

MONTANA ADMINISTRATIVE REGISTER

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MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 7

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 The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

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

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

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 24.29.1433, 24.29.1534, and) PROPOSED AMENDMENT
24.29.1538, pertaining to medical fee)
schedules for workers' compensation)
purposes)

TO: All Concerned Persons

1. On May 6, 2019, at 10:00 a.m., the Department of Labor and Industry (department) will hold a public hearing in conference rooms A and B of the Beck Building, 1805 Prospect Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m., on April 29, 2019, to advise us of the nature of the accommodation that you need. Please contact Celeste Ackerman, Employment Relations Division, P.O. Box 8011, Helena, Montana 59604-8011; telephone (406) 444-6604; facsimile (406) 444-4140; Montana TTD (406) 444-5549; or e-mail celeste.ackerman@mt.gov.

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

24.29.1433 FACILITY SERVICE RULES AND RATES FOR SERVICES PROVIDED ON OR AFTER JULY 1, 2013 (1) through (1)(c)(iv) remain the same.

(v) The "Montana Workers' Compensation Facility Fee Schedule Instruction Set Effective July 1, 2017," for services provided from July 1, 2017, through June 30, 2018; ~~and~~

(vi) The "Montana Workers' Compensation Facility Fee Schedule Instruction Set Effective July 1, 2018," for services provided from July 1, 2018, through June 30, 2019; and

(vii) The "Montana Workers' Compensation Facility Fee Schedule Instruction Set Effective July 1, 2019."

(2) through (11)(a)(v) remain the same.

(vi) Effective July 1, 2018, through June 30, 2019, the base rate is \$8,373.

(vii) Effective July 1, 2019, the base rate is \$8,599.

(b) Payments for inpatient acute care hospital services must be calculated using the base rate multiplied by the Montana MS-DRG weight. For example, if the MS-DRG weight is 0.5, the amount payable is ~~\$4,186.50~~ \$4,299.50, which is the base rate of ~~\$8,373~~ \$8,599 multiplied by 0.5.

(c) through (12)(a)(iv) remain the same.

(v) \$114, from July 1, 2017, through June 30, 2018; ~~and~~

(vi) ~~\$116, on or after~~ from July 1, 2018, through June 30, 2019; and
(vii) \$119, on or after July 1, 2019.

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

(v) ~~\$86, from July 1, 2017, through June 30, 2018; and~~

(vi) ~~\$87, on or after~~ from July 1, 2018, through June 30, 2019; and

(vii) \$89, on or after July 1, 2019.

(c) through (g) remain the same.

AUTH: 39-71-203, MCA

IMP: 39-71-704, MCA

24.29.1534 PROFESSIONAL FEE SCHEDULE FOR SERVICES

PROVIDED ON OR AFTER JULY 1, 2013 (1) through (1)(a)(iv) remain the same.

(v) The "Montana Workers' Compensation Professional Fee Schedule Instruction Set Effective July 1, 2017" applies to services provided from July 1, 2017, through June 30, 2018; ~~and~~

(vi) The "Montana Workers' Compensation Professional Fee Schedule Instruction Set Effective July 1, 2018" applies to services provided ~~on or after~~ from July 1, 2018, through June 30, 2019; and

(vii) The "Montana Workers' Compensation Professional Fee Schedule Instruction Set Effective July 1, 2019" applies to services provided on or after July 1, 2019.

(b) through (10) remain the same.

AUTH: 39-71-203, MCA

IMP: 39-71-704, MCA

24.29.1538 CONVERSION FACTORS FOR SERVICES PROVIDED ON OR AFTER JANUARY 1, 2008 (1) through (2)(f) remain the same.

(g) ~~\$62.92 from July 1, 2017, through June 30, 2018; and~~

(h) ~~\$63.50 on or after~~ from July 1, 2018, through June 30, 2019; and

(i) \$64.04 on or after July 1, 2019.

(3) through (3)(g) remain the same.

(h) ~~\$65.98 from July 1, 2017, through June 30, 2018; and~~

(i) ~~\$66.97 on or after~~ from July 1, 2018, through June 30, 2019; and

(j) \$69.58 on or after July 1, 2019.

(4) and (5) remain the same.

AUTH: 39-71-203, MCA

IMP: 39-71-704, MCA

REASON: There is reasonable necessity to amend ARM 24.29.1433, 24.29.1534, and 24.29.1538 to incorporate the annually updated medical fee schedules and related materials, in order to comply with the provisions of 39-71-704(2), MCA, that require that the department annually establish a medical fee schedule.

