condition of the body or mind;

~~(5)~~ ~~(e)~~ Resorting ~~resorting~~ to fraud, misrepresentation, or deception in the examination or treatment of a person; or in billing, giving, or receiving a fee related to professional services; or reporting to a person, company, institution, or organization, including fraud, misrepresentation, or deception with regard to a claim for benefits under Title 39, chapter 71 or 72, MCA;

~~(6)~~ ~~(f)~~ Use ~~use~~ of a false, fraudulent, or deceptive statement in any document connected with the practice of dietetics-nutrition;

~~(7)~~ ~~(g)~~ Having ~~having~~ been subject to disciplinary action of another state or jurisdiction against a license or other authorization to practice dietetics-nutrition, based upon acts or conduct by the licensee similar to acts or conduct that would constitute grounds for disciplinary action under Title 37, chapter 25, MCA, or these rules; a. A certified copy of the record of the action taken by the other state or jurisdiction is evidence of unprofessional conduct;

~~(8)~~ ~~(h)~~ Willful ~~willful~~ disobedience of a rule adopted by the board, or an order of the board regarding enforcement of discipline of a licensee;

~~(9)~~ ~~(i)~~ Habitual ~~habitual~~ intemperance or excessive use of an addictive drug, alcohol, or any other substance to the extent that the use impairs the user physically or mentally;

~~(10)~~ ~~(j)~~ Failing ~~failing~~ to furnish to the board or its investigators or representatives information legally requested by the board;

~~(11)~~ ~~(k)~~ Failing ~~failing~~ to cooperate with a lawful investigation conducted by the board;

~~(12)~~ ~~(l)~~ Failing ~~failing~~ to report to the board any adverse judgment, settlement, or award arising from a medical liability claim or other unprofessional conduct;

~~(13)~~ ~~(m)~~ Obtaining ~~obtaining~~ a fee or other compensation, either directly or indirectly, by the misrepresentation that a manifestly incurable disease, injury, or condition of a person can be cured;

~~(14)~~ ~~(n)~~ Abusive ~~abusive~~ billing practices;

~~(15)~~ ~~(o)~~ Commission ~~commission~~ of an act of sexual abuse, misconduct, or exploitation related to the licensee's practice of dietetics-nutrition. The use of or the failure to use a chaperone for patient encounters in which the potential for sexual exploitation exists shall be considered in evaluating complaints of sexual exploitation related to the licensee's practice of dietetics-nutrition;

~~(16)~~ ~~(p)~~ Conviction ~~conviction~~ or violation of a federal or state law regulating the possession, distribution, or use of any drug or any controlled substance, as defined by the federal Food and Drug Administration or successors, whether or not an appeal is pending;

- ~~(17)~~ (g) ~~Testifying~~ testifying in court on a contingency basis;
- ~~(18)~~ (r) ~~Conspiring~~ conspiring to misrepresent or willfully misrepresenting medical conditions improperly to increase or decrease a settlement, award, verdict, or judgment;
- ~~(19)~~ (s) ~~Except~~ except as provided in this subsection, practicing dietetics-nutrition as the partner, agent, or employee of, or in joint venture with, a person who does not hold a license to practice dietetics-nutrition within this state; however, this does not prohibit:
 - (a) and (b) remain the same, but are renumbered (i) and (ii).
 - ~~(e)~~ (iii) practicing dietetics-nutrition as the partner, agent, or employee of, or in joint venture with, a hospital, medical assistance facility, or other licensed health care provider; however,
 - ~~(i)~~ (A) the partnership, agency, employment, or joint venture must be evidenced by a written agreement containing language to the effect that the relationship created by the agreement may not affect the exercise of the nutritionist's independent judgment in the practice of dietetics-nutrition; and
 - ~~(ii)~~ (B) the nutritionist's independent judgment in the practice of dietetics-nutrition must in fact be unaffected by the relationship; and
 - (iii) remains the same, but is renumbered (C).
- ~~(20)~~ (t) ~~Failing~~ failing to transfer pertinent and necessary patient records to another licensed health care provider, the patient, or the patient's representative when requested to do so by the patient or the patient's legally designated representative;
- ~~(21)~~ (u) ~~Practicing~~ practicing dietetics-nutrition as a registered or licensed nutritionist in this state without a current active Montana license; such unlicensed practice shall be grounds for denial of a license to that individual if the application is made subsequent to such conduct;
 - (v) terminating an existing relationship with a patient, for whatever reason, without verifiable written notice prior to terminating the relationship, and sufficiently far in advance to allow other dietetics-nutrition care to be secured;
 - (w) failing to place patient health records in a secure location preceding, during, or following a change in practice location or termination of a patient relationship or a dietetics-nutrition practice; or knowingly breaching confidentiality of patient health records with an individual unauthorized to receive health records; or
- ~~(22)~~ (x) ~~Any~~ any other act, whether specifically enumerated or not, that in fact constitutes unprofessional conduct.

AUTH: 37-1-319, 37-25-201, MCA
IMP: 37-25-308, MCA

REASON: Please see the reasonable necessity statement for ARM 24.156.625.

The board is amending punctuation and grammar throughout to comply with ARM formatting rules of the Montana Secretary of State.

24.156.1412 UNPROFESSIONAL CONDUCT (1) In addition to those forms of unprofessional conduct defined in 37-1-316, MCA, the following is unprofessional conduct for a licensee or license applicant under Title 37, chapter 13, MCA:

- (a) ~~Failure~~ failure to maintain professional boundaries in relationships with patients, or in any way exploiting the practitioner/patient trust;
- (b) ~~Engaging~~ engaging in sexual contact with a current patient if the contact commences after the practitioner/patient relationship is established;
- (c) ~~Engaging~~ engaging in sexual contact with a former patient, unless a reasonable period of time has elapsed since the professional relationship ended and unless the sexual contact does not exploit the trust established during the professional relationship;
- (d) ~~Failure~~ failure to utilize clean needle technique, as required by the National Commission for the Certification of Acupuncture and Oriental Medicine, or its successor;
- (e) ~~Conduct~~ conduct likely to deceive, defraud, or harm the public;
- (f) ~~Making~~ making a false or misleading statement regarding the licensee's skill or the effectiveness or value of the medicine, treatment, or remedy prescribed by the licensee or at the licensee's direction, in the treatment of a disease or other condition of the body or mind;
- (g) ~~Resorting~~ resorting to fraud, misrepresentation, or deception in the examination or treatment of a person; or in billing, giving, or receiving a fee related to professional services; or reporting to a person, company, institution, or organization, including fraud, misrepresentation, or deception with regard to a claim for benefits under Title 39, chapter 71 or 72, MCA;
- (h) ~~Use~~ use of a false, fraudulent, or deceptive statement in any document connected with the practice of acupuncture;
- (i) ~~Having~~ having been subject to disciplinary action of another state or jurisdiction against a license or other authorization to practice acupuncture, based upon acts or conduct by the licensee similar to acts or conduct that would constitute grounds for disciplinary action under Title 37, chapter 13, MCA, or these rules; ~~a. A~~ A certified copy of the record of the action taken by the other state or jurisdiction is evidence of unprofessional conduct;
- (j) ~~Willful~~ willful disobedience of a rule adopted by the board, or an order of the board regarding enforcement of discipline of a licensee;
- (k) ~~Failing~~ failing to furnish to the board or its investigators or representatives information legally requested by the board;
- (l) ~~Failing~~ failing to cooperate with a lawful investigation conducted by the board;
- (m) ~~Obtaining~~ obtaining a fee or other compensation, either directly or indirectly, by the misrepresentation that a manifestly incurable disease, injury, or condition of a person can be cured;
- (n) ~~Abusive~~ abusive billing practices;
- (o) ~~Testifying~~ testifying in court on a contingency basis;
- (p) ~~Conspiring~~ conspiring to misrepresent or willfully misrepresenting a medical condition improperly to increase or decrease a settlement, award, verdict, or judgment;
- (q) ~~Except~~ except as provided in this subsection, practicing acupuncture as the partner, agent, or employee of, or in joint venture with, a person who does not hold a license to practice acupuncture within this state; however, this does not prohibit:

(i) through (iii) remain the same.

(r) ~~Failing~~ failing to transfer pertinent and necessary patient records to another licensed health care provider, the patient, or the patient's representative when requested to do so by the patient or the patient's legally designated representative;

(s) ~~Misrepresenting~~ misrepresenting professional credentials (i.e., education, training, experience, level of competence, skills, and/or certification status);

(t) ~~Engaging~~ engaging in conduct that demonstrates a lack of knowledge of, or lack of ability in, or failure to apply the prevailing principles and/or skills of the profession in which the individual has been certified; ~~and~~

(u) terminating an existing relationship with a patient, for whatever reason, without verifiable written notice prior to terminating the relationship, and sufficiently far in advance to allow other medical care to be secured;

(v) failing to place patient medical records in a secure location preceding, during, or following a change in practice location or termination of a patient relationship or an acupuncture practice; or knowingly breaching confidentiality of patient medical records with an individual unauthorized to receive medical records;
or

~~(u)~~ (w) Any any other act, whether specifically enumerated or not, that in fact constitutes unprofessional conduct.

AUTH: 37-1-134, 37-1-136, 37-1-319, 37-13-201, MCA

IMP: 37-1-308, 37-1-309, 37-1-310, 37-1-311, 37-1-312, 37-1-316, 37-1-319, 37-13-201, MCA

REASON: Please see the reasonable necessity statement for ARM 24.156.625.

The board is amending punctuation and grammar throughout to comply with ARM formatting rules of the Montana Secretary of State.

24.156.1620 PHYSICIAN ASSISTANT LICENSE RENEWAL (1) through (2)(a) remain the same.

~~(b) affirm that the physician assistant possesses a current National Commission on the Certification of Physician Assistants (NCCPA) certification;~~

(c) through (e) remain the same, but are renumbered (b) through (d).

(3) Inactive licensees shall comply with (2)(a), (b), (c), and (d), ~~and (e)~~ of this rule to renew an inactive license.

(4) remains the same.

~~(5) The board shall conduct a random audit of NCCPA certification following each renewal period.~~

AUTH: 37-1-131, 37-20-202, MCA

IMP: 37-1-141, 37-20-203, 37-20-302, 37-20-402, MCA

REASON: Following questions from a licensed physician assistant, the board concluded that failing NCCPA recertification has no impact on licensure. The board further determined that requiring recertification only at renewal has no meaning and notes that no other board licensee must prove national private sector certification at

renewal. The board is amending this rule accordingly, and will seek to remove the certification requirement from statute as well. Because the board is deleting the NCCPA certification, it is reasonably necessary to strike the requirement for the board to audit such certification.

24.156.1625 UNPROFESSIONAL CONDUCT (1) remains the same.

(a) conviction, including conviction following a plea of nolo contendere, of an offense involving moral turpitude, whether misdemeanor or felony, and whether or not an appeal is pending;

(b) conduct likely to deceive, defraud, or harm the public, including, but not limited to, practicing while subject to a physical or mental condition which renders the licensee unable to safely engage in the practice of medicine;

(c) remains the same.

(d) resorting to fraud, misrepresentation, or deception in the examination or treatment of a person; or in billing, giving, or receiving a fee related to professional services; or reporting to a person, company, institution, or organization, including fraud, misrepresentation, or deception with regard to a claim for benefits under Title 39, chapter 71 or 72, MCA;

(e) violation of any section in Title 37, chapter 20, MCA, and/or any rule adopted by the board to implement Title 37, chapters 1 or 20, MCA, any order of the board regarding enforcement of discipline of a licensee, or any term, condition, or limitation imposed on the licensee in a utilization plan;

(f) through (h) remain the same.

