

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 2

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 The notice section contains state agencies' proposed new, amended or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

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

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BEFORE THE DEPARTMENT OF ADMINISTRATION  
OF THE STATE OF MONTANA

In the matter of the repeal of ) NOTICE OF PROPOSED  
ARM 2.59.107 Investments of ) REPEAL  
Financial Institutions )  
) NO PUBLIC HEARING  
) CONTEMPLATED

TO: All Concerned Persons

1. On March 14, 2002, the Department of Administration, Division of Banking and Financial Institutions proposes to repeal ARM 2.59.107 which describes the type of U.S. government obligations that banks may invest in under section 32-1-424, MCA.

2. The Department of Administration, Division of Banking and Financial Institutions, 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 Division of Banking and Financial Institutions no later than 5:00 p.m. on February 15, 2002, to advise us of the nature of the accommodation that you need. Please contact Susan Pendergast, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, Montana 59620-0546; telephone (406) 444-2091; TDD (406) 444-1421; facsimile (406) 444-4186; e-mail to [spendergast@state.mt.us](mailto:spendergast@state.mt.us).

3. ARM 2.59.107, the rule proposed to be repealed, is on page 2-5924 of the Administrative Rules of Montana.

AUTH: 32-1-424, MCA

IMP: 32-1-424, MCA

4. The repeal of ARM 2.59.107 is necessary because the Division is adopting in this issue of the register, new investment rules, including rules on authorized mutual fund investments, which conflict with this older rule provision. The repeal was not contemplated at the time the new rules were proposed. However, during the public hearing and comment process, several commentors expressed a desire to have the Division change its proposed new rule concerning authorized mutual fund investments. After considering these comments, the Division decided to change the proposed new rule, which is now in conflict with this older rule, requiring the repeal of this rule.

5. Concerned persons may present their data, views or arguments, concerning the proposed repeal in writing to Peter Funk, Legal Counsel, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, Montana 59620-0546; faxed to the office at (406) 444-4186, e-mailed to

pfunk@state.mt.us, and must be received no later than February 28, 2002.

6. If persons who are directly affected by the proposed repeal wish to express their data, views and arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments they have to Peter Funk, Legal Counsel, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, Montana 59620-0546; faxed to the office at (406) 444-4186, e-mailed to pfunk@state.mt.us. A written request for hearing must be received no later than February 28, 2002.

7. If the agency receives requests for a public hearing on the proposed repeal from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed repeal; from the appropriate administrative rule review committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be seven people based on 70 state-chartered banks and trust companies.

8. The Division of Banking and Financial Institutions maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this division. Persons who wish to have their name added to the mailing list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding division rulemaking actions. Such written requests may be mailed or delivered to Susan Pendergast, Division of Banking and Financial Institutions, 846 Front Street, P.O. Box 200546, Helena, MT 59620-0546; faxed to the office at (406) 444-4186, emailed to spendergast@state.mt.us, or may be made by completing a request form at any rules hearing held by the Division of Banking and Financial Institutions.

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

By: /s/ Scott Darkenwald  
SCOTT DARKENWALD, Director  
Department of Administration

By: /s/ Dal Smilie  
DAL SMILIE, Rule Reviewer

Certified to the Secretary of State January 18, 2002

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY  
OF THE STATE OF MONTANA

In the matter of the amendment ) AMENDED NOTICE OF PUBLIC  
of ARM 17.56.308 and 17.56.309 ) HEARING  
pertaining to operating )  
permits or compliance plans, ) (Underground Storage Tanks)  
and compliance inspections )

TO: All Concerned Persons

1. On December 20, 2001, the Department of Environmental Quality published a notice of public hearing in MAR Notice No. 17-150 at page 2452, 2001 Montana Administrative Register, issue number 24. The hearing was held on January 9, 2002, in Helena, Montana. The notice of public hearing is being amended because persons on the Department's interested persons mailing list were not notified as required by section 2-4-302, MCA.

2. On February 20, 2002, at 10:00 a.m., a public hearing will be held in the Lewis Room East of the Phoenix Building, 2209 Phoenix Drive, Helena, Montana, to consider the proposed amendment of the above-stated rules pertaining to issuance of operating permits, compliance plans, and compliance inspections.

3. The Department will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Department no later than 5:00 p.m., February 11, 2002, to advise us of the nature of the accommodation that you need. Please contact Barbara Williams, Remediation Division, Department of Environmental Quality, P.O. Box 200901, Helena, Montana, 59620-0901; phone (406) 444-1420; email bwilliams@state.mt.us, or fax (406) 444-1901.

4. The rules proposed to be amended appear exactly as set forth in MAR Notice No. 17-150, and provide as follows, stricken matter interlined, new matter underlined:

17.56.308 OPERATING PERMIT OR COMPLIANCE PLAN REQUIRED

(1) Between ~~March 31~~ September 30, 2002 and March 31, 2003, a person may not place a regulated substance in or dispense a regulated substance from an underground storage tank system unless the owner or operator has either:

(a) through (11) remain the same.

(12) Owners and operators who have operating permits that were issued after a compliance inspection documenting violations in any of the operation and maintenance categories listed in ARM 17.56.309(1)(a) must, not later than ~~March 31~~ September 30, 2002, have a compliance plan that meets the requirements of ARM 17.56.309.

AUTH: 75-11-505, MCA  
IMP: 75-11-509, MCA

REASON: The department proposes to amend ARM 17.56.308 to extend the deadline, by which owners and operators are required to have either an operating permit or a compliance plan, by six months, from March 31, 2002 to September 30, 2002. This time extension is necessary for the department to process inspection reports as they come in, issue warning letters and compliance plans to owners or operators of facilities with deficiencies, process any necessary re-inspections, and process compliance plans. The six-month time extension will allow the department to perform these additional tasks required by the third-party inspection program with minimal disruption to its regular workload.

Owners and operators will have up to six months to complete a compliance plan. After the end of the compliance plan period, on March 31, 2003, all facility underground storage tank systems will be required to have a valid operating permit in order to receive and dispense petroleum products.

17.56.309 REQUIREMENTS FOR COMPLIANCE INSPECTIONS AND COMPLIANCE PLANS (1) remains the same.

(2) For the first compliance inspection required by 75-11-509, MCA, a provisional operating tag may be issued, in accordance with ARM 17.56.308(5), where an inspection indicates one or more violations of past testing, monitoring, maintenance, recordkeeping or inspection deadlines that cannot be corrected by ~~March 31~~ September 30, 2002. The owner or operator must sign and submit a compliance plan in accordance with ARM 17.56.309(8) and demonstrate compliance with all applicable testing, monitoring, maintenance and recordkeeping deadlines that the department determines are appropriate during the compliance plan period.

(3) through (7) remain the same.

(8) Owners and operators unable to meet the ~~March 31~~ September 30, 2002 deadline established in ARM 17.56.308(1), must sign and submit a department-approved compliance plan, on a form provided by the department, by ~~March~~ September 1, 2002. The compliance plan must:

(a) through (9) remain the same.

AUTH: 75-11-505 and 75-11-509(2), MCA  
IMP: 75-11-509 and 75-11-525, MCA

REASON: The department proposes to amend ARM 17.58.309 in order to provide a six-month extension of the deadline, by which owners and operators are required to have either an operating permit or a compliance plan. The reasons for this time extension are stated in the statement of reason for the amendments to ARM 17.58.308.

5. Concerned persons may submit their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to David Scrimm, Remediation Division, Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901, faxed to the office at (406) 444-1901, or emailed to "dscrimm@state.mt.us", and must be received no later than 5:00 p.m., February 28, 2002. To be guaranteed consideration, the comments must be postmarked on or before that date. Written and/or oral comments received at the hearing and during the comment period afforded for MAR Notice No. 17-150, will be considered for this notice also and need not be resubmitted.

6. Kirsten Bowers, attorney for the Department, has been designated to preside over and conduct the hearing.

7. The Department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: air quality; hazardous waste/waste oil; asbestos control; water/wastewater treatment plant operator certification; solid waste; junk vehicles; infectious waste; public water supplies; public sewage systems regulation; hard rock (metal) mine reclamation; major facility siting; opencut mine reclamation; strip mine reclamation; subdivisions; renewable energy grants/loans; wastewater treatment or safe drinking water revolving grants and loans; water quality; CECRA; underground/above ground storage tanks; MEPA; or general procedural rules other than MEPA. Such written request may be mailed or delivered to Elois Johnson, Paralegal, Department of Environmental Quality, 1520 E. Sixth Ave., P.O. Box 200901, Helena, Montana 59620-0901, faxed to the office at (406) 444-4386, emailed to "ejohnson@state.mt.us" or may be made by completing a request form at any rules hearing held by the Department.

DEPARTMENT OF ENVIRONMENTAL  
QUALITY

By: Jan P. Sensibaugh  
JAN P. SENSIBAUGH, Director

Reviewed by:

James Madden  
JAMES MADDEN, Rule Reviewer

Certified to the Secretary of State, January 18, 2002.

BEFORE THE BOARD OF CRIME CONTROL  
OF THE STATE OF MONTANA

In the matter of the adoption ) NOTICE OF PROPOSED  
of a rule authorizing ) ADOPTION  
reimbursement to counties for )  
detention of Indian youth) NO PUBLIC HEARING  
CONTEMPLATED

TO: All Concerned Persons

1. On March 2, 2002 the Board of Crime Control proposes to adopt a rule authorizing reimbursement to counties for costs associated with detention of Indian youth.

2. The Board of Crime Control 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 Department of Justice no later than 5:00 p.m. on February 18, 2002, to advise us of the nature of the accommodation that you need. Please contact Ali Sheppard, Department of Justice, Office of the Attorney General, P.O. Box 201401, Helena, MT 59620-1401; (406) 444-2026; FAX (406) 444-3549.

3. The proposed rule provides as follows:

RULE I REIMBURSEMENTS TO COUNTIES FOR TRIBAL USE OF DETENTION SERVICES (1) The board may reimburse counties for detention costs of Indian youth placed in a regional youth detention facility or a county detention facility pursuant to an order of a tribal court and approved by the regional detention board as part of the regional plan.

(2) Reimbursements under (1) may only be made for Indian youth placements that are in compliance with the requirements of state law and 42 U.S.C. 5632, 42 U.S.C. 5633(a)(21) and U.S.C. 5674.

AUTH: 41-5-1908, MCA  
IMP: 41-5-1908, MCA

4. These rules are proposed for adoption to comply with Attorney General Opinion No. 10, Volume 49 which states: "The Montana Board of Crime Control may reimburse counties for detention costs for Indian youth placed in a regional youth detention facility pursuant to an order of a tribal court." Subsection (1) of proposed Rule I implements the Attorney General's Opinion and coordinates the reimbursement process with the regional planning process. Subsection (2) of proposed Rule I ensures that Indian youth placements under tribal court orders to a regional or county youth detention facility do not violate state or federal law relating to the detention of a juvenile.

5. Concerned persons may submit their data, views, or arguments concerning the proposed adoption in writing to Ali Sheppard, Assistant Attorney General, Office of the Attorney General, P.O. Box 201401, Helena, MT 59620-1401, to be received no later than February 28, 2002.

6. If persons who are directly affected by the proposed adoption wish to submit their data, views and arguments orally or in writing at a public hearing, they must make a written request for a hearing and submit this request, along with any written comments to Ali Sheppard, Assistant Attorney General, Office of the Attorney General, P.O. Box 201401, Helena, MT 59620-1401. The comments must be received no later than February 28, 2002.

7. If the agency receives request for a public hearing on the proposed adoption from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed adoption; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected have been determined to be 6 based upon the 7 tribes and 56 counties in Montana.

8. The Department of Justice 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 to receive notices and specifies that the person wishes to receive notices regarding the Board of Crime Control. Such written request may be mailed or delivered to the Office of the Attorney General, Attn: Interested Party List, P.O. Box 201401, Helena, MT 59620, faxed to the office at (406) 444-3549, e-mailed to asheppard@state.mt.us, or may be made by completing a request form at any rules hearing held by the Department.

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

By: /s/ Jim Oppedahl  
JIM OPPEDAHL, Director  
Board of Crime Control

/s/ Ali Sheppard  
ALI SHEPPARD, Rule Reviewer

Certified to the Secretary of State January 18, 2002.

BEFORE THE BOARD OF REAL ESTATE APPRAISERS  
DEPARTMENT OF LABOR AND INDUSTRY  
STATE OF MONTANA

In the matter of the proposed )  
amendment of ARM 24.207.401, )  
24.207.402, 24.207.509 and )  
24.207.515 pertaining to fees, )  
adoption of USPAP by reference, )  
qualifying experience, and )  
inactive license/certification )

NOTICE OF PUBLIC HEARING  
ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On February 26, 2002, at 10:00 a.m., a public hearing will be held in the Business Standards Division conference room #471, 4th Floor, Federal Building, 301 South Park Avenue, Helena, Montana to consider the proposed amendment of the above-stated rules.

2. The Department of Labor and Industry will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Real Estate Appraisers no later than 5:00 p.m., on February 22, 2002 to advise us of the nature of the accommodation that you need. Please contact Lorri Sandrock, Board of Real Estate Appraisers, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2386, Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail dlibsrea@state.mt.us.

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

24.207.401 FEES (1) The following fees will apply to all license/certificate holders or applicants. Fees are not refundable or transferable.

(a) and (b) remain the same.

(c) temporary ~~license~~ registration of certification and licensure of out-of-state appraisers 150

(d) through (j) remain the same.

(k) reciprocity 300 400

(l) remains the same.

~~(m) examination fee~~ 50

(2) In addition to the fees charged by the board, examination candidates who sit for an examination must pay a seating fee to cover the cost of administering the examination. The seating fee must be paid by the examination candidate directly to the examination service provider specified by the board. The board will furnish examination candidates with the necessary information regarding the examination, and the contact information for registering with the examination service

provider.

AUTH: 37-1-131, 37-54-105, MCA

IMP: 37-1-131, 37-54-105, 37-54-112, 37-54-201, 37-54-210, 37-54-211, 37-54-212, 37-54-302, 37-54-310, 37-54-406, MCA.

**REASON:** The Board finds it is reasonably necessary to update the terminology that refers to the temporary registration of certification and licensure of out-of-state appraisers to coincide with the language under 37-54-212, MCA, which created this category of licensure. Section 37-54-212, MCA, was enacted as Chapter 492, Laws of 2001 (House Bill 120).

There is also reasonable necessity to amend the fee schedule in order to make the fee for reciprocity commensurate with costs, as required by 37-1-134, MCA. With the proposed fee increase to the amount that reciprocal applicants would pay for their initial license, revenue may increase by \$1,100 based upon 11 applicants. Though this is a proposed fee increase, the Board believes that because of the adoption of 37-54-212, MCA, temporary registration of certification and licensure of out-of-state appraisers, the number of reciprocal licenses issued will significantly decrease because virtually all of those applicants will probably apply under the temporary registration of certification and licensure. The Board anticipates that there will be an overall reduction in revenue of \$1,650 based upon 11 such applicants.

There is reasonable necessity to amend the rule to advise potential applicants that the Board contracts with a national testing company to administer the examinations, so as to avoid misunderstandings regarding the seating fee. The proposed amendment clarifies that the examination seating fee must be paid directly to the contractor, and not to the Board. The Board notes that currently the examination seating fee is \$105. The Board estimates candidate examination costs will increase a total of \$1,815, based on 33 persons sitting for the examination in 2001. None of that additional revenue will be paid to the Board or the Department of Labor and Industry.

24.207.402 ADOPTION OF USPAP BY REFERENCE (1) ~~The board hereby adopts and incorporates by reference Upon review of the publication known as the Uniform Standards of Professional Appraisal Practice (USPAP), published by the appraisal foundation, the board hereby adopts and incorporates by reference the 2002 edition of USPAP as promulgated by the appraisal foundation. Copies of USPAP may be obtained from the Appraisal Foundation, 1029 Vermont Avenue N.W., Suite 900, Washington, D.C. 20005-3317, or may be reviewed in the office of the board at Federal Building, 301 South Park, Helena, Montana 59620. The board adopts and incorporates by reference the advisory opinions listed as an addendum to the USPAP publication, for the purpose of explaining and interpreting~~

professional appraisal practice standards as required by 37-54-105, MCA.

(2) Upon review of the publication known as the USPAP frequently asked questions (USPAP FAQ), published by the appraisal foundation, the board hereby adopts and incorporates by reference the 2002 edition of USPAP FAQ, for the purpose of explaining and interpreting the standards as provided by 37-54-105, MCA.

(3) A copy of the revised USPAP will be sent to each licensee each time a revised version of USPAP is adopted and incorporated by reference by the board.

(4) Copies of USPAP and USPAP Frequently Asked Questions may be obtained from the Appraisal Foundation, 1029 Vermont Avenue NW, Suite 900, Washington, DC 20005-3317, or may be reviewed in the board office at 301 South Park, Helena, Montana 59620-0513.

AUTH: 37-54-105, MCA

IMP: 37-54-105, 37-54-403, MCA

**REASON:** The Board finds it is reasonably necessary to incorporate by reference the most current version of professional standards established by the appraisal standards board of the Appraisal Foundation, as required by the provisions of 37-54-403, MCA. The Board also finds it reasonably necessary to incorporate by reference the various publications and documents by which the Board will use to explain and interpret the USPAP, as directed in 37-54-105(6), MCA. The Board finds that the USPAP are the generally accepted standards of professional appraisal practice.

24.207.509 QUALIFYING EXPERIENCE (1) remains the same.

(2) Acceptable appraisal experience must be for an unrelated client or where the applicant has no financial interest in the property.

(2) through (9) remain the same but are renumbered (3) through (10).

AUTH: 37-1-131, 37-54-105, MCA

IMP: 37-1-131, 37-54-105, 37-54-202, 37-54-303, MCA

**REASON:** The Board finds that the amendment is reasonably necessary to clarify that appraisal experience will only be considered for projects that are for an unrelated client or in which the applicant does not have a financial interest. The Board notes that recently individuals have sought to satisfy the experience requirements by tendering appraisals that were performed on the individual's or a family member's property. The Board concludes that an applicant should only use appraisal reports that are done for a third party when demonstrating their ability to perform appraisals.

24.207.515 INACTIVE LICENSE/CERTIFICATION (1) A licensed or certified appraiser can place their license or certification

in an inactive status by:

(a) paying the required fee in accordance with 37-54-105, 37-54-112, MCA, and ARM 24.207.401; and

(b) indicating, in writing, "inactive at present-"; and

(c) submitting proof of obtaining the required continuing education on the schedule currently adhered to by the board, in accordance with ARM 24.207.2101.

(2) and (3) remain the same

AUTH: 37-1-131, 37-54-210, 37-54-310, MCA

IMP: 37-1-131, 37-54-210, 37-54-310, MCA

**REASON:** The Board finds it is reasonably necessary to clarify that inactive licensees are required to maintain their continuing education on the schedule currently prescribed by the Board, to prevent individuals from using "inactive status" as a loophole to avoid continuing education obligations. The Board has recently noticed that some individuals have attempted to circumvent continuing education requirements by manipulating their status during the continuing education reporting period.

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 Real Estate Appraisers, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to [dlibsirea@state.mt.us](mailto:dlibsirea@state.mt.us) and must be received no later than 5:00 p.m., February 28, 2002. If comments are submitted in writing, the Board requests that the person submit eight copies of their comments.

5. An electronic copy of this Notice of Public Hearing is available through the Department's and Board's site on the World Wide Web at [http://www.discoveringmontana.com/dli/bsd/license/bsd\\_boards/rea\\_board/rules.htm](http://www.discoveringmontana.com/dli/bsd/license/bsd_boards/rea_board/rules.htm). 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.

6. The Board of Real Estate Appraisers will meet on March 11, 2002, at 9:00 a.m., by teleconference in Helena to consider the comments made by the public, the proposed responses to those comments, and take final action on the proposed rule changes. The public may listen to the meeting by telephone at the Business Standards Division conference room #471, 4th Floor, Federal Building, 301 South Park Avenue, Helena, Montana. Members of the public are welcome to listen to the Board's deliberations, but the Board cannot accept any comments concerning the proposed rule changes beyond the February 28, 2002, deadline.

7. The Board of Real Estate Appraisers 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 which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding all Board of Real Estate Appraisers administrative rulemaking proceedings or other administrative proceedings. Such written request may be mailed or delivered to the Board of Real Estate Appraisers, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, faxed to the office at (406) 841-2305, e-mailed to [dlibsirea@state.mt.us](mailto:dlibsirea@state.mt.us) or may be made by completing a request form at any rules hearing held by the agency.

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

9. Lon Mitchell, attorney, has been designated to preside over and conduct this hearing.

BOARD OF REAL ESTATE APPRAISERS  
TIMOTHY MOORE, CHAIRMAN

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

By: /s/ KEVIN BRAUN  
Kevin Braun,  
Rule Reviewer

Certified to the Secretary of State, January 18, 2002.

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

In the matter of the	)	NOTICE OF PUBLIC HEARING
amendment of ARM 37.76.101	)	ON PROPOSED AMENDMENT
pertaining to the food stamp	)	
program, ARM 37.78.102,	)	
37.78.103; 37.78.201 and	)	
37.78.202; 37.78.216 and	)	
37.78.506 pertaining to	)	
temporary assistance for	)	
needy families (TANF)	)	

TO: All Interested Persons

1. On February 20, 2002, at 10:00 a.m., a public hearing will be held in the auditorium of the Department of Public Health and Human Services Building, 111 N. Sanders, Helena, Montana to consider the proposed amendment of the above-stated rules.

The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who need an alternative accessible format of this notice or provide reasonable accommodations at the public hearing site. If you need to request an accommodation, contact the department no later than 5:00 p.m. on February 12, 2002, to advise us of the nature of the accommodation that you need. Please contact Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210; telephone (406)444-5622; FAX (406)444-1970; Email dphhslegal@state.mt.us.

2. The rules as proposed to be amended provide as follows. Matter to be added is underlined. Matter to be deleted is interlined.

37.76.101 FOOD STAMP PROGRAM (1) The department of public health and human services hereby adopts and incorporates by reference 7 CFR 271 through 275, as amended through December 31, ~~1990~~ 2001, which are the food stamp program regulations as adopted by the food and nutrition services, United States department of agriculture. These federal regulations set forth the food stamp program and include general information and definitions, requirements for participating state agencies, certification of eligible households, issuance and use of food coupons, performance reporting system and state agency liabilities and federal sanctions. A copy of 7 CFR 271 through 275, as amended through December 31, ~~1990~~ 2001, may be obtained from the Department of Public Health and Human Services, 111 N. Sanders, P.O. Box 4210, Helena, MT 59604-4210.

AUTH: Sec. 53-2-201 and 53-4-212, MCA  
IMP: Sec. 53-2-201 and 53-2-306, MCA

37.78.102 FAIM FINANCIAL ASSISTANCE TEMPORARY ASSISTANCE FOR NEEDY FAMILIES (TANF): FEDERAL REGULATIONS ADOPTED BY REFERENCE (1) ~~The FAIM financial assistance TANF program shall be administered in accordance with the requirements of federal law governing temporary assistance to needy families, feed stamps, and medical assistance, as set forth in Title IV of the Social Security Act, 42 USC 601 et seq., as amended by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 and the Balanced Budget Act of 1997, the Food Stamp Act of 1977 as amended, 7 USC 2026 et seq., and Title XIX of the Social Security Act, 42 USC 1396 et seq.~~

AUTH: Sec. 53-4-212, MCA  
IMP: Sec. 53-4-211 and 53-4-601, MCA

37.78.103 FAIM FINANCIAL ASSISTANCE TEMPORARY ASSISTANCE FOR NEEDY FAMILIES (TANF): DEFINITIONS The following definitions apply to this chapter:

(1) "Assistance unit" means a minor child or children and all individuals who live with the child and are related to the child by blood, marriage, adoption, or by law if the child was conceived by artificial insemination, provided that the relationship is within the fifth degree of kinship as specified in the definition of caretaker relative in this rule and provided that the individual meets the eligibility requirements to have the individual's needs covered by FAIM financial assistance temporary assistance for needy families (TANF).

