

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 1

The Montana Administrative Register (MAR or Register), a twice-monthly publication, has three sections. The Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted. The Rule Section contains final rule notices which show any changes made since the proposal stage. All rule actions are effective the day after 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 DEPARTMENT OF AGRICULTURE
AND THE DEPARTMENT OF LIVESTOCK
OF THE STATE OF MONTANA

In the matter of the proposed adoption of) NOTICE OF PUBLIC HEARING ON
New Rule I through VII relating to) PROPOSED ADOPTION
Montana certified natural beef cattle)
marketing program)

TO: All Concerned Persons

1. On February 7, 2008, at 3:00 p.m. the Montana Department of Agriculture will hold a public hearing in Room 225 of the Scott Hart Building, 303 N. Roberts at Helena, Montana, to consider the proposed adoption of the above-stated rules.

2. The Department of Agriculture will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Agriculture no later than 5:00 p.m. on January 22, 2008, to advise us of the nature of the accommodation that you need. Please contact Cort Jensen at the Montana Department of Agriculture, 303 North Roberts, P.O. Box 200201, Helena, MT 59620-0201; Phone: (406) 444-3144; Fax: (406) 444-5409; or e-mail: agr@mt.gov.

3. The proposed new rules would be placed in ARM Title 4 and provide as follows:

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

- (1) "Animal by-products" means biodegradable wastes consisting of animal carcasses, parts of animal carcasses, and products of animal origin that are not intended for human consumption.
- (2) "Beef product" means edible muscle tissue produced from the harvesting and processing of finished cattle.
- (3) "Best grazing standards" means proper grazing using the practice of managing forage harvest by all grazing animals including domestic livestock at a sustainable yield that does not accelerate erosion and sedimentation above acceptable levels for the receiving waters.
- (4) "Certificate" means a document signed by the department verifying the producer is raising cattle within the parameters of the "Montana Certified Natural Beef" program.
- (5) "Certificate holder" means a producer who has met all requirements for participation in the program and has received a certificate signed by the department.
- (6) "Certified enrolled cattle" means feeder and finished cattle that have been enrolled and raised in compliance with the requirements of the program.
- (7) "Corrective action" means the action required of a certificate holder by the department to come into compliance with the requirements of the program.

(8) "Department" means the Department of Agriculture.

(9) "Ionophores" means the technical name for a class of additives designed to effect the microbial population found in the rumen that are commonly fed to cattle to improve feed efficiency and rate of gain.

(10) "Montana Beef Network" means a program providing animal identification for Montana cattle that meet specific beef quality and consistency targets.

(11) "Producer" means a person, partnership, association, corporation, cooperative, trust, sharecropper, and all other business units, devices, and arrangements who raise, own, feed, or finish cattle.

(12) "Program" means the Montana Certified Natural Beef Program created by Title 80, chapter 11, part 8, MCA and this chapter.

(13) "Raised" means the animal must have spent its entire life in Montana except for up to five days allowing for slaughter.

(14) "Sub-therapeutic antibiotics" means antibiotics used as preventatives such as those administered below the dosage levels used to treat diseases.

(15) "Synthetic hormones" or "synthetic growth promotants" means hormones or growth promotants that are developed in the laboratory to be used in enhancing growth in cattle.

AUTH: 80-11-801, MCA

IMP: 80-11-801, MCA

NEW RULE II APPLICATION AND PROGRAM AGREEMENT (1) Any producer desiring to participate in the program shall submit an application on a form provided by the department, which shall include the appropriate application fee and a Montana Natural Beef Program agreement, which must be signed by the applicant. The applicant shall also participate in an in-person evaluation as a part of the certification process.

(2) The department shall establish the terms and conditions included in the agreement consistent with Title 80, chapter 11, part 8, MCA, and this chapter. An agreement shall include, but is not limited to, the following requirements:

(a) the certificate holder shall not use any proprietary rights of the program except as allowed by law or pursuant to the terms of the agreement and this chapter;

(b) the certificate holder shall follow all applicable program procedures and keep detailed records showing full compliance with requirements of the program;

(c) the certificate holder shall pay all fees and costs;

(d) the certificate holder shall submit to all inspections and audits, and to allow or provide for access by the department, Department of Livestock or its designees, to the facility, enrolled cattle, and records during regular business hours for such purposes;

(e) the certificate holder shall represent that the applicable requirements set forth in this chapter for the animal at each applicable stage of production will be met;

(f) the certificate holder shall comply with all applicable state, federal, and local laws, rules, and ordinances;

(g) the certificate holder agrees that the certificate may be suspended or revoked by the department as provided in this chapter.

(3) If an application is approved, the department shall issue a certificate verifying the holder has met the Montana Natural Beef Program requirements.

(4) The department may deny an application if it determines that issuing the certificate will put the integrity of the program at risk. When making this determination, the department may consider the following information relating to the applicant:

- (a) ability to comply with the program requirements;
- (b) willingness to comply with the program requirements;
- (c) history, as provided by the department or Department of Livestock, of noncompliance with livestock or agriculture rules that has lead to fines;
- (d) whether applicant will be subject to the jurisdiction of the program;
- (e) whether livestock to be enrolled will be subject to the jurisdiction of the program;
- (f) whether applicant has, in the past, failed to meet any requirements of the program;
- (g) whether applicant has done anything to jeopardize the integrity of the program.

(5) Each certificate shall be renewed annually upon receipt of a renewal application unless the certificate is otherwise terminated by the department.

AUTH: 80-11-801, MCA

IMP: 80-11-801, MCA

NEW RULE III PROGRAM REQUIREMENTS (1) To enroll an animal in the program, a producer shall submit the required data to the department. The data shall be in an electronic form or in manuscript as required by the department. Certificate holders shall confirm the animal to be enrolled was born within the state of Montana, has continuously been in Montana, and remains in Montana in the physical possession of a certificate holder at the time of enrollment.

(2) Certified cattle may not be fed any products containing:

(a) food processing waste, restaurant food waste, dried poultry waste, dried poultry litter, dried ruminant waste, dried swine waste, undried processed animal waste products, or processed animal waste derivative as these products are defined on pages 326 and 334 through 336 of the 2005 "Official Publication of the Association of American Feed Control Officials Incorporated," published by the Association of American Feed Control Officials Incorporated. Copies may be obtained from the Association of American Feed Control Officials, P.O. Box 478, Oxford, IN 47971; or

(b) any material prohibited from use in ruminant livestock feeds pursuant to the Code of Federal Regulations, 21 C.F.R. 589.2000, as amended April 1, 2004. Copies may be obtained from the Department of Agriculture, P.O. Box 200201, Helena, MT 59620-0201; or

(c) feed products containing drugs, chemicals, and/or ionophores.

(3) To qualify as Montana certified natural beef cattle, the cattle must be finished on a ration that is natural feed containing no drugs, chemicals, ionophores, or animal by-products. Detailed records and invoices must be available for inspection to verify the duration of feeding and the ration content.

(4) To qualify as Montana certified natural grass-fed beef cattle, animals must be fed a feed source consumed for the lifetime of the ruminant animal, with the exception of milk consumed prior to weaning within Montana and raised in compliance with this program. The diet shall be derived solely from forage consisting of grass (annual and perennial), forbs (e.g., legumes, Brassica), browse, or cereal grain crops in the vegetative (pregrain) state. Animals cannot be fed grain or grain byproducts and must have continuous access to pasture during the growing season. Hay, haylage, baleage, silage, crop residue without grain, and other roughage sources may also be included as acceptable feed sources. Routine mineral and vitamin supplementation may also be included in the feeding regimen. If incidental supplementation occurs due to inadvertent exposure to nonforage feedstuffs or to ensure the animal's well being at all times during adverse environmental or physical conditions, the producer must fully document (e.g., receipts, ingredients, and tear tags) the supplementation that occurs including the amount, the frequency, and the supplements provided. Detailed records and invoices must be available for inspection to verify the duration of feeding and the ration content.

(5) The certificate holder shall keep detailed records in compliance with [New Rule IV].

(6) To retain eligibility in the program, the transfer of certified cattle shall be made as follows:

(a) every certificate holder who transfers ownership or physical possession of enrolled cattle to another certificate holder shall warrant the cattle comply with all requirements of the program. The warranty shall be in writing on a form provided by the department. The warrant form shall be provided to the transferee before or at the time of transfer;

(b) the transfer of certified enrolled cattle from one certificate holder to another shall be reported to the department or its designees as follows:

(i) when enrolled cattle are transferred from a certificate holder to another certificate holder, the transferor shall report the transfer to the department before or at the time of the transfer;

(ii) any transfer, other than as expressly provided for in these rules, automatically terminates the enrollment of the animal in the program unless specifically exempted by the department.

(7) A certificate holder who enrolls cattle and raises them in compliance with program requirements may use the mark "Montana Certified Natural Beef," or "Montana Certified Natural Grass-fed Beef," in connection with qualifying cattle.

AUTH: 80-11-801, MCA

IMP: 80-11-801, MCA

NEW RULE IV RECORD KEEPING (1) The certificate holder shall maintain records of the enrolled cattle which must include the following:

(a) month and year of birth and premise;

(b) health records, including vaccine lot numbers, the vaccine manufacturer, and dates of vaccination;

- (c) transfers of ownership and physical possession of certified cattle, including a record of the date and the person who reported the transfers to the department data management system;
 - (d) compliance with the certificate requirement for the enrolled cattle fed;
 - (e) temporary premise transfers;
 - (f) lost or destroyed cattle;
 - (g) duration of feeding and ration content.
- (2) Records shall be kept on forms provided by the department. Records shall be available for inspection during normal business hours by the department, Department of Livestock, or either department's authorized agents. The records required by this chapter shall be kept for five years.

AUTH: 80-11-801, MCA
IMP: 80-11-801, MCA

NEW RULE V INSPECTIONS AND AUDITS (1) The applicant shall submit to premises and records inspections and audits to ensure compliance with program requirements as required by the department or Department of Livestock or its designees.

- (2) Each certificate holder may be inspected up to once each year.
 - (a) A certificate holder who has failed an inspection may be inspected again in the same year and must pay for the additional inspection.
 - (b) If the department has reason to believe a certificate holder is engaged in a violation of the law or rules governing the certificate, the department may perform an additional inspection but may not charge an inspection fee for it.

AUTH: 80-11-801, MCA
IMP: 80-11-801, MCA

NEW RULE VI FEES AND COSTS (1) The annual certification fee is \$100.
(2) The inspection fee is \$2 per head.
(3) All fees paid to the department by certificate holders shall be deposited into the fund administered by the department.

AUTH: 80-11-801, MCA
IMP: 80-1-103, 80-11-801, MCA

NEW RULE VII ENFORCEMENT (1) The department may take informal or formal enforcement action against a certificate holder for violation of department statutes or rules.

- (2) The department's informal enforcement action may include:
 - (a) requiring the certificate holder to take corrective action within the time specified by the department by department order;
 - (b) removal of enrolled cattle from the program if the department finds an animal does not comply with the standards and requirements of the program;
 - (c) requiring additional inspections.

(3) The department's formal enforcement actions shall be conducted under the Montana Administrative Procedure Act. The department may suspend or revoke the certification if the department finds the cattle or products do not conform to the requirements of the program.

(4) The department may suspend or revoke a certificate for causes including but not limited to:

- (a) failure to maintain records as required by this chapter;
- (b) failure to allow or provide access for the department to the certificate holder's premises or records;
- (c) failure to comply with applicable federal, state, or local law;
- (d) failure to pay fees when due;
- (e) any other violations of this chapter; or
- (f) receipt of credible evidence the certificate holder did not meet the eligibility requirements set forth in this chapter at the time the certificate was issued.

AUTH: 80-11-801, MCA

IMP: 80-11-801, MCA

REASONS: The proposed new rules are necessary to implement the provisions of Senate Bill 544, codified at 80-11-801, MCA, as passed by the 2007 Montana Legislature. Senate Bill 544 required the Departments of Agriculture and Livestock to create and administer a Montana Certified Natural Beef Cattle and Montana Certified Natural Grass Beef-fed Cattle Marketing Program, and to provide qualifications for certification of this program. The proposed new fees will generate \$5,000 in revenue, based on 25 potential applicants in the state.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action orally or in writing to Cort Jensen at the Montana Department of Agriculture, 303 North Roberts, P.O. Box 200201, Helena, MT 59620-0201; Fax: (406) 444-5409; or e-mail: agr@mt.gov. Any comments must be received no later than 5:00 p.m. on February 14, 2008.

5. The Department of Agriculture maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person and specifies for which program the person wishes to receive notices. Such written request may be mailed or delivered to Montana Department of Agriculture, Attention: Cort Jensen, 303 North Roberts, P.O. Box 200201, Helena, MT 59620-0201; Fax: (406) 444-5409; or e-mail: agr@mt.gov or may be made by completing a request form at any rules hearing held by the Department of Agriculture.

6. An electronic copy of this Notice of Proposed Adoption is available through the department's web site at www.agr.mt.gov, under the Administrative Rules section. The department 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 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.

7. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was notified on October 15, 2007 by regular mail.

DEPARTMENT OF AGRICULTURE

/s/ Ron de Yong
Ron de Yong, Director

/s/ Cort Jensen
Cort Jensen
Rule Reviewer

/s/ Christian Mackay
Christian Mackay
Executive Officer
Board of Livestock
Department of Livestock

/s/ Carol Grell Morris
Carol Grell Morris
Rule Reviewer

Certified to the Secretary of State, January 7, 2008.