4. Copies of the proposed 2019 publication is available and can be accessed at <http://erd.dli.mt.gov/work-comp-claims/medical-regulations>.

5. A printed version of the proposed 2019 publication is also available by contacting Celeste Ackerman at the address, e-mail, or telephone numbers listed in paragraph 2 of this notice.

6. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Jason Swant, Employment Relations Division, P.O. Box 8011, Helena, MT 59604-8011; fax (406) 444-4140; or e-mail to jswant@mt.gov, and must be received no later than 5:00 p.m., on May 13, 2019.

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

8. An electronic copy of this notice of public hearing is available through the Secretary of State's web site at <https://sosmt.gov/arm/>. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems, and that a person's difficulties in sending an e-mail do not excuse late submission of comments.

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

10. Pursuant to 2-4-111, MCA, the department has determined that the rule changes proposed in this notice do not have a significant and direct impact upon small businesses.

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

/s/ Mark Cadwallader
Mark Cadwallader
Alternate Rule Reviewer

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

Certified to the Secretary of State April 2, 2019.

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

In the matter of the adoption of an emergency rule closing the Smith River from Camp Baker to Eden Bridge)
) NOTICE OF ADOPTION OF AN EMERGENCY RULE
)
)

TO: All Concerned Persons

1. The Department of Fish, Wildlife and Parks (department) has determined the following reasons justify the adoption of an emergency rule closing the Smith River from Camp Baker to Eden Bridge:

(a) There is ice on the Smith River that has caused the river to be impassable by recreationists. The steep canyon walls provide a perfect place for ice to collect and remain due to lack of sun exposure.

(b) Persons recreating on the river in these conditions would be subjected to:

- (i) collisions with ice;
- (ii) becoming stranded and having to hike out of steep canyon areas; or
- (iii) drowning.

(c) Therefore, as this situation constitutes an imminent peril to public health, safety, and welfare, due to the combination of unsafe conditions and this threat cannot be averted or remedied by any other administrative act, the department adopts the following emergency rule. The emergency rule will be sent as a press release to newspapers throughout the state. Also, signs informing the public of the closure will be posted at access points. The rule will be sent to interested parties and published as an emergency rule in Issue No. 7 of the 2019 Montana Administrative Register.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of the notice. If you require an accommodation, contact the department no later than 5:00 p.m. on April 26, 2019, to advise us of the nature of the accommodation that you need. Please contact Kaedy Gangstad, Fish, Wildlife and Parks, 1420 East Sixth Avenue, P.O. Box 200701, Helena, MT 59620-0701; telephone (406) 444-4594; or e-mail kgangstad@mt.gov.

3. The emergency rule is effective March 22, 2019, when this rule notice is filed with the Secretary of State.

4. The text of the emergency rule provides as follows:

RULE I SMITH RIVER EMERGENCY CLOSURE (1) The closed portion of the Smith River is located in Meagher and Cascade Counties.

(2) The Smith River is closed to all floating on the river between Camp Baker and Eden Bridge.

(3) This rule will remain in effect until the department determines the river is again safe for boating. This will depend on the extent and duration of the ice on the river. Signs closing the river will be removed when the rule is no longer effective.

AUTH: 2-4-303, 23-1-106, MCA
IMP: 2-4-303, 23-1-106, MCA

5. The rationale for the emergency rule is as set forth in paragraph 1.

6. Concerned persons are encouraged to submit their comments to the department. They should submit their comments along with their names and addresses to Colin Maas, Fish, Wildlife and Parks, 4600 Giant Springs Rd, Great Falls, MT 59405; or e-mail cmaas@mt.gov. Any comments must be received no later than May 10, 2019.

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

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

/s/ Mike Volesky

Mike Volesky

Chief of Operations

Department of Fish, Wildlife and Parks

/s/ Zach Zipfel

Zach Zipfel

Rule Reviewer

Certified to the Secretary of State March 22, 2019.

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

In the matter of the adoption of an) NOTICE OF ADOPTION OF
emergency rule closing the Mallard's) EMERGENCY RULE
Rest Fishing Access Site in Park)
County)

TO: All Concerned Persons

1. The Department of Fish, Wildlife and Parks (department) has determined the following reasons justify the adoption of an emergency rule closing the Mallard's Rest Fishing Access Site:

(a) The Mallard's Rest Fishing Access Site (FAS) is located along Highway 89, which is currently flooded. Highway 89's steep embankment is collapsing into the FAS. Along with the collapsing embankment, the FAS is also flooded.