(2) remains the same.

(3) "Budget month" means the calendar month used to determine eligibility for FAIM financial TANF cash assistance and to calculate the amount of the cash assistance payment. Under the prospective budgeting method, the budget month and the benefit month are the same.

(4) remains the same.

(5) "Case manager" means the person who provides guidance for a participant in the FAIM TANF cash assistance employment and training or activity program.

(6) and (7) remain the same.

(8) "Community operating plan/annual agreement" means the document developed by the community advisory council for a particular county or counties which sets forth local decisions made in areas where community flexibility is allowed.

~~(9) "Community services program (CSP)" is the cash assistance program for individuals who have exhausted their time limited pathways benefits but have not yet become employed or found alternatives to public assistance.~~

(10) and (11) remain the same but are renumbered (9) and (10).

~~(12)~~ (11) "Domestic violence" means physical, sexual, and/or mental or emotional abuse of a member of the assistance unit by a person with whom that member lives or with whom that member has recently lived which is sufficiently severe to interfere with the FAIM TANF participant's ability to become employed or seek alternatives to public assistance.

(13) and (14) remain the same but are renumbered (12) and (13).

(14) "Eligibility case manager" means the person who determines eligibility for benefits, assists clients to develop their family investment agreement, monitors the agreements, makes referrals to other resources, and authorizes benefits.

(15) remains the same.

(16) "Employment and training activities" means the activities in the family investment agreement for all participants other than activities related to immunization and health screening requirements.

(16) and (17) remain the same but are renumbered (17) and (18).

~~(18) "FAIM coordinator" means the person who determines eligibility for benefits, assists clients to develop their family investment agreement, monitors the agreements, makes referrals to other resources, and authorizes benefits.~~

~~(19) "FAIM employment and training and activities" means the activities in the family investment agreement for all participants other than activities relating to child support enforcement, quality control, third party liability or immunization and health screening requirements.~~

~~(20) "FAIM financial assistance" is the collective term for the three programs of the FAIM project, namely the job supplement program (JSP), the pathways program, and the community services program (CSP). The term also is used to denote benefits provided in JSP, pathways, or CSP in the form of cash assistance, medical assistance, child care payments, supportive services, or other services.~~

~~(21) (19) "Family investment agreement (FIA)" means a written document outlining pathways and community service TANF cash assistance program requirements and the employment and training activities a family will participate in order to work toward self-sufficiency.~~

(22) remains the same but is renumbered (20).

~~(23) (21) "Filing unit" means the minor child and all individuals who live with the child and are related to the child within the fifth degree of kinship. The filing unit includes:~~

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

(24) remains the same, but is renumbered (22).

~~(25) "Grant" means the monthly cash payment to the pathways or CSP assistance unit.~~

(26) through (29) remain the same but are renumbered (23) through (26).

~~(30) (27) "Indian country" means the land within the geographical boundaries of an Indiana Indian reservation and within the city limits of the towns of Hardin, Harlem, and Dedson, Montana.~~

(31) through (38) remain the same but are renumbered (28) through (35).

~~(39) "Net monthly income" means gross monthly income less any income disregarded in accordance with ARM 37.78.406.~~

(36) "Non-financial assistance" means the programs funded, in part, with temporary assistance for needy families, as

provided in 45 CFR 260.31(b). Non-financial assistance is also the collective term used for post employment training and education payments, post employment service payments and work support payments.

(40) remains the same but is renumbered (37).

~~(41) (38) "Participant" means a person who is eligible for and receiving FAIM TANF benefits in the job supplement, pathways or community services programs.~~

~~(42) (39) "Participation hours" means the number of hours which a pathways or community services program TANF cash assistance participant must perform employment and training activities as specified in the participant's family investment agreement.~~

~~(43) "Pathways" means the time limited cash assistance program designed to provide families with employment and training opportunities leading to permanent public assistance alternatives. The duration of pathways is 24 months. Participation requirements are stated in the family investment agreement.~~

~~(44) (40) "Penalty period" means the period of time during which a participant is sanctioned participant is ineligible to receive benefits.~~

(45) remains the same but is renumbered (41).

~~(46) (42) "Screening guide" means the tool by which the FAIM coordinator eligibility case manager in conjunction with the FAIM participant determines appropriate employment and training activities for the participant.~~

(47) through (49) remain the same but are renumbered (43) through (45).

~~(50) (46) "Supportive services" means expenses and services necessary for a pathways or CSP TANF cash assistance participant to participate in training or accept a job.~~

~~(47) "Temporary assistance to needy families (TANF)" means the collective term for all programs funded by the TANF grant. The term also is used to denote benefits provided in the form of financial assistance, non-financial assistance, child care payments, supportive services, or other services.~~

~~(48) "TANF cash assistance" is the term for the financial assistance program of TANF. The term also is used to denote supportive services provided to non-working families who also receive TANF cash assistance.~~

~~(49) "TANF extended benefits" is the term for cash assistance issued to a household under the 20% hardship extension as allowed at 45 CFR 264.1(c).~~

~~(50) "TANF grant" means the monthly cash payment to the assistance unit.~~

(51) through (53) remain the same.

~~(54) "20% hardship extension" means a household is eligible to receive federal TANF benefits beyond 60 months on the basis of a hardship according to rules defined by the state. This is allowed at 45 CFR 264.1(c).~~

(54) through (56) remain the same but are renumbered (55) through (57).

~~(57) (58) "Work activities" means job search, on-the-job~~

~~training, unsubsidized employment, and alternative work experience all family investment agreement (FIA) activities as allowed under the waiver obtained from adult children and family under the Social Security Act.~~

~~(58)(59) "Work readiness component (WoRC)" means the intensive case management component of the FAIM TANF cash employment and training program.~~

AUTH: Sec. 53-4-212, MCA

IMP: Sec. 53-4-211 and 53-4-601, MCA

~~37.78.201 FAIM FINANCIAL ASSISTANCE: FAIM PROGRAMS AND TANF CASH ASSISTANCE TIME LIMITS (1) The FAIM financial assistance (FFA) portion of the FAIM project consists of three programs referred to as the job supplement, pathways and community services programs.~~

~~(2) The job supplement program (JSP) is intended to divert individuals who are eligible for cash assistance and at risk of becoming dependent on public assistance. Its elements include:~~

~~(a) earned income disregards as provided in ARM 37.78.406;  
(b) a one time employment related payment as provided in ARM 37.78.425;~~

~~(c) medicaid coverage as follows:~~

~~(i) basic medicaid benefits as specified in ARM 37.85.206 for individuals 21 years of age or older, except that pregnant women are eligible for all services provided in ARM 37.85.206;~~

~~(ii) individuals under age 21 and pregnant women are eligible for all medicaid services provided in ARM 37.85.206.~~

~~(d) child care assistance for hours of employment;~~

~~(e) referral to appropriate community resources;~~

~~(f) information about and assistance in applying for the earned income tax credit; and~~

~~(g) medicaid coverage extended beyond the eligibility period as provided in ARM 37.82.701.~~

~~(3) The pathways program is a time limited program comprised of the following elements:~~

~~(a) assistance for a maximum of 24 months, unless an exemption listed in ARM 37.78.202 applies, which months need not be consecutive;~~

~~(b) child support enforcement assistance;~~

~~(c) earned income disregards as provided in ARM 37.78.406;~~

~~(d) medicaid coverage as follows:~~

~~(i) basic medicaid benefits as specified in ARM 37.85.206 for individuals 21 years of age or older, except that pregnant women are eligible for all services provided in ARM 37.85.206;~~

~~(ii) individuals under age 21 and pregnant women are eligible for all medicaid services provided in ARM 37.85.206.~~

~~(e) referral to appropriate community resources;~~

~~(f) information about and assistance in applying for the earned income tax credit;~~

~~(g) a one time employment related payment as provided in ARM 37.78.425;~~

~~(h) extended medicaid coverage as provided in ARM 37.82.701;~~

~~(i) assistance in finding employment through employment and training activities included in a family investment agreement (FIA) as specified in ARM 37.78.216; and~~

~~(j) child care assistance as needed to comply with FIA employment and training activities.~~

~~(4) The community services program (CSP) is a time limited program which furnishes cash assistance and other benefits to caretaker relatives and their children whose time limited benefits under the pathways program have expired, provided the caretaker relative performs employment and training activities as required in the family investment agreement. The elements of the CSP include:~~

~~(a) assistance for up to 36 months, which months need not be consecutive, or for more than 36 months up to the maximum period of time allowed by section 408(a)(7)(A) of the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996.~~

~~(b) child support enforcement assistance;~~

~~(c) earned income disregards as provided in ARM 37.78.406;~~

~~(d) medicaid coverage as provided as follows;~~

~~(i) basic medicaid benefits as specified in ARM 37.85.206 for individuals 21 years of age or older, except that pregnant women are eligible for all services provided in ARM 37.85.206;~~

~~(ii) individuals under age 21 and pregnant women are eligible for all medicaid services provided in ARM 37.85.206.~~

~~(e) referral to appropriate community resources;~~

~~(f) information about and assistance in applying for the earned income tax credit;~~

~~(g) extended medicaid coverage as provided in ARM 37.82.701; and~~

~~(h) child care assistance.~~

~~(5) Participants in the FAIM project in any of the three programs may also request to receive food stamps in addition to the other benefits enumerated above.~~

~~(6) (1) A family is not eligible for TANF cash assistance in pathways or CSP if the family includes an adult who has received cash assistance in a program funded under the temporary assistance for needy families block grant in any state or states, including tribal programs, for 60 months or more, whether or not the months are consecutive, unless all adults in the filing unit qualify for TANF extended benefits. However, in calculating the number of months that an adult has received such assistance, the department shall not count any month when the person received assistance if during that month:~~

~~(a) through (b)(i) remain the same.~~

AUTH: Sec. 53-4-212, MCA

IMP: Sec. 53-4-211, 53-4-601 and 53-4-603, MCA

~~37.78.202 FAIM FINANCIAL ASSISTANCE TANF: CASH ASSISTANCE EXEMPTIONS TO TIME LIMITS (1) Benefits under the pathways and community services TANF cash assistance programs are time limited as provided in ARM 37.78.201. An individual may be exempted from those time limits if the individual:~~

~~(a) is under age 18 and is a full-time elementary or secondary school student or is completing an equivalency program;~~

~~(b) has a verifiable illness, injury or physical or mental impairment or disability or is recovering from a verifiable illness or injury which prevents the individual from participating in activities to help the individual gain employment;~~

~~(c) is 60 years of age or older;~~

~~(d) is providing care for another household member with a disability who requires special care because no other resources are available to provide such care;~~

~~(e) is the parent of and caring for a child under age one who resides with the individual; however, in a two-parent household, only one parent at a time may be exempted to provide care for a child under the age of one.~~

~~(f) is a teen parent in the individual's own case who is complying with required family investment agreement activities;~~

~~(g) cannot participate in activities to help the individual gain employment because necessary child care assistance is not available;~~

~~(h) is a victim of domestic violence as defined in ARM 37.78.103, provided that an individual can be exempted due to domestic violence only for a maximum of 6 months per lifetime.~~

(2) Households may be eligible for TANF cash assistance when an adult household member has received 60 months of TANF cash assistance if each adult household member is in compliance with the family investment agreement and each adult meets one of the following extension reason criteria:

(a) each adult household member is temporarily or permanently physically or mentally ill or physically or mentally incapacitated in a manner that prevents the household member from working;

(b) each adult household member is temporarily or permanently physically or mentally ill or physically or mentally incapacitated in a manner that prevents the household member from working as a result of domestic violence;

(c) each adult household member is required in the home full time as the primary caretaker of a person who is temporarily or permanently physically or mentally ill or physically or mentally incapacitated and no alternative care is available, and the person who needs care is either:

(i) a member of the filing unit; or

(ii) a person who would be a member of the filing unit if the person was eligible.

(d) The adult household member is presently attempting to resolve a current domestic violence situation.

(3) Each adult household member must submit an application for the extension of TANF cash assistance and all required proof showing the household members meets an extension criterion before an extension will be considered. An application for the extension of TANF cash assistance will not be considered complete if required proof is not attached. Required proof may include, but is not limited to: physician statements, medical

records, police reports, professional assessments and psychological evaluations.

(4) All completed applications for the extension of TANF cash assistance will be evaluated by the eligibility case manager, the local director and a central committee made up of public assistance bureau administrative program staff or their designees. The central committee will make the final determination on whether an extension will be granted.

AUTH: Sec. 53-2-201, 53-4-211 and 53-4-212, MCA  
IMP: Sec. 53-4-211, 53-4-212, 53-4-231, 53-4-601 and 53-4-607, MCA

37.78.216 ~~FAIM FINANCIAL ASSISTANCE~~ TANF: TANF CASH ASSISTANCE FAMILY INVESTMENT AGREEMENT (1) The family investment agreement (FIA) is a negotiated document listing eligibility requirements, employment and training activities, and mutual obligations of the state and the participant regarding the course of action leading to the individual's employment and the number of hours and the time limits within which such activities and obligations shall be performed.

(a) All participants in the ~~pathways and community services~~ TANF cash assistance programs are required to negotiate and comply with their FIA as a condition of eligibility in the pathways and community services programs. A participant who is exempt from time limits as specified in ARM 37.78.505 37.78.202 must enter into a FIA. The FIA activities for a participant who is ~~exempt from time limits~~ eligible for TANF extended benefits will take into consideration any limitations which are the basis for the ~~exemption~~ extension.

(b) The FIAs will be reviewed at least once every 3 months ~~for pathways participants and at least once every 6 months for community services participants~~. They may also be renegotiated as needed or at the request of either the participant or the ~~FAIM coordinator~~ eligibility case manager.

~~(i) (c)~~ (c) Once the agreement is completed, it is signed by the participant and the ~~coordinator~~ eligibility case manager. The participant receives a signed copy.

(c) remains the same but is renumbered (d).

(2) Because entering into a FIA is a condition of eligibility for ~~pathways and CSP~~ TANF cash assistance, failure or refusal without good cause to enter into a FIA initially or to renegotiate and/or sign a new FIA when requested will result in the denial of or termination of assistance for the entire assistance unit.

AUTH: Sec. 53-4-212, MCA  
IMP: Sec. 53-4-211, 53-4-601, 53-4-606 and 53-4-608, MCA

37.78.506 ~~FAIM FINANCIAL ASSISTANCE~~ TANF: TANF CASH ASSISTANCE; SANCTIONS (1) If any member of the assistance unit fails or refuses without good cause as defined in ARM 37.78.508 to comply with a requirement of the individual's family investment agreement, the participant will be sanctioned by

means of the reduction of the monthly FAIM TANF cash assistance payment by an amount equal to one person's share ~~the portion of the payment allocated to the needs of that member for a period of time as specified in (2) and (3).~~ This rule does not apply to households who are receiving TANF extended benefits as defined in ARM 37.78.202.

(2) The duration of the penalty period is as follows:

(a) ~~for the first sanction, a minimum of 1 month or until the month following the month in which the participant complies and renegotiates the participant's family investment agreement, whichever is longer;~~

(b) ~~for the second sanction, a minimum of 3 months or until the month following the month in which the participant complies and renegotiates the participant's family investment agreement, whichever is longer;~~

(c) ~~for the third sanction, a minimum of 6 months or until the month following the month in which the participant complies and renegotiates the participant's family investment agreement, whichever is longer; and~~

(d) ~~for the fourth and any subsequent sanctions, a minimum of 12 months or until the month following the month in which the participant complies and renegotiates the participant's family investment agreement, whichever is longer.~~

(3) remains the same.

(4) ~~For pathways and community services~~ TANF cash assistance program participants, the penalty period will count toward the time limits provided in ARM 37.78.201.

(5) ~~In addition to the loss of financial assistance as specified in (1), the sanctioned individual will lose medicaid coverage during the penalty period set forth in (2) only when the failure to comply involved child support enforcement, third party liability trauma questionnaires, or program compliance requirements. However, if the sanctioned individual cures the failure to comply by meeting child support enforcement, third party liability trauma questionnaires, or program compliance requirements, medicaid benefits will be reinstated back to the first day of the month in which the sanctioned individual complies if the individual is otherwise medicaid eligible. A sanctioned individual must negotiate and sign a new family investment agreement prior to the end of the sanction penalty period or the household's TANF cash assistance will terminate at the end of the sanction penalty period.~~

(6) remains the same.

(7) During the penalty period, child care assistance will continue if:

(a) child care is necessary to allow the FAIM TANF cash assistance participant to perform employment-related or training activities, as defined in (8), which are required by the family investment agreement; and

(b) remains the same.

(8) "Employment-related or training activities", as specified in (7)(a), ~~means educational or training activities required by the activities specified on the family investment agreement which are directly intended to promote economic self-~~

sufficiency. "Employment-related or training activities" does not include ~~child support enforcement~~ family strengthening activities; early periodic screening, diagnosis and treatment; ~~program compliance; third party liability;~~ participation log and travel; nor negotiation of a new family investment agreement.

(9) If a sanctioned individual requests a hearing to challenge the sanction and receives continued benefits pending the hearing, the sanction will not be imposed until a final decision is ~~issued by the hearing officer or the board of public assistance appeals~~ obtained. If a final decision upholding the sanction ~~has been issued~~ is obtained and it is possible to impose the sanction following the decision, the sanction will then be imposed in the usual manner in a later month or months. ~~Assistance received for the sanctioned individual's needs pending the fair hearing decision will not be considered an overpayment provided the sanctioned individual was otherwise eligible to receive benefits. However, if the sanctioned individual is no longer eligible to receive benefits when the sanction is to be imposed, the benefits paid to the sanctioned individual during the pendency of the appeals process will be considered an overpayment. If a final decision upholding the sanction is obtained and it is not possible to impose the sanction following the decision, the assistance received pending the fair hearing will be considered an overpayment.~~

AUTH: Sec. 53-4-212, MCA

IMP: Sec. 53-4-211, 53-4-601 and 53-4-608, MCA

3. The Temporary Assistance for Needy Families (TANF) cash assistance program, the Medicaid program, and the Food Stamp program provide cash assistance, medical care, and food, respectively, to eligible low income Montanans. The programs are jointly funded by the State and Federal governments and are administered by the State in accordance with federal and State law and regulations.

The proposed amendments to ARM 37.78.103 are necessary to incorporate definitional changes made by the Federal government and the 57th Montana legislature to the statutes governing the TANF programs governed by Title 53, Chapters 2 through 6, MCA. The 57th legislature changed the definitions pertaining to various kinds of assistance funded through the TANF grant because the federal law changed the definitions pertaining to TANF in order to distinguish financial assistance from nonfinancial assistance. The Montana legislature, likewise, changed the terms defined in Title 53 of the Montana Code Annotated in order to distinguish between financial and nonfinancial assistance and the FAIM waiver demonstration project and ongoing TANF assistance programs. (See Senate Bill 77 of the 57th Legislature codified in Title 53, Chapters 2 through 6, MCA.) These amendments are necessary so that the rules addressing the implementation of these programs will use terms that are consistent with the State and Federal law governing the programs. In addition, due to the complexity of

the programs and their governing law, the development of common terms is necessary and appropriate in order to foster better understanding.

The proposed amendment to ARM 37.76.101 is necessary to update the version of the federal regulations that have been adopted and incorporated by reference into the rules. The federal regulations are periodically updated and amended versions of the regulations are published in the updated Codes of Federal Regulations. ARM 37.76.101 adopts and incorporates by reference 7 CFR 271 through 275, but the version of the incorporated regulations has not been updated since 1990. Consequently, the Department proposed this amendment to update the version of the federal regulations incorporated by the rule. The Department does not expect any changes in fees, costs, or benefits, to result from this update. In addition, the amendment is not expected to have any effect on the costs of the program. There are approximately 27,000 households receiving food stamps across the State during any given month.

The proposed amendments to ARM 37.78.102 are necessary in order to update the name of the cash assistance program and to correct the references in the rule. The Temporary Assistance for Needy Families "TANF" grant is a federal grant which assists the State in providing several programs to needy families, including the financial assistance program. ARM 37.78.102 currently refers to the FAIM financial assistance program and provides that the FAIM financial assistance program is to be administered in accordance with the various Acts listed in the rule. The name "FAIM financial assistance" is no longer being used to denote the State's financial assistance program, but rather is used to denote the waiver program initially administered by the State under welfare reform. In order to update the rule and to use the current terminology consistently throughout, it is necessary to delete the old reference to the "FAIM" program, in favor of using the new and more precise term "TANF program." The TANF grant is governed by its own statutes in the federal law and is not subject to the Food Stamp Act, nor Title XIX of the Social Security Act. Thus, it is necessary to delete references to those Acts within the rule. Consequently, the Department proposed these amendments to ARM 37.78.102 to update the terminology and delete obsolete references. While the Department could have left the rule unamended, that option would have resulted in confusion as the old terminology is no longer being used. These amendments are not expected to result in a change to fees, benefits, or costs.

The proposed amendment to ARM 37.78.103 also adds a phrase to the definition of "community operating plan". The addition of the phrase "annual agreement" is necessary to clarify the rule so that it is understood that the definition applies to the annual agreement required by Senate Bill 339 passed by the 57th Legislature codified in § 53-2-305, MCA.

The proposed amendments to ARM 37.78.103 are also necessary in order to delete references to pathways and the community service program because those programs ended on June 30, 2001. Thus, the amendments are appropriate so that obsolete terms may be deleted.

The proposed amendments to ARM 37.78.103 change the definition of a sanction so that it is understood that a sanctioned individual is still eligible for the program; but, the household's grant will be reduced due to the sanction.

The proposed amendments to ARM 37.78.103 also add a definition for "20% hardship exception". This addition is necessary because some TANF financial assistance recipients are reaching or nearing 60 months on assistance in Montana and federal law prohibits adults from receiving financial assistance for longer than 60 months unless they meet the criteria for an extension within the 20% hardship exception defined by the State or some other federal exception defined by law. Montana has recently proposed a policy regarding those persons that may fit within the 20% hardship exception in Montana. That policy is proposed as a rule amendment to ARM 37.78.202 herein. Consequently, in order to discuss and implement that proposed policy, it is necessary to create a common terminology in order to avoid confusion, create understanding, and foster public participation in the design and implementation of the hardship exception policy. Consequently, the definition was added to accomplish that goal.

All of the amendments to ARM 37.78.103 are for the purpose of changing, adding, or deleting definitions. They create a common language with which to interpret and apply the rules. While the Department could have left the definitions as they were, that option would have created confusion as the old terms would not be consistent with current program language. Thus, the Department opted to amend the rule. The amendments to ARM 37.78.103 do not increase, decrease, or change any fee, cost or benefit. And, they are expected to have no impact on families within the State except that it is hoped the definitions will foster better understanding.