(i) failing to report to the board any adverse judgment, settlement, or award arising from a medical liability claim or other unprofessional conduct;

(j) remains the same.

(k) commission of an act of sexual abuse, misconduct, or exploitation related to the licensee's practice of medicine. The use of or the failure to use a chaperone for patient encounters in which the potential for sexual exploitation exists shall be considered in evaluating complaints of sexual exploitation related to the licensee's practice of medicine;

(l) through (p)(iii) remain the same.

(A) the partnership, agency, employment, or joint venture must be evidenced by a written agreement containing language to the effect that the relationship created by the agreement may not affect the exercise of the physician's independent judgment in the practice of medicine; and

(B) the physician's independent judgment in the practice of medicine must in fact be unaffected by the relationship; and

(C) remains the same.

(q) failing to transfer pertinent and necessary medical records to another licensed health care provider, the patient, or the patient's representative when requested to do so by the patient or the patient's legally designated representative, in accordance with Title 50, chapter 16, MCA;

(r) promoting the sale of services, goods, appliances, or drugs in such a manner as to exploit the patient for the financial gain of the licensee or a third party;

(s) through (z) remain the same.

- (aa) commission of any act of sexual abuse, misconduct, or exploitation by the licensee, whether or not related to the practice;
- (ab) through (ad) remain the same.
- (ae) failing to submit to the board a completed supervision agreement prior to commencing physician assistant practice in the state of Montana;
- (af) and (ag) remain the same.

AUTH: 37-1-319, 37-20-202, MCA

IMP: 37-1-319, 37-3-202, 37-20-403, MCA

REASON: Please see the reasonable necessity statement for ARM 24.156.625.

The board is amending punctuation and grammar throughout to comply with ARM formatting rules of the Montana Secretary of State.

24.156.2705 UNPROFESSIONAL CONDUCT (1) through (1)(r) remain the same.

(s) commission of any act of sexual abuse, misconduct, or exploitation by the licensee whether or not related to the practice. The use of or the failure to use a chaperone for patient encounters in which the potential for sexual exploitation exists shall be considered in evaluating complaints of sexual exploitation related to the licensee's practice;

(t) through (ac) remain the same.

AUTH: 50-6-203, MCA

IMP: 37-1-131, 50-6-203, MCA

REASON: Please see the reasonable necessity statement for ARM 24.156.625.

The board is amending punctuation and grammar throughout to comply with ARM formatting rules of the Montana Secretary of State.

4. The proposed new rule provides as follows:

NEW RULE I PODIATRY POSTGRADUATE TRAINING (1) "Equivalent experience or training" per 37-6-302(2)(c), MCA, means:

(a) successful completion of a 12-month preceptorship in a jurisdiction that statutorily authorizes preceptorships and sets standards in rule for preceptor clinical affiliation, scope of preceptor practice, and standards for review and completion of the program;

(b) a minimum of three years of active clinical practice in another jurisdiction or in the armed forces with licensing standards substantially equivalent to or greater than the standards in this state;

(c) completion of at least one year of postdoctoral fellowship training;

(d) a minimum of two years of full-time teaching in a college of podiatric medicine subsequent to receipt of the degree of doctor of podiatric medicine; or

(e) successful evaluation of clinical competency in a program approved by the board prior to initiation of evaluation.

AUTH: 37-3-203, 37-6-106, MCA
IMP: 37-6-302, MCA

REASON: The board determined it is reasonably necessary to adopt this new rule to address inquiries to the board about residencies or remedial education for podiatrists who have not completed the required one year of postgraduate training. The board currently has no rule addressing this subject and is proposing this rule to clearly describe the board's intent regarding this equivalent experience and training.

5. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Board of Medical Examiners, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or e-mail to dlibsmed@mt.gov, and must be received no later than 5:00 p.m., August 8, 2014.

6. An electronic copy of this notice of public hearing is available at www.medicalboard.mt.gov (department and board's web site). The department strives to make the electronic copy of this notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems, and that technical difficulties in accessing or posting to the e-mail address do not excuse late submission of comments.

7. The board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this board. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding all board administrative rulemaking proceedings or other administrative proceedings. The request must indicate whether e-mail or standard mail is preferred. Such written request may be sent or delivered to the Board of Medical Examiners, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; faxed to the office at (406) 841-2305; e-mailed to dlibsmed@mt.gov; or 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, do not apply.

9. With regard to the requirements of 2-4-111, MCA, the board has determined that the amendment of ARM 24.156.1620 will significantly and directly impact small businesses.

With regard to the requirements of 2-4-111, MCA, the board has determined that the amendment of ARM 24.156.508, 24.156.606, 24.156.607, 24.156.611, 24.156.625, 24.156.1005, 24.156.1301, 24.156.1304, 24.156.1306, 24.156.1307,

24.156.1412, 24.156.1625, and 24.156.2705 will not significantly and directly impact small businesses.

With regard to the requirements of 2-4-111, MCA, the board has determined that the adoption of NEW RULE I will significantly and directly impact small businesses.

Documentation of the board's above-stated determinations is available upon request to the Board of Medical Examiners, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or e-mail to dlibsmed@mt.gov.

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

BOARD OF MEDICAL EXAMINERS
MARY ANNE GUGGENHEIM, PHYS,
PRESIDENT

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

/s/ PAM BUCY
Pam Bucy, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State June 30, 2014

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 37.86.3006, 37.87.102,	)	PROPOSED AMENDMENT AND
37.87.903, 37.87.1013, and	)	REPEAL
37.87.1223, and the repeal of ARM)	
37.87.303 pertaining to the revision of)	
the rules for serious emotional)	
disturbance for youth, mental health)	
outpatient partial hospital services,)	
and Medicaid mental health)	
authorization requirements)	

TO: All Concerned Persons

1. On July 30, 2014, at 10:00 a.m., the Department of Public Health and Human Services will hold a public hearing in the auditorium of the Department of Public Health and Human Services Building, 111 North Sanders, Helena, Montana, to consider the proposed amendment and repeal of the above-stated rules.

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 Department of Public Health and Human Services no later than 5:00 p.m. on July 23, 2014, to advise us of the nature of the accommodation that you need. Please contact Kenneth Mordan, 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.

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

37.86.3006 MENTAL HEALTH OUTPATIENT PARTIAL HOSPITAL SERVICES, REQUIREMENTS (1) Medicaid reimbursement is not available for outpatient partial hospitalization services unless ~~the provider submits to the department or its designee in accordance with these rules a complete and accurate Certificate of Need, certifying that:~~

(a) the ~~recipient~~ person is experiencing psychiatric symptoms of sufficient severity to create severe impairments in educational, social, vocational, ~~and/or~~ interpersonal functioning;

(b) the ~~recipient~~ person cannot be safely and appropriately treated ~~or~~ contained in a less restrictive level of care;

(c) proper treatment of the ~~beneficiary's~~ person's psychiatric condition requires acute treatment services on an outpatient basis under the direction of a physician; and

(d) the services can reasonably be expected to improve the ~~recipient's~~ person's condition or prevent further regression; and

~~(e) the recipient's has exhausted or cannot be safely and effectively treated by less restrictive alternative services, including day treatment services or a combination of day treatment and other services.~~

(2) Partial hospitalization services may include day, evening, night, and weekend treatment programs that must employ an integrated, comprehensive, and complementary schedule of recognized treatment or therapeutic activities.

~~(a)~~ (3) Acute level partial hospitalization is provided by programs which:

(i) ~~(a)~~ are operated by a hospital as ~~described~~ defined in 50-5-101, MCA, and are collocated with that hospital such that in an emergency a patient of the acute partial hospitalization program can be transported to the hospital's inpatient psychiatric unit within 15 minutes;

(ii) ~~(b)~~ serve primarily ~~individuals~~ persons being discharged from inpatient psychiatric treatment or inpatient psychiatric residential treatment; and

(iii) ~~(c)~~ provide psychotherapy services consisting of at least individual, family, and group sessions at a frequency designed to stabilize ~~patients~~ the person sufficiently to allow discharge to a less intensive level of care at the earliest appropriate opportunity; ~~on average, after 15 or fewer treatment days.~~

~~(b)~~ (4) Acute level partial hospitalization is reimbursed according to ARM 37.86.3022.

~~(c)~~ Subacute level partial (SAP) hospitalization is provided by programs which:

~~(i)~~ operate under the license of a general hospital with a distinct psychiatric unit or an inpatient psychiatric hospital for individuals under 21;

~~(ii)~~ operate a self-contained facility and offer integrated mental health services appropriate to the individual's needs as identified in an individualized treatment plan;

~~(iii)~~ provide psychotherapy services consisting of at least three group sessions per week and five individual and/or family sessions per month;

~~(iv)~~ encourage and support parent and family involvement;

~~(v)~~ provide services in a supervised environment by a well-integrated, multidisciplinary team of professionals which includes program therapists, behavioral specialists, teachers, and ancillary staff;

~~(A)~~ a program therapist must be a licensed mental health professional who is site-based;

~~(B)~~ a program therapist must have an active caseload that does not exceed ten program clients;

~~(C)~~ a behavioral specialist must be site-based and have a bachelor's degree in a behavioral science field or commensurate experience working with children with serious emotional disturbance. There must be one behavioral specialist for each five youth in the SAP program; and

~~(D)~~ all staff responsible for implementing the treatment plan must have a minimum of 24 hours orientation training and 12 additional hours of continuing

~~education each year relating to serious emotional disturbance in children and its treatment. Training must include specific instruction on recognizing the effects of medication.~~

~~(vi) provide education services through one of the following:~~

~~(A) full collaboration with a school district;~~

~~(B) certified education staff within the program; or~~

~~(C) interagency agreements with education agencies.~~

~~(vii) provide crisis intervention and management, including response outside of the program setting;~~

~~(viii) provide psychiatric evaluation, consultation, and medication management on a regular basis. Psychiatric consultation to the program treatment staff is provided at least twice each month and includes at least one face-to-face evaluation with each youth each month;~~

~~(ix) serve children or youth with a serious emotional disturbance being discharged from inpatient psychiatric treatment or residential treatment or who would be admitted to such treatment in the absence of partial hospitalization; and~~

~~(x) are designed to stabilize patients sufficiently to allow discharge to a less intensive level of care, on average, after 60 or fewer treatment days.~~

~~(d) Subacute level partial hospitalization is reimbursed at the rate specified in the department's Medicaid Mental Health Fee Schedule.~~

~~(3) For recipients determined Medicaid eligible by the department as of the time of admission to the partial hospitalization program, the Certificate of Need required under (1) must be:~~

~~(a) completed, signed and dated prior to, but no more than 30 days before, admission; and~~

~~(b) made by a team of health care professionals that has competence in diagnosis and treatment of mental illness and that has knowledge of the recipient's situation, including the recipient's psychiatric condition. No more than one member of the team of health care professionals may be professionally or financially associated with a partial hospitalization program. The team must include:~~

~~(i) a physician that has competence in diagnosis and treatment of mental illness, preferably in psychiatry;~~

~~(ii) a licensed mental health professional; and~~

~~(iii) an intensive case manager employed by a mental health center or other individual knowledgeable about local mental health services as designated by the department.~~

~~(4) For recipients who are being transferred from a hospital's acute inpatient program to the same facility's partial hospitalization program, the certificate of need required under (1) may be completed by a facility based team of health care professionals:~~

~~(a) that has competence in diagnosis and treatment of mental illness and that has knowledge of the recipient's psychiatric condition;~~

~~(b) that includes a physician that has competence in diagnosis and treatment of mental illness, preferably in psychiatry, and a licensed mental health professional; and~~