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

In the matter of the proposed repeal) NOTICE OF PUBLIC HEARING
of ARM 24.7.302, 24.7.307, 24.7.310,) ON PROPOSED REPEAL
and 24.7.314, related to Board of)
Labor Appeals procedural rules)

TO: All Concerned Persons

1. On February 8, 2008, at 11:30 a.m., the Board of Labor Appeals (board) will hold a public hearing to be held in the first floor conference room (Room 104), Walt Sullivan Building, 1327 Lockey Avenue, Helena, Montana to consider the proposed repeal of the above-stated rules.

2. The board 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 no later than 5:00 p.m., on February 1, 2008, to advise us of the nature of the accommodation that you need. Please contact the Office of Legal Services, Department of Labor and Industry, Attn: Marieke M. Beck, P.O. Box 1728, Helena, MT 59624-1728; telephone (406) 444-2917; fax (406) 444-1394; TDD (406) 444-5549; or e-mail mabeck@mt.gov.

3. The board proposes to repeal the following rules:

24.7.302 GENERAL RULES GOVERNING APPEALS found at page 24-267 of the Administrative Rules of Montana.

AUTH: 2-4-103, MCA
IMP: 2-4-103, MCA

REASON: There is reasonable necessity to repeal ARM 24.7.302 because the board has determined, as part of a recent review of its rules, the rule is obsolete and redundant when read in context of the rest of the board's rules.

24.7.307 WITNESS FEES found at page 24-279 of the Administrative Rules of Montana.

AUTH: 2-4-201, MCA
IMP: 2-4-201, MCA

REASON: There is reasonable necessity to repeal ARM 24.7.307 because the board has determined, as part of a recent review of its rules, that the rule is obsolete and misleading because the board does not have any funds available to it to make reimbursements for witness fees paid.

24.7.310 BENEFIT DETERMINATION NOTICE found at page 24-280 of the Administrative Rules of Montana.

AUTH: 2-4-201, MCA
IMP: 2-4-201, MCA

REASON: There is reasonable necessity to repeal ARM 24.7.310 because the board has determined, as part of a recent review of its rules, the rule is redundant when read in context of the rest of the board's rules.

24.7.314 BOARD REVIEW found at page 24-281 of the Administrative Rules of Montana.

AUTH: 2-4-201, MCA
IMP: 2-4-201, MCA

REASON: There is reasonable necessity to repeal ARM 24.7.314 because the board has determined, as part of a recent review of its rules, the rule is redundant when read in context of the rest of the board's rules.

4. An on-line version of the board's rules, including the full text of the rules proposed for repeal, is available on the internet at <http://arm.sos.mt.gov/24/24-271.htm>. The text of the rules proposed for repeal can be found in the printed version of the Administrative Rules of Montana on the pages indicated in paragraph 3. A copy of the rules proposed for repeal is also available upon request to Marieke Beck, whose contact information is listed in paragraph 2.

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: Marieke M. Beck, Agency Counsel, Office of Legal Services Department of Labor and Industry, P.O. Box 1728, Helena, Montana 59624-1728; by facsimile to (406) 444-1394; or by e-mail to mabeck@mt.gov, and must be received no later than 5:00 p.m., February 15, 2008.

6. An electronic copy of this Notice of Public Hearing is available through the Department of Labor and Industry's (department) web site at <http://dli.mt.gov/events/calendar.asp>, under the Calendar of Events, Administrative Rules Hearings Section. The department strives to make the electronic copy of this Notice of Public Hearing conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems, and that a

person's difficulties in sending an e-mail do not excuse late submission of comments.

7. The department and the board maintain lists of interested persons who wish to receive notices of rulemaking actions proposed by the department and/or the board. Persons who wish to have their name added to the lists 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 or areas of law 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 Department of Labor and Industry, attention: Mark Cadwallader, 1327 Lockey Avenue, P.O. Box 1728, Helena, Montana 59624-1728, faxed to the department at (406) 444-1394, e-mailed to mcadwallader@mt.gov, or may be made by completing a request form at any rules hearing held by the agency.

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

9. The department's Hearings Bureau has been designated to preside over and conduct this hearing.

/s/ MARK CADWALLADER
Mark Cadwallader
Alternate Rule Reviewer

/s/ ELIZABETH BEST
Elizabeth Best, Chair
BOARD OF LABOR APPEALS

Certified to the Secretary of State January 7, 2008

BEFORE THE BOARD OF ARCHITECTS AND LANDSCAPE ARCHITECTS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the proposed amendment) NOTICE OF PUBLIC HEARING
of ARM 24.114.401 fee schedule and) ON PROPOSED AMENDMENT
24.114.501 examination)

TO: All Concerned Persons

1. On February 11, 2008, at 10:00 a.m., a public hearing will be held in room 439, 301 South Park Avenue, Helena, Montana to consider the proposed amendment 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 Architects and Landscape Architects (board) no later than 5:00 p.m., on February 4, 2008, to advise us of the nature of the accommodation that you need. Please contact Brooke Jasmin, Board of Architects and Landscape Architects, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2351; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2309; e-mail dlibsduc@mt.gov.

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

24.114.401 FEE SCHEDULE (1) through (1)(b) remain the same.
(c) Original license fee (~~prorated for licensure in midrenewal year~~) 80
(2) and (3) remain the same.

AUTH: 37-1-131, 37-1-134, 37-65-204, MCA
IMP: 37-1-134, 37-1-141, 37-65-307, MCA

REASON: The board determined that it is reasonable and necessary to amend this rule and eliminate the prorating of licensure fees. The board notes that the board staff processes applications in the same manner and involving the same amount of time and effort regardless of when an application is submitted. There is no cost savings to the board or the department to process an application midyear. The amendment will reduce applicant confusion and the additional work for staff to issue refunds or obtain correct fees from applicants. Based on the 105 applicants that paid the \$40 prorated fee between July 1, 2005 and June 30, 2006, the board estimates the change will affect approximately 100 applicants per year with a revenue increase of \$4000.

24.114.501 EXAMINATION (1) ~~Applicants for licensure in Montana shall pass~~ Eligibility for admission to the Architectural Registration Examination (ARE).

~~To be admitted to the ARE, applicants shall complete the education and training requirements and obtain a council record.~~

~~(a) Eligibility requirements must be verified by the council NCARB record and satisfied in accordance with the NCARB requirements handbook for interns and architects. The handbook is available from NCARB or the board office and is adopted and incorporated herein by reference requirements are available at www.ncarb.org.~~

~~(2) Applicants for the ARE must shall either:~~

~~(a) be enrolled in the Intern Development Program (IDP) by establishing a NCARB record or have completed the IDP and obtained a NCARB record; and~~

~~(a)(b) hold a degree in architecture from a school of architecture, the degree curriculum of which was accredited by the National Architectural Accrediting Board (NAAB) not later than two years after graduation; or~~

~~(b)(c) meet the alternate education criteria outlined in available on the NCARB handbook web site.~~

~~(3) Prior to application for licensure applicants shall: Applicants shall~~

~~(a) pass all sections of the ARE and request submittal to the board of all exam scores for every section of the exam passed.~~

~~(a) Applicants shall be permitted to may retake any section or all sections of the examination that the applicant failed to pass; and~~

~~(b) complete all IDP requirements and obtain a complete NCARB record.~~

~~(4) Examination records shall be are confidential and shall not be considered public records. Nothing herein shall prevent the The board from reporting may report applicants' scores to architectural registration boards in other jurisdictions or to NCARB.~~

AUTH: 37-1-131, 37-65-204, MCA

IMP: 37-1-131, ~~37-65-301~~, 37-65-303, MCA

REASON: It is reasonably necessary to amend this rule to align with changes at the national level. The National Council of Architects Registration Board (NCARB) no longer requires completion of the Intern Development Program (IDP) prior to taking the Architecture Registration Examinations (ARE). The amendment will allow Montana candidates to begin taking the ARE while working on their IDP requirements and comports with changes in ARE eligibility already adopted in several states. Applicants that have passed all sections of the ARE will still be required to complete the IDP to obtain licensure in Montana. Because NCARB updates the handbook for interns and architects annually and it is available on their web site, the board is amending this rule to remove the handbook reference and refer interested parties to the NCARB web site for the most current information. Implementation cites are being amended to accurately reflect all statutes implemented through the rule.

4. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Board of Architects and Landscape Architects, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-

2309, or by e-mail to dlibsdark@mt.gov, and must be received no later than 5:00 p.m., February 19, 2008.

5. An electronic copy of this Notice of Public Hearing is available through the department and board's site on the World Wide Web at www.architect.mt.gov. 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.

6. The Board of Architects and Landscape Architects 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 the person wishes to receive notices regarding all Board of Architects and Landscape Architects 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 Architects and Landscape Architects, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, faxed to the office at (406) 841-2309, e-mailed to dlibsdark@mt.gov, or made by completing a request form at any rules hearing held by the agency.

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

8. Pat Bik, attorney, has been designated to preside over and conduct this hearing.

BOARD OF ARCHITECTS AND
LANDSCAPE ARCHITECTS
BAYLISS WARD, PRESIDENT

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

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

Certified to the Secretary of State January 7, 2008

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

In the matter of the proposed amendment) NOTICE OF PUBLIC HEARING
of ARM 24.138.407 functions for dental) ON PROPOSED AMENDMENT
hygienists, 24.138.3102 specialty) AND ADOPTION
advertising, and the adoption of NEW)
RULE I hygiene diagnosis and treatment)
planning)

TO: All Concerned Persons

1. On February 7, 2008, at 9:00 a.m., a public hearing will be held in room 439, 301 South Park Avenue, Helena, Montana to consider the proposed amendment and adoption of the above-stated rules.

2. The Department of Labor and Industry (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 Dentistry (board) no later than 5:00 p.m., on February 1, 2008, to advise us of the nature of the accommodation that you need. Please contact Traci Collett, Board of Dentistry, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2390; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail dlibsdden@mt.gov.

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

24.138.407 FUNCTIONS FOR DENTAL HYGIENISTS (1) through (3) remain the same.

(a) diagnosis and treatment planning as per 37-4-401, MCA, except such dental hygiene diagnosis and treatment planning set forth at [NEW RULE I] that are necessary to the provision of educational, therapeutic, prophylactic, or preventive dental hygiene procedures;

(b) through (8) remain the same.

AUTH: 37-1-131, 37-4-205, 37-4-408, MCA

IMP: 37-4-401, 37-4-405, 37-4-408, MCA

REASON: The board determined it is reasonably necessary to amend this rule and adopt NEW RULE I to clarify the practice of Montana licensed dental hygienists. Following receipt of information from the Montana Dental Hygiene Association, the issue of dental hygiene diagnosis by licensed Montana dental hygienists was reviewed by the board's dental hygiene committee. The committee then brought the issue and a recommendation to the full board.

Noting that dental hygiene diagnosis is part of the established curricula at board approved dental hygiene schools accredited by the Commission on Dental Accreditation, the board reviewed the definition of dental hygiene practice at 37-4-401, MCA. The board found that specific dental hygiene diagnosis that is educational, therapeutic, prophylactic, or preventive in nature is within the practice of licensed dental hygienists. The board found that the restriction in 37-4-401, MCA, against the board or licensed dentists delegating "diagnosis, treatment planning, and prescription" is unclear. The board is amending this rule and adopting New Rule I to set forth the board's interpretation of the statute that dental diagnosis is not delegable, but that specific dental hygiene diagnosis is permissible for Montana licensed dental hygienists under the general supervision of a licensed dentist.

24.138.3102 SPECIALTY ADVERTISING (1) remains the same.

(2) A licensee shall not advertise using the terms "specialist," "specializing," or "practice limited to" unless the licensee has met the board standards for specialization as set forth in ARM 24.138.3101 and 24.138.3103 and the branch of dentistry advertised as a specialty branch of dentistry is sanctioned as a specialty branch of dentistry by (1).

(3) A licensee who possesses a verifiable combination of education and experience is not prohibited from including in his the licensee's practice one or more branches of dentistry. Any advertisement of such practice shall not make use of the terms "specialty," "specializing," "specialist," or "practice limited to" and must contain the statement "the services are being performed or provided by a general dentist," or words to that effect, and such statement must appear or be expressed in the advertisement as conspicuously as the branch of dentistry advertised.

(4) A Montana licensed dentist listing or advertising the dentist's services under any dental category that is a specialty recognized by the American Dental Association must clearly disclose within the licensee's individual advertisement that the services are provided by a general dentist. Any general disclosure or disclaimer made by the advertiser or not located within the specific licensee's advertisement does not comply with this requirement.

AUTH: 37-4-205, MCA

IMP: 37-4-205, MCA

REASON: The board determined it is reasonably necessary to amend this rule to clarify the advertisement of specialty services by Montana licensed general dentists. Following receipt of information and numerous requests for clarification, the issue was discussed by the board's advertising committee. The committee then brought the issue and a proposed rule amendment to the full board.

The board has discussed the advertising by general dentists under specialty headings in telephone directories several times over the past few years and has previously provided guidance through letters to all dental licensees. In addition, the board has received complaints of advertisements misleading the public and numerous requests for clarification in the area of specialty advertising. The board is amending this rule now to address the requests and further clarify the requirements for general dentists to advertise the provision of specialty dental services in their

general practices. The board concluded that the amendment will help ensure clear advertising and lessen any public misperception about the practices of announced specialists and that of general dentists.