The proposed amendment of ARM 37.78.201 is necessary in order to delete obsolete provisions of the rule. (1) through (5) of the rule governed old programs, namely passport and community services program, that ended on June 30, 2001 in accordance with Senate Bill 77 passed by the 57th Legislature, codified in Title 53, Chapters 2 through 6, MCA. Since passport and community services programs are no longer offered and because references to those programs were removed from Title 53 of the Montana Code Annotated, it is necessary to delete the references to those old programs from the rule in order to avoid confusion.

In addition, the proposed amendment to ARM 37.78.201 adds a phrase recognizing that the federal 60 month time limit for

financial assistance may not apply to a family if all of the adult household members meet the criteria for TANF extended benefits under the 20% hardship exception. This amendment is necessary to implement the extension allowed by federal law. Montana could have chosen not to allow extended benefits to households that had already received 60 months of financial assistance; however, the Department decided the extended benefits should be permitted in those circumstances described in proposed amendments to ARM 37.78.202 because households in those circumstances have an especially difficult time escaping public assistance due to their unusual circumstances. Therefore, more time may be necessary for those families to work toward self-sufficiency. The proposed amendment to ARM 37.78.201 does not increase, decrease, or change any fee, cost, or benefit. It simply acknowledges the changes required by Senate Bill 77 and the extended benefit provision proposed for ARM 37.78.202.

The proposed amendments to ARM 37.78.202 are necessary in order to delete references to pathways and community services program, for reasons discussed above, and to define the circumstances under which families may apply for extended TANF cash assistance benefits. As previously mentioned, the federal law permits the states to opt to allow up to 20% of its caseload to qualify for extended benefits (beyond the 60 months permitted by federal law) under criteria established by the individual states. The proposed amendment to ARM 37.78.202 lists the criteria under which the State of Montana may permit extended TANF cash assistance benefits. The proposed amendments are necessary because some households in Montana are reaching or nearing the 60 month limit, and therefore, criteria implementing the extended benefits must be adopted immediately in order to ensure that the criteria will be applied consistently and to ensure notice of and public participation in the policy.

Twenty percent of the average TANF cash assistance caseload is approximately 1,000 cases (2,785 individuals). Pursuant to federal law, no more than twenty percent of the average caseload may receive extended cash assistance benefits. The Department estimates that extended TANF cash assistance benefits will increase the cost of the cash assistance program by approximately \$270,000 over the next twelve month period. The proposed amendment to ARM 37.78.202 and the implementation of extended TANF cash assistance does create an additional benefit of the program for those families that qualify under the criteria established herein. Furthermore, the ability to access extended TANF cash assistance benefits will impact the economic well-being of those qualifying families who are suffering from a physical or mental illness or disability or presently attempting to resolve a domestic violence situation.

The proposed amendments to ARM 37.78.216 and 37.78.506 are necessary to ensure that sanctioned individuals understand their obligation to negotiate and comply with a Family Investment Agreement (FIA). Because the agreement is an eligibility

requirement, if a sanctioned individual who is required to negotiate and comply with a FIA fails or refuses, the household is no longer eligible for benefits. In order to avoid confusion and to ensure that the public has notice, the Department decided to amend the rule to clarify the policy herein. While the Department could have left the rule as it was, the amendment is proposed in order to clarify the rule and ensure that sanctioned individuals understand that the FIA is an eligibility requirement.

The proposed amendment to ARM 37.78.506 is also necessary to remove obsolete references to the pathways and community services program. (See discussion above.) In addition, the definition of "employment-related or training activities" is amended in the proposed amendment in order to expand the definition to include other activities that promote self-sufficiency, but were previously excluded in the definition, such as job readiness activities. The Department could have retained the current definition, however that option did not allow for maximum flexibility in identifying activities that would best benefit the broad and varied circumstances encountered by the participants of the program in their effort to attain self-sufficiency.

Again, there are approximately 5,400 cases (15,039 individuals) presently participating in the TANF cash assistance program. Of those, approximately 150 individuals are under sanction during any given month. The Department does not anticipate any increase or decrease in the costs of the program as a result of the proposed amendments to ARM 37.78.506. Furthermore, benefits, fees, and costs assessed against the participants will not be increased, decreased, or changed because of these amendments. The Department does not anticipate that these amendments will change the nature of the participants that are sanctioned.

4. Interested persons may submit their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to Kathy Munson, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 202951, Helena, MT 59620-2951, no later than 5:00 p.m. on February 28, 2002. Data, views or arguments may also be submitted by facsimile (406)444-1970 or by electronic mail via the Internet to [dphhslegal@state.mt.us](mailto:dphhslegal@state.mt.us). The Department also maintains lists of persons interested in receiving notice of administrative rule changes. These lists are compiled according to subjects or programs of interest. For placement on the mailing list, please write the person at the address above.

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

Dawn Sliva  
Rule Reviewer

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

Certified to the Secretary of State January 18, 2002.

BEFORE THE STATE COMPENSATION INSURANCE FUND  
OF THE STATE OF MONTANA

In the matter of the	)	NOTICE OF ADOPTION,
adoption of New Rule I	)	AMENDMENT AND REPEAL
(ARM 2.55.311) pertaining to	)	
multiple rating tiers,	)	
amendment of ARM 2.55.319,	)	
2.55.320, 2.55.327A,	)	
pertaining to premium rates,	)	
2.55.409 pertaining to premium	)	
modifiers and 2.55.501 and	)	
2.55.502 pertaining to	)	
individual loss sensitive	)	
dividend distribution plan,	)	
and repeal of 2.55.325 and	)	
2.55.327 pertaining to premium	)	
rates	)	

TO: All Concerned Persons

1. On October 25, 2001, the Montana State Fund published notice of the proposed adoption of New Rule I (ARM 2.55.311) pertaining to multiple rating tiers, and the proposed amendment of rules 2.55.319, 2.55.320, 2.55.327A, 2.55.409, 2.55.501 and 2.55.502 pertaining to premium rates, premium modifiers and individual loss sensitive dividend distribution plan, and repeal of 2.55.325 and 2.55.327 pertaining to premium rates at page 2073 of the 2001 Montana Administrative Register, issue number 20. A public hearing was held on November 14, 2001 to consider the proposed adoption, amendment and repeal of rules.

2. The Montana State Fund Board of Directors adopted new Rule I (ARM 2.55.311), amended ARM 2.55.319, 2.55.320, 2.55.327A, 2.55.409, 2.55.501 2.55.502, and repealed ARM 2.55.325 and 2.55.327 as proposed.

3. No comments or testimony concerning the rules were received.

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

/s/ Herb Leuprecht  
Herb Leuprecht  
Chairman of the Board

/s/ Dal Smilie  
Dal Smilie, Chief Legal Counsel  
Rule Reviewer

Certified to the Secretary of State January 18, 2002.

BEFORE THE DEPARTMENT OF ADMINISTRATION  
OF THE STATE OF MONTANA

In the matter of the adoption of new ) NOTICE OF ADOPTION  
Rules I through VII regarding approved ) AND AMENDMENT  
investments for Montana banks and the )  
amendment of ARM 2.59.112 regarding )  
investment policies )

TO: All Concerned Persons

1. On October 25, 2001, Department of Administration, Division of Banking and Financial Institutions published notice of the proposed adoption of new Rules I through VII and amendment to ARM 2.59.112 concerning approved investments for Montana banks at page 2066 of the 2001 Montana Administrative Register, Issue Number 20.

2. The agency has adopted new Rule II, (ARM 2.59.1602) new Rule IV, (ARM 2.59.1604) and new Rule VII, (ARM 2.59.1607) exactly as proposed. The agency has adopted new Rule I, (ARM 2.59.1601), new Rule III, (ARM 2.59.1603), new Rule V, (ARM 2.59.1605) and new Rule VI, (ARM 2.59.1606) with the following changes, stricken matter interlined, new matter underlined:

RULE I (2.59.1601) U.S. TREASURY AND U.S. GOVERNMENT  
AGENCY ISSUES (1) There is no dollar limit on a bank's investment in the following U.S. treasury securities:

- (a) bonds;
- (b) notes; or
- (c) bills.

(2) There is no dollar limit on a bank's investment in U.S. treasury bonds and notes in the form of separate trading of registered interest and principal of securities (STRIPS). ~~However, investments in U.S. treasury STRIPS shall be limited to those having a maturity of less than seven years.~~

(3) There is no dollar limit on a bank's investment in the following U.S. government agency ~~debt~~ ordinary debt issues:

- (a) through (4)(g) remain as proposed.

AUTH: 32-1-433, MCA  
IMP: 32-1-424, 32-1-433, MCA

RULE III (2.59.1603) STATE, COUNTY, AND MUNICIPAL ISSUES

(1) Banks may invest, without dollar limitation, in the general obligation of any state which is part of the United States of America.

(a) Such obligations must be fully guaranteed as to the repayment of principal and interest. Evidence of such a full guarantee includes, but is not limited to, the pledge of the full faith and credit of the state responsible for repayment of the general obligation.

(2) Banks may invest, without dollar limitation, in the general obligations of any Montana county, city, school district, or other public body with the power to levy taxes political subdivision.

(a) through (3)(b) remain as proposed.

~~(c) The 40% overall limit pertains only to the bank's capital and surplus, and is silent as to the portion of any one issue a bank may purchase. However, this becomes an important issue to the bank's board of directors as it reviews and operates through its bank's investment policy.~~

~~(d) (c) Banks which have branch banks in other states, as that term is defined in 32-1-109(4), MCA, may also invest without limitation in general obligations of the political subdivisions of the states in which the offices are located.~~

(4) through (6) remain as proposed.

AUTH: 32-1-433, MCA

IMP: 32-1-424, 32-1-433, MCA

RULE V (2.59.1605) MUTUAL FUNDS ~~(1) There is no dollar limit on a bank's investment in mutual funds whose shares represent the fund's sole investments in U.S. government bonds, notes, and bills, and repurchase agreements that exclusively involve the purchase of U.S. government obligations, and are fully collateralized therewith, with no other type of security being held in the fund.~~

~~(2) There is no dollar limit on a bank's investment in money market mutual funds that invest solely in U.S. government obligations whose average dollar weighted maturity is no longer than 90 days.~~

~~(3) As used in this rule, U.S. government obligations refers to those obligations listed in ARM 2.59.107.~~

(1) Under the authority of 32-1-424(1)(b), MCA, and subject to its restrictions, banks may invest in mutual funds whose shares represent only those United States obligations listed in Rule I (ARM 2.59.1601).

(2) Shareholders must have a proportionate undivided interest in any mutual fund utilized under this rule.

(3) Shareholders must be shielded from personal liability for acts or obligations of the mutual fund.

(4) The bank's investment policy, as formally approved by its board of directors, must specifically provide for such investments. Prior approval of the board of directors must be obtained for initial investments in specific mutual funds and recorded in the official board minutes. Procedures, standards and controls for managing such investments must be implemented prior to the investment being made.

AUTH: 32-1-433, MCA

IMP: 32-1-424, 32-1-433, MCA

RULE VI (2.59.1606) OTHER APPROVED INVESTMENTS

(1) Certain other instruments which may have investment characteristics are approved for state-chartered banks. They are the following:

(a) banks may invest up to 100% of their capital and surplus, per accepting bank, in bankers acceptances;

(b) ~~"CDs" or deposit notes purchased from insured financial institutions are approved to an aggregate of \$100,000 from each insured selling institution. Such accounts include the deposit and any accrued interest thereon;~~ banks may invest, on a per issuer basis, in certificates of deposit (CDs) or deposit notes from insured financial institutions up to the greater of 20% of their unimpaired capital and surplus or the maximum amount of federal deposit insurance available for deposits. This limitation applies to the deposit and any accrued interest;

(c) remains as proposed.

(d) banks may invest up to 20% of their capital and surplus, per issue, in privately issued (CMOs) and (REMICs); and

(e) privately issued (CMOs) and (REMICs) will not represent more than 40% of a bank's investment portfolio, or more than 400% of a bank's unimpaired capital and surplus, whichever is the lesser; and

(f) banks may invest up to 20% of their capital and surplus, per issuer, in trust preferred securities. These bonds must be investment grade, i.e., rated in one of the four highest grades by a recognized national investment rating organization. Other rating services may be used if the gradations are equivalent to those above, and the rating services are identified by the bank's investment policy.

AUTH: 32-1-433, MCA

IMP: 32-1-424, 32-1-433, MCA

3. The agency has amended ARM 2.59.112 as proposed.

4. The following comments were received and appear with the Division's responses:

COMMENT 1: George Bennett, attorney for the Montana Banker's Association, appeared at the hearing and submitted written comments after the hearing. The association argued that banks should be allowed to invest in mutual funds made up of United States government obligations other than simply U.S. Treasury bonds, notes and bills as stated in proposed Rule V. They believe that 32-1-424, MCA, authorizes mutual fund investment in a broader range of U.S. government obligations.

RESPONSE: The Division has carefully considered this issue and has amended proposed Rule V to allow for unlimited mutual fund investment in any of the U.S. government obligations listed in proposed Rule I.

COMMENT 2: Gary R. Lucas, Stockman Bank, Billings, submitted a written comment and argued that the seven-year maturity limitation on U.S. Treasury STRIPS found in proposed Rule I did not serve a useful purpose as these securities offer attractive and secure yields with maturities longer than seven years.

RESPONSE: The Division has reviewed the information submitted by Mr. Lucas and has decided to amend proposed Rule I to eliminate the seven-year maturity limit on U.S. Treasury STRIPS.

COMMENT 3: Ray Randolph, First Interstate Bank, Billings, appeared at the hearing and offered several comments on the Division's proposed rules. Mr. Randolph noted that the proposed rules did not address investments in tax credit funds or in trust preferred securities. He felt that both types of investments should be authorized in the proposed rules. He also felt it would be appropriate for the Division to remove the seven-year maturity limitation on U.S. Treasury STRIPS found in proposed Rule I. As to mutual fund investments, Mr. Randolph supported the position of the Montana Banker's Association and also felt that banks should be able to invest in mutual funds that include commercial paper. Finally, Mr. Randolph stated that the proposed CD limitation of \$100,000 found in proposed Rule VI was far too low to provide for effective investments from reputable institutions.

RESPONSE: The Division does not believe that bank investment in tax credit funds is authorized by either 31-1-424, MCA, or 31-1-433, MCA, the two statutes implemented by the proposed rules. The Division has authorized bank investment in trust preferred securities in the past and, accordingly, has amended proposed Rule VI to authorize this type of investment with certain stated limits. The Division has also amended proposed Rule I, as our response to Comment 2 indicates, to remove the seven-year maturity limit on U.S. Treasury STRIPS. While the Division has amended its proposed rules to broaden investments in mutual funds (see Comment 1 and Response above), 31-1-424, MCA, does not authorize investment in mutual funds made up of commercial paper. Direct investment in commercial paper is allowed, with the stated limits, under Rule VI. The Division agrees that the proposed limit for CDs may be too low to allow for effective investments. The Division has amended proposed Rule VI to allow for investment in CDs up to the greater of 20% of unimpaired capital and surplus or the maximum amount of federal deposit insurance available for deposits.

By: /s/ Scott Darkenwald  
SCOTT DARKENWALD, Director  
Department of Administration

By: /s/ Dal Smilie  
DAL SMILIE, Rule Reviewer

Certified to the Secretary of State January 18, 2002.

BEFORE THE STATE AUDITOR AND COMMISSIONER OF INSURANCE  
OF THE STATE OF MONTANA

In the matter of the ) NOTICE OF ADOPTION  
adoption of new RULES I )  
through XX pertaining to the )  
formation and regulation )  
of captive insurance )  
companies )

TO: All Concerned Persons

1. On December 6, 2001, the State Auditor and Commissioner of Insurance published a notice of proposed adoption of new RULES I through XX pertaining to the formation and regulation of captive insurance companies at page 2351 of the 2001 Montana Administrative Register, Issue No. 23.

2. The State Auditor has adopted new RULE I, (6.6.6801), II (6.6.6802), III (6.6.6803), IV (6.6.6804), V (6.6.6805), VI (6.6.6806), VII (6.6.6807), VIII (6.6.6808), IX (6.6.6809), X (6.6.6810), XI (6.6.6811), XII (6.6.6812), XIII (6.6.6813), XIV (6.6.6814), XV (6.6.6815), XVI (6.6.6816), XVII (6.6.6817), XVIII (6.6.6818), XIX (6.6.6819), and XX (6.6.6820) as proposed.

3. No comments or testimony were received.

JOHN MORRISON, State Auditor  
and Commissioner of Securities

By: /s/ Angela Caruso  
Angela Caruso  
Deputy Insurance Commissioner

By: /s/ Elizabeth L. Griffing  
Elizabeth L. Griffing  
Rules Reviewer

Certified to the Secretary of State on January 18, 2002.

BEFORE THE BOARD OF PUBLIC EDUCATION  
OF THE STATE OF MONTANA

In the matter of the amendment ) NOTICE OF AMENDMENT  
of ARM 10.55.601 relating to )  
accreditation standards and )  
procedures )

TO: All Concerned Persons

1. On December 6, 2001, the Board of Public Education published notice of the proposed amendment of the above stated rule concerning accreditation standards and procedures at page 2359 of the 2001 Montana Administrative Register, Issue Number 23.

2. The Board has amended ARM 10.55.601 exactly as proposed.

3. No comments or testimony were received.

/s/ Dr. Kirk Miller  
Dr. Kirk Miller, Chair  
Board of Public Education

/s/ Steve Meloy  
Steve Meloy, Executive Secretary  
Rule Reviewer  
Board of Public Education

Certified to the Secretary of State January 18, 2002.

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

In the matter of the transfer ) NOTICE OF TRANSFER  
of ARM 8.6.101 through )  
8.6.423 pertaining to the )  
Board of Architects )

TO: All Concerned Persons

1. Pursuant to Chapter 483, Laws of Montana 2001, effective July 1, 2001, the Board of Architects is transferred from the Department of Commerce to the Department of Labor and Industry ARM Title 24, Chapter 114.

2. The Department of Labor and Industry has determined that the transferred rules will be numbered as follows:

<u>OLD</u>	<u>NEW</u>	
8.6.101	24.114.101	Board Organization
8.6.201	24.114.201	Procedural Rules
8.6.202	24.114.202	Public Participation
8.6.405	24.114.503	Licensure of Applicants Who Are Registered in Another State
8.6.406	24.114.405	Qualifications Required for Montana Branch Office
8.6.407	24.114.501	Examination
8.6.409	24.114.402	Individual Seal
8.6.410	24.114.2101	Renewals
8.6.412	24.114.2301	Unprofessional Conduct
8.6.413	24.114.401	Fee Schedule
8.6.415	24.114.404	Architect Partnerships to File Statement With Board Office
8.6.416	24.114.2402	Screening Committee
8.6.417	24.114.2401	Complaint Procedure
8.6.418	24.114.406	Solicitation of Business by Architects from Other States
8.6.419	24.114.510	Use of Title
8.6.420	24.114.301	Definitions
8.6.421	24.114.403	Business Entity Practice
8.6.422	24.114.407	Emergency Use of Architects
8.6.423	24.114.502	Licensure of Applicants by Examination

3. The transfer of rules is necessary because this board was transferred from the Department of Commerce to the Department of Labor and Industry by the 2001 legislature by Chapter 483, Laws of Montana 2001.

BOARD OF ARCHITECTS  
EUGENE VOGL, CHAIRMAN

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

By: /s/ KEVIN BRAUN  
Kevin Braun  
Rule Reviewer

Certified to the Secretary of State, January 18, 2002.

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

In the matter of the amendment ) NOTICE OF AMENDMENT  
of ARM 8.6.405, 8.6.407, )  
8.6.410 and 8.6.413 )  
pertaining to licensure of )  
applicants who are registered )  
in another state, examinations, )  
renewals and fees )

TO: All Concerned Persons

1. On August 9, 2001, the Board of Architects published a notice of proposed amendment of the above-stated rules at page 1408, 2001 Montana Administrative Register, Issue Number 15.
2. A public hearing was held in Helena on September 10, 2001.
3. No comments or testimony were received.
4. The Board has amended ARM 8.6.405, 8.6.407, 8.6.410, and 8.6.413 exactly as proposed.

BOARD OF ARCHITECTS  
EUGENE VOGL, CHAIRMAN

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

By: /s/ KEVIN BRAUN  
Kevin Braun  
Rule Reviewer

Certified to the Secretary of State, January 18, 2002.

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

In the matter of the amendment of ) NOTICE OF AMENDMENT  
ARM 8.10.414, pertaining to )  
prohibition of animals in )  
barbershops, and ARM 8.10.1011, )  
pertaining to certain records of )  
barber schools )

TO: All Concerned Persons

1. On October 11, 2001, the State Board of Barbers published notice of the proposed amendment of the above-stated rules at page 1953 of the 2001 Montana Administrative Register, Issue Number 19.

2. A public hearing was held in Helena on November 5, 2001, but no members of the public attended. One written comment was received by the Board prior to the closing of the comment period.

3. After consideration of the comment received, the Board has amended ARM 8.10.414 and 8.10.1011 exactly as proposed.

4. The Board received comments from one person. The comments received and the Board's responses are as follows:

Comment 1: The commenter, a former board member of the Board of Cosmetology, stated that if the proposed amendments regarding dogs were adopted, there would be inconsistent rules for barbers and cosmetologists if and when the anticipated merger of the Board of Barbers with the Board of Cosmetology is accomplished.

Response 1: The Board of Barbers acknowledges that in the event of such a merger, all of the rules will need to be reviewed for duplication, conflicts and the possible harmonization of any conflicts.

Comment 2: The commenter stated that she was opposed to the proposed amendments regarding dogs. The commenter noted that some persons are afraid of dogs and believe that dogs should not be allowed indoors.

Response 2: The Board acknowledges that some individuals, for whatever reason, avoid dogs whenever possible. The Board believes that the requirement for posting of a sign at or near the entrance to an establishment advising of the presence of a dog or dogs will provide adequate information to such individuals so that they can make a decision whether or not to enter the establishment.

BOARD OF BARBERS  
DELORES LUND, Chairman

By: /s/ KEVIN BRAUN  
Kevin Braun,  
Rule Reviewer

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

Certified to the Secretary of State: January 18, 2002.

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

In the matter of the ) NOTICE OF AMENDMENT,  
amendment of ARM 8.40.401 ) ADOPTION AND REPEAL  
through 8.40.404, 8.40.407, )  
8.40.408A, 8.40.413, 8.40.416, )  
8.40.417, 8.40.502, 8.40.601, )  
through 8.40.607, 8.40.901 )  
through 8.40.907, 8.40.909, )  
8.40.1001, 8.40.1003, 8.40.1004, )  
8.40.1203, 8.40.1207, 8.40.1208, )  
8.40.1213, and 8.40.1215 )  
pertaining to substantive )  
pharmacy rules, automated data )  
processing, certified )  
pharmacies, internship )  
regulations, continuing )  
education for pharmacists, the )  
dangerous drug act and the )  
adoption of new rule I )  
pertaining to collaborative )  
practice agreement requirements, )  
new rule II pertaining to )  
security of certified pharmacy, )  
and new rule III pertaining to )  
the administration of vaccines )  
by pharmacists and the repeal of )  
ARM 8.40.405 and 8.40.408 )  
pertaining to explosive )  
chemicals and prescription )  
copies for legend drugs )

TO: All Concerned Persons

1. On August 9, 2001, the Board of Pharmacy published a notice of public hearing on the proposed amendment, adoption and repeal of the above-stated rules at page 1422, 2001 Montana Administrative Register, issue number 15. The hearing was held on September 4, 2001.