~~(c) the Certificate of Need must also be signed by an intensive case manager employed by a mental health center or other individual knowledgeable about local mental health services as designated by the department.~~

~~(5) For recipients determined Medicaid eligible by the department after admission to or discharge from the facility, the Certificate of Need required under (1) is waived. A retrospective review to determine the medical necessity of the admission to the program and the treatment provided will be completed by the department or its designee at the request of the department, a provider, the individual, or the individual's parent or guardian. Request for retrospective review must be:~~

~~(a) received within 14 days after the eligibility determination for recipients determined eligible following admission, but before discharge from the partial hospitalization program; or~~

~~(b) received within 90 days after the eligibility determination for recipients determined eligible after discharge from the partial hospitalization program.~~

~~(6) All Certificates of Need required under (1) must actually and personally be signed by each team member, except that signature stamps may be used if the team member actually and personally initials the document over the signature stamp.~~

~~(5) Subacute partial hospitalization is provided for in ARM 37.87.903(8).~~

~~(7) (6) Prior authorization is not a guarantee of payment as Medicaid rules and regulations, client eligibility, or additional medical information on retrospective review may cause the department to refuse payment.~~

AUTH: 53-2-201, 53-6-101, 53-6-111, 53-6-113, MCA

IMP: 53-2-201, 53-6-101, 53-6-111, 53-6-113, MCA

37.87.102 MENTAL HEALTH SERVICES (MHS) FOR YOUTH WITH SERIOUS EMOTIONAL DISTURBANCE (SED), DEFINITIONS As used in this chapter, the following terms apply:

~~(1) remains the same.~~

~~(2) "Applicant" means a youth with SED for whom the process to determine eligibility has been initiated but not completed.~~

~~(3) "Correctional or detention facility" means:~~

~~(a) the Pine Hills youth correctional facility;~~

~~(b) the Riverside youth correctional facility;~~

~~(c) a Department of Corrections boot camp;~~

~~(d) a juvenile detention center;~~

~~(e) a city or county criminal detention facility; or~~

~~(f) any privately operated or out-of-state correctional or detention facility that the state of Montana may choose to utilize in place of one of the above facilities or categories of facilities.~~

~~(4) "Emergency" means a serious medical or behavioral condition resulting from mental illness which arises unexpectedly and manifests symptoms of sufficient severity to require immediate care to avoid jeopardy to the life or health of the youth or harm to another person by the youth.~~

~~(5) "Federal poverty level" or "FPL" means the poverty guidelines for the 48 contiguous states and the District of Columbia as published under the "Annual Update of the HHS Poverty Guidelines" in the Federal Register each year on or about February 15 and subsequent annual updates.~~

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

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

~~(8) (4) "Medically necessary service" for Medicaid and MHSP is defined as provided in ARM 37.82.102.~~

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

~~(10) "Mental Health Services Plan (MHSP)" for youth with SED, in accordance with ARM 37.87.102, 37.87.303, 37.87.1503, 37.87.1513, 37.87.1703, 37.87.1723, 37.87.1733, 37.87.1903, 37.87.1915, 37.87.2103, and 37.87.2203 is a defined set of services.~~

(11) remains the same, but is renumbered (6).

~~(12) (7) "Provider" means a person or entity that has enrolled and entered into a provider agreement with the department in accordance with the requirements of ARM 37.85.401 through 37.85.513 to provide mental health services to youth with SED on Medicaid or the Mental Health Services Plan.~~

(13) remains the same, but is renumbered (8).

~~(14) (9) "Serious Emotional Disturbance (SED)" criteria are defined in ARM 37.87.303 the Children's Mental Health Bureau, Medicaid Services Provider Manual as adopted and incorporated by reference in ARM 37.87.903.~~

(15) remains the same, but is renumbered (10).

~~(16) (11) "Youth" means:~~

~~(a) for Medicaid services, a person 17 years of age and younger or a person who is up to 20 years of age and is enrolled in an accredited secondary school with the exception for PRTF services, a person 17 years of age or younger; or~~

~~(b) for MHSP, a person 17 years of age and younger that is not eligible for Medicaid or the Children's Health Insurance Plan (CHIP) and meets the financial eligibility for MHSP.~~

AUTH: 53-2-201, 53-6-113, 53-21-703, MCA

IMP: 53-1-601, 53-1-602, 53-1-603, 53-2-201, 53-21-201, 53-21-202, 53-21-701, 53-21-702, MCA

37.87.903 MEDICAID MENTAL HEALTH SERVICES FOR YOUTH, SERIOUS EMOTIONAL DISTURBANCE AND AUTHORIZATION REQUIREMENTS

~~(1) The department will not reimburse providers for some Medicaid services unless the prior authorization and continued authorization requirements are met.~~

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

~~(3) (2) Medicaid mental health services for youth requiring approval prior to treatment, prior authorization, or continued stay authorization will be reimbursed only if the following requirements are met:~~

~~(a) the youth, defined in ARM 37.87.102, has been determined to have a serious emotional disturbance defined in ARM 37.87.303 the Children's Mental Health Bureau, Medicaid Services Provider Manual, which has been verified by the department or designee; or~~

(b) the department or designee has determined on a case-by-case basis, that treatment is medically necessary for early intervention and prevention of a more serious emotional disturbance;

~~(i) prior to treatment, (prior authorization); and~~

~~(ii) when required, (continued authorization).~~

~~(4) (3) Youth are not required to have a serious emotional disturbance to receive the following outpatient therapy services:~~

~~(a) the first 24 sessions of individual, and/or family, or both outpatient therapies per state fiscal year. Group outpatient therapy is not included in the 24-session limit; and~~

~~(b) remains the same.~~

~~(5) (4) The department may waive a requirement for prior authorization or continued authorization when the provider submits documentation that:~~

~~(a) the provider submits documentation that:~~

~~(i) remains the same, but is renumbered (a).~~

~~(ii) (b) a timely request for prior authorization or continued authorization was not possible because of a an equipment failure or malfunction of the department's or its designee's equipment that prevented the transmittal of the request at the required time and the provider submitted a subsequent authorization request within ten business days.~~

~~(b) (5) eComputing the time for any request provided for in this subchapter includes weekends and holidays. If a deadline falls on a weekend or holiday, the deadline is the next business day.~~

~~(c) (6) If the department finds exceptional circumstances that reasonably justify a provider's failure to timely request prior authorization or continued authorization, it may extend the deadline for meeting the requirement.~~

~~(6) remains the same, but is renumbered (7).~~

~~(7) (8) Review of authorization requests and retrospective reviews by the department or its designee will be made with consideration of the department's clinical management guidelines. 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, dated September 5, 2014, for the purpose of utilization management. The department adopts and incorporates by reference the Children's Mental Health Bureau's, Provider Manual and Clinical Guidelines for Utilization Management dated November 15, 2013 Medicaid Services Provider Manual, dated September 5, 2014. 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 www.dphhs.mt.gov/mentalhealth/children/index.shtml www.dphhs.mt.gov/publications/index.shtml#cmh.~~

~~(8) and (9) remain the same, but are renumbered (9) and (10).~~

AUTH: 53-2-201, 53-6-113, MCA

IMP: 53-2-201, 53-6-101, 53-6-111, MCA

37.87.1013 THERAPEUTIC GROUP HOME (TGH), REIMBURSEMENT

(1) For the purpose of this subchapter, the following definitions apply:

(a) "Patient day" means a whole 24-hour period that a youth is present and receiving TGH services. Even though a youth may not be present for a whole 24-hour period, the day of admission is a patient day. The day of discharge is not a patient day.

(b) "Therapeutic intervention" is defined in ARM 37.97.102(23).

(c) "Therapy" is defined in ARM 37.97.102(26).

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

~~(2) The therapeutic services provided by the lead clinical staff (LCS) and the program manager (PM) are "therapy" and "therapeutic intervention" services defined as:~~

~~(a) "Therapy" means the provision of psychotherapy and rehabilitative services provided by the LCS acting within the scope of the professional's license or same services provided by an in-training mental health professional in a TGH. These services include a combination of supportive interactions, cognitive therapy, interactive psychotherapy, and behavior modification techniques which are used to induce therapeutic change for youth in TGH. (Interactive psychotherapy means using play equipment, physical devices, language interpreter, or other mechanisms of nonverbal communication.)~~

~~(b) "Therapeutic intervention" means interventions provided by the LCS or the PM under the supervision of the LCS to provide youth with activities and opportunities to improve social, emotional, and/or behavioral skill development and reduce symptoms of the youth's serious emotional disturbance. Interventions include implementing behavior modification techniques and offering psycho-educational groups and activities. Interventions may be provided to the youth individually, in a group setting or with the youth and family.~~

~~(3) The purpose of the therapeutic services in (2) (1) is:~~

~~(a) to reduce the impairment of the youth's mental disability of the youth and to improve the youth's functional level of the youth;~~

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

~~(a) "Patient day" means a whole 24-hour period that a youth is present and receiving TGH services. Even though a youth may not be present for a whole 24-hour period, the day of admission is a patient day. The day of discharge is not a patient day.~~

~~(5) and (6) remain the same.~~

~~(7) Reimbursement will be made to a provider for reserving a TGH bed while the youth is temporarily absent for a THV for a maximum of 14 patient days per state fiscal year; requests for additional days must be prior authorized by the department. A THV is an opportunity to assess the youth's ability to successfully transition to a less restrictive level of care. For reimbursement the following criteria must be met:~~

~~(a) the youth's treatment plan must document the medical need for a THV as part of a therapeutic plan to transition the youth to a less restrictive level of care;~~

~~(b) the TGH provider clearly documents staff contact and youth achievements or regressions during and following the THV; and~~

~~(c) the youth is absent from the provider's facility for no more than three patient days per THV, with a maximum of 14 THV patient days per state fiscal year, unless additional days are prior authorized by the department.~~

AUTH: 53-2-201, 53-6-113, MCA
IMP: 53-2-201, 53-6-101, 53-6-111, MCA

37.87.1223 PSYCHIATRIC RESIDENTIAL TREATMENT FACILITY (PRTF) SERVICES, REIMBURSEMENT (1) ~~For inpatient psychiatric services provided in a PRTF on or after December 31, 2013, for youth as defined in ARM 37.87.102, the Montana Medicaid Program will pay a PRTF for each patient day as provided in these rules. The Montana Medicaid Program will reimburse providers of inpatient psychiatric services provided to a youth in a PRTF for each patient day as provided in these rules, effective December 31, 2013.~~

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

~~(2) (3) For in-state PRTFs, the Montana Medicaid Program will pay a provider, for each Medicaid patient day, a the following bundled per diem rate as specified in (3), less any third party or other payments. Services included in the bundled per diem rate are defined in (5).~~

~~(3) The bundled per diem rate for in-state PRTF services is the lesser of:~~

~~(a) and (b) remain the same.~~

~~(4) Out-of-state PRTFs will be reimbursed 50% of their usual and customary charges. Services that must be included in the out-of-state PRTFs usual and customary rate are outlined in (7).~~

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

~~(6) (5) The bundled per diem rate for in-state PRTFs does not include the following services, which listed in (a) through (d), are separately reimbursable by the Medicaid program for enrolled providers. The Montana Medicaid Program will reimburse enrolled providers directly for the following services:~~

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

~~(d) Medicaid state plan ancillary services as directed by the PRTF physician, except targeted case management provided by either the PRTF or by outside providers, if they are. Medicaid state plan ancillary services must be stated in the plan of care of the youth.~~

~~(i) in the plan of care for the youth;~~

~~(ii) provided under the direction of the PRTF physician; and~~

~~(iii) provided under an arrangement with other qualified providers.~~

~~(6) Out-of-state PRTFs will be reimbursed 50% of their usual and customary charges. Services that must be included in the out-of-state PRTFs usual and customary rate are outlined in (7).~~

~~(7) remains the same.~~

~~(8) The bundled per diem rate for out-of-state PRTFs does not include the following services, which are separately reimbursable by the Medicaid program for enrolled providers listed in (a) through (c). The Montana Medicaid Program will reimburse enrolled providers directly for the following services:~~

~~(a) and (b) remain the same.~~

~~(c) Medicaid state plan ancillary services, as directed by the PRTF physician, provided by the PRTF or by outside providers, if they are, enrolled as Montana Medicaid providers. Medicaid state plan ancillary services must be stated in the plan of care of the youth.~~

- ~~(i) in the plan of care for the youth;~~
- ~~(ii) provided under the direction of the PRTF physician; and~~
- ~~(iii) provided under an arrangement with other qualified providers.~~

(9) The in-state and out-of-state PRTFs must maintain the medical records for Medicaid state plan ancillary services the youth receives.