Additional amendments are being made to comply with ARM punctuation requirements and to substitute gender neutral terms for gender specific language.

4. The proposed new rule provides as follows:

NEW RULE I PERMISSIBLE DENTAL HYGIENE DIAGNOSIS AND TREATMENT PLANNING (1) Montana licensed dental hygienists may perform only such dental hygiene diagnosis and treatment planning functions that are necessary to the provision of educational, therapeutic, prophylactic, or preventive dental hygiene procedures within the scope of practice of a licensed Montana dental hygienist.

AUTH: 37-1-131, 37-4-205, 37-4-408, MCA
IMP: 37-4-401, 37-4-405, 37-4-408, MCA

5. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Board of Dentistry, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to dlibsdden@mt.gov, and must be received no later than 5:00 p.m., February 15, 2008.

6. An electronic copy of this Notice of Public Hearing is available through the department and board site on the World Wide Web at www.dentistry.mt.gov. 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 of Dentistry 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 the person wishes to receive notices regarding all Board of Dentistry 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 Dentistry, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, faxed to the office at (406) 841-2305, e-

mailed to dlibsdden@mt.gov, or made by completing a request form at any rules hearing held by the agency.

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

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

BOARD OF DENTISTRY
DR. PAUL SIMMS, DDS

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

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

Certified to the Secretary of State January 7, 2008

BEFORE THE BOARD OF HORSE RACING
DEPARTMENT OF LIVESTOCK
STATE OF MONTANA

In the matter of the proposed adoption of)
NEW RULES I-VIII pertaining to advance)
deposit account wagering on horse racing)
and greyhound racing))
NOTICE OF PROPOSED)
ADOPTION)
NO PUBLIC HEARING)
CONTEMPLATED)

TO: All Concerned Persons

1. On February 16, 2008, the Board of Horse Racing proposes to adopt the above-stated rules.

2. The Board of Horse Racing will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Horse Racing no later than 5:00 p.m. on February 7, 2008, to advise us of the nature of the accommodation that you need. Please contact Marlys Stark, P.O. Box 200512, Helena, MT 59620-0512; phone (406) 444-4287; TTD number: 1-800-253-4091; fax: (406) 444-4305; e-mail: mstark@mt.gov.

3. The rules as proposed for adoption provide as follows:

NEW RULE I ADVANCE DEPOSIT WAGERING DEFINITIONS In this subchapter, the following definitions apply:

(1) "Account" means an account for advance deposit wagering with a specific identifiable record of credits, debits, deposits, wagers, and withdrawals established by an account holder and managed by a licensed advance deposit wagering hub licensee.

(2) "Account holder" means a natural person, at least eighteen years of age, residing within or outside of Montana for whom a licensed advance deposit wagering licensee has opened an account.

(3) "Account number" means a unique identification number consisting of numbers or letters as designated or selected by the account holder or advance deposit wagering hub licensee.

(4) "Advance deposit wagering" has the meaning set forth in 23-4-101, MCA.

(5) "Advance deposit wagering hub operator" or "hub operator" has the meaning set forth in 23-4-101, MCA.

(6) "Communications by other electronic means" means communication by any electronic communication device or combination of devices including, but not limited to, the following: personal computers, the internet, private networks, interactive televisions, and wireless communication technologies, or other technologies approved by the board.

(7) "Confidential information" means the following:

- (a) the amount of money credited to, debited from, withdrawn from, or present in any particular account holder's account;
 - (b) the amount of money wagered by a particular account holder on any race or series of races;
 - (c) the account number and secure personal identification code of a particular account holder;
 - (d) the identities of particular entries on which the account holder is wagering or has wagered;
 - (e) unless otherwise authorized by the account holder, the name, address, and any other information in the possession of a licensed advance deposit hub operator that would identify the account holder to anyone other than the board, the licensed advance deposit wagering hub operator, the regulatory authority in the state that regulates the licensed advance deposit wagering hub or as otherwise required by state or federal law; and
 - (f) credit and debit information.
- (8) "Credits" means all deposits of money into an account.
- (9) "Debits" means all withdrawals from an account.
- (10) "Deposits" means a payment of money by cash, check, money order, credit card, debit card, or electronic funds transfer made by an account holder to the account holder's account.
- (11) "Foreign jurisdiction" means a jurisdiction of a foreign country or political subdivision thereof.
- (12) "Hub contract" means a contract between a hub and the board. A hub contract may also be called a "license agreement."
- (13) "Plan of operation" or "operating plan" means a written document from an advance deposit wagering hub operator which must accompany the application for licensure and which provides sufficient detail to allow the board to identify processes for operation of the system, including: handling of unforeseen events; verification of account holder information; establishment of a dispute resolution process; withdrawal process; allowance for account holders residing outside of Montana; and any other information requested by the board.
- (14) "Principal residence address" means that place where the natural person submitting an application for an account resides at least fifty percent of the time during the calendar year.
- (15) "Proper identification" means a form of identification accepted in the normal course of business that establishes the person making the transaction is the account holder.
- (16) "Secure personal identification code" means an alpha and or numeric character code chosen by an account holder as a means by which the advance deposit wagering hub operator may verify a wager or account transaction as authorized by the account holder.
- (17) "Source market fee" has the meaning set forth in 23-4-101, MCA.
- (18) "Source market fee area" means the state of Montana.
- (19) "Withdrawal" means a payment from an account by the hub licensee to the account holder when properly requested by the account holder.

AUTH: 23-4-202, MCA

IMP: 23-4-101, 23-4-301, 23-4-302, MCA

REASON: The proposed new rule is necessary to create definitions of terms to be used for the advance deposit account wagering program and rules. This new program was authorized by HB 390 passed by the 2007 Montana Legislature.

NEW RULE II REQUIREMENTS TO CONDUCT ADVANCE DEPOSIT ACCOUNT WAGERING (1) The advance deposit wagering rules set forth in this chapter shall apply to the establishment and operation of accounts by a licensed hub operator for account holders whose principal residence address is in the state of Montana.

(2) Advance deposit wagering by any person whose principal residence address is in the state of Montana may be conducted only by a Montana-licensed hub operator licensed by the board pursuant to this chapter.

(3) No licensed hub operator shall solicit, accept, open, or operate an account for any person with a principal residence address in the state of Montana unless the hub operator has received a license in good standing from the board.

(4) The board may impose any license discipline, including suspension, revocation, or fines against a license to operate as a hub operator, if the licensed hub operator, its officers, directors, or employees violate any provision of Title 23, chapter 4, MCA, or any rule or order of the board.

(5) A licensed hub operator located within Montana shall not solicit, accept, open, or operate advance deposit wagering accounts for persons whose principal residence is outside of the state of Montana, including residents of foreign jurisdictions unless:

(a) the hub operator has received a license from the board, and the license is in good standing;

(b) wagering on that same type of live racing is lawful in the jurisdiction which is the person's principal residence; and

(c) the licensed hub operator complies with the provisions of the Interstate Horseracing Act, 15 U.S.C. 3001 to 3007, and the laws of the jurisdiction, which is the principal place of residence of the applicant.

(6) The licensed hub operator shall provide a bond or irrevocable letter of credit in an amount set by the board for the purpose of ensuring that payments to the board and to Montana account holders are made. In the alternative, a hub operator may provide other means of assurance of such payment including, but not limited to, evidence of bond(s), irrevocable letter(s) of credit, or other forms of financial guarantees posted and in good standing with regulatory authorities in other jurisdictions, which shall be subject to the approval of the board. Any bond, letter of credit, or other assurance of payment acceptable to the board provided by the hub operator shall run to the board as obligee, and shall be for the benefit of the board and any account holder who suffers a loss by reason of the hub operator's violation of Title 23, chapter 4, MCA, or these rules. The bond, letter of credit, or other assurance of payment shall be conditioned on the obligor as licensee faithfully complying with Title 23, chapter 4, MCA, and these rules. The bond shall be continuous and may be cancelled by the surety only upon the surety giving written notice to the board of its intent to cancel the bond. The notice of cancellation shall

be effective no sooner than thirty days after the notice is received by the board. In the event of cancellation of the bond, letter of credit, or other assurance of payment the hub operator shall file a new bond, letter of credit, or other assurance of payment prior to the effective date of the cancellation notice.

(7) Persons whose primary residence is within Montana shall not participate in advance deposit wagering unless such activity is conducted through a hub operator licensed in Montana.

(8) The content and frequency of reports from a licensed hub operator shall be at the discretion of the board.

(9) In determining whether to approve an application for a license as an advance deposit wagering hub operator under this chapter, the board shall consider the following factors:

(a) the impacts on all entities conducting business as part of the Montana horse racing industry;

(b) whether the board deems the state compliance and monitoring efforts of the state where the licensed hub operator is located are sufficient for compliance with applicable laws, and for the protection of the public, and to ensure the integrity of all operations and financial transactions under the agreement between the board and the licensed hub operator; and

(c) any other factor the board identifies on the record as relevant to its determination.

(10) The hub operator licensee recognizes and accepts the jurisdiction of the state of Montana as provided in Title 23, chapter 4, MCA. A licensed hub operator shall provide to the board or its staff access to review and audit all records and financial information, including all Montana account information. An advance deposit wagering hub operator physically located in Montana shall also provide access to the board, or its staff, to review and audit all records and financial information that relate to applications and accounts for persons whose primary residences are not located in Montana. This information shall be made available to the board or its staff at the hub operator's location upon notice from the board or board staff at all reasonable times. The board may require the hub operator annually to submit to the board audited financial statements.

AUTH: 23-4-202, MCA

IMP: 23-4-101, 23-4-301, 23-4-302, MCA

REASON: The proposed new rule is necessary to set forth requirements to be used for conducting advance deposit account wagering. The new rule will inform both hub operators and account holders of the procedures and requirements which must be followed in Montana to participate in advance deposit wagering on horse racing and greyhound racing. This new program was authorized by HB 390 passed by the 2007 Montana Legislature.

NEW RULE III ADVANCE DEPOSIT ACCOUNT WAGERING HUB OPERATOR APPLICATION AND LICENSE REQUIREMENTS (1) Prior to accepting applications from Montana residents for advance deposit wagering accounts, the advance deposit wagering hub operator must possess:

- (a) a written hub contract or license agreement with the board; and
- (b) a license from the board to conduct advance deposit wagering.
- (2) An application to operate as an advance deposit wagering hub operator must be filed on a form provided by the board and must include:
 - (a) a proposed plan of operation;
 - (b) a proposed hub contract;
 - (c) a bond or irrevocable letter of credit; and
 - (d) the correct application fee.
- (3) The advance deposit wagering hub operator applicant must provide the following information as part of the application:
 - (a) if the hub operator is an individual, his/her legal name, and the legal name of his/her spouse, and dates of birth and address;
 - (b) if the hub operator is a corporation;
 - (i) the date and place of incorporation;
 - (ii) the names and addresses of its shareholders, and the names, addresses, and dates of birth of directors and officers who are natural persons;
 - (iii) if a shareholder is a corporation then the date and place of its incorporation, and the names, and addresses, and dates of birth of those corporations' directors and officers; and
 - (iv) if the hub operator is a corporation ultimately owned by a not-for-profit entity without any shareholders, or is a publicly traded corporation, the information required in this subsection shall be required from the directors of the not-for-profit entity, or the directors and officers of the publicly traded corporation, in lieu of the shareholders;
 - (c) if the hub operator is a general or limited partnership, the names, addresses, and dates of birth of the partners; if a partner is a corporation, the date of incorporation, the place of incorporation, and the names, and addresses, and dates of birth of its directors and officers must be provided;
 - (d) fingerprints, if required by the board;
 - (e) information from the hub operator that demonstrates whether the hub operator has the financial resources to operate as an advance deposit wagering hub operator;
 - (f) written approval to conduct advance deposit wagering from the appropriate regulatory authority in the state where the advance deposit wagering hub operator is located;
 - (g) a description of how the state where the hub operator is located regulates and monitors the advance deposit wagering facility for compliance with applicable law and protection of the public; and
 - (h) any other information required by the board.
- (4) A proposed written hub contract or license agreement between the advance deposit wagering hub operator and the board must be submitted with the application and must contain substantially the following terms:
 - (a) a description of the source market fee (percentage of each wager placed in Montana) to be paid to the board;
 - (b) an agreement to pay the source market fee monthly to the board; and
 - (c) a provision requiring the facility to agree it shall not accept any wager that violates Montana law or rule.

(5) The board may negotiate changes to the proposed hub contract as a condition of granting a license. No subsequent material changes in the hub contract may occur unless ordered by the board or until written approval is obtained from the board.

(6) A proposed detailed plan of operations in a format and containing such information as required by the board must be submitted with the application and must address the following issues:

(a) the manner in which the proposed simulcasting and wagering system will operate;

(b) the process for handling wagers when wagering pools cannot be merged with the wagering pools of the race track where the race is being run live;

(c) a plan for verification of an account holder applicant's identity, age, and residence when establishing an account;

(d) establishment of a dispute resolution process for account holders who file a claim against the licensed hub operator;

(e) the process for an account holder to make withdrawals from the account holder's account;

(f) a licensed hub operator located in Montana must include in its operating plan information on how the hub operator will implement the requirements for accounts established and operated for persons whose principal residence is outside of the state of Montana; and

(g) any other issues as required by the board.