2. The Board has amended ARM 8.40.401, 8.40.402, 8.40.403, 8.40.417, 8.40.502, 8.40.601, 8.40.602, 8.40.603, 8.40.604, 8.40.605, 8.40.606, 8.40.607, 8.40.901, 8.40.902, 8.40.905, 8.40.906, 8.40.907, 8.40.909, 8.40.1001, 8.40.1003, 8.40.1004, 8.40.1203, 8.40.1207, 8.40.1208, 8.40.1213, 8.40.1215 exactly as proposed.

3. The Board has amended ARM 8.40.404, 8.40.407, 8.40.408A, 8.40.413, 8.40.416, 8.40.903, and 8.40.904 as proposed with the following changes from the original proposal. Matter to be added is underlined. Matter to be deleted is interlined. New material is shown in all CAPS.

8.40.404 FEE SCHEDULE

- (1) through (9) same as proposed.
- (10) NAPLEX examination fee (paid directly to exam service) 250 ~~300~~ 360
- (11) through (21) same as proposed.

AUTH: 37-1-134, 37-7-201, MCA  
 IMP: 37-1-134, 37-7-201, 37-7-302, 37-7-303, 37-7-321, 37-7-703, MCA

8.40.407 COPY OF PRESCRIPTION (1) same as proposed.

(2) It shall be unlawful for any pharmacist or other person to fill a copy of a prescription for a legend drug FROM A PHARMACY-PRODUCED COPY.

AUTH: 37-7-201, MCA  
 IMP: 37-7-101, 37-7-102, 37-7-201, MCA

8.40.408A TRANSFER OF PRESCRIPTIONS (1) through (3) same as proposed.

(a) Any pharmacy which establishes an electronic file for prescription records, which is shared with or accessible to other pharmacies, shall post in a place conspicuous to and readily readable by prescription drug consumers a notice in substantially the following form:

"NOTICE TO CONSUMERS:

This pharmacy maintains its prescription information in an electronic file which is shared by or accessible to the following pharmacies: (list names of ALL pharmacies which share the prescription information).

By offering this service, your prescriptions may also be refilled at the above locations. If for any reason you do not want your prescriptions to be maintained this way, please notify the pharmacist-in-charge."

(b) through (6) same as proposed.

AUTH: 37-7-201, MCA  
 IMP: 37-7-201, MCA

8.40.413 VENDING ALTERNATE DELIVERY OF PRESCRIPTIONS

(1) and (1)(a) same as proposed.

(b) Nothing in this rule shall prohibit a registered pharmacist from installing an appropriate secure device as an alternate delivery system, WHEN THE PHARMACY IS CLOSED. THE, which system AND COUNSELING METHODS must have the prior approval of the board or its designee.

AUTH: 37-7-201, MCA  
 IMP: 37-7-301, MCA

8.40.416 TRANSMISSION OF PRESCRIPTIONS BY FACSIMILE ELECTRONIC MEANS (1) through (4)(e) same as proposed.

(f) The prescription shall be marked "electronically transmitted prescription" OR BE OTHERWISE IDENTIFIED FOR EASY

RETRIEVAL;

(g) through (5) same as proposed.

AUTH: 37-7-201, 50-32-103, MCA

IMP: 37-7-102, 37-7-201, 50-32-103, MCA

8.40.903 INTERNSHIP REQUIREMENTS (1) same as proposed.

(2) Application shall be made on the intern application form prescribed by the board. Certification REGISTRATION must be obtained prior to commencing work as an intern.

(3) through (12) same as proposed.

AUTH: 37-7-201, MCA

IMP: 37-7-201, MCA

8.40.904 PRECEPTOR REQUIREMENTS (1) same as proposed.

(2) ~~A preceptor shall be in direct supervision of all~~ THE repackaging, labeling and dispensing of drugs for distribution shall be under the supervision of a registered pharmacist or PHARMACIST preceptor.

(3) same as proposed.

AUTH: 37-7-201, MCA

IMP: 37-7-201, MCA

4. The Board adopted NEW RULE I (ARM 8.40.1701) COLLABORATIVE PRACTICE AGREEMENT REQUIREMENTS and NEW RULE II (ARM 8.40.609) SECURITY OF CERTIFIED PHARMACY as proposed.

5. The Board adopted NEW RULE III (ARM 8.40.1801) ADMINISTRATION OF VACCINES BY PHARMACISTS as proposed with the following changes from the original proposal. Matter to be added is underlined. Matter to be deleted is interlined.

NEW RULE III ADMINISTRATION OF VACCINES BY PHARMACISTS

(1) and (1)(a) same as proposed.

(b) the pharmacist holds a current basic cardiopulmonary resuscitation certification issued by the American heart association, ~~or~~ the American red cross or other recognized provider;

(c) the vaccines are administered in accordance with an established protocol that includes emergency measures; and

(d) through (3) same as proposed.

(4) The pharmacist must report any adverse events to the primary care provider identified by the patient and to the centers for disease control (CDC).

(5) same as proposed.

(a) the name, address, allergies and date of birth of the patient;

(b) through (7) same as proposed.

6. The Board repealed 8.40.405, EXPLOSIVE CHEMICALS, and 8.40.408, PRESCRIPTION COPIES FOR LEGEND DRUGS, as proposed.

7. The comments received and the Board's responses are as follows:

COMMENT 1: The commentor stated the term "copy" was vague and questioned the difference between a "copy" and an "electronic version" of a prescription.

RESPONSE 1: The Board agrees with the comment. ARM 8.40.407 is amended accordingly.

COMMENT 2: A commentor referenced ARM 8.40.413, and questioned exactly what the Board had in mind for patient counseling or if this delivery device would be for refills only.

RESPONSE 2: The Board's intent of this rule is for a pharmacy to leave a prescription for a customer in a secure device when a pharmacy is closed. The Board amended ARM 8.40.413 to include the requirement for a patient counseling method to be included in this situation.

COMMENT 3: This commentor questioned if "or practitioner's agent" should be added to the written prescription by a practitioner.

RESPONSE 3: The Board concludes that a written prescription must be from the practitioner but can be transmitted to the pharmacy by the practitioner or the practitioner's agent.

COMMENT 4: A commentor objected to the use of "Palm Pilot" in the reason for proposed amendments to ARM 8.40.417.

RESPONSE 4: The Board agrees that endorsing a specific brand name product is not appropriate and will in the future avoid use of brand names in rule notices.

COMMENT 5: There were a few comments asking for clarification of the requirement for the MPJE examination. They questioned if existing licensees would be required to take and pass this exam.

RESPONSE 5: The license transfer requirements of ARM 8.40.403 only pertain to new licensee applicants wishing to obtain a license in Montana by reciprocity. The only other individuals required to take MPJE are new graduates working towards a pharmacist license.

COMMENT 6: A commentor questioned whether there should be a limit to the amount of time an intern is allowed to spend under the instruction of a non-pharmacist preceptor.

RESPONSE 6: The Board believes that the schools of pharmacy adequately oversee that and there is no present need for the Board to put such limitations in the administrative rule.

COMMENT 7: A commentor asked for clarification of completion of clerkship. Does the Board see this as the end of a year or the end of each rotation?

RESPONSE 7: At the end of the rotation. The Board staff will inform interns that the completion of a clerkship experience is at the end of each rotation or site.

COMMENT 8: The commentor objected strongly to requiring prior consent from a patient to partake in a collaborative practice agreement, especially in the hospital or facility setting.

RESPONSE 8: The Board does not want to see each consent, but wants the procedure identified how consent would be obtained. This can mean a patient when being admitted to a hospital or facility signs a statement of permission to be involved in a collaborative practice. The Board sees this as keeping the patient or public aware of the individual's own medical care.

COMMENT 9: The commentor asked if an immunization card should be required when a pharmacist administers a vaccination.

RESPONSE 9: The Board agrees that a record should be kept and a card should be provided to the consumer. New Rule III (ARM 8.40.1801) is amended accordingly.

COMMENT 10: A commentor stated that in ARM 8.40.401 the term "prescriber" should be changed to "clinician".

RESPONSE 10: The Board notes that "prescriber" is clearly defined in § 37-7-502, MCA and "clinician" is not.

COMMENT 11: A commentor was concerned that technicians would be assessed an application fee twice when moving from a technician-in-training to a certified technician.

RESPONSE 11: The Board agrees that an original application fee should only be charged one time in this circumstance. There is no re-application required for a certified technician if they are already registered as a technician-in-training.

COMMENT 12: A commentor asked for clarification of the term "emergency". Does this mean a 7-day supply to be subtracted from the original prescription?

RESPONSE 12: The Board noted that an emergency fill does not specify the number of days of a prescription to be filled, and no matter the number dispensed, documentation should always accompany the transfer.

COMMENT 13: A commentor expressed concern about consistency

in record retention of pharmacies.

RESPONSE 13: The Board notes that there is a three year requirement for records of vaccinations, but all other pharmacy records are required to be kept for only two years.

COMMENT 14: A commentor pointed out that interns are registered, not certified.

RESPONSE 14: The Board agrees. ARM 8.40.903 is amended to reflect the correct terminology.

COMMENT 15: A commentor suggested that language be clear that dispensing functions should only be performed under the supervision of a pharmacist for interns.

RESPONSE 15: The Board agrees with comment and has amended ARM 8.40.904 to reflect this decision.

COMMENT 16: This commentor asked for clarification of the responsibility for notification to the Board when a Pharmacist-in-Charge changes.

RESPONSE 16: The Board believes the responsibility is shared. The outgoing Pharmacist-in-Charge needs to notify the Board of their change in employment and the incoming Pharmacist-in-Charge is responsible for filing the proper paperwork accepting responsibility for the pharmacy with the Board office.

COMMENT 17: A commentor questioned if the "Intern Manual" published by the Board should be referenced somehow in administrative rules.

RESPONSE 17: The Board notes that the manual simply helps to clarify process and rules for interns and currently isn't a required publication.

COMMENT 18: A commentor stated that interns should have one full year, rather than six months, to complete internship requirements after passing the NAPLEX.

RESPONSE 18: The Board notes that the intern has already graduated and should be close to completing the required 1500 hours of internship experience. There should be no need for an additional six months to complete the MPJE and send the certificate fee. The Board sees no reason to change ARM 8.40.903.

COMMENT 19: A commentor stated there should be protocol in place when a pharmacist is giving vaccinations for emergencies.

RESPONSE 19: The Board agrees and amended New Rule III (ARM

8.40.1801) to reflect the requirement of policies and procedures in case of an emergency when administering vaccinations.

BOARD OF PHARMACY  
ALBERT A. FISHER, R.Ph.,  
PRESIDENT

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

By: /s/ KEVIN BRAUN  
Kevin Braun  
Rule Reviewer

Certified to the Secretary of State, January 18, 2002.

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

In the matter of the transfer ) NOTICE OF TRANSFER  
of ARM 16.32.101 through )  
16.32.103, 16.32.106 and )  
16.32.107, 16.32.109 through )  
16.32.112, 16.32.118 and )  
16.32.119, 16.32.128, )  
16.32.136 through 16.32.141, )  
16.32.301, 16.32.303 through )  
16.32.313, 16.32.320 through )  
16.32.331, 16.32.340, )  
16.32.347 and 16.32.348, )  
16.32.355, 16.32.360 and )  
16.32.361, 16.32.363, )  
16.32.370 and 16.32.371, )  
16.32.373 through 16.32.375, )  
16.32.396 through 16.32.427, )  
16.32.701 through 16.32.708, )  
16.32.711 through 16.32.719, )  
16.32.801 and 16.32.802, )  
16.32.805 through 16.32.811, )  
16.32.814 through 16.32.817, )  
16.32.901 through 16.32.922 )  
and 16.32.1001 through )  
16.32.1012 pertaining to )  
licensure of health care )  
facilities )

TO: All Interested Persons

1. Pursuant to Chapter 546, Laws of Montana 1995, effective July 1, 1995, health care facilities services is transferred from the Department of Health and Environmental Sciences to the Department of Public Health and Human Services, Title 37.

2. The Department of Public Health and Human Services has determined that the transferred rules will be numbered as follows:

<u>OLD</u>	<u>NEW</u>	
16.32.101	37.106.101	Definitions
16.32.102	37.106.103	Long Term Care:-- Where Allowed
16.32.103	37.106.106	Submission of Letter of Intent
16.32.106	37.106.107	Submission of Applications
16.32.107	37.106.108	Notice of Acceptance or Effective Withdrawal of Application
16.32.109	37.106.112	Informational Hearing Procedures
16.32.110	37.106.113	Criteria and Findings
16.32.111	37.106.114	Department Decision

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<u>OLD</u>	<u>NEW</u>	
16.32.112	37.106.115	Appeal Procedures
16.32.118	37.106.120	Duration of Certificate: Termination; Extension
16.32.119	37.106.121	Increase in Certified Cost
16.32.128	37.106.126	Swing Beds:--Review Criteria
16.32.136	37.106.133	Certificate of Need Application: Introduction and Cover Letter
16.32.137	37.106.134	Certificate of Need Application:-- Required Information
16.32.138	37.106.137	Annual Operational Reports by Hospitals
16.32.139	37.106.138	Annual Financial Reports by Hospitals
16.32.140	37.106.139	Annual Reports by Long-Term Care and Personal Care Facilities
16.32.141	37.106.140	Annual Reports by Home Health Agencies
16.32.301	37.106.301	Definitions
16.32.303	37.106.306	Submission of Plans and Specifications:--A New Institutional Health Service:--Alteration or Addition to a Health Care Facility
16.32.304	37.106.310	Licensing:--Procedure for Obtaining a License:--Issuance and Renewal of a License
16.32.305	37.106.311	Minimum Standards for All Health Care Facilities:--Food Service Establishments
16.32.306	37.106.312	Minimum Standards for All Health Care Facilities:--Blood Bank and Transfusion Services
16.32.307	37.106.313	Minimum Standards for All Health Care Facilities:--Communicable Disease Control
16.32.308	37.106.314	Minimum Standards for All Health Care Facilities:--Medical Records
16.32.309	37.106.320	Minimum Standards for All Health Care Facilities:--Physical Plant and Equipment Maintenance
16.32.310	37.106.321	Minimum Standards for All Health Care Facilities:--Environmental Control
16.32.311	37.106.322	Minimum Standards for All Health Care Facilities:--Disaster Plan
16.32.312	37.106.330	Minimum Standards for All Health Care Facilities:--Written Policy and Procedure
16.32.313	37.106.331	Minimum Standards for All Health Care Facilities:--Laundry and Bedding
16.32.320	37.106.401	Minimum Standards for a Hospital:-- General Requirements
16.32.321	37.106.410	Minimum Standards for a Hospital:-- Coronary Care Unit

<u>OLD</u>	<u>NEW</u>	
16.32.322	37.106.411	Minimum Standards for a Hospital:-- Intensive Care Unit
16.32.323	37.106.420	Minimum Standards for a Hospital:-- Obstetrical Services
16.32.324	37.106.421	Minimum Standards for a Hospital:-- Newborn Nursery
16.32.325	37.106.422	Minimum Standards for a Hospital:-- Pediatric and Adolescent Services
16.32.326	37.106.430	Minimum Standards for a Hospital:-- Psychiatric Services
16.32.327	37.106.440	Minimum Standards for a Hospital:-- Respiratory Therapy
16.32.328	37.106.402	Minimum Standards for a Hospital:-- Medical Records
16.32.329	37.106.403	Minimum Standards for a Hospital:-- Hospital Records
16.32.330	37.106.404	Minimum Standards for a Hospital:-- Laboratories
16.32.331	37.106.405	Minimum Standards for a Hospital:-- Organ Donation Requests and Protocols
16.32.340	37.106.640	Minimum Standards for an Infirmiry
16.32.347	37.106.645	Minimum Standards for an Intermediate Developmental Disability Care Facility
16.32.348	37.106.1401	Minimum Standards for Chemical Dependency Facilities
16.32.355	37.106.1001	Minimum Standards for an Outpatient Facility
16.32.360	37.106.601	Minimum Standards for a Skilled and Skilled/Intermediate Care Facility:-- General Requirements
16.32.361	37.106.605	Minimum Standards for a Skilled Nursing Care Facility for each 24 Hour Period:--Staffing
16.32.363	37.106.606	Minimum Standards for a Skilled and Skilled/Intermediate Care Facility:-- Drug Services
16.32.370	37.106.1505	Minimum Standards for a Home Health Agency
16.32.371	37.106.1506	Minimum Standards for a Health Maintenance Organization
16.32.373	37.106.2301	Minimum Standards for a Hospice Program: -- General
16.32.374	37.106.2305	Minimum Standards for an Inpatient Hospice Facility
16.32.375	37.106.2311	Minimum Standards for a Residential Hospice Facility
16.32.396	37.106.650	Minimum Standards for a Kidney Treatment Center
16.32.397	37.106.1101	Medical Assistance Facilities:-- Definitions

<u>OLD</u>	<u>NEW</u>	
16.32.398	37.106.1103	Medical Assistance Facilities:-- Organizational Structure; Governing Body
16.32.399	37.106.1104	Medical Assistance Facilities:-- Medical Staff
16.32.399A	37.106.1120	Medical Assistance Facilities:-- Nursing Services
16.32.399B	37.106.1121	Medical Assistance Facilities:-- Pharmaceutical Services
16.32.399C	37.106.1122	Medical Assistance Facilities:-- Radiologic Services
16.32.399D	37.106.1123	Medical Assistance Facilities:-- Laboratory Services
16.32.399E	37.106.1124	Medical Assistance Facilities:--Food and Dietetic Services
16.32.399F	37.106.1130	Medical Assistance Facilities:-- Outpatient Services
16.32.399G	37.106.1131	Medical Assistance Facilities:-- Emergency Services
16.32.399H	37.106.1132	Medical Assistance Facilities:-- Third-Party Services
16.32.399I	37.106.1105	Medical Assistance Facilities:-- Medical Records
16.32.399J	37.106.1110	Medical Assistance Facilities:-- Quality Assurance
16.32.399K	37.106.1111	Medical Assistance Facilities:-- Utilization Review
16.32.399L	37.106.1112	Medical Assistance Facilities:-- Infection Control
16.32.399M	37.106.2201	Residential Treatment Facility:-- Application of other Rules
16.32.399N	37.106.2202	Residential Treatment Facility:-- Licensure Standards
16.32.399O	37.106.2203	Residential Treatment Facilities:-- Separate Licenses
16.32.401	37.106.1801	Specialty Mental Health Facility:-- Application of Other Rules
16.32.402	37.106.1802	Specialty Mental Health Facility:-- Definitions
16.32.403	37.106.1841	Specialty Mental Health Facility:-- Required Treatment Services
16.32.404	37.106.1852	Specialty Mental Health Facility:-- Prohibitions
16.32.405	37.106.1810	Specialty Mental Health Facility:-- Organizational Structure; Governing Body
16.32.406	37.106.1812	Specialty Mental Health Facility:-- Medical and Professional Staff
16.32.407	37.106.1843	Specialty Mental Health Facility:-- Nursing Services
16.32.408	37.106.1811	Specialty Mental Health Facility:-- Administrator

<u>OLD</u>	<u>NEW</u>	
16.32.409	37.106.1844	Specialty Mental Health Facility:-- Pharmaceutical Services
16.32.410	37.106.1814	Specialty Mental Health Facility:-- Treatment Team
16.32.411	37.106.1851	Specialty Mental Health Facility:-- Admission Procedures
16.32.412	37.106.1853	Specialty Mental Health Facility:-- Treatment Program
16.32.413	37.106.1813	Specialty Mental Health Facility:-- Staff Development
16.32.414	37.106.1842	Specialty Mental Health Facility:-- Food and Nutrition Services
16.32.415	37.106.1845	Specialty Mental Health Facility:-- Outpatient Services
16.32.416	37.106.1805	Specialty Mental Health Facility:-- Medical Records
16.32.417	37.106.1820	Specialty Mental Health Facility:-- Quality Assurance
16.32.418	37.106.1821	Specialty Mental Health Facility:-- Utilization Review
16.32.419	37.106.1829	Specialty Mental Health Facility:-- Infection Control
16.32.420	37.106.1827	Specialty Mental Health Facility:-- Physical Environment
16.32.421	37.106.1831	Specialty Mental Health Facility:-- Emergency Services
16.32.422	37.106.1828	Specialty Mental Health Facility:-- Environmental Control
16.32.423	37.106.1832	Specialty Mental Health Facility:-- Disaster Plan
16.32.424	37.106.1833	Specialty Mental Health Facility:-- Laundry and Bedding
16.32.425	37.106.1826	Specialty Mental Health Facility:-- Life Safety and Building Code
16.32.426	37.106.1825	Specialty Mental Health Facility:-- Physical Plant
16.32.427	37.106.1854	Specialty Mental Health Facility:-- Patient Rights
16.32.701	37.106.2401	Infusion Therapy: Definitions
16.32.702	37.106.2404	Home Infusion Therapy: Responsibility for Services
16.32.703	37.106.2405	Home Infusion Therapy: Administrator
16.32.704	37.106.2415	Home Infusion Therapy: Administration of Medication and Treatment
16.32.705	37.106.2406	Home Infusion Therapy: Clinical Services
16.32.706	37.106.2411	Home Infusion Therapy: Education Services
16.32.707	37.106.2412	Home Infusion Therapy: Home Care Record

<u>OLD</u>	<u>NEW</u>	
16.32.708	37.106.2407	Home Infusion Therapy: Quality Assessment
16.32.711	37.106.2416	Home Infusion Therapy: Parenteral or Enteral Solutions
16.32.712	37.106.2420	Home Infusion Therapy: Pharmacy Policy and Procedure Manual
16.32.713	37.106.2422	Home Infusion Therapy: Physical Requirements for Pharmacies
16.32.714	37.106.2423	Home Infusion Therapy: Dispensing of Sterile Pharmaceuticals
16.32.715	37.106.2426	Home Infusion Therapy: Pharmacy Personnel
16.32.716	37.106.2430	Home Infusion Therapy: Labeling
16.32.717	37.106.2431	Home Infusion Therapy: Antineoplastic Drugs
16.32.718	37.106.2432	Home Infusion Therapy: Disposal of Antineoplastic, Infectious, and Hazardous Wastes
16.32.719	37.106.2433	Home Infusion Therapy: Delivery of Medications
16.32.801	37.106.2501	Retirement Homes: Definitions
16.32.802	37.106.2502	Retirement Homes: Application of Other Rules
16.32.805	37.106.2505	Retirement Homes: Fire and Building Codes Approval
16.32.806	37.106.2506	Retirement Homes: Swimming Pools and Spas
16.32.807	37.106.2510	Retirement Homes: Physical Requirements
16.32.808	37.106.2511	Retirement Homes: Environmental Control
16.32.809	37.106.2512	Retirement Homes: Water Supply System
16.32.810	37.106.2513	Retirement Homes: Sewage System
16.32.811	37.106.2514	Retirement Homes: Solid Waste
16.32.814	37.106.2520	Retirement Homes: Laundry Facilities
16.32.815	37.106.2521	Retirement Homes: Housekeeping and Maintenance
16.32.816	37.106.2522	Retirement Homes: Food Service Requirements
16.32.817	37.106.2530	Retirement Homes: Resident Register
16.32.901	37.106.2701	Application of Rules
16.32.901A	37.106.2702	Application of Other Rules
16.32.902	37.106.2703	Definitions
16.32.903	37.106.2708	Administration
16.32.904	37.106.2710	Staffing
16.32.905	37.106.2730	Recreational Activities
16.32.906	37.106.2719	Laundry
16.32.907	37.106.2716	Physical Plant
16.32.908	37.106.2717	Environmental Control
16.32.909	37.106.2709	Written Policies and Procedures
16.32.910	37.106.2725	Residential Services
16.32.911	37.106.2726	Personal Services

<u>OLD</u>	<u>NEW</u>	
16.32.912	37.106.2718	Infection Control
16.32.913	37.106.2729	Social Services
16.32.914	37.106.2731	Pets
16.32.915	37.106.2728	Food Service
16.32.916	37.106.2742	Resident Rights
16.32.917	37.106.2740	Residency Application Procedures
16.32.918	37.106.2741	Resident Records
16.32.919	37.106.2727	Medications and Oxygen
16.32.920	37.106.2715	Construction
16.32.921	37.106.2750	Requirements for Category B Facilities Only
16.32.922	37.106.2711	Fees
16.32.1001	37.106.2602	General Services, Administration and Staffing
16.32.1002	37.106.2616	Food Service
16.32.1003	37.106.2620	Client and Personnel Records
16.32.1004	37.106.2621	Medications
16.32.1005	37.106.2603	Policies and Procedures
16.32.1006	37.106.2609	Infection Control
16.32.1007	37.106.2610	Maintenance and Housekeeping
16.32.1008	37.106.2607	Environmental Control
16.32.1009	37.106.2608	Disaster and Fire Plan
16.32.1010	37.106.2615	Laundry
16.32.1011	37.106.2606	Construction
16.32.1012	37.106.2601	Application of Other Rules

3. The transfer of rules is necessary because this program was transferred from the Department of Health and Environmental Sciences to the Department of Public Health and Human Services by the 1995 legislature by Chapter 546, Laws of Montana 1995.