~~(10) Reimbursement will be made to in-state and out-of-state PRTF providers for reserving a bed while the youth is temporarily absent for a therapeutic home visit if:~~

~~(a) the plan of care for the youth documents the medical need for therapeutic home visits as part of a therapeutic plan to transition the youth to a less restrictive level of care;~~

~~(b) the provider clearly documents staff contact and youth achievements or regressions during and following the therapeutic home visit;~~

~~(c) the youth is absent from the provider's facility for no more than three patient days per therapeutic home visit, unless additional days are authorized by the department; and~~

~~(d) the out-of-state PRTF pays for transportation for youth on a therapeutic home visit from an out-of-state PRTF.~~

~~(11) No more than 14 patient days per youth in each state fiscal year will be reimbursed for therapeutic home visits.~~

(12) and (13) remain the same, but are renumbered (10) and (11).

AUTH: 53-2-201, 53-6-113, MCA

IMP: 53-2-201, 53-6-101, 53-6-111, MCA

4. The department proposes to repeal the following rule:

37.87.303 YOUTH MENTAL HEALTH SERVICES, SERIOUS EMOTIONAL DISTURBANCE CRITERIA is found on page 37-21329 of the Administrative Rules of Montana.

AUTH: 53-2-201, 53-6-113, 53-21-703, MCA

IMP: 53-1-601, 53-1-602, 53-1-603, 53-2-201, 53-21-201, 53-21-202, 53-21-701, 53-21-702, MCA

5. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (the department) is proposing to amend 37.86.3006, 37.87.102, 37.87.903, 37.87.1013, and 37.87.1223, and the repeal of ARM 37.87.303 pertaining to the revision of the rules for serious emotional disturbance for youth, mental health outpatient partial hospital services, and Medicaid mental health authorization requirements.

ARM 37.86.3006

The department proposes to amend ARM 37.86.3006 to remove the requirement for the Certificate of Need (CON) for partial hospital services. During the 63rd Montana

Legislative Session, CMHB funding was decreased for the utilization review contract that is currently held by Magellan Medicaid Administration, Inc. As a result of this decrease in funding, the CMHB proposed a rule change on September 9, 2013 in MAR 37-648 which removed the requirement to submit the CON; rather, it was required the CON be placed in the file of the youth. That rule became effective November 15, 2013. The department has identified that the amendment to that rule conflicts with the CON requirements stated in ARM 37.86.3006. Due to the fact that a CON is not federally required for partial hospital services and that the function of the utilization contractor is no longer available for this service with CMHB, it is necessary to remove this requirement to maintain consistency within the Administrative Rules of Montana. Further amendments proposed to this rule serve to align current terminology and to clarify the rule, but do not substantively change the rule.

ARM 37.87.102

The department proposes to amend ARM 37.87.102 to remove reference to the Mental Health Services Plan (MHSP) for youth with Serious Emotional Disturbance (SED). This proposed amendment is necessary because the MHSP for youth with SED is no longer a service offered through the Children's Mental Health Bureau. The department also proposes to amend the reference for SED criteria from ARM 37.87.303 to 37.87.903. This is necessary because the department is proposing to remove the SED criteria from ARM 37.87.303 and place it into the "Children's Mental Health Bureau Medicaid Services Provider Manual" which is proposed to be adopted and incorporated into ARM 37.87.903 as part of this rule making. The department is proposing to strike certain definitions from this rule which is necessary as those terms are no longer used within the CMHB's rules chapter. Further amendments proposed to this rule serve to align current terminology and to clarify the rule, but do not substantively change the rule.

ARM 37.87.903

The department proposes to amend ARM 37.87.903 to remove the "Children's Mental Health Bureau's Provider Manual and Clinical Guidelines for Utilization Management dated November 15, 2013" and replace this manual with a new provider manual the Children's Mental Health Bureau (CMHB) developed. The previous manual provided by the CMHB titled, "Children's Mental Health Bureau Provider Manual and Clinical Guidelines for Utilization Management," dated November 15, 2013 presented providers enrolled in Montana Medicaid detailed instructions for initiating the review and appeals process and guidance regarding clinical guidelines for medical necessity. This is necessary because of feedback from providers the bureau received regarding the difficulty in navigating and understanding that document. The bureau determined it would be pragmatic to create a new manual that was more comprehensive and easier to navigate. As such, this proposed manual titled, "Children's Mental Health Bureau Medicaid Services Provider Manual" (manual), dated September 5, 2014 will supersede the previous CMHB Provider Manual and Clinical Guidelines for Utilization Management.

The majority of the information provided in the proposed manual remains the same as in its predecessor and has been simply reformatted; however, there are changes that are important to note:

- (a) The serious emotional disturbance (SED) definition, diagnostic codes, and criteria have been moved from ARM 37.87.303 and are now in the manual.
- (b) The Montana Child and Adolescent Needs and Strength (CANS-MT) functional assessment requirements have been added.
- (c) The medical necessity criteria for acute hospital services have been rewritten to make them more direct and abbreviated.
- (d) In response to a collaborative effort between CMHB and Therapeutic Group Home (TGH) providers, the admission criteria for TGH services has been modified into more applicable medical necessity criteria and the utilization process has been streamlined.
- (e) The certificate of need requirement has been removed from Partial Hospital Program and Therapeutic Foster Care - Permanency services because this is not in line with the federal requirements for these services. The certificate of need medical necessity requirements must still be met for Therapeutic Foster Care - Permanency though a CON does not need to be completed.
- (f) Clearer discharge requirements and criteria for the coordination of concurrent services are provided.
- (g) The appeals process has been amended due to the changes with the Magellan Medicaid Administration contract.

Acute Hospital and Psychiatric Residential Treatment services will continue to have the utilization and appeals processes handled by Magellan.

Children's Mental Health Bureau will be managing the utilization process for Home Support Services, Therapeutic Foster Care, and Therapeutic Group Home Services.

The remaining CMHB services will follow their normal utilization and appeals processes.

ARM 37.87.1013

The department proposes to amend ARM 37.87.1013 to allow for 14 days of therapeutic home visits (THV) per youth per state fiscal year without the requirement to have prior authorization from the department for each THV that is longer than three patient bed days per visit and to remove the option for additional days. This is necessary to allow providers more discretion over how the allowed 14 days is utilized. The department also proposes to remove the other service requirements for

THV from this rule because the requirements are now in the proposed manual titled, "Children's Mental Health Bureau Medicaid Services Provider Manual" (manual), dated September 5, 2014, in ARM 37.87.903. Further amendments proposed to this rule serve to align current terminology and to clarify the rule, but do not substantively change the rule.

ARM 37.87.1223

The department proposes to amend ARM 37.87.1223 to remove the service requirements for THV from this rule because the requirements are now in the proposed manual titled, "Children's Mental Health Bureau Medicaid Services Provider Manual" (manual), dated September 5, 2014," in ARM 37.87.903. Further amendments proposed to this rule serve to align current terminology and to clarify the rule, but do not substantively change the rule.

ARM 37.87.303

The department is proposing to repeal ARM 37.87.303. This is necessary because the information previously contained in this rule is now located in the Children's Mental Health Bureau's new manual, "Children's Mental Health Bureau Medicaid Services Provider Manual."

Fiscal Impact:

Currently, after a child is in a therapeutic group home for 120 days, providers can make a continued stay request for an additional 120 days that is reviewed by the department's utilization review contractor Magellan. CMHB is proposing to have CMHB clinical staff complete the initial continued stay reviews after the first 120 days. If the clinical staff believes the continued stay request meets criteria for additional time at the group home, there will be a 90-day extension of service request option. If the department's clinical staff believes the continued stay request does not meet criteria for additional days, or the department's staff has questions about the appropriateness of the request, then the continued stay request will be forwarded to Magellan for review and decision.

This involvement of two reviewers for a limited number of cases could potentially increase the number of stays authorized when compared to current continued stays allowed. However, state clinical staff will follow specific guidelines on continued stay requests that should minimize any change in review procedures. Additionally, since the continued stay review will authorize 90 days instead of the current 120 days, there is a possibility that authorized days could actually decrease overall. It is anticipated that any fiscal impacts attributable to the change in continued stay reviews will be minimal.

6. The department intends to adopt these rule amendments effective September 5, 2014.

7. 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: Kenneth Mordan, 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, and must be received no later than 5:00 p.m., August 7, 2014.

8. The Office of Legal Affairs, Department of Public Health and Human Services, has been designated to preside over and conduct this hearing.

9. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 7 above or may be made by completing a request form at any rules hearing held by the department.

10. An electronic copy of this proposal notice is available through the Secretary of State's web site at <http://sos.mt.gov/ARM/Register>. The Secretary of State strives to make the electronic copy of the notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the Secretary of State works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

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

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

/s/ John C. Koch
John C. Koch
Rule Reviewer

/s/ Richard H. Opper
Richard H. Opper, Director
Public Health and Human Services

Certified to the Secretary of State June 30, 2014.

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the amendment of ARM)	NOTICE OF DECISION ON
17.36.326 and 17.36.327 pertaining to)	PROPOSED AMENDMENT
sewage systems: operation and)	
maintenance, ownership, easements,)	(SUBDIVISIONS/ON-SITE
and agreements; and sewage systems:)	SUBSURFACE WASTEWATER
existing systems)	TREATMENT)

TO: All Concerned Persons

1. On June 26, 2014, the Department of Environmental Quality published MAR Notice No. 17-363 regarding a notice of public hearing on the proposed amendment of the above-stated rules at page 1334, 2014 Montana Administrative Register, Issue Number 12.

2. The department has decided to cancel the public hearing on the proposed amendment of the above-stated rules that was scheduled for July 23, 2014, at 1:00 p.m., in Room 40, Metcalf Building, 1520 East Sixth Avenue, Helena, Montana.

3. The department has determined that it is necessary to propose amendment of additional rules before proceeding with the public hearing. The department will re-notice these and the additional rules for public participation at a later date.

Reviewed by: DEPARTMENT OF ENVIRONMENTAL QUALITY

<u>/s/ John F. North</u>	BY: <u>/s/ Tracy Stone-Manning</u>
JOHN F. NORTH	TRACY STONE-MANNING, Director
Rule Reviewer	

Certified to the Secretary of State, June 30, 2014.