(7) The board may require changes to a hub operator applicant's proposed plan of operation as a condition of granting a license. No subsequent material changes in the plan of operations may occur unless ordered by the board or until written approval is obtained from the board.

(8) The advance deposit wagering hub operator applicant must provide a bond or irrevocable letter of credit to the board with the application, as per [NEW RULE II].

(9) The board may conduct investigations or inspections, or request additional information from the applicant for a license under this section as it deems appropriate in determining whether to approve the license application.

(10) The hub operator applicant must include the correct nonrefundable application fee with the application.

(11) An advance deposit wagering hub operator license shall be in effect from January 1 to December 31 of each year and shall be renewed annually unless otherwise rescinded by the board.

AUTH: 23-4-202, MCA

IMP: 23-4-101, 23-4-301, 23-4-302, MCA

REASON: The proposed new rule is necessary to set forth the hub operator application and licensing requirements to be used for conducting advance deposit account wagering. The new rule will inform potential applicants of all requirements to aid in consideration of application decisions and in the application process. This new program was authorized by HB 390 passed by the 2007 Montana Legislature.

NEW RULE IV ADVANCE DEPOSIT ACCOUNT WAGERING FEES

(1) A nonrefundable application fee of \$1000 must be submitted with all hub operator license applications to conduct advance deposit account wagering.

(2) The hub operator applicant will be billed and shall be responsible for any costs involved in background checks, investigation, and review of the application in excess of \$100.

(3) An annual license fee of \$500 shall be payable to the board on issuance of the original hub operator license, which fee shall not be prorated to the license issuance date.

(4) An annual hub operator license renewal fee of \$500 shall be paid by the licensee, and is due thirty days prior to the license expiration date.

(5) The hub operator licensee will be billed and shall be responsible for any costs involved in background checks, investigation, and review of the annual renewal application in excess of \$100.

AUTH: 23-4-202, MCA

IMP: 23-4-301, MCA

REASON: The proposed new rule is necessary to set forth fees to be paid upon application for a hub operator license and upon annual renewal of the license. The board estimates the new fee will generate one-time new application revenues of \$3000, and annual renewal revenues of \$1000, based on an estimate of two hub operator applicants. The new fee will affect two entities, based on an estimate of two applications in Montana.

NEW RULE V ESTABLISHMENT OF AN ADVANCE DEPOSIT ACCOUNT

(1) An established account is necessary to place advance deposit wagers. An account may only be established with a licensed hub operator.

(a) To establish an account, an account application form must be signed or otherwise authorized in a manner acceptable to the board and include:

(i) the account applicant's full legal name;

(ii) principal residence address;

(iii) telephone number;

(iv) proper identification or certification demonstrating that the account applicant is at least eighteen years of age;

(v) completed W-9; and

(vi) any additional information required by the board.

(b) Each account application submitted shall be verified by the licensed hub operator with respect to name, principal residence address, and date of birth by either an independent hub operator or another means which meets or exceeds the reliability, security, accuracy, privacy, and timeliness provided by an independent hub operator. If there is a discrepancy between the application submitted and the information provided by the verification described above, or if no information on the account applicant is available from such verification process, another individual reference service may be accessed or another technology meeting the requirements described above may be used to verify the information provided. If the account

applicant's information cannot be verified by the licensed hub operator, the licensed hub operator shall not establish an account.

(2) Each account shall have a unique identifying account number. The identifying account number may be changed at any time by the licensed hub operator provided the account holder is given notice in writing prior to the change.

(3) The account applicant shall supply a secure personal identification code when the account holder is placing an advance deposit wager. The account holder has the right to change this code at any time.

(4) The licensed hub operator must provide the following to the account holder at the time the account is approved:

(a) unique account identification number;

(b) copy of the advance deposit wagering rules and such other information and material that is pertinent to the operation of the account;

(c) notice that the account holder must be at least eighteen years of age, and that individuals under the age of eighteen shall not have access to the account;

(d) such other information as the licensed hub operator or the board may deem appropriate.

(5) Accounts shall only be accepted in the name of a natural person, which shall not include a corporation, partnership, limited liability company, trust, estate, or any other entity.

(6) The account is nontransferable between natural persons.

(7) The licensed hub operator may close or refuse to open an account for good and sufficient reason, and shall order an account closed if it is determined information that was used to open an account was false, or the account has been used in violation of these rules.

(8) Any disputes between an account holder and a licensed hub operator shall follow the dispute resolution procedures contained in the hub operator's plan of operations as approved by the board. If the hub operator fails to resolve the dispute, the board may take appropriate action including claims against the bond or other form of financial security.

(9) The licensed hub operator shall state in all advertising in the state of Montana that residents under the age of eighteen are not permitted to open, own, or have access to an advance deposit wagering account.

(10) If the licensed hub operator is located in Montana, no account shall be established for any natural person under the age of eighteen.

AUTH: 23-4-202, MCA

IMP: 23-4-101, 23-4-301, 23-4-302, MCA

REASON: The proposed new rule is necessary to set forth requirements for establishment of an advance deposit account with a Montana-licensed hub operator. The new rule will inform potential account holders of all information the hub operator must supply when an account is opened. This new program was authorized by HB 390 passed by the 2007 Montana Legislature.

NEW RULE VI OPERATION OF AN ADVANCE DEPOSIT ACCOUNT

(1) The licensed hub operator may refuse deposits to an account for good and sufficient reason.

(2) The licensed hub operator may suspend any account or close any account at any time provided when an account is closed, the hub operator shall, within seven calendar days, return to the account holder all moneys then on deposit by sending a check to the last known principal residence address. Any moneys which cannot be so refunded shall be forwarded to the board for distribution in accordance with [NEW RULE VII].

(3) Credits to an account after the initial establishment of the account may be made as follows:

(a) deposits to an account by an account holder may be made in the following forms:

(i) cash, which may be deposited at financial or retail outlets designated by the licensed hub operator;

(ii) check, money order, or negotiable order of withdrawal given or sent to the licensed hub operator;

(iii) charges made to an account holder's credit and/or debit card upon the direct and personal instruction of the account holder, if the use of the card has been approved by the licensed hub operator;

(iv) transfer by means of an electronic funds transfer from a monetary account controlled by an account holder to his/her account, said account holder to be liable for any charges imposed by the transmitting or receiving entity with such charges to be deducted from the account; or

(v) funds so deposited will be made available for wagering use in accordance with financial institution funds availability schedules.

(b) credit for winnings from wagers placed with funds in an account and credit for account wagers on entries that are scratched shall be posted to the account by the licensed hub operator.

(4) Debits to an account shall be made as follows:

(a) upon receipt by the licensed hub operator of an advance deposit wager, the licensed hub operator shall debit the account in the amount of the wager; and

(b) upon incurrence of fees for service or other transaction-related charges by the hub operator.

(5) The licensed hub operator may close accounts in which there has been no activity for at least six months, returning funds remaining therein to the account holder at his/her last known principal residence address. Any moneys which cannot be so refunded shall be forwarded to the board for distribution in accordance with [NEW RULE VII].

(6) In the event an account holder is deceased, funds accrued in the account shall be released to the decedent's legal representative upon receipt of a copy of a valid death certificate, tax releases or waivers, probate court authorizations, or other documents required by applicable laws.

(7) Account holders may communicate instructions concerning advance deposit wagers to the licensed hub operator in person, by mail, telephone, or other electronic means.

(8) The licensed hub operator shall not accept wagers from an account holder in an amount in excess of the account balance.

(9) Notwithstanding any other rules, the licensed hub operator may at any time declare the advance deposit wagering closed for receiving wagers on any parimutuel pool, race, group of races, or closed for all wagering. Any time advance deposit wagering is closed other than coincident with the start of a race, a written report must be filed with the board within 48 hours. Any time the licensed hub operator is closed during its normal hours of operation a written report must be filed with the board within 48 hours.

(10) The licensed hub operator has the right at any time and for what it deems good and sufficient reason to refuse to accept all or part of any wager.

(11) Accounts are for the personal use of the account holder. The account holder is responsible for maintaining the secrecy of the account number and his/her secure personal identification code.

(12) Payment on winning parimutuel wagers and credits for advance deposit wagers on entries which are scratched shall be posted to the credit of the account holder as soon as practicable after the race is declared official.

(13) The licensed hub operator shall provide written or electronic statements of an individual's account activity at any time upon the request of the account holder.

(14) No employee or agent of the licensed hub operator shall divulge any confidential information related to the placing of any wager or any confidential information related to the operation of the licensed hub operator, except to the account holder or as required by these rules, the board, and as otherwise required state or federal law.

AUTH: 23-4-202, MCA

IMP: 23-4-301, 23-4-302, MCA

REASON: The proposed new rule is necessary to set forth procedures for operations of an advance deposit account. The new rule will inform account holders of the processes to be used by the hub operator in opening, closing, debiting, and crediting an account. This new program was authorized by HB 390 passed by the 2007 Montana Legislature.

NEW RULE VII DISTRIBUTION OF SOURCE MARKET FEE FOR ADVANCE DEPOSIT ACCOUNT WAGERING (1) The licensed hub operator shall agree to pay to the board a source market fee in an amount equal to a percentage, as set forth in its hub contract or license agreement, of the total amount wagered by Montana residents from their accounts with the hub operator.

(2) The source market fee shall be paid monthly, unless otherwise directed by the board, for the source market fee area on all accounts that have Montana as the principal address.

(3) Source market fees from licensed hub operators must be deposited by the board in the board's state special revenue account.

(4) As set forth in 23-4-302, MCA, the board shall pay 80% of the source market fees generated between May 1 and the following April 30 to live race meet licensees based on each live race meet licensee's percentage of the total annual on-track parimutuel handle during the previous live race season. In addition to the statutory language, the total annual on-track simulcast handle during the previous

season shall be included in calculating a live race meet's percentage. Prior to the beginning of each year's live race season, the correct percentage must be distributed by the board to each live race meet licensee to be used for race purses or other purposes that the board considers appropriate for the good of the horseracing industry.

(5) As set forth in 23-4-302, MCA, ten percent of the source market fees paid to the board in a calendar year may be retained by the board for the payment of administrative expenses. One-half of the remaining 10% of the source market fees paid to the board in a calendar year must, by January 31 of the following calendar year, be paid to the owner bonus program and the other one-half to the breeder bonus program.

AUTH: 23-4-202, MCA

IMP: 23-4-302, MCA

REASON: The proposed new rule is necessary to set forth the process for distribution of the source market fee to live racing and owner and breeder bonus programs, in addition to the board's administrative fee. This new program was authorized by HB 390 passed by the 2007 Montana Legislature.

NEW RULE VIII ENFORCEMENT AND PENALTIES FOR ADVANCE DEPOSIT ACCOUNT WAGERING STATUTE OR RULE VIOLATIONS (1) Any violations of board statutes and rules shall be referred to the board. The board may also initiate an investigation on its own or in response to a complaint. The board shall have sole authority to ensure compliance with these rules, conduct hearings on violations, and determine penalties for violations. All license disciplinary activities, including any necessary contested case hearings, shall be conducted in Montana. Montana retains sole jurisdiction and is the sole and exclusive venue for administrative licensing actions and any related court actions under this chapter.

(2) The board may deny an application, suspend, or revoke a license issued to a hub operator, withdraw approval of a contract with a hub operator, or impose fines, if the licensee:

(a) violates any of the requirements of board statutes or rules;

(b) fails to provide a bond, or letter of credit, or evidence thereof in another jurisdiction to the satisfaction of the board;

(c) fails to make payments in a timely manner as required by these rules;

(d) fails to comply with any conditions on the license imposed by the board;

(e) has demonstrated willful disregard for complying with ordinances, statutes, administrative rules, or court orders, whether at the local, state, or federal level. This includes, but is not limited to, failure to make required payments to other state regulatory agencies;

(f) poses a threat to the effective regulation of wagering or creates or increases the likelihood of unfair or illegal practices, methods, and activities in the conduct of wagering activities, as demonstrated through the prior activities, criminal record, reputation, habits, or associations;

(g) fails to provide at the board office any information required under the board's rules within the time required by applicable rule, or if no maximum time has

been established respecting the particular kind of information by other rule, then within thirty days after receiving a written request from the board or its staff;

(h) commits, or has committed, any other act that the board determines constitutes a sufficient reason in the public interest for denying, suspending, or revoking licenses or approval of agreements.

(3) The board shall have authority to ensure compliance with its statutes and rules, including, but not limited to, injunctive relief and the imposition of fines, suspensions, and revocation of license, and repayment of outstanding source market fees.

AUTH: 23-4-202, MCA

IMP: 23-4-101, 23-4-301, 23-4-302, MCA

REASON: The proposed new rule is necessary to set forth enforcement and penalties for violation of Montana statutes and rules in operating advance deposit account wagering. The new rule will inform hub operators, account holders, and the public of board authority to impose license discipline. This new program was authorized by HB 390 passed by the 2007 Montana Legislature.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to the Board of Horse Racing, Attn. Marlys Stark, P.O. Box 200512, Helena, MT 59620-0512, by faxing to (406) 444-4305, or by e-mailing to mstark@mt.gov to be received no later than 5:00 p.m., February 14, 2008.

5. If persons who are directly affected by the proposed rules 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 they have to the same address as above. The request for hearing and comments must be received no later than 5:00 p.m., February 14, 2008.

6. If the board receives a request for a public hearing on the proposed action from either 10% 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. Ten percent of those persons directly affected has been determined to be 130, based on the 1,300 licensees in Montana.