(b) The combination of dangerous conditions includes the eroding and collapsing highway bank, high water levels, rapidly changing water levels, and flooded roadways that have become unsafe for vehicle and pedestrian travel.

(c) Persons recreating at the fishing access site would be at risk of becoming trapped by the collapsing bank and unsafe roadways, injury, or drowning due to flooding.

(d) Therefore, as this situation constitutes an imminent peril to public health, safety, and welfare, due to the combination of unsafe conditions and this threat cannot be averted or remedied by any other administrative act, the department adopts the following emergency rule. The emergency rule will be sent as a press release to newspapers throughout the state. Also, signs informing the public of the closure will be posted at access points. The rule will be sent to interested parties, and published as an emergency rule in Issue No. 7 of the 2019 Montana Administrative Register.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of the notice. If you require an accommodation, contact the department no later than 5:00 p.m. on April 26, 2019, to advise us of the nature of the accommodation that you need. Please contact Kaedy Gangstad, Fish, Wildlife and Parks, 1420 East Sixth Avenue, P.O. Box 200701, Helena, MT 59620-0701; telephone (406) 444-4594; or e-mail kgangstad@mt.gov.

3. The emergency rule is effective March 26, 2019, when this rule notice is filed with the Secretary of State.

4. The text of the emergency rule provides as follows:

RULE I MALLARD'S REST FISHING ACCESS SITE EMERGENCY CLOSURE (1) The Mallard's Rest Fishing Access Site is located along the Yellowstone River in Park County.

(2) The Mallard's Rest Fishing Access Site is closed to all public occupation and recreation as signed.

(3) This rule will remain in effect until the department determines that the site is again safe for public occupancy. This will depend on the extent and duration of the collapsing highway bank including the Department of Transportation's assessment of the bank, as well as the extent of flooding in the fishing access site. Signs closing the fishing access site will be removed when the rule is no longer effective.

AUTH: 2-4-303, 87-1-202, MCA

IMP: 2-4-303, 87-1-202, MCA

5. The rationale for the emergency rule is as set forth in paragraph 1.

6. Concerned persons are encouraged to submit their comments to the department. They should submit their comments along with their names and addresses to Travis Horton, Fish, Wildlife and Parks, 1400 South 19th Avenue, Bozeman, MT 59718-5496; or e-mail thorton@mt.gov. Any comments must be received no later than May 10, 2019.

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

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

/s/ Mike Volesky

Mike Volesky

Chief of Operations

Department of Fish, Wildlife and Parks

/s/ Aimee Hawkaluk

Aimee Hawkaluk

Rule Reviewer

Certified to the Secretary of State March 26, 2019.

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

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 37.108.507 pertaining to update)
of the Healthcare Effectiveness Data)
and Information Set (HEDIS))

TO: All Concerned Persons

1. On February 22, 2019, the Department of Public Health and Human Services published MAR Notice No. 37-874 pertaining to the proposed amendment of the above-stated rule at page 198 of the 2019 Montana Administrative Register, Issue Number 4.

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

3. No comments or testimony were received.

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

/s/ Flint Murfitt
Flint Murfitt
Rule Reviewer

/s/ Sheila Hogan
Sheila Hogan, Director
Public Health and Human Services

Certified to the Secretary of State April 2, 2019.

NOTICE OF FUNCTION OF ADMINISTRATIVE RULE REVIEW COMMITTEE

Interim Committees and the Environmental Quality Council

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

Economic Affairs Interim Committee:

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

Education and Local Government Interim Committee:

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

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

- Department of Public Health and Human Services.

Law and Justice Interim Committee:

- Department of Corrections; and
- Department of Justice.

Energy and Telecommunications Interim Committee:

- Department of Public Service Regulation.

Revenue and Transportation Interim Committee:

- Department of Revenue; and
- Department of Transportation.

State Administration and Veterans' Affairs Interim Committee:

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

Environmental Quality Council:

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

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

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

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

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

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

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

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

Use of the Administrative Rules of Montana (ARM):

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

RECENT RULEMAKING BY AGENCY

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies that have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through December 31, 2018. This table includes notices in which those rules adopted during the period October 19, 2018, through March 29, 2019, occurred and any proposed rule action that was pending during the past 6-month period. (A notice of adoption must be published within six months of the published notice of the proposed rule.) This table does not include the contents of this issue of the Montana Administrative Register (MAR or Register).

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

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

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

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