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the adoption of NEW	)	NOTICE OF ADOPTION AND
RULE I concerning electronic	)	AMENDMENT
submission of documents and electronic)	
signatures, and the amendment of ARM)	
23.16.101, 23.16.508, 23.16.1102,)	
23.16.1103, 23.16.1201, 23.16.1202,)	
23.16.1225, 23.16.1705, 23.16.1929,)	
23.16.3501 and 23.16.3801 pertaining to)	
definitions, records, and devices,)	
changes in managers, officers, and)	
directors, charitable card game)	
tournaments, types of card games)	
authorized, house players, authorized)	
sports pools, repairing machines –)	
approval, department approval of)	
promotional games of chance, devices,)	
or enterprises, and review of carnival)	
games)	

TO: All Concerned Persons

1. On May 22, 2014, the Department of Justice published MAR Notice No. 23-16-236 regarding the public hearing on the proposed adoption and amendment of the above-stated rules at page 1012, 2014 Montana Administrative Register, Issue Number 10.

2. The Department of Justice has adopted New Rule I (23.16.106) and amended ARM 23.16.101, 23.16.508, 23.16.1102, 23.16.1103, 23.16.1201, 23.16.1202, 23.16.1225, 23.16.1705, 23.16.1929, 23.16.3501, and 23.16.3801 as proposed.

3. A public hearing was held on June 12, 2014. Oral comments were received from Neil Peterson, Gaming Industry Association, who spoke in support of these proposed rules. Additionally, during the Gaming Advisory Council meeting on May 2, 2014, the council advised the division to proceed with publication of the new rule and these rule amendments.

By: /s/ Tim Fox
TIM FOX
Attorney General
Department of Justice

/s/ Matthew T. Cochenour
MATTHEW T. COCHENOUR
Rule Reviewer

Certified to the Secretary of State June 30, 2014.

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

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 24.17.127 pertaining to)
prevailing wage rates for public works)
projects)

TO: All Concerned Persons

1. On May 8, 2014, the Department of Labor and Industry published MAR Notice No. 24-17-284 regarding the public hearing on the amendment of the above-stated rule on page 912 of the 2014 Montana Administrative Register, Issue No. 9.

2. On May 30, 2014, a public hearing was held at which time members of the public made oral and written comments and submitted documents. Additional comments were received during the comment period.

3. The department has thoroughly considered the comments and testimony received from the public. The following is a summary of the public comments received and the department's responses to those comments:

COMMENT 1: Ron Nelson, training instructor, LIUNA #1686, supported the preliminary prevailing wage rates. The commenter also stated 4 districts are more beneficial to workers than 10, and that the preliminary rates establish a more realistic livable wage.

RESPONSE 1: The department acknowledges the comments.

COMMENT 2: Carey Hegreberg, executive director, Montana Contractors Association (MCA), thanked organized labor that worked with the MCA to pass HB 464, and stated overall all the MCA is pleased with the results. Mr. Hegreberg also stated there are some glitches with the zone pay in the federal highway rates.

RESPONSE 2: The department acknowledges the comments and is willing to assist the MCA, organized labor, and the federal government with any issues that may come up with the adoption of federal highway rates in Montana.

COMMENT 3: Seth Bergen, business agent, Iron Workers Local 762, stated the wage on the highway rates should be the same as the heavy and building rates, which is \$26.50.

RESPONSE 3: The department did not receive sufficient data to set a rate with survey responses, and used highest collectively bargaining agreement it received to set the rate per ARM 24.17.121(3)(c).

COMMENT 4: Edward Beaudette, attorney, Montana Department of Transportation, echoed Carey Hegreberg's comments and asked that the department not adopt the rules until the glitches with the federal rates are fixed, and then have the state highway rates mirror those of the federal highway rates.

RESPONSE 4: State prevailing wage rates apply to state funded projects, and federal prevailing wage rates apply to federally funded projects. ARM 24.17.121 explains the methodology used to set state highway prevailing wage rates, which provides for a survey and for the results from that survey be compared to the federal prevailing wage rates in effect September 1 of that year. However, the department is willing to assist the federal government with any issues that may come up with the adoption of federal highway rates in Montana.

COMMENT 5: Jason Crowson, director of organizing, Painters #82, is in favor of the proposed rule changes.

RESPONSE 5: The department acknowledges the comment.

COMMENT 6: Various individuals and entities submitted additional data or documents for inclusion in the rate-setting process during the comment period.

RESPONSE 6: The department has reviewed the information submitted. The department has incorporated the data as appropriate and has revised certain rates in line with the rate-setting standards. Revised rates are identified below in paragraphs 5 through 7.

4. After consideration of the comments and additional data provided, the department has amended ARM 24.17.127 as proposed. As noted in paragraphs 5 through 7, certain rates in the publications incorporated by reference in ARM 24.17.127 have been amended.

5. The following rates in the "Montana Prevailing Wage Rates for Building Construction Services 2014" publication, incorporated by reference in the rule, have been amended as follows, stricken matter interlined, new matter underlined:

Construction Laborers Group 1

District	Wage	Benefit
1	\$17.18 <u>19.08</u>	\$7.69 <u>7.42</u>
2	\$15.41	\$8.72 <u>8.65</u>
3	\$17.20 <u>18.00</u>	\$7.04 <u>7.17</u>
4	\$14.21 <u>18.00</u>	\$7.04 <u>7.17</u>

Construction Laborers Group 2

District	Wage	Benefit
1	\$19.09 <u>19.07</u>	\$6.59 <u>6.69</u>
2	\$18.32 <u>18.48</u>	\$6.85 <u>6.90</u>
3	\$16.08 <u>16.44</u>	\$5.74 <u>6.17</u>

4	\$17.84	<u>18.04</u>	\$4.93	<u>5.01</u>
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Construction Laborers Group 3

District	Wage		Benefit	
1	\$19.33	<u>19.48</u>	\$7.59	<u>7.42</u>
2	\$18.33		\$8.72	<u>8.65</u>
3	\$18.20		\$7.04	<u>7.17</u>
4	\$18.20		\$7.04	<u>7.17</u>

Construction Laborers Group 4

District	Wage		Benefit	
1	\$18.15		\$7.69	7.62

Construction Equipment Operators Group 1

District	Wage		Benefit	
1	\$24.32	<u>24.07</u>	\$11.47	<u>11.40</u>
2	\$24.32	<u>24.07</u>	\$11.47	<u>11.40</u>
3	\$24.32	<u>24.07</u>	\$11.47	<u>11.40</u>
4	\$24.32	<u>24.07</u>	\$11.47	<u>11.40</u>

Construction Equipment Operators Group 2

District	Wage		Benefit	
1	\$24.79	<u>25.54</u>	\$11.47	<u>11.40</u>
2	\$24.79	<u>25.54</u>	\$11.47	<u>11.40</u>
3	\$24.79	<u>25.54</u>	\$11.47	<u>11.40</u>
4	\$24.79	<u>25.54</u>	\$11.47	<u>11.40</u>

Construction Equipment Operators Group 3

District	Wage		Benefit	
1	\$26.00	<u>25.95</u>	\$11.47	<u>11.40</u>
2	\$26.00	<u>25.95</u>	\$11.47	<u>11.40</u>
3	\$26.00	<u>25.95</u>	\$11.47	<u>11.40</u>
4	\$26.00	<u>25.95</u>	\$11.47	<u>11.40</u>

Construction Equipment Operators Group 4

District	Wage		Benefit	
1	\$27.00	<u>26.95</u>	\$11.47	<u>11.40</u>
2	\$27.00	<u>26.95</u>	\$11.47	<u>11.40</u>
3	\$27.00	<u>26.95</u>	\$11.47	<u>11.40</u>
4	\$27.00	<u>26.95</u>	\$11.47	<u>11.40</u>

Construction Equipment Operators Group 5

District	Wage		Benefit	
1	\$28.00	<u>27.95</u>	\$11.47	<u>11.40</u>
2	\$28.00	<u>27.95</u>	\$11.47	<u>11.40</u>
3	\$25.72	<u>27.95</u>	\$8.71	<u>11.40</u>
4	\$28.00	<u>27.95</u>	\$11.47	<u>11.40</u>

Construction Equipment Operators Group 6				
District	Wage		Benefit	
1	\$29.00	<u>28.95</u>	\$11.47	<u>11.40</u>
2	\$29.00	<u>28.95</u>	\$11.47	<u>11.40</u>
3	\$26.74	<u>28.95</u>	\$10.38	<u>11.40</u>
4	\$29.00	<u>28.95</u>	\$11.47	<u>11.40</u>

Construction Equipment Operators Group 7				
District	Wage		Benefit	
1	\$30.00	<u>29.95</u>	\$11.47	<u>11.40</u>
2	\$30.00	<u>29.95</u>	\$11.47	<u>11.40</u>
3	\$30.00	<u>29.95</u>	\$11.47	<u>11.40</u>
4	\$30.00	<u>29.95</u>	\$11.47	<u>11.40</u>

6. The following rates in the "Montana Prevailing Wage Rates for Heavy Construction Services 2014" publication, incorporated by reference in the rule, have been amended as follows, stricken matter interlined, new matter underlined:

Construction Laborers Group 1		
	Wage	Benefit
	\$20.08	\$7.96 <u>7.89</u>

Construction Laborers Group 2		
	Wage	Benefit
	\$22.90	\$7.96 <u>7.89</u>

Construction Laborers Group 3		
	Wage	Benefit
	\$23.04	\$7.96 <u>7.89</u>

Construction Laborers Group 4		
	Wage	Benefit
	\$23.06 <u>23.76</u>	\$7.96 <u>7.89</u>

Construction Equipment Operators Group 1		
	Wage	Benefit
	\$24.32	\$11.47 <u>11.40</u>

Construction Equipment Operators Group 2		
	Wage	Benefit
	\$24.79	\$11.47 <u>11.40</u>

Construction Equipment Operators Group 3		
	Wage	Benefit
	\$26.00	\$11.47 <u>11.40</u>

Construction Equipment Operators Group 4			
	Wage		Benefit
	\$27.00		\$11.47 <u>11.40</u>

Construction Equipment Operators Group 5			
	Wage		Benefit
	\$28.00		\$11.47 <u>11.40</u>

Construction Equipment Operators Group 6			
	Wage		Benefit
	\$29.00		\$11.47 <u>11.40</u>

Construction Equipment Operators Group 7			
	Wage		Benefit
	\$30.00		\$11.47 <u>11.40</u>

Diver			
	Wage		Benefit
Stand By	\$31.00 <u>36.02</u>		\$12.87 <u>12.89</u>
Diving	\$62.00 <u>72.04</u>		\$12.87 <u>12.89</u>

Diver Tender			
Stand By	Wage		Benefit
	\$29.60 <u>34.02</u>		\$12.87 <u>12.89</u>

7. The following rates in the "Montana Prevailing Wage Rates for Highway Construction Services 2014" publication, incorporated by reference in the rule, have been amended as follows, stricken matter interlined, new matter underlined:

Construction Laborers Group 1			
	Wage		Benefit
	\$18.90 <u>17.80</u>		\$8.05

Construction Laborers Group 2			
	Wage		Benefit
	\$21.97 <u>20.60</u>		\$8.05

Construction Laborers Group 3			
	Wage		Benefit
	\$22.19 <u>22.03</u>		\$8.05

Construction Laborers Group 4			
	Wage		Benefit
	\$23.18 <u>21.89</u>		\$8.05

Construction Equipment Operators Group 1			
	Wage		Benefit

~~\$24.32~~ 23.71 ~~\$11.47~~ 9.40

Construction Equipment Operators Group 2

Wage Benefit
~~\$26.05~~ 24.50 ~~\$11.47~~ 9.30

Construction Equipment Operators Group 3

Wage Benefit
~~\$26.91~~ 25.85 ~~\$11.47~~ 9.30

Construction Equipment Operators Group 4

Wage Benefit
~~\$27.60~~ 25.67 ~~\$11.47~~ 9.30

Construction Equipment Operators Group 5

Wage Benefit
~~\$28.94~~ 26.67 ~~\$11.47~~ 9.41

Construction Equipment Operators Group 6

Wage Benefit
~~\$29.63~~ 27.13 ~~\$11.47~~ 9.30

Construction Equipment Operators Group 7

Wage Benefit
~~\$30.73~~ 29.23 ~~\$11.47~~ 9.45

Construction Equipment Operators Group 1

Zone Pay:

- 0-30 mi. free zone
- >30-60 mi. base pay + ~~\$3.50/hr.~~ \$3.05/hr.
- >60 mi. base pay + ~~\$5.50/hr.~~ \$4.85/hr.