7. An electronic copy of this proposal notice is available through the department's web site at <http://www.liv.mt.gov/liv/horseracing/general.asp>.

8. The Board of Horse Racing maintains a list of interested persons who wish to receive notice of rulemaking actions proposed by the 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 the Board of Horse Racing.

Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed to Marlys Stark, Board of Horse Racing, Department of Livestock, P.O. Box 200512, Helena, MT 59620-0512, faxed to (406) 444-4305, or e-mailed to mstark@mt.gov.

9. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled. The primary sponsor of House Bill 390 was notified on August 14, 2007 by letter sent via U.S. Mail.

BOARD OF HORSE RACING
DEPARTMENT OF LIVESTOCK

/s/ Christian Mackay
Christian Mackay
Executive Officer
Department of Livestock

/s/ Carol Grell Morris
Carol Grell Morris
Rule Reviewer

Certified to the Secretary of State January 7, 2008.

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

In the matter of the amendment of ARM)
37.86.2207 pertaining to Medicaid)
reimbursement for the therapeutic)
portion of therapeutic youth group)
home treatment services)

NOTICE OF PUBLIC HEARING
ON PROPOSED AMENDMENT

TO: All Interested Persons

1. On February 7, 2008, at 11:00 a.m., the Department of Public Health and Human Services will hold a public hearing in the Wilderness Room, 2401 Colonial Drive, Helena, Montana to consider the proposed amendment of the above-stated rule.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process (including reasonable accommodations at the hearing site) or who need an alternative accessible format of this notice. If you need an accommodation, contact the department no later than 5:00 p.m. on January 28, 2008. Please contact Rhonda Lesofski, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena MT 59604-4210; telephone (406)444-4094; fax (406)444-1970; e-mail dphhslegal@mt.gov.

3. The rule as proposed to be amended provides as follows. New matter is underlined. Matter to be deleted is interlined.

37.86.2207 EARLY AND PERIODIC SCREENING, DIAGNOSTIC AND TREATMENT SERVICES (EPSDT), REIMBURSEMENT (1) through (2) remain the same.

(3) The interim R~~reimbursement rate~~ for the therapeutic portion of therapeutic youth group home treatment services provided on or after October 1, 2007 through September 30, 2008 is the lesser of:

(a) the amount specified in the department's Medicaid Mental Health Fee Schedule. The department adopts and incorporates by reference the department's Medicaid Mental Health and Mental Health Services Plan, Individuals Under 18 Years of Age Fee Schedule dated ~~July 15, 2005~~ October 1, 2007. A copy of the fee schedule may be obtained from the Department of Public Health and Human Services, Health Resources Division, Children's Mental Health Bureau, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951; or

(b) the provider's usual and customary charges (billed charges).

(4) The final reimbursement rate for the therapeutic portion of therapeutic youth group home treatment services provided during state fiscal year (SFY) 2008, July 1, 2007 through June 30, 2008 will be determined by adjusting the interim rate adopted in (3)(a) for each provider so that the total amount received for SFY 2008

equals either:

(a) 100% of allowable costs if a provider complies with the cost reporting requirements set forth in (6), except that a provider's final reimbursement rate may not be more than 10% higher or 10% lower than the interim rates adopted in (3)(a); or

(b) the amounts specified in the department's Medicaid Mental Health and Mental Health Services Plan, Individual Under 18 Years of Age Fee Schedule dated July 15, 2005 which is adopted and incorporated by reference, if a provider does not comply with the cost reporting requirements set forth in (5).

(5) Each provider of therapeutic youth group home services will report allowable costs for SFY 2008 that starts July 1, 2007 using standardized forms, instructions, definitions, and timelines supplied by the department.

(a) The cost settlement will be performed on an individually licensed therapeutic youth group home basis; and

(b) Reports of allowable costs for SFY 2008 must be received by the department before August 15, 2008.

(4) through (11) remain the same but are renumbered (6) through (13).

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

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

4. The Department of Public Health and Human Services (department) is proposing an amendment to ARM 37.86.2207 that would update the department's Medicaid Mental Health and Mental Health Services Plan, Individuals Under 18 Years of Age Fee Schedule to October 1, 2007 rates. The department is proposing to increase reimbursement rates for providers of therapeutic youth group home treatment services by 2.5% annually. The change in rule is necessary to implement an appropriation of funds earmarked for that purpose by the 2007 Legislature Special Session (Legislature) in House Bill 2 (HB 2). Since the use of funds is restricted by law, the department did not consider an alternative.

Financial Impact

The Legislature in HB 2 added \$23,785 in general funds and \$69,943 in federal Medicaid matching funds to raise the Medicaid rate for Campus Based Therapeutic Youth Group Homes (CBTGH) to be effective July 1, 2007. \$93,728 (\$23,785 general fund and \$69,943 federal) was appropriated for state fiscal year (SFY) 2008 and \$213,819 (\$54,261 general fund and \$159,558 federal) was appropriated for SFY 2009. The department is proposing a new reimbursement methodology based on a modified cost settlement process. As part of this methodology and to ensure client access the department is proposing to equalize the CBTGH reimbursement rate and bring it up to the same level paid to other therapeutic group homes (as long as they are recognized as a separate level of care), the department allocated an additional \$91,283.56 as an interim basis for SFY 2008.

The Legislature also appropriated funding for a 2.5% rate increase for each year of the biennium for SFY 2008 and 2009. The SFY 2008 start date is October 1, 2007

and the funding is \$1,580,237. The SFY 2009 start date is July 1, 2008. Total new funding for this biennium is \$3,070,706.

Number of Persons Affected

A total of 9,218 Medicaid youth were served by the Children's Mental Health Bureau in SFY 2007. Not all of these children received services affected by this rule change. The department does not have an unduplicated count of youth receiving these services. In addition, 13 therapeutic group home agencies, six therapeutic foster/family care agencies, eight mental health centers, and three in-state residential treatment centers will be affected by the rule change.

Provider Notification

A provider notice will be issued and provider letters mailed when this rule notice is filed with Secretary of State.

5. The department intends to apply the proposed amendment retroactively to claims for services provided on or after October 1, 2007. Since the rates for services will not decrease for any provider, the department believes there will be no detrimental effect.

6. Interested persons may submit comments orally or in writing at the hearing. Written comments may also be submitted to Rhonda Lesofski, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena MT 59604-4210, no later than 5:00 p.m. on February 14, 2008. Comments may also be faxed to (406)444-1970 or e-mailed to dphslegal@mt.gov. The department maintains lists of persons interested in receiving notice of administrative rule changes. These lists are compiled according to subjects or programs of interest. To be included on such a list, please notify this same person or complete a request form at the hearing.

7. 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. The web site may be unavailable at times, due to system maintenance or technical problems.

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

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

/s/ John Koch
Rule Reviewer

/s/ Joan Miles
Director, Public Health and
Human Services

Certified to the Secretary of State January 7, 2008.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 2.4.202 and 2.4.301 concerning)
minimum refunds and the state's)
volume cap allocation)

TO: All Concerned Persons

1. On September 20, 2007, the department published MAR Notice No. 2-4-388 regarding a public hearing on the proposed amendment of the above-stated rules at page 1351 of the 2007 Montana Administrative Register, Issue No. 18.
2. The department has amended the above-stated rules exactly as proposed.
3. No comments or testimony were received.

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

By: /s/ Dal Smilie
Dal Smilie, Rule Reviewer
Department of Administration

Certified to the Secretary of State January 7, 2008.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the adoption of New Rule I and the amendment of ARM 2.5.120, 2.5.201, 2.5.202, 2.5.301 through 2.5.303, 2.5.401, 2.5.402, 2.5.404 through 2.5.408, 2.5.501 through 2.5.503, 2.5.601 through 2.5.604, 2.5.606 through 2.5.609, 2.5.701, 2.5.702, and 2.5.801 pertaining to procurement of supplies and services and surplus property)
) CORRECTED NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On August 23, 2007, the department published MAR Notice No. 2-5-381 regarding a public hearing on the proposed adoption and amendment of the above-stated rules at page 1116 of the 2007 Montana Administrative Register, Issue No. 16. On October 25, 2007, the department published notice of the adoption and amendment of the above-stated rules at page 1657 of the 2007 Montana Administrative Register, Issue No. 20.

2. This corrected notice of amendment is to resolve an error in the amendment of ARM 2.5.201. The error pertains to failure to correctly indicate rule changes by underlining new material and interlining material to be removed. The rule, as amended in corrected form, reads as follows, deleted matter interlined, new matter underlined:

2.5.201 DEFINITIONS In these rules, words and terms ~~defined in Title 18, chapter 4, MCA,~~ shall have the same meaning as defined in Title 18, chapter 4, MCA, in the statutes and, unless the context clearly requires otherwise or a different meaning is prescribed for a particular ~~section~~ rule, the following definitions apply:

(1) through (43) remain as amended.

AUTH: 18-1-114, 18-4-221, MCA

IMP: 18-4-221, MCA

3. The replacement pages for this corrected notice were submitted to the Secretary of State on December 31, 2007.

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

By: /s/ Dal Smilie
Dal Smilie, Rule Reviewer
Department of Administration

Certified to the Secretary of State January 7, 2008.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the repeal of ARM) NOTICE OF REPEAL
2.6.101 pertaining to insurance)
requirements)

TO: All Concerned Persons

1. On August 23, 2007, the Department of Administration published MAR Notice No. 2-6-382 pertaining to the proposed repeal of the above-stated rule at page 1130 of the 2007 Montana Administrative Register, Issue Number 16.

2. The department has repealed the above-stated rule as proposed.

3. No comments or testimony were received.

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

By: /s/ Dal Smilie
Dal Smilie, Rule Reviewer
Department of Administration

Certified to the Secretary of State January 7, 2008.

BEFORE THE TEACHERS' RETIREMENT BOARD
OF THE STATE OF MONTANA

In the matter of the amendment of)	CORRECTED NOTICE OF
ARM 2.44.308, 2.44.412, 2.44.413,)	AMENDMENT
2.44.414, 2.44.517A, 2.44.518, and)	
2.44.527, and repeal of ARM)	
2.44.505 and 2.44.511 pertaining to)	
Independent Contractors, Calculating)	
Service Credits, Termination Pay,)	
Earned Compensation, Benefit)	
Adjustments)	

TO: All Concerned Persons

1. On October 25, 2007, the Teachers' Retirement Board published MAR Notice No. 2-44-393 pertaining to the proposed amendment and repeal of the above-stated rules at page 1558 of the 2007 Montana Administrative Register, Issue Number 20. On December 20, 2007, the department published the notice of amendment and repeal at page 2121 of the 2007 Montana Administrative Register, Issue Number 24.

2. The board made several clerical errors in MAR Notice No. 2-44-393. The first error pertained to ARM 2.44.412. This rule was missing the words "NATIONAL GUARD, RESERVISTS, AND" in the beginning of the catchphrase. Also, "National Guard, reservists, and" needed to be inserted in (2). The second error pertained to the failure to underline new material contained within the notice of the proposed amendment. In particular, 19-20-414, 19-20-416, 19-20-417, 19-20-426, 19-20-427, MCA, were not underlined as implemented by ARM 2.44.414. The rules, as amended in corrected form, read as follows, deleted material interlined, new matter underlined.

2.44.412 NATIONAL GUARD, RESERVISTS, AND VETERANS CALLED TO ACTIVE DUTY (1) remains as amended.

(2) Reemployed National Guard, reservists, and veterans may elect to purchase creditable service for their military leave to be used in the calculation of retirement benefits. The cost to purchase this service shall be equal to the employee contributions that would have been made had they not been called to active duty. Interest accruing on the balance due to purchase active duty service will not be levied during the five years following the date of reemployment. If payment is not completed within five years following reemployment, interest will be assessed as provided under ARM 2.44.405.

(3) and (4) remain as amended.

AUTH: 19-20-201, MCA
IMP: 19-20-415, MCA

2.44.414 INSTALLMENT PURCHASE (1) remains as amended.

AUTH: 19-20-201, MCA

IMP: ~~19-20-401~~, 19-20-402, 19-20-403, 19-20-404, ~~19-20-405~~, ~~19-20-406~~,
~~19-20-407~~, 19-20-408, 19-20-409, 19-20-410, 19-20-411, 19-20-414, 19-20-415, 19-
20-416, 19-20-417, 19-20-426, 19-20-427, MCA

3. The replacement pages for this corrected notice were submitted to the Secretary of State on December 31, 2007.

/s/ Dal Smilie
Dal Smilie
Rule Reviewer

/s/ David L. Senn
David L. Senn
Executive Director

Certified to the Secretary of State January 7, 2008.

BEFORE THE BOARD OF HOUSING
DEPARTMENT OF COMMERCE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 8.111.501, 8.111.502,)
8.111.503, 8.111.504, 8.111.505,)
8.111.506, and 8.111.507 pertaining)
to housing loans)

TO: All Concerned Persons

1. On November 21, 2007, the Department of Commerce and the Board of Housing published MAR Notice No. 8-111-60 pertaining to the proposed amendment of the above-stated rules at page 1855 of the 2007 Montana Administrative Register, Issue Number 22.

2. The department and board have amended the above-stated rules as proposed.

3. No comments or testimony were received.

/s/ G. MARTIN TUTTLE
G. MARTIN TUTTLE
Rule Reviewer

/s/ ANTHONY J. PREITE
ANTHONY J. PREITE
Director
Department of Commerce

Certified to the Secretary of State January 7, 2008.