Dawn Sliva  
Rule Reviewer

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

Certified to the Secretary of State January 18, 2002.

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

In the matter of the transfer        )       NOTICE OF TRANSFER AND  
and amendment of ARM                )       AMENDMENT  
16.32.302 pertaining to               )         
health care licensure                 )       

TO: All Interested Persons

1. On October 11, 2001, the Department of Public Health and Human Services published notice of the proposed transfer and amendment of the above-stated rule at page 1959 of the 2001 Montana Administrative Register, issue number 19.
2. The Department has transferred and amended ARM 16.32.302 (37.106.302) as proposed.
3. No comments or testimony were received.

/s/ Dawn Sliva  
Rule Reviewer

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

Certified to the Secretary of State January 18, 2002.

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

In the matter of the	)	NOTICE OF ADOPTION AND
temporary emergency adoption	)	AMENDMENT OF TEMPORARY
of Rule I and the amendment	)	EMERGENCY RULES
of ARM 37.86.2207,	)	
37.86.2219, 37.86.2221,	)	
37.86.3505, 37.86.3507,	)	
37.86.3515, 37.86.3705,	)	
37.86.3707, 37.86.3715,	)	
37.88.101, 37.89.106 and	)	
37.89.114 pertaining to	)	
mental health services	)	

TO: All Interested Persons

1. The Department of Public Health and Human Services is adopting and amending the above-stated temporary emergency rules pertaining to mental health services.

The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who need an alternative accessible format of this notice. Please contact Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210; telephone (406)444-5622; FAX (406)444-1970; Email dphhslegal@state.mt.us.

2. The text of the temporary emergency rule is as follows:

[RULE I] TEMPORARY EMERGENCY RATE ADJUSTMENT (1) There is an emergency reimbursement reduction in effect for the following provider types for medicaid mental health services and mental health services plan services provided January 1, 2002 through June 30, 2002:

- (a) psychiatrists;
- (b) psychologists;
- (c) licensed social workers; and
- (d) licensed professional counselors.

(2) The fee reduction will apply to the provider types listed in this rule both in private practice as well as those providing services through a licensed mental health center.

(3) The net pay reimbursement for provider types listed in this rule will be 2.6% less than the amount provided in the following rules: ARM 37.85.212, 37.86.105, 37.88.206, 37.88.306 and 37.88.606.

(i) For purposes of this rule, "net pay reimbursement" means the allowed amount minus third party liability payments, copayments, coinsurance, incurments, and other deductions.

(4) If there are sufficient funds available as a result of these reductions at the end of state fiscal year 2002, the

providers of services affected by this rule may be eligible for a rebate.

(5) If a rebate is to occur, the department will define a process for calculating and issuing the rebate.

AUTH: Sec. 53-6-113 and 53-12-201, MCA

IMP: Sec. 53-6-101, 53-6-113 and 53-21-201, MCA

3. The text of the temporary emergency rules is as follows. Matter to be added is underlined. Matter to be deleted is interlined.

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

(2) Reimbursement for outpatient chemical dependency treatment, nutrition, and private duty nursing services is specified in the department's EPSDT fee schedule. The department hereby adopts and incorporates herein by reference the department's EPSDT fee schedule effective ~~July 2000~~ January 2002. A copy of the fee schedule may be obtained from the Department of Public Health and Human Services, Health Policy and Services Division, Medicaid Services Bureau, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

(3) through (9) remain the same.

(10) The department will not reimburse partial hospitalization, day treatment, comprehensive school and community treatment, outpatient therapy, community-based psychiatric rehabilitation and support, therapeutic youth group home, adult group home or adult foster care providers for two services that duplicate one another on the same day. The department hereby adopts and incorporates by reference the matrix of services excluded from simultaneous reimbursement dated January 11, 2002. A copy of the matrix is posted on the internet at the department's home page at [www.dphhs.state.mt.us/divisions/hcs/provider\\_fee\\_schedule.htm](http://www.dphhs.state.mt.us/divisions/hcs/provider_fee_schedule.htm) or by writing the Department of Public Health and Human Services, Addictive and Mental Disorders Division, 555 Fuller, P.O. Box 202905, Helena, MT 59620-2905.

(10) remains the same but is renumbered (11).

AUTH: Sec. 53-2-201 and 53-6-113, MCA

IMP: Sec. 53-2-201, 53-6-101 and 53-6-113, MCA

37.86.2219 EARLY AND PERIODIC SCREENING, DIAGNOSTIC AND TREATMENT SERVICES (EPSDT), THERAPEUTIC YOUTH GROUP HOME SERVICES (1) through (1)(e) remain the same.

(2) Medicaid reimbursement is not available for therapeutic youth group home services unless the provider submits to the department or its designee in accordance with these rules a complete and accurate certificate of need that certifies the necessary level of care for recipients who have a serious emotional disturbance (SEDS) as defined in ARM 37.86.3702. ~~The certificate of need must certify the necessary~~

~~level of care and, for intensive level services, must certify that 4 of the criteria in (2)(a) through (e) are met, or for moderate or campus-based level services, must certify that 3 of the criteria in (2)(a) through (e) are met. The recipient A child or adolescent must meet at least 4 of the following criteria for moderate or campus-based therapeutic group home services and 5 of the following criteria for intensive therapeutic group home services:~~

~~(a) is experiencing psychiatric symptoms of a severe or persistent nature that require more intensive treatment and clinical supervision than can be provided by outpatient mental health services;~~

~~(b) is at significant risk for placement in a more restrictive environment if therapeutic living care is not provided, or the recipient is currently being treated or maintained in a more restrictive environment and requires a structured treatment environment in order to be successfully treated in a less restrictive setting;~~

~~(c) has a prognosis for beneficial treatment at a level of care lower than therapeutic living is very poor because the recipient demonstrates one or more of the following:~~

~~(i) significantly impaired interpersonal or social functioning;~~

~~(ii) significantly impaired educational or occupational functioning;~~

~~(iii) lack of family or other community or social support networks;~~

~~(iv) impairment of judgment; or~~

~~(v) poor impulse control;~~

~~(d) exhibits an inability to perform daily living activities due to a mental, emotional or eating disorder; and~~

~~(e) exhibits maladaptive or disruptive behaviors due to a mental, emotional or eating disorder.~~

(a) Symptoms of the individual's emotional disturbance or mental illness are of a severe or persistent nature requiring more intensive treatment and clinical supervision than can be provided by outpatient mental health service.

(b) The beneficiary exhibits behaviors related to the covered diagnosis that result in significant risk for psychiatric hospitalization or placement in a more restrictive environment if therapeutic living care is not provided or the person is currently being treated or maintained in a more restrictive environment and requires a structured treatment environment in order to be successfully treated in a less restrictive setting.

(c) The prognosis for treatment of the individual's mental illness or emotional disturbance at a less restrictive level of care is very poor because the individual demonstrates 3 or more of the following due to the emotional disturbance or mental illness:

(i) significantly impaired interpersonal or social functioning;

(ii) significantly impaired educational or occupational functioning;

(iii) impairment of judgment; or

(iv) poor impulse control.

(d) As a result of the emotional disturbance or mental illness, the individual exhibits an inability to perform daily living activities in a developmentally appropriate manner.

(e) As a result of the emotional disturbance or mental illness, the beneficiary exhibits maladaptive or disruptive behavior that is developmentally inappropriate.

(3) through (5) remain the same.

AUTH: Sec. 53-2-201 and 53-6-113, MCA

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

37.86.2221 EARLY AND PERIODIC SCREENING, DIAGNOSTIC AND TREATMENT SERVICES (EPSDT), THERAPEUTIC FAMILY CARE TREATMENT SERVICES (1) through (1)(b) remain the same.

(c) The therapeutic portion of permanency therapeutic family care treatment, as defined in (2)(c)(i), is covered if provided by a therapeutic family care agency licensed by and contracted with the department to provide intensive therapeutic family care services.

(i) Permanency therapeutic family care treatment is intensive level therapeutic family care treatment for which the foster family placement is permanent and which includes:

(i)(A) through (d) remain the same.

~~(2) Medicaid reimbursement is not available for therapeutic youth family care services unless the provider submits to the department or its designee in accordance with these rules a complete and accurate certificate of need that certifies the necessary level of care. The certificate of need must certify the necessary level of care and, for intensive level services, must certify that 4 of the criteria in (2)(a) through (e) are met, or for moderate level services, must certify that 3 of the criteria in (2)(a) through (e) are met. The recipient A child or adolescent must meet at least 4 of the following criteria for moderate therapeutic family care treatment services and 5 of the following criteria for intensive therapeutic family care treatment services:~~

~~(a) is experiencing psychiatric symptoms of a severe or persistent nature that require more intensive treatment and clinical supervision than can be provided by outpatient mental health services;~~

~~(b) is at significant risk for placement in a more restrictive environment if therapeutic family care is not provided, or the recipient is currently being treated or maintained in a more restrictive environment and requires a structured treatment environment in order to be successfully treated in a less restrictive setting;~~

~~(c) has a prognosis for beneficial treatment at a level of care lower than therapeutic family care is very poor because the recipient demonstrates one or more of the following:~~

~~(i) significantly impaired interpersonal or social functioning;~~

~~(ii) significantly impaired educational or occupational~~

functioning;

~~(iii) lack of family or other community or social support networks;~~

~~(iv) impairment of judgment; or~~

~~(v) poor impulse control;~~

~~(d) exhibits an inability to perform daily living activities due to a mental, emotional or eating disorder; and~~

~~(e) exhibits maladaptive or disruptive behaviors due to a mental, emotional or eating disorder.~~

(a) Symptoms of the individual's emotional disturbance or mental illness are of a severe or persistent nature requiring more intensive treatment and clinical supervision than can be provided by outpatient mental health service.

(b) The beneficiary exhibits behaviors related to the covered diagnosis that result in significant risk for psychiatric hospitalization or placement in a more restrictive environment if therapeutic living care is not provided or the person is currently being treated or maintained in a more restrictive environment and requires a structured treatment environment in order to be successfully treated in a less restrictive setting.

(c) The prognosis for treatment of the individual's mental illness or emotional disturbance at a less restrictive level of care is very poor because the individual demonstrates 3 or more of the following due to the emotional disturbance or mental illness:

(i) significantly impaired interpersonal or social functioning;

(ii) significantly impaired educational or occupational functioning;

(iii) impairment of judgment; or

(iv) poor impulse control.

(d) As a result of the emotional disturbance or mental illness, the individual exhibits an inability to perform daily living activities in a developmentally appropriate manner.

(e) As a result of the emotional disturbance or mental illness, the beneficiary exhibits maladaptive or disruptive behavior that is developmentally inappropriate.

(3) through (5) remain the same.

AUTH: Sec. 53-2-201 and 53-6-113, MCA

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

37.86.3505 CASE MANAGEMENT SERVICES FOR ADULTS WITH SEVERE DISABLING MENTAL ILLNESS, SERVICE COVERAGE (1) and (2) remain the same.

(3) Care coordination case management services for adults with severe disabling mental illness are case management services, as specified in (1), provided in accordance with these rules by a licensed mental health center ~~or a practitioner~~. Care coordination case management services may include telephone services.

(a) For purposes of ARM 37.86.3501, 37.86.3502, 37.86.3505, 37.86.3506, ~~37.86.3507~~ and 37.86.3515, a

practitioner is a physician, mid-level practitioner, licensed psychologist, licensed clinical social worker or licensed professional counselor.

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

37.86.3507 CASE MANAGEMENT SERVICES FOR ADULTS WITH SEVERE DISABLING MENTAL ILLNESS, PROVIDER REQUIREMENTS (1) and (2) remain the same.

(3) Care coordination case management services for adults with severe disabling mental illness must be provided by either a licensed mental health center ~~or a practitioner, as defined in ARM 37.86.3505,~~ enrolled in the Montana medicaid program as a case management services provider.

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

37.86.3515 CASE MANAGEMENT SERVICES FOR ADULTS WITH SEVERE DISABLING MENTAL ILLNESS, REIMBURSEMENT (1) through (4) remain the same.

(5) The department will pay the lower of the following for case management services for adults with severe disabling mental illness:

(a) remains the same.

(b) the amount specified in the department's medicaid mental health fee schedule. ~~the department fee schedule contained in this rule.~~

~~(6) The fee schedule for case management services for adults with severe disabling mental illness is the following:~~

~~(a) for intensive case management services for adults with severe disabling mental illness, \$224.00 per full month and \$112.00 per half month per recipient; and~~

~~(b) for care coordination case management services for adults with severe disabling mental illness:~~

~~(i) for individual care coordination services, \$8.50 per 15-minute unit of service; and~~

~~(ii) for group care coordination services, \$2.50 per 15-minute unit of service per participant.~~

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

37.86.3705 CASE MANAGEMENT SERVICES FOR YOUTH WITH SERIOUS EMOTIONAL DISTURBANCE, SERVICE COVERAGE (1) and (2) remain the same.

(3) Care coordination case management services for youth with serious emotional disturbance are case management services, as specified in (1), provided in accordance with these rules by a licensed mental health center ~~or a practitioner.~~ Care coordination case management services may include telephone services.

(a) For purposes of ARM 37.86.3702, ~~37.86.3705,~~

37.86.3706, ~~37.86.3707~~ and 37.86.3715, a practitioner is a physician, mid-level practitioner, licensed psychologist, licensed clinical social worker or licensed professional counselor.

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

37.86.3707 CASE MANAGEMENT SERVICES FOR YOUTH WITH SERIOUS EMOTIONAL DISTURBANCE, PROVIDER REQUIREMENTS (1) and (2) remain the same.

(3) Care coordination case management services for youth with serious emotional disturbance must be provided by either a licensed mental health center ~~or a practitioner, as defined in ARM 37.86.3705,~~ enrolled in the Montana medicaid program as a case management services provider.

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

37.86.3715 CASE MANAGEMENT SERVICES FOR YOUTH WITH SERIOUS EMOTIONAL DISTURBANCE, REIMBURSEMENT (1) through (4) remain the same.

(5) The department will reimburse for up to 3 months of medically necessary intensive case management services while a youth is authorized to receive either therapeutic youth group home services or therapeutic family care treatment services.

~~(5)~~ (6) The department will pay the lower of the following for case management services for youth with serious emotional disturbance:

(a) remains the same.

(b) the amount specified in the department's medicaid mental health fee schedule. ~~the department fee schedule contained in this rule.~~

~~(6) The fee schedule for case management services for youth with serious emotional disturbance is the following:~~

~~(a) for intensive case management services for youth with serious emotional disturbance, \$246.00 per full month and \$123.00 per half month per recipient; and~~

~~(b) for care coordination case management services for youth with serious emotional disturbance:~~

~~(i) for individual care coordination services, \$8.50 per 15-minute unit of service; and~~

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

37.88.101 MEDICAID MENTAL HEALTH SERVICES, AUTHORIZATION REQUIREMENTS (1) Prior authorization is required for all mental health services provided to a medicaid recipient under the Montana medicaid program, except:

(a) the first 24 visits in the 12 month period beginning July 1, 2002 and each 12 month period thereafter for outpatient mental health counseling services billed under Current Procedure

Terminology, 4th edition (CPT4) codes 90804, 90806, 90808, 90810, 90812, 90814, 90846, 90847, 90849, 90853, and 90857 only. For purposes of this rule, the term "visit" does not include a session with a physician for the purpose of medication management. Practitioners who believe that more than 24 sessions are medically necessary may request prior authorization for additional sessions;

(b) the first 12 visits in the period from January 11, 2002 through June 30, 2002 for outpatient mental health counseling services billed under CPT4 codes 90804, 90806, 90808, 90810, 90812, 90814, 90846, 90847, 90849, 90853, and 90857 only. Practitioners who believe that more than 12 sessions are medically necessary may request prior authorization for additional sessions; or

(c) for these other services designated by the department.  
(2) through (5) remain the same.

AUTH: Sec. 53-6-113, MCA

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

37.89.106 MENTAL HEALTH SERVICES PLAN, MEMBER ELIGIBILITY

(1) through (5)(a)(ii) remain the same.

(6) If the department determines that the average per-case cost of mental health services plan expenditures times the number of enrollees will exceed total appropriations, it will suspend enrollment of new recipients.

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

(c) no person enrolled in the MHSP on September 4, 2000, shall be determined ineligible solely as a result of the determination by the department provided for in ~~(12)~~ (6)(a).

(d) notwithstanding the provisions of ~~(12)~~ (6)(a) through (c) of this rule, the department may enroll a qualified applicant if the applicant is:

(i) through (iii) remain the same.

AUTH: Sec. 41-3-1103, 53-2-201, 53-6-113, 53-6-131, 53-6-701 and 53-6-706, MCA

IMP: Sec. 41-3-1103, 53-1-601, 53-1-602, 53-2-201, 53-6-101, 53-6-113, 53-6-116, 53-6-117, 53-6-131, 53-6-701, 53-6-705, 53-6-706, 53-21-139 and 53-21-202, MCA

37.89.114 MENTAL HEALTH SERVICES PLAN, COVERED SERVICES

(1) through (2)(g) remain the same.

(h) the therapeutic component of therapeutic youth group home care and therapeutic family care services for children and adolescents who are also covered by CHIP. ~~Room and board in therapeutic youth group homes and therapeutic youth family care is covered if the therapeutic component is covered and if funding for room and board is not available from any other source; and~~

(2)(i) through (11)(a)(ii) remain the same.

AUTH: Sec. 41-3-1103, 52-1-103, 53-2-201, 53-6-113, 53-6-131 and 53-6-706, MCA

IMP: Sec. 41-3-1103, 52-1-103, 53-1-405, 53-1-601, 53-1-602, 53-2-201, 53-6-101, 53-6-113, 53-6-116, 53-6-701, 53-6-705, 53-6-706, 53-21-139 and 53-21-202, MCA

4. The Department of Public Health and Human Services is facing imminent and substantial budget deficits in the Montana Medicaid program and Mental Health Services Plan (MHSP) for state fiscal year (SFY) 2002 and the rest of the biennium. Under current rules, expenditures will exceed appropriations before June 30, 2002, the end of SFY 2002. 17-8-104, MCA subjects public officials to civil penalties if they fail to keep expenditures, obligations and liabilities within the amount of the legislative appropriation as required by 17-8-103, MCA. If the Department failed to take immediate action to slow the rate of Medicaid and MHSP expenditures and funding was subsequently exhausted, the Department would be forced to eliminate or substantially curtail coverage for mental health services and eliminate eligibility for groups for whom coverage is not mandated by the federal Medicaid law. The elimination or substantial curtailment of Medicaid mental health services, eligibility, MHSP services or MHSP eligibility would immediately imperil the public health, safety and welfare.

Therefore, in addition to other cost-saving measures, the Department adopts these temporary emergency rules to prevent the imminent peril to the public health, safety and welfare that would result from elimination or substantial curtailment of Medicaid mental health services, eligibility, MHSP services and MHSP eligibility. The temporary emergency rules make immediate rate reductions and adjustments to the Montana Medicaid mental health program and MHSP. The expected effect of these emergency rules would be to reduce total state and federal expenditures for Medicaid mental health services and MHSP services in Montana by approximately \$1,840,112 in the state fiscal year ending June 30, 2002. Of the total, state expenditures would be reduced a total of approximately \$629,093. The Department believes the savings from these emergency rule amendments will allow the Department to stay within legislative appropriations and thus avoid severe reductions in Medicaid mental health services and MHSP services to recipients or the elimination of some or all services. However, if these rules are not effective in bringing expenditures within appropriations, the Department will initiate additional cost saving measures.

The persons affected by these emergency rules are 900 mental health practitioners and other enrolled providers. The Department does not anticipate adverse effects upon the recipients of Medicaid or MHSP services.

The Department published notice of its intent to adopt these emergency rules in the newspapers of all cities in Montana with a population of 50,000 or more on December 26 and 27, 2001. The Department also posted a copy on its Internet home page. The notice invited providers, beneficiaries and their

representatives, and other concerned Montana residents to submit written data, views or arguments concerning the emergency rules. The version posted on the Internet clarified the Department's January 1, 2002 amendment of provider rates so that pharmacies would know that psychotropic drug reimbursement rates would be reduced by 2.6%. The Department considered the comments it received and will make full, detailed, written responses during the standard rulemaking procedure.

The temporary emergency rules make the following changes to the Montana Medicaid mental health services rules and MHSP rules:

a. ARM 37.86.3505, 37.86.3507, 37.86.3705 and 37.86.3707 are amended to provide that care coordination case management services for adults with severe disabling mental illness and youth with serious emotional disturbance may only be provided by a licensed mental health center enrolled in the Montana Medicaid program as a case management provider.

Physicians, mid-level practitioners, licensed psychologists, licensed clinical social workers and licensed clinical professional counselors who are not employed by a licensed mental health center will not be reimbursed for care coordination case management after January 11, 2002.

b. ARM 37.88.101 is amended so that outpatient therapy services will be limited to 24 sessions per year. This will include CPT4 codes 90804, 90806, 90808, 90810, 90812, 90814, 90846, 90847, 90849, 90853, and 90857. For purposes of this restriction, a year is defined as July 1 through June 30. The limit applies to all providers, including mental health centers, and will be applied to both children and adults. Since this limitation is effective January 11, 2002, 12 sessions may be provided without prior authorization through June 30, 2002. Visits with a physician for the purpose of medication adjustment are not counted for purposes of this limitation.