Construction Equipment Operators Group 2

Zone Pay:

- 0-30 mi. free zone
- >30-60 mi. base pay + ~~\$3.50/hr.~~ \$3.05/hr.
- >60 mi. base pay + ~~\$5.50/hr.~~ \$4.85/hr.

Construction Equipment Operators Group 3

Zone Pay:

- 0-30 mi. free zone
- >30-60 mi. base pay + ~~\$3.50/hr.~~ \$3.05/hr.
- >60 mi. base pay + ~~\$5.50/hr.~~ \$4.85/hr.

Construction Equipment Operators Group 4

Zone Pay:

- 0-30 mi. free zone

>30-60 mi. base pay + ~~\$3.50/hr.~~ \$3.05/hr.
>60 mi. base pay + ~~\$5.50/hr.~~ \$4.85/hr.

Construction Equipment Operators Group 5

Zone Pay:

0-30 mi. free zone
>30-60 mi. base pay + ~~\$3.50/hr.~~ \$3.05/hr.
>60 mi. base pay + ~~\$5.50/hr.~~ \$4.85/hr.

Construction Equipment Operators Group 6

Zone Pay:

0-30 mi. free zone
>30-60 mi. base pay + ~~\$3.50/hr.~~ \$3.05/hr.
>60 mi. base pay + ~~\$5.50/hr.~~ \$4.85/hr.

Construction Equipment Operators Group 7

Zone Pay:

0-30 mi. free zone
>30-60 mi. base pay + ~~\$3.50/hr.~~ \$3.05/hr.
>60 mi. base pay + ~~\$5.50/hr.~~ \$4.85/hr.

Painters

Travel:

~~0-120 mi. free zone~~
>120 mi. ~~\$45/day~~
(no rate established.)

Diver

	Wage	Benefit
Stand By	\$31.00 <u>36.02</u>	\$12.87 <u>12.89</u>
Diving	\$62.00 <u>72.04</u>	\$12.87 <u>12.89</u>

Diver Tender

Stand By	Wage	Benefit
	\$29.60 <u>34.02</u>	\$12.87 <u>12.89</u>

8. The amendments and the rates are effective July 11, 2014.

/s/ MARK CADWALLADER

Mark Cadwallader
Alternate Rule Reviewer

/s/ PAM BUCY

Pam Bucy, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State June 30, 2014.

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

In the matter of the amendment of	)	NOTICE OF AMENDMENT
ARM 24.29.1401A definitions,)	
24.29.1433 facility service rules and)	
rates, 24.29.1534 professional fee)	
schedule for services provided,)	
24.29.1538 conversion factors for)	
services provided, and 24.29.1591)	
utilization and treatment guidelines)	

TO: All Concerned Persons

1. On April 24, 2014, the Department of Labor and Industry (department) published MAR Notice No. 24-29-283 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 776 of the 2014 Montana Administrative Register, Issue Number 8. On May 22, 2014, the department published an amended notice, which rescheduled the public hearing and extended the comment period, at page 1055 of the 2014 Montana Administrative Register, Issue Number 10.

2. The department amends the following rules as proposed:

24.29.1401A	DEFINITIONS
24.29.1534	PROFESSIONAL FEE SCHEDULE FOR SERVICES PROVIDED ON OR AFTER JULY 1, 2013
24.29.1538	CONVERSION FACTORS FOR SERVICES PROVIDED ON OR AFTER JANUARY 1, 2008
24.29.1591	UTILIZATION AND TREATMENT GUIDELINES

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

24.29.1433 FACILITY SERVICE RULES AND RATES FOR SERVICES PROVIDED ON OR AFTER JULY 1, 2013 (1) and (2) remain as proposed.

(3) Critical access hospitals (CAH) are reimbursed at 100 percent of that facility's usual and customary charges. CAH is a designation for a facility only. The reimbursement rate for CAH set by this rule applies to facility charges.

(i) (a) Regarding professional services provided at a CAH, ~~PT, OT, and ST~~ physical therapy (PT), occupational therapy (OT), and speech therapy (ST) services provided on an outpatient basis must be billed on a UB04 and reimbursed 100 percent of usual and customary. PT, OT, and ST outpatient services may not be billed on the CMS 1500.

(ii) remains as proposed but is renumbered (b).

(4) through (12) 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: One commenter suggested that the percentages of payment listed in the Instruction Sets for the Professional and Facility Fee Schedules be consistently repeated in the appropriate section of the CPT Modifiers.

RESPONSE # 1: The department appreciates the careful attention to detail commenters have given in reviewing the various components of the Professional and Facility Fee Schedules, Instruction Sets, and CPT Modifier Schedules. The department determines that the suggested change to the CPT Modifiers is necessary to consistently list all percentages of payments for medical services. The department adds the percentage of payment for assistant surgeons at 20% (Modifier 80) and for nonphysician assistant surgeons at 15% (Modifier 81) of the Professional Fee Schedule.

COMMENT # 2: A commenter pointed out that a conflict exists between the Facility Fee Instruction Set and administrative rule. The Instruction Set excludes the "costs" of inpatient and outpatient implants from the outlier calculation, while ARM 24.29.1433(11)(e)(iii) states that the "implantable charge is excluded from any calculation for an outlier payment."

RESPONSE # 2: The department concurs that the words "costs" and "charge" have very different meanings. The department corrects the Facility Fee Instruction Set at pages 12 and 14 by replacing the word "costs" with the term "charge," in order to conform the Instruction Set with the administrative rule.

COMMENT # 3: A commenter noted an inconsistency in the language of the Facility Fee Schedule Instruction Set concerning payment reductions for multiple procedures.

RESPONSE # 3: The department is grateful for the careful review and comments provided during this rulemaking process. The department corrects the clerical error on page 10 of the Facility Fee Schedule Instruction Set by replacing the phrase "second subsequent procedure" with the phrase "second and all subsequent procedures."

COMMENT # 4: Two commenters pointed out that the Surgery Section of the Professional Fee Schedule Instruction Set does not include payment percentages for preoperative, surgical, and postoperative care provided by separate providers. The commenters observed that payment percentages of 10%, 70%, and 20%, respectively, were in effect prior to July 1, 2013. The commenters noted that such payment percentages would help insurers and providers establish consistent expectations for payments.

RESPONSE # 4: The department acknowledges that the Professional Fee Schedule Instruction Set includes no lower payment percentages for preoperative, surgical, and postoperative care provided by separate medical providers. Under the 2014 Professional Fee Schedule, the services of these separate providers of preoperative, surgical, and postoperative care are paid at 100% and are not subject to a lower percentage payment. The department determines that the changes to the Professional Fee Schedule proposed by the commenters would be a material change to the reimbursement rate of providers that would necessitate additional public participation in the rulemaking process.

COMMENT # 5: One commenter suggested that if the department were able to maintain consistency in the payments to medical providers over a two-year biennium period, reimbursement rates would be stabilized and small practices would be assisted in financial planning.

RESPONSE # 5: Montana law, specifically 39-71-704, MCA, requires the department to adopt a revised Professional Fee Schedule on an annual basis. The change suggested by the commenter would require a statutory change.

COMMENT # 6: Another commenter suggested alternative language for the Guidelines for Complex Regional Pain Syndrome and Chronic Pain in order to encompass the use of neurostimulation devices for more medical conditions than those specifically listed in the Guidelines.

RESPONSE # 6: The department adopts the Guidelines for Complex Regional Pain Syndrome and Chronic Pain as presented by the Colorado Guidelines. Colorado derived these Guidelines after extensive search of the peer-reviewed medical literature for evidence-based medical best practices and a consensus-building process. The department notes that it lacks the scientific resources to develop the Guidelines independent of the Colorado Guideline process.

COMMENT # 7: A commenter pointed out that the proposed rule amendments do not explain the acronyms "OT, PT, and ST."

RESPONSE # 7: The department determines that definition of acronyms is critical to provide clarity, and amends ARM 24.29.1433 in order to define the acronyms when they first appear in the Facility Service Rules.

COMMENT # 8: A commenter requested that all percentages of payment listed in the Modifier Table be included in the Professional and Facility Instruction Sets.

RESPONSE # 8: The department determines that consistent repetition of the percentages of payment in both the Modifier Table and the Instruction Sets would be unnecessarily redundant.

COMMENT # 9: Two commenters requested that the department amend the Professional and Facility Fee Schedules in order to increase the payments to providers and facilities in order to ensure patient access to vital medical services.

RESPONSE # 9: The department adopts the Professional and Facility Fee Schedules on an annual basis, in accordance with the direction set forth by 39-71-704, MCA, and does not have the legal authority to increase reimbursement as suggested.

/s/ JUDY BOVINGTON
Judy Bovington
Rule Reviewer

/s/ PAM BUCY
Pam Bucy
Commissioner
Department of Labor and Industry

Certified to the Secretary of State June 30, 2014.

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

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 37.40.307, 37.40.326, and)
37.40.361 pertaining to nursing)
facility reimbursement)

TO: All Concerned Persons

1. On April 24, 2014, the Department of Public Health and Human Services published MAR Notice No. 37-671 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 811 of the 2014 Montana Administrative Register, Issue Number 8.

2. The department has amended the above-stated rules as proposed.

3. 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 statement of reasonable necessity indicates that the department is implementing a 2% rate increase provided by House Bill 2 (HB2) of the 63rd Montana Legislature. However, the department has provided proposed rates that implement a 1.64% rate increase. This increase is 20% less than the increase approved by the legislature. We are asking that the full 2% be implemented. There are sufficient appropriated funds to do so. We believe the department's calculations are deficient in two ways and we ask that the department make appropriate adjustments to address these issues:

1. Nursing facility bed days have been declining for about 15 years. We ask that the department adjust the proposed bed days in the rate spreadsheet to account for an approximately 15-year trend of declining days. The spreadsheet is based on days increasing above what is projected for fiscal year (FY) 2014 which simply hasn't happened in many years.

2. The department inaccurately accounts for swing bed days. The rate spreadsheet assumes that all bed days will be nursing facility bed days, but a growing number of bed days are in swing beds. The actual net reimbursement in state and federal funds for swing bed days is substantially less than for nursing facility bed days, largely because of patient contribution which includes an increasing Medicare participation. We are asking that the department take into account the fact that nursing facility bed days are decreasing significantly while the less expensive, on a net basis, swing bed days are increasing.

RESPONSE #1: The funding level being distributed in the reimbursement

spreadsheet agrees with the funding appropriated by the Legislature for nursing facility providers at \$145,522,658 of state and federal funds for the per diem rate calculation. The funding has increased from \$134.48 in 2014 up to the proposed \$137.21 per day of state and federal funds which is a calculated 2% rate increase.