BEFORE THE BOARD OF HORSE RACING
DEPARTMENT OF LIVESTOCK
STATE OF MONTANA

In the matter of the amendment of)
ARM 32.28.709, 32.28.801, and 32.28.1906) NOTICE OF AMENDMENT
pertaining to horse racing)

TO: All Concerned Persons

1. On November 21, 2007, the Board of Horse Racing, Department of Livestock, published MAR Notice No. 32-7-189 regarding the above-stated rules at page 1861 of the 2007 Montana Administrative Register, issue number 22.
2. The Board of Horse Racing has amended ARM 32.28.709, 32.28.801, and 32.28.1906 exactly as proposed.
3. No comments or testimony were received.

BOARD OF HORSE RACING
DEPARTMENT OF LIVESTOCK

/s/ Christian Mackay
Christian Mackay
Executive Officer
Department of Livestock

/s/ Carol Grell Morris
Carol Grell Morris
Rule Reviewer

Certified to the Secretary of State January 7, 2008.

BEFORE THE DEPARTMENT OF MILITARY AFFAIRS
OF THE STATE OF MONTANA

In the matter of the adoption of New)	NOTICE OF
Rules I through V pertaining to)	ADOPTION AND REPEAL
reimbursement for life insurance)	
premiums paid by Montana reserve)	
component service members serving)	
outside Montana in a contingency)	
operation and the repeal of ARM)	
34.7.101 through 34.7.106 pertaining)	
to reimbursement for life insurance)	
premiums paid by Montana reserve)	
component service members serving)	
outside Montana in a contingency)	
operation)	

TO: All Concerned Persons

1. On November 21, 2007 the Department of Military Affairs published MAR Notice No. 34-8 pertaining to the proposed adoption and repeal of the above-stated rules at page 1864 of the 2007 Montana Administrative Register, Issue Number 22.

2. The department has adopted New Rule I (34.7.201), New Rule II (34.7.202), New Rule III (34.7.203), New Rule IV (34.7.204), and New Rule V (34.7.205) as proposed.

3. The rules to be repealed, 34.7.101, 34.7.102, 34.7.103, 34.7.104, 34.7.105, and 34.7.106, were repealed as proposed.

4. No comments or testimony were received.

/s/ John C. Melcher
John C. Melcher
Assistant Attorney General
Rule Reviewer

/s/ Randall D. Mosley
Randall D. Mosley
The Adjutant General
Department of Military Affairs

Certified to the Secretary of State January 7, 2008.

BEFORE THE DEPARTMENT OF MILITARY AFFAIRS
OF THE STATE OF MONTANA

In the matter of the adoption of New) NOTICE OF ADOPTION
Rules I through VIII pertaining to the)
Montana military family relief fund)

TO: All Concerned Persons

1. On November 21, 2007 the Department of Military Affairs published MAR Notice No. 34-9 pertaining to the proposed adoption of the above-stated rules at page 1870 of the 2007 Montana Administrative Register, Issue Number 22.

2. The department has adopted New Rule I (34.8.101), New Rule II (34.8.102), New Rule III (34.8.104), New Rule IV (34.8.106), New Rule V (34.8.108), New Rule VI (34.8.110), New Rule VII (34.8.112), and New Rule VIII (34.8.114) as proposed.

3. No comments or testimony were received.

/s/ John C. Melcher
John C. Melcher
Assistant Attorney General
Rule Reviewer

/s/ Randall D. Mosley
Randall D. Mosley
The Adjutant General
Department of Military Affairs

Certified to the Secretary of State January 7, 2008.

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

In the matter of the amendment of ARM) NOTICE OF AMENDMENT
37.57.301, 37.57.304, 37.57.305,)
37.57.306, 37.57.307, 37.57.308,)
37.57.315, 37.57.316, 37.57.320, and)
37.57.321 pertaining to newborn)
screening tests and eye treatment)

TO: All Interested Persons

1. On November 8, 2007, the Department of Public Health and Human Services published MAR Notice No. 37-422 pertaining to the public hearing on the proposed amendment of the above-stated rules, at page 1790 of the 2007 Montana Administrative Register, issue number 21.

2. The department has amended ARM 37.57.306, 37.57.307, 37.57.308, 37.57.315, 37.57.320, and 37.57.321 as proposed.

3. The department has amended the following rules as proposed with the following changes from the original proposal. New matter to be added is underlined. Matter to be deleted is interlined.

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

(1) and (2) remain as proposed.

(3) "Newborn screening tests" are laboratory screening tests for the following conditions:

(a) Acylcarnitine Disorders:

(i) Fatty Acid Oxidation Disorders:

(A) ~~Carnitine~~ Carnitine uptake defect;

(B) Long-chain L-3-OH acyl-CoA dehydrogenase deficiency;

(C) Medium-chain acyl-CoA dehydrogenase deficiency;

(D) Trifunctional protein deficiency; and

(E) Very long-chain acyl-CoA dehydrogenase deficiency;

(ii) Organic Acidemia Disorders:

(A) ~~3-OH-3-CH₃ glutaric aciduria~~ 3-hydroxy-3-methylglutaryl-CoA lyase deficiency;

(B) ~~3-m~~ Methylcrotonyl-CoA carboxylase deficiency;

(C) β -ketothiolase deficiency;

(D) Glutaric acidemia type I;

(E) Isovaleric acidemia;

(F) Methylmalonic acidemia (Cbl A,B);

(G) Methylmalonic acidemia (mutase deficiency);

(H) Multiple carboxylase deficiency; and

- (l) Propionic acidemia;
- (b) Amino Acid Disorders:
 - (i) Argininosuccinic acidemia;
 - (ii) Citrullinemia;
 - (iii) Homocystinuria (~~due to CBS deficiency~~);
 - (iv) Maple syrup urine disease;
 - (v) Phenylketonuria; and
 - (vi) Tyrosinemia type I;
- (c) Biotinidase deficiency;
- (d) Classical galactosemia;
- (e) Congenital adrenal hyperplasia (~~21-hydroxylase deficiency~~);
- (f) Congenital hypothyroidism;
- (g) Cystic fibrosis; and
- (h) Hemoglobinopathies, including:
 - (i) Hb S/ β -thalassemia;
 - (ii) Hb SC disease; and
 - (iii) Hb SS disease (~~Sickle cell anemia Hb~~).

AUTH: 50-19-202, MCA

IMP: 50-19-203, MCA

37.57.304 VERY LOW BIRTH WEIGHT (UNDER 1,500 GRAMS)

NEWBORNS (1) remains as proposed.

~~(2) If the infant is not yet feeding when the initial screening sample is collected, a repeat specimen for phenylalanine testing must be taken at least 48 hours following the first ingestion of milk.~~

~~(3)~~ (2) In the event that the newborn stays in a health care facility longer than 14 days following birth, a repeat congenital hypothyroid screening must be made either at the time of discharge if the stay is less than one month, or at one month of age if the stay is one month or longer.

AUTH: 50-19-202, MCA

IMP: 50-19-203, MCA

37.57.305 NEWBORNS OTHER THAN THOSE WITH VERY LOW BIRTH WEIGHT (1) For newborns at birth weights of 1,500 grams or more, the required blood specimen must be taken:

~~(a) between 24 and 72 hours of age; or,~~

~~(b) 48 hours following its first ingestion of milk, but not later than the seventh day of life.~~

(2) through (3) remain as proposed.

AUTH: 50-19-202, MCA

IMP: 50-19-203, MCA

37.57.316 ABNORMAL TEST RESULT (1) and (1)(a) remain as proposed.

(b) the person to whom the above report is made must ensure that within 48

hours of receiving the notification of an abnormal test result, a second blood specimen ~~is will be~~ taken ~~within 24 hours of notification~~ and submitted to the department for a second test.

(2) through (3) remain as proposed.

AUTH: 50-19-202, MCA

IMP: 50-19-203, MCA

4. The department has thoroughly considered all commentary received. The comments received and the department's response to each follow:

COMMENT #1: The department received two formal comments which asked the department to amend the proposed rules to remove the list of specific conditions for which the proposed rules require mandatory screening. Instead, the persons providing the comments proposed that the rules make a general statement requiring that the hospitals and other facilities conduct screening with an expanded panel of tests as "recommended by" the American Academy of Pediatrics (AAP) or other appropriate organization. The comments indicated that newborn screening is an ever changing field and that it would be more efficient to have a general requirement so that as the recommendations of the AAP change and as new and accepted tests become available, it will not be necessary to amend the rules in the future.

RESPONSE: In order to enforce a mandatory newborn screening requirement, the screening requirement must be sufficiently specific to put the hospital or other facility charged with providing the screening on notice of what it is being required to do. The department has set out the specific recommendations made by the AAP in March of 2005. That listing was presented to the 2007 Legislature as the then most current standard for newborn screening and was used to support an appropriation for Medicaid reimbursement for providers conducting screening for these conditions on a patient who is Medicaid eligible. The department recognizes that recommendations of the AAP likely will change over time as effective screenings for other conditions are developed. However, the department cannot require a hospital or facility to conduct screening for such other conditions unless they are specifically identified in the administrative rules. Additionally, the department does not want to require that a health care provider conduct a screening test on a Medicaid patient if that test is not Medicaid reimbursable. The department therefore anticipates that future amendments to this rule will likely occur. When that occurs, a request will also be made to the Legislature for an appropriation that will allow Medicaid reimbursement for any new screening tests required that are performed on Medicaid eligible patients. In the interim, however, any hospital or other facility conducting newborn screenings may certainly choose to also conduct screenings for other conditions as recommended by the AAP.

COMMENT #2: A suggestion was made that ARM 37.57.304(2) and 37.57.305(1)(b) be omitted to reflect the advances in Phenylketonuria (PKU) screening. Those current provisions both require that blood samples taken for PKU screening occur at least 48 hours after the newborn has first ingested milk.

RESPONSE: This recommendation has been reviewed by the Montana Public Health Laboratory and the department agrees with this comment. The department has determined that it would be appropriate to delete ARM 37.57.304(2) and 37.57.305(1)(b) because current testing methodology for PKU is not sensitive to infant feeding status. The department will therefore delete ARM 37.57.304(2) and 37.57.305(1)(b).

COMMENT #3: A question was raised about whether out-of-state hospitals are bound by Montana's Administrative Rules in terms of newborn screening requirements for babies born in Montana and transferred to hospitals in other states.

RESPONSE: ARM 37.57.306 and all other rules in the Administrative Rules of Montana apply only to Montana institutions. The state of Montana does not have legal authority over institutions in other states. The department will therefore make no change to this rule.

COMMENT #4: One comment requested that additional time be provided for hospitals and other facilities conducting newborn screening to allow up to 48 hours to obtain a specimen for a follow-up testing after an abnormal test result is received, instead of requiring that the specimen be taken within 24 hours after receiving such notification. The commentor noted that it sometimes takes longer than 24 hours to find the family and to talk to the specialist, who may order a different test after an initial abnormal test result, rather than repeating the same test.

RESPONSE: After reviewing this comment and recommendation, the department agrees. It will change ARM 37.57.316(1)(b) to read: "(b) the person to whom the above report is made must ensure that within 48 hours of receiving notification of an abnormal test result, a second blood specimen will be taken and submitted to the department for a second test".

COMMENT #5: One recommendation was made that the listing of screening tests in ARM 37.57.301 be simplified to list the categories of disease conditions for which screening will be mandatory, rather than each specific disease condition.

RESPONSE: The department has considered this recommendation, but rejects it. The originally published list of disease conditions for which a newborn must be screened is adopted with only minor spelling and typographical changes. It identifies general categories of diseases and then the specific disease conditions within those categories for which newborns must be screened. The department has decided to modify the listings to reflect the conditions for which screening will be performed, instead of the names of the specific defect involved.

COMMENT #6: The proposed rules require that the initial newborn screening blood specimen be taken after 24 hours of birth. For a very low birth weight baby, the test must be taken no later than seven days of age unless medically contraindicated. For other babies, the sample must be taken between 24 and 72 hours of age. A comment was received requesting that the department change this requirement to

allow an additional day for that test for babies who do not have low birth weight. The comment pertained to the situation in which the newborn is delivered at home and where it may take several days before the mother is ready to come into town due to recovery issues or travel limitations due to the weather and where the health care provider attending the birth may have difficulty returning to the home within three days due to weather problems or because of the need to attend other births.

RESPONSE: The department does not support the recommended change to increase the maximum time period in this rule. The department considers it of critical importance that there is no longer delay for taking an initial screening sample for any baby, whether born in or outside of a hospital.

COMMENT #7: One commentor expressed concern about how to handle parental refusal of the mandatory newborn bloodspot screening.

RESPONSE: The administrative rules regulate the activities of those professional individuals who attend births in Montana. The rules require those professionals to cause the bloodspot specimen to be taken and submitted to the department. It would be the department's recommendation that a professional who offers a screening to a parent who refuses it document the parent refusal as part of the baby's medical record in order to establish that the screening was offered and refused.

COMMENT #8: A question was received about whether provisions have been made for parents who cannot afford the increased cost of the expanded screening.

RESPONSE: The 2007 Montana Legislature increased state matching funds for Medicaid to cover potential increased Medicaid costs for the additional newborn screening for Medicaid eligible patients.

/s/ Kimberly Kradolfer
Rule Reviewer

/s/ Joan Miles
Director, Public Health and
Human Services

Certified to the Secretary of State January 7, 2008.