Practitioners who believe that additional sessions are medically necessary may request authorization from the Department's utilization review contractor. The criteria for determination of medical necessity and specific instructions on how to submit a request will be posted on the Department's Internet home page under the provider fee schedules at '[www.dphhs.state.mt.us/divisions/hcs/provider\\_fee\\_schedule.htm](http://www.dphhs.state.mt.us/divisions/hcs/provider_fee_schedule.htm)'.

c. ARM 37.86.3715 is amended to provide that the Department will reimburse for up to three months of medically necessary intensive case management services for youth when they are simultaneously authorized for therapeutic group home care or therapeutic family care. Intensive case management may be provided to assist with transition into the facility or as part of planning prior to a youth's discharge from the service. The restriction does not apply to care coordination case management for youth in this level of care.

d. The revised Medicaid mental health fee schedule is adopted by reference at ARM 37.86.2207 and is amended as follows:

(i) The Department will discontinue payment under the fee schedule of room and board charges through ACS/Consultec for Medicaid and MHSP youth in therapeutic group homes or in therapeutic family care who are not otherwise in the custody of the State of Montana. The Department will contract with individual providers for the period through June 30, 2002 to receive a block grant as a subsidy for the cost of room and board for Medicaid and MHSP eligible youth with no other source of funding for room and board who have been authorized for therapeutic living services by the Department's utilization review contractor. This is a reduction, but not an elimination of reimbursement for this cost component.

(ii) Independent practitioners may not be reimbursed for care coordination case management (CPT4 codes Z0660, Z0661, Z0662 and Z0663).

(iii) Reimbursement increases for mental health adult group home (Z0652), adult foster care (Z0653), community-based psychiatric rehabilitation and support (Z0634 and Z0635).

(iv) All codes and reimbursement rates for room and board for therapeutic youth group home and therapeutic youth family care (Z0690, Z0691, Z0692, Z0693) have been removed from the fee schedule. Reimbursement will be provided by contract with providers.

(v) Fee schedules related to partial hospitalization for the period prior to April 27, 2001 have been deleted.

(vi) Contracted services now includes room and board services for therapeutic youth group homes and therapeutic youth family care.

ARM 37.86.2207 is amended to provide that the Department will not reimburse for two services that duplicate one another on the same day. This includes outpatient therapy or community-based psychiatric rehabilitation and support services provided on the same day as either comprehensive school and community treatment or full day adult or youth day treatment. A matrix specifying the applicable billing codes is adopted by reference and is available at the Department's Internet home page or by writing the Department of Public Health and Human Services, Addictive and Mental Disorders Division, 555 Fuller, P.O. Box 202905, Helena, MT 59620-2905.

e. Clinical management guidelines for therapeutic living and youth residential treatment have been amended in ARM 37.86.2219 and 37.86.2221 to reflect a stricter interpretation

of the use of federal Medicaid funds for medically necessary treatment provided out of the home. Copies of the revised guidelines will be mailed to providers and posted on the Department's Internet home page at [www.dphhs.state.us](http://www.dphhs.state.us) under the heading "Legal".

f. The Department is adopting a new rule that reduces the payment for services provided by mental health practitioners by 2.6% for the period extending through June 30, 2002. For purposes of this fee reduction, practitioners include psychiatrists, psychologists, licensed social workers, and licensed professional counselors. The fee reduction will apply to these provider types both in private practice as well as those providing services through a licensed mental health center. A January 1, 2002 emergency rule amendment adopted by the Department reduced reimbursement for psychotropic drugs and other Medicaid reimbursement rates by 2.6%. If both reduction rules happen to apply to a single service, the Department will not reduce reimbursement for that service by more than 2.6%. If there are sufficient funds available as a result of these reductions for State fiscal year 2002, the providers of services affected by this rule may be eligible for a rebate.

Incorrect internal references in ARM 37.89.106 were amended to reflect the current structure of the rule.

5. The temporary emergency amendment will be effective January 11, 2002.

6. A standard rulemaking procedure will be undertaken by the Department prior to the expiration of the temporary emergency rule changes.

7. Interested persons may submit their data, views or arguments during the standard rulemaking process. The Department also maintains lists of persons interested in receiving notice of administrative rule changes. These lists are compiled according to subjects or programs of interest. For placement on the mailing list, please write to Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210, submit by facsimile (406)444-1970 or by electronic mail via the Internet to [dphhslegal@state.mt.us](mailto:dphhslegal@state.mt.us).

Dawn Sliva  
Rule Reviewer

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

Certified to the Secretary of State January 11, 2002.

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

In the matter of the adoption ) NOTICE OF ADOPTION  
of New Rule I pertaining to )  
the licensure of minimum )  
standards for critical access )  
hospital (CAH) )

TO: All Interested Persons

1. On October 11, 2001, the Department of Public Health and Human Services published notice of the proposed adoption of the above-stated rule at page 1956 of the 2001 Montana Administrative Register, issue number 19.

2. The Department has adopted the following rule as proposed with the following changes from the original proposal. Matter to be added is underlined. Matter to be deleted is interlined.

RULE I [37.106.704] MINIMUM STANDARDS FOR A CRITICAL ACCESS HOSPITAL (CAH) (1) A critical access hospital shall comply with the conditions of participation for critical access hospitals as set forth in 42 CFR 485 Subpart F, October 2001. The department hereby adopts and incorporates by reference 42 CFR 485 Subpart F, October 2001. A copy of the cited ~~rules~~ requirements is available at ~~from~~ the Department of Public Health and Human Services, Quality Assurance Division, 2401 Colonial Dr., P.O. Box 202953, Helena, MT 59620-2953.

(2) A critical access hospital shall provide emergency services meeting the emergency needs of patients in accordance with acceptable standards of practice, including the following standards:

(a) Emergency services must be organized under the direction of a practitioner member of the medical staff.

(b) The services must be integrated with other departments of the facility.

(c) The medical staff must establish and assume continuing responsibility for policies and procedures governing medical care provided in the emergency services.

~~(2)~~ (3) A facility qualifies as a necessary provider of health care services to residents of the area where the facility is located if the facility is either located in a county with fewer than six residents a per square mile or is a state-licensed facility ~~located more than 35 road miles from the nearest hospital within the boundaries of an Indian reservation.~~

~~(4)~~ 24 hour emergency care service provided by a facility is determined to be necessary for ensuring access to emergency care services in the area served by the facility if, in accordance with a written policy, the facility ensures that: the 24 hour emergency care provided by the facility satisfies the requirements for emergency services for Medical Assistance

~~Facilities set forth in ARM 16.32.399G including compliance with the rules governing emergency medical services, subchapters 2, 3, and 4 of ARM Title 16, chapter 30.~~

~~(4) The Department hereby adopts and incorporates by reference ARM 16.32.399(G)(1)(a), (b), (c) and (d) and subchapters 2, 3 and 4 of ARM Title 16, Chapter 30. A copy of the cited rules is available at the department's licensure bureau.~~

(a) A physician, nurse practitioner, or physician's assistant is on duty or on call and physically available at the facility within 1 hour at all times, unless the procedure described in (4)(b) is adopted and implemented;

(b) If the facility cannot ensure that a practitioner is available within 1 hour after a patient first contacts the facility, within that hour, the director of nursing or alternate must:

(i) evaluate the condition of the patient;

(ii) determine whether a practitioner can reach the facility before the hour is up; and

(iii) if the practitioner will not be available, arrange for the transport of the patient to another facility capable of providing the appropriate level of care.

AUTH: Sec. 50-5-233, MCA

IMP: Sec. 50-5-233, MCA

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

COMMENT #1: A commentor requested that licensed facilities located within the geographic boundaries of an Indian reservation be included in the definition of facilities which are a necessary provider of health care services to residents of the area where the facility is located.

RESPONSE: The Department agrees with the comment and has amended the rule accordingly.

COMMENT #2: A commentor requested that 24 hour emergency services provided by a facility be determined to be necessary for ensuring access to emergency care services in the area served by the facility if the emergency services provided by the facility comply with ARM 16.32.398(1)(c)(iii) and (iv) and ARM 16.32.399G(1)(a) through (c).

RESPONSE: The Department agrees with the comment and has amended the rule accordingly.

Dawn Sliva  
Rule Reviewer

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

Certified to the Secretary of State January 18, 2002.

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

In the matter of the amendment) CORRECTED NOTICE OF  
of ARM 42.23.413 relating to ) AMENDMENT  
carryovers of net operating )  
losses for corporation )  
license taxes )

TO: All Concerned Persons:

1. On December 20, 2001, the Department published a notice at page 2468 of the 2001 Montana Administrative Register, Issue No. 24, of the amendment of ARM 42.23.413 relating to carryovers of net operating losses for corporation license taxes.

2. The reason for the correction is text for this rule was previously amended as proposed at page 1600 of the 2001 Montana Administrative Register, Issue No. 16 and adopted on page 2046 of Issue No. 19 and those amendments were not incorporated into the proposal notice shown in Issue No. 20. The corrected rule amendment reads as follows:

42.23.413 CARRYOVERS OF NET OPERATING LOSSES (1) through (3) remain the same.

(4) For taxable periods beginning after December 31, 1988, a taxpayer may elect to forego the entire carryback period. ~~If the election is made, the loss may be carried forward seven taxable periods. The election must be made on or before the due date of the return, including any extension of time, for the tax year of the net operating loss for which the election is to be in effect. The election is irrevocable for the year made.~~ Montana corporation license tax form CLT-4 provides an area to perfect this election. When form CLT-4 is filed with the department, the election must be clearly marked in the area provided on that form. If no indication is made in the area provided on form CLT-4, the net operating loss will be carried back and applied as provided in (1) above. For state purposes, an election to forego a federal net operating loss carryback provision will not be accepted as a valid election.

AUTH: Sec. 15-31-501, MCA

IMP: Sec. 15-31-114, MCA

3. Replacement pages for the corrected notice of amendment were submitted to the Secretary of State on December 31, 2001.

4. An electronic copy of this Correction Notice is available through the Department's site on the World Wide Web at [http://www.state.mt.us/revenue/rules\\_home\\_page.htm](http://www.state.mt.us/revenue/rules_home_page.htm), under the Notice of Rulemaking section. The Department strives to make the electronic copy of this Correction 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 website accessible at all times, concerned persons should be aware that the website may be unavailable during some periods, due to system maintenance or technical problems.

/s/ Cleo Anderson  
CLEO ANDERSON  
Rule Reviewer

/s/ Kurt G. Alme  
KURT G. ALME  
Director of Revenue

Certified to Secretary of State January 18, 2002

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

In the matter of the ) NOTICE OF AMENDMENT  
amendment of ARM 42.29.101, )  
42.29.103, 42.29.104 and )  
42.29.111 relating to universal) system benefits credits )

TO: All Concerned Persons

1. On November 8, 2001, the department published notice of the proposed amendment of the above-stated rules relating to universal system benefits credits at page 2216 of the 2001 Montana Administrative Register, issue no. 21.

2. A public hearing was held on November 29, 2001, where oral and written comments were received. The comments received during and subsequent to the hearing are summarized as follows along with the response of the department:

COMMENT NO. 1: Deb Young, Montana Power Company, testified at the hearing and suggested that ARM 42.29.111 should be amended but prior to the close of comment, she supplemented her testimony with written comments withdrawing her request. She stated that upon further review it appears the rule appropriately references 69-8-402, MCA, regarding qualifying measures related to the "amortized or non-amortized portions of expenditures for the purchase of power" for universal benefits activities and the deletion of 42.29.111(5) is acceptable.

RESPONSE NO. 1: The department appreciates the comments and will adopt the rule as proposed deleting (5) of ARM 42.29.111.

COMMENT NO. 2: Gary Wiens, representing the Montana Electric Cooperatives' Association, testified in favor of deleting the text in ARM 42.29.111(5) because the present text is in direct conflict with the law as amended by the 2001 Legislature. Deleting this language allows utilities to receive USBP credits for any new projects that are amortized. The intent of the Legislature is to allow amortized projects going forward to receive the credits for debts incurred in a prior year. This amendment makes the rule consistent with the law.

RESPONSE NO. 2: As noted in Response No. 1 above, the department will adopt ARM 42.29.111 with the proposed amendment deleting (5).

COMMENT NO. 3: Mary Whittinghill, representing the Montana Taxpayers Association and Stan Kaleczyc both testified that they have a concern with the amendment to ARM 42.29.103(2). They stated that challenges have to be made by a certain date so the publication date is an important factor and should not be changed. The current rule text provides the correct statutory

application. They both recommended that the department leave the rule in its current form.

RESPONSE NO. 3: Upon further review, the department agrees with the comments of Ms. Whittinghill and Mr. Kaleczyc. The department was attempting to reduce the number of publications that were required because it has been difficult to meet the 10-day turnaround period. The rule will be further amended to increase the time the department has to publish the notice by ten additional days, but will continue to publish the notice after each annual report is received rather than once a year.

COMMENT NO. 4: Donald Quander, attorney with the law firm Holland and Hart, submitted written testimony regarding the proposed amendment to ARM 42.29.103 and 42.29.104. He stated that the revisions to the claim procedure and challenge procedures are inconsistent with the underlying statute and opposed the changes. He stated that the proposed amendments would be a disincentive to early filing of reports, and thus could increase the likelihood of untimely filings. However, he recognizes the department's concern with respect to timing and publication deadlines. Therefore, does not object to the revisions in the initial publication dates, consistent with the statute and expeditious process that would promote administrative efficiencies.

RESPONSE NO. 4: The department appreciates Mr. Quander's comments and as noted in Response No. 3, has amended the rule to address his concerns along with those stated in Comment No. 3.

3. As a result of the comments received the department amends ARM 42.29.103 and 42.29.104 with the following amendments:

42.29.103 CLAIM PROCEDURE (1) through (3) remain the same.

(4) Publication will occur ~~15 days after the March 1 annual report deadline~~ WITHIN 20 DAYS OF THE DEPARTMENT RECEIVING THE ANNUAL REPORT. The department shall publish the public notice in the six major newspapers of general circulation for the state of Montana. Those newspapers are: Independent Record; Montana Standard; Billings Gazette; Missoulian; Bozeman Chronicle; and Great Falls Tribune.

(5) remains the same.

AUTH: Sec. 69-8-413, MCA

IMP: Sec. 69-8-402 AND 69-8-414, MCA

42.29.104 CHALLENGE AND REVIEW PROCEDURE (1) Any interested person may file comments challenging a claim. A challenge must include supporting documentation. A challenge of any claimed credit must be received within 60 days of the ~~initial publication date~~ DEPARTMENT'S RECEIPT OF THE CREDIT CLAIMANT'S ANNUAL REPORTS. The 60 days does not begin to run until the department ~~publishes the claimant's annual report~~

RECEIVES THE CLAIMANT'S ANNUAL REPORTS or a motion for protective order is determined, whichever occurs later.

(2) through (5) remain the same.

AUTH: Sec. 69-8-413, MCA

IMP: Sec. 69-8-402 and 69-8-414, MCA

4. The department adopts ARM 42.29.101 and 42.29.111 as proposed.

5. An electronic copy of this Adoption Notice is available through the Department's site on the World Wide Web at [http://www.state.mt.us/revenue/rules\\_home\\_page.htm](http://www.state.mt.us/revenue/rules_home_page.htm), under the Notice of Rulemaking section. 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 website accessible at all times, concerned persons should be aware that the website may be unavailable during some periods, due to system maintenance or technical problems.

/s/ Cleo Anderson

CLEO ANDERSON

Rule Reviewer

/s/ Kurt G. Alme

KURT G. ALME

Director of Revenue

Certified to Secretary of State January 18, 2002

VOLUME NO. 49

OPINION NO. 14

SCHOOL DISTRICTS - Abandonment of elementary school district;  
SCHOOL DISTRICTS - Attachment of abandoned district to  
contiguous district;  
STATUTORY CONSTRUCTION - Construing plain meaning of words of  
statute;  
STATUTORY CONSTRUCTION - Construing statute as a whole and  
giving effect to intent of legislature;  
MONTANA CODE ANNOTATED - Sections 10-6-502, 20-6-209;  
OPINIONS OF THE ATTORNEY GENERAL - 14 Op. Att'y Gen. 126  
(1931).

HELD: An elementary school district that has not operated a  
school for three consecutive school years has been  
abandoned pursuant to Mont. Code Ann. § 20-6-209 and may  
not petition to reopen the school under Mont. Code Ann.  
§ 20-6-502.

January 10, 2002

Mr. Richard A. Malagisi  
Sweet Grass County Attorney  
P.O. Box 1188  
Big Timber, MT 59011-1188

Dear Mr. Malagisi:

You have presented three questions for my opinion. Upon  
review of your questions, I have determined that an answer to  
the following question will resolve all three. Thus, I have  
rephrased your question as follows:

May an elementary school which has not been operated  
for three consecutive years, and which is in an  
elementary district that has been abandoned pursuant  
to Mont. Code Ann. § 20-6-209, be reopened at the  
request of the abandoned district pursuant to Mont.  
Code Ann. § 20-6-502?

The following background information is taken from your letter  
of request and from a memo submitted by the Office of Public  
Instruction (OPI). The Bridge school district was an  
elementary school district in Sweet Grass County. Within the  
Bridge school district, the only operating school was the  
Bridge School. In August 1998 the Bridge School was closed.  
The school did not operate during the school fiscal years of  
1998-99, 1999-2000, or 2000-01.

On May 29, 2001, during the Bridge School's third year of non-  
operating status, the Superintendent of Public Instruction  
received a petition from the Sweet Grass County Superintendent

of Schools requesting that the Bridge School be reopened. OPI denied the petition to reopen the school.

A letter from Deputy Superintendent William Cooper to the Sweet Grass County Commissioners outlines the reason for the denial. Citing Mont. Code Ann. § 20-6-209, Mr. Cooper states, "However, if a school district is not operated for three consecutive fiscal years, then the County Superintendent must declare the district abandoned." This opinion arises out of that denial.

You have argued that the abandonment provisions found at Mont. Code Ann. § 20-6-209 and the provisions governing opening or reopening elementary schools found at section 20-6-502 should be read independently of one another and that the abandonment provisions should not preclude the reopening of the Bridge School. I cannot agree with your conclusion.

Section 20-6-209 outlines when the abandonment of an elementary school district is required. It provides:

20-6-209. Elementary district abandonment. (1) The county superintendent shall declare an elementary district to be abandoned and order the attachment of the territory of the district to a contiguous district of the county when:

(a) a school has not been operated by a district for at least 180 days under the provisions of 20-1-301 for each of 3 consecutive school fiscal years or a lesser number of days as approved by the board of trustees under the provisions of 20-9-806; or

(b) there is an insufficient number of residents who are qualified electors of the district that can serve as the trustees and clerk of the district so that a legal board of trustees can be organized.

(2) The county superintendent shall notify the elementary district that has not operated a school for 2 consecutive years before the first day of the third year that the failure to operate a school for 180 days or a lesser number of days than approved by the board of trustees under the provisions of 20-9-806 during the ensuing school fiscal year constitutes grounds for abandonment of the district at the conclusion of the succeeding fiscal school year. Failure by the county superintendent to provide the notification does not constitute a waiver of the abandonment requirement prescribed in subsection (1)(a).

(3) Any abandonment under subsection (1)(a) becomes effective on July 1. Any abandonment of an

elementary district under subsection (1)(b) becomes effective immediately on the date of the abandonment order.

The county superintendent's duty to declare an elementary district to be abandoned is a mandatory duty pursuant to subsection (1) which cannot be waived pursuant to subsection (2). Because the Bridge school district did not operate a school for three consecutive fiscal school years, the abandonment provisions of section 20-6-209 apply.

You have argued that I should apply Mont. Code Ann. § 20-6-502, which sets forth the process for opening or reopening an elementary school, independently of the abandonment provisions found in Mont. Code Ann. § 20-6-209. This approach, however, would not be in accordance with the well-accepted principles of statutory construction that must apply when interpreting Montana statutes.

The most common of these canons requires that if the intention of the legislature can be determined from the plain meaning of the words used, I may go no further and may apply no other means of interpretation. State v. Marker, 302 Mont. 380, 386, 15 P.3d 373, 377 (2000) (citations omitted). And, as the Montana Supreme Court has noted, when interpreting various statutes together I must adhere to the following:

In construing a statute, this Court must read and construe each statute as a whole so as to avoid an absurd result and to give effect to the purpose of the statute. Indeed[, s]tatutes do not exist in a vacuum, [but] must be read in relationship to one another to effectuate the intent of the statutes as a whole. This Court will, if possible, construe statutes so as to give effect to all of them. When more than one statute applies to a given situation, such construction, if possible, is to be adopted as will give effect to all.

State v. Marker, 302 Mont. 380, 387, 15 P.3d 373, 377 (2000) (citing Skinner Enters. v. Board of Health, 286 Mont. 256, 271-72, 950 P.2d 733, 742 (1997)).

Applying these basic principles, I do not agree with your argument that the abandonment statutes were not meant to preclude an abandoned elementary school district from petitioning to reopen a school. Section 20-6-502 governs the process for reopening an elementary school, while section 20-6-209 outlines when an elementary district must be abandoned. As the Supreme Court noted, section 20-6-502 cannot be read in a vacuum; I must take into consideration the abandonment provisions in section 20-6-209.

Interpreting the provisions of section 20-6-209, I must give the words employed therein their usual meaning unless it is apparent from the context that the legislature intended a different meaning. Montana Beer Retailers Protective Ass'n v. State Bd. of Equalization, 95 Mont. 30, 34, 25 P.2d 128, 130 (1933). In this instance, the legislature did not define the term *abandonment*. However, the usual meaning of the word *abandon* or *abandonment* typically implies an irreversible event. As defined by *Webster's New International Dictionary* (2d ed. 1934), the term *abandon* means "to relinquish or give up with the intent of never again resuming or claiming one's rights or interests in."

*Black's Law Dictionary* provides a similar definition: "The surrender, relinquishment, disclaimer, or cession of property or of rights. Voluntary relinquishment of all right, title, claim and possession, with the intention of not reclaiming it." *Black's Law Dictionary* 2 (6th ed. 1990).

Thus, analyzing the plain meaning of the words used in section 20-6-209, I conclude that where a school district has not operated a school for three consecutive school fiscal years, the abandonment outlined in that section is a permanent one. This construction gives effect to both section 20-6-209 and section 20-6-502. An elementary school may be reopened in accordance with section 20-6-502 so long as the petitioning district has operated a school for 180 days in one of the three previous consecutive school fiscal years. However, section 20-6-502 presumes the existence of a district. If a school district, such as the Bridge school district in this instance, has not operated a school for at least 180 days for each of the three previous consecutive school fiscal years, the district must be abandoned by the county superintendent. Thus, the Bridge School District cannot request the reopening of the school under section 20-6-502.

While the Supreme Court has considered issues surrounding the abandonment of an elementary school district, it has not directly addressed the issue you have raised. However, the Court has acknowledged the legislature's intent to abandon school districts that have not been in operation. In State ex rel. McDonnell v. Musburger, 111 Mont. 579, 583, 111 P.2d 1038, 1040 (1941) (citing 14 Op. Att'y Gen. 126 (1931) at 127), the Court cited to an Attorney General's Opinion in which then-Attorney General L. A. Foot stated: "In my opinion . . . it was clearly the intention of section 970 [now codified at Mont. Code Ann. § 20-6-209], after its amendment by chapter 65 of the twenty-first legislative assembly, to require all districts to be abandoned that had not actually conducted school therein." Nothing in section 20-6-209 or section 20-6-502 indicates that this overriding intent of the legislature has changed.

I would also note, however, that section 20-6-209 requires the county superintendent to attach the territory of the abandoned district, in this case the Bridge school district, to another contiguous district. Nothing in section 20-6-209 would prevent this contiguous district from petitioning to reopen the Bridge School if the conditions of section 20-6-502 are satisfied.

THEREFORE, IT IS MY OPINION:

An elementary school district that has not operated a school for three consecutive school years has been abandoned pursuant to Mont. Code Ann. § 20-6-209 and may not petition to reopen the school under Mont. Code Ann. § 20-6-502.