The current patient contribution or third-party payor funds and nursing facility bed days are not components that are appropriated by the Legislature. They are components that the department uses to calculate the per day amounts from year to year in the reimbursement methodology. The department has reevaluated its calculation and will agree to adjust the nursing facility bed days and the rate components to achieve a 2% overall statewide average rate increase. The total revised statewide average Medicaid rate will be \$169.42 up from the 2014 statewide average rate of \$166.10 for an increase of \$3.32 per Medicaid day. We would propose to adopt this rate increase in the final calculated rate sheet that will be provided to all providers with their rate letter notification. Rate increases will be effective retroactively to July 1, 2014. Any rate decreases will be effective after the final notice of these rules and will be implemented August 1, 2014.

There are two separate reimbursements for nursing facilities and swing beds and the commenter is correct in that there are differences in how those expenditures are actually billed and paid under Medicaid. However, historically we have aggregated the swing bed and the nursing facility expenditures into one calculation of the statewide average rate due to the swing bed expenditures representing less than 4% of the overall Medicaid spending for this category of services. This rate setting methodology has been in existence since 2002 and has calculated rates in this way since its establishment. We have reviewed past and current trends in Medicaid expenditures and find that there is no need to separate nursing facility and swing bed days for projection purposes.

COMMENT #2: The department claims to be proposing rates that are at a level consistent with efficiency, economy, quality of care, and to ensure the continued participation of providers; that simply is not the case. According to Skilled Nursing Facility (SNF) Total Market Basket projections from Global Insight, skilled nursing facilities have experienced inflation of about 14% from July 1, 2008 to July 1, 2014. Over that period of time, nursing facility rates have risen 2% and now the department is proposing to raise them by only 1.64% for a total of 3.64% over a seven-year period. In order to establish reasonable rates for this service the department should consider the factors outlined in 53-6-113, MCA, in addition to other pertinent factors, which include the:

availability of appropriated funds - the legislature appropriated additional funds for nursing facilities beyond 2%;

actual cost of services - the current cost to provide a day of nursing facility care is about \$192.23 while the current rate is about \$166.09. A 1.64% increase is woefully inadequate to bridge that gap;

quality of services - facilities struggle to meet state and federal quality standards, and only a handful of facilities are in full compliance when they are surveyed annually; professional knowledge and skills necessary for the delivery of services - increased acuity necessitates more professional knowledge and skills for those delivering care; and availability of services.

There is no evidence in the statement of reasonable necessity that the department took these and other pertinent factors into account in proposing a 1.64% increase. We are asking the department to consider the effects of inflation on nursing facilities and to properly account for inflation in setting rates. No one can deny that costs that are beyond facilities' control are increasing more than 1.64% - food, utilities, health insurance, liability insurance, medical supplies and the like, to say nothing of the need to provider wage increases to staff to maintain a competent and reliable work force.

RESPONSE #2: Federal laws or regulations do not mandate that established Medicaid rates must cover all of the actual costs incurred by nursing facility providers.

The department has developed rates which are reasonable and adequate and in compliance with all requirements. The price is reflective of many factors that impact the ways that nursing facilities do business and is set at a level that is fair when considering all of those factors together.

The statewide price is determined through a public process. Factors that are considered in the establishment of this price include the cost of providing nursing facility services, Medicaid recipient's access to nursing facility services, the quality of nursing facility care, as well as budgetary or funding levels. The price-based rate reflects a rate commensurate with the services that are required to be provided by nursing facility providers when meeting federal and state requirements. Predictability of the reimbursement calculation is one of the required features of the price-based reimbursement approach, as is the recognition of the changes in acuity of the residents in a facility over time.

Each nursing facility receives the same operating per diem rate, which is 80% of the statewide price. The remaining 20% of the statewide price represents the direct resident care component of the rate and is acuity adjusted. Each facility's direct resident care component rate is specific to that facility and is based on the acuity of Medicaid residents served in that facility. As acuity changes in each facility based on the level of complexity of the residents being served relative to the statewide acuity, facility rates adjust upward or downward to account for this change in acuity.

Montana contracts with Myers and Stauffer LC to prepare an annual analysis of each nursing facility's cost of providing nursing facility services to Medicaid recipients, and each facility's reimbursement rate. The analysis provides the department with an evaluation tool as to the adequacy of the statewide pricing for Montana nursing facilities and has done so since 2002. The annual rate-to-cost

analysis that is performed for the rate-setting process indicates for State Fiscal Year (SFY) 2013 that Montana's Medicaid day-weighted average total rate that includes all supplemental payments (IGT and direct care wages) was \$182.08 compared to the Medicaid inflated cost of \$186.89, or that on average Medicaid is covering approximately 97.43% of cost through the various forms of reimbursement to nursing facility providers. This rate comparison supports the determination as to the adequacy of the Medicaid reimbursement rates for nursing facilities and that there is a process for such a determination.

COMMENT #3: The department received several comments about the increased costs that are being incurred by nursing facilities and the adequacy of the rate that is being proposed effective July 1, 2014.

The Legislature recognized that nursing facilities needed additional funding to account for inflation and the difference between cost and rates as well as increased acuity of those we care for. After hours of testimony and careful consideration the 2013 Legislature provided funding for rate increase above the 2% per year level. Unfortunately the Governor vetoed this important and necessary funding and now the department is proposing funding below even the 2% that was left after the veto. There is no relationship between rates and cost of services, and inflation and acuity are not taken into account.

RESPONSE #3: The department has utilized the appropriated level of funding that was included in HB2 that was signed into law by the Governor for SFY 2015 rate setting. The Governor's administration proposed and supported a 2% provider rate increase for all department providers as part of the Governor's 2014/2015 biennial budget.

The department has reevaluated its calculation and will agree to adjust the nursing facility bed days and the rate components to achieve a 2% overall statewide average rate increase. The total revised statewide average Medicaid rate will be \$169.42 up from the 2014 statewide average rate of \$166.10 for an increase of \$3.32 per Medicaid day. We would propose to adopt this rate increase in the final calculated rate sheet that will be provided to all providers with their rate letter notification. Rate increases will be effective retroactively to July 1, 2014. Any rate decreases will be effective after the final notice of these rules and will be implemented August 1, 2014.

Please refer to the response to Comment #2, which explains in detail why the department believes nursing facility reimbursement is adequate.

COMMENT #4: The Montana Legislature approved a 2% increase for providers. With the department's plan to keep the patient contribution amount the same at \$31.62, the intended increase falls short to approximately 1.64%. I feel this is unacceptable. It causes the providers to be penalized because the patient contribution falls short.

Every year we have to increase the private pay rate considerably to attempt to make

up losses. Our current rate for private pay is more than \$40 dollars per day than the reimbursement rate paid by Medicaid. The gap will become ever increasing each year.

I can tell you that nearly every one of our nursing facilities has total daily expenses that are significantly higher than the daily Medicaid rate. We rely on premium payers to make up the large losses we take on the majority of our census (Medicaid census is around 65-70% of our total census). In today's market, more and more of those premium payers are staying at home or going to assisted living and that is making it tougher and tougher to cover expense.

Year after year, we face a growing percentage of Medicaid patients; however, the level of clinical complexity and administrative costs to care for these patients continue to climb. The Medicaid rate is too low already to meet current costs for care. It is imperative that our facility receive the full payment adjustment, as intended by the Legislature.

It is my understanding that this proposal will increase state and federal rates, but ignores reimbursement for patients. It is unfortunate that the facilities that provide frontline care for these patients and their families are penalized. The burden of the decreased portion of funding should not be shifted to those already receiving the short end of the stick. Oftentimes these patients are already unable to meet their minimum Medicaid monthly portion. Our facility and others across the state end up absorbing that loss of payment every day and suffering that loss year after year.

Although we continue to increase our private pay rate each year by 5% to offset escalating costs associated with decreasing reimbursements for our high Medicaid patient population, the high and increasing cost of care is often shifted to others, like our private pay patients and our staff. As fewer and fewer organizations are able to accept Medicaid patients for long term care, the impact of not receiving the full 2% increase for Medicaid payments intensifies the challenges and costs for all of us who still serve Medicaid patients.

RESPONSE #4: The funding level being distributed in the reimbursement spreadsheet comports with the funding appropriated by the Legislature for nursing facility providers at \$145,522,658 of state and federal funds for the per diem rate calculation which has increased from \$134.48 in 2014 up to the proposed \$137.21 per day of state and federal funds which is a calculated 2% rate increase.

The current patient contribution or third party payor funds and nursing facility bed days are not components that are appropriated by the Legislature. They are components that the department uses to calculate the per day amounts from year to year.

Please refer to the response to Comment #2, which explains in detail why the department believes nursing facility reimbursement is adequate.

COMMENT #5: A commenter stated that with your proposed cuts, we will be reducing staff because we will be reducing our Medicaid resident intake. At this time 60% of our residents are on Medicaid; we cannot afford a higher percentage; in fact, we will reduce our Medicaid intake. Your communities of elders need and deserve to be cared for. A majority of the residents come from the hospital and want to return to the community. I know the department is looking to return residents to the community from the nursing facility, but it won't be the nursing facility where they are staying; it will be the hospital because they require a higher level of skilled care. We are asking you as representatives to honor our elders and give to them what was promised. We ask that you produce rates that are keeping up with the demands of our economy and residents who need nursing facility care.

RESPONSE #5: Occupancy in Montana for nursing facility care has been declining for some time but has slowed in recent years. The current statewide occupancy level is at 69% with several facilities operating at occupancy levels of under 50%. Medicaid occupancy statewide is at 59%. With these levels of occupancy there are open and available beds for those individuals that seek to access nursing facility placements. While some facilities are operating at a much fuller occupancy level, there is capacity in many of Montana's nursing facilities to place individuals that require this level of service.

There is designated funding provided above the calculated per diem rate funding for each nursing facility in the form of supplemental direct care wage funds. In SFY 2015 Montana nursing facilities will continue to receive increases from direct care wage (DCW) funding through an appropriation that is separate and in addition to the provider rate funding provided through the price-based methodology. The DCW program provides funding separately from the reimbursement rate calculation, to help facilities provide wage increases to its direct care workforce and will provide over \$3.9 million dollars in ongoing funding during this SFY that can only be used to provide for lump sum bonuses or to sustain or increase wage payments to direct care and ancillary workers in nursing facilities. This payment is approximately \$3.99 per day above the calculated per diem rate for 2015.

COMMENT #6: Commenters stated they remain concerned about the adequacy of Medicaid payments to meet the cost to provide services to nursing facility residents. The gap between the cost to deliver care and the amount Medicaid pays continues to grow. Over the most recent six-year period Medicaid payments have never kept up with inflation. For four years no inflationary adjustment was made at all. Just 2% per year in the current biennium was authorized. It now appears that even that 2% will not be realized.

We encourage the department to delineate a plan to address three important goals: improve payment adequacy in the near term future; provide incentives to improve the quality and cost effectiveness of services; and assure continued access to care for Medicaid beneficiaries.

We make this request because we sincerely believe that an alternative approach to the current rate methodology is needed. To continue making minor inflationary adjustments to the current per diem rate will fail to achieve any of the three goals we have identified.

RESPONSE #6: The annual rate-to-cost analysis that is performed for the rate-setting process indicates for SFY 2013 that Montana's Medicaid day-weighted average total rate that includes all supplemental payments (IGT and direct care wages) was \$182.08 compared to the Medicaid inflated cost of \$186.89, or that on average Medicaid is covering approximately 97.43% of cost through the various forms of reimbursement to nursing facility providers. This rate comparison supports the determination as to the adequacy of the Medicaid reimbursement rates for nursing facilities and that there is a process for such a determination.

Montana nursing facilities continue to receive additional funding from the Intergovernmental Fund Transfer (IGT) program by taking advantage of the ability to match existing county funds with enhanced federal funds up to the higher Medicare Upper Payment Limit amount thus providing an enhanced IGT payment to Montana nursing facilities up to the total appropriation of \$23,945,170 in 2015 of total funds.