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

In the matter of the adoption of New)	NOTICE OF ADOPTION,
Rule I, the amendment of ARM)	AMENDMENT, AND REPEAL
37.79.102, 37.79.201, 37.79.206,)	
37.79.207, 37.79.209, 37.79.301,)	
37.79.302, 37.79.303, 37.79.312,)	
37.79.316, 37.79.326, 37.79.501,)	
37.79.503, 37.79.505, 37.79.601,)	
37.79.602, 37.79.605, 37.79.606,)	
37.79.607, and 37.79.801, and the)	
repeal of ARM 37.79.504 pertaining to)	
the Children's Health Insurance)	
Program (CHIP))	

TO: All Interested Persons

1. On October 25, 2007, the Department of Public Health and Human Services published MAR Notice No. 37-415 pertaining to the proposed adoption, amendment, and repeal of the above-stated rules, at page 1591 of the 2007 Montana Administrative Register, issue number 20.

2. The department has adopted New Rule I (37.79.106) as proposed.

3. The department has amended ARM 37.79.206, 37.79.207, 37.79.209, 37.79.301, 37.79.303, 37.79.312, 37.79.316, 37.79.501, 37.79.503, 37.79.505, 37.79.601, 37.79.602, 37.79.607, and 37.79.801 and repealed ARM 37.79.504 as proposed.

4. The department has amended the following rules as proposed with the following changes from the original proposal. New matter to be added is underlined. Matter to be deleted is interlined.

37.79.102 DEFINITIONS As used in this subchapter, unless expressly provided otherwise, the following definitions apply:

(1) through (26) remain as proposed.

(27) "Third party administrator (TPA)" means an entity with a certificate of registration to conduct business in Montana in accordance with 33-17-603, MCA, or an entity licensed as a health service corporation. The CHIP program may contract for TPA services including but not limited to claims processing, maintaining an adequate network of participating providers, coordination and continuation of care, health education, notices, quality assurance, reporting, case management services, and customer service.

(28) and (29) remain as proposed.

AUTH: 53-4-1009, MCA

IMP: 53-4-1003, MCA

37.79.201 ELIGIBILITY (1) through (1)(j) remain as proposed.

(2) Family income information for all family members must be included on the signed and dated application.

(a) through (a)(ii)(A) remain as proposed.

(B) The income of individuals under the age of 19 who live in the household but do not attend school is ~~inputted~~ imputed to the custodial parent.

(b) through (10) remain as proposed.

AUTH: 53-4-1004, 53-4-1009, MCA

IMP: 53-4-1003, 53-4-1004, MCA

37.79.302 COVERAGE LIMITATIONS (1) remains as proposed.

(2) Pre-existing conditions of each enrollee are covered as of the effective date of enrollment if the condition would be otherwise covered ~~except in the following conditions:~~

(3) and (4) remain as proposed.

AUTH: 53-4-1009, MCA

IMP: 53-4-1003, MCA

37.79.326 DENTAL BENEFITS (1) through (4) remain as proposed.

(5) Enrollees with significant dental needs beyond those covered in the basic dental plan may, with prior authorization, receive additional services through the CHIP Extended Dental Plan (EDP). The EDP program is dependent on legislative appropriation for the program.

(a) through (7) remain as proposed.

AUTH: 53-4-1009, MCA

IMP: 53-4-1003, MCA

37.79.605 PARTICIPATING PROVIDERS (1) through (4) remain as proposed.

(5) ~~Participating providers may not bill the enrollee, parent, or guardian for any medical care provided beyond the cost sharing provisions outlined in ARM 37.79.504.~~ In addition to the cost sharing provisions outlined in ARM 37.79.501, participating providers may bill the enrollee, parent, or guardian for services provided to a CHIP enrollee, which are not covered benefits.

(6) through (6)(b) remain as proposed.

AUTH: 53-4-1009, MCA

IMP: 53-4-1003, MCA

37.79.606 REIMBURSEMENT OF THE THIRD PARTY ADMINISTRATOR

(1) remains as proposed.

~~(2) The third party administrator will receive a monthly administrative fee and weekly claims payment. These payments are considered to be payment in full and the third party administrator may not bill the enrollee, parent, or guardian for any medical care provided beyond the cost-sharing provisions outlined in ARM 37.79.501.~~

AUTH: 53-4-1009, MCA

IMP: 53-4-1003, MCA

5. The department is revising their text that was proposed adding the sentence "The EDP program is dependent on legislative appropriation for the program" to ARM 37.79.326(5) to clarify that an individual enrollee's dental benefits available under the extended dental program may be limited by the Legislature's annual appropriation for EDP benefits. If the EDP appropriation is expended during a fiscal year, those CHIP benefits may no longer be available to enrollees for the remainder of the benefit year.

6. The department has thoroughly considered all commentary received. The comments received and the department's response to each follows:

COMMENT #1: A commentor supported funding by the 2007 Legislature to provide additional dental benefits for children covered under CHIP. The commentor supports the amendment to ARM 37.79.326 and appreciates the department's effort to ensure that the application process for this extended dental benefit is simple and easily navigable by dentists and their staff.

RESPONSE: The department appreciated the commentor's participation in the rulemaking process.

COMMENT #2: A commentor commented that the meaning of the term "adequate network of participating providers", which appears in ARM 37.79.102(26), should be established in rule.

RESPONSE: The department reviewed several health plans that use the services of a third party administrator. No Montana plan defines the term, which is difficult to quantify in a state wide plan. Currently, the department does not agree that an adequate network needs to be defined in rule but it will continue to consider the comment and will amend the rule if necessary.

COMMENT #3: A commentor commented that adding ARM 37.79.209(1), which states that income verification is not required with an application, could result in families with too high of income receiving CHIP.

RESPONSE: Many states have removed the requirement that every applicant provide income verification because it eliminates a barrier to applying and eliminates unnecessary paperwork. Section (2) of the rule requires the department to verify eligibility of a random sample of families. The experience of Montana and other

states has been that random verification of a sample of applicants saves administrative dollars and does not result in a higher percentage of ineligible recipients. The department will continue to monitor the policy change.

COMMENT #4: A commentor commented that the current CHIP Third Party Administrator (TPA) performs TPA services under its health insurance license and is not licensed, nor is it required to be licensed, under 33-17-603, MCA. The commentor requested the department add the following language to the definition of Third Party Administrator ... "or an entity licensed as a health service corporation".

RESPONSE: The department agrees and has amended ARM 37.79.102(27) to reflect the change in definition of a Third Party Administrator.

COMMENT #5: A commentor requested that ARM 37.79.605(5) be clarified to provide that participating providers may bill the enrollee, parent, or guardian for benefits/services provided to a CHIP participant, beyond the cost sharing provisions, for services that are not covered benefits.

RESPONSE: The department agrees and has revised ARM 37.79.605(5) of the rule to reflect the suggested change.

COMMENT #6: A commentor recommended the department delete the proposed section (2) of ARM 37.79.606 in its entirety. That section states, "The third party administrator will receive a monthly administrative fee and weekly claims payment. These payments are considered to be payment in full and the third party administrator may not bill the enrollee, parent, or guardian for any medical care provided beyond the cost-sharing provisions outlined in ARM 37.79.501." The commentor indicated, "TPAs do not bill enrollees, parents, or guardians for any medical care or cost sharing amounts. The CHIP program, the department, or the providers are the only entities that would bill for or demand such amounts."

RESPONSE: The department agrees and has deleted section (2) of ARM 37.79.606. Section (1) of ARM 37.79.606 states, "In consideration for all services rendered by a third party administrator under a contract with the department, the third party administrator will receive for services provided as agreed in the contract." This section, which references the department's TPA contract, is sufficient.

/s/ GERALYN DRISCOLL
Rule Reviewer

/s/ JOAN MILES
Director, Public Health and
Human Services

Certified to the Secretary of State January 7, 2008.

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

In the matter of the amendment of ARM) NOTICE OF AMENDMENT
37.86.1101 and 37.86.1105 pertaining)
to Medicaid reimbursement for)
dispensing fees and outpatient)
compound prescriptions)

TO: All Interested Persons

1. On October 25, 2007, the Department of Public Health and Human Services published MAR Notice No. 37-417 pertaining to the public hearing on the proposed amendment of the above-stated rules, at page 1611 of the 2007 Montana Administrative Register, issue number 20.

2. The department is not amending ARM 37.86.1101 at this time.

3. The department has amended the following rule as proposed with the following changes from the original proposal. New matter to be added is underlined. Matter to be deleted is interlined.

37.86.1105 OUTPATIENT DRUGS, REIMBURSEMENT (1) remains as proposed.

(2) The dispensing fee for filling prescriptions shall be determined for each pharmacy provider annually.

(a) The dispensing fee is based on the pharmacy's average cost of filling prescriptions ~~and whether the pharmacy dispenses a generic, preferred drug list (PDL) or non-PDL drug.~~ The average cost of filling a prescription will be based on the direct and indirect costs that can be allocated to the cost of the prescription department and that of filling a prescription, as determined from the Montana Dispensing Fee Questionnaire. ~~Considerations in determining the dispensing fee include but are not limited to: prescription volume, overhead costs, pharmacy personnel wages, and special packaging.~~ A provider's failure to submit, upon request, the a properly completed dispensing fee questionnaire properly completed upon request will result in the assignment of the minimum dispensing fee offered. A copy of the Montana Dispensing Fee Questionnaire is available upon request from the department.

(b) The dispensing fees assigned ~~for in-state providers~~ shall range between a minimum of \$2.00, ~~a \$5.50 dispensing fee for non-PDL brand medications and new in-state providers and a maximum of \$10.00 for PDL and generic medications~~ and a maximum of \$4.70.

(c) and (d) remain as proposed.

(3) In-state pharmacy providers that are new to the Montana Medicaid program will be assigned an interim \$3.50 ~~\$5.50~~ dispensing fee until a dispensing fee questionnaire, as provided in (2), can be completed for six months of operation.

At that time, a new dispensing fee will be assigned which will be the lower of the dispensing fee calculated in accordance with (2) for the pharmacy or the \$4.70 dispensing fee as provided in (2)(b). Failure to comply with the six months dispensing fee questionnaire requirement will result in assignment of a dispensing fee of \$2.00.

(4) through (7) remain as proposed.

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

IMP: 53-6-101, 53-6-113, 53-6-141, MCA

4. The department received several comments from providers in support of the proposed dispensing fee amendments to ARM 37.86.1101 and 37.86.1105(2) and (3). The dispensing fee amendments were proposed in response to the pharmacy reimbursement provisions of the Deficit Reduction Act of 2005 (Public Law No. 109-171) and the proposed federal regulations to implement it (42 CFR Chapter IV). Implementation of those provisions have been delayed indefinitely due to a pending lawsuit. Therefore, the department has withdrawn the proposed dispensing fee amendments to ARM 37.86.1101 and restored ARM 37.86.1105(2) and (3) to reflect the withdrawal of those proposed amendments.

5. The department has thoroughly considered all commentary received. The comments received and the department's response to each follow:

COMMENT #1: The compounding drug payment methodology fails to reimburse pharmacists adequately for the time spent, and will limit the access of Medicaid recipients to compounded medications.

RESPONSE: The department disagrees and finds that the proposed compound drug payment methodology is sufficient to determine an adequate reimbursement rate. Montana's proposed rate compares favorably to other state Medicaid compound drug reimbursement methodologies, and other states have not reported access issues. The commentor's statement that this rule would adversely affect recipient access is not supported by the facts. The department has seen a steady increase in the number of compounds billed by line item since it was first allowed in 2004. The drugs compounded using line item billings have included anti-rejection medications, pediatric preparations, and a number of specialty medications.

COMMENT #2: The current system using department assigned local drug codes (00888-codes) is an excellent means by which to bill compounded medications.

RESPONSE: The department disagrees. The department finds it cannot continue to allow the use of local codes for billing compounded medications. These codes neither comply with the requirements of the Health Insurance Portability and Accountability Act of 1996 (HIPAA, P.L.104-191), nor do they allow the department to reimburse only for covered outpatient drugs as mandated by 42 USC 1396r-8.

COMMENT #3: The proposed compounding dispensing fees are unrealistic and will

make it financially impossible for pharmacies to provide compounded medications.

RESPONSE: The department disagrees. The department designed the dispensing fees for compound drugs to compare favorably to those of the Medicaid programs of other states. The proposed amendment maintains Medicaid reimbursement rates while complying with a federal mandate to collect rebates from participating drug manufacturers. The billing requirements will assure continued federal financial participation for compounded prescriptions. Over one-third of the compounds billed to Medicaid in state fiscal year (SFY) 2007 by Montana pharmacies were billed by line item. By substantially increasing the dispensing fees for compounded drugs, the department intends to compensate pharmacies for the additional work generated by the billing requirements.

COMMENT #4: Private third party health plans allow \$30.00 plus the average wholesale price (AWP) for ingredients as a compounding fee. Could Medicaid match that dispensing fee?

RESPONSE: Private third party insurers are not restricted by the provisions of 42 USC 1396r-8, so their payment methodologies are not comparable to Medicaid's. Montana Medicaid's dispensing fees for compounded prescription drugs compare favorably with those of other state Medicaid programs.

COMMENT #5: Prior authorization for moderate and high levels of effort for preparing compounds will be time consuming and would cause delay in serving Medicaid recipients.