Very truly yours,

/s/ Mike McGrath

MIKE McGRATH  
Attorney General

mm/as/dm

VOLUME NO. 49

OPINION NO. 15

LEGISLATURE - Dual officeholding by member of legislature;  
PUBLIC OFFICE - Dual officeholding by member of legislature;  
PUBLIC OFFICE - Eligibility for Board of Review;  
REVIEW, BOARD OF - Dual officeholding by member of legislature;  
REVIEW, BOARD OF - Eligibility for Board of Review;  
MONTANA CONSTITUTION - Article V, section 9;  
MONTANA CODE ANNOTATED - Sections 5-2-104, 30-16-301, -302;  
OPINIONS OF THE ATTORNEY GENERAL - 40 Op. Att'y Gen. No. 46  
(1984), 35 Op. Att'y Gen. No. 90 (1974), 19 Op. Att'y Gen. No.  
155 (1941), 8 Op. Att'y Gen. 393 (1920).

- HELD: 1. The President of the Senate and the Speaker of the House are prohibited by article V, section 9 of the Montana Constitution and by Mont. Code Ann. § 5-2-104 from appointing a legislator as a member of the Board of Review as provided by Mont. Code Ann. § 30-16-302.
2. Designating a legislator as a nonvoting member does not circumvent this prohibition.
3. Under Mont. Code Ann. § 30-16-301, the President and the Speaker can appoint a nonlegislator as a member of the Board.

January 14, 2002

Mr. Kurt G. Alme  
Director  
Montana Department of Revenue  
P.O. Box 5805  
Helena, MT 59604-5805

Dear Mr. Alme:

You have requested my opinion concerning the following question:

Does the appointment of a legislator as a member of the Board of Review, under Mont. Code Ann. § 30-16-302, conflict with article V, section 9 of the Montana Constitution and Mont. Code Ann. § 5-2-104, and if so, can a nonvoting legislator be appointed?

Your question requires an interpretation of article V, section 9 of the Montana Constitution and Mont. Code Ann. § 5-2-104. Article V, section 9 provides:

No member of the legislature shall, during the term for which he shall have been elected, be appointed to any civil office under the state.

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Article V, section 9, is nearly identical to article V, section 7 of the 1889 Montana Constitution. Further, 1972 Constitutional Convention notes indicate that the delegates meant to retain the provision and that only minor changes in grammar were made to this section. 40 Op. Att'y Gen. No. 46 (1984) at 184 should be consulted for a history of the constitutional provision.

Mont. Code Ann. § 5-2-104 provides, in pertinent part:

- (1) No member of the legislature may, during the term for which he was elected, be appointed to any civil office under the state.

Since the Montana Constitution and Montana law clearly prohibit legislators from being appointed to civil office, the issue becomes whether membership on the Board of Review would qualify as a civil office.

In 1981, the legislature enacted the Montana Small Business Licensing Coordination Act (Act) codified at Mont. Code Ann. § 30-16-101. The Act outlined a plan for streamlining the registration and licensing procedures of certain state agencies. See Mont. Code Ann. § 30-16-301. This plan is commonly referred to as the One-Stop Licensing Program (Program). A Board of Review (Board) was created to provide policy direction to the Department of Revenue (Department), which is charged with implementing and operating the Program. See Mont. Code Ann. § 30-16-302.

The 2001 Legislature attached the Board administratively to the Department. See Mont. Code Ann. § 30-16-302(5). Section 30-16-302 provides in pertinent part:

The board of review includes the directors of the departments of agriculture, labor and industry, environmental quality, livestock, revenue, justice, and public health and human services, the secretary of state, a member appointed by the president of the senate, and a member appointed by the speaker of the house.

Mont. Code Ann. § 30-16-302 (emphasis added).

The Board is directed by the legislature to:

- (3) . . . meet at the call of the presiding officer at least once each calendar quarter to:
  - (a) establish interagency policy and guidelines for the plan;
  - (b) review findings, status, and problems of system operations and recommend courses of action; and

- (c) receive reports from industry and agency task forces that the board of review may request to inquire into particular issues.
- (4) The board of review may implement a plan for streamlined registration and licensing to include licenses not specified in 30-16-301, as provided in 30-16-303.

Mont. Code Ann. § 30-16-302.

The subject of dual officeholding and what constitutes a "public office of a civil nature" has been the subject of several past Attorney General's Opinions. As cited in each opinion, the most significant Montana case on the subject is Barney v. Hawkins, 79 Mont. 506, 257 P. 411 (1927). In Barney, the Montana Supreme Court set forth the following five-part test for determining whether a certain position qualifies as a "public office of a civil nature" and is thereby affected by the above-cited constitutional and statutory language.

- (1) It must be created by the Constitution or by the Legislature or created by a municipality or other body through authority conferred by the Legislature;
- (2) it must possess a delegation of a portion of the sovereign power of government, to be exercised for the benefit of the public;
- (3) the powers must be defined, directly or impliedly, by the Legislature or through legislative authority;
- (4) the duties must be performed independently and without control of a superior power, other than the law, unless they be those of an inferior or a subordinate office, created or authorized by the Legislature, and by it placed under general control of a superior body;
- (5) it must have some permanency and continuity, and not be only temporary or occasional. In addition, in this state, an officer must take and file an official oath, and give an official bond, if the latter be required by proper authority.

Barney, 79 Mont. at 528-29.

Applying Barney, the following positions were found to be civil offices under article V, section 9 of the Montana Constitution: a county high school trustee, 8 Op. Att'y Gen. at 393 (1920), a member of a local government study commission, 35 Op. Att'y Gen. No. 90 at 252 (1974), and a member on the State Soil Conservation Committee, 19 Op. Att'y Gen. No. 155 (1941).

With regard to whether a legislator may be appointed as a member to the Board, the same legal analysis set forth in Barney and its progeny applies. Under Barney, the first prong is met if the position is created by the legislature. Here, the Board was created by the legislature's enactment of Mont. Code Ann.

§ 30-16-302. The second prong of Barney requires that some portion of sovereign power be delegated for the benefit of the public. Since the Board has administrative rule-making authority under Mont. Code Ann. § 30-16-302, it clearly has been delegated executive powers designed to benefit the public, specifically small business owners.

Barney's third prong requires that the powers to be discharged must be defined by the legislature. The legislature clearly defined the duties of Board members in Mont. Code Ann. § 30-16-302. The fourth prong provides that duties must be performed without supervision. Though statute provides for the appointment of a presiding officer, the officer does not supervise the Board nor does the statute provide for any supervising body. Mont. Code Ann. § 30-16-301. The fifth prong provides that the position must have permanency and continuity. The statutes provide no limit on the Board's duration, thus it exists for a permanent and continuous duration. Finally, though an oath of office is not a requirement for Board membership, past Attorney General's Opinions have reached the conclusion that a civil office exists without addressing the requirement that there be an actual oath of office. See 35 Op. Att'y Gen. No. 90 (1975); 19 Op. Att'y Gen. No. 155 (1941). Accordingly, membership on the Board qualifies as an appointment to civil office because it meets the five requirements set forth in Barney.

You also inquire whether the President and the Speaker can appoint a legislator as a "non-voting member" of the Board. I note initially that no statutory authority exists for the appointment of "non-voting members" of this Board, nor do the statutes set forth a requirement that Board members be allowed to vote at all. Thus, while the legislative leadership certainly has the power to designate members of the legislature to attend and participate in Board meetings, as any member of the public might, see Mont. Code Ann. tit. 2, ch. 3, there does not appear to be any authority supporting the idea that legislators could be designated as "nonvoting members" of the Board.

Even if "nonvoting member" status existed, in my opinion, the result of the inquiry would not change. Arguably, less sovereign power is delegated to a nonvoting member under the second prong of the Barney test; however, the nonvoting member is still able to participate and exert influence in Board business. Thus, the second prong is still met. Further, the statutes provide no exception for nonvoting appointments to civil offices. The rules of statutory construction require me "simply to ascertain and declare what is in terms or in substance contained therein, not to insert what has been omitted or to omit what has been inserted." Mont. Code Ann. § 1-2-101. Therefore, the President and the Speaker are also prohibited from appointing a "nonvoting" legislator as a member of the Board.

The President and the Speaker can appoint a nonlegislator as a member of the Board. The Board includes "a member appointed by the president of the senate, and a member appointed by the speaker of the house." Mont Code Ann. § 30-16-302 (emphasis added). *Member* refers to Board membership, not legislature membership. In construing a statute, a court must look at "each statute as a whole so as to avoid an absurd result 'and to give effect to the purpose of the statute.'" Infinity v. Dodson, 2000 MT 287, ¶ 46, 302 Mont. 209, 14 P.3d 487 (2000) (citing Christenot v. Department of Commerce, 272 Mont. 396, 401, 901 P.2d 545, 548 (1995)). This "whole statute interpretation" is based upon the idea that a statute is passed as a whole and should not be read as a "series of unrelated and isolated provisions." Gustafson v. Alloyd Co., 513 U.S. 561, 570 (1995). Further, identical words used in different parts of the same act are intended to have the same meaning. Id. (citing Department of Rev. of Ore. v. ACF Industries, Inc., 510 U.S. 332, 342 (1994)).

In reading Mont. Code Ann. § 30-16-302 as a whole, it is clear and unambiguous. Throughout section 30-16-302, the term "member" is consistently used in reference to a "member" of the Board of Review. Thus "member" means a member of the Board and the language of the entire statute supports such an interpretation. Under Mont. Code Ann. § 30-16-302, the President and Speaker can appoint a member to the Board and, as determined above, that member cannot be a legislator. Accordingly, the president and speaker can appoint a nonlegislator as a member of the Board.

THEREFORE, IT IS MY OPINION:

1. The President of the Senate and the Speaker of the House are prohibited by article V, section 9 of the Montana Constitution and by Mont. Code Ann. § 5-2-104 from appointing a legislator as a member of the Board of Review as provided by Mont. Code Ann. § 30-16-302.
2. Designating a legislator as a nonvoting member does not circumvent this prohibition.
3. Under Mont. Code Ann. § 30-16-301, the President and the Speaker can appoint a nonlegislator as a member of the Board.

Very truly yours,

/s/ Mike McGrath

MIKE McGRATH  
Attorney General

mm/pdb/dm

2-1/31/02

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VOLUME NO. 49

OPINION NO. 16

COUNTIES - Authority of board of library trustees to adopt county library budget;  
COUNTIES - Effect of repeal of numerical mill levy caps on commissioners' authority with respect to county library budget;  
COUNTY COMMISSIONERS - Effect of repeal of numerical mill levy caps on commissioners' authority with respect to county library budget;  
INTERLOCAL AGREEMENTS - Agreement between county and school district for operation of county library may include provision binding commissioners to fund budget at specified level;  
LIBRARIES - Authority of board of library trustees to adopt county library budget;  
MONTANA CODE ANNOTATED - Title 7, chapter 11, part 1; sections 22-1-304, -309(1), 15-10-420;  
MONTANA LAWS OF 2001 - Chapter 574;  
OPINIONS OF THE ATTORNEY GENERAL - 49 Op. Att'y Gen. No. 5 (2001), 48 Op. Att'y Gen. No. 3 (1999), 41 Op. Att'y Gen. No. 91 (1986).

- HELD: 1. The county commissioners are generally obligated to fund the library budget submitted by the library board within the limits set by Mont. Code Ann. § 5-10-420.
2. The county has the power to enter an interlocal agreement under which it could bind itself to fund the library budget as submitted by the library board under Mont. Code Ann. § 22-1-309(1).

January 18, 2002

Mr. John T. Flynn  
Broadwater County Attorney  
P.O. Box 96  
Townsend, MT 59644-0096

Dear Mr. Flynn:

You have requested my opinion on the following question:

Does the library board have the power to require the county commissioners to levy five mills in support of the county library?

Prior to the 2001 legislative session, this question was answered by 48 Op. Att'y Gen. No. 3 (1999), in which Attorney General Mazurek held that the county commissioners were obligated to fund the library budget at the amount set by the library board, up to the amount that would be raised by a property tax of five mills. However, in 2001 the legislature

made significant changes in the laws relating to local government budget and taxation, and these changes require a reexamination of the prior opinions in this area.

In 1986 the Montana voters adopted Initiative Measure 105, which capped the property taxes that could be assessed against real property at the amounts assessed in 1986. I-105 proved difficult to administer, and as the years passed its provisions were amended several times, culminating in the adoption by the 2001 legislature of chapter 574 of the 2001 Montana Laws.

In 49 Op. Att'y Gen. No. 5 (2001), the Attorney General discussed the statutory changes adopted by the 2001 legislature in the area of local government taxation. Chapter 574 made substantial changes that are described in detail in the opinion. In brief, those changes eliminated most of the numeric mill levy limitations for specific government purposes that existed previously. With reference to your request, the legislature amended Mont. Code Ann. § 22-1-304 to delete the former reference to a five-mill levy. As amended, the statute simply authorizes the county to levy mills for support of the library.

In place of the numeric mill levies, Mont. Code Ann. § 15-10-420, as amended by 2001 Mont. Laws, ch. 574, allows the county to levy sufficient mills to raise the amount of property tax raised in the previous year, subject to certain adjustments not pertinent here. Since the five-mill library levy has been eliminated, there is no longer a statutory basis to argue that the library board has the authority to require the commissioners to levy five mills for support of the library budget.

However, in 41 Op. Att'y Gen. No. 91 (1986), Attorney General Greely held that Mont. Code Ann. § 22-1-309(1) authorizes the library board to determine the budgetary needs of the library, and that the county commissioners lacked the power to modify the budget presented by the library board. In 48 Op. Att'y Gen. No. 3 (1999), Attorney General Mazurek reaffirmed Attorney General Greely's holding, but modified it to hold that the library board could not compel the commissioners to expend more than the amount raised by five mills.

In my opinion, the 2001 statutory changes adopted in 2001 Mont. Laws, ch. 574, did not delete the library board's authority to determine the amount of financial support required by the library, nor did they confer on the county commissioners the authority to modify the library budget submitted by the library board. The prior opinions cited above found that the library board was granted budget authority by statute under Mont. Code Ann. § 22-1-309(1), and the deletion of the five-mill levy does not alter the library board's budget authority.

While these statutes are not ambiguous in light of the prior interpretations of this office, I also note that the legislative history of the 2001 act suggests that the legislature did not intend to alter the relationship between the library board, and similar boards with budget authority, and the county commissioners with respect to budget matters. See Mins., Sen. Comm. on Local Gov't, Jan. 16, 2001, at 8 (testimony of Harold Blattie) ("The bill does not remove the authority of the local trustees of the water control district, cemetery district, etc. to determine what their mill levies are as long as they are compliant with 15-10-420."); Mins., Local Gov't Funding Select Comm., Feb. 6, 2001 ("Rep. Story mentioned that library and airport board budgets were eliminated from HB 124. Gordon Morris said they wanted to operate under present law.")

It is therefore my opinion that chapter 574 of the Laws of Montana, 2001, did not give the board of county commissioners the authority to modify the budget submitted by the library board pursuant to Mont. Code Ann. § 22-1-309(1), provided that budget fits within the provisions of Mont. Code Ann. § 15-10-420. As discussed above, that statute, as amended in 2001, limits the county to the number of mills required to raise the amount of money raised in the previous fiscal year, subject to statutory adjustments. Under the reasoning of 48 Op. Att'y Gen. No. 3 (1999), the budget which the library board may require the commissioners to adopt is limited to the amount budgeted in the prior year as adjusted pursuant to section 15-10-420.

While the above discussion describes the governing law, your situation may be affected by the interlocal agreement between Broadwater County and the Townsend School District. Broadwater County and the Townsend School District have entered an agreement under which they share fiscal responsibility for the county library. The School District has agreed to house the library and "provide funds for the general operation of the library." Interlocal Agreement, Part III.B.2. The County agreed to "provide the approved level of funding for the general operation of the library as well as for a materials budget to meet the non-school needs of the population," and to "[l]evy the maximum number of mills allowed by law for support of the public library."

The Interlocal Cooperation Act, Mont. Code Ann. tit. 7, ch. 11, pt. 1, specifically allows a county to appropriate funds for the purpose of supporting an interlocal agreement. In this case, Broadwater County has agreed to "provide the approved level of funding" for the library, and to "[l]evy the maximum number of mills allowed by law for support of the public library." Interlocal Agreement, Part III.C.1., 2. Nothing in the 2001 tax and budget amendments would prevent Broadwater County from voluntarily entering an interlocal

agreement providing that it would accept the library board's budget proposal and levy the necessary mills to fund it.

I am unable to issue an opinion as to whether the interlocal agreement between Broadwater County and the Townsend School District binds the county to fund the entire amount of the budget submitted by the library board. The language in the agreement is not entirely clear, and issues of fact may exist as to the prior interpretation of the agreement by the parties and their intention in entering the contract. An opinion from this office is not an appropriate vehicle for resolving such factual questions. I would suggest that in light of the statutory changes outlined above, the parties to the agreement should renegotiate its provisions and agree to changes that better fit the statutes as amended.

THEREFORE, IT IS MY OPINION:

1. The county commissioners are generally obligated to fund the library budget submitted by the library board within the limits set by Mont. Code Ann. § 5-10-420.
2. The county has the power to enter an interlocal agreement under which it could bind itself to fund the library budget as submitted by the library board under Mont. Code Ann. § 22-1-309(1).

Very truly yours,

/s/ Mike McGrath

MIKE McGRATH  
Attorney General

mm/cdt/dm

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;
- Department of Public Service Regulation; and
- Office of the State Auditor and Insurance Commissioner.

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.

Revenue and Transportation Interim Committee:

- Department of Revenue; and

‣ Department of Transportation.

State Administration, and Veterans' Affairs Interim Committee:

‣ Department of Administration;

‣ Department of Military Affairs; and

‣ Office of the Secretary of State.

Environmental Quality Council:

‣ Department of Environmental Quality;

‣ Department of Fish, Wildlife, and Parks; and

‣ Department of Natural Resources and Conservation.

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

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

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

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

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

Use of the Administrative Rules of Montana (ARM):

- |                                     |   |
|-------------------------------------|---|
| Known<br>Subject                    | 1. Consult ARM topical index.<br>Update the rule by checking the accumulative table and the table of contents in the last Montana Administrative Register issued. |
| Statute<br>Number and<br>Department | 2. Go to cross reference table at end of each title which lists MCA section numbers and corresponding ARM rule numbers.   |

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies that have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through September 30, 2001. This table includes those rules adopted during the period October 1, 2001 through December 31, 2001 and any proposed rule action that was pending during the past 6-month period. (A notice of adoption must be published within 6 months of the published notice of the proposed rule.) This table does not, however, include the contents of this issue of the Montana Administrative Register (MAR).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through September 30, 2001, 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 2000, 2001 and 2002 Montana Administrative Registers.

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

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## BOARD APPOINTEES AND VACANCIES

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

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

In this issue, appointments effective in December 2001, appear. Vacancies scheduled to appear from February 1, 2002, through April 30, 2002, are listed, as are current vacancies due to resignations or other reasons. Individuals interested in serving on a board should refer to the bill that created the board for details about the number of members to be appointed and necessary qualifications.

Each month, the previous month's appointees are printed, and current and upcoming vacancies for the next three months are published.

### IMPORTANT

Membership on boards and commissions changes constantly. The following lists are current as of January 2, 2002.

For the most up-to-date information of the status of membership, or for more detailed information on the qualifications and requirements to serve on a board, contact the appointing authority.

BOARD AND COUNCIL APPOINTEES FROM DECEMBER 2001

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
AIDS Advisory Council (Public Health and Human Services) Mr. Jesse Sherratt Helena Qualifications (if required): student representative	Governor	Ficek	12/5/2001 11/15/2002
Concealed Weapon Advisory Council (Corrections) Mr. Mike Batista Helena Qualifications (if required): law enforcement official	Governor	not listed	12/5/2001 0/0/0
Rep. Gilda Clancy Helena Qualifications (if required): legislator	Governor	Jore	12/5/2001 0/0/0
Rep. Bob Clark Ryegate Qualifications (if required): gun owner	Governor	not listed	12/5/2001 0/0/0
Mr. Tom Frank Miles City Qualifications (if required): law enforcement official	Governor	not listed	12/5/2001 0/0/0
Mr. Pete Hansen Billings Qualifications (if required): gun owner	Governor	not listed	12/5/2001 0/0/0
Mr. Bob Jones Great Falls Qualifications (if required): law enforcement official	Governor	not listed	12/5/2001 0/0/0
Mr. Marty Lambert Bozeman Qualifications (if required): law enforcement official	Governor	not listed	12/5/2001 0/0/0

BOARD AND COUNCIL APPOINTEES FROM DECEMBER 2001

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Concealed Weapon Advisory Council (Corrections) cont. Mr. Gary Marbut Missoula Qualifications (if required): gun owner	Governor	not listed	12/5/2001 0/0/0
Ms. Joan Micheletti Billings Qualifications (if required): gun owner	Governor	Tuemmler	12/5/2001 0/0/0
Sen. Jack Wells Bozeman Qualifications (if required): legislator	Governor	not listed	12/5/2001 0/0/0
Montana Alfalfa Seed Committee (Agriculture) Mr. Ernest Johnson Chinook Qualifications (if required): representative of alfalfa seed growers industry	Governor	not listed	12/21/2001 12/21/2004
Mr. John Markegard Laurel Qualifications (if required): representative of alfalfa seed growers industry and alfalfa leaf-cutting bee industry	Governor	not listed	12/21/2001 12/21/2004
Noxious Weed Seed Free Forage Advisory Council (Agriculture) Mr. Dennis Cash Bozeman Qualifications (if required): ex officio	Director	not listed	12/11/2001 12/11/2003
Mr. Ray Ditterline Bozeman Qualifications (if required): ex officio	Director	not listed	12/11/2001 12/11/2003

BOARD AND COUNCIL APPOINTEES FROM DECEMBER 2001

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Noxious Weed Seed Free Forage Mr. Kelly Flynn Townsend Qualifications (if required):	Advisory Council (Agriculture) cont. Director outfitters and guides	not listed	12/11/2001 12/11/2003
Mr. David Leininger Lewistown Qualifications (if required):	Director forage producer	not listed	12/11/2001 12/11/2003
Ms. Marcy Mack Pablo Qualifications (if required):	Director weed districts	not listed	12/11/2001 12/11/2003
Mr. Wayne Maughn Fort Benton Qualifications (if required):	Director livestock/agriculture	not listed	12/11/2001 12/11/2003
Mr. W. Ralph Peck Helena Qualifications (if required):	Director Director of Department of Agriculture	not listed	12/11/2001 12/11/2003
Mr. Jim Pfau Stevensville Qualifications (if required):	Director feed pellets/cubes products	not listed	12/11/2001 12/11/2003
Mr. Tim Schaff Fishtail Qualifications (if required):	Director forage producer	not listed	12/11/2001 12/11/2003
Mr. LaMonte Schnur Townsend Qualifications (if required):	Director forage producer	not listed	12/11/2001 12/11/2003

BOARD AND COUNCIL APPOINTEES FROM DECEMBER 2001

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Noxious Weed Seed Free Forage Advisory Council (Agriculture) cont. Mr. Ross Wagner Kalispell Qualifications (if required): forage producer	Director	not listed	12/11/2001 12/11/2003
Mr. Clay Williams Livingston Qualifications (if required): weed districts	Director	not listed	12/11/2001 12/11/2003
Risk Management Executive Council (Administration) Mr. Peter Donovan Helena Qualifications (if required): representative of the Board of Public Education	Governor	Dunkle	12/5/2001 2/21/2003
State Emergency Response Commission (Military Affairs) Mr. Steve Larson Helena Qualifications (if required): representative of local fire departments	Governor	Hirose	12/10/2001 10/1/2003
Brig. General Frank Tobel Helena Qualifications (if required): representative of National Guard	Governor	Higgins	12/10/2001 10/1/2003