Additionally nursing facility providers received direct care wage funds to support their direct care staffing. In SFY 2015 Montana nursing facilities will continue to receive increases from direct care wage (DCW) funding through an appropriation that is separate and in addition to the provider rate funding provided through the price-based methodology. The funding will provide over \$3.9 million dollars in ongoing funding during this SFY that can only be used to provide for lump sum bonuses or to sustain or increase wage payments to direct care and ancillary workers in nursing facilities. This funding helps facilities provide wage increases to its direct care workforce.

The department will take under consideration these comments and will discuss with Myers and Stauffer any new options or trends in analyzing and measuring payment adequacy for nursing facilities or new payment options such as pay for performance, etc. that would better recognize acuity.

COMMENT #7: The department received several comments about the increased costs that are being incurred by nursing facilities related to staffing and wages. The difficulty in recruiting and retaining staff is due to the continued development of the Bakken oil fields in North Dakota. Although we are not directly impacted as communities further east are, we continue to have difficulty recruiting staff since people from here are employed in the oil fields in the area. The other issue that we are seeing in the community is the continued building of businesses that are indirectly related to the Bakken expansion including hotels, restaurants, expanded customer base for Wal-Mart, and other businesses being less than adequately staffed. We currently have one motel that is using short term staffing from Mexico to provide room services due to the difficulty in finding adequate staffing. Our staffing salaries need to be competitive with the area due to the continued difficulty in finding

staff. Our Certified Nursing Aide pay is currently similar to other businesses in the area.

In March we had to conduct a reduction in force which affected seven staff members, and three other staff members had their hours reduced. We most likely will not be offering wage increases this year. Staff members received a 1% increase in 2013 and did not receive an increase in 2012.

RESPONSE #7: Nursing facility providers have benefited from additional funding that has been appropriated and targeted specifically at direct care wages for several years. This funding is in addition to the funding allocated through the reimbursement methodology. In SFY 2015 Montana nursing facilities will continue to receive increases from direct care wage (DCW) funding through an appropriation that is separate and in addition to the provider rate funding provided through the price-based methodology. The funding will provide over \$3.9 million dollars in ongoing funding during this SFY that can only be used to provide for lump sum bonuses or to sustain or increase wage payments to direct care and ancillary workers in nursing facilities. This funding helps facilities provide wage increases to its direct care workforce. This is approximately \$3.99 per Medicaid day that will be passed on to facilities to provide for wage or bonus increases for direct care and ancillary workers. This funding should serve to mitigate some of the concerns related to providing wages and bonuses to facility workers during the next SFY.

COMMENT #8: The department received several comments about the waiting time it takes for a person to get approved by Medicaid.

RESPONSE #8: These comments do not relate directly to this rule amendment. The department will respond to these comments through separate correspondence.

COMMENT #9: The department received several comments about the acuity of the residents in nursing facilities. The acuity of the resident continues to increase. Due to the longer life span of people, residents require more time with safe lift practices, assistance to toilet and bath, dress, and eat. We currently serve mostly people 85 and older with two residents over the age of 100. This requires adequate staffing and the ability to provide the necessary education to ensure that we are caring for the residents appropriately. Due to the increased acuity of the resident, the registered nurse services we provide are critical to maintaining the health and quality of life of the residents. Nursing services continue to be an important part of our care and are also part of the rising costs of future care provision.

We manage a high acuity patient mix in our facility. This results in the need for high cost intravenous drugs and medical supplies to appropriately treat patients with complex medical conditions. Each day, we care for patients on Medicaid who need expensive medications and treatments for acute and chronic illnesses. Our goal is to help our patients regain enough functional strength to safely return to their families, homes, and communities. However, a lack of support and resources often

forces many of them to remain in our facility for long term care further compounding the financial constraints of poor reimbursement.

We accept high acuity of care for those that have closed head injuries, severe strokes, wound care, tracheostomy (trach), and extensive IVs. Residents are transferring from the hospitals sicker and sooner from intensive care units and surgeries than they ever have in the past. In order to meet the demands of our increasing acuity we have had to have physicians on site and purchase more specialty equipment such as bladder scanner, special IV products, and specialty beds.

We used to accept ventilator patients, not anymore; they go out of state or stay in the hospital for continued care. The reimbursement rate does not cover the expense for these individuals to stay in their home town.

RESPONSE #9: The current reimbursement methodology recognizes acuity of residents and makes adjustments for the variation of the Case Mix Indexes in the calculation of the nursing portion of the rate that is acuity adjusted. Each nursing facility receives the same operating per diem rate, which is 80% of the statewide price. The remaining 20% of the statewide price represents the direct resident care component of the rate and is acuity adjusted. Each facility's direct resident care component rate is specific to that facility and is based on the acuity of Medicaid residents served in that facility. As acuity changes in each facility based on the level of complexity of the residents being served relative to the statewide acuity, facility rates adjust upward or downward to account for this change in acuity. The statewide average acuity utilized in the reimbursement system has gone from .9933 in 2012, to 1.0071 in 2013, to 1.0105 in 2014, and is currently at 1.0100. The current methodology adjusts 20% of the total rate for acuity which was a desired characteristic when the price-based reimbursement system was first adopted in order to mitigate wide fluctuations in rates when acuity changes occurred in facilities.

COMMENT #10: One person commented that when their father-in-law, a private pay patient, spent his final days in a Billings nursing home they discovered the extra charge for nursing home bed tax imposed on him and other private pay patients, who had no idea there was such a tax. This bed tax is just another one of the continued tax shifts to the elderly, homeowners, and college students. This law is insidious.

RESPONSE #10: The nursing facility utilization fee for bed days in nursing facilities is a tax on nursing facilities whereby they must pay a utilization fee for each bed day in the facility regardless of payor. The Montana Code Annotated at 15-6-102(3) is very clear that a nursing facility may not place a fee created in this section on the patient's bill.

4. The department intends to apply these proposed rule amendments retroactively to July 1, 2014. A retroactive application of the proposed rule amendments does not result in a negative impact to any affected party.

/s/ Valerie A. Bashor
Valerie A. Bashor
Rule Reviewer

/s/ Richard H. Opper
Richard H. Opper, Director
Public Health and Human Services

Certified to the Secretary of State June 30, 2014.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF AMENDMENT
ARM 42.2.302, 42.2.303, 42.2.304,)	
42.2.305, 42.2.306, 42.2.307,)	
42.2.308, 42.2.310, 42.2.311,)	
42.2.312, 42.2.313, 42.2.321,)	
42.2.322, 42.2.323, 42.2.324,)	
42.2.325, 42.2.501, 42.2.503,)	
42.2.504, 42.2.505, 42.2.510,)	
42.2.511, 42.2.520, and 42.2.901)	
pertaining to the department's)	
general rules and definitions)	

TO: All Concerned Persons

1. On May 22, 2014, the Department of Revenue published MAR Notice No. 42-2-907 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 1061 of the 2014 Montana Administrative Register, Issue Number 10.

2. A public hearing was held on June 12, 2014, to consider the proposed amendments. No one appeared at the hearing to testify and no written comments were received.

3. The department amends the above-stated rules as proposed.

/s/ Laurie Logan
Laurie Logan
Rule Reviewer

/s/ Mike Kadas
Mike Kadas
Director of Revenue

Certified to the Secretary of State June 30, 2014.

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 44.5.121 pertaining to)
miscellaneous fees charged by the)
Business Services Division)

TO: All Concerned Persons

1. On May 22, 2014, the Secretary of State published MAR Notice No. 44-2-196 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 1074 of the 2014 Montana Administrative Register, Issue Number 10.

2. The Secretary of State has amended the following rule as proposed, but has made the following changes from the original proposal, new matter underlined, deleted matter interlined:

44.5.121 MISCELLANEOUS FEES (1) through (6) remain the same.
~~(7) Surety bond, cashier's check, or certificate of deposit — 15.00~~
(8) through (10) remain as proposed, but are renumbered (7) through (9).

AUTH: 2-15-405, 30-9A-526, 35-1-1307, 35-2-1107, 35-7-103, MCA
IMP: 2-6-103, 2-15-405, ~~20-7-604~~, 30-9A-525, 30-13-320, 35-1-1206, 35-2-119, 35-2-1003, 35-2-1107, 35-7-103, 80-8-210, ~~82-1-104~~, MCA

3. No member of the public commented on the rule notice. The Secretary of State received comments from K. Virginia Aldrich, attorney for the State Administration and Veterans' Affairs Interim Committee (SAVA). The Secretary of State appeared before the SAVA committee on June 5, 2014, to respond to Ms. Aldrich's comments. A summary of the discussion follows:

COMMENT: Ms. Aldrich questioned the Secretary of State's authority to charge a fee for depositing surety bonds, cashier's checks, or certificates of deposit with the Secretary of State's office as required by 20-7-604 and 82-1-104, MCA, because those statutes do not specifically state that the Secretary of State is allowed to charge a fee for those services.

RESPONSE: The Secretary of State responded that even though those two statutes do not specifically state that the Secretary of State may charge a fee for those services, the Legislature enacted 2-15-405, MCA, in 2001 designating the Secretary of State's office as a proprietary fund agency, mandating that the Secretary of State charge a fee for the services it provides, and directing that all fees collected be deposited into an enterprise fund account. An enterprise fund is "financed and operated similar to private business enterprises, where the intent of the legislature is to finance or recover all costs primarily through user charges." See

Montana Operations Manual Policy 302 Governmental Accounting Overview. Senator Dave Lewis, who was the Director of the Office of Budget and Program Planning in 2001 when the statute was enacted, said it was his recollection that "the Appropriations Committee came up with the idea that if you use the office, you would pay the costs of the office."

The SAVA committee decided to introduce legislation to amend 20-7-604 and 82-1-104, MCA, to allow the Secretary of State to charge a fee for the services it provides under those statutes. Therefore, the Secretary of State agreed to eliminate (7) from its proposed amendments to the rule and to eliminate those two statutes from the implementation statutes. The Secretary of State will amend the rule in the future.

/s/ JORGE QUINTANA
Jorge Quintana
Rule Reviewer

/s/ LINDA MCCULLOCH
Linda McCulloch
Secretary of State

Dated this 30th day of June, 2014.

NOTICE OF FUNCTION OF ADMINISTRATIVE RULE REVIEW COMMITTEE

Interim Committees and the Environmental Quality Council

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

Economic Affairs Interim Committee:

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

Education and Local Government Interim Committee:

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

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

- Department of Public Health and Human Services.

Law and Justice Interim Committee:

- Department of Corrections; and
- Department of Justice.

Energy and Telecommunications Interim Committee:

- Department of Public Service Regulation.

Revenue and Transportation Interim Committee:

- Department of Revenue; and
- Department of Transportation.

State Administration and Veterans' Affairs Interim Committee:

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

Environmental Quality Council:

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

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

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

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

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

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

Use of the Administrative Rules of Montana (ARM):

- | | |
|---------------|---|
| Known Subject | 1. Consult ARM Topical Index.
Update the rule by checking the accumulative table and the table of contents in the last Montana Administrative Register issued. |
| Statute | 2. Go to cross reference table at end of each number and title which lists MCA section numbers and department corresponding ARM rule numbers. |

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies that have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through March 31, 2014. This table includes those rules adopted during the period April 1, 2014, through June 30, 2014, 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 March 31, 2014, this table, and the table of contents of this issue of the MAR.

This table indicates the department name, title number, rule numbers in ascending order, catchphrase or the subject matter of the rule, and the page number at which the action is published in the 2014 Montana Administrative Register.

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