RESPONSE: The department disagrees. Obtaining prior authorization for mid and high level of effort compounds will take the same amount of time as for other drugs. The Medicaid prior authorization unit is staffed with experienced pharmacists and will be given clear guidelines in determining level of effort parameters. The department's prior authorization unit makes immediate coverage determinations by telephone, and authorizations for new compounds may be expedited by utilizing faxed authorization requests.

COMMENT #6: Montana Medicaid only reimburses for ingredients manufactured by companies that have entered into an agreement with the Centers for Medicare and Medicaid Services (CMS) to pay rebates. It does not pay for excipients or for drugs from manufacturers that do not have a rebate agreement. This policy creates an incentive for compounding pharmacies to maintain a "cash only" business model.

RESPONSE: Medicaid law requires the department to reimburse for drugs within the limits of 42 USC 1396r-8. The department is aware that some compound ingredient manufacturers refuse to sign rebate agreements with CMS, thereby precluding access to their drugs by all Medicaid programs.

The department encourages compounding pharmacies to contact their suppliers and urge them to participate in the Medicaid rebate program. This would ensure access

to quality ingredients for all Medicaid recipients.

COMMENT #7: There are different methods of producing the same compound which result in more or less elegant products. How will the department distinguish such methodologies?

RESPONSE: The department is not able to distinguish different methods of compounding a medication, let alone determine whether one is more "elegant" than another. The department will not attempt to make such distinctions and will rely on the pharmacist's professional discretion and expertise to make effective compounded products.

/s/ John Koch
Rule Reviewer

/s/ Joan Miles
Director, Public Health and
Human Services

Certified to the Secretary of State January 7, 2008.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 42.4.502 relating to the capital)
gain credit)

TO: All Concerned Persons

1. On November 21, 2007, the department published MAR Notice No. 42-2-787 regarding the proposed amendment of the above-stated rule at page 1896 of the 2007 Montana Administrative Register, issue no. 22.

2. A public hearing was held on December 13, 2007, to consider the proposed amendment. No one appeared at the hearing to testify and no written comments were received. Therefore, the department amends the rule as proposed.

3. An electronic copy of this Adoption Notice is available through the department's site on the World Wide Web at www.mt.gov/revenue, under "for your reference"; "DOR administrative rules"; and "upcoming events and proposed rule changes." The department strives to make the electronic copy of this Adoption 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.

/s/ Cleo Anderson
CLEO ANDERSON
Rule Reviewer

/s/ Dan R. Bucks
DAN R. BUCKS
Director of Revenue

Certified to Secretary of State January 7, 2008

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the adoption of New) NOTICE OF ADOPTION
Rule I (42.4.702) and II (42.4.703))
relating to tax year 2007 property tax)
credit)

TO: All Concerned Persons

1. On November 8, 2007, the department published MAR Notice No. 42-2-781 regarding the proposed adoption of the above-stated rules at page 1807 of the 2007 Montana Administrative Register, issue no. 21.

2. A public hearing was held on November 28, 2007, to consider the proposed adoption. No oral comments were received during the hearing. Written comments were received subsequent to the hearing and are summarized as follows along with the response of the department:

COMMENT NO. 1: Senator John Cobb commented on New Rule II, stating that the unaudited general fund revenue must be certified using generally accepted accounting under 15-30-140, MCA. He contends that the department did not certify the revenue using generally accepted accounting. Therefore, he argues, there can be no tax credit since the certification was not done correctly and that if the department had certified using generally accepted accounting under the statute, there would have been no "trigger" for the tax credit since the revenue using generally accepted accounting would have been under the threshold amount of \$1,802,000,000.

He further stated that, one can also argue that there has been no certification on the unaudited general fund revenue and whatever was certified on July 27, 2007 from the Department of Administration to the Budget Director had nothing to do with implementing 15-30-104, MCA. The certification must use generally accepted accounting principles and it did not do so.

RESPONSE NO. 1: The department thanks Senator Cobb for his comments. The responsibility of certifying the surplus amount to be considered in the calculation was the responsibility of the Department of Administration. The Department of Administration's methodology and basis for the calculation were explained and defended by the administration in the litigation Senator Cobb initiated with the state. The department, as an executive branch agency, abides by and adopts this explanation and defense. These rules were developed solely to implement the calculation of the tax credit amount based on the certification of the surplus amount certified by the Department of Administration to the Budget Office as required in 15-30-140, MCA. The methodology that the Department of Administration uses to calculate its certification is not addressed by the rules.

3. The department amends New Rule I (42.4.702) to correct the title and

language of the rule to reflect that this rule applies to a "tax credit" not a "tax refund". The rule is amended with the following changes:

NEW RULE I (42.4.702) QUALIFYING FOR THE 2007 PROPERTY TAX REFUND CREDIT (1) If a taxpayer or taxpayers changed principal Montana residences during 2007, the department may consider the ownership and occupancy of the successive residence as a principal residence when determining whether the taxpayer or taxpayers qualify for the minimum term of residence for the property tax ~~refund~~ credit as provided in 15-30-140, MCA.

(2) For the successive residence to be considered as a principal residence for purposes of a minimum term of residence for the property tax ~~refund~~ credit as stated in 15-30-140, MCA, the taxpayer or taxpayers must, during the tax year:

(a) move out of the primary principal residence in Montana and into the successive principal residence in Montana; and

(b) have paid Montana property taxes on either or both residences for at least seven months.

(3) The taxpayer or taxpayers may only make a claim for a ~~refund~~ credit under 15-30-140, MCA, for one of the residences.

(4) remains the same.

AUTH: 15-1-201, 15-30-105, 15-30-140, MCA

IMP: 15-1-201, 15-30-140, MCA

4. Therefore, the department adopts New Rule I (42.4.702) with the amendments listed above and adopts New Rule II (42.4.703) as proposed.

5. An electronic copy of this Adoption Notice is available through the department's site on the World Wide Web at www.mt.gov/revenue, under "for your reference"; "DOR administrative rules"; and "upcoming events and proposed rule changes." The department strives to make the electronic copy of this Adoption 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.

/s/ Cleo Anderson
CLEO ANDERSON
Rule Reviewer

/s/ Dan R. Bucks
DAN R. BUCKS
Director of Revenue

Certified to Secretary of State January 7, 2008

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 42.4.1603 and 42.4.1609)
relating to new and expanded industry)
credits)

TO: All Concerned Persons

1. On November 21, 2007, the department published MAR Notice No. 42-2-785 regarding the proposed amendment of the above-stated rules at page 1889 of the 2007 Montana Administrative Register, issue no. 22.

2. No comments were received at or subsequent to the hearing. However, the department amends ARM 42.4.1603 to add an additional implementing citation as follows:

42.4.1603 PERIOD OF ELIGIBILITY (1) and (2) remain as proposed.

AUTH: 15-31-127, 15-31-501, MCA

IMP: 15-31-124, 15-31-125, MCA

3. Therefore, the department amends ARM 42.4.1603 with the amendments listed above and amends ARM 42.4.1609 as proposed.

4. An electronic copy of this Adoption Notice is available through the department's site on the World Wide Web at www.mt.gov/revenue, under "for your reference"; "DOR administrative rules"; and "upcoming events and proposed rule changes." The department strives to make the electronic copy of this Adoption 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.

/s/ Cleo Anderson
CLEO ANDERSON
Rule Reviewer

/s/ Dan R. Bucks
DAN R. BUCKS
Director of Revenue

Certified to Secretary of State January 7, 2008

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the adoption of New) NOTICE OF ADOPTION
Rule I (42.4.2501), Rule II (42.4.2502),)
Rule III (42.4.2503), and Rule IV)
(42.4.2504) relating to biodiesel and)
biolubricant tax credits)

TO: All Concerned Persons

1. On November 21, 2007, the department published MAR Notice No. 42-2-786 regarding the proposed adoption of the above-stated rules at page 1892 of the 2007 Montana Administrative Register, issue no. 22.

2. A public hearing was held on December 17, 2007, to consider the proposed adoption. No one appeared at the hearing to testify and no written comments were received. Therefore, the department adopts the new rules as proposed.

3. An electronic copy of this Adoption Notice is available through the department's site on the World Wide Web at www.mt.gov/revenue, under "for your reference"; "DOR administrative rules"; and "upcoming events and proposed rule changes." The department strives to make the electronic copy of this Adoption 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.

/s/ Cleo Anderson
CLEO ANDERSON
Rule Reviewer

/s/ Dan R. Bucks
DAN R. BUCKS
Director of Revenue

Certified to Secretary of State January 7, 2008

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 42.4.2701 and 42.4.2704)
relating to qualified endowment)

TO: All Concerned Persons

1. On November 21, 2007, the department published MAR Notice No. 42-2-784 regarding the proposed amendment of the above-stated rules at page 1885 of the 2007 Montana Administrative Register, issue no. 22.

2. A public hearing was held on December 13, 2007, to consider the proposed amendment. No one appeared at the hearing to testify and no written comments were received. Therefore, the department amends the rules as proposed.

3. An electronic copy of this Adoption Notice is available through the department's site on the World Wide Web at www.mt.gov/revenue, under "for your reference"; "DOR administrative rules"; and "upcoming events and proposed rule changes." The department strives to make the electronic copy of this Adoption 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.

/s/ Cleo Anderson
CLEO ANDERSON
Rule Reviewer

/s/ Dan R. Bucks
DAN R. BUCKS
Director of Revenue

Certified to Secretary of State January 7, 2008

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 42.4.3102, 42.4.3103 relating to)
contractor's gross receipts taxes)

TO: All Concerned Persons

1. On November 21, 2007, the department published MAR Notice No. 42-2-783 regarding the proposed amendment of the above-stated rules at page 1883 of the 2007 Montana Administrative Register, issue no. 22.

2. A public hearing was held on December 13, 2007, to consider the proposed amendment. No one appeared at the hearing to testify and no written comments were received. Therefore, the department amends the rules as proposed.

3. An electronic copy of this Adoption Notice is available through the department's site on the World Wide Web at www.mt.gov/revenue, under "for your reference"; "DOR administrative rules"; and "upcoming events and proposed rule changes." The department strives to make the electronic copy of this Adoption 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.

/s/ Cleo Anderson
CLEO ANDERSON
Rule Reviewer

/s/ Dan R. Bucks
DAN R. BUCKS
Director of Revenue

Certified to Secretary of State January 7, 2008

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 42.4.3301, 42.4.3303,)
42.4.3304, and 42.4.3305 relating to)
movie, television, and related media)
tax credits)

TO: All Concerned Persons

1. On November 21, 2007, the department published MAR Notice No. 42-2-791 regarding the proposed amendment of the above-stated rules at page 1919 of the 2007 Montana Administrative Register, issue no. 22.

2. A public hearing was held on December 13, 2007, to consider the proposed amendment. No one appeared at the hearing to testify and no comments were received. Therefore, the department amends the rules as proposed.

3. An electronic copy of this Adoption Notice is available through the department's site on the World Wide Web at www.mt.gov/revenue, under "for your reference"; "DOR administrative rules"; and "upcoming events and proposed rule changes." The department strives to make the electronic copy of this Adoption 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.

/s/ Cleo Anderson
CLEO ANDERSON
Rule Reviewer

/s/ Dan R. Bucks
DAN R. BUCKS
Director of Revenue

Certified to Secretary of State January 7, 2008

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the adoption of New)
Rule I (42.17.317), and amendment of)
ARM 42.17.105, 42.17.114,)
42.17.304, and 42.17.305 relating to)
estimated tax payments)

NOTICE OF ADOPTION AND
AMENDMENT

TO: All Concerned Persons

1. On November 21, 2007, the department published MAR Notice No. 42-2-788 regarding the proposed adoption and amendment of the above-stated rules at page 1900 of the 2007 Montana Administrative Register, issue no. 22.

2. A public hearing was held on December 14, 2007, to consider the proposed adoption and amendment. No comments were received during or subsequent to the hearing. Therefore, the department adopts New Rule I (42.17.317) and amends ARM 42.17.105, 42.17.114, 42.17.304, and 42.17.305 as proposed.

3. An electronic copy of this Adoption Notice is available through the department's site on the World Wide Web at www.mt.gov/revenue, under "for your reference"; "DOR administrative rules"; and "upcoming events and proposed rule changes." The department strives to make the electronic copy of this Adoption 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.

/s/ Cleo Anderson
CLEO ANDERSON
Rule Reviewer

/s/ Dan R. Bucks
DAN R. BUCKS
Director of Revenue

Certified to Secretary of State January 7, 2008

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 44.2.101, 44.15.101, and)
44.15.104 pertaining to)
commissioning of notaries public)

TO: All Concerned Persons

1. On November 21, 2007, the Secretary of State published MAR Notice No. 44-2-141 regarding the public hearing on the proposed amendment of the above-stated rules at page 1923 of the 2007 Montana Administrative Register, Issue Number 22.
2. The rules are amended as proposed.
3. No comments or testimony were received.

/s/ W. Ralph Peck for
W. RALPH PECK for
BRAD JOHNSON
Secretary of State

/s/ Janice Doggett
JANICE DOGGETT
Rule Reviewer

Dated this 7th day of January 2008.

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 September 30, 2007. This table includes those rules adopted during the period September 1, 2007, through December 31, 2007, and any proposed rule action that was pending during the past six-month period. (A notice of adoption must be published within six months of the published notice of the proposed rule.) This table does not 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 September 30, 2007, 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 2006 and 2007 Montana Administrative Register.

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