VACANCIES ON BOARDS AND COUNCILS -- February 1, 2002 through April 30, 2002

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Board of Architects (Commerce) Mr. Eugene Vogl, Billings Qualifications (if required): registered architect	Governor	3/27/2002
Board of Athletics (Commerce) Mr. John Kinna, Fairfield Qualifications (if required): public member	Governor	4/25/2002
Board of Dentistry (Commerce) Mr. Clifford Christenot, Libby Qualifications (if required): denturist	Governor	3/29/2002
Dr. Sheldon Ivers, Great Falls Qualifications (if required): dentist	Governor	3/29/2002
Ms. Nancy Rupert, Billings Qualifications (if required): public member	Governor	3/29/2002
Ms. Julie Fullerton, Lolo Qualifications (if required): dental hygienist	Governor	3/29/2002
Board of Hail Insurance (Agriculture) Ms. Rebecca McCabe, Ekalaka Qualifications (if required): public member	Governor	4/18/2002
Board of Public Education (Education) Mr. Kirk Miller, Cascade Qualifications (if required): Republican residing in District 3	Governor	2/1/2002
Capital Finance Advisory Council (Administration) Mr. Dick Anderson, Helena Qualifications (if required): representing the Board of Investments	Governor	2/11/2002

VACANCIES ON BOARDS AND COUNCILS -- February 1, 2002 through April 30, 2002

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Capital Finance Advisory Council (Administration) cont. Mr. Jerry Hoover, Helena Qualifications (if required): representing the Montana Health Facility Authority	Governor	2/11/2002
Sen. Bea McCarthy, Anaconda Qualifications (if required): legislator	Governor	2/11/2002
Sen. Chuck Swysgood, Dillon Qualifications (if required): representing the Budget Office	Governor	2/11/2002
Sen. Royal C. Johnson, Billings Qualifications (if required): legislator	Governor	2/11/2002
Mr. Jim Currie, Helena Qualifications (if required): representing the Director of the Department of Transportation	Governor	2/11/2002
Mr. Bob Thomas, Stevensville Qualifications (if required): member of the Board of Housing	Governor	2/11/2002
Ms. Barbara Ranf, Helena Qualifications (if required): representing the Department of Administration	Governor	2/11/2002
Mr. Mark A. Simonich, Helena Qualifications (if required): Director of the Department of Commerce	Governor	2/11/2002
Mr. W. Ralph Peck, Helena Qualifications (if required): Director of the Department of Agriculture	Governor	2/11/2002
Mr. Bud Clinch, Helena Qualifications (if required): Director of the Department of Natural Resources and Conservation	Governor	2/11/2002

VACANCIES ON BOARDS AND COUNCILS -- February 1, 2002 through April 30, 2002

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Capital Finance Advisory Council (Administration) cont. Mr. Mark Semmens, Great Falls Qualifications (if required): representative of the Board of Regents	Governor	2/11/2002
Ms. Jan Sensibaugh, Helena Qualifications (if required): representing the Department of Environmental Quality	Governor	2/11/2002
Commission on Practice of the Supreme Court (Justice) Mr. Gary Davis, Helena Qualifications (if required): elected	elected	4/1/2002
Mr. Sam Haddon, Missoula Qualifications (if required): elected	elected	4/1/2002
Governor's Council on Organ Donor Awareness (Public Health and Human Services) Mr. Lowell Bartels, East Helena Qualifications (if required): representative of business	Governor	3/23/2002
Ms. Nancy Ellery, Helena Qualifications (if required): representative of the Department of Public Health and Human Services	Governor	3/23/2002
Governor Judy Martz, Helena Qualifications (if required): representative of state government and donor families	Governor	3/23/2002
Mr. Ted Marchion, Anaconda Qualifications (if required): representative of donor recipients	Governor	3/23/2002
Mr. Ron Davis, Butte Qualifications (if required): representative of the media	Governor	3/23/2002
Mr. Paul Buck, Missoula Qualifications (if required): ex-officio member	Governor	3/23/2002

VACANCIES ON BOARDS AND COUNCILS -- February 1, 2002 through April 30, 2002

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Governor's Council on Organ Donor Awareness (Public Health and Human Services) cont. Ms. Jan Hendrix, Kalispell Qualifications (if required): ex-officio member	Governor	3/23/2002
Ms. Joyce Kramer, Billings Qualifications (if required): ex-officio member	Governor	3/23/2002
Ms. Sandi Stroot, Superior Qualifications (if required): ex-officio member	Governor	3/23/2002
Ms. Carole Erickson, Missoula Qualifications (if required): public member	Governor	3/23/2002
Mr. Dean Roberts, Helena Qualifications (if required): representative of the Department of Justice	Governor	3/23/2002
Ms. Mary Hainlin, Helena Qualifications (if required): representative of organ donor families	Governor	3/23/2002
Rev. Kenneth Mottram, Kalispell Qualifications (if required): clergy	Governor	3/23/2002
Governor's Standing Committee for Inmate Projections (Corrections) Mr. Marko Lucich, Butte Qualifications (if required): representing juvenile probation	Governor	3/2/2002
Mr. Troy W. McGee, Helena Qualifications (if required): representing law enforcement	Governor	3/2/2002
Sen. Sue Bartlett, Helena Qualifications (if required): legislator	Governor	3/2/2002

VACANCIES ON BOARDS AND COUNCILS -- February 1, 2002 through April 30, 2002

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Governor's Standing Committee for Inmate Projections (Corrections) cont. Sen. Vicki Cocchiarella, Missoula Qualifications (if required): representing the Montana Legislature	Governor	3/2/2002
Rep. Jim Shockley, Victor Qualifications (if required): legislator	Governor	3/2/2002
Mr. John Strandell, Great Falls Qualifications (if required): representing law enforcement	Governor	3/2/2002
Ms. Mary LaFond, Helena Qualifications (if required): representing the Governor's Budget Office	Governor	3/2/2002
Mr. Don Crabbe, Helena Qualifications (if required): representing the Board of Crime Control	Governor	3/2/2002
Mr. Ted Clack, Helena Qualifications (if required): representing the judiciary	Governor	3/2/2002
Ms. Christine Cooke, Hardin Qualifications (if required): representing county prosecutors	Governor	3/2/2002
Mr. Craig Thomas, Deer Lodge Qualifications (if required): representing the Board of Pardons and Parole	Governor	3/2/2002
Ms. Mary Fay, Helena Qualifications (if required): representing the Department of Corrections	Governor	3/2/2002
Mr. Bill Furois, East Helena Qualifications (if required): representing the public at large	Governor	3/2/2002
Mr. Rudy Gideon, Missoula Qualifications (if required): representing the University System	Governor	3/2/2002

VACANCIES ON BOARDS AND COUNCILS -- February 1, 2002 through April 30, 2002

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Governor's Standing Committee for Inmate Projections (Corrections) cont. Ms. Melissa Harrison, Missoula Qualifications (if required): representing the University System	Governor	3/2/2002
Mr. Jeff Rosky, Helena Qualifications (if required): representing the Department of Corrections	Governor	3/2/2002
Helena College of Technology of the U of M Executive Board (University System) Ms. C. Lynn Robson, Helena Qualifications (if required): public member	Governor	4/15/2002
Independent Living Council (Public Health and Human Services) Ms. June Hermanson, Billings Qualifications (if required): none specified	Director	2/15/2002
MSU-Billings Executive Board (Education) Mr. Jim Sites, Billings Qualifications (if required): public member	Governor	4/15/2002
MSU-Northern Executive Board (Education) Mr. David G. Rice, Havre Qualifications (if required): public member	Governor	4/15/2002
MSU-Great Falls College of Technology Executive Board (University System) Mr. Jack King, Great Falls Qualifications (if required): public member	Governor	4/15/2002
Martin Luther King Holiday Commemorative Commission (Community Services) Mr. Donald Louie Clayborn, Helena Qualifications (if required): Director of Indian Affairs	Governor	3/23/2002
Ms. Angelina Vallejo Cormier, Billings Qualifications (if required): public member	Governor	3/23/2002

VACANCIES ON BOARDS AND COUNCILS -- February 1, 2002 through April 30, 2002

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Martin Luther King Holiday Commemorative Commission (Community Services) cont. Mr. Robert Fourstar, Wolf Point Qualifications (if required): public member	Governor	3/23/2002
Ms. Kay Maloney, Great Falls Qualifications (if required): public member	Governor	3/23/2002
Ms. Cristina Medina, Helena Qualifications (if required): public member	Governor	3/23/2002
Mr. Brian Schnitzer, Billings Qualifications (if required): public member	Governor	3/23/2002
Ms. Michelle Wilkerson, Great Falls Qualifications (if required): public member	Governor	3/23/2002
Ms. Carol Murray, Browning Qualifications (if required): public member	Governor	3/23/2002
Mr. William Jones, Great Falls Qualifications (if required): public member	Governor	3/23/2002
Ms. Betty McCoy, Bozeman Qualifications (if required): public member	Governor	3/23/2002
Mr. Alan Thompson, Helena Qualifications (if required): public member	Governor	3/23/2002
Ms. Kathy Day, Great Falls Qualifications (if required): public member	Governor	3/23/2002
Ms. Lindley Dupree, Kalispell Qualifications (if required): public member	Governor	3/23/2002

VACANCIES ON BOARDS AND COUNCILS -- February 1, 2002 through April 30, 2002

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Martin Luther King Holiday Commemorative Commission (Community Services) cont. Mr. Hilton McClendon, Billings Qualifications (if required): public member	Governor	3/23/2002
Ms. Gwendolyn Kircher, Billings Qualifications (if required): public member	Governor	3/23/2002
Montana Abstinence Education Advisory Council (Public Health and Human Services) Sen. Duane Grimes, Clancy Qualifications (if required): public member	Governor	3/14/2002
Ms. Helen Beausoleil, Helena Qualifications (if required): public member	Governor	3/14/2002
Ms. Elaine Collins, Dillon Qualifications (if required): public member	Governor	3/14/2002
Ms. Jill Flynn, Townsend Qualifications (if required): public member	Governor	3/14/2002
Mr. Bill Hodges, Hardin Qualifications (if required): public member	Governor	3/14/2002
Ms. Janet Meissner, Belt Qualifications (if required): public member	Governor	3/14/2002
Ms. Karen S. Sloan, Havre Qualifications (if required): public member	Governor	3/14/2002
Ms. Jessie Stinger, Polson Qualifications (if required): public member	Governor	3/14/2002

VACANCIES ON BOARDS AND COUNCILS -- February 1, 2002 through April 30, 2002

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Montana Abstinence Education Advisory Council (Public Health and Human Services) cont. Mr. Gary Swant, Deer Lodge Qualifications (if required): public member	Governor	3/14/2002
Mr. Bryce Skjervem, Helena Qualifications (if required): public member	Governor	3/14/2002
Ms. Cassie Rice, Helena Qualifications (if required): public member	Governor	3/14/2002
Mr. Jim Good, Bozeman Qualifications (if required): public member	Governor	3/14/2002
Mr. Jason Gleason, Butte Qualifications (if required): public member	Governor	3/14/2002
Ms. Joleen Spang, Lame Deer Qualifications (if required): public member	Governor	3/14/2002
Ms. Traci Hronek, Great Falls Qualifications (if required): public member	Governor	3/14/2002
Ms. Julie Rossignol, Wolf Point Qualifications (if required): public member	Governor	3/14/2002
Rep. Ken Peterson, Billings Qualifications (if required): public member	Governor	3/14/2002
Ms. Susan Smith, Billings Qualifications (if required): public member	Governor	3/14/2002
Ms. Julie Ippolito, Helena Qualifications (if required): public member	Governor	3/14/2002

VACANCIES ON BOARDS AND COUNCILS -- February 1, 2002 through April 30, 2002

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Montana Arts Council (Montana Arts Council) Mr. John B. Dudis, Kalispell Qualifications (if required): public member	Governor	2/1/2002
Ms. Carol Novotne, Fort Harrison Qualifications (if required): public member	Governor	2/1/2002
Mr. Robert Morrison, Billings Qualifications (if required): public member	Governor	2/1/2002
Ms. Connie G. Clarke, Miles City Qualifications (if required): public member	Governor	2/1/2002
Ms. Carol Brenden, Scobey Qualifications (if required): public member	Governor	2/1/2002
Montana State University Executive Board (Education) Mr. Lee Oldenburger, Manhattan Qualifications (if required): public member	Governor	4/15/2002
Montana Tech of the University of Montana (Education) Mr. Dan Berube, Anaconda Qualifications (if required): public member	Governor	4/15/2002
Montana Wolf Management Advisory Council (Governor) Dr. Charles E. Buehler, Butte Qualifications (if required): public member	Governor	4/28/2002
Mr. Hank Fischer, Missoula Qualifications (if required): public member	Governor	4/28/2002
Rep. Chase Hibbard, Helena Qualifications (if required): public member	Governor	4/28/2002

VACANCIES ON BOARDS AND COUNCILS -- February 1, 2002 through April 30, 2002

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Montana Wolf Management Advisory Council (Governor) cont. Mr. Bruce Tutvedt, Kalispell Qualifications (if required): public member	Governor	4/28/2002
Ms. Darlyne Dascher, Fort Peck Qualifications (if required): public member	Governor	4/28/2002
Mr. Bruce Malcolm, Emigrant Qualifications (if required): public member	Governor	4/28/2002
Dr. Nelson Wert, Townsend Qualifications (if required): public member	Governor	4/28/2002
Ms. Robin Hompesch, Bozeman Qualifications (if required): public member	Governor	4/28/2002
Mr. James Cross, Kalispell Qualifications (if required): public member	Governor	4/28/2002
Mr. Terry Beaver, Helena Qualifications (if required): public member	Governor	4/28/2002
Mr. Ira Newbreast, Browning Qualifications (if required): tribal representative	Governor	4/28/2002
Mr. Jay Kirkpatrick, Billings Qualifications (if required): public member	Governor	4/28/2002
Organ Donor Awareness Task Force (Public Health and Human Services) Ms. Pamela Meyer, Lame Deer Qualifications (if required): Native American representative	Governor	3/23/2002

VACANCIES ON BOARDS AND COUNCILS -- February 1, 2002 through April 30, 2002

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Organ Donor Awareness Task Force (Public Health and Human Services) cont. Ms. Jennifer Keck, Conrad Qualifications (if required): recipient	Governor	3/23/2002
Peace Officers' Standards and Training Council (Justice) Ms. Anne Kindness, Billings Qualifications (if required): representative of the 9-1-1 service	Governor	2/14/2002
Mr. Jim Smith, Helena Qualifications (if required): representative of the League of Cities and Towns	Governor	2/14/2002
Captain Greg Hintz, Missoula Qualifications (if required): representative of the Deputy Sheriff's Association	Governor	2/14/2002
Mr. Chris Miller, Deer Lodge Qualifications (if required): representing Montana Attorney's Association	Governor	2/14/2002
Mr. Greg Noose, Helena Qualifications (if required): representing Montana Law Enforcement Academy	Governor	2/14/2002
Mr. Dennis McCave, Billings Qualifications (if required): representing Montana detention officers	Governor	2/14/2002
Sheriff Lee Edmisten, Virginia City Qualifications (if required): representing Montana Sheriff's Association	Governor	2/14/2002
Dr. Raymond C. Murray, Missoula Qualifications (if required): representing citizens at large	Governor	2/14/2002
Commissioner Gary Fjelstad, Forsyth Qualifications (if required): representing Montana Association of Counties	Governor	2/14/2002

VACANCIES ON BOARDS AND COUNCILS -- February 1, 2002 through April 30, 2002

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Peace Officers' Standards and Training Council (Justice) cont. Mr. John Ramsey, Helena Qualifications (if required): representing the Department of Fish, Wildlife, and Parks	Governor	2/14/2002
Captain Bill Dove, Bozeman Qualifications (if required): representing Montana Police Protective Association	Governor	2/14/2002
Col. Bert Obert, Helena Qualifications (if required): representing Montana Highway Patrol	Governor	2/14/2002
Dr. James W. Burfeind, Missoula Qualifications (if required): representing criminal justice educators	Governor	2/14/2002
Ms. Winifred M. Ore, Helena Qualifications (if required): representing the Department of Corrections	Governor	2/14/2002
Ms. Shanna Bulik, Great Falls Qualifications (if required): representing juvenile detention administrators	Governor	2/14/2002
Chief Mark Tymrak, Bozeman Qualifications (if required): representing the Police Chiefs Association	Governor	2/14/2002
Sen. Debbie Shea, Butte Qualifications (if required): representative of the Crime Control Board	Governor	2/14/2002
Public Employees' Retirement Board (Administration) Ms. Carole Carey, Ekalaka Qualifications (if required): public employee	Governor	4/1/2002
State Small Business Development Center Advisory Council (Commerce) Mr. Andy Poole, Helena Qualifications (if required): none specified	Director	4/26/2002

VACANCIES ON BOARDS AND COUNCILS -- February 1, 2002 through April 30, 2002

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
State Small Business Development Center Advisory Council Mr. Dave Sharpe, Bozeman Qualifications (if required): none specified	(Commerce) cont. Director	4/26/2002
Ms. Carol Willis, Billings Qualifications (if required): none specified	Director	4/26/2002
Mr. Bud Leuthold, Billings Qualifications (if required): none specified	Director	4/26/2002
Mr. Chris Busch, Ronan Qualifications (if required): none specified	Director	4/26/2002
Mr. Scott Heck, Bozeman Qualifications (if required): none specified	Director	4/26/2002
Ms. Shirley Beck, Philipsburg Qualifications (if required): none specified	Director	4/26/2002
Mr. Ryan Reid, Colstrip Qualifications (if required): none specified	Director	4/26/2002
Ms. Nancy Snow, Great Falls Qualifications (if required): none specified	Director	4/26/2002
Ms. Patricia Jurenka, Havre Qualifications (if required): none specified	Director	4/26/2002
Ms. Toni Broadbent, Helena Qualifications (if required): none specified	Director	4/26/2002
Mr. Ken Green, Whitefish Qualifications (if required): none specified	Director	4/26/2002

VACANCIES ON BOARDS AND COUNCILS -- February 1, 2002 through April 30, 2002

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
State Small Business Development Center Advisory Council Mr. Craig Rawlings, Missoula Qualifications (if required): none specified	(Commerce) cont. Director	4/26/2002
Mr. James Johnson, Wolf Point Qualifications (if required): none specified	Director	4/26/2002
Mr. Paul Tuss, Cut Bank Qualifications (if required): none specified	Director	4/26/2002
Mr. John Langenheim, Bozeman Qualifications (if required): none specified	Director	4/26/2002
Mr. Rich McLaughlin, Butte Qualifications (if required): none specified	Director	4/26/2002
Dr. Bob Taylor, Bozeman Qualifications (if required): none specified	Director	4/26/2002
Ms. Judi Tilman, Butte Qualifications (if required): none specified	Director	4/26/2002
Mr. John Balsam, Missoula Qualifications (if required): none specified	Director	4/26/2002
Ms. Linda Reed, Helena Qualifications (if required): none specified	Director	4/26/2002
Dr. Richard Dailey, Missoula Qualifications (if required): none specified	Director	4/26/2002
Ms. Michelle Johnston, Helena Qualifications (if required): none specified	Director	4/26/2002

VACANCIES ON BOARDS AND COUNCILS -- February 1, 2002 through April 30, 2002

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
University of Montana Executive Board (Education) Colonel Sam A. Roberts, Missoula Qualifications (if required): public member	Governor	4/15/2002
Upper Clark Fork River Basin Remediation and Restoration Education Advisory Council (Environmental Quality) Mayor Judy H. Jacobson, Butte Qualifications (if required): representing local government	Governor	4/26/2002
Ms. Carole Lankford, Pablo Qualifications (if required): representative of the Salish and Kootenai Tribes	Governor	4/26/2002
Ms. Carol Fox, Helena Qualifications (if required): representative of the Natural Resource Damage Litigation	Governor	4/26/2002
Ms. Jan Sensibaugh, Helena Qualifications (if required): representing the Department of Environmental Quality	Governor	4/26/2002
Mr. M. Jeff Hagener, Helena Qualifications (if required): representing the Department of Fish, Wildlife, and Parks	Governor	4/26/2002
Commissioner Gail Jones, Deer Lodge Qualifications (if required): local government representative	Governor	4/26/2002
Mr. Jim Flynn, Anaconda Qualifications (if required): businessperson	Governor	4/26/2002
Ms. Mary Seccombe, Butte Qualifications (if required): conservation district representative	Governor	4/26/2002
Mr. Tom Bugni, Butte Qualifications (if required): member of the public active in conservation or recreation	Governor	4/26/2002

VACANCIES ON BOARDS AND COUNCILS -- February 1, 2002 through April 30, 2002

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Upper Clark Fork River Basin Remediation and Restoration Education Advisory Council (Environmental Quality) cont.		
Ms. Kathleen Hadley, Deer Lodge Qualifications (if required): local natural resource scientist	Governor	4/26/2002
Mr. Bruce Hall, Milltown Qualifications (if required): local planner or local development specialist	Governor	4/26/2002
Dr. Pat Munday, Walkerville Qualifications (if required): engineer	Governor	4/26/2002
Mr. Rob Collins, Helena Qualifications (if required): representative of the Natural Resource Damage Litigation	Governor	4/26/2002
Mr. Matt Clifford, Missoula Qualifications (if required): representative of a non-profit organization	Governor	4/26/2002
Mr. Chris Marchion, Anaconda Qualifications (if required): member of the public active in conservation or recreation	Governor	4/26/2002
Ms. Sally Johnson, Missoula Qualifications (if required): member of the public who does not represent one of the above interests	Governor	4/26/2002
Western Montana College of the University of Montana (Education)		
Ms. Maryellen Wilkerson, Dillon Qualifications (if required): public member	Governor	4/15/2002
Wild Medicinal Plants Task Force (Natural Resources and Conservation)		
Mr. Gary Gingery, Helena Qualifications (if required): representative of the Department of Agriculture	Governor	4/20/2002

VACANCIES ON BOARDS AND COUNCILS -- February 1, 2002 through April 30, 2002

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Wild Medicinal Plants Task Force (Natural Resources and Conservation) Mr. Curley Youpee, Poplar Qualifications (if required): representative of tribal governments	Governor	4/20/2002
Ms. Robyn Klein, Bozeman Qualifications (if required): knowledge of the scientific aspects of indigenous medicinal plants	Governor	4/20/2002
Ms. Kathleen Wagnild, Outlook Qualifications (if required): knowledge of the scientific aspects of indigenous medicinal plants	Governor	4/20/2002
Dr. Rustem S. Medora, Missoula Qualifications (if required): representative of the Montana University System	Governor	4/20/2002
Mr. Peter McCay, Lolo Qualifications (if required): representative of the medicinal plant production industry	Governor	4/20/2002
Mr. Kirk Denny, Lame Deer Qualifications (if required): knowledge of the cultural, historical and spiritual aspects of wild medicinal plants	Governor	4/20/2002
Mr. Kevin Chappell, Helena Qualifications (if required): representative of the Department of Natural Resources and Conservation	Governor	4/20